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The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 9.30 a.m.

and read prayers.

PETITIONS

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

Immigration: Asylum Seekers

To the Honourable the President and the Members of the Senate in Parliament assembled:

Whereas the 1998 Synod of the Anglican Diocese of Melbourne carried without dissent the following Motion:

That this Synod regrets the Government’s adoption of procedures for certain people seeking political asylum in Australia which exclude them from all public income support while withholding permission to work, thereby creating a group of beggars dependent on the Churches and charities for food and the necessities of life;

and calls upon the Federal government to review such procedures immediately and remove all practices which are manifestly inhumane and in some cases in contravention of our national obligations as a signatory of the UN Covenant on Civil and Political Rights.

We, therefore, the individual, undersigned attendees and members at the Oxfam meeting at Mount Waverly, Victoria 3149, petition the Senate in support of the abovementioned motion.

by Senator McGauran (from 63 citizens)

Petition received.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.31 a.m.)—I seek leave to move a motion relating to the routine of business for today.

Leave not granted.

Suspension of Standing Orders

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.32 a.m.)—Pursuant to contingent notice standing in the name of Senator Hill, I move:

That so much of standing orders be suspended as would prevent Senator Hill moving a motion to provide for the consideration of a matter, namely a motion to give precedence to a motion to vary the routine of business today.

I am not going to speak to the motion. I just want to get on with the substantive issue.

Senator BROWN (Tasmania) (9.32 a.m.)—Firstly, I remind the government that last night, when I sought leave to have the completion of my speech on a matter to do with Christmas Island Incorporated, leave was not granted by the government. Secondly, I want to place on record my objection to the debate of the antiterrorism legislation, which is the major reason for the proposed changes to the sitting hours today. I know the Attorney-General believes that the Senate will take longer than today to deal with this piece of legislation but it is a vital piece of legislation. It has enormous interest in the Australian populace. There are major amendments which are being flagged by all parties in this place. There is a large suite of
very significant amendments from the government, yet we did not see the amendments during previous sitting hours. They were delivered to us after the Senate rose last night. I object to that. This is not a proper process. The government needs to get its act in order much better than that. How can the community feed in—

Senator Ian Campbell—Madam President, I rise on a point of order. We are debating a motion which is pursuant to a contingent notice which is a motion to give precedence to a motion to vary the routine of business this afternoon. I think the senator is in breach of standing orders as his speech seems entirely irrelevant to this subject.

The PRESIDENT—The motion at present is a matter of urgency and I am certainly listening to Senator Brown to see whether that is the thrust of what he is saying. He has five minutes to speak.

Senator BROWN—How can the government claim urgency on this matter when it has had it in hand for a long time now but dumps these significant amendments on the Senate and then wants today to change the sitting hours and the form of the Senate to deal with them? The urgency is a political one for the government, but there is not urgency, I am arguing, in us changing our sitting hours to deal with this today. Quite the reverse, what is urgent and important is that we are able to consult with our constituency about this matter and with the experts in the field. The ramifications of the legislation we are being asked to deal with later in the day are huge for this nation. They need proper consideration. There is not an urgency to deal with them. We are not in a crisis situation in this country. The government has had months to get this legislation fixed up and to allow proper and due consideration. I reiterate: these are major amendments. Quite the contrary to urgency, the important factor—

Senator Ian Campbell—Madam President, on a point of order: the senator has now had four minutes to discuss the issue before you and before the Senate and has continued to refuse to be relevant. I ask you to sit him down.

The PRESIDENT—Senator Brown, on the point of order.

Senator BROWN—I have been quite clearly putting the case against urgency on this matter and I will continue to do so, Madam President.

The PRESIDENT—This is the urgency of suspending standing orders, and Senator Brown has to keep within that.

Senator BROWN—Thank you, Madam President. I could explain it to the leader later. I wrote to the Attorney-General yesterday morning asking that we, and the community, have time to review amendments coming from the government. I have had no response to that letter. We have had the amendments dumped on us, but I have had no response to that letter from the government.

Senator Ian Campbell—We rang you twice yesterday and you did not return our calls.

Senator BROWN—You did not return the call this morning, Senator. The fact is I wrote to the Attorney; I am still waiting on a written reply. This matter is not urgent—quite the contrary. We should be allowing proper time, due time, for the community to debate it.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (9.38 a.m.)—I want to address the question before the chair, which is the proposal from Senator Campbell to suspend standing orders, effectively to allow government business to be dealt with in general business time this afternoon. That is what the government is proposing to do. I would like to give some background to that in a moment.

I heard Senator Brown’s speech, and I listened to it in detail. First, let me say that I think it was an error of judgment from the government not to grant leave to Senator Brown to allow him to incorporate the remainder of his speech yesterday on Christmas Island. That was an error of judgment. I can say, through you, Madam President, to the chamber, particularly to Senator Brown, that he would be aware that the opposition was willing to grant leave. It seemed sensible in the circumstances, and I think that the
government duty minister and duty whip need to think about some of the consequences of their knee-jerk reactions in relation to these particular matters. And they are arguing about it over there as we speak—they may as well have a mass meeting about it to discuss that level of chamber tactics.

Let me go to the substantive issue before the chair, which is a move by the government, given that leave has not been granted for Senator Campbell’s motion in relation to the placing of business, to reorder the business before the chamber for this afternoon. I want to make it absolutely clear that the opposition indicated through all the formal processes—through the whips’ meeting and on a manager-to-manager basis—that, given the unique circumstances of this sittings fortnight, the opposition was prepared to allow government business to take place during general business time today. Why we did that is simple. Next week, as I am sure all colleagues are aware, eight senators who sit in this chamber will be leaving. There will be a need for valedictory speeches. Each and every one of the 76 senators in this chamber would accept that it would be appropriate in our sittings timetable to allow valedictory speeches to take place. The opposition is sensitive to that and believes the appropriate course of action was to allow that to occur during general business time next week.

We also have traditionally given up general business time in the last sitting week to the government to allow the program to be completed. It probably will not be possible to do that next week because of the pressure not only of business but of valedictory speeches. So what the opposition decided to do was to give up general business time this week to compensate for that, knowing full well—and let’s be honest—that six of those retiring eight senators represent the Australian Labor Party in this place. They are members of the opposition. We know that and we just have to be sensible about the way the program works in this chamber. But I want to say this, particularly to Senator Brown—through you, Madam President—but to the chamber as well: what the opposition proposed was to give this time up for the government’s legislation program—for government business. It is up to the government to determine what matters, what legislation they bring forward at that time.

I can say to Senator Brown that I am well aware that there is a very significant number of senators who have indicated they want to make a speech in the second reading debate on the security package, if that is brought forward for debate by the government. There is a qualification there: if that is brought forward. And I think the chance of us getting to the committee stage on that package of legislation is very slight indeed—it is almost negligible. But that is the background. I ask the Senate to take account of all those factors that have been properly communicated to all parties through the appropriate mechanisms. And it is for those reasons, in these difficult circumstances that we face, with the pressure on the program, that the opposition will support the suspension motion to allow that to occur.

Senator HARRADINE (Tasmania) (9.43 a.m.)—Madam President, I know you have allowed the debate to roam a little further than strictly is appropriate, but may I enter the debate by acknowledging that we need cooperation on all sides to see the chamber run. I must say that I am very well served by the Senate officers who keep our office and me informed as to what is going to happen in the place. They do not tell us in advance what decisions are going to be made, but at least they give us all of the information about what is happening. I am a bit disturbed by the fact that I have not got any amendments at all. There is nothing on the system either. There has been no material handed to me about the amendments. So far as I am concerned, this is a very important piece of legislation. I think everybody understands that it is a very important piece of legislation. I hope that the matter will not go into the committee stage today. I think that would not be appropriate, given the fact that we have not had the time to analyse the amendments. So I appeal to the government that this measure not go into the committee stage today.

Senator Faulkner—I don’t think there is any chance of that. If they bring it on, I don’t think there is a chance.
Senator HARRADINE—I indicate that I would have appreciated Labor letting me know that there was going to be a disallowance motion yesterday afternoon. I did not know that it was going to occur.

Senator Robert Ray—We didn’t know that they were going to table them. They did it without letting us know.

The PRESIDENT—Order!

Senator Ian Campbell—It was on request. You demanded that we table them at the first opportunity.

Senator Lightfoot—Just debate amongst yourselves!

Senator Faulkner—that is just what we’re doing.

The PRESIDENT—Senators should address the chair.

Senator HARRADINE—I must insist that normally speaking the opposition is also very good at letting us know what is going to happen. I do appreciate the circumstances in which—

Senator Mackay—We didn’t know that the government tabled it until the red.

Senator HARRADINE—I understand.

The PRESIDENT—Order! It is very difficult for me to know what is happening in the chamber when there are four or five conversations going on. Senator Harradine, I am listening to you.

Senator HARRADINE—I will leave it at that.

Senator ROBERT RAY (Victoria) (9.46 a.m.)—Part of the reason this motion is before us is that this Senate chamber will have had six sitting weeks in eleven months. From September last year to when we resume to re-elect you as the President on 19 August this year, we will have sat for only six weeks. That would be the fewest weeks since Federation for any similar period. So there is urgency in dealing with government legislation given that restricted time.

Secondly, I think Senator Brown sees some conspiracy between the government and maybe the opposition to sneak through the security bills today. In fact, it was explained earlier in the week that we would give up general business this week in order to do the valedictories next week. So we must be really cunning conspirators if we planned that so early on in the week.

To come to Senator Brown’s point, he says, ‘Well, how can we possibly debate the legislation in the committee stage when these complex amendments are lobbed in at the last minute?’ The answer is: you cannot; it would be impossible. Remember that this is the government that introduced these five security bills and required a vote in the House of Representatives less than 24 hours later. All five bills had to be read, analysed, put through the party process—plus the fact that we had to have a few hours sleep that night—and voted on by about 4 o’clock the next afternoon. What did the government do? They sent speaker after speaker into the other place to bag us as being soft for not dealing with them straightaway and giving them an absolute commitment.

What is likely to evolve today is that we will have second readers on this. I personally think that we could have even gone later to finish those second readers but not go into committee stage. Even then, some senators will quite clearly be disadvantaged that their speeches in the second reading debate will be affected by their analysis of the amendments. They may take a slightly stronger or softer line depending on how they regard those amendments and how effective they are. But they are not getting this choice.

Through you, Madam President, I do not blame Senator Campbell for this; I blame the Attorney-General. The Attorney-General’s pathetic dithering and incompetence in handling these five security bills means these amendments are coming in today, instead of us being able to look at them three, four, five or six weeks ago. How any competent Attorney-General could ever have introduced legislation with so many flaws in it is beyond me. It is a tribute to this chamber and the joint committees that many of these defects have been pointed out. If we had let the democratic process run as the Attorney-General would have liked, those bills would have been rammed through here within 24 hours the same as they were in the House of Representatives. Now, because of the proc-
essen in place here we are going to see entirely different bills presented, considered and amended in this particular chamber.

I do not really have any objections to the government debating these security bills. We have all had our speeches for debate on the second reading prepared for weeks. It has been put off before so bring it on today. But I say to the Manager of Government Business: do not even think of bringing on the committee stage. I know you are a reasonable person. You would not expect people to consider those complex amendments within a day. You know that Senator Faulkner, Senator Carr and I all have the intellectual competence to analyse them and come to a decision within a few minutes, but for the less well off, for the strugglers within the Senate, I make a plea for you not to go to the committee stage today.

Question agreed to.

Procedural Motion

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.52 a.m.)—I move:

That—

(a) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) not be proceeded with; and

(b) the routine of business from not later than 4.30 pm till the adjournment shall be government business only.

I would like to give Senator Brown and all other senators the assurance that Senator Ray sought—for the strugglers in the Senate—that our intention is to deal only with second reading stages this afternoon.

Question agreed to.

COMMITTEES

Economics Legislation Committee

Meeting

Senator CAL VERT (Tasmania) (9.53 a.m.)—by leave—On behalf of the chair of the Economics Legislation Committee, Senator Brandis, I move:

That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 24 June 2002, from 3.30 pm, to take evidence for the committee’s inquiries into the New Business Tax System (Consolidation) Bill (No. 1) 2002 and the provisions of the Taxation Laws Amendment Bill (No. 4) 2002.

Question agreed to.

NOTICES

Postponement

Items of business were postponed as follows:

General business notice of motion no. 92 standing in the name of Senator Allison for today, relating to state legislation to protect marine national parks, postponed till 25 June 2002.

General business notice of motion no. 93 standing in the name of Senator Allison for today, relating to renewable energy measures, postponed till 25 June 2002.

General business notice of motion no. 98 standing in the name of the Leader of the Australian Democrats (Senator Stott
Despoja) for today, relating to parliamentary debate on any proposed military involvement by Australia, postponed till 24 June 2002.

**Senator Allison** (Victoria) (9.54 a.m.)—by leave—I move:

That general business notice of motion no. 94 standing in her name for today, relating to the shipment of nuclear fuel, be postponed till the next day of sitting.

Question agreed to.

**COMMITTEES**

**Environment, Communications, Information Technology and the Arts References Committee**

Reference

**Senator Crossin** (Northern Territory) (9.54 a.m.)—I ask that business of the Senate notice of motion No. 3 standing in my name for today, relating to the environmental performance by uranium mining operations being referred to the Environment, Communications, Information Technology and the Arts References Committee, be taken as a formal motion.

The **President**—Is there any objection to this motion being taken as formal?

**Senator Calvert** (Tasmania) (9.55 a.m.)—I seek leave to put a point of explanation on this matter. I was led to believe that this matter was going to be deferred.

Leave granted.

**Senator Calvert**—I understood this matter was going to be deferred because it had not been to our party meeting, but Senator Crossin wishes to pursue it. Could I ask, through you, Madam President, whether the committee itself is in total agreement with this reference?

**Senator Mackay** (Tasmania) (9.55 a.m.)—by leave—I apologise to Senator Calvert, but I understood that the government had been advised that we were likely to bring this on this morning. Also, I am advised that it has the support of the committee. I do not know if that assists in relation to Senator Calvert’s deliberations.

**Senator O’Brien**—We’ve got the numbers, in other words.

**Senator Mackay**—Yes.

The **President**—Is there any objection to the motion proceeding as a formal motion? There is no objection.

**Senator Crossin** (Northern Territory) (9.56 a.m.)—I move:

That the following matter be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 5 December 2002:

The regulatory, monitoring, and reporting regimes that govern environmental performance at the Ranger and Jabiluka uranium operations in the Northern Territory and the Beverley and Honeymoon in situ leach operations in South Australia, with particular reference to:

(a) the adequacy, effectiveness and performance of existing monitoring and reporting regimes and regulations;

(b) the adequacy and effectiveness of those Commonwealth agencies responsible for the oversight and implementation of these regimes; and

(c) a review of Commonwealth responsibilities and mechanisms to realise improved environmental performance and transparency of reporting.

Question agreed to.

**Rural and Regional Affairs and Transport References Committee**

Reference

**Senator Murphy** (Tasmania) (9.56 a.m.)—I ask that business of the Senate notice of motion No. 2 standing in my name for today, proposing the reference of matters to the Rural and Regional Affairs and Transport References Committee relating to plantation industry strategies, be taken as a formal motion.

The **President**—Is there any objection to this motion being taken as formal? There is an objection.

**PARLIAMENTARY COMMISSION OF INQUIRY (FOREST PRACTICES) BILL 2002**

**First Reading**

**Senator Brown** (Tasmania) (9.57 a.m.)—I move:

That the following bill be introduced: A Bill for an Act to provide for a Parliamentary Com-
mission of Inquiry in relation to Forestry Tasmania and for related purposes.

Question agreed to.

Senator BROWN (Tasmania) (9.57 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator BROWN (Tasmania) (9.57 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This Bill is to establish a Parliamentary Commission of Inquiry into Forestry Tasmania to investigate

- the financial management of Forestry Tasmania
- the independence, adequacy and effectiveness of the regulatory system and its enforcement;
- the extent to which Forestry Tasmania is exempt from state and federal legislation and whether this is appropriate;
- whether a culture of croneyism is compromising the independence and integrity of the management of Tasmania’s forests and wood products industry;
- any other matters that are relevant and necessary to make recommendations about the future management of Tasmania’s forests and wood products industry; and
- to recommend any measures including legislative, institutional and administrative changes necessary to improve the integrity, independence, accountability and good management of Tasmania’s forests and wood products industry.

The Bill provides for a Commission to be known as the Parliamentary Commission of Inquiry into Forestry Tasmania to be established no later than fifteen sitting days after the commencement of this Act.

It provides for the appointment of a Commission of six members nominated by the President of the Senate and the President of the House of Representatives to be presided over by a person with experience in the conduct of inquiries into complicated issues.

The Commission as a whole will have expertise in financial management, administrative law, environmental management, present and future challenges to Australia’s natural environment and the global environment and the attitudes and opinions of Australians concerned about forestry operations.

The Bill sets out the rules which will govern the inquiry including the requirement for the hearings to be public unless circumstances require otherwise.

The Commission will report, together with transcripts of evidence, to the President of the Senate and the Speaker of the House of Representatives who will cause the report and transcripts to be tabled in both Houses. The Commission will report by the 16th May 2003 unless the date is extended by a resolution of each House of Parliament.

The powers of the Commission are similar to those provided for in a Royal Commission including the power to subpoena witnesses and call for documents and other material.

Offences and penalties in relation to the taking of evidence are set down in Part 3 Offences.

It will be noted that the Terms of Reference provide for a potentially wide ranging Inquiry. This has been necessary because allegations against Forestry Tasmania, its management, financial performance and relationship with the Forest Practices Board and the forest industry are consistently being brought to the attention of government and the public in Tasmania with no independent mechanism for their redress. Forestry Tasmania has been exempted from Freedom of Information legislation.

Forestry Tasmania’s 2001-2002 Annual report showed a 34% increase in the area of native forest cleared with a virtually identical 34% decrease in the public dividend from Forestry Tasmania’s operations. Forestry Tasmania has a return on equity of around 2% whilst its major customer Gunns Ltd has reported a 190% increase in profit in the latest half year. This poor financial performance of Forestry Tasmania is a continuation of the debt accumulation which characterised the old Forestry Commission and saw the transfer of $272 million debt to the public account in 1990.

Gunns Ltd, the dominant woodchip company in Tasmania stated in its prospectus that Tasmania has overtaken the entire Southern United States of
America to become the largest regional producer of hardwood woodchips in the world.

This escalation in the logging of Tasmania’s forests following the signing of the Regional Forest Agreement between Tasmania and the Commonwealth is causing widespread unrest in the Tasmanian community as native forests are increasingly being cleared for plantation establishment with loss of biodiversity, landscape values and increased risk of road accidents on Tasmanian roads. Log truck movements in Tasmania have now reached approximately 150,000 per annum.

Furthermore some of the forested areas supposedly protected under the Regional Forest Agreement have been cleared with approval from Forestry Tasmania and the Forest Practices Board. Forestry Tasmania abolished 1000 hectares of an 1,800 hectare rain forest reserve on Mount Arthur in north east Tasmania in spite of it being habitat for a listed threatened species, the Mount Arthur burrowing crayfish.

The actual tonnage of woodchips generated in 2000-2001 is not available as the monopoly woodchip company Gunns Ltd has exercised its right to withhold the figures from the Australian Bureau of Statistics on business confidentiality grounds. However, extrapolation from the increase in area being logged would put the figure at around 6.6 million tonnes. This is over 80% of the total Australian export woodchip volume from a State with 0.9% of Australia’s land area. The secrecy surrounding the industry is unacceptable. The level of logging of native forests is ecologically unsustainable.

There is great dissatisfaction in Tasmania about the adequacy of the Forest Practices Code and its enforcement by the Forest Practices Board. Communities in Tasmania have become so concerned about the failure of the Forest Practices Board to uphold the Forest Practices Code that they have conducted their own audits which clearly demonstrate numerous breaches and yet prosecutions are almost never recommended by the Board.

The Forest Practices Board is not independent of the forest industry and its members are mostly former forest industry employees. The Chair of the Forest Practices Board is a Director of Forestry Tasmania. The task of assessing the conservation values of prospective logging coupes and monitoring their biodiversity is assigned to employees of the logging companies or Forestry Tasmania.

Since the signing of the Regional Forest Agreement there has been an alarming fall in employment in the industry in spite of claims to the contrary. Since the first full year of operation after the implementation of the Regional Forest Agreement 1998-1999 employment in the major forest sectors has fallen by 1,240 from 6,650 to 5,410.

The allegations of cronyism are widespread. The relationships between government ministers, members of parliament, heads of department, the Forestry Corporation, the Forest Practices Board and the main industry protagonists are the subject of considerable public conjecture. There is a history in Tasmania of former industry association representatives being appointed to the public service and former parliamentarians appointed to forest industry boards. The public has no confidence in the management of the forest industry and is aware of the total lack of transparency in decision making. Opinion polls regularly demonstrate that the public wants an end to old growth logging but this opinion is not reflected in the Parliament of Tasmania.

The Tasmanian community was consulted about the performance of the forest industry through the Tasmania Together process and overwhelmingly recommended that old growth logging should stop and set a timetable for the protection of old growth forests with high conservation values. The Tasmania government has made no move to implement the community’s wishes. The ecological value of Tasmania’s native forests is well recorded with several areas along the eastern boundary of the Tasmanian Wilderness World Heritage Area recommended for World Heritage listing by eminent scientists. The fact that they are being logged under an agreement between the Commonwealth and the State of Tasmania needs investigation.

Tasmanian public policy promoted the eradication of the thylacine less than a century ago. Such short sightedness continues to be practised in a State where there are no boundaries between politics, industry and business where the forest industry and the logging of native forests is concerned. There will not be any improvement until there is a thorough investigation of the industry, its practices and its governance. The truth of the situation will not be achieved without a Commission of Inquiry. There is such a culture of fear and repression in the public sector in Tasmania that no one will speak out unless protected in doing so.

Passage of this Bill will provide the mechanism for an investigation which will lead to a much enhanced forest industry in Tasmania. Recommendations for legislative, institutional and administrative changes will improve the integrity, independence, accountability and good manage-
ment of Tasmania’s forests and wood products industry.

I commend the Bill to the Senate.

Senator BROWN—I seek leave to con-
tinue my remarks later.

Leave granted; debate adjourned.

SESSIONAL ORDERS

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.58 a.m.)—I move:

(1) That a bill shall not be considered in committee of the whole, unless, prior to the resolution of the question for the second reading, any senator has:
   (a) circulated in the Senate a proposed amendment or request for amendment of the bill; or
   (b) required in debate or by notification to the chair that the bill be considered in committee of the whole.

(2) That this order operate as a sessional order.

Question agreed to.

COMMITTEES

A Certain Maritime Incident Committee

Extension of Time

Senator COOK (Western Australia) (9.58 a.m.)—I move:

That the time for the presentation of the report of the Select Committee on a Certain Maritime Incident be extended to 21 August 2002.

Question put.

The Senate divided. [10.03 a.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes......... 38
Noes......... 34
Majority....... 4

AYES

Forshaw, M.G.    Greig, B.
Hogg, J.J.        Harradine, B.
Lees, M.H.        Hutchins, S.P.
Landy, K.A.       Ludwig, S.W.
McKiernan, J.P.   Mackay, S.M. *
Murphy, S.M.      McLucas, J.E.
O’Brien, K.W.K.   Murray, A.J.M.
Ridgeway, A.D.    Ray, R.F.
Stott Despoja, N.  Schacht, C.C.
West, S.M.

NOES

Alston, R.K.R.    Barnett, G.
Boswell, R.L.D.   Brandis, G.H.
Calvert, P.H.*    Campbell, I.G.
Chapman, H.G.P.   Colbeck, R.
Cooman, H.L.      Eggleson, A.
Ellison, C.M.     Ferguson, A.B.
Ferris, J.M.      Harris, L.
Heffernan, W.     Herron, J.J.
Hill, R.M.        Kemp, C.R.
Knowles, S.C.     Lightfoot, P.R.
Macdonald, I.     Macdonald, J.A.L.
Mason, B.J.       McGauran, J.J.J.
Minchin, N.H.     Patterson, K.C.
Payne, M.A.       Reid, M.E.
Scullion, N.G.    Tchen, T.
Tierney, J.W.     Troeth, J.M.
Vanstone, A.E.    Watson, J.O.W.

PAIRS

Bolkus, N.        Crane, A.W.
Sherry, N.J.      Abetz, E.

* denotes teller

Question agreed to.

COMMITTEES

Finance and Public Administration Legislation Committee

Extension of Time

Senator CALVERT (Tasmania) (10.06 a.m.)—On behalf of the chair of the Finance and Public Administration Legislation Committee, Senator Mason, I ask that general business notice of motion No. 91, proposing an extension of time for a committee report, be taken as formal.

The PRESIDENT—Is there any objection to this motion being taken as formal?

Senator Robert Ray—I object.

The PRESIDENT—There is an objection.
FAMILY LAW AMENDMENT (JOINT RESIDENCY) BILL 2002

First Reading

Senator HARRIS (Queensland) (10.07 a.m.)—I move:

That the following bill be introduced: A Bill for an Act to amend the Family Law Act 1975, and for related purposes.

Question agreed to.

Senator HARRIS (Queensland) (10.07 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator HARRIS (Queensland) (10.08 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Family Law Amendment Bill 2002, which in spirit and letter transcends party politics, deals with the moral question of how we best meet the needs of children whose parents are separating. The Family Law Amendment (Joint Residency) Bill 2002 is based on the notion that, when parents separate or divorce, children have the fundamental human right to be brought up by both their mother and father to continue their developmental years with two parents. These parents should be equal in their responsibilities in the upbringing of their children unless there is a compelling reason why one parent is not fit.

In cases where children are genuinely at risk, this bill provides for all the protections and safeguards of our present family law. As parliamentarians we cannot ignore the fact that, within the current system, Australian children are not doing well. We cannot ignore the consequences of a system that awards day-to-day responsibility to one parent as a matter of course, denying children their fundamental birthright to have an equal relationship with both their mother and father and to experience the love, guidance and companionship of both parents. With a unanimity of view that is virtually unparalleled, social science researchers have confirmed what intuition has long made clear: the best parent is both parents. Children are born with two parents. Children want, love and need two parents, regardless of the social ill that is under consideration, whether it be child abuse, school drop-outs, suicide, drug abuse, juvenile delinquency, teenage pregnancy or any of the social concerns that afflict our children. The research is clear: children who do not have two actively involved parents are at greater risk. That is not to say that single parents fail to try their best, but just as two of anything is more than one, two actively involved parents can provide more physical, emotional and psychological support than one.

No one can rationally contend that our nation suffers from an excess of fathering. The time has come to end the system under which the courts on a daily basis enter orders that bar fit and eager fathers from exercising a most fundamental human right: the right to simply spend time with their own children. The state’s treatment of divorced fathers has become a self-fulfilling prophecy. By sending a distinct message to divorced fathers that they are not essential to the raising of children, beyond supplying a percentage of their pay cheques to the mother of their children and limited contact with their children, the state has encouraged divorced fathers to abandon true fatherhood. Yet society looks on with bewilderment and disdain when some divorced fathers fade from a meaningful relationship with their children.

The usual parenting order made by the Family Court invests long-term parenting responsibility for the child in both parents. A contact order regulates the child’s contact with their non-resident parent and a specific issues order invests day-to-day responsibility for the child in the resident parent. That is not joint residence. The scheme adopted by the Family Court simply continues the failed sole custody/joint guardianship/limited contact model: the catalyst for the 1980 and 1992 Joint Select Committee’s examinations of family law. For parent and child, there is a qualitative difference between visiting together and living together. In a typical case, there can really be no place for the notion of a parent as a mere caller who has contact. The current winner-loser system is irrational.

The typical Family Court case involves two fit and loving parents who each want to avoid being cast out of the role of parent and into the role of visitor. We should rejoice to find children with two parents who each want to do all that they can for their child.

Instead, we place those parents against each other and declare that one will be the winner and the other will be the loser—a mere visitor. Such a system only guarantees that the child will be a
Children have two parents at birth. All children enter into joint residence and remain in joint residence unless and until it is broken by court order. Both parents have full parental rights and responsibilities unless or until they are restricted by a court order. The proposed legislation simply states that the party seeking to restrict those parental rights and responsibilities should be required to provide a compelling reason to do so. A parenting order is an injunction. It takes away rights or prohibits actions that previously were unrestricted. The law with respect to all other injunctions is that the party seeking to impose the restriction has the burden of proof for establishing the need for the restriction.

So it should be with child residence matters before the Family Court. The party seeking sole residence seeks to restrict the other parent’s relationship to the child, and should be required to come forward with a compelling reason to do so. The presumption in the proposed legislation merely states that the pre-existing joint residence will continue in the event that neither parent comes forward with a valid reason for sole residence.

Everything we know about the needs of children teaches us that it is in the best interests of children to maximise the involvement of both parents for the involvement of the child. The amount of time a parent spends with a child directly affects the parent’s competence in dealing with the child. One major difficulty in ‘visiting’ with one child, beyond the time-limited dimension, is the artificial structure. Parents and children are deprived of the daily intimate contact that living together provides: putting a child to sleep, helping with homework, preparing a meal together, et cetera.

Joint residence is a means of preserving the child’s rights to two parents and, where both parents seek to continue their role as parents, the court should reduce neither parent to a mere visitor unless the other parent comes forward with a valid reason to do so.

Opponents of joint residence argue that joint residence cannot work if the parents are in conflict. Certainly it is the case that conflict between parents is troubling to children. The opponents of joint residence, however, make the wrong comparison. The choice is between joint residence and sole residence, not between joint residence and the intact family.

Compared against sole residence, joint residence is a device for conflict reduction and facilitates cooperation by avoiding both the grasping by parents fearful of loss and the devastation to a parent suffering loss. Research tells us also that children suffer the fear of loss and the actual loss of parental involvement during divorce. Joint residence saves the child from the loss of a parent. Sole residence does not reduce conflict; it exacerbates it. The parents still must deal with one another in connection with all aspects of the child’s life but they do so in an unstable and unhealthy relationship of victor and vanquished.

If we want to reduce conflict between parents, we must end the barbaric practice of forcing them through the winner-loser combat of sole residence trials. The most mean-spirited opposition of joint residence is the claim that it should be barred and restricted to the population at large because of the risk of family violence among some families. These opponents argue from a presumption of pathology and urge a rule that would assume that the worst behaviour of the most extreme individual is the norm.

Policy cannot be made by anecdote. The law should not be based upon the presumption of this pathology. The law should serve the vast bulk of fit and loving parents who simply want to be with their children. Where family violence occurs it is properly handled as a deviation from the norm. This legislation specifically recognises that family violence, like all forms of abhorrent behaviour, is relevant and must be considered by the judge in fashioning the parenting order.

Nationally, although single parent homes represent a minority of homes with children, they commit almost two-thirds of all abuse. Joint residence protects children by ensuring that both parents have a substantial relationship and contact with the child and can observe and report abuse.

Under the current case law, most Family Court judges believe that they do not have the authority to grant joint residence if one parent opposes it. Legislation is needed to protect the best interests of the child and abrogate the obscene doctrine that the most obstructionist parent can unilaterally deprive the child of a full relationship with a parent. The proposed legislation does not depart from the pursuit of the best interests of the child. Instead, the legislation recognises the social science research and the intuitive human understanding that most parents are fit and eager to parent their children and that their children will benefit from the active involvement of both parents. The legislation encourages these fit and
loving parents to share their parental responsibilities without a winner-loser battle. It preserves to each parent the right to present any fact and argument to support a claim that sole residence would better serve a child’s needs.

Children are born with two parents; children love and need two parents. In all but the vanishing number of pathological cases, we should strive to maximise the involvement of both parents. If factors prevent a substantially equal relationship with both parents, the preference should go to that parent who shows a greater willingness and ability to cooperate and nurture the relationship with the child and the other parent. That is what being a caretaker is all about.

I commend the bill to the Senate.

Senator HARRIS—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

BUSINESS

Senator HARRADINE (Tasmania) (10.08 a.m.)—by leave—I would like to correct a statement that I made a moment ago. I have noted that upon my desk—and I understand upon the desks of the other honourable senators—are the amendments relating to the Suppression of the Financing of Terrorism Bill 2002. The chamber officers, as usual, have been their very efficient selves and the document is here. Though it is not in my office, it is here. I appreciate that.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.09 a.m.)—by leave—I would like to correct a statement that I made a moment ago. During the debate on the suspension of standing orders, there was some discussion in relation to the question of Senator Brown seeking leave to incorporate the last five minutes of a speech he made in relation to Christmas Island, as he described it—I think it was in the debate on the disallowance motion yesterday.

Just so we are all clear on this, the advice I received from the opposition whips was that the opposition did not formally deny leave. I think that is accurate as far as it went. So that we have the full and correct record of what occurred before the chamber, there were at least informal discussions between Senator Ian Macdonald, the duty minister for the government, and Senator Carr, the duty shadow minister in the chamber. Senator Carr has indicated to me that he informally indicated to Senator Macdonald, when this issue was raised, that he would be dealing with this in accordance with the normal way leave is dealt with—in other words, leave would be granted after the material had been sighted by the duty shadow minister.

I do believe that the comments I made a little earlier did not reflect the full detail of what occurred in the chamber. Senator Macdonald pointed out to me, at the commencement of that last division, what the background was. I have checked that with Senator Carr and I have checked it with the duty Opposition Whip. As I understand it now, the full circumstances—if they are of any interest to the chamber—are now before the chamber. I think the record ought to be corrected in relation to the formal approach that the opposition took in relation to Senator Brown seeking leave on that matter.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (10.11 a.m.)—by leave—I would like to speak briefly on the same matter. I thank Senator Faulkner for his statement. I indicate to Senator Brown that I do not know that either Senator Carr or I made any call; I think the chair, quite rightly, understood that there had been no ayes called to agree that leave would be granted. Had we been called upon to make a call, I would have said no. The point I want to make is that Senator Brown will be treated like any other senator here. The convention is that if we see the material we will let it be incorporated. I am quite sure it would have been okay; but Senator Brown cannot expect to have special treatment. If we sighted that, were happy with it and made sure that it was not a vicious attack on the government, of course we would have approved it. Senator Brown was being treated as anyone else would be in accordance with the conventions.

Senator BROWN (Tasmania) (10.12 a.m.)—by leave—The government yesterday did say no to the incorporation; I heard it. The other point that Senator Macdonald makes is very clear: if one does not sight a document, one has the ability to refuse leave.
I am going to take my lead from the government on this matter.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (10.13 a.m.)—by leave—I would like to make a further comment. This is a comment to Senator Brown, but I would prefer to make it publicly, if I could, through you, Madam President. I would like to indicate that of course—as far as the opposition is concerned I think the appropriate call was made by my colleague Senator Carr—that offer stands. As far as the opposition is concerned, Senator Brown, on sighting that material—which I gather has not been provided at this point—leave will be granted for its incorporation in Hansard.

Senator Ian Macdonald—Could I interject and say me too.

Family and Community Services Legislation Amendment (Disability Reform) Bill 2002

Consideration of House of Representatives Message

Message received from the House of Representatives forwarding the Family and Community Services Legislation Amendment (Disability Reform) Bill 2002 for concurrence.

Financial Sector Legislation Amendment Bill (No. 1) 2002

Therapeutic Goods and Other Legislation Amendment Bill 2002

Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Bill 2002

First Reading

Bills received from the House of Representatives.

Senator Alston (Victoria—Minister for Communications, Information Technology and the Arts) (10.16 a.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator Alston (Victoria—Minister for Communications, Information Technology and the Arts) (10.16 a.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

FINANCIAL SECTOR LEGISLATION AMENDMENT BILL (No. 1) 2002

I rise today to introduce the Financial Sector Legislation Amendment Bill (No. 1) 2002 that continues the legislation amendments to improve the efficiency and operation of a range of financial sector legislation.

Most of the amendments are minor and technical in nature.

The bill contains amendments to nine Acts. Amendments to the Life Insurance Act 1995 and amendments to section 50 of the Australian Prudential Regulation Authority Act 1998 (the APRA Act) need to be amended by 30 June of this year.

The Life Insurance Act 1995 amendments will remove sunset clauses on the right to appeal prudential decisions to the Administrative Appeals Tribunal. By removing the right to appeal to the tribunal, APRA will be able to act more quickly in the event of a financial crisis to prevent contagion across the financial system. This amendment is consistent with the Insurance Act 1979 which has also removed the right to appeal prudential financial decisions. As the sunset clauses expire on 30 June 2002, it is necessary for the amendments to occur by 30 June 2002.

The amendments to section 50 of the APRA Act 1998 will ensure that levy revenue is treated on an accrual basis, consistent with Government policy. This amendment will also address concerns raised by the Australian National Audit Office in relation to APRA’s financial accounts. To enable APRA to make the necessary changes and for its financial statements to reflect changes
for the 2001/02 financial year, the amendments need to apply from 1 July 2001.

The second part of this amendment will modify the wording of section 50 of the Act so that the Treasurer can specify an amount for each of the levies collected by APRA to be hypothecated to the Commonwealth costs of customer protection and market integrity. This amendment will enable APRA to better manage its cash flow.

Amendments to the Financial Sector (Transfers of Business) Act 1999 will ensure that the Australian Tax Office has a formal role in assessing applications to transfer a financial sector business between regulated bodies. Currently, only the Australian Securities and Investments Commission and the Australian Competition and Consumer Commission need to be consulted for business transfers. This amendment will ensure that the tax implications from a transfer of a business are considered on application decisions.

Amendments to the Reserve Bank Act 1959 will simplify and clarify the process for the appointment and termination of appointments of Reserve Bank Board members, Payments System Board members and senior Reserve Bank officials. Other amendments to the Reserve Bank Act 1959 will remove administrative complexity from the Reserve Bank’s superannuation arrangements and remove an unnecessary restriction on the location of the Reserve Bank head office.

The proposed changes to the Insurance Acquisitions and Takeovers Act 1991 will remove the current requirement to approve the application for a merger or acquisition within 30 days. The current 30 day limit does not give enough time for a comprehensive investigation to take place, resulting in the need to place a temporary restraining order on the merger or acquisition. Removing the 30 day time limit will give more time to undertake the necessary investigations prior to making a fully informed decision on the merger application.

The first proposed amendment to the Superannuation Supervision Levy Imposition Act 1998 will remove uncertainty about the amount of levy payable by a superannuation entity that becomes a superannuation entity during a fiscal year.

One of the proposed amendments to the Superannuation Industry Supervision Act 1993 will remove the unintended penalties imposed on superannuation funds that have fewer than five members and are in the process of winding up. The second amendment will allow the Australian Tax Office to provide currently protected information to APRA in relation to breaches of the Act. This amendment will align the Superannuation Industry Supervision Act 1993 with section 56 of the APRA Act and is consistent with the current application of the Privacy Act.

A number of amendments will be made to the Financial Institutions Supervisory Levies Collection Act 1998, some of which will rectify drafting errors. Other amendments will have the effect of changing due dates for the payments of levies, to address some of the administrative problems APRA faces with the current levy payment structure. Another amendment to the Act will give APRA the right to act on behalf of the Commonwealth to recover financial sector levy debts to overcome the current possible legal ambiguity of APRA recovering debts.

There are a number of proposed amendments to the Insurance Act 1973. Some amendments simply delete redundant sections of the Act with other amendments ensuring harmonisation and consistency in the wording of the Act.

Amendments also refine the ‘fit and proper’ requirements for directors or senior managers of general insurers or authorised non-operating holding companies. The amendments will maintain consistency with other APRA administered legislation.

Lastly, amendments were included to prevent a person who is linked to a general insurer or related group from sitting as a member of the Administrative Appeals Tribunal when hearing appeals about general insurance.

These bills build on the financial sector reforms already undertaken and they emphasise the commitment to ongoing improvements which will ensure that Australia is at the forefront of world’s best practice in financial regulation.

The financial sector is a key driver in the economy. The benefits that these amendments will provide include increased efficiency of the financial industry and will improve the operation of the Acts.

THERAPEUTIC GOODS AND OTHER LEGISLATION AMENDMENT BILL 2002

The bill makes a number of changes to the Therapeutic Goods Act 1989. It also makes necessary changes to the Industrial Chemicals (Notification and Assessment) Act 1989 and the National Occupational Health and Safety Commission Act 1985 to give effect to the transfer of portfolio responsibilities for the National Industrial Chemicals Notification and Assessment Scheme to the Health and Ageing portfolio.

The changes made to the Therapeutic Goods Act 1989 will enable the Mutual Recognition Agree-
ment, entered into between Australia and Singapore on 26 February 2001, to be implemented.

The amendments will allow the Secretary to accept the conclusions of Good Manufacturing Practice inspections and manufacturing certificates as evidence that the manufacturing processes employed in Singapore, in the manufacture of medicines that are exported to Australia, meet with Australian requirements.

The certificates of Good Manufacturing Practice are taken into account for the purposes of determining whether medicines imported from Singapore may be supplied to the general public in Australia.

Provision is also made in the bill to allow the Secretary to give effect to any other Mutual Recognition Agreements entered into between Australia and other countries that provide for arrangements similar to those applying under the Singapore Mutual Recognition Agreement.

The bill also includes new provisions to address constitutional issues raised by the High Court’s decision in R.v. Hughes. In that case, the High Court raised issues about a number of Commonwealth and State cooperative schemes that are underpinned by legislation.

The Court’s decision affects the cooperative scheme for the regulation of therapeutic goods, under which New South Wales and Victoria currently have legislation that confer powers and functions upon Commonwealth officials.

The Hughes case raised questions about the capacity of a Commonwealth authority to perform functions or exercise powers under State laws when the function or power conferred on the Commonwealth authority is coupled with a duty, particularly a duty that has the potential to affect the rights of individuals.

The Court decided that where both a power and a duty are conferred on the Commonwealth authority pursuant to a Commonwealth/State legislative scheme, an appropriate Commonwealth head of power must support the conferment of that power and duty.

However the Court left open the question whether it was necessary for this duty to have been imposed by the Commonwealth, rather than by State law, for constitutional issues to be raised.

To address the issues raised by Hughes, and to minimise the risk that any aspect of the cooperative scheme for the regulation of therapeutic goods may be held to be invalid, this bill provides for a series of alternatives for the treatment of State or Territory provisions that purport to impose a duty upon Commonwealth officers.

These alternatives are designed to maximise the validity of both existing and any future complementary legislation enacted by States and Territories to complement the Therapeutic Goods Act 1989.

Remedial action to address the Hughes problem in relation to a cooperative scheme is likely to be dealt with in two ways.

The first is taking prospective action, such as amending Commonwealth legislation and, where necessary, State legislation designed to put the cooperative scheme on a secure foundation for the future.

The second is retrospective action to preserve the validity of any actions that might have been taken under the Commonwealth/State cooperative scheme.

To this end, ‘generic’ validation legislation has been passed or will be passed in all States. The generic validation legislation, once it commences in relation to a cooperative scheme, is capable of applying to past actions of Commonwealth officers or authorities taken under that scheme that may be at risk.

Discussions with both Victoria and New South Wales will occur with a view to including in the generic validation legislation of those States, the Commonwealth/State cooperative scheme for the regulation of therapeutic goods.

Other changes made to the Act by the bill will enable the Secretary to obtain information and documents from manufacturers of blood or blood components about their manufacturing processes and practices. This will enable the Secretary to monitor the manufacturer’s compliance with new standards for blood, and new manufacturing standards for the manufacture of blood and blood components.

At present the only way to obtain this information is through the conduct of an audit of manufacturing practices employed in the blood establishment, which is a complex process.

While the Therapeutic Goods Administration will continue to audit these establishments, the amendments in this bill will enable the TGA to also request information related to the quality and safety of blood components without having to audit the establishments. The TGA already has this ability to obtain information for standard medicinal products included in the Australian Register of Therapeutic Goods.

This bill also clarifies when the balance of evaluation fees, payable for the evaluation of registrable medicines must be paid by applicants.
seeking to register their medicines in the Australian Register of Therapeutic Goods.

Currently outstanding fees are payable when an evaluation of an application to register a medicine in the Register has been completed, and a decision of the Secretary to register, or refuse registration, of a medicine is made and communicated to the applicant.

However, following the completion of an evaluation, the results of which are usually communicated to an applicant, but before the Secretary notifies the applicant of his/her decision to register or not register the medicine, an applicant may withdraw its application.

Where this occurs, the Secretary is not able to recover the cost of the evaluation that has already been completed.

The effect of the amendments is to enable the Secretary to recover the balance of the evaluation fees owing for the evaluation work completed.

The bill also makes an amendment to subsection 17(5) of the Act to allow the Minister, when determining what therapeutic goods may be treated as “listable” goods for the purposes of being entered into the Australian Register of Therapeutic Goods, to impose conditions for the treatment of those goods as listable goods.

Some therapeutic goods may only qualify as a listable product in certain circumstances, such as where the amount of certain ingredients is below a certain level or where the supply of goods is accompanied by appropriate warning statements. To enable these circumstances to be described as conditions for listing, an amendment to the Act is required.

Finally, the bill also contains provisions that amend the Industrial Chemicals (Notification and Assessment) Act 1989 and the National Occupational Health and Safety Commission Act 1985 (NOHSC Act).

The proposed amendments to these Acts are required to reflect the new Administrative Arrangements Order dated 26 November 2001, under which portfolio responsibility for the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) moved from the then Minister for Employment, Workplace Relations and Small Business to the Minister for Health and Ageing.

Under the proposed amendments, the Department of Health and Ageing, rather than the National Occupational Health and Safety Commission, will supply staff to the Director of NICNAS to implement the Industrial Chemicals (Notification and Assessment) Act 1989. Also, references to the role and functions of the Chief Executive Officer of the National Occupational Health and Safety Commission in relation to the Director of NICNAS are to be removed from the National Occupational Health and Safety Commission Act.

AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY (LICENCE CHARGES) AMENDMENT BILL 2002

The purpose of this Bill is to amend the Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998 to confirm that the charges imposed by that Act are payable even by Commonwealth entities that are otherwise exempt from tax (unless the relevant exemption explicitly refers to that Act).

Under the Australian Radiation Protection and Nuclear Safety Act 1998, the Chief Executive Officer of the Australian Radiation Protection and Nuclear Safety Agency licences and regulates the safe use of nuclear installations, radioactive material and apparatus by the Commonwealth and its contractors.

It is Government policy that the cost of this licensing and regulation be recovered from licence holders. The Australian Radiation Protection and Nuclear Safety Act allows for the charging of an application fee for a licence. The Australian Radiation Protection and Nuclear Safety (Licence Charges) Act requires licence holders to pay an annual charge.

The Australia New Zealand Food Authority, the Australian Nuclear Science and Technology Organisation, the Commonwealth Science and Industrial Research Organisation, the Australian Institute of Marine Science, the Australian National University, the Federal Airports Corporation, the Australian War Memorial and the Director of National Parks are Commonwealth entities that hold single or multiple licences issued under the Australian Radiation Protection and Nuclear Safety Act. These entities are also exempt from taxation.

This Bill is necessary to ensure compliance with the Government policy that the costs of regulating licence holders are borne by licence holders. This Bill will also ensure that the object of the Australian Radiation Protection and Nuclear Safety Act, which is to protect the health and safety of people, and the environment, from the harmful effects of radiation, will not be placed at risk.

Senator Brown—Madam President, I had a matter under discovery of formal business, and I believe another senator does too, and I wonder if we could return to that.
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The PRESIDENT—I think we will have to wait until we complete this matter.

Debate (on motion by Senator Mackay) adjourned.

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

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

The PRESIDENT—Senator Brown, are you seeking leave to return to the discovery of formal business?

Senator Brown—Yes.

Senator Robert Ray—Madam President, on a point of order: Senator Brown was rising while you were still in that area and you did not see him, and you just moved on to the next area. So I assert we should move back to that without leave.

The PRESIDENT—I have no difficulty with that. One of the problems is the number of people standing and moving around the chamber contrary to standing orders, which I have referred to previously.

INTERNATIONAL CRIMINAL COURT

Senator BROWN (Tasmania) (10.17 a.m.)—by leave—I move:

That the Senate supports the establishment of the International Criminal Court.

Question agreed to.

COMMITTEES

Rural and Regional Affairs and Transport References Committee

Reference

Senator O'BRIEN (Tasmania) (10.18 a.m.)—I move:

That the following matter be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 12 December 2002:

(a) whether there are impediments to the achievement of the aims of the ‘Plantations for Australia: The 2020 Vision’ strategy;
(b) whether there are elements of the strategy which should be altered in the light of the identification of these impediments; and
(c) whether other action is desirable in the interests of establishing and maintaining a viable and sustainable plantation forest sector.

This proposition has its genesis in discussions about a proposal by Senator Murphy to refer certain matters to a Senate select committee relating to the plantation industries. The opposition indicated to Senator Murphy that it did not believe that this matter was of sufficient importance to justify the commitment of public time and moneys of the nature that he proposed but undertook to move that the matter of plantation forestry and particularly the ‘Plantations for Australia: the 2020 vision’ strategy be referred to the Rural and Regional Affairs and Transport References Committee. We did so and proposed that reference on 15 May. We have been seeking to resolve that matter. Initially, we postponed the matter at the request of the Australian Democrats because they wished to have time to consider it. There have been subsequent discussions about the form of words but, unfortunately, those discussions have not led to a final form of wording.

We propose what I consider to be fairly broad-ranging terms of inquiry, which are couched in terms that I would categorise as being devised to seek a series of public policy outcomes and not directed towards political objectives, if I can put it that way, on the basis that this is a matter on which it would be best if there were a thorough-going inquiry on all of the evidence relative to the very important plantation industry and this country’s future. I am sure many senators agree that it is an important industry and that it is important for the future of this country that the plantation industry develop in such a way as to provide a useable long-term, renewable, sustainable resource and that the best possible means are applied to that enterprise. Of course, state governments play an integral role in this public policy area and so it is not simply a matter for the federal parliament to deal with. I regret to say that Senator Murphy has a notice of motion on the Notice Paper which he sought to move formally this morning and to which I denied formality. That was on the basis that my motion is somewhat different from his, we cannot agree to both propositions and refer both
matters to the Senate committee, and we needed to resolve the form of words.

It was my view that the desirable course of action was to bring this matter up in this part of the Senate’s agenda and allow, if necessary, for amendments to be moved and for the Senate to determine the matter, obviously in the absence of the ability for the opposition and Senator Murphy to agree to a form of words. The Democrats also indicated they had some additional words which I believe are appropriate to be categorised as ones which have more a political than a public policy objective. That is a matter for them to debate as they wish. I simply say that we were quite happy to proceed with this motion on the basis of pursuing the outcomes, as I outlined them, rather than political agendas.

Having said that, I have spoken to Senator Macdonald, who has a view that perhaps the government might have a say in formulating a final form of words. I understand that he is proposing to move to adjourn the debate on this matter. If Senator Murphy were to pursue his motion to do the same in relation to his motion, to see if the matter can be resolved and the matter brought back on Monday, the opposition will obviously support that on the basis of pursuing the outcomes, as I outlined them, rather than political agendas.

Debate (on motion by Senator Macdonald) adjourned.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (10.24 a.m.)—by leave—I have not had a chance to speak to Senator Murphy. The situation is that, as Senator O’Brien forecast, if Senator Murphy does move his motion, I would be moving the same motion because it is an inquiry that we all agree might usefully be held. To a certain degree, it is just a question of the English wording of what the terms are, and I would be hopeful that, between now and Monday, we might be able to get a form of words that suits all parties and the reference can be made to the committee.

Rural and Regional Affairs and Transport References Committee
Reference
Senator MURPHY (Tasmania) (10.25 a.m.)—I move:

(1) That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 12 December 2002:

(a) whether there are impediments to the achievement of the aims of ‘Plantations for Australia: The 2020 Vision’ strategy;

(b) whether or not the initial imperatives, goals and actions of the strategy have been proceeded with;

(c) whether there are elements of the strategy which should be altered in light of any impediments identified;

(d) whether or not the states are employing world’s best practice in sustainability and environmental applications for plantation development;

(e) whether there are further opportunities to maximise the benefits from plantations in respect of their potential to contribute environmental benefits, including whether there are opportunities to:

(i) better integrate plantations into achieving salinity and water quality objectives and targets,

(ii) optimise the environmental benefits of plantations in low rainfall areas, and

(iii) address the provision of public good services (environmental benefits) at the private cost of plantation growers;

(f) whether there is the need for government action to encourage longer rotation plantations, particularly in order to supply sawlogs; and

(g) whether other action is desirable to maintain and expand a viable and sustainable plantation forest sector, including the expansion of processing industries to enhance the contribution to regional economic development.

(2) That the committee provide interim reports on issues of importance as and
when they arise and take account of other reports and findings, such as the Private Forests Consultative Committee's review of 'Plantations for Australia: The 2020 Vision' strategy.

The reason I intend to proceed with my motion is very clear. I started from the very significant position of proposing a select committee to conduct this inquiry. I felt at the time that this inquiry was very important to the future of the timber industry in this country and that some major problems, in my view, had developed with the implementation of the 2020 Vision strategy.

As a result of discussions I had with the opposition, the other parties—the minor parties—the Democrats and the government, that position has changed because it became evident that there was not going to be support for a select committee, albeit I still believe that is the best process. To that end, those discussions led to a reference to the Rural and Regional Affairs Transport and References Committee. What this has come down to is simply that the opposition had a proposition and Senator O'Brien outlined the proposition, saying that the terms of reference, which are set out in the Notice Paper, are broad and cover all bases. There are specific matters that relate to some of the problems associated with the implementation of the 2020 Vision strategy, and they relate very clearly to the objectives that were set out in the National Forest Policy Statement. When we, as a parliament, determined that we would give responsibility to the states for a lot of the management of the forested areas of this country, we set down very clear goals and objectives. Indeed, we set down a number of very clear criteria and we especially focused on environmental sustainability and ecologically sustainable management.

In going through that process, it has become clear that major difficulties have developed in that area with regard to the consultation process—and I could go on for a long period of time but I know that we are short of time in this place. This is a very important issue and I want to highlight the words that are the current sticking point of whether this gets referred to now or not at all. They are in point (d) of my proposal which says, 'whether or not the states are employing world’s best practice in sustainability and environmental applications for plantation development.' That is the bottom line.

Of course anyone can develop a set of words that might be broad enough to cover the bases in respect of that, providing that the committee is of a mind to take account of those issues in its considerations and the conduct of its inquiry. I am but a participating member of the Rural and Regional Transport References Committee. It is chaired by the Democrats but the numbers lie clearly with the government and the opposition. As we know, committees have the right to take account of submissions that they receive, to discount others and to call witnesses that they perceive are relevant to the inquiry. That is why I wanted some very specific focus on some issues. It is very important that we do give some very clear focus on some of the issues. If it is not a problem, then there is nothing to worry about.

Any inquiry that relates to forestry—whether it is taking account of Tasmania, Victoria, Western Australia, New South Wales, Queensland or, to a lesser extent, South Australia—will of course create some emotion and some debate with regard to the views on environmental grounds. But, at the end of the day, the committee has a responsibility to determine those issues. As I said, one of the reasons that I want some specific matters referred to in the terms of reference is so that we do actually deal with those issues and there can be no avoidance of those issues by way of the numbers on the committee. I want the committee to be required to look at particular matters.

The motion that I will move here today has but two clauses of my original motion—just two: (b) and (d). The rest of the words in the motion are those of either the opposition or the government. That is a fact. That is why I cannot understand what the major difficulty is. That is why I could not understand why I was denied formality this morning. If we come down to the point where we say, 'Okay, Senator Murphy, you just can’t have any clauses that you want in any reference to this committee—that is the end of the day,'
well, I am sorry, that is not good enough, because it does not go to the specifics of this debate, it will not look specifically at the issues.

I know that other senators in this chamber know there are problems here. We should move to address them. We should move to address issues like whether or not the current tax structure is good enough or is appropriate for the purposes of plantation development. If it is the case that world’s best practice is not being achieved from an environmental point of view and if ecological sustainability is not being employed with regard to plantation development, we should also look at that. We should clearly deal with the issues; that is what the people expect this place to do. So this motion should be supported, and I make an appeal to Senator Macdonald. We have had a period of time now to work out a set of words, and at the end of the day I can accept all of the other propositions, that we can cover this off and cover that off. But I want a particular focus on whether or not world’s best practice in sustainability and environmental applications for plantation development are being achieved. This is not just about plantations. This is also about whether or not we can have a sustainable native forest industry in this country.

Any reasonable person who was able to see some of the things that I have seen would make a judgment that there are problems and that they should be addressed. Even with the limited capacity that the Commonwealth now has as a result of the regional forest agreements and the processes involved in those arrangements, we still have a responsibility in the national interest to ensure that our timber industry develops in a sustainable way and develops in the public interest, and to make sure that, from an economic and a social point of view, we maximise those outcomes. I have no other objective than that. That has always been my objective. I have made many speeches in this place about that.

Senator Brown has a position—and I do not want to misrepresent him—where he is opposed to the logging of native forests. I respect that. But I know that he also would accept that if we are to take resources from native forests then we ought to be maximising the opportunities that go with that. In my view, we are not. That is why I want this referred to the committee, so it is able to take into account all of the evidence that it will see and is able to make a report to the parliament that truly represents the facts on the ground.

I ask the Senate to support this motion because I feel it is very important. One of the reasons we must move now is that the plantation industry has time frames in which it has to operate. The basis for most plantation development in this country is through managed investment schemes through prospectus offerings to the general public. The industry have time frames that they have to meet. They have to get product rulings from the Taxation Office, which they have to do in the previous year, and then put out the public offerings in the marketplace.

It is important that we move now to get this done in the shortest possible space of time. Although the date given is 12 December, the last paragraph of my motion says that the committee can provide interim reports on issues of importance when they arise to take account of other reports and findings. That is very important because if the committee were to deal, for instance, with taxation matters it should provide a report well before 12 December so that that aspect of its findings can be taken into account by the government and by the Australian Taxation Office. We must be fair to the development of the plantation industry in this country because it is very important. This is a country that imports over $2 billion worth of forest products each year—that is why this is important. I urge the Senate to support this motion. (Quorum formed)

Debate (on motion by Senator Ian Macdonald) adjourned.

CHRISTMAS ISLAND SPACE CENTRE (APSC PROPOSAL) REGULATIONS 2001

Motion for Disallowance

Debate resumed from 19 June, on motion by Senator Brown:

(1) That the Christmas Island Space Centre (APSC Proposal) Regulations 2001, as contained in the Territory of Christmas Island
Regulations 2001 No. 1, and made under the Christmas Island Space Centre (APSC Proposal) Ordinance 2001, be disallowed.

(2) That the Christmas Island Space Centre (APSC Proposal) Ordinance 2001, as contained in the Territory of Christmas Island Ordinance No. 4 of 2001, and made under the Christmas Island Act 1958, be disallowed.

Senator BROWN (Tasmania) (10.41 a.m.)—Senator Harradine has kindly suggested that I seek leave to incorporate my speech, but I gather from last night’s events that the Minister for Forestry and Conservation wants to actually hear this speech.

The ACTING DEPUTY PRESIDENT (Senator Calvert)—You understand that you will be closing the debate?

Senator BROWN—Yes.

Senator Ian Macdonald—I take a point of order, Mr Acting Deputy President. I was in continuation when the matter was adjourned last night. Pursuant to Senator Harradine’s suggestion, as both Senator Faulkner and I have indicated, if we were to see the balance of Senator Brown’s comments and they were appropriate then we would agree to their incorporation. I can assure Senator Brown that I do not particularly want to hear his speech again, but if he wants to incorporate it then we are quite happy to allow that. But my point of order is that I was in continuation when the debate was adjourned.

The ACTING DEPUTY PRESIDENT—I was not in the chair last night, but if you were in continuation I think you should have stood and continued.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (10.42 a.m.)—I will do that now. I only had 30 seconds yesterday and I do not intend to take much more time today. The ordinance and regulations provided in this matter give a framework for the development of a proposal for the construction of a space centre on Christmas Island for the Minister for Regional Services, Territories and Local Government to consider. They also provide a mechanism for ongoing regulation and monitoring of any approved proposal, including adherence to environmental standards and construction in accordance with the Building Code of Australia.

For Senator Brown’s benefit, I want to mention some issues that he raised yesterday. I suspect that he said them honestly but that he does not quite understand what is happening. So I will briefly—and I emphasise briefly—run through a couple of points that, although I will not say he made them deliberately erroneously, Senator Brown made erroneously. I want to point out to Senator Brown and anyone who may be interested in this debate the truth of the matter. Senator Brown said that the government is at the same time encouraging the expansion of phosphate mining. I have to tell Senator Brown and anyone interested that no new mining leases have been issued. Senator Brown then said:

By this ordinance, the government is setting the taxpayers up for compensation to the company if final approvals were not to be granted.

In fact, the ordinance and regulations only provide a framework for the submission of a project for the minister’s consideration and, if approved, for ongoing regulatory monitoring. It does not grant de facto approval of the project. The proponents of the project—that is, Asia Pacific Space Centre—must meet a range of requirements, including very strict environmental standards. Further, Senator Brown said:

Yet earthworks are already under way ... Drilling in the area of the launch pad is proceeding. This is de facto approval of the project ...

Anyone listening to the debate might have been concerned by that. The actual facts are these: the Minister for the Environment and Heritage has approved an environment management plan for the earthworks for the project. I was involved in that at that time as the minister for territories. It is a very substantial and very precise management plan. However, no approval for the commencement of earthworks has been given. APSC, the proponent, has been given access to the site at South Point to undertake preparatory groundworks on the mining site. This includes geotechnical drilling, to which Senator Brown refers. Under the access arrangements, APSC is not allowed to undertake any major excavation work. The drilling is a re-
quirement of Environment Australia to investigate anomalies found in the ground-penetrating radar work near the launch pad site. The results of the work are required to be given to Environment Australia. If any major cavities are found, the proposed site of the launch pad may need to be reconsidered.

There has been no approval of the project. Further work is required, including additional flora and fauna studies by APSC. The Minister for the Environment and Heritage will not approve a construction environmental management plan until he is satisfied that all environmental issues have been satisfactorily addressed. Construction cannot commence and approval will not be given until the environment management plan is approved.

The Asia Pacific Space Centre will be subject to strict environmental standards. The project will not proceed to construction until the Minister for the Environment and Heritage is satisfied that the appropriate environmental standards have been met. But it is very important for the Senate to understand that this project has the potential to bring very substantial benefits to Christmas Island and to bring them in a sustainable and environmentally sensitive way. This project is supported by the community. It has been estimated that the project will create 300 to 400 jobs during construction. It will generate revenue of $33 million per annum for Christmas Island, and it will bring total benefits to Australia of about $1.3 billion. If the ordinance and regulation were disallowed, this important leading edge project and its benefits could be lost to Christmas Island and Australia.

The proponents of this project are a very enthusiastic, energetic group of Australians. They have a very substantial goal for Christmas Island and for Australia’s future leading edge technologies and their place in the world of science, space exploration and communication. The company has been very diligent in all of their plans. It will be a great project for Australia and one that will bring very substantial benefits to a community— that is, the Christmas Island community— which, before this project was first thought through, had a very bleak future. As a result of this project, there is a very promising future for Christmas Island, one which the government strongly supports. We congratulate the proponents, the Asia Pacific Space Centre group, for all the work they have done. I am sure this will turn out to be a great project for Australia, but it is one that will be very carefully managed in accordance with Australia’s very strict environmental laws. (Quorum formed)

Senator CARR (Victoria) (10.52 a.m.)—This motion to disallow regulations to do with the proposed Christmas Island space centre highlights some interesting developments in regard to politics in this country. That Senator Brown would move a disallowance of this nature would be consistent with his view of these matters and would not surprise us in the slightest. Until recently we too were very concerned about a number of matters which I will address in a moment. What is really interesting here is that this is an opportunity for Australia to extend its international cooperation in space with the Russian Federation.

It is somewhat ironic that the issue of Russian rockets would be a matter of such debate in this chamber—and the terms of that debate. Given the history of this Commonwealth, I would have thought it would be a very unusual circumstance for the Liberal Party to be so strongly in support of the Russian space industry and Russian rockets being deployed on Australian soil. This is a project we support. I just point out there is an irony in the way the government has approached this issue, a historical fact that we should note.

Senator Ian Macdonald—But they are not red like you, Kim; they are capitalist.

Senator CARR—I was not aware that rockets had a political colour. This is the problem. We have a very important Australian scientific project. We are working in cooperation with the Russian Federation for the deployment of Russian space technology working with Australian scientists. This is a project we applaud. I think we should see more international cooperation on scientific projects. This is a particularly good example of the way in which countries can pool their resources and produce great benefits for the
peoples of the world. It is just an irony that the terms of this partnership are being brought forward in this manner.

Labor does not support Senator Brown’s disallowance motion. Labor was approached earlier in the year by the Shire of Christmas Island and a number of community groups on the island with concerns about the Christmas Island space centre ordinance. In particular, the council was concerned that, under the plan to excise the proposed site for the space centre administration and employee housing and the provisions that apply to the Western Australian local government legislation, the council would be required to provide the normal council services for that development but without the ability to collect rates to pay for those services. The council and community groups condemned the government for its failure to adequately consult the people of Christmas Island on the implications of this ordinance. Labor has called on the government to adequately consult with the people of Christmas Island and to respond to community concerns. I am pleased to be able to report that, under pressure from Labor, the government has now given a written commitment to the council that its ability to levy rates on the site would be restored as soon as the council incorporates the site into its town plan. The shire council has accepted this position. Given that the government has finally been dragged to this position and the council feels it is able to live with these arrangements—these assurances—Labor will no longer support a motion to disallow the ordinance.

However, this government should take a clear lesson from this episode: it cannot ride roughshod over the concerns of the 1,500 Australian citizens who live on Christmas Island. The Christmas Island community has a number of other concerns about the construction and the operation of the space centre which, while they do not directly relate to the operations of this ordinance, ought to be addressed by the government as a matter of priority. In particular, the government must enter into meaningful consultations with the council and the community groups on the island about such important environmental concerns as the possible impact on the Abbot’s booby and red crab populations and how the highly dangerous satellite fuel is handled and stored. We note in the ordinance, particularly section 31, that the company will be required to appoint an environmental officer who will report to the secretary of the department. This is a good move. We also note that, under section 32, there are provisions that the project, the company, will not be exempt from any other Commonwealth law. That is another very important measure. It leads us to the view that there is a genuine commitment to there being an extensive EIS process—which is currently under way—that that process will be thorough and comprehensive, and that we can be assured that in regard to the actual EIS processes the environmental concerns can be satisfied within the normal administrative arrangements.

The broader concerns that Senator Brown has raised about the fragile environment on Christmas Island are matters that we are concerned about.

Senator Ian Macdonald—So are we.

Senator CARR—So is the government—that is a good thing, and it ought be the case. There are a number of projects that are being undertaken on Christmas Island which are important to Australia but which require careful consideration of their broader environmental and social impacts. They are issues that we will address as the projects come up.

In terms of this particular project, it is good to see that the government is able to support such international scientific cooperation. It is important that this country does more in regard to space industries. We have enormous potential in regard to the development of our own capacities in that regard. It is important that the management of these projects over time protects Australia’s national interest in regard to the operation. I would hate to see a situation where we were merely landlords. The issue of technology transfer and other things will need to be considered in the development of this project. There is a very important opportunity here. It is important for us to work with international space agencies. It is good to see that we are able now to turn aside from some of the
hysteria of the Cold War and work with the Russian people in the advancement of humanity.

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (10.59 a.m.)—This motion for disallowance relates to the Christmas Island Space Centre (APSC Proposal) Ordinance 2001 and the associated regulations. (Quorum formed) As we have heard, the purpose of the ordinance is to enable the Asia Pacific Space Centre to make a proposal to the Minister for Regional Services, Territories and Local Government to establish a space facility on Christmas Island. The ordinance allows a proposal to be made—part 2—provides details that must be included in the proposal, requires evidence of the commitment and capacity of APSC to carry out the proposal, requires APSC to undertake various studies, and outlines considerations that must be part of the minister’s decision. The regulations provide criteria for building approvals and compliance certificates.

The Australian Democrats will be supporting this disallowance motion for broad and very specific reasons. We do not support the creation of exclusion zones, particularly when those zones reduce levels of environmental protection and reduce accountability and transparency of government. Waiving the requirements of local laws means that Christmas Island and the Australian community will be excluded from the decision-making processes. There will be no consultation and the Commonwealth can proceed in the secretive way that is becoming its trade-mark.

Already the Christmas Island space facility is shrouded in secrecy, including the negotiations with the Russians. While I take on board Senator Carr’s comments about internationally significant cooperations and dealings, there is secrecy surrounding negotiations with the Russians in relation to technology transfer. Will Australia get anything out of this deal with the Russians? Are we going to receive the new technologies and, we hope, green technologies that will lead to an Australian space program? This was one of the original promises of the government in supporting the space base, but the long and not always great history of the Russian space program in Siberia, combined with a secretive government dedicated to big business, does not always inspire confidence. Who holds liability in case of a major accident? Is the Australian taxpayer going to foot the bill in order to protect private enterprise from costs and dangers associated with their activities?

The original purpose behind the environmental impact assessment requirement was to determine whether or not a development proposal should proceed and, if it should proceed, whether there were better locations for the proposal; and, if it should proceed where proposed, how environmental impacts could be reduced to a minimum. EIA was never intended to be the handmaid of government decisions and approvals. Just as with the detention centre on Christmas Island, the space base began with an approval and environmental controls. Plans and studies were being prepared as they fit in with the development process.

This ordinance continues the process of deferring environmental controls and decisions to some later point. The government would have us believe that even now, after site works have begun, environmental studies could result in the government changing their mind. That is the impression they are trying to give. Section 13(2)(e) of the ordinance demonstrates the shallowness of the environmental commitment of this government in relation to Christmas Island:

The Minister must not approve a proposal unless the Minister is satisfied that an Environmental Management Plan will be established. No requirement that the EMP actually exists before the approval is given; no requirement that the EMP fully considers environmental impacts before the approval. The EMP could conceivably, just as the original approval did, allow more studies and more reports to be conducted at some point down the line. In its original appraisal of the EIA, Environment Australia recommended that studies of the flora and fauna of the subterranean cave systems and of the broader geology of the limestone caverns be assessed before any building approvals took place.
As the Democrats have revealed, two years later, with site works under way, approval was given and the government was fully devoted to the space base, the geological work was still under way, and the fundamental decision regarding the launch pad site was not made, or had just been made—depending on which estimates testimony of the government you happen to listen to. The Democrats have revealed, and talked about, a number of questions in relation to Christmas Island. We have made statements, had briefings, and made a couple of queries that seem to have hit home. The fallout from the Australian Democrats making the defect in the environmental practice on site public—that is us letting people know what was going on—apparently has been the sacking of the drilling engineers. I call on the government to clarify: is that the case? That is our information. Democrats go public; people lose jobs. Is that what happened? I ask the minister to explain.

The reports that we have received indicate that the immediate reaction of the APSC was not to open its books and demonstrate that its environmental research was best practice. Instead, the drilling engineers, who were already belatedly fulfilling a condition that should have been completed before the approval—investigating the limestone geology of the launch pad site—were told to leave the site immediately. The strident claims from the government that there were no problems on the site have been absolutely, fundamentally exposed. Even today, there is still no EMP, meaning most of the 65 conditions that were imposed by Senator Hill are still unfulfilled. Instead we have an approved interim EMP that allows earthworks to proceed before the environmental work has been done.

Environment Australia have been well aware of the threats represented by this development. EA have said that they do not believe that all impacts of the space base can be mitigated. They indicated that there was a possibility that the only way to prevent ongoing negative impacts on breeding bird populations may be to discontinue launches from the facility. But the reality is that there is little likelihood of that happening, regardless of how severe the impacts may be. The ordinance does not require that all studies or approvals or impacts be properly assessed and understood before decisions are made. This is such a fundamental violation of environmental impact assessment best practice—and one that I have to admit we are seeing with increasing regularity—that this aspect of the ordinance alone justifies the disallowance that we are debating today.

Some of the environmental impacts that are likely to be associated with this proposal include not only the impacts on the seabird populations but also impacts on marine life as a result of disturbance of the fringing reef communities at Flying Fish Cove; the impact of the dumping of rocket junk, like fuel tanks, into ocean drop zones; the impacts of increased traffic and, of course, road use; the impacts on the limestone caverns and the pipistrelle bat; and the impacts on the tourism industry on Christmas Island—in the long term, far more likely to be a more sustainable and community friendly industry.

Disallowance is also justifiable for a number of other reasons. Christmas Island is something special. Sixty-three per cent of the island is national park and most of the island is listed on the Register of the National Estate. The statement of significance made by the Heritage Commission, in listing the island, gives a sense of what a unique place Christmas Island is. I quote from that statement:

The evolutionary significance of Christmas Island is demonstrated both by its high level of endemism and by its unique assemblage of plant and animal species.

The dominance of the land crabs is a striking feature of the island’s fauna. The island has thirteen of the twenty species known worldwide—clearly ‘worldwide’; a significant number—and one of the highest land crab densities known in the Indian Ocean. The land crabs of Christmas Island are remarkable for their variety and numbers and for the role they play in the ecology of the rainforest …

The presence of seventeen endemic plant species … contributes to the place’s significance for understanding evolutionary relationships … The well-developed karst landscape of Christmas Island contains an internationally significant cave fauna with twelve endemic invertebrate species.
The island is also one of the world’s most significant seabird islands, both for the variety and numbers of sea-birds … including eight species which breed on the island. The island rainforest provides significant habitat for two endemics, the nationally endangered Abbott’s booby … and the nationally vulnerable Christmas Island frigate bird …

The island’s relatively simple fringing reefs and adjacent waters support a rich diversity of marine species …

One would expect that environmental standards on this Commonwealth heritage listed island would be of the highest order. Instead, the opposite is true. We are seeing the government, which should be the model for environmental assessment and practice, engage in both extremely poor practice and poor process. For instance, under the current heritage laws, the government is required to consider feasible and prudent alternatives to a development proposal that could harm a place listed on the Register of the National Estate. That assessment must occur before approval. We know with the detention centre that the government failed to abide by its own law. It referred the matter to the Heritage Commission after a decision had been made. This was recently acknowledged during the estimates process. But we are not holding our breath that the Australian government will remedy the situation or insist that its ministers uphold the law.

The Commonwealth appear to be regressing in their environmental practices to a discredited multiple use, technocratic view of the environment that says, ‘We can allow all uses and the environment can be protected at the same time.’ Ridiculous! The space base is going to be built over the limestone caverns that form part of the heritage significance of Christmas Island. Good environmental managers would have assessed those caverns, and the flora and fauna that depend on them, before they decided they were going to build a space base on top of them. That is not what happened in this case, however.

The poor environmental practices that are being demonstrated by the Commonwealth in relation to this space base are being duplicated all over the island. It is important to understand that the Democrats’ support for the disallowance before us is occurring in this context. The space base cannot be looked at in isolation. We are seeing a compounding of errors and the threat of cumulative impacts studiously ignored. The barrage of development on Christmas Island is threatening to make Christmas Island into our Siberia: a gulag, if you like, of dirty and damaging industries and prison-like detention centres. In addition to the space base, there is a massive new detention centre on Christmas Island. That detention centre was announced in May, for mining lease 138.

Mining lease 138 is adjacent to existing rainforest habitat for the Abbott’s booby. It was designated a high-priority revegetation site, both to protect existing habitat and to create a new habitat. So instead of rehabilitation, we are getting a detention centre that will house up to 1,200 people, a compensation bill to be paid to the mining company, 10 kilometres of road and infrastructure cutting through a national park, and increased threats to the island’s ecosystem. Mining lease 138 was selected by this government because hiding a detention centre 1,500 kilometres away from the mainland was not enough. They wanted to ensure that it was not close to any human contact. We are very good at doing that with our detention centres, just to try to demonise these people even more. Environment Australia recommended alternative sites—we know this, although the government will not release those reports—but they were rejected, not on environmental grounds but on pure political grounds.

When the immigration and territories ministers applied for a waiver of the environmental impact assessment requirements under the EPBC Act, based on a notion of national interest that does not stand up to any level of scrutiny, the environment minister granted the waiver, apparently ignoring the advice of his own department that alternative sites were available and indeed were preferable. The waiver, like the space base ordinance, promised a wonderful environmental management plan—eventually. After approvals are granted, contracts are entered into, materials are delivered and construction has begun, we will have an EMP. This is sort of like making all your investment decisions
and then asking an investment adviser to prepare you an investment plan. That is not the way to do business and it is certainly not the way that you protect the environment.

The third major threat that Christmas Island faces is the new mining proposal from Phosphate Resources Ltd or PRL. The mining company, which has been operating on Christmas Island for a number of years, has applied to mine another 490 hectares on the island, including old-growth rainforest areas that were supposed to be protected for all time. PRL is also seeking access to national park land through a land swap with the federal government. At the estimates committee hearing there was no statement given, no commitment given, that this would not happen. We still do not know the extent to which PRL has complied with its former lease conditions. We still do not know if they have rehabilitated to the extent that their lease required. We do not even know whether PRL has been paying all its bills. These are issues that deserve full airing and full investigation and clearly before any approvals are given. Unfortunately, from what we have seen that has already occurred, there is no reason for us to have any faith in the process of government relating to Christmas Island or indeed more generally in relation to environmental protection. One of the ironies is that just as a major threat to the island’s ecology is being brought under control—the crazy ant invasion, with its super colonies that threaten crab populations and the rainforest ecology—a new and more difficult threat has hit the island. Yes, a more difficult threat than the crazy ant: it is the Commonwealth government—the crazy Commonwealth government.

It is in this broader context, a context of mismanagement, abuse of power and the bypassing of laws, that the Democrats strongly support the disallowance motion before us today. It is clear that Christmas Island needs protection, but it needs protection from government policy. It is also clear that the current practices on Christmas Island need review. The Australian Democrats are keen to ensure that management and other practices are reviewed fully. We will be seeking to ensure that these processes are fully inquired into. We will be seeking to establish an inquiry and we will certainly be looking to the Labor opposition and to the Greens for support in that endeavour. Of course, we would like to have government support for that.

I think that the government’s processes, practices and management of Christmas Island deserve rigorous scrutiny. This is the reason that I have been talking about Christmas Island for quite a period of time now, despite the fact that government has made a mockery of the work that I and others have done in this regard and despite the fact that, having said on record and publicly to media organisations, ‘There is nothing going on there,’ we then see the sacking of two drilling engineers. I look forward to the government’s explanation of what has happened and why that has happened. They should know that we know we caused them some distress with our comments and we know that our comments and our sources were spot-on.

On behalf of the Democrats, once again I indicate that we will be supporting the disallowance before us today for specific reasons and broader reasons. We do stress that the people of Christmas Island and the ecology of that island deserve every support and every bit of protection we can give them. I say this in the context of being the science and technology spokesperson for this party and recognising that, yes, space activities are extraordinary. I have been fascinated with space activities for many years as science spokesperson and I will strongly support any government moves in relation to changes to space activities law and to development of technologies in our land, but I also have a strong commitment to our environment. Without going further into detail as to some of the problems relating to the location of the space centre, I put on record very strongly today our environmental and other concerns.

Senator BROWN (Tasmania) (11.21 a.m.)—I commend Senator Stott Despoja and the Democrats for that contribution. I am sure that the Senate will grant leave to the minister if he wishes to explain the sacking of the drillers that Senator Stott Despoja referred to in the chamber. What we have here
is the Minister for the Environment and Heritage ignoring his department’s own advice and approving an interim environment management plan for stage 1 of the earthworks before he knows what the overall impact of the facility will be. That is very much like giving approval for foundations on a building before you know what the building is going to be. Of course, he will also approve the whole operation after having approved the earthworks in preparation for the construction.

It is not just for environmental assessment that these earthworks are proceeding, as the mining company is working overtime to extract all the phosphate from the site. If he cares to give a response in the period when we grant leave for that, I would ask him: is that not the case? He says that they are only drilling in there. Is it a fact that they are not removing phosphate and are not going to? What has this meant for the buffer zone reassessment required by Environment Australia? It seems inevitable that the minister will approve a stage 2 environment management plan for construction and then a stage 3 plan for the operation of the project. Who believes that, once this facility is in operation, any minister will close it down if the monitoring shows that the facility is causing an adverse environmental impact, especially with the oversight of the provisions of the environment management plan being left to an environment officer, appointed by the minister, to report to the secretary in accordance with the ordinance now before us? That is in part 4, section 31(2). This is a totally inadequate enforcement provision. There is nothing independent about it whatsoever.

This ordinance should provide a transparent and fair framework for government assessment of APSC’s proposal to build the rocket launching station and the satellite launching facility on Christmas Island. It should involve community rights and access as well. It fails to do so. It sets up instead yet another government exclusion zone. Business and the administrator will decide what happens to the people who live on the island, and they will be deliberately shunned. In the whole process of this, I would very much welcome—and I ask the minister for
it—an assessment of the company itself. I would like to know who its investors are, where it is based, what its shareholding base is, what its investment parameters are and, indeed, who the owners are and who will benefit directly and indirectly from the investment by this Russian based company.

This ordinance allows for the declaration of exclusion zones on Christmas Island so that local government law does not apply. What happened to participatory democracy? Why should the community be left with a vague promise that the company and the ministers will consult them? Remember the detention centre: the community was informed, without consultation, that cabinet had decided to build a detention centre in their shire. That development was excluded from the Environment Protection and Biodiversity Conservation Act 1999 because the act required consultation, which would have taken six months, and the government was not about to wait. What sort of consultation can the community expect once its rights have been taken away in this case? This ordinance does not spell out how or to what extent consultation will occur. On past form, the consultation will be worthless, and the people of the island will be effectively disempowered. Christmas Island is rapidly becoming a de facto modern penal colony open to any development that the minister, the honourable Wilson Tuckey, deems acceptable. In this case, that is a 99-year lease to convert to freehold once construction is finished for this foreign based company, APSC.

By approving this ordinance, the Senate would be giving the green light to yet another round of exemptions from Australian law on Christmas Island. The ordinance should be disallowed. The Senate should at least first require an assessment of the cumulative environmental impacts of the proposed satellite launching facility, the additional mining leases, the detention centre and the associated infrastructure developments of the new port facilities and the extended runway and road proposals. I remind senators of the fragile and complex ecosystem of this fantastic Australian territory—and Senator Stott Despoja just gave us an outline of those. The Commonwealth has a responsibility to conserve the biodiversity of Australia and not endanger it in such a premeditated fashion.

I give an example of what a space station will mean to the local breeding colonies of rare birds and the marine environment. One of the reasons you aspire to put these facilities in remote places is because you would not dare to put them in a city anywhere in Australia. Why not? Because the environmental impact, noise and danger to human life and limb from falling fuel and potential overhead explosion would be enormous. Putting it out in a remote area which is filled with bird life and unique and rare ecosystems exposes them to exactly those same threats.

This ordinance should at least be withdrawn until the baseline monitoring and other surveys required by Environment Australia are completed. An informed determination must be made as to whether this project can ever be approved because of its environmental impacts on a range of endangered and vulnerable species and their habitats. I have therefore moved this motion to disallow the Christmas Island Space Centre (APSC Proposal) Ordinance 2001.

Question put:
That the motion (Senator Brown’s) be agreed to.

The Senate divided. [11.35 a.m.]
(The President—Senator the Hon. Margaret Reid)

Ayes............. 11
Noes............. 49
Majority........ 38

AYES
Allison, L.F.
Bourne, V.W. *
Cherry, J.C.
Lees, M.H.
Murray, A.J.M.
Stott Despoja, N.

NOES
Barnett, G.
Boswell, R.L.D.
Buckland, G.
Campbell, G.
Chapman, H.G.P.
Collins, J.M.A.
Bartlett, A.J.J.
Brown, B.J.
Greig, B.
Murphy, S.M.
Ridgeway, A.D.

Bishop, T.M.
Brandis, G.H.
Calvert, P.H.
Carr, K.J.
Colbeck, R.
Cook, P.F.S.
When I was discussing yesterday this particular issue of the pharmaceutical benefits changes that this government is mooting in the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002, I was talking about the fact that last year the previous minister indicated that there were no problems; that it was economically sustainable the way things currently are. But when the Prime Minister was asked about it this year, after the budget, he said that no, that was not the case; Michael did not have the Intergenerational Report. I was making the point that that particular point is a bit of a furphy because, whilst the Intergenerational Report does talk about these issues, there have been a number of similar studies commissioned and reported on in the last six years.

In 1996 the government received the National Commission of Audit Report to the Commonwealth Government, which had a separate chapter dealing with this issue of pharmaceeuticals. We know that in 1998 the government was aware of an OECD report *Maintaining prosperity in an ageing society*. We know that in 1999 there was the production of the National Strategy for an Ageing Australia. We know that in 2001 the OECD Economics Department did a working paper on the fiscal implications of ageing, and we know that Australia is well placed—and better placed than most nations—to deal with this issue.

So, far from being hidden from the government until very recently, the information and knowledge on the issues raised in the Intergenerational Report have in fact been there in one way or another. In chapter 6 of the National Commission of Audit report from 1996 it says:

Projections based on recent health cost trends and demographic change suggest public and private health expenditure will absorb 8.6 per cent more of GDP by the year 2041.

So none of this information is new to the government, but they are saying that it is and that the Intergenerational Report was the reason why they have had to introduce this piece of legislation. I do not think so. Either the government, former Minister Wooldridge, the Prime Minister and the Treasurer have been asleep at the wheel for the last six years, or they are being exposed—

Senator Kemp—We have won two elections.

Senator WEST—Senator Kemp, it is disorderly to interject when you are out of your chair.

The ACTING DEPUTY PRESIDENT (Senator Hogg)—Order! Senator West, Senator Kemp knows it is disorderly.

Senator Kemp—Senator West is not authorised to give that sort of standing orders instruction.

The ACTING DEPUTY PRESIDENT—Senator Kemp, order!

Senator WEST—They might have won the elections, but I think they won the last election because they raided the bickie barrel and emptied it out. Now, they find that they need some more money so that their deficit is not as large. They are trying to hide that
from the people. They certainly knew about this information which they now say is the premise and the reason for the increase in this PBS charge. I think the government has to come clean on that particular issue.

Of course, Senator Kemp can be very sensitive about this. He was an assistant Treasurer who never answered a question in this place. So I suspect his ability to not answer questions would indicate that his knowledge is probably similar to the government’s lack of knowledge or the fact that they chose to ignore most of those reports prior to this. They needed to raid the bickie barrel because they spent up big to buy the last election. They won it; they bought it. Now they have to cover their steps and say that they have plenty of money and that it is not a monetary problem.

They are going to spend a bit more money as a result of this change in the PBS. They are going to spend something like $12 million on an advertising campaign to tell pensioners and struggling families that the increased cost in their essential medication is good for them. Wonderful! This is typical of this government—the highest spending advertising organisation in this country. This proposal is just adding to it. It should be of concern to all.

Whilst we do not like the legislation, and we will move amendments to it, we are concerned to keep tabs on what is happening with the issue of pharmaceuticals. We are concerned and we think that there are a number of programs, processes and measures—which were outlined by our leader in his budget reply—that could be taken to curb, monitor and improve the use of pharmaceutical benefits. The budget shows that the government will save $80 million over four years. We know where the $80 million is going to come from. It is going to come out of taxpayers’ pockets. I suppose you could say that is almost like a tax.

We think some measures need to be implemented to ensure the long-term viability of the scheme. We support the increasing use of generic drugs where available. That is a very important and very good measure. There needs to be some recognition given though, with the use of generic drugs, that there will be individual patients who will have idiosyncratic reactions to particular drugs and will need a specific drug. It is very important to have that backstop in there. We agree totally with stopping pharmaceutical fraud. We agree totally with improving the listing process for new medications. We do not want to see future health ministers doing what former Minister Wooldridge did. Former Minister Wooldridge had a great history of choosing to ignore the recommendations of the expert advisory panels and groups.

On the issue of immunisation I recall that the National Health and Medical Research Council recommended the use of an alternative form of the combined diphtheria, tetanus and pertussis vaccine to the old triple antigen. The newer vaccine was more expensive, but it had fewer side effects for the children who were being immunised. It could be given to children of an older age. Whereas, once a child was over 12 months old, there were certainly concerns about using the old triple antigen. But the minister overrode the NHMRC recommendations and said, ‘No, let them continue to have triple antigen.’ He did not care that more children were going to have reactions. He did not care that it was not necessarily as effective. I think it certainly impacted on immunisation rates because parents knew the situation. Anyway, that was the minister.

He also put Celebrex and Zyban on the PBS. He did not look at what the impact of that was going to be or that it was contrary to the PBAC recommendation. Costs then blew out. Very good research from overseas shows that Zyban is only effective if it is used in conjunction with Quit campaigns et cetera. He did not do that and from the way that the former minister was carrying on, people thought that they could take the pill and keep smoking and that they would stop smoking. It does not work like that.

We also think that there should be a measure that provides better information and guidance for prescribing doctors. There is a need for independent advice on the effects of medications and the various prescribing information. This should not be the material that comes from the drug companies because they have a vested interest; they want to sell
their drugs. They want to tell everybody that their drug is the best. It is very important that doctors get information other than from the drug companies. We know that the drug companies take the doctors out on harbour cruises. They fete them and wine and dine them and of course it has an influence. In fact, they do it to medical students. The drug companies start this sort of behaviour while students are still in first year medicine. I think these are the sorts of things that we can be doing to improve the use of pharmaceuticals. We also need an increased focus on evidence medicine. I think that is absolutely essential.

These proposals are very important and our leader and the shadow minister have outlined them before. We also support an increased focus on the cost and prescribing patterns of drugs in their first year on the PBS because we have seen some very interesting actions there. We agree that the full cost of the medicine should be included on the label so that consumers are aware of the cost. We think there should be tighter controls on direct to consumers advertising because that certainly had an impact on the sales of Celebrex and Zyban in particular but also others. I take a very strong view on that. It is not appropriate to be advertising products to consumers because it encourages self-diagnosis and, therefore, misdiagnosis. It also encourages inappropriate use. There needs to be greater scrutiny of industry marketing.

Those are the sorts of mechanisms and things that the Labor Party think should be happening—and we are trying to be positive about this. As I have said, this call by the government, saying, ‘Oh, until the Intergenerational Report came out, we didn’t know what was going on,’ is flawed. Over the last six years, prior to that report coming out, they have had at least three or four others indicating the position with health and medication issues. Once we can get the government behaving properly, recognising and admitting that this is one way they can drag $800 million back into their budget bottom line to cover up their negative, deficit budget, then we will begin to see things very clearly.

As I have said, I will always have concerns about placing greater costs on people as far as their health care goes. I know that the Pharmaceutical Guild is as concerned as I am that, if people are given a prescription for a number of medications, they may well start saying, ‘I can’t afford the cost of all of these medications; I will only purchase this and that drug.’ They may well start being very selective about the drugs they are going to take, or they may decide to take their medication at a lesser dose or a lesser rate. All these sorts of actions will impact upon patient health. When we start to get that sort of noncompliance with prescribed medication, we start to get a greater impact upon the health budget with visits to the doctor and increased hospitalisation.

I know the government and the minister will say that what I have said is all wrong and I do not know what I am talking about. But I did not spend nearly 20 years in the health industry without learning about the things some patients will do, whether you want to know about them or not. These people will probably tell you something different anyway; they will tell you what you want to hear. They will not tell you what they are doing if you do not seek out this information very carefully. I urge people to support the second reading amendment that our party has moved.
As I understand it, the public contribution towards the cost of the Pharmaceutical Benefits Scheme has ranged from around 20 per cent to where it is currently around 15 per cent, if the information I have been given is correct. It is the intention of the government, at least in part, to bring it up to the level of 20 per cent, as I understand it was back in the early 1990s. I suppose one might say that is a half-reasonable argument. But I look at that and say, ‘Okay, does that really solve the problem?’ Does it address the question of the long-term management of this scheme? If you increase the cost to the consumer, the public, up to a certain level, what is the right level? Is 20 per cent the right level? If you look at the way the cost of the scheme has blown out in recent years, I would think that 20 per cent probably is not sufficient. As far as the cost of the scheme in the future, if the information given to me is correct, with new drugs—and we should always be grateful for life-saving drugs being developed, coming on to the market and being made part of the PBS—the cost will grow at an even greater rate. So I do not believe that the solution at the moment is to lump an increased cost onto the end user.

Over a number of years, there have been investigations into the PBS. To the best I can find out, in the last 10 years, there was an inquiry done by the Productivity Commission, although not specifically into the Pharmaceutical Benefits Scheme, an Auditor-General’s report done for 1997-98 and an Industry Commission investigation in both 1995 and 1996. The last parliamentary committee inquiry that seems to have had any relevance to the Pharmaceutical Benefits Scheme was undertaken by the House of Representatives Standing Committee on Community Affairs back in 1992 and that produced a report on the prescription and supply of drugs.

I watched with interest the Sunday program of the 16th of this month which looked at the American situation—in so far as the supply of medicines is a similar situation to the PBS. I think that raised some significant concerns. It is my firm view that it is about time the parliament had another look at the provision of pharmaceutical drugs and supplies in this country. What is proposed by the government is only a short-term solution. All of the other measures contained in the budget seem to me to be just tinkering at the edges and that there are far greater problems that need resolution. I appreciate—and I have not read all of the reports; I clearly have not had the time to do that—that the government has picked up some of the recommendations of the Auditor-General’s report from 1997-98.

But it seems to me that the moneys to be saved as a result of implementing some of those measures are not very significant in terms of the growth in the cost of operating this scheme in an overall sense. I would be of the view that, despite what happens as a result of this debate, and whether these measures are implemented or not, there is a great necessity for an inquiry of this parliament. I certainly will be giving consideration to drafting a terms of reference for the Senate Community Affairs References Committee to have a look at the PBS and the overall industry in this country, particularly looking at some of the concerns that were raised on the Sunday program on the 16th of this month, which raised very serious issues.

I understand that some of those issues relate to the patenting of new drugs. There is a 20-year patent, as I understand it, for all new drugs that are developed. Some of them get out to the generic manufacturers quicker than others. But I have noted with regard to a patent that was applied to one particular drug—the name of which escapes me—that at the time of the patent’s expiry date the company sought a new patent which had nothing to do with the original patent. Of course, the new patent took effect and the supply of a generic drug could not be provided.

All of those things need to be looked at because it is a very significant cost. It is a cost that any government of any political persuasion has to manage. I am concerned about the fact that we say, ‘We just have to increase the cost to the consumer,’ and that the government wants to get that shared cost for the consumer back up to a level of 20 per cent. I do not know whether 20 per cent is sufficient. It would seem to me that it is not sufficient. It might well be a valid argument on the part of the government that because it
was 20 per cent at some time in the past, it ought to be brought back up to 20 per cent now.

I will listen with interest to what the government has to say in terms of its longer-term management of the PBS. I think it has been pointed out that the former minister did make some comment to the effect that the current scheme was manageable. I am not sure about that. I have no information to suggest that he was wrong, other than it would seem that the government is now claiming that that in fact is not correct. So I will listen with interest to the government’s arguments and I will make up my mind with regard to the circumstances. But I have to say that I am not in favour of just increasing the cost to consumers with what appears to be a very short-term solution in addressing what is going to be a major long-term problem.

Senator Patterson (Victoria—Minister for Health and Ageing) (12.02 p.m.)—What has happened in the last couple of days during the debate on the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 has been that the opposition and the other parties—the Greens, the Democrats and the Independents—have shown their complete disregard for the future of the Pharmaceutical Benefits Scheme. Senator Murphy has just said that we were tinkering around the edges. Senator Murphy, I would like to take the opportunity to brief you in even more detail than you have been already about the various things we have put in place. We have provided a briefing for Senator Lees and hopefully you will avail yourself of a briefing because you are concerned about the long-term viability of the PBS. That is what I am concerned about. Hopefully, we can convince you that we are not just tinkering around the edges.

We have seen some crocodile tears and new-found concerns from Labor senators opposite and from Labor Party members in the House, and they have been purveying incredible misinformation. I want to put some of the facts on the table. Under Labor, from 1983 to 1996—that 13-year period Labor was in power—the general PBS patient copayment increased by 420 per cent. It increased from $4 to $16.80 over a 13-year period. Where were the Labor Party? Where was all this new-found compassion and new-found concern when we saw those increases?

In 1986, Labor imposed a one-off increase in the general copayment—that is for people who do not have a concession card, a health care card—of $5. In 1990, there was another one-off increase, of $4. Five dollars in 1986 and $4 in 1990 could buy a lot more than $6.20 today. So the relative increase in 1986 and the relative increase in 1990 were significantly greater than the increase we are proposing people who are not on a health care card should pay.

The average annual increase under Labor was 17½ per cent. One of the things that is happening with the PBS is that the costs for medications are growing at a faster rate than for any other product. One of the things that are of concern is that we are not keeping up with that. We drive the lowest prices in the world from the pharmaceutical manufacturers because we purchase and we have a pharmaceutical benefits scheme for the whole nation. This is unlike Canada, for example, where each province negotiates their prices. Because we are purchasing for potentially 19 million people, we are able to drive lower prices. This is not something that the pharmaceutical companies want other countries to adopt. A Productivity Commission study recently showed that we pay the lowest prices in the world.

We want a PBS that works for all Australians. We want Australians to have access to new generation medications. Some of the ones that are coming on will cost $20,000 per person per year and $50,000 per person per year—that ranges from $1,100 and $1,500 to $2,000 a month. We are asking people to pay an additional dollar if they are on a health care card or an additional $6.20 if they are not on a health care card. Eighty-five per cent of scripts are issued to people on health care cards. When a person or a family on a health care card have had 52 scripts they receive their medication free—whether that medication costs $50 or $1,000 per script, they receive it free. There is nowhere else in the world that has a system like this. If a family or an individual are not on a health care card, after they have bought ap-
approximately 31 scripts they, too, receive their medication at the concessional rate. So we have a safety net for both groups of people.

We need to attend to the PBS. In the budget we have a raft of measures, including enhancing processes to ensure PBS prescribing guidelines are followed by doctors. Some doctors do not necessarily follow those guidelines. The government does not want to interfere with the patient-doctor relationship, but when medication is put onto the PBS by the PBAC there are guidelines about how it should be prescribed—for example, as a third line drug or in conjunction with some other treatment such as a behavioural course in quitting smoking. Those guidelines are there for a purpose, because those drugs have been found more to be more efficacious in those situations. We want doctors to prescribe according to the guidelines.

We are facilitating the use of generic medication. I can remember when that was brought in the comment was that people would be dying in the streets because they would not take their medication. We have been able to demonstrate to people that generic medications are therapeutically equivalent and we have been able to curb some of the growth in the PBS. It is still growing at an increasing rate but, had we not done that, the PBS would now have been through the roof.

We are changing listing arrangements to ensure evidence based quality prescribing. We are addressing pharmacy fraud. There is a small group of pharmacists—and let me reiterate that it is a small group—who could make quite a significant dent in the PBS by engaging in fraud. I am working with the HIC, the Health Insurance Commission, to make sure that those people are brought to account and that we reduce the leakage from the Pharmaceutical Benefits Scheme as a result of that very small handful of pharmacists who are not playing the game. The Pharmacy Guild has been very cooperative with us in that.

We are also introducing a community awareness program so that people are aware of the benefits they receive under the Pharmaceutical Benefits Scheme. We did some focus group work at the beginning of the year. When I became minister I was concerned about the Pharmaceutical Benefits Scheme and its rate of growth. We asked people what they knew about the Pharmaceutical Benefits Scheme. Most people—it was up around 90 cent; I stand to be corrected on that figure but it was a very high percentage of people—that the general copayment of $22.40 was the cost of the medication and that they were not getting a benefit from the government. The people who paid a copayment of $3.60 thought that an expensive medication was $20. So here we have Australians who do not understand the enormous subsidisation that the taxpayer is paying for the Pharmaceutical Benefits Scheme. Most do not understand that the most commonly prescribed medication on the Pharmaceutical Benefits Scheme is a lipid-lowering drug which costs, per person, on average $80 per script per month. Let me repeat that: the most commonly prescribed medication on the Pharmaceutical Benefits Scheme costs $80 per month per script. It costs between about $54 and $120; on average it is $80. People will take that for the rest of their lives. On a concession card they get that for $3.60, and we are proposing that they pay $4.60. We are proposing that people pay an increase of $6.20 if they are not on a concession card. Once they and their family reach the threshold, after 52 scripts, if they are on a concession card they get their scripts for free. If they are not on a concession card, after approximately 31 scripts they get their medication at a concessional rate.

So we have this community awareness program to try to educate the public, because I think sometimes doctors are pressured by their patients to receive medication. We have the National Prescribing Service, which was brought in by this government. Senator West came into the chamber and gave a speech before. The Labor Party was in for 13 years, they have been in opposition for six years and now Senator West has seen the light, on the way to her retirement at the end of the next week, that we should be doing something about prescribing and that we should be doing something about the other side of the PBS. I do not know where Senator West has been, but we have a National Prescribing Service that was brought in by the Howard
government to look at better prescribing of medicines. We have just increased the funding to that body.

A couple of weeks ago, the National Prescribing Service launched a Common Colds Need Common Sense program to try to encourage the community not to demand antibiotics when they have an upper respiratory infection—the flu or a cold. Fifty per cent of antibiotics are prescribed to people who have the flu or a cold, and 30 per cent of those are mostly unnecessary. We as a community go in and demand of the doctor that we want to be fixed overnight and we are increasing the number of bacteria in the community which are resistant to antibiotics. In 2000, we had 7,000 people die in hospital because they failed to respond to our last-line antibiotics. We are using up a very valuable resource in antibiotics.

We also have the Home Medicines Review program. There are 1,500 pharmacists now accredited—and we have more in the pipeline—to undertake home medicine reviews. That did not happen under Labor. Senator West says, ‘What are you doing?’ Senator Murphy says, ‘We want to see what other things you can do.’ We are trying to reduce the number of people who go into hospital as the result of adverse reactions to pharmaceuticals. Eighty thousand people a year are admitted to hospital because of an adverse reaction to medication. Some of those are unforeseen; some people have a reaction that is unpredictable. Others are going to hospital because of polypharmacy—because of the interaction of medication. We can reduce that. We have this Home Medicines Review program which was rolled out in January or February—I cannot remember when I launched it—this year. The pharmacist will go into someone’s home, review their medication and work through what they are taking over the counter. They might be taking Alka-Seltzer, for example, not realising it has 300 milligrams of aspirin in it and it is contraindicated to the medication they are taking from the doctor. As well, pharmacists will look at the herbal preparations they may also be taking.

You would think that the government had done nothing about the other side of the Pharmaceutical Benefits Scheme. We are doing an enormous amount, not just because it saves money but because it saves lives, it reduces the number of bacteria in the community that are resistant to antibiotics and it reduces the number of people going into hospital because they have an adverse reaction—develop a neutrogenic disease or a reaction to polypharmacy. To have the other side come in here and preach to us about what we should do to reduce the cost of the PBS is galling. They had 13 years to do it. This government has seen all those measures and more brought in to ensure that we have proper prescribing and an appropriate response from the pharmaceutical industry. The industry have committed to putting the guidelines on their advertising. They have also committed to working with doctors to tell them about the guidelines. But, no, it is taken with a grain of salt. The Democrats come in here and say, ‘That’s like putting the fox in charge of the henhouse.’ They give no credit to anybody for wanting to curb this.

Within the budget measures we also have a response from the pharmaceutical industry. I have been saying across the board that it is a whole of community response. Funnily enough, I did not realise when I started saying that, that was something that had been said in the 1990 budget papers. In the 1990 budget papers, which is when the then Labor government increased the copayment, Mr Keating said:

The Government recognises that all sections of the community—patients, prescribers, drug manufacturers, wholesalers and pharmacists—have a part to play in addressing the issue of costs in the Scheme to make sure it remains a viable part of our health care system.

I know that is most probably in breach of the standing orders, but this is the increase in the Pharmaceutical Benefits Scheme.

The ACTING DEPUTY PRESIDENT (Senator Hogg)—It is a breach of standing orders.

Senator PATTERSON—This is so serious. I do not often breach standing orders. That is the curve.

The ACTING DEPUTY PRESIDENT—Senator Patterson, you should not
undertake to breach standing orders if you
know it is a breach of standing orders.

Senator PATTERSON—I apologise and
I withdraw, but I feel very strongly about
this, Mr Acting Deputy President. I feel
strongly that, in 13 years, the people on the
other side had a 420 per cent increase but
they sit there now sanctimoniously saying,
‘No, we’re not going to accept an increase of
$1 in the copayment for people on the
Healthcare card, and we’re not going to ac-
cept a $6.20 rise for people without a con-
cession card.’ When we cannot afford to put
new medications on the PBS and when it
blows out, do not blame this side of the
house. There has been a furphy in this debate
that we are taking money out of the PBS.
That is not true. We are going to spend the
same amount on the PBS next financial year
as we did last financial year. The budget in-
dicates that we are taking money out of the PBS.
We are going to spend the
same amount on the PBS next financial year
as we did last financial year. The budget in-
dicates that we are taking money out of the PBS.

We need to make a decision. We are going
to be spending more on the Pharmaceutical
Benefits Scheme as a nation. It has gone
from $1 billion in 1990 to nearly $5 billion.
That growth is not sustainable. What we
have to say to the community is that, if the
government is going to spend more and if we
want people to have access to the best medi-
cation—medications that costs $80 a month;
medications for multiple sclerosis and dia-
betes cost in the thousands or more a
month—at an affordable rate, maybe we
have to spend more of our household budget
on medications.

I know that, for some people, it is tough.
For some pensioners, it is difficult, but it is
going to be more difficult when they cannot
have access to medications. It will affect the
poorest and the sickest more when they can-
not have access to new generation medica-
tions. So we have to make a decision. It is
costing us more as a nation. Maybe it has to

I do understand that there are some peo-
ple—and Senator West mentioned this—who
have a number of medications that they have
to take in a very short period. In fact, I think
the first person to reach the threshold at the
beginning of the calendar year reaches it on
about 5 January, or the first week of January,
anyway. But we made this announcement in
the May budget. Those people who take a
large number of medications will have
reached the threshold, the safety net, by now.
They have six months to deal with the issue
of an increase. Although it will commence
on 1 August, they will not face the increase
until 1 January, because they are now in the
safety net period. Remember I said that 85
per cent of scripts are issued to people on a
health care card. So 85 per cent of scripts are
issued to people on the health care card cur-
rently at $3.60, and 15 per cent of scripts go
to people who pay a general copayment.
Those families who have a higher number of
medications will have reached the safety net
and will be paying the copayment by now.
They will not face the proposed increase un-
til the beginning of January. I did think about
that because I was concerned about it when I
was putting this together.

The Pharmaceutical Benefits Scheme can-
not grow unabated. The Intergenerational
Report demonstrates that, if we continue at
the rate we are going, the PBS will cost bil-
lions of dollars—$60 billion by the year
2040. We cannot sustain that. Senator Stott
Despoja painted herself into a corner, but I
ask the Democrats and I ask Senator Murphy
to think again very carefully, because I will
lay the blame at the feet of the Labor Party,
the Independents, the Democrats and the
Greens when I am faced with the difficulty
of having to look at how I am going to pay
for new medications on the PBS. The com-
community indicate to me that they understand it.
It is a shame that Labor, the Greens, the
Democrats and the Independents do not.
The ACTING DEPUTY PRESIDENT (Senator Hogg)—Before putting the question for the second reading, I remind honourable senators that, under a sessional order agreed to today, if the second reading is agreed to I shall call the minister to move the third reading unless any senator requires the bill to be considered in the Committee of the Whole.

Senator BUCKLAND (South Australia) (12.23 p.m.)—We would reserve our right to have this heard in the Committee of the Whole.

Question put:
That the motion (Senator Ian Campbell’s) be agreed to.

The Senate divided. [12.28 p.m.]
(The President—Senator the Hon. Margaret Reid)

Ayes………………. 30
Noes………………. 35
Majority……….. 5

AYES
Abetz, E. Alston, R.K.R.
Boswell, R.L.D. Brandis, G.H.
Calvert, P.H. * Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
Coonan, H.L. Eggleston, A.
Ellison, C.M. Ferguson, A.B.
Ferris, J.M. Heffernan, W.
Herron, J.J. Hill, R.M.
Knowles, S.C. Lightfoot, P.R.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.J. Minchin, N.H.
Patterson, K.C. Payne, M.A.
Reid, M.E. Scullion, N.G.
Tchen, T. Tierney, J.W.
Troeth, J.M. Watson, J.O.W.

NOES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Bourne, V.W.
Brown, B.J. Buckland, G. *
Campbell, G. Carr, K.J.
Cherry, J.C. Collins, J.M.A.
Conroy, S.M. Cook, P.F.S.
Cooney, B.C. Crossin, P.M.
Crowley, R.A. Denman, K.J.
Evans, C.V. Forslash, M.G.
Gibbs, B. Greig, B.
Harradine, B. Hogg, J.J.
Hutchins, S.P. Lees, M.H.
Ludwig, J.W. Lundy, K.A.
Mackay, S.M. McKiernan, J.P.
Murphy, S.M. Murray, A.J.M.
Ridgeway, A.D. Stott Despoja, N.
West, S.M.

PAIRS
Crane, A.W. Bolkus, N.
Kemp, C.R. Faulkner, J.P.
Macdonald, I. Sherry, N.J.
Vanstone, A.E. Schacht, C.C.

* denotes teller

Question negatived.

SOCIAL SECURITY AND VETERANS’ ENTITLEMENTS LEGISLATION AMENDMENT (DISPOSAL OF ASSETS—INTEGRITY OF MEANS TESTING) BILL 2002

Second Reading

Debate resumed from 19 June, on motion by Senator Ian Macdonald:
That this bill be now read a second time.
ent approach to addressing the issues of concern to the government. It retains the $10,000 limit but adds a further limit of $25,000 over a rolling five-year period. In effect, it imposes a $5,000 per year limit over a period of five years. It is just a trickier way of limiting gifting by aged pensioners. The ugly premise behind this bill is that our aged pensioners are rorting the pension. The Howard government is always quick to claim that people are rorting the system but is always a little tardier in coming up with the evidence to justify its assertions. The government claims that current gifting rules allowing pensioners to gift up to $10,000 a year to family and relatives are assisting thousands of pensioners to get pension payments that they are not entitled to receive. We asked them for the evidence that pensioners use gifting in this way as opposed to lending family members a helping hand in times of need. The government could not provide that evidence.

What we do know is that the government has worked out that tightening the rules will save it just $6 million over four years. That tells the story: a lousy $6 million over four years. It gives the lie to claims that older Australians are systematically rorting the age pension. If the government were going to save tens of millions of dollars each year, you might believe that was a basis of a claim, but $6 million in savings over four years is hardly evidence of widespread abuse. The reason it is vitally important to have evidence that the current system is being abused before trying to change the rules is that gifting is an important avenue for many older Australians to help out their loved ones.

As a society, we should not be too quick to further constrain the bonds of family between older Australians and their children and grandchildren. Just one per cent of Australian family households includes a grandparent or other relative. Where extended family households do exist today, they are disproportionately ageing parents living with adult children. Australian Institute of Family Studies research suggests that relatives play a critical role in supporting families. Let me give you three instances: firstly, 35 per cent of adults receive financial assistance from relatives; secondly, 82 per cent receive help with babysitting and child care; and, finally, 69 per cent receive emotional support in a crisis.

Governments should not be in the business of limiting the ability of older Australians to help their kids or grandkids unless a clear case of abuse is made out. The case has just not been made in the Social Security and Veterans’ Entitlements Legislation Amendment (Disposal of Assets—Integrity of Means Testing) Bill 2002. The government is not taking unilateral action to crack down on financial planning approaches that enable people with significant assets to claim the pension. This brings into question the government’s decision to tackle this issue. There is no doubt that financial planners are advising prospective age pensioners, on managing their finances, to maximise their entitlements. In some cases, this activity does, indeed, tread a fine line. That is why, in addressing the more dubious activities of financial planners, it is important that comprehensive action is taken. That means looking at all avenues where dubious activity is taking place and reforming the rules at the one time.

It is also important to consider the value of the current gifting provisions for older Australians. The current $10,000 limit on gifting has never been indexed. This means that over time its real value is decreasing. As a result, there is an automatic tightening of the provisions that discourage serial gifting. What this all really comes back to is a desire from the coalition to cut back on the small number of benefits and concessions that Australians receive after a lifetime of working for their country.

Since they came into office we have seen the coalition inflict a variety of penny-pinching measures targeted at older Australians. Despite promising otherwise, the coalition have put through a swathe of budget measures that have led to real cuts in the pension. From 1996, changes to the deeming rules cut pensions by up to $4 per fortnight—a total of $23 million in pension payments cut. From 1997, the abolition of the earnings credit scheme for pensioners
who undertook occasional work cut up to $50 per fortnight from pensions—again, a total of $19 million in pension payments cut. From 1997, changes to rent assistance for people in shared rental accommodation resulted in cuts of up to $20 per fortnight—again, a total of $30 million in pension payments cut. From 1999, sneaky new ‘daily’ payment calculations effectively cut pensions by up to $10 per fortnight in the pension payment immediately following the twice-yearly pension increases—again, a total of $100 million in pension cuts. Added to these are cuts to concessions which are on par with a pension cut since the fortnightly pension payment has to be raided to make up for the loss in concessions.

From 1996, pensioners and retirees with concession cards lost access to the free dental care they had had under Labor’s Commonwealth dental program. Average pensioners now pay over $100 a year in dental costs from their own pockets. From 1996, pensioners and retirees with concession cards were forced to pay 20 per cent more for prescription medicines, with out-of-pocket costs up an extra $26 per year. The total cut for card holders was $308 million. From 1996, retirees with concession cards had free hearing aids stripped from the benefits. The total cut, again, was $12 million. Since 1996, service fees for hearing aids have increased by $6.50 per visit. From 1997, the number of lump sum $500 pension advances was cut to only one advance per year. The total cut, again, another $83 million. From 1998, the government cut the home equity conversion loan scheme that provided subsidised loans of up to $7,500 for pensioners. By not refunding the program the government cut another $12 million. With the GST, the $17 per quarter telephone allowance has become almost worthless, with the GST on telephone bills eating up the allowance and more.

In the latest budget they are at it again. This time, there is a hike in the PBS copayment. Last year—an election year—saw older Australians showered with gifts: a one-off bonus, the extension of telephone allowance to seniors card holders and broadened tax breaks for retirees. We, of course, asserted at the time that what was given with one hand would almost certainly be taken back with the other. How right we were, with the coalition announcing in this year’s budget a cut in pharmaceutical concessions through a proposed increase in the PBS copayment. For concession card holders the price will go up, we are told, a dollar a script. That might not seem like a lot of money to coalition members with a clutch of family trusts. But for a pensioner it could mean the difference in whether or not they are able to scrape together enough change for a litre of milk before their next pension is due. This really underscores the problem for coalition members: they are not interested in what happens at the kitchen table, only at the boardroom table. The measure we have before us today is evidence of that, and precisely the reason why we will be opposing it.

On the evidence, the government has failed to properly balance compassion with compliance. We should do everything, in a policy sense, to encourage the bonds between families, and that includes the provision of financial and in-kind support from older Australians to their children. By curbing gifting by pensioners to their families, we run the risk of transferring the cost to charities and other areas. Someone still picks up the cost of supporting families who are struggling under financial pressure with the growing costs of school fees, transport, home loans and credit card debt. Better that this transfer be conducted within families than being outsourced to government and charitable institutions.

The current limits are reasonable. If you assume an aged pensioner who can no longer drive gives a grandchild their car at a value of $10,000 and then wishes to provide additional support to other family members, there would be little room to move under the provisions the government proposes in this bill. Instead of cracking down on pensioners helping out their families, the government should investigate the level and nature of serial gifting behaviour that is aimed solely at maximising income. It may be that the evidence suggests a quite different path that does not have the unintended consequence of disadvantaging those seeking to help others. This should occur as part of a more compre-
hensive program to address any improper actions by financial planners. We need to get the balance right. This bill gets the balance wrong. As it is currently framed it does not achieve that desirable purpose and, accordingly, at the appropriate time the opposition will oppose the bill.

Debate interrupted.

**TAXATION LAWS AMENDMENT (MEDICARE LEVY AND MEDICARE LEVY SURCHARGE) BILL 2002**

Second Reading

Debate resumed from 19 June, on motion by Senator Ian Campbell:

That this bill be now read a second time.

**Senator MARK BISHOP (Western Australia) (12.44 p.m.)**—I thought I might take the opportunity to pass a few remarks on the Taxation Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2002, the subject of discussion before the chamber at the moment. It is a bill for an act to amend the law relating to taxation, and for related purposes. The bill in schedule 1 addresses increases in thresholds in the A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999 by substituting increases of a relatively minor amount, in the order of $700. The threshold increases, as one reads the schedule, are all of a similar amount. There are similar routine and technical amendments to the Income Tax Assessment Act 1936 and the Medicare Levy Act 1986. I am advised that the opposition is not opposing this clutch of minor amendments.

**Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.47 p.m.)**—I move:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

**Third Reading**

**Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.47 p.m.)**—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**BUSINESS**

**Rearrangement**

**Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.47 p.m.)**—I move:

That government business order of the day no. 5 (Australian Protective Service Amendment Bill 2002) be postponed till a later hour.

Question agreed to.

**CUSTOMS TARIFF AMENDMENT BILL (No. 1) 2002**

Second Reading

Debate resumed from 19 June, on motion by Senator Ian Campbell:

That this bill be now read a second time.

**Senator LUDWIG (Queensland) (12.48 p.m.)**—So there is no confusion: this is during our non-controversial legislation time. The Customs Tariff Amendment Bill (No. 1) 2002 is non-controversial. The Labor Party
agrees with this bill proceeding. We support the bill.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.48 p.m.)—I thank the other parties in the Senate for their agreement to the Customs Tariff Amendment Bill (No. 1) 2002. It contains a number of amendments to the Customs Tariff Act 1995 under several headings, and other amendments to the bill are made to ensure the correctness of detail in the customs tariff. I commend the bill to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—I once again remind honourable senators that, under a sessional order agreed to today, after the second reading vote I shall immediately call the minister to move the third reading unless any senator has indicated that the bill be considered in Committee of the Whole.

Question agreed to.

Bill read a second time.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.49 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AMENDMENT BILL 2002

Second Reading

Debate resumed from 16 May, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (12.49 p.m.)—I rise to indicate support for the Aboriginal and Torres Strait Islander Commission Amendment Bill 2002. I understand that the government will be putting forward some amendments, which have been circulated in the chamber, and we also agree to those. We support the passage of the bill.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.50 p.m.)—I point out to the Senate that the Aboriginal and Torres Strait Islander Commission Amendment Bill 2002 is a small step towards improving arrangements within ATSIC and I commend it to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.50 p.m.)—by leave—I table a supplementary explanatory memorandum relating to the government amendments to be moved to the Aboriginal and Torres Strait Islander Commission Amendment Bill 2002. The memorandum was circulated in the chamber on 19 June 2002. I move government amendments (1) to (3):

(1) Clause 2, page 1 (line 8) to page 2 (line 6), omit the clause, substitute:

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

(2) Clause 4, page 2 (lines 13 to 16), omit sub-clause (1).

(3) Schedule 1, page 10 (after line 8), after item 45, insert:

45A Section 141T
Repeal the section.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Second Reading

Debate resumed.
Senator BUCKLAND (South Australia) (12.52 p.m.)—The opposition have looked at the Financial Sector Legislation Amendment Bill (No. 1) 2002 and agreed that it is non-controversial, so we have no difficulty with it passing.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.52 p.m.)—I thank honourable senators for their agreement to the passing of the Financial Sector Legislation Amendment Bill (No. 1) 2002 and commend it to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—I remind the Senate that, under a sessional order agreed to just this day, after the second reading vote is taken I shall call the minister to immediately move the third reading unless any senator indicates that the bill needs to be considered in the Committee of the Whole.

Question agreed to.

Bill read a second time.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.53 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a second time.

MIGRATION AGENTS REGISTRATION APPLICATION CHARGE AMENDMENT BILL 2002

MIGRATION LEGISLATION AMENDMENT (MIGRATION AGENTS) BILL 2002

Second Reading

Debate resumed from 19 June, on motion by Senator Ian Campbell:

That these bills be now read a second time.

Senator FORSHAW (New South Wales) (12.53 p.m.)—I indicate on behalf of the opposition that we support the Migration Agents Registration Application Charge Amendment Bill 2001 and the Migration Legislation Amendment (Migration Agents) Bill 2002. In doing so, I would like to make a couple of points. These bills contain some technical amendments to the migration legislation. In particular, they make provision for the Migration Agents Registration Authority to continue and finalise investigations of complaints against agents who may have voluntarily deregistered as agents. Many senators and members have had brought to their attention instances where the behaviour of some migration agents has not been satisfactory. This legislation will enable the investigations to continue, even where the agents have voluntarily deregistered themselves hoping to avoid any further investigation. Further, if such complaints against former agents are substantiated, the legislation will ensure that they are prevented from returning to the industry for a period of up to five years.

The legislation also provides for carryover registration pending MARA's final decision, where an agent applies for re-registration before the due date. The current regulatory system expires in March 2003, by virtue of a sunset clause in the act, and we await with keen interest the results of the current review and the announcement of the government's intentions in this regard. I wish to point out particularly that the Labor Party does not support voluntary self-regulation, which the minister, Mr Ruddock, has advocated in the past. Finally, we expect that the parliament will get an opportunity for a more significant debate on these issues later in the year, following the finalisation of the review. We look forward to that opportunity. We support the passage of the legislation currently before the parliament.

Senator BARTLETT (Queensland) (12.56 p.m.)—I speak on behalf of the Australian Democrats to the Migration Agents Registration Application Charge Amendment Bill 2001 and the Migration Legislation Amendment (Migration Agents) Bill 2002, which make amendments to the Migration Act 1958 in matters concerning migration agents. I guess it is worth noting that this is one of those rare occasions when the government is putting forward migration amendment bills that I am not roundly criticising as being appalling, disgraceful and horrendous. On this occasion, these are positive bills and I thought that, rather than speak
only when I disagree, I should speak as well when I agree. I indicate my support for them.

I thought it appropriate to take the opportunity to make a few comments in relation to the MARA, the Migration Agents Registration Authority, which has been in place since I think 1998. The agency plays an important role, and the aspects of these bills which increase the power of the registration authority to investigate complaints made against migration agents, even if those agents deregister themselves to try to avoid investigation, are a very positive move. In addition, the components of the bills that enable people’s registration to carry over whilst decisions are being made are positive, from the point of view of agents, to enable certainty in the operation of their important activities.

It is worth emphasising the very large number of people who rely on migration agents and the enormous consequences for them if those agents do not act appropriately when they are meant to be helping them. A lot of people—migrants and in some cases refugees, or potential migrants and potential refugees—rely on migration agents to advise them about how best to effect their stay in Australia, whether permanently or temporarily. If it is stuffed up by the agent, or particularly if deliberate abuse occurs by the agent, then it can put people in very difficult situations. Often people do not have much money and may have spent some of what little they have seeking advice. It is crucial that there be as strong a confidence as possible in the ability and integrity of registered migration agents, and the Migration Agents Registration Authority has been tasked by the parliament with that job. It is positive, as I said, that its powers will be expanded under this legislation and that there will be greater chances of catching some of the small number of crooks who are out there.

I think it is appropriate to comment on the load that the parliament and the government are expecting the registration authority to carry. In a sense, the more successful they are, the more stretched their resources will become. The Migration Agents Registration Application Charge Amendment Bill 2002 allows a little more money to be gained through slightly increasing the charge roughly in line with the CPI. But it is worth noting that the more agents who register, particularly the more investigations that MARA undertakes, does not increase its resource base. The more investigations it undertakes the more likely it is to uncover inappropriate behaviour, particularly as more and more agents register, as they are being encouraged to do. I have a concern that over time it may become a problem for MARA to effectively undertake its job, under the financial arrangements that it has.

It is a bit of a problem when your funding structure is such that you have a built-in disincentive to do too much investigating. Obviously, if MARA does not do enough investigating it will not pick up some of the misconduct out there and then its own credibility will come into question. I am not in any way suggesting that MARA is doing this. I know the people involved in the registration authority. I visited there not too long ago and spoke with a number of the staff as well as the manager in Sydney. I also know a number of people on the board. I have total confidence in not only their ability to do their job but also their strong desire to perform their responsibilities as effectively as possible—it is in their interests and in the interests of their industry. So I am certainly not in any way reflecting on them; I am simply making the comment that there will always be an in-built limitation upon their ability to investigate misconduct when they have capped revenue, which is the case at the moment. I believe that an eye needs to be kept on that.

This authority is now a very significant body. It has a number of employees and many agents overseas. I do not know the number, but I am sure it is in the thousands. The people on the board, whilst they are all professional people, do this task in addition to their normal employment. So they are having to put in an enormous amount of time, energy and commitment overseeing what is now a very significant authority. It is a new body; it has been around for only four or so years. The idea of regulating agents and having regulation criteria, standards and accreditation is still very much in its infancy compared with other professions, such as
accounting, for example. So it is a work in progress and it is worth monitoring. Mainly I want to flag what I think are issues that the parliament as a whole needs to look out for in the longer term, and I want to encourage the department—which I know works with the authority—to be aware of some of the potential problems and, if necessary, try to assist the authority in not becoming affected by them.

Having said that, I think the legislation is a positive measure. As I said, it should enhance the further effectiveness of the authority—which is a very positive move. The Democrats support the Migration Legislation Amendment (Migration Agents) Bill 2002 and the accompanying bill, the Migration Agents Registration Application Charge Amendment Bill 2001, which increases application charges. I want to make one small comment in relation to the application charge itself. I think this was the very first piece of legislation I dealt with when I came into this chamber, somewhat unexpectedly, in late 1997. The concern I had then was that, for agents who work for not-for-profit legal centres—community legal centres and the like—the application charge may become too much of a burden on what are very stretched resources of many of those community legal centres.

I am aware of a number of those centres around the country, and I think it is worth paying tribute to many of the people who work in the community legal centres. The Caxton Legal Centre in Brisbane is well known and has a proud history of helping a lot of people who would not otherwise get assistance—on a range of issues, not just migration issues. The South Brisbane Immigration and Community Legal Service does an astonishing job, with very limited resources, for a lot of people who are in very difficult circumstances. They make a life and death difference to some people. They are, though, like most community legal centres, operating under very constrained resources. I realise, partly as a consequence of the amendments that I negotiated on behalf of the Democrats at the time, the burden of charges on those centres is a lot lower than it would otherwise have been, and I appreciate the government adopting and agreeing to those amendments at the time.

Each time we increase those charges—and even though this is only a small charge—it is worth noting the potential impacts it could have on community legal centres, and we should encourage the government to keep a watching eye on that. Even though we are supporting this legislation in a non-controversial way, I would not want to suggest that the Democrats would automatically lend their support to future rises, even if they are just CPI rises, for non-commercial migration agents, because of the ongoing burden that those organisations operate under. I think their burden has increased over the last four or so years since registration became required. So, even if the charge is maintaining its same effective value, whether or not it is appropriate to keep lifting it into the future needs to be kept as a matter for consideration rather than just automatically whacking it up every time an increase occurs for commercial practitioners. But we support the change on this occasion, and I am pleased to be able to support the two bills in total.

Senator COONEY (Victoria) (1.06 p.m.)—The Migration Legislation Amendment (Migration Agents) Bill 2002 and Migration Agents Registration Application Charge Amendment Bill 2002, as has been said, are agreed to around the chamber. But there are certain matters which they raise and I would like to comment on. First of all, these bills are directed towards ensuring that the services provided to people with problems under the Migration Act are proper services, in the sense that they are carried out by people with knowledge of the area in which they operate and who are dedicated to their task, ethical in their conduct, learned and with ability in this area. I was pleased to hear the contributions from Senator Forshaw and Senator Bartlett who have done, I think, much and very effective work in this area of asylum seekers.

But the only way you can get things to work properly is for people to work at them with those attributes that I was talking about before. These are knowledge of what they are about, dedication to the task, a commit-
ment to ethics, and the ability to practise their learning in the interests of other people. It is always good to see someone with great ability and great dedication do things in ways that you can admire, whether it be Cathy Freeman winning the 400 metres final at the Olympic Games, a person driving a tram, a plumber, a person on the slaughter line in an abattoir, a doctor, a lawyer or a migration agent. You want to see people do their task with that sort of dedication.

If you look for models of people who carry out their work in this way you need look no further than this very house and this very parliament. When you think of the people who look after the needs of the parliament you will understand what I mean. I spoke recently about the Parliamentary Library and the people who work there, about Hansard and about Sound and Vision—they are examples of what I mean. You can go further than that of course: senators in this chamber would understand the work that Comcar does. I think Senator Troeth would have a great appreciation of that and of what we owe them and the thanks that are due to them. We look to the people who look after us in this chamber and look at the ability and the dedication and the skill and the learning they have.

Throughout this building there are people who give great service to us as senators, and to the public of Australia, whether they be the people who deliver our goods and papers to us or who are on the desks at various spots around this house doing the sorts of things that are essential to having this place run well. To have this place running well is an important task. I would like to use this occasion to pay tribute to all those people, whether they be the people who drive the cars, the people that give security to the place, the people who give us service, the people in Sound and Vision, the people in the Parliamentary Library or the people in the various places that we need to go to when we are in this house. May I include, for example, the sports centre: it is one of the great sports centres in this country, indeed in the world. The only problem is that not enough senators attend the place. May I say, without picking anybody out, that people like Senator O’Brien used to be a regular attendee at the gym in the old days but since he has taken on the burdens of office he has attended less than he used to. Senator Collins has at times been around there but not as much as she ought and Senator Forshaw is not keeping himself as fit as he might. So, even though we have the staff of Parliament House dedicated to their tasks in this place, and although they are amongst the finest people in Australia, senators—and members from the House of Representatives, for that matter—let them down by not making use of all those services.

The ACTING DEPUTY PRESIDENT
(Senator Bartlett)—May I remind the senator that this is supposed to be about migration agents.

Senator COONEY—It is. This is directly in point. I am saying that migration agents, every now and again, do not do what they should do and often it is more frequent than every now and again. I would advise them to do what indeed I would advise senators to do and that is to look at the way we are serviced in parliament, look at the way that people go about their tasks in this parliament and use that as a model because I do not think we could point to any weakness amongst the people that run this place, whereas we could point to a lot of faults amongst those that purport to give service to those that have issues to be settled under the Migration Act. I just want to say that in this context and just point out what happens.

Another area from which we often get excellent work is the media. I could point to many people in the media who do outstanding work, but it would be wrong to name anyone in particular. If I were going to name anyone, it would be Tosca and her parents. But I do not want to get into naming people because as soon as you name anyone you get yourself into all sorts of trouble. As we come towards the end of this session, these are the sorts of things that occur to me. I just thought I would put on record my appreciation for the way we are looked after in this place, the way that the parliament is run and the way that this building is serviced by all those who operate within it.
Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.16 p.m.)—
I thank senators for their contribution—especially for your remarks, Senator Bartlett, and for the extremely thoughtful contribution made by Senator Cooney. I would point out that the Migration Legislation Amendment (Migration Agents) Bill 2002 and the Migration Agents Registration Application Charge Amendment Bill 2002 are concerned with very important issues which deserve close consideration by the parliament. The amendments made to the first bill, the migration agents bill, will enhance client protection as well as improve the efficiency of the industry regulation arrangements. Also, although the second bill does not increase the actual charge payable—as you have pointed out, Senator Bartlett—it will however provide a degree of flexibility for future increases in charges. This will ensure that the Migration Agents Registration Authority has adequate resources to carry out its statutory responsibilities. I commend the bills to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—I remind honourable senators again that, under a sessional order agreed to today, after the second reading question is put I shall immediately call the minister to move the third reading unless any senator indicates a desire for the bill to be considered in Committee of the Whole.

Question agreed to.
Bill read a second time.

Third Reading
Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.17 p.m.)—
I move:

That these bills be now read a second time.

Question agreed to.
Bill read a third time.

HORTICULTURE MARKETING AND RESEARCH AND DEVELOPMENT SERVICES (AMENDMENT) BILL 2002 Second Reading
Debate resumed from 19 June, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator O’BRIEN (Tasmania) (1.18 p.m.)—If there had been a committee stage in the last debate, I would have been tempted to ask questions of the minister about the use of sporting facilities by coalition senators, but perhaps we will deal with that another time.

In rising to speak on the Horticulture Marketing and Research and Development Services (Amendment) Bill 2002, I want to say that the Australian horticultural industry is a key rural industry and a major regional employer. In 1998-99, the industry had a gross value of production of around $5.5 billion. The farm gate value of production was $4.74 billion, which comprised $1.53 billion for vegetables, $2.56 billion for fruit and nuts, and $650 million for nursery production. The total value of horticultural exports for 1999-2000 was $720 million, made up of $394 million for fruit, $193 million for vegetables, $100 million for nuts and $33 million for nursery products. The top three fruit export products were citrus to the value of $153 million, grapes to the value of $74 million and apples to the value of $37 million. The value of the three top vegetable export products were asparagus at $45 million, carrots at $36 million and cauliflowers at $23 million. Macadamias made up $76 million of the $100 million for nut exports, and cut flowers made up 91 per cent, or $31 million, of nursery exports. Total horticultural imports for 1999-2000 came to $93 million, $73 million of which was fruit, with the balance being vegetables. This was an increase of 20 per cent on the previous year.

Australia’s horticultural sector has been one of the success stories of the past decade, growing by 142 per cent and representing 18 per cent of agricultural production. As I have said, it is a major regional force, employing 80,000 people, with a further 11,200 people being employed in processing. Approximately 21,000 farms are engaged in the industry, and the industry has undergone a great deal of change in recent times. The most significant change has been the merger of Australian Horticultural Corporation and the Horticultural Research and Development Corporation. The purpose of the merger was
to create a company that has closer links to the industry and to promote more effectively and efficiently the interests of Australian horticulture. The merger followed nearly two years of consultation between the company, the wider horticultural industry and the government. That merger was the subject of close scrutiny by the parliament at the initiation of the opposition. It is our view that such changes must be properly scrutinised to ensure that they are for the better, from the point of view of both government and industry.

Rightly, the new structure has a strong commercial focus. This bill will remedy what is a simple technical problem, but that correction is fundamental to the operation of Horticulture Australia as an export control body. This bill will amend the Horticulture Marketing and Research and Development Services Act 2000 to deem Horticulture Australia Ltd as the export control body under that act, and as a Commonwealth agency for the purposes of section 16 of the Customs Administration Act 1985. Currently, Horticulture Australia Ltd is given the function of administering export controls on behalf of horticultural industries, as the company has been declared the export control body under subsection 9(2) of the Horticulture Marketing and Research and Development Services Act.

Horticulture Australia Ltd commenced business on 1 February 2001 taking over the functions previously undertaken by the Horticultural Research and Development Corporation, the Australian Horticultural Corporation and the Australian Dried Fruits Board. Horticulture Australia Ltd is an industry owned company that the Commonwealth has entered into arrangement with for the delivery of marketing and research and development services to the horticultural industry. The Australian Horticultural Corporation previously administered export controls on behalf of horticultural industries.

During the period of its operation the Australian Horticultural Corporation could have access to information from the Australian Customs Service exit database to enable it to exercise appropriate management over the use of export control powers. As Horticulture Australia Ltd does not meet the criteria of a Commonwealth agency under section 16 of the Customs Act, the Australian Customs Service has advised Horticulture Australia Ltd that it is no longer able to provide data to it from its exit database. This bill will correct that problem and will therefore ensure that Horticulture Australia Ltd can exercise appropriate management over current export control powers and any future export control powers by being able to access the exit database to show evidence of any breaches that may have occurred in contravention of export controls. Having said all of that, I simply say that Labor will support this bill.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.24 p.m.)—I thank Senator O’Brien for his comments and commend the Horticulture Marketing and Research and Development Services (Amendment) Bill 2002 to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—I remind honourable senators that, under a sessional order agreed to today, after the second reading question is put I will call the minister to move the third reading unless any senator requires that the bill be considered in Committee of the Whole.

Question agreed to.

Bill read a second time.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.24 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a second time.

Sitting suspended from 1.25 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

CSIRO: Research Vessels

Senator CARR (2.00 p.m.)—My question is to Senator Alston, representing the Minister for Science. Can the minister confirm that the CSIRO research vessel 'Southern
Surveyor has just completed one major cruise in the past two years, has been underutilised for the past four years—in fact, it has been laid up for the last 18 months—and is currently undergoing major repair work, including the removal of asbestos and rusted equipment? Can you confirm that Geoscience Australia wish to use the Southern Surveyor to undertake seismic research, and that the CSIRO is in the process of disposing of the purpose-built research vessel Franklin in order to transfer national facilities funding to the Southern Surveyor? What will be the effect on marine research of this collapse in the CSIRO’s research capacity and of the reduction in access to research vessels from two to sharing one?

Senator ALSTON—I am not familiar with the Southern Surveyor, but I do have a note here that will enable me to cast some light on the subject. To the extent that Senator Carr was interested to know why the CSIRO was planning to sell the research vessel RV Franklin, and to change over to the RV Southern Surveyor, there is no plan or intention to reduce Australia’s research capacity in the absolutely crucial area of marine and oceanographic research. The situation is that the CSIRO currently owns two research vessels, the Franklin and the Southern Surveyor. The Franklin currently operates as the National Facility on behalf of all Australian oceanographic researchers and under the management of the National Facility Steering Committee.

The steering committee, which is an independent body of scientific and industry experts, believes that the Southern Surveyor will be a better platform for the National Facility than the Franklin. The CSIRO and the steering committee are proposing that the Southern Surveyor become the National Facility vessel, and that CSIRO sells the Franklin. The Southern Surveyor is equipped to undertake research in fisheries, marine, geoscience and environmental work, which the Franklin cannot perform. In addition, Southern Surveyor is a larger, more robust vessel able to work in rougher waters, particularly in the south, that cannot be reached by the Franklin.

Through the sale of the Franklin, CSIRO marine research expects to gain the capacity to charter time on various vessels that meet its own research needs. As the National Facility vessel, the Southern Surveyor will increase the ocean research capabilities accessible to all Australian marine researchers. CSIRO and the National Facility Steering Committee both believe that, with this change, Australia’s current marine research demands will be better met.

Senator CARR—Madam President, I ask a supplementary question. I thank the minister for now confirming what the government have failed to confirm to this point—that they are, in fact, selling the Franklin. I ask you, in view of the claim that you have just made that there will be no reduction in research capacity, how this can be the case, when we are now seeing a situation where we are moving from access to two research ships down to one? It is a research vessel that, I might add, is very old, is rusted and is much less capable of doing the work than the specifically-built vessel that the CSIRO currently owns.

Senator ALSTON—I have just pointed out to Senator Carr that the CSIRO actually owns both vessels. They take the view that the Southern Surveyor has a much greater capacity to carry out the work that needs to be done, that the Franklin is therefore inferior and going down this path would make a good deal of sense. If you end up with a vessel that can undertake research in those areas, that is more robust, is able to go into rougher waters, then I would have thought that was a very positive outcome. If Senator Carr wants a further briefing on the matter, I am happy to arrange it.

Howard Government: Communications and Workplace Relations

Senator FERRIS (2.05 p.m.)—My question is to Senator Alston, as both minister for communications and as minister representing the employment and workplace relations portfolio. How has the Howard government set a clear national direction underpinned by strong values and principles in the crucial policy areas of communications and workplace relations? Is the minister aware of any alternative policies?
Senator George Campbell—you haven’t got any policies.

Senator ALSTON—I see—we will come to that in a moment about who has not got any policies. Senator Ferris very rightly identifies the need to have both values and policies if you are serious about governing Australia, because the population at large are not interested in factional squabbles. They are actually interested in real policies. What we have seen over recent years are very courageous decisions in areas like gun control, East Timor, Work for the Dole—a whole range of areas. There is a big on-going agenda which is why things like media reform are very important if you want to get into the 21st century and have companies that have the capacity to expand rather than shrink and reduce their services.

Similarly, as we all know—and Labor knows, better than anyone else—Telstra’s capacity to operate is currently hamstrung. It is not able to do the things that need to be done, and there is no downside detriment to the national interest in proceeding with the full privatisation of Telstra. It damages you greatly because when you go around to the business community trying to come up with confected reasons why you should not go ahead and sell Telstra—they know you sold everything that moved when you were in government—your credibility is fundamentally damaged.

That is why there is such a chasm between the two major parties in Australia. We are the party of reform. We are the party that wants to drive forward with initiatives that are in the public interest and that benefit consumers and workers, and this crowd over here basically are just not interested in those sorts of issues. Look at Senator Faulkner: how long has he been in, and he has never had a serious policy job. He thinks that scoring a few points at estimates is the main game. It simply is not. The public are not interested in that sort of rubbish.

I am asked whether there are any alternative policies and, of course, the answer is no. But you do not have to take my word for it: you just have to look at what Mr B. Jones had to say in the Australian this morning. It really is rather tragic, because he identifies the need for a national vision. He says that we have one and Labor does not. He says that in the past six years the opposition has barely laid a glove on the government. I do not know what he means by ‘barely’ but, apart from that, he is absolutely right. He says that the playing safe approach will not get them anywhere. We know that.

You have Senator Carr trying to run Victoria. Lord knows how he ends up on the front bench. You have all that deadwood there that is not going anywhere. No-one is prepared to do the hard work. You have the General Dostrum of Uzbekistan up on the back bench there—Senator Ray. We have got warlordism here like you have never seen in Afghanistan, Senator Ray, and you have the opportunity to do something about it. Get down on the front bench, do the hard yards and come up with some policy initiatives instead of the ‘just say no’ faction that is only interested in saying, ‘Border protection, it is all too hard.’ Give us a look at the polls. What do the branches really want? What do our preselectors back at Trades Hall Council want?’ The fact is that no-one is prepared to do the hard work. Senator Ray had the capacity to do that some years ago. I can understand why he feels a bit tired and disillusioned these days, but it is not too late. If you are here, the opportunity is there.

There are reforms that are desperately needed. We were prepared to support reforms when we were in opposition. We supported the privatisation of Qantas and the Commonwealth Bank. We took decisions which would not necessarily have been immediately electorally popular. We have been doing that for a long time, and it reaps its rewards. I think the Labor Party simply needs to have a good, hard look at itself. For people like Senator Carr, the ultimate put-down is to accuse someone of an initiative being neo-Liberal or Blairite—he links the two together—and we have Tony Blair heading for 10 years in government. In other words, that is the ultimate criminal offence: to actually win government. Well, he did it by getting serious about policy, and you have not. (Time expired)
Defence: Contracts

Senator CHRIS EVANS (2.09 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Can the minister confirm that on 9 July last year the government put a stop to the initial Defence Integrated Distribution System tender process? Didn’t the then minister Peter Reith then offer $6 million in compensation to the six bidders because of the government’s bungled handling of the first tender round, and wasn’t $1 million of this money offered to his current employer, Tenix? Can the minister also confirm that, in the revised tender documents which were subsequently issued, out of the 19 sites in the DIDS tender the only one that is mandated and protected is the Moorebank site, which happens to be in electorate of his assistant minister? Is this the Howard government’s version of an open and honest tender process?

Senator HILL—I am pleased that the honourable senator reads the answers that I have provided to him. He has clearly done that and found that Moorebank is mandated under the new DIDS tender process. What he failed to say in his question is that, as I understand, that is the principal storage and central point for most of the distribution for the whole of the Defence Force. So it is no surprise that it would regarded as essential that that continue in that role. It is true that the previous tender process was discontinued. I will check on this, but I think there was some form of compensation paid to those who had tendered, for the extensive costs that they had undertaken, which I understand is not an unusual situation in circumstances such as this. What I am not sure of is whether the financial support was given in terms of their previous tender or in terms of the additional work that they would have to do to meet the new tender process. I will check on this, but I think there was some form of compensation paid to those who had tendered, for the extensive costs that they had undertaken, which I understand is not an unusual situation in circumstances such as this. What I am not sure of is whether the financial support was given in terms of their previous tender or in terms of the additional work that they would have to do to meet the new tender process. I will find out the answer to that and advise the Senate.

The good news is that the new process has progressed well and I understand that the department is about to make a recommendation on it, which I look forward to. Hopefully, we will be able to announce the preferred tenderer in the near future and get on with the job of providing a more economi-
It is absolutely hypocritical of the opposition to disallow those regulations when you consider that it was only late last year that the opposition joined with the government in excising Christmas Island, Cocos Island and other territories and, what is more, supported the government to allow for legislation which permitted excision to occur. You have to ask: why was it okay then and not now? The simple answer is that it was politically expedient because of the election. Senator Scullion asked about the government’s commitment to border protection. We are totally committed to border protection and we have approached this in a comprehensive and concise way. No other government has ever had such an effective policy in relation to border protection. Whilst we have a comprehensive policy, the opposition has absolutely nothing. Not one single new idea has the opposition come up with in relation to border protection.

But what has this government done? Earlier this year we cochaired the people-smuggling conference with Indonesia which was a comprehensive measure in this region to deal with people-smuggling. As a result of it, there is work being done in the region to make people-smuggling an offence in those countries which attended the conference. The AFP have been working closely with law enforcement in the region and the success of that cooperation was evidenced last week when the Indonesian police signed an agreement with the Australian Federal Police in relation to fighting transnational crime and, in particular, people-smuggling. We have also reached agreement with Afghanistan for the return of people to that country. We have participated in measures to help rebuild Afghanistan so people can return to their own country and help rebuild it. We have appointed an ambassador for people-smuggling, Mr John Buckley, who is working to implement a range of options in relation to dealing with this worldwide problem. We currently have two extradition requests for alleged people smugglers in Thailand. The government’s action is comprehensive and we have in place border protection in unprecedented coastal surveillance, border patrols by Customs and Navy and also aerial surveillance. This is essential if we are to protect Australia’s borders from not just illegal entrants but such things as drug trafficking and disease which could ruin Australia.

When you look at the opposition, what do you see? You see a total backflip on border protection. It was just last year that the opposition said it would stand shoulder to shoulder with the government on border protection. Where were they this week? They were fighting the government on border protection. They were stopping the government from looking after Australia’s interests by excising those islands and territories off the northern half of this continent. That was a measure which was even welcomed by the Torres Strait Regional Authority. The Torres Strait Regional Authority welcomed the excision of those islands.

Senator Cook interjecting—

The PRESIDENT—Senator Cook, you are being disorderly.

Defence: Employment

Senator CROWLEY (2.18 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Can the minister confirm that the government is planning to sack 1,400 people currently employed in the defence stores and distribution facilities across the country when these facilities are outsourced under the Defence Integrated Distribution System, or DIDS project? Can the minister confirm that, just months before the last election, the government guaranteed the continuation of 350 of these positions and that all of those jobs just happened to be in coalition seats? Can the minister say why the 33 jobs in South Australia were not protected, the 12 jobs in Tasmania, the 56 jobs in the Northern Territory or the 66 jobs in Western Australia? Is a job only worth protecting if it is in a marginal coalition electorate?

Senator HILL—For a political party which, when in government, drove unemployment rates up to over 10 per cent—a million Australians out of work—I suggest to Senator Crowley that she has gall to ask a question in these terms. The government have been about increasing employment in this country and can now look back upon a highly successful record in that regard. Fur-
The point that I was going to make, when I was so rudely interrupted by the point of order, was that we do not believe that the task is completed. We believe we have a responsibility to continue to put in place the framework for economic reform in this country which will encourage economic growth to continue. That commitment stands and will continue to be implemented under this government. I am sorry that Senator Crowley is so disinterested in a million jobs being created under the Howard government that, if she ever wants a demonstration of the error in the thesis behind her question, and that is that we are disinterested in jobs, I suggest that she refers to the statistics.

Senator CROWLEY—Madam President, I have a supplementary question. Some of the opposition senators interjected on that last question and I can tell Senator Hill that I have been here long enough to remember what the unemployment rate was when we arrived here in 1983, perhaps the minister might think on it. Can the minister tell the Senate why the government, if it is interested in protecting jobs, started the DIDS process in the first place when in fact the bidders estimated they would halve the current work force of 1,400? Isn’t the government budgeting on a saving of $300 million as a result of the project? Hasn’t the government protected the jobs in coalition marginal seats simply by deepening the cut in the regions the government failed to protect, including all of the jobs in the minister’s state of South Australia? Minister, aren’t these jobs in your portfolio area? Why are you not defending them?

Senator HILL—I was going to say what a nonsense, but I thought it might be of interest to Senator Crowley, if she had researched the issue rather than simply taken the question from Senator Evans, she would be referring to the particular part of the DIDS request for tender which specifies employment levels must be maintained in a number of critical regional and rural Australian locations. So not only is this government interested in growing employment overall, but it is particularly interested in supporting employment and growing employment in areas where there have been traditionally
employment difficulties. Despite the fact that we have a Labor government in South Australia, which historically is not a good fact for employment figures, we will continue to ensure that growth and employment in South Australia continues as well.

**Education: University Fees**

**Senator STOTT DESPOJA** (2.25 p.m.)—My question is addressed to the minister representing the Minister for Education. Does the minister agree with the key finding of a paper by the Australian Vice-Chancellors Committee on student finances called *Paying Their Way* that financial pressures on Australian students are having negative impacts on their capacity to study? In light of the Prime Minister’s recent support for further deregulation of university fees, what evidence does the government have that there is any capacity to increase fees for students?

**Senator ALSTON**—I think we can safely take the word of the vice-chancellors on that. They are the ones who are closest to the coalface. They are the ones who understand the critical importance of Australia having world-class education institutions. We know that we do not have any universities in the top 100 and that is something that should be a matter of national regret. What the vice-chancellors are doing is identifying the critical importance of aspiring to excellence. In order to do that, you need to have the funding capabilities to be able to provide the sorts of skill sets that go with attracting the best and brightest. The tragedy in this whole debate is that you had Mrs Macklin the other day going out there and making up a figure of $100,000 and suggesting that is what people would have to pay each year and then trumpeting the criticism of elitism, when of course the whole debate is about excellence. It is quite clear that the Labor Party does not seem to have any interest in that. They are a lowest common denominator party. The unions hate the idea of performance pay and yet in education, like any other area—

**Senator Carr**—That is drivel and you know it.

**Senator ALSTON**—If you are not careful, we will take back that degree you got from Norfolk Island.

**Government senators interjecting—**

**Senator ALSTON**—That is right. I was told that he applied but was rejected. So it is not surprising. If you spend all your time trying to win factional wars in Victoria, what does the state come to when you have got people like that running the place? I suppose it is meant to be a decoy but it has frightened a lot of people, Senator Carr.

**The PRESIDENT**—Senator Alston, I draw your attention to the question.

**Senator STOTT DESPOJA**—I thank the minister for his answer. I again ask for clarification, if there is any evidence that the government has of any capacity for students in Australia to pay additional fees, given I was talking about the AVCC paper, *Paying
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Their Way, not the most recently released paper? I also ask the minister to confirm that, in 2000, the average fees in the United States state university system were around $A4,396 per annum which compares favourably with to annual HECS fees for Australian students of $4,454 per annum. Does the minister recognise those fee levels? Will he confirm that? Will he confirm that Australian students already pay among the highest fees and charges in the world?

_Senator ALSTON_—What I can confirm is that all the hysteria that accompanied the introduction of HECS fees by the Labor government—let it be remembered—has not resulted in many students missing out. It has in fact been accompanied by an increased level of interest in pursuing university places. So the starting point of your proposition is presumably that education should be free. If it is not that, then we are only arguing over matters of degree. And I do not see why you ought to assume that somehow no-one has got any greater capacity to pay now than when you would have tried to make us make that assumption some years ago. The fact is that the universities themselves will be the best judges of that. They would be absolutely crazy to pitch their prices at levels that disqualified the bulk of the student population. They do not want people in there because it is so cheap that you can simply acquire a degree when it really does not matter. They want people that make a conscious decision about whether they are prepared to make the effort, and to date all the evidence suggests they are. (Time expired)

_Agriculture: Meat Industry_

_Senator O'BRIEN_ (2.31 p.m.)—My question is to Senator Ian Macdonald, representing the Minister for Agriculture, Fisheries and Forestry. Is the minister aware that in evidence to a Senate committee this week the agriculture department admitted that no analysis has been conducted in relation to where in regional Australia the probable 5,000 to 7,000 job losses caused by the minister’s plan to allocate US beef quota would occur? Why was Minister Truss so negligent in not directing that analysis be done to determine how many jobs would be destroyed in rural and regional Australia as a result of his US beef quota management proposal?

_Senator IAN MACDONALD_—I thank Senator O’Brien for that question. I think it is appropriate that that issue is raised here. Senator O’Brien talks about job losses because of the quota system, but, unfortunately, it appears that he simply does not understand that whatever management system is in place, and even if there were no system in place, there are only a certain number of jobs available in the industry, unless the exporters can develop new markets.

The reality is that we have a 378,214-tonne quota of beef to the United States, and jobs that are created in one abattoir are lost in another. As Senator O’Brien knows, the abattoirs supplying beef to the US market had not reached their quota level imposed by the US but, with the decline in the Japanese market, some processors have decided to try to enter the US market rather than persevere with the more difficult task of rebuilding their export markets. The proposal made by Mr Truss, and supported by the government, would distribute the 378,000 tonnes of quota as fairly as possible amongst beef producers. Although it will be introduced part way through the quota year, it will ensure that those processors who have rushed the US market so far cannot continue to take large market shares from those who have worked over the years to build up their US market exports.

The government is concerned that rejection of Mr Truss’s proposed quota management plan for US beef exports would bring the real benefits to the big multinational companies and send some small regional abattoirs to the wall. Many of those small regional abattoirs have built up their businesses over the years by supplying beef to the US market, while other processors have concentrated on alternative markets, including Japan. If Senator O’Brien and the Labor Party do succeed in throwing out the government’s proposed quota management system, the big multinational processors will be best equipped to dump meat into the unregulated market, leaving no quota for the regular US suppliers. Small regional abattoirs would be the big losers.
It is a difficult decision; Mr Truss consulted very widely in coming to a decision. It is one of those decisions that governments have to make. Whatever the decision was there would be people who would be unhappy. But, on balance, the government had to take the difficult decision. Mr Truss took the decision in the long-term benefit, as best we see it, of the overall industry.

Senator O'BRIEN—I ask a supplementary question, Madam President. I note that the minister chose not to address the lack of action by Minister Truss in analysing the impact of job losses but to simply read from his brief. Is the minister aware that Minister Truss's stance on US beef quotas has directly led to the withdrawal of a proposal by St Merryn, Europe's largest meat processor, to invest $70 million to upgrade the Cudgegong abattoir and create 600 new jobs in the Mudgee community, in the Deputy Prime Minister's electorate? Is the minister aware that a Cudgegong abattoir officer told the committee that the minister's quota management scheme caused the deal with St Merryn to collapse and stated unequivocally, 'Nothing else affected the deal'?

Senator IAN MACDONALD—No, Madam President, I am not aware of that. If Senator O'Brien, who was just reading from his brief, had made his brief available to me before, I might have been able to—

Senator Hill—Inconsiderate of him.

Senator IAN MACDONALD—Yes, quite inconsiderate of him—and I might have been able to give you those details. Senator O'Brien, there is a production capacity that cannot be met in the US and there will be difficulties whichever way you go. What you say may well be correct; I do not accept it as gospel because over the years we have learnt not to accept what Labor people put up at question time. Even if that is correct, Senator, that is unfortunate and I am sad to hear about it, but whether it is there or somewhere else, in a limited market someone will have some difficulties. And that was the point of the question you asked earlier, as I answered: there will be difficulties somewhere in regional Australia. Most of the abattoirs are in regional Australia, and wherever there is a cutback someone will suffer.

Taxation: Rulings

Senator HARRIS (2.37 p.m.)—My question without notice is to Senator Coonan, the Assistant Treasurer and Minister for Revenue. I ask the minister whether she recalls that paragraph 4.2 of the consultation paper on the Inspector-General of Taxation that she issued in May states:

This system comprises public rulings, private rulings and oral rulings, providing the Commissioner's view of an aspect of the tax law. By providing guidance to taxpayers, rulings are an important part of the self assessment system particularly as they are legally binding on the Commissioner of Taxation if they are favourable to a taxpayer...

Minister, is it correct that the position of the ATO's Chief Tax Counsel on the private rulings is that, once the ruling is approved and dispatched to the rulee, that interpretive view is added to the database of precedent which is then available for future reference to ATO staff and the community? Is this also consistent with the Sherman report?

Senator COONAN—Thank you, Senator Harris, for that question. I have not actually spoken to the Chief Tax Counsel about this, but I do understand that private rulings are added to a database which is available for future reference by both ATO staff and the community. I believe that this practice was actually recommended in the Sherman report on output pricing review, because obviously it helps to maintain accuracy and consistency in Taxation Office decisions. This is very important. It is precisely because rulings are such an important part of the self-assessment system that we do set a high premium on accuracy and consistency. I also believe that a rulings database could be very useful in the kinds of situations that Senator Harris has outlined.

The issue of mass marketed schemes, as I have said before in this place, is of concern to the government, but I do not believe the problem has arisen because the commissioner has not adhered to due process in relation to rulings. In fact, there were very few rulings on the mass marketed schemes—I have checked that—and the rulings were applied only in very few cases. I note the commissioner's settlement offer, which takes
into account the fact that many investors in mass market schemes have a good tax record and that they accepted advice from advisers who should have been aware of the tax risks involved in the advice they were giving and also accepted bad advice, including on how the rulings system works. Since making the offer of settlement, the commissioner has succeeded in two test cases in the Federal Court. The decision in the Vincent case, which is subject to appeal, confirmed that the arrangements typically employed in the mass market schemes cases were in fact artificially created to get the advantage of tax deductions—and they do not typically succeed.

There are some rulings where people do make wrong assumptions, rely on bad advice or even do not understand whether a ruling applies to them. A private ruling, on the other hand, allows a taxpayer to get the commissioner’s view of how the law applies to the taxpayer’s individual circumstances. A private ruling is a vehicle for personalised advice from the commissioner and cannot apply to anyone except the person to whom it is issued. This is of course because there is no guarantee that anyone else’s circumstances are the same as those of the person who has obtained the private ruling.

With regard to public rulings, the rulings always clearly specify the circumstances in which they apply. The commissioner is giving his view of how the law applies to particular facts and the ruling will be of limited value unless people’s circumstances are literally and exactly the same. In some managed investments, the way in which investments were arranged has also changed over time—which is a critical factor—so that any earlier advice from the tax office, whether in the form of rulings or not, might not necessarily apply to all schemes sold by the same promoter. I think the real issue that goes to Senator Harris’s question is that there is basis for some concern about how well rulings are understood. That is why the proposal for the Inspector-General of Taxation clearly flags the fact that the inspector-general will be given the power to actually review the rulings system and indeed to take up any circumstances where there are groups of investors who, for instance, have been misled or do not understand the effect of a ruling.

**Senator HARRIS**—I have a supplementary question, Madam President. I draw the minister’s attention back to the section of that document that talks about the importance of rulings in self-assessment because they are legally binding on the commissioner. I draw the minister’s attention to three particular relevant rulings relating to Tumut River Orchard, the Paulownia tree plantation and Golden Vintage. Why has the commissioner departed from the principle of consistency in the taxpayers’ charter and rested from applying these simple and fair principles to the tens of thousands of ordinary taxpayers caught up in the mass marketed tax fiasco?

**Senator COONAN**—Thank you for the supplementary, Senator Harris. Much as I try, there are now something like 1,600 rulings and it is a bit difficult to know everyone who has applied a ruling and everyone who has found that, in fact, they have put in an assessment based on a ruling that they have misunderstood. I do, however, repeat the fact—and I think it is an important underlying point that is made here—that those who do not understand the effects of rulings or who have trouble with the way in which a ruling is applied will end up with a very effective tax advocate in the form of the inspector-general, who will no doubt devise ways to assist people to understand the rulings system better.

**HIH Insurance**

**Senator CONROY** (2.43 p.m.)—My question is to Senator Coonan, the Assistant Treasurer and Minister for Revenue. Does the minister recall that Mr Ivon Hardham wrote to her in February regarding a claim he had against an HIH policyholder who had been assessed as eligible for assistance by HIH Claims Support? Is the minister aware that, despite a judgment of negligence against the HIH policyholder in October 2001, Mr Hardham is still to receive payment from the HIH Claims Support Scheme? Is this the extent of the delay and frustration that was intended when HIH Claims Support was established or is HIH Claims Support, as was stated on 6 June in Economics estimates
by a Treasury officer, just providing services in the management of claims as per insurance industry practices? Is the government satisfied with the customer service levels being provided by HIH Claims Support?

Senator COONAN—Thank you, Senator Conroy, for the question. It is simply not appropriate for me to talk about any individual case that relates to HIH Claims Support. Obviously, when a third party applies for some support under the HIH claims scheme they do not qualify because it is the actual policyholder—the person, the company or the entity—that is entitled to seek the support of the claims scheme. That, of course, is the same as in general law. There are some very limited exceptions.

While I do not want to go into the particular case that you refer to, because that would simply be inappropriate and there are obviously some privacy aspects to it, I do understand that there was a situation there with some insolvency aspects relating to the particular policyholder. In fact, that policyholder, or anyone who is a receiver or a liquidator of the policyholder position, needs to make a claim so that any third party who has a legitimate claim against the policyholder can see whether they are eligible for support from the HIH claims scheme, and they will then be assessed using the normal criteria. The claims support system has been very successful. There have been many applications and indeed many settlements. But, there is no way a third party can have a direct cut, other than in the most limited circumstances. If you would like to see me about that particular case, Senator Conroy, I would be delighted to assist you further.

Senator CONROY—Madam President, I ask a supplementary question. Is the minister aware that Mr Hardham has now been offered 60c in the dollar for the judgment that was awarded in his favour? How is this possible when the then Minister for Financial Services and Regulation stated during the debate on the Appropriation (HIH Assistance) Bill 2001:

The HIH assistance scheme will offer to claimants 100 cents in the dollar for certain claims, and will offer 90 cents in the dollar for other claims.

Just what is a ministerial undertaking worth in this government?

Senator COONAN—My answer does not really change. I am not prepared to comment on an individual case in this place. It is entirely inappropriate. I have offered to provide you with some further information about that particular person. However, in providing assistance, the scheme must simply comply with the provisions of the Privacy Act. You must know that. Its responsibility is to the policyholders it represents and, if a policyholder has some obligations, those obligations are private also. This is not a forum in which to be canvassing the circumstances of an individual claim when it relates to the HIH Claims Support. Third parties requiring information on a particular claim should be approaching the policyholder’s legal representative, as they would have to in any other case where they are making a claim against a person or company with an insurance policy. It is elementary, Senator Conroy. If you were a third party, both in general law and in the claims scheme system, you would still have to make sure that the policyholder makes the claim.

Small Business

Senator TIERNEY (2.48 p.m.)—My question is to the minister representing the Minister for Small Business and Tourism, Senator Abetz. Will the minister inform the Senate of how the Howard government is continuing to support the engine room of our economy, the small business sector? Is the minister aware of any alternative policies that threaten small business viability?

Senator ABETZ—I thank Senator Tierney for yet another coalition question on small business. I also acknowledge Senator Tierney’s support of small business, especially in the Hunter. I note that it has now been 223 days since the last election and Labor has not asked one question in this place on small business. Labor simply does not care. The Howard government, however, is unambiguously supportive of the vital importance of the small business sector.

As a former small business operator myself, I know first-hand the sacrifices and commitments that are needed to grow a small
business and create jobs. I recall battling the Labor interest rates of 20 per cent plus when people like Mr Crean were in cabinet. The Howard government’s continuing strong management of the economy continues to deliver for Australia’s 1.2 million small businesses, with historically low interest rates, with $36 million for skills development and small business incubators, with increasing the minimum grant under the Export Market Development Grants Scheme, with expanding the successful TradeStart export assistance network into regional and rural areas and, importantly, with providing extra incentives for employers to take on new apprentices. Also in my home state of Tasmania, the well respected and innovative Mentor Resources run so well by Tony Bromage will be funded with $150,000 over three years to match volunteers to small business.

But there is a threat to the viability of our small business sector and jobs growth. That threat is the Labor Party and their masters in the trade union movement. Like the wider community, we are appalled that Labor supported Senator George Campbell’s AMWU blockade, which threatened the livelihood of 500 component manufacturers and 50,000 jobs, despite Federal Court injunctions.

Senator George Campbell—Are you reading the speech?

Senator ABETZ—I do not have to refer to my notes to remind Senator George Campbell that former Labor Prime Minister Paul Keating said that he was personally responsible for the loss of 100,000 jobs of Australian workers. Labor supports such militant action, and the small businesses and the workers of Australia ask why. The simply answer is: Senator Campbell and all the other unions that are represented on that side provide multimillions of dollars worth of support to the Australian Labor Party and, most importantly of all, provide them with their preselections.

Frighteningly enough, it is not only the blockades. It is also their opposition to our fair and balanced unfair dismissal laws which has stopped the creation of an extra 50,000 jobs in this nation. But Labor does have a policy on small business: it is to get a big business and to turn it into a small business. Senator Conroy still believes in that policy and he is personally implementing it in his right wing faction of the Labor Party in Victoria. The small businesses of this country and the workers know that jobs growth is vital. It comes through small business and it is coming through the Howard government’s policy of supporting small business, unlike Labor, who have a definite anti-small business policy. They like big business, big unions, with big inflation and big unemployment rates.

Superannuation: Commercial Nominees of Australia Ltd

Senator HOGG (2.53 p.m.)—My question is to Senator Coonan, Assistant Treasurer and Minister for Revenue. Is the minister aware that many hundreds of superannuation investors, including many older Australians who had retired from the work force but have been forced back to work, will miss out on full compensation for their Commercial Nominees losses as a result of her decision to cover the losses only to 90 per cent excluding interest? Isn’t it true that the report by the Australian Prudential Regulation Authority, APRA, on Commercial Nominees did not make a recommendation on the amount of compensation, so this slap in the face to Commercial Nominee victims is all the minister’s own work?

Senator COONAN—Thank you for the question, but it is predicated on a completely false assumption. While I am on incredibly false assumptions, this is a question which shows complete ignorance of how the whole system works for compensation for victims of trustees who have been guilty of either fraudulent conduct or theft. The whole problem with Commercial Nominees was that there was some fraud or theft on the part of the trustees, and obviously that was a fact that had to be established because that is what the act provides. So there was a situation where there was a very long investigation. Unfortunately it was too long, but it had to be undertaken by an independent investigator to establish, first of all, whether or not compensation should be paid under the act. Once that was established, it was necessary for APRA to form a view about it. It was
necessary for me to seek the advice of APRA. There are established procedures set out in the SI(S) Act. Then there had to be a decision taken as to what level of compensation would be appropriate.

The Wallis report recommended that compensation should be 80c, and in fact this government in a generous way has put that up to 90c. That is consistent with the HIH Claims Support Scheme. It is consistent with international practice. It now falls to me to make some individual determinations in respect of the 181 victims of the Enhanced Cash Management Trust, and I will do that. It was necessary to make an announcement so that people who were victims of that fund had some certainty and so that they knew what they could expect when these determinations were finally made. There are some further spin-offs from Commercial Nominees where there are still some ongoing investigations. Under those circumstances, I am not going to be making any further comment until I have had an opportunity to get independent advice in respect of each of those funds and to make a determination in respect of any other victims of the Commercial Nominees matter.

Far from it being my doing, under those circumstances, I really find it hard to believe that you can think that this all happened in the space of a couple of months. This matter has been going on for some considerable time. It is necessary that there be the proper investigations carried out under the SI(S) Act, and in fact those steps were finally made. There are some further spin-offs from Commercial Nominees where there are still some ongoing investigations. Under those circumstances, I am not going to be making any further comment until I have had an opportunity to get independent advice in respect of each of those funds and to make a determination in respect of any other victims of the Commercial Nominees matter.

Senator COONAN—I am not sure that that arises as a supplementary question out of Senator Hogg’s earlier question, but obviously it is important that our regulatory agencies observe their charters and their legislation and that they carry out their duties in an appropriate way so that the Wallis reforms that this government implemented deliver a regulatory system that is world’s best practice. In fact, there is to be a review of APRA and ASIC next year. In terms of any assertion that APRA is not carrying out its job, APRA has been under scrutiny, as those on the other side would know, for some considerable time. This government instigated a report from the Superannuation Working Group headed by Don Mercer. APRA participated in that report. That has now been given to government and is under consideration as to whether there should be any changes to APRA. (Time expired)

Australian Broadcasting Corporation: Funding

Senator BOURNE (2.59 p.m.)—My question is addressed to Senator Alston, the Minister for Communications, Information Technology and the Arts. In the 2001 election, did the government promise to ‘maintain the existing level of triennial funding for the ABC in real terms during its next term’? Will the minister honour this commitment in the ABC’s next funding triennium, including the $71 million for regional and other programming, and will the government also take into account Macquarie Bank’s findings on the real cost of funding the ABC to meet its charter obligations and to properly digitise?

Senator ALSTON—I would like to acknowledge Senator Bourne’s longstanding interest in the welfare of the ABC over very many years. I hope that she continues to display the level of intelligence that is often so sadly lacking in other quarters. We will certainly honour our commitments in relation to the ABC. Is it Senator Boswell who is always talking about the length of the Chancellor’s foot? No, it is Paul Neville. The fact is that there is never enough money. You can get Macquarie Bank or anyone else to tell you what it might cost to meet the charter obligations. I will not forget in a hurry Brian Johns saying to me, ‘You don’t really need to
change the charter because it enables us to do whatever we want to do,’ which really means, ‘Whatever amount of money you give us, we will spend it for you.’ Like any other claimant on the public purse, it has to be subject to the fiscal disciplines that apply. As a result, we will make sure that we do enter into serious negotiations with the ABC when the current triennium expires.

Certainly, we understand the priority needs of the ABC. We have already had discussions with them about certain aspects. The ABC already receives record levels of funding, as I am sure Senator Bourne would graciously acknowledge. This government have, as you rightly point out, provided an additional $71 million to enable the ABC to better service regional and rural areas in particular. The ABC no doubt is busy spending the money as we speak. There is not much more we can do right now, but if you would like to reinvent yourself as a consultant down the track we would be happy to have a talk to you.

Senator BOURNE—Madam President, I ask a supplementary question. I thank the minister for his compliment, if not his answer. I am ungracious enough to say that the ABC is not funded nearly highly enough. However, that is another argument. Minister, along with all those other things that you are considering and which you have promised, I ask you to consider that it will cost only $14 million extra to put News Radio and Triple J in all regional centres with more than 10,000 people—something that you have said is very important. Minister, will you consider doing that at least in the next funding triennium? I point out to the minister that I am considering carrying out a ruthless and relentless letter-writing campaign to him once all the avenues for me to attack him in the Senate have gone.

Senator ALSTON—I take it all back. Madam President. I was profoundly misled. I honestly thought that Senator Bourne had a serious interest in public policy issues. If she is just going to be yet another negative activist, I am very disappointed to hear it. It will be changing the habits of a lifetime. I am sure there are better ways, and we might be able to have a talk about that. I would not join Friends of the ABC just yet.

Madam President, there are many worthy causes and I am sure you can identify them for us. No doubt the ABC will be able to tell us how we could spend a lot more money on many more rollouts. We have already substantially extended Triple J, as we did from 1996 onwards. The Parliamentary News Network is successful in the metropolitan areas in which it operates, but it does have a fairly minuscule audience. Whether the ABC would regard that as a high priority, I do not know. There are many who very much extol its virtues because it is not in the business of relentless editorialising. I seem to remember former Senator Newman pointing that out to me on a regular basis. I will take all those matters into account.

Senator Hill—Madam President, I ask that further questions be placed on the Notice Paper.

QUESTIONS WITHOUT NOTICE:
ADDITIONAL ANSWERS

Agriculture: Meat Industry

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (3.03 p.m.)—Senator O’Brien asked me about St Merryn Australia Pty Ltd and I can provide him with a little more information. St Merryn Australia Pty Ltd is a 100 per cent owned subsidiary of St Merryn Meat Ltd in the UK, which has a turnover of some $330 million. In a press release dated 14 June, St Merryn announced that it would not be proceeding with the acquisition of the Mudgee regional abattoir and that non-allocation of the beef quota to the abattoir was a key factor in this decision. Mr Truss is aware that St Merryn is seeking financial assistance from the Commonwealth government to secure an investment project in the Australian meat industry. The strategic investment coordinator is working with the company to identify relevant government programs to help develop the project.

A component of the original investment project proposal was the purchase and upgrade of the Mudgee abattoir. I understand that the abattoir would have become the company’s primary export hub for its primal
cuts to markets in South-East Asia and the UK but not to the US. St Merryn have not substantiated their claim that their decision not to proceed with the original investment project can be attributed to the failure of the Mudgee abattoir or to their obtaining a high quality beef quota to the EU, or an allocation of the US beef quota under the quota management scheme that Mr Truss announced on 15 May this year. In any event, St Merryn or the Mudgee abattoir would be able to obtain quota to the EU for high-quality beef by commercial means as the quota is tradable and the quota for the US beef market will also be tradable.

RULES FOR QUESTIONS

The PRESIDENT (3.05 p.m.)—After question time on 19 June, Senator Faulkner asked me to consider an answer given by the Minister for Health and Ageing, Senator Patterson, during question time that day relating to the Pharmaceutical Benefits Scheme. Senator Faulkner asked for some guidance relating to standing order 73(2) which prohibits anticipation of debate on any subject on the Notice Paper in that the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill is before the Senate. The standing order is interpreted narrowly to prohibit only questions and answers which clearly canvass items on the Notice Paper. If it were not interpreted in this way, many questions would be prevented because of the large number of issues on the Notice Paper.

In relation to a bill on the Notice Paper, questions and answers may not directly canvass the merits of a bill, but this does not prevent questions and answers about issues which are involved in a bill. Senator Patterson’s answer referred to the government’s approach to pharmaceutical benefits and alternative approaches but did not canvass the merits of the bill on the Notice Paper. It was suggested that the answer strayed into the prohibited area when Senator Patterson quoted speeches from Hansard on the bill. These quotations, however, were used only to demonstrate alternative approaches to the subject and did not directly canvass the merits of the bill. I consider that the minister’s answer was in order.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Answers to Questions

Senator CHRIS EVANS (Western Australia) (3.07 p.m.)—I move:

That the Senate take note of the answers given by ministers to questions without notice asked today.

I particularly want to focus on Senator Hill’s answers to the questions asked of him, because I think they reveal the story of another one of Peter Reith’s political fixes that were put in prior to the last election. Unfortunately, this one was not just at the cost of taxpayers’ money—although there was an enormous amount of taxpayers’ money wasted as a result of that political fix—but is also going to be at the cost of 1,400 Australians’ jobs. I think it is an issue that this parliament ought to take very seriously.

In 1999, the government took a decision, in line with their ideological approach to such issues, to outsource all the stores and maintenance services of the Australian defence forces. This project has become known as DIDS—the Defence Integrated Distribution System contract. So we have a situation where, in 1999, they called for tenders to outsource those functions. It took three years before they got around to moving on the issue; there was a long delay. But in 2001 there was a backbench revolt. In the lead-up to the last federal election a number of backbenchers revolted over the question of the loss of regional jobs brought about by this decision—the fact that there would be a lot of jobs lost, a lot of them in regional Australia, and that the outsourcing of this Defence function would come at considerable cost, both to individuals and to communities.

As a result of that outcry, Peter Reith, the then Minister for Defence, determined to end the tender process. Of course, the contractors who had been tendering for that process had expended a lot of money over the last couple of years putting in their bids. So Minister Reith authorised, as I understand it, $6 million of taxpayers’ money in compensation for those tenderers. I do not deny that they ought to have been compensated; they were treated most poorly, they had spent a lot of time and
effort on their bids, and so they were compensated. But the cost was, of course, on the Australian taxpayer.

The new tender went out and, in that new tender round, of the 1,400 jobs across Australia, 350 jobs were protected. It is not a real protection, in a sense, but it is a requirement on the contractor that they try and maintain jobs in these designated areas, and 350 jobs were identified. It just so happens that, with this decision in the lead-up to the last federal election, all of those 350 jobs, out of the 1,400 total, happened to be jobs in marginal Liberal electorates. They just happened to be mainly in Queensland and in Victoria, where the government was looking to improve its political standing and where they had concluded the election outcome would be determined. Only 350 jobs of the 1,400 were to be protected—as I said, the protection is very weak; it is protection in name only—but the contractor had to undertake to maintain that number of jobs in that region. I am not sure how that will ever be achieved, but that is another issue for another day. But the fix went in; Peter Reith put the fix in. They protected jobs mainly in Queensland and Victoria. There was no protection for the jobs in South Australia, no protection for the jobs in Tasmania, no protection for the jobs in the Northern Territory and no protection for the jobs in Western Australia.

So now we have the situation where 1,400 people are waiting for the sack. They have been waiting for the sack since 1999—and they will be sacked. As soon as the tender is let, those 1,400 people will be sacked. There are no arrangements in place to ensure continuity of employment.

Senator Hill—That is not right!

Senator CHRIS EVANS—They will be terminated—according to the contract, they will be terminated. There is no requirement on the new tenderer to take them on. It is made very clear that there are no continuity of employment arrangements, that there is no ongoing obligation and that there is no preference of employment. Minister Hill, that is all in your documentation which you provided to me, which clearly indicates those people will be sacked and they will have to go out and look for work.
Senator Chris Evans—I remember when MacGibbon asked about flat tyres!

Senator FERGUSON—That is right. I assume that because Senator Evans says, ‘Look, I want to take note of all answers to all questions that were asked to the government today,’ we are having an open ‘taking notice of answers’ session as well. That means that I do not know whether I should be responding to Senator Evans or to the question that was asked of Senator Coonan on finance, or to the question that was asked by Senator Stott Despoja to Senator Alston.

Senator Chris Evans—Subject matter has never affected your speech before!

Senator FERGUSON—you have given us such a wide range today, Senator Evans, that it really makes me wonder why you people do not get more organised.

The DEPUTY PRESIDENT—Order! Senator Ferguson, address the chair and ignore Senator Evans’s disorderly—

Senator FERGUSON—I am sorry, Madam Deputy President, I do apologise.

Senator Chris Evans—Just give us your speech for deputy presidency! Why don’t you give that a run?

The DEPUTY PRESIDENT—Senator Evans, you have spoken. Please remain silent.

Senator FERGUSON—Senator Evans seems to be concentrating on the effect on jobs and the protection of jobs, and what any decisions that are made by this government, particularly in the tendering process, might mean to the people in these various areas. I am very surprised that Senator Evans, or anybody on the opposition side, would talk about the protection of jobs. This is an opposition who, when they were in government, presided over 11 per cent plus unemployment. What jobs were they protecting then? What jobs were they protecting when they saw unemployment rise to 11 per cent? Who was protecting the jobs that former Prime Minister Paul Keating said Senator George Campbell was responsible for? One hundred thousand jobs lost by Senator George Campbell when he was running his union.

If anybody is going to talk about the protection of jobs, it should not be anybody on the other side of the chamber. Nobody knows more about unemployment than the Labor Party because they were responsible for the highest rate of unemployment that we have seen in decades. Senator Evans gets up and talks about the protection of jobs for some 1,400 workers and in another case some 500 workers yet their record in protecting jobs is so appalling. For him to suggest that this government is derelict in its duty by not making sure that there is some protection for jobs in the tender process that is currently under way—

Senator Carr—You’re running out of steam.

The DEPUTY PRESIDENT—Senator Carr, come to order!

Senator FERGUSON—The government decided not to proceed with the original tender process for the Defence Integrated Distribution System and, therefore, requested revised bids from tenderers.

Senator Carr—you’re running out of steam again; you can do better than this.

Senator FERGUSON—Senator Carr has cost Australian taxpayers $3 million just getting answers to questions that he put on notice. So Senator Carr should not talk about anybody running out of steam. Having witnessed his performance in estimates, I know that there are plenty of people both on his side of the chamber and on ours who wish that Senator Carr had run out of steam a lot earlier. All that his steam did was cost the Australian taxpayers $3 million.

The DEPUTY PRESIDENT—Would you like to get back to the subject at hand, please.

Senator Carr—This proves that he has nothing to say.

The DEPUTY PRESIDENT—Senator Carr, come to order please.
Senator FERGUSON—Madam Deputy President, I do apologise, but I was responding to a very provocative interjection from Senator Carr. It was a very provocative interjection because he knows where he is at fault in relation to who is running out of steam. The government was concerned that the tender process did not provide sufficient opportunity to allow tenderers to offer innovative solutions in accordance with commercial best practice nor did it sufficiently recognise the importance of maintaining jobs in regional and rural Australia. This government has done more to protect the jobs of Australians than any government we have seen for a long time.

This is a government which has seen unemployment fall to just over six per cent, and hopefully it will fall even further in the near future. We are concerned about the jobs of Australians. We have always been concerned about the jobs of Australians. Not only that, we have put into practice policies that make sure the unemployment rate comes down, unlike Senator Carr who only creates jobs in the Public Service by asking for answers to questions that he puts on notice.

Senator Carr—The only job you’re interested in is in the President’s office.

The DEPUTY PRESIDENT—Senator Carr, order!

Senator FERGUSON—which have so far cost us $3 million. Perhaps you would like to answer how you are going to keep all those people in work forever. (Time expired)

Senator CARR (Victoria) (3.17 p.m.)—Today we have seen a number of examples of the failure of government to do its job properly. I would like to raise a second example of this—that is, in regard to the research policies of this government. In particular, it is the way in which this government is undermining this nation’s capacity to undertake marine research. We were told today that the government is about to sell one of our leading vessels—our special purpose-built research vessel. The CSIRO is having its capacity to undertake marine research reduced from the current situation whereby it has three research vessels—two vessels are owned outright and one that it operates on charter—to a situation where it will be reduced to one. At the moment, we are effectively able to have at least 12 major voyages a year and that is going to be reduced to three voyages a year. We are expected to accept the government’s assurances that this means there will be no reduction in the effective capacity of this country to undertake marine research.

There are two major research agencies that operate in the field of marine research: the CSIRO and Geoscience Australia. They both have responsibilities in terms of our vast maritime territories. In 1998, these two separate organisations had three research vessels. Geoscience Australia had the Rig Seismic on contract while the CSIRO had the Franklin, a purpose-built research vessel, and the Southern Surveyor, a 30-year-old converted North Sea trawler. These three vessels undertook a range of research activities, including oceanographic and climatological research, seismic testing for a variety of purposes, and of course fisheries research.

This government says that it is committed to a proper research policy, but what we see in effect is that it is reducing our maritime research capacity. The contract on Rig Seismic terminated in 1998. This resulted in the loss of, among many other things, a considerable annual revenue from the sale of data collected by the Rig Seismic. Since that time Geoscience Australia has, on occasions, used one of the two CSIRO research vessels and has undertaken seismic testing.

It has been revealed to us today that CSIRO is going to sell the purpose-built Franklin, a 15-year-old vessel, and replace it with a basically clapped-out North Sea trawler which has been laid up for the last 18 months. It has serious rust problems. It has broken down on numerous occasions over the last seven years. We have a situation where the major research capacity of this country will be reduced because the government will not provide enough money for marine research. What we are observing here is quite clearly a scramble by our research agencies to get on board the vessels for some of the limited ship time that is available—limited because of the government’s failure
to provide adequate funding. The Lords marine survey requirements have not been provided in regard to the replacement vessel for the *Franklin*. Geoscience Australia is most anxious to get its hands on the CSIRO vessel. This will result in a reduction in the capacity of this country to provide adequate research facilities.

We had revealed to us today in question time that the national facilities funding, a resource that underwrites the cost of research projects and which is currently attached to the research vessel *Franklin*, will now be transferred to the *Southern Surveyor*. While this will reduce the cost of using the *Southern Surveyor* for CSIRO projects, it also appears likely to reduce the daily costs for Geoscience Australia, using its preferred vessel, from about $25,000 to $12,000. This is a direct consequence of the government’s financial neglect. What has been exposed today is that this government’s failure to provide adequate research funding has undermined our research capacity in a whole range of areas at a time when we are increasingly telling the world that our maritime territories will be well serviced by the Australian government. That clearly is not the case. This exposure today of the government’s administrative failure is a matter that ought to be condemned.

**Senator SANDY MACDONALD** (New South Wales) (3.22 p.m.)—This is quite an extraordinary taking note of answers. We had Senator Evans’s impassioned question to Senator Hill, and now we have not a follow-up speaker from the opposition on DIDS but Senator Carr on a frolic of his own.

**Senator Ferguson**—That is not unusual.

**Senator SANDY MACDONALD**—That is exactly right, Senator Ferguson. They are all at sea. I take this opportunity to explain a little of what the DIDS project was. The DIDS initiative arose from the government’s 1997 Defence Reform Program and aims to exploit commercial best practice in warehousing, distribution and elements of Army maintenance through competitive outsourcing activity. I do not think anybody would disagree with that. The aim is to provide a responsive, reliable and efficient Australian Defence Force warehousing and distribution network and maintenance for land equipment, with a single operator for its operation and maintenance at a sustainable cost. That is very much in line with our Commercial Support Program and is commonsense and appropriate.

The original project indicated that there might have been some job wastage. Military personnel were to be redeployed to other roles within the ADF and any Public Service personnel were to be retrained, redeployed or provided redundancy packages in accordance with other current departmental guidelines. The government decided not to proceed with the original tender process for DIDS and has therefore requested revised bids from tenderers. The government was concerned that the tender process did not provide sufficient opportunity to allow tenderers to offer innovative solutions in accordance with commercial best practice and that it did not sufficiently recognise the importance of maintaining jobs in rural and regional Australia. There can be no more important role that government plays than maintaining those Defence establishments in rural and regional Australia, because many of us come from areas which have a connection to not only the manufacturing base of Defence and some of its commercial outlets but also its military personnel, both permanent and Army Reserve.

The government at that time agreed to meet reasonable costs of tenderers for the revision of the tender processes. The cost is expected to be $6 million, but the ongoing savings from the DIDS program in the outsourcing of the Defence distribution network are expected to be tens of millions of dollars a year over the next few years.

There is strong public support for a sound, competitive, domestic, commercial industrial base as a key element of our national defence effort. There is a commitment from the government to get the biggest bang for its buck from the defence dollar, and this applies to both the purchase of equipment in the commercialisation of many aspects of Defence and the tendering process that it has put under the Commercial Support Program. There is a clear opinion in the community that the ADF should purchase as much defence equipment as possible from Australian
based suppliers. This has a twofold effect: it contributes to the Australian economy and it ensures that the ADF effort could be sustained on operation in a time of conflict. Defence can no longer sustain a position in which it manages its resources as if they were separate from the rest of the community, and the DIIDS program is clearly an example of that. Defence recognises it has responsibilities in developing the commercial relationships that will be ongoing in a time of both peace and war.

I take note of the comments made in the Defence white paper about future reform and efficiency savings. Defence has undertaken major reforms over the past decade and has produced efficiency savings from the order of $30 million in the year 1991-92 to more than $1,200 million in the year 2000-01. Further efficiency measures are under way and are expected to deliver additional savings of at least $200 million by the year 2003-04. These savings have been included in the funding projections in this white paper. We are now seeing this very substantial increase in Defence over the next 10 years, estimated at over $30 billion. At a time of unprecedented commitment of our defence forces both at home and abroad, this increase in funding is appropriate.

Senator O'Brien (Tasmania) (3.27 p.m.)—It was very interesting to hear from Senator Ferguson today that, according to him, the coalition have always been concerned about the jobs of Australians. Not Minister Truss; not this negligent minister. The profession of concern for regional employment is not reflected in the actions of this minister, who did nothing to find out about the impact of his quota management scheme on regional Australia. He did nothing and his department did nothing; he gave no direction to do anything. The evidence that we in the committee examining this matter have is that 5,000 to 7,000 jobs hang off this proposal. So much for a concern about jobs in regional Australia.

Senator Ian Macdonald in his answer said that somehow the opposition did not understand his proposal and that is why we were critical of it. What he is saying then is that the whole industry does not understand his proposal, that certainly the Cattle Council—not normally one of Labor's allies—does not understand his proposal, that the Red Meat Advisory Council, the Australian Meat Council, the Australian Lot Feeders Association or the myriad of processors who made submissions to the inquiry that their businesses will be seriously harmed by Minister Truss's proposal do not understand the proposal.

Senator Ian Macdonald in his contribution today did not tell us who the big winners in this proposal were. One of them is CMG, a meat processor in the Rockhampton area—the Packer operation. It is the biggest winner, because late last year it decided the price of cattle was too high and that it was better to lock its workers out and not process meat. Now it is coming into the market having processed a mere 3,000 tonnes, and it processed 49,000 tonnes last year. We are told that about half of the quota, or perhaps more, will be gone before the minister's scheme comes in and that it will come into the market with well over 30,000 tonnes available to it under the minister’s scheme, and a lot of processors will opt out. It will come into the market with probably drought in Queensland and cattle being turned off at low prices and make a killing, with others being frozen out of the market. Why? Because the minister’s proposal means—

Senator Calvert—Madam Deputy President, on a point of order: I understand that this afternoon the rural and regional affairs committee will be continuing to take evidence on this particular matter that Senator O'Brien is talking about. I wonder whether he is in order to discuss this matter, when the bill itself is being investigated by the Senate committee later today.

The DEPUTY PRESIDENT—There is no point of order, Senator Calvert.

Senator O'Brien—Thank you, Madam Deputy President. There is no point of order, because there is no bill. In fact, the minister is not proposing to table anything until after the committee has reported, and this is probably because he wants to leave his scheme sitting on the table to deny the Senate the opportunity to—
Senator Calvert—Madam Deputy President, I want to hear the advice from you rather than from Senator O'Brien.

The DEPUTY PRESIDENT—I have ruled that there is no point of order because the bill is not before the house; it is with one of the committees, and you had Madam President’s ruling given just after question time today.

Senator O'BRIEN—There is no bill. I am amazed that Senator Calvert and, apparently, Senator Hill are talking about a bill that does not exist. What I have been trying to say is that the minister is—through his advice from the department—saying that he will not be promulgating any regulation until he has seen the committee’s report, so I do not know how that could possibly lead to a point of order. Perhaps Senator Calvert ought to check that matter out.

What I was saying was that here we have a plan, promulgated by this minister, that is retrospective. The very reason it is going to harm so many businesses is that it is retrospective, and many businesses are telling us that they will find on 1 July—that is when the scheme comes in—that they have no quota, that they will have used their quota and that they will be frozen out of the market. They will not even be able to get into the market on the basis of paying the 26.4 per cent tariff that applies to over-quota shipments to the United States because arrangements have not been made with the United States to allow that to occur. They will be frozen out of the market for a month or two months or three months. They will close.

That is where thousands of jobs will disappear. It is amazing that Senator Ferguson professes that the coalition is concerned about jobs for Australians. Well, not these jobs and not these Australians. There will be 5,000 to 7,000 jobs in regional and rural Australia—supposedly, the constituency of the National Party. We have got a National Party minister here who is doing nothing to make sure that he can minimise the impact—perhaps because he has got directions from the Prime Minister’s office, because it is a Packer operation, and perhaps it is because there has been lobbying by certain former executives of the Liberal Party. But we will wait and see—that will all come out in the wash. The reality is we have got a minister who has been negligent, who has been dogged in pursuing a scheme which the Red Meat Advisory Council—his own appointed body—recommended against, 6-0. (Time expired)

Question agreed to.

COMMITTEES
Reports: Government Responses

Senator HILL (South Australia—Minister for Defence) (3.33 p.m.)—I present five government responses to committee reports as listed on today’s Order of Business at item (13). In accordance with the usual practice, I seek leave to incorporate the documents in Hansard.

Leave granted.

The responses read as follows—

SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—INQUIRY INTO THE DISPOSAL OF DEFENCE PROPERTIES

GOVERNMENT RESPONSE

The disposition of the Australian Defence Force (ADF) has been closely linked to our history, our industry base and the shape and size of the military and its capabilities. Changes over the last two decades have been significant, with the shift to the north and west of Australia, a smaller ADF, a focus on joint operations and support and new technology.

Today, the Defence estate comprises some 360 properties, down from over 500 in the early 1990s. The Government understands that there will continue to be public comment and concern regarding the disposal of Defence properties because of the historical associations, environmental and heritage issues and public attitudes towards surplus Commonwealth land.

In its Interim Report, dealing specifically with the Artillery Barracks property in Fremantle, and the final Report, covering the broader issues related to the disposal of Defence properties, the Committee has made four recommendations.

In respect of Artillery Barracks:

1. The Committee recommends that the Artillery Barracks, Fremantle be transferred to the Western Australian Government using funds provided through the Centenary of Federation Fund or through some similar mechanism.
2. The Committee recommends that the Minister for Defence review the Department’s decision to relocate the Army Museum of Western Australia to Hobbs Hall and examine the possibility of retaining the Museum at Artillery Barracks.

The Committee noted in its final Report that the current proposal by the Commonwealth Government to transfer Artillery Barracks and the ancillary properties, excluding Gun House, to the Western Australian Government is in line with the Committee’s recommendations. This includes the retention of the Army Museum at the Barracks. As conveyed to the Western Australian Government, Gun House will be offered to the State should it no longer be required for Defence purposes. The Commonwealth will continue to work with the State Government on the future of this property.

In the final Report, the Committee made the following recommendations:

1. The Committee recommends that the Department of Defence ensure that Defence Estate Organisation (DEO) staff’s personal and business skills/credentials be of the highest order to enable DEO to operate effectively with the business and broader community in this often sensitive area.

2. The Committee notes that DEO is already obliged to consult stakeholders (including residents in the local area) in the disposal of surplus properties and recommends that DEO fulfil its obligations in respect of all properties for which it has responsibility for their disposal.

The Committee also recommends that DEO continue to consult stakeholders throughout the disposal process.

The Government supports these recommendations and believes that both the process of consultation and those conducting the consultation are important in progressing more efficient disposal of surplus property.

The Department of Defence identifies and includes consultation as part of its disposal process, however, it accepts that there could have been wider and/or more extensive consultation for some properties. Of course, consultation itself does not guarantee a non-contentious outcome.

The disposal of Commonwealth land is a multifaceted process. Political factors are a major influence under a three-tiered system of government. During the course of the Inquiry, the Committee highlighted the difficulty of disposing of certain surplus Commonwealth land, particularly in the case of Defence for which there will usually be a change of purpose.

The Department of Defence recognises the community sensitivity associated with the disposal of properties. This aspect of the disposal process needs to be considered in conjunction with the Lands Acquisitions Act 1989, the Commonwealth’s Property Disposal Policy, the Commonwealth Property Principles and the obligations under various Federal legislative requirements associated with estate management eg environmental and heritage. The Committee’s Inquiry has reinforced the importance of ensuring full consultation with stakeholders occurs throughout the process.

While not making a specific recommendation, the Committee highlighted the financial benefit to the Government by optimising its revenue through a commercial approach and further stated that this approach provided manageable risk to the Government. The Government agrees with this analysis.

ATTACHMENT A

TERMS OF REFERENCE

That the following matter be referred to the Senate Foreign Affairs, Defence and Trade References Committee for inquiry and report by the last sitting day in March 2001:

1. The importance and value of the Western Australian Army Museum and Fremantle Artillery Barracks.

2. Whether the Fremantle Artillery Barracks is the most appropriate and suitable location for the Museum.

3. The reason for the disposal of the Fremantle Artillery Barracks.

4. The disposal of the Fremantle Artillery Barracks and the probity of the disposal process.

5. How the Australian Defence Organisation (ADO) decides whether property is surplus to requirements and the management or disposal of surplus property.


7. Any other matter related to the above-mentioned issues.

The Committee will report initially on the disposal of the Fremantle Artillery Barracks and then in a second report on the broader issues in terms 5 and 6.

ATTACHMENT B

INTERIM REPORT – ARTILLERY BARRACKS, FREMANTLE

The Committee made the following recommendations:
1. The Committee recommends that the Artillery Barracks, Fremantle be transferred to the Western Australian Government using funds provided through the Centenary of Federation Fund or through some similar mechanism.

2. The Committee recommends that the Minister for Defence review the Department's decision to relocate the Army Museum of Western Australia to Hobbs Hall and examine the possibility of retaining the Museum at Artillery Barracks.

**FINAL REPORT – INQUIRY INTO THE DISPOSAL OF DEFENCE PROPERTIES**

The Committee made the following recommendations:

1. The Committee recommends that the Department of Defence ensure that Defence Estate Organisation (DEO) staff's personal and business skills/credentials be of the highest order to enable DEO to operate effectively with the business and broader community in this often sensitive area.

2. The Committee notes that DEO is already obliged to consult stakeholders (including residents in the local area) in the disposal of surplus properties and recommends that DEO fulfil its obligations in respect of all properties for which it has responsibility for their disposal.

   The Committee also recommends that DEO continue to consult stakeholders throughout the disposal process.

   **GOVERNMENT RESPONSE TO THE SENATE SELECT COMMITTEE ON SUPERANNUATION AND FINANCIAL SERVICES REPORT ON THE ENFORCEMENT OF THE SUPERANNUATION GUARANTEE CHARGE**

**Recommendation 1 - Chapter 2, para. 2.52**

The Committee recommends that the ATO and the Department of the Treasury examine the severity of the current SGC penalty.

**Government Response Supported in Principle.**

The Government notes that no employer need pay the Superannuation Guarantee Charge (SGC). Employers can avoid paying the SGC by making superannuation contributions to a complying superannuation fund by 28 July each year.

The Government recognises the need to remove unnecessary and/or harsh imposts on business. However, key aspects of the current Superannuation Guarantee (SG) regime underpin employer compliance with the SG (eg lack of discretion around timing of payments and lack of deductibility for the Charge). Nevertheless, the Government has asked the Australian Taxation Office (ATO) to consider this issue further.

**Recommendation 2 - Chapter 2, para. 2.70**

The Committee recommends that the ATO continue educating employers and employees in SG rights and responsibilities, with greater targeting of ‘at risk’ individuals and groups.

**Government Response Supported in Principle.**

The Government understands the ATO has recently created the Corporate Communication Line to maximise the impact of its communication efforts.

The Government supports the ATO’s continuing activities to safeguard the interests of ‘at risk’ employees through a number of education/information strategies, including:

- contacting all new employers via its call centre;
- having information regarding superannuation in the ATO’s ‘Bizstart’ package; and
- working with non-compliant employer groups in consultation with the Department of Employment and Workplace Relations.

The ATO also targets the information needs of ‘at risk’ groups through a number of channels including:

- partnerships with community advocacy groups such as Jobwatch Vic;
- participation at industry forums and expos;
- information in school programs; and
- the ATO’s SBS Radio program.

The Government understands the ATO’s education activities will continue to be an important facet of its administration of the Superannuation Guarantee system. The ATO will continue to work closely with industry groups to help educate employers and employees about their superannuation obligations and entitlements.

The Government also recognises the role that can be played by members of the superannuation industry in disseminating information to ‘at risk’ individuals and groups and calls upon industry to lend its support to educational activities.

**Recommendation 3 - Chapter 2, para. 2.71**

The Committee recommends that employers, employees and superannuation funds be given greater access to the ATO’s SG databases,
where appropriate, and that the ATO increase its promotion of the availability of this information.

**Government Response**

**Noted.**

The Government understands the ATO and the superannuation industry are already working closely to facilitate access by superannuation funds to information held by the ATO in respect of lost members, unremitted Superannuation Guarantee vouchers and the Superannuation Holding Accounts Reserve.

This ‘SuperMatch’ system has recently commenced and approximately 20 funds (including a number of large industry and public offer funds) have already taken this opportunity to enhance their services to members by participating in this scheme.

The Government understands the ATO devotes considerable resources to promoting the availability of its information material, through attendance at expos and industry forums, and the provision of web based resources.

However, much of the information held by the ATO in relation to individual superannuation matters is protected by secrecy legislation and cannot be made available to the public. This does not of course prevent taxpayers making inquiries to the ATO in respect of their individual affairs.

** Recommendation 4 - Chapter 3, para 3.23**

The Committee recommends that the ATO focus more attention on prosecuting employers who repeatedly default on their SG responsibilities.

**Government Response**

**Supported in Principle.**

The Government believes that employers must meet their superannuation obligations. The Government notes that the ATO has implemented a strategy to ensure that these obligations are met and encourages the ATO’s approach of education and assistance to make sure that employers are aware of their obligations.

The ATO now has improved capability to use its data holdings (for example, surcharge data and information from income tax returns) to identify employers that appear:

a) not to have made contributions for employees; or

b) not to have made sufficient contributions for employees.

Once identified, these employers will be required to advise the ATO of the names of all employees for whom no or insufficient contributions were made in the financial year. An employer that fails to provide the information will be subject to prosecution action for failing to comply with the requirement to furnish information—the ATO has indicated it will seek court orders requiring the employer to give the information.

Legal debt recovery action forms part of the ATO’s overall collection policy but the ATO advises that it is not always practical to initiate formal recovery processes through the courts against an employer that does not comply with an arrangement to pay an established SG liability over time.

The Government also acknowledges that the ATO’s collection policy operates under the general principle that there is no benefit in liquidating corporate debtors or bankrupting individual debtors if they can demonstrate they have an ability to pay an established SG liability over time.

** Recommendation 5 - Chapter 3, para 3.24**

The Committee recommends that employers be required to show details of their Superannuation Guarantee contributions on individual employees’ payslips.

**Government Response**

**Supported in Principle.**

The Government notes the benefits of increasing employees’ awareness of their superannuation entitlements, and that this can be achieved through regular reporting to employees of superannuation contributions made on their behalf.

Many employers currently advise their employees about the superannuation contributions made on their behalf and the Government encourages others to adopt this practice.

There is currently a requirement under the federal Workplace Relations Act 1996 that details of relevant superannuation contributions made under a federal award or federal agreement be included on employees’ payslips [Workplace Relations Regulations 1996, Reg 132B(1)(b)]. This is not always the case for State workplace relations systems, although some do have similar requirements.

If employers were to be required to provide details of their SG contributions on employees’ payslips, such change would best be implemented through the SG legislation rather than through awards or by amending the Workplace Relations Act 1996, as the latter options would be highly unlikely to achieve national consistency.

In implementing quarterly Superannuation Guarantee contributions, the Government will require employers to report to their employees the amount and destination of SG contributions.
Recommendation 6 - Chapter 3, para 3.58
The Committee recommends that the ATO and the Department of the Treasury explore options for enabling members, or their nominated representatives, to follow up on SG complaints and obtain more information on complaint action progress.

The Government understands the ATO recently adopted a new approach to handling SG complaints which is faster so the need to follow up will be limited. The Government notes it is the ATO’s practice to advise employees:
• when it has collected any outstanding SGC for them;
• if contributions have actually been made to a superannuation fund; and
• if the employer is declared bankrupt, insolvent or enters voluntary administration.

Much of the information held by the ATO in relation to Superannuation Guarantee matters is protected by secrecy legislation and cannot be made available to third parties.

Recommendation 7 - Chapter 4, para 4.24
The Committee recommends that the requirement for compulsory SG contributions by employers, where it is not currently monthly, be varied to provide for quarterly payments.

Government Response. Supported.
The Government has introduced legislation into Parliament that, from 1 July 2003, will require all employers to make at least quarterly superannuation contributions on behalf of their employees. This measure will ensure fairness between employees and encourage employers to make regular superannuation contributions.

Recommendation 8 - Chapter 4, para 4.53
The Committee recommends that:
• the ATO and APRA clarify the extent to which employers and/or others may be legally liable for employees’ insurance cover lapsing due to late or non-payment of the SG; and
• the ATO and APRA act to enforce this.


The Superannuation Guarantee (Administration) Act 1992 (SGAA) does not require an employer or a superannuation fund to provide insurance for an employee. Nor does the legislation directly provide a right for an employee to recover unpaid Superannuation Guarantee contributions or any amount of insurance that those contributions would have covered.

Woodforde & Anor v Landline Investments Pty Ltd & Ors [2000] QDC 258 held that the SGAA does not provide an employee with an implied right of action for damages for breach of statutory obligations. Therefore, based on Woodforde v Landline an employer cannot be held liable for a lapse in employee’s insurance cover as a result of late or non-payment of SG.

The Government considers the law in this area to be clear and does not plan to change the arrangements at this time. However, the Government will continue to monitor the situation.

Recommendation 9 - Chapter 5, para. 5.29
The Committee recommends that the ATO, the Department of the Treasury and the Australian Securities and Investments Commission (ASIC) establish further mechanisms for coordination across government, industry and employer groups to address the problem of unclaimed monies.

The Government has amended legislation to allow Tax File Numbers for lost members to be reported to the ATO along with other lost member information. This will enhance the matching of lost members with their superannuation.

The Government understands the ATO has also recently launched SuperMatch, a process that allows superannuation funds to trace lost monies on behalf of their members, which is further engaging the superannuation industry in the solution to this issue.

Individual employees are also able to request a search of the ATO’s lost member data to determine if there are any amounts belonging to them that have been reported to the ATO as lost.

ASIC does not have any responsibility for requirements relating to the treatment of unclaimed superannuation monies or the maintenance and administration of the Lost Member Register. However, ASIC does have responsibility for disclosure about the circumstances in which benefits can be paid out of a superannuation fund including very specific requirements for disclosure of the circumstances in which lost or inactive members may have their benefits transferred to an eligible rollover fund (ERF) without their consent. The effectiveness of these disclosure requirements has implications for the unclaimed money problem and the ability of members to keep track of their benefits. ASIC monitors these
requirements as part of its normal surveillance activities.

To facilitate coordination across government, industry and employer groups the ATO has established the Superannuation Advisory Committee (SAC). SAC is a committee that includes representatives of APRA, ASIC and Treasury in conjunction with representatives of the superannuation industry and employers. This committee allows both industry and Government organisations involved in superannuation to meet and discuss topics relevant to the administration of superannuation, including issues associated with unclaimed monies.

To help address the issue of unclaimed money the Government has restated its commitment to give employees greater choice as to the superannuation fund or Retirement Savings Account into which their superannuation contributions are paid. In conjunction with the Government’s policy to ensure that superannuation benefits are ‘portable’ between funds, this will result in a decrease in the number of lost members as it will enable employees to consolidate future Superannuation Guarantee contributions into one superannuation account. The passage of the Government’s choice legislation has previously been blocked by the opposition parties.

Recommendation 10 - Chapter 5, para. 5.51
The Committee recommends that the Government review the preservation rules for superannuation funds for non-Australian resident itinerant workers, in view of the impact that this could have on limiting legitimate access to superannuation monies for those workers departing Australia.

Government Response
Supported in Principle.

From 1 July 2002, eligible temporary residents will be able to access their superannuation benefits upon permanent departure from Australia. Access will be subject to withholding tax arrangements to return the tax concessions provided to these superannuation benefits.

Recommendation 11 - Chapter 5, para. 5.76
The Committee recommends that the ATO and the Department of the Treasury review the current SG voucher system.

Government Response
Noted.

The Government understands the ATO has examined the voucher system within the existing law. The ATO is working to reduce the number of unclaimed vouchers. The introduction of the SuperMatch system is one example of how the ATO is tackling this problem. New regulations have been put into place to facilitate the matching of unclaimed vouchers.

Legislation currently before the Parliament would allow the Commissioner of Taxation to deposit amounts directly into a superannuation account of the relevant employee. This amendment is expected to significantly reduce the problem of unredeemed vouchers.

Recommendation 12 - Chapter 6, para. 6.32
The Committee recommends that the current age limits and work tests that apply to SG contributions for individuals under 70 years be removed from the legislation.

Government Response
Not Supported.

The restrictions that apply to superannuation contributions after age 65 reflect the primary object of the superannuation system, being the provision of retirement income. They also ensure that superannuation, which benefits from generous taxation concessions, is used for genuine retirement income.

However, it is current Government policy for over 65s to be able to make personal contributions if they work at least part-time (10 hours each week) and the Government has already raised the eligibility age for SG payments to 70. These SG payments are subject to the usual SG earnings threshold of at least $450 per month. The Government has also announced, as part of its election commitments, that it will be increasing the upper age limit for voluntary contributions to 75. The Government has consulted with stakeholders on the implementation details of this initiative.

The Government has also asked the Treasury to review the monitoring requirements for superannuation funds in respect of the 10 hours per week part-time gainful employment work test for persons aged between 65 and 70 years.

Recommendation 13 - Chapter 6, para. 6.49
The Committee recommends that the ATO re-examine the appropriateness of the current threshold level for SG eligibility for established itinerant vocations or professions.

Government Response
Noted.

Under the Superannuation Guarantee arrangements, employers are exempt from making contributions where employees receive salary and wages of less than $450 per month. The $450 threshold endeavours to strike a balance between the desirability of providing superannuation cov-
verage to as wide a range of employees as possible and the desire to minimise costs to business.

The Government’s view is that it is not appropriate for employees’ access to superannuation to be determined by the industry in which they work.

Notwithstanding the above, the Government proposes to change the threshold from $450 per month to $1,350 per quarter in moving to a regime of quarterly SG contributions.

**Recommendation 14 - Chapter 6, para. 6.68**

The Committee recommends that the Department of the Treasury develop model rules or guidelines for award conditions to facilitate greater consistency between the Federal SG system and awards.

**Government Response**

Not Supported.

There is already a framework superannuation clause for federal awards, established in the Australian Industrial Relations Commission’s (AIRC) 1994 *Superannuation Test Case*, and reaffirmed in the AIRC’s *Superannuation Decision* of 1999. Both of these decisions dealt explicitly with the matter of the consistency of awards with the SG system, and in December 2000 an AIRC Full Bench commented that these decisions ‘go as far as it is at present appropriate to go with respect to the provision of general guidance and a framework clause’ [Print T4144, paragraph 20].

**Recommendation 15 - Chapter 6, para. 6.98**

The Committee recommends that the pre 21 August 1991 notional earnings bases be removed from the *Superannuation Guarantee (Administration) Act 1992*.

**Government Response**

Noted.

Removing pre-1991 notional earnings bases could lead to considerable increases in the superannuation contributions that some employers must make for their employees. Such increases to labour costs would work to undermine employment and could prove disadvantageous for those industries as a whole.

Removing pre 21 August 1991 notional earnings bases is also a piecemeal approach to the issue of earnings bases given that the SGAA recognises award and agreement earnings bases more generally. The Government will consult with industry to establish whether it is feasible to move to a simplified earnings base provision over a period of time. Such consultation would involve the Department of Employment and Workplace Relations portfolio.

**Recommendation 16 - Chapter 6, para. 6.99**

The Committee recommends that for SG purposes, the notional earnings base, where there is an employer/employee relationship, should include income derived from commissions.

**Government Response**

Noted.

The relevant earnings base is usually specified in the superannuation fund trust deed, a law of the Commonwealth, a State or Territory, an industrial award or a workplace agreement. Some of the earnings bases included in these arrangements do not include commissions for the purpose of calculating SG.

If there is otherwise no acceptable earnings base, a default earnings base equivalent to the ordinary time earnings of the employee will apply. Ordinary time earnings of an employee are the total of the employee’s earnings in respect of ordinary hours of work and earnings consisting of over-award payments, shift loading or commission.

As noted in the response to recommendation 15, the Government will consult with industry to establish whether it is feasible to move to a simplified earnings base provision over a period of time.

Janet Holmes
Committee Secretary
Human Rights Sub-Committee
Joint Standing Committee on Foreign Affairs, Defence and Trade
Department of the House of Representatives
Parliament House
CANBERRA ACT 2600
19 June 2002

**JSCFADT REPORT ON LINK BETWEEN AID AND HUMAN RIGHTS: RESPONSE TO RECOMMENDATIONS**

Dear Ms Holmes

The attached letter of 21 April 2002 from the Minister for Foreign Affairs to the Chair of the JSCFADT Human Rights Sub-Committee is submitted for tabling as the Government’s response to the recommendations of the Sub-Committee’s report on *The Link Between Aid and Human Rights*.

On 14 May 2002 the Treasurer, Peter Costello, and the Minister for Foreign Affairs, Alexander Downer, announced an additional commitment of $18 million to the enhanced Heavily Indebted Poor Countries (HIPC) Initiative. The $18 million will be paid over three years commencing in 2002-03.
This contribution meets Australia’s share of the continuing costs of the HIPC Initiative, and brings Australia’s total commitment to the HIPC Initiative to $77 million.

Yours sincerely
(signed)
Scott Dawson
Deputy Director General
Asia and Corporate Resources
THE HON ALEXANDER DOWNER MP
MINISTER FOR FOREIGN AFFAIRS
PARLIAMENT HOUSE
CANBERRA ACT 2600
Senator Manse Payne
Chair
Human Rights Sub-Committee
Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
Canberra
Dear Marise
Thank you for your letter of 17 September 2001 concerning the Sub-Committee’s report, The Link between Aid and Human Rights.

Congratulations on your reappointment as Chair of the Committee. Let me also express my appreciation for the way you took on the task last year at short notice due to the untimely death of our colleague Peter Nugent, and for the manner in which you chaired the Committee seminar on 5 July.

I have noted the main conclusions of the Committee relating to the aid program and offer the following by way of response.

While AusAID already puts considerable effort into ensuring its documentation is complete and easily available to those interested in its work, there is always room for improvement. AusAID will bear your Committee’s conclusion in mind when it next reviews the range of documentation it publishes and the methods for doing this.

The Committee concluded that AusAID convene seminars with Australian NGOs on subjects of common interest, including links between aid and human rights. AusAID already has significant dialogue with Australian NGOs on policy issues and other matters of mutual interest. These include annual consultations with the NGO community, meetings several times a year between the AusAID Executive and the Chief Executive Officers of key NGOs, and regular discussions with the head of the Australian Council for Overseas Aid. In response to the Committee’s view, AusAID is currently arranging a workshop with NGOs to discuss human rights.

The Committee expressed the view that the Australian Government give serious consideration to the cancellation of the debts of seriously indebted nations. As you know, Australia is a strong supporter of the enhanced Heavily Indebted Poor Countries (HIPC) Initiative and has contributed a total of A$64 million at current exchange rates to HIPC (in nominal terms), in addition to the aid budget. The Government does not intend, in current circumstances, to go beyond this. Furthermore, Australia has pledged 100 per cent debt forgiveness to countries that qualify for debt relief under the enhanced Initiative. The Committee should be advised that Australia is also active through the aid program in helping countries manage their debts and avoid excessive debt burdens.

While I understand the Committee’s view that the process of admission to the HIPC Initiative requires review, the enhanced HIPC Initiative is subject to an ongoing review process, conducted jointly by the World Bank and IMF. Furthermore, the progress of the HIPC Initiative will be considered at the forthcoming Spring Meetings of these institutions, which Australia will attend. Given these processes, I do not consider it appropriate for Australia to take the lead in convening an international conference reviewing the eligibility criteria of HIPC.

I note the Committee’s support for continuation of at least the current level of financial support to the Asia-Pacific Forum, the CDI and the UNHCHR. You will be aware, of course, that aid program funding for human rights is subject to annual budgetary circumstances and outcomes. The Australian Government’s direct aid expenditure on human rights activities is likely to be around $2.5 million this financial year. Indirect expenditure in the aid program that promotes human rights is considerably higher. Expenditure on governance, for example, which enhances transparency and accountability of government processes, exceeded $367 million in 2000-01.

In closing, I wish to thank the members of the Committee for their report and for the opportunity provided by the inquiry for Australian NGOs and officials to gain a better understanding of each others’ perspectives on links between aid and human rights.

Yours sincerely
(signed)
Alexander Downer
**GOVERNMENT RESPONSE TO THE JOINT STANDING COMMITTEE ON MIGRATION**

‘New faces, new places’

**REPORT ON REVIEW OF STATE SPECIFIC MIGRATION MECHANISMS**

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<th>Reference</th>
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<tr>
<td>Recommendation 1 Paragraph No: 3.40 Page 15</td>
<td>The Committee recommends that DIMA re-examine the identification of ‘designated areas’ in consultation with the States and Territories and establish a realistic set of criteria for areas to be included on the Designated Areas List which would avoid the distortions which currently exist.</td>
<td>Agreed. The Commonwealth/State Working Party on Skilled Migration has previously discussed criteria for determining ‘regionality’. No consensus has yet been reached on the matter. At the Working Party meeting in May 2001, members noted the inherent difficulties with defining what constitutes regional Australia for migration purposes and agreed to further consider the definition of regionality through identification of possible alternative indicators. Further consultation with DoTRS and DEWR will also be undertaken on this matter. It should be noted, however, that with proposed reforms to the Regional Established Business in Australia category (REBA), use of the ‘designated area’ concept will be reduced to a single category where the ‘competitive’ aspects of designating one area versus another are not significant.</td>
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<td>Recommendation 2 Paragraph No: .4.12 Page 19</td>
<td>The Committee recommends that a specific definition should be devised by DIMA in consultation with the States and Territories to identify the areas covered by RSMS.</td>
<td>Agreed. The areas of responsibility for the gazetted regional certifying bodies (RCBs) define the areas covered by Regional Sponsored Migration Scheme (RSMS). DIMIA, on the advice of RCBs, and in consultation with DoTRS is preparing a list of the areas RCBs cover. The list will be cleared with the relevant State and Territory Governments.</td>
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<td>Recommendation 3 Paragraph No: .4.12 Page 19</td>
<td>The Committee recommends that information concerning expected and current processing times be made readily available, including on the DIMA website.</td>
<td>Agreed. DIMIA will include reference to processing times on its website and ensure certifying bodies are kept informed of any changes to the processing times for RSMS applications.</td>
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<td>Recommendation 4 Paragraph No: .4.90 Page 34</td>
<td>The Committee recommends that DIMA ensure that potential employers and migrant employees are aware of the sanctions relating to RSMS employees who do not complete their two-year contract.</td>
<td>Agreed. Since the review, information on the sanctions has been included in the Migration Booklet – Employer Sponsored Migration, the employer nomination form and the ‘Application for employer sponsored migration to Australia’ form. A leaflet is also now available for regional offices and overseas posts to provide to employers and employees intending to use the RSMS.</td>
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<td>Recommendation 5 Paragraph No: .4.103 Page 37</td>
<td>The Committee recommends that the scale of ‘exceptional’ approvals be continually monitored, and reviewed in 2003 in order to ensure that required standards remain relevant.</td>
<td>Agreed. DIMIA and DEWR will monitor the rate of ‘exceptional’ appointments and review the concession in 2003.</td>
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<td>Recommendation 6</td>
<td>The Committee recommends that the use of the Skill</td>
<td>Agreed. DIMIA in conjunction with the States and Territories is continuously looking at ways</td>
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Matching Database should be re-examined in 2003.

The Committee recommends that, in its advice to Certifying Bodies, DIMA indicate how labour market testing for RSMS may diverge from the standards for ENS and still be accepted as valid.

The Committee recommends that DIMA make the employers’ training record a consideration in RSMS.

The Committee recommends that a follow-up survey of employees’ and employers’ performance should be conducted in 2003 to determine whether successful applicants were remaining in regional areas as intended.

The Committee recommends that DIMA revise the STNI entry in the General Skilled Migration booklet prior to the next edition.

The Committee recommends that a study of SDAS be undertaken in 2003 to determine how well it is meeting its stated objectives.

The Committee recommends that DIMA provide settlers who have arrived in Australia and who have indicated their intention to use REBA with information about contacting DIMA and local agencies.

of promoting and increasing the entries on the Skill Matching Database (SMD). A number of measures are currently being introduced to increase the entries on the SMD. It would be timely to re-assess the use of the SMD in 2003.

Agreed. Following the review, DIMA has provided guidance to RCBs on labour market testing aspects. This encourages RCBs to use their own local knowledge to determine whether a vacancy needs to be filled from overseas. It notes RCBs should only resort to seeking evidence that an employer is unable to fill the position locally if they are unable to determine by any other means if the vacancy is genuine. The evidence would only be the minimum required in covering the local area and not require advertising in metropolitan newspapers, in a prescriptive way, as is the case under ENS. DEWR will provide further advice to DIMIA to distribute to RCBs on the use of DEWR data relating to labour market issues.

Agreed.

Agreed.

Agreed. DIMIA and DEWR will examine options to incorporate employer training record into the certification process.

Agreed.

Agreed. The Booklet has been revised for the March 2002 edition. Apart from revising the STNI entry, a section has been included to promote the categories available for those skilled migrants not meeting the independent category passmark.

Agreed. This study could include consultation with regional communities.

Agreed. The information material currently available will be expanded to cover information on DIMA business centres and local agencies. DIMIA currently provides successful temporary resident applicants intending to use REBA with information on the visa requirements for REBA. Some State and Territory Governments provide
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<td>Recommendation 14 Paragraph No: 7.68 Page 98</td>
<td>The Committee recommends that the operation of REBA, including ‘exceptional’ approvals, be reviewed during 2003.</td>
<td>support services to new and prospective business migrants and are now providing more information on these services. DIMIA will encourage this and improve its linkages with the relevant areas of State and Territory Governments. Agreed. DIMIA is currently reviewing the business skills categories, including REBA, in consultation with stakeholders including the States/Territories and the Australian Local Government Association.</td>
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<td>Recommendation 15 Paragraph No: 8.14 Page 102</td>
<td>The Committee recommends that DIMIA examine the issues raised relating to family businesses and to arrangements for dependent children under REBA and determine whether they could be resolved without compromising Australia’s broader migration criteria.</td>
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Agreed. DIMIA will examine the issues raised relating to family businesses and to arrangements for dependent children under REBA in the context of Australia’s broader migration criteria. |
| Recommendation 16 Paragraph No: 8.25 Page 104 | The Committee recommends that DIMIA pursue means of merging the existing SSMM visas into a single visa class. | 

Agreed. DIMIA will consider the feasibility of rationalising the existing SSMM visas where possible. However, it should be noted that there are inherent difficulties in merging family, employment and business visas into a single class. Agreed. DIMIA, DEWR and DoTRS are liaising over means of increasing regional representation in the consultation process. DIMIA Business Centres will consult with RCBs, and local government and business associations during visits to regional areas. The Australian Local Government Association is involved in the Commonwealth/State Working Party on Skilled Migration. |
| Recommendation 17 Paragraph No: 9.6 Page 116 | The Committee recommends that DIMA examine the option of merging the existing SSMM visas into a single visa class. | 

Agreed. DIMIA will consider the feasibility of rationalising the existing SSMM visas where possible. However, it should be noted that there are inherent difficulties in merging family, employment and business visas into a single class. Agreed. DIMIA, DEWR and DoTRS are liaising over means of increasing regional representation in the consultation process. DIMIA Business Centres will consult with RCBs, and local government and business associations during visits to regional areas. The Australian Local Government Association is involved in the Commonwealth/State Working Party on Skilled Migration. |
| Recommendation 18 Paragraph No: 9.33 Page 122 | The Committee recommends that DIMA improve its liaison with Area Consultative Committees, the Australian Local Government Association and Regional Certifying Bodies. | 

Agreed. As part of its promotional activities in regional areas of Australia, DIMIA will be liaising with local government authorities, the RCBs, DEWR and ACCs as well as working with local business organisations. |
| Recommendation 19 Paragraph No: 9.42 Page 124 | The Committee recommends that DIMA review the content descriptors of its website with the aim of making it more visible to search engines. | 

Agreed. Following this recommendation, DIMIA has reviewed the content descriptors of its website. This will be reviewed on a monthly basis to monitor the effectiveness of changes. |
| Recommendation 20 Paragraph No: 9.47 Page 125 | The Committee recommends that DIMA review its promotion of SSMM with a view to making access to them more migrant oriented. | 

Agreed. DIMIA will develop a more comprehensive information package on SSMMs. DIMIA Business Centres are increasing visits to regional areas of Australia. DIMIA is also developing with overseas posts improved promotion of SSMMs offshore. |
COMMONWEALTH GOVERNMENT RESPONSE TO THE PJSC REPORT ON FEES ON ELECTRONIC AND TELEPHONE BANKING

Introduction
The recommendations of the Parliamentary Joint Statutory Committee on Corporations and Securities (PJSC) Report on Fees on Electronic and Telephone Banking, address two key areas of concern about banking fees:

- Concerns about the disclosure of banking fees, including the availability and transparency of fee information and the feasibility of a real time disclosure framework. The Government’s response to this aspect of the report is at Part A.
- Concerns about the level of banking fees, including interchange fees for automatic teller machines (ATMs). Part B contains the Government’s response to the PJSC’s findings on this matter.

Part A
Disclosure of Banking Fees

Majority Recommendations

7.26 The PJSC recommends that a framework for a real time disclosure regime on electronic and telephone banking needs to be established in no more than two years and implemented within six months of the finalisation of the framework. On technical grounds the PJSC would accept the exclusion of EFTPOS transactions from this timeframe.

7.27 The PJSC recommends that ASIC report back to the Committee its progress in implementing this recommendation on a quarterly basis, with a review of its progress at the two year deadline.

7.28 The PJSC recommends that financial institutions provide to customers:

- A transaction statement through their ATM terminals and through their Web Sites setting out the number of previous transactions undertaken in at least the last month;
- That monthly account statements include a breakdown of all fees and charges, not simply a lump sum amount, and that these fees and charges be displayed in a prominent manner; and
- That as a transition to real time disclosure, a warning notice be displayed at all ATMs immediately indicating that a fee will be charged on foreign ATM transactions.

7.30 The PJSC recommends that all of these recommendations be included as requirements in the EFT Code of Conduct.

7.31 The PJSC notes that the practice of surcharging creates a potential risk for consumers and that as a matter of course recommends that any surcharge must be disclosed. Consequently, the PJSC recommends the insertion into the EFT Code of Conduct of a provision that would require parties to the Code to make it a condition of their merchant agreements that surcharges be disclosed in time for a transaction to be cancelled.

7.32 The PJSC recommends that if, two years after the introduction of real-time disclosure, the level of electronic banking fees provides evidence of continuing market failure, then the Productivity Commission should inquire into the reasons for this and recommend measures to alleviate it.

Minority Recommendations

1 Labor members of the PJSC recommend that:

- Banks introduce a real time fee disclosure regime for ATMs within a period of 12-24 months.
- Banks provide to a customer information on the cost of a transaction before the transaction is made so that a consumer has an opportunity to cancel the transaction.
- Banks provide to customers a breakdown of fees charged on monthly statements, including a comparison of fees over previous months so that consumers can compare their transaction activity.

2 Labor members of the PJSC recommend that ASIC continue its role in facilitating the introduction of a real time fee disclosure regime through the ASIC Transaction Fee Disclosure Working Group.

Effective Disclosure
The Government believes that effective disclosure is essential for ensuring that customers of financial institutions understand the fee structures applying to them. Effective disclosure allows consumers to make informed investment decisions. It is also a key driver of competition in the banking industry, as it facilitates the ability of consumers to compare the costs of alternative products and services and consider switching to them.

Through the Financial Services Reform Act 2001 (FSR Act), which came into effect from 11 March 2002, the Government is implementing a harmonised licensing, disclosure and conduct framework under the Corporations Act 2001 for all
Financial service providers, including a consistent and comparable financial product disclosure regime.

The improved disclosure framework includes obligations for providers of financial services, such as banks, to provide disclosure to consumers at the point of sale of a financial product, as well as ongoing disclosure and periodic reporting.

Point of sale disclosure through the giving of a Product Disclosure Statement will ensure that consumers are provided with relevant information, including about the cost of a financial product, so that they can make an informed decision about whether to acquire that product. This obligation would apply, for example, where a person seeks to open a new bank account.

Ongoing disclosure will also assist consumers by ensuring that they are notified of any increase in the fees or charges for a banking product that they hold. In order to provide notice, at least 30 days before that change takes effect. It will be complemented by periodic reporting requirements so that consumers regularly receive information that will assist them to understand their investment, including a summary of all transactions in relation to the product.

**Real Time Fee Disclosure**

The Government supports the principle that consumers should have the option to access information about the cost of a transaction prior to the transactions being completed. It believes that real time disclosure of fee information has the potential to benefit consumers by enabling them to decide whether to proceed with a transaction based on its cost. It may also assist consumers to understand better the fee structures applying to their accounts, so that they can manage those transactions that do incur fees and minimise their banking costs.

While in principle real time transaction fee disclosure appears to be desirable, the Government is concerned that the costs of implementation will ultimately be borne by consumers. The banking industry has submitted that these costs would be substantial, particularly if a short timeframe for introduction is imposed. However, cost and timing considerations would be expected to vary between different delivery channels, such as ATMs, internet and telephone banking.

Rather than imposing obligations for real time fee disclosure through regulation or legislation, the Government therefore prefers a co-operative approach with industry. A co-operative approach avoids imposing regulatory compliance costs on industry and is more likely to foster industry innovation and commitment to improved disclosure practices. However, if the Government is not convinced that there is a genuine commitment by industry to implementing real time disclosure initiatives within a realistic timeframe it will re-evaluate this approach.

**Regulator and Industry Initiatives**

The Government supports appropriate industry self-regulation in relation to codes of practice, which complement legislative reforms such as the FSR Act by formalising a commitment by industry participants to principles and standards for good industry practices and customer service.

**Electronic Funds Transfer Code of Conduct**

It welcomes the revised Electronic Funds Transfer (EFT) Code of Conduct, which was released in April 2001 and officially commenced on 1 April 2002. The EFT Code of Conduct has been expanded by the Australian Securities and Investments Commission (ASIC) EFT Working Group of government, industry and consumer representatives, to provide enhanced protections for consumers in all forms of electronic funds transfer. The Government encourages providers of electronic banking services to sign up to the voluntary code so that they can begin passing the benefits of these protections on to their customers.

The protections afforded by the revised EFT Code include a requirement for parties to the Code to make disclosure of surcharges a condition of their agreements with owners of ATM or EFT machines. This requirement will come into effect on 1 April 2003. It will ensure any fees charged by the owner of an ATM or EFTPOS machine, for the use of that machine, are brought to the attention of consumers in time for the transaction to be cancelled.

The revised EFT Code does not address matters such as real time disclosure of fees on electronic and telephone banking. The Government notes that it was agreed that these issues would be progressed separately through the establishment of the ASIC Transaction Account Fee Disclosure Working Group (ASIC Fee Disclosure Working Group).

**ASIC Fee Disclosure Working Group**

The Government supports the ASIC Fee Disclosure Working Group as an appropriate and effective forum for consideration of good fee disclosure practices across the full range of delivery methods, including electronic and telephone banking. It welcomes the co-operative efforts of the ASIC Fee Disclosure Working Group, including the development of the Guide to Good Transaction Fee Disclosure for Banks, Building Societies and Credit Unions (Disclosure Guide).
The Disclosure Guide is an important initiative for promoting best practice fee disclosure in the banking industry. It addresses key issues such as personalised disclosure on bank statements and provides practical examples of how financial institutions can improve their disclosure practices. This includes unbundling the fees disclosed on bank statements, including by delivery channels, so that consumers can better understand and compare the costs of conducting their banking transactions. The Disclosure Guide also addresses matters such as good disclosure practices for ATM and EFTPOS surcharges.

The Government considers that the ASIC Fee Disclosure Working Group has made good progress towards its goal of providing consumers with the opportunity to understand better the transaction fee structures applying to their accounts so that they can make informed choices.

In particular, it is pleased to note that ASIC will monitor and report publicly on the extent that industry adopts the disclosure principles contained in the Disclosure Guide. This will include monitoring closely the extent of planning, time-tabling and implementation of real time transaction fee disclosure.

**Industry Codes of Conduct**

The Government strongly encourages industry to consider embedding outcomes of the ASIC Fee Disclosure Working Group in industry codes of conduct that deal with the full range of delivery modes. This would ensure that protections for consumers are harmonised across electronic and telephone banking and more traditional types of banking.

In particular, the Final Report of the Review of the Code of Banking Practice, released in October 2001, does not address the issue of real time fee disclosure. However, as part of the review, an issues paper released in March 2001 foreshadowed that a supplementary issues paper could be prepared to deal with this matter. This would provide an opportunity for the banking industry to consider what changes to the Banking Code might be appropriate to commit to real time disclosure initiatives, taking into account the outcomes of the ASIC Fee Disclosure Working Group.

**Interim Measures**

In the interim, the Government strongly encourages all financial institutions to begin factoring real time disclosure initiatives into ATMs, software and computer systems as they are replaced or upgraded. This would be expected to reduce substantially the costs involved in transitioning to real time disclosure of banking fees.

As a transition to real time disclosure, the Government also encourages actions such as the use of warning notices as a way of disclosing to consumers that they may be charged a fee by their own financial institution for use of another institution’s ATM. It is pleased to note that some financial institutions have commenced displaying notices at ATMs warning people who are not customers of the institution that foreign ATM fees may apply.

Other interim initiatives that may assist consumers to assess the likely cost of a transaction include mini-statement facilities at ATMs and on the websites of financial institutions. Some financial institutions already provide this facility, which enables customers to access information about the number of previous transactions that they have undertaken. This may assist consumers to determine whether they will be charged a fee for an additional banking transaction. The form and content of mini-statements and bank statements is a matter that could, if needed, be further considered and progressed through the ASIC Fee Disclosure Working Group.

**Progress of Initiatives**

The Government will observe closely the progress of industry initiatives towards improved disclosure practices, including real time fee disclosure, and will consider whether it is necessary to review their effectiveness and impact on bank fees after there has been some experience with their operation.

The combination of the above processes and reforms will have a significant effect on the future direction of disclosure practices in the banking industry. The Government will therefore wait to see the impact of these developments before considering further intervention.

**Part B

Level of Banking Fees**

**Majority Recommendation**

7.29 The PJSC recommends that interchange fees between banks in relation to foreign ATM transactions be abolished immediately and replaced by direct charging with the effect of reducing foreign ATM transaction fees from approximately $1.50 to 50 cents.

The Government is determined to see bank fees and charges minimised while maximising the quality and availability of banking services to the Australian community. The quality and affordability of banking services in regional and remote areas is a particular priority.

The issues relating to interchange fees are highly complex. The Reserve Bank of Australia (RBA)
is currently working with industry to explore the issues and identify possible options relating to interchange fees on foreign ATM transactions. The RBA is proposing to undertake public consultations on possible options once it is in a position to do so.

It would be premature for the Government to make any decisions on these issues until the RBA has completed its current investigation.

Minority Recommendation
5 Labor members of the PJSC do not support the Chairman’s recommendation to introduce a fee regime for ATMs based upon direct charging without an agreement on the level of bank fees.

The Reserve Bank is currently working with industry to explore the issues and identify possible options relating to interchange fees on foreign ATM transactions. The RBA will be inviting comment from interested parties once it has completed its initial investigations.

Minority Recommendation
2 Labor members of the PJSC recommend that banks accept a moratorium on increasing bank fees for a period of 12 months.

The Government is concerned that imposing a moratorium on bank fees would restrict competition in the provision of banking services to consumers. While a moratorium period would prevent financial institutions from increasing their fees, it would also discourage financial institutions from reducing their fees and charges below their current level (the moratorium level) and would inhibit innovation in fee structures.

Moreover, a 12-month moratorium might result in financial institutions merely delaying any fee increases until the end of the moratorium period, and then imposing fee increases of a greater magnitude, to compensate for the moratorium, which would be to the detriment of consumers.

In view of these concerns, the Government does not support a moratorium on bank fees, which would deny financial institutions the flexibility to adjust their fees and charges in response to competitive and marketing pressures. However, the Government believes that it is important that any changes to fees for the provision of banking services are justified, especially as technological developments reduce the cost of handling transactions.

Minority Recommendation
1 Labor members of the PJSC recommend that the Government immediately direct the ACCC to formally monitor bank fees and charges.

The Government notes the initiatives already under way to improve fee disclosure practices in the banking industry, including the progress of the ASIC Fee Disclosure Working Group. It considers that these measures, by facilitating the ability of consumers to compare fees and charges across banking products, will heighten competitive pressures in the banking industry with respect to the level of bank fees. More transparent fee structures would also be expected to place greater pressure on financial institutions to ensure that their fees and charges are economically justified.

The implementation of these initiatives will play an important role in encouraging competition in the provision of banking services and the fees charged for those services. Accordingly, at this time, the Government does not consider it appropriate to direct the Australian Competition and Consumer Commission (ACCC) to monitor bank fees and charges.

Minority Recommendation
4 Labor members of the PJSC recommend that the Federal Government immediately direct the ACCC to hold an inquiry into why UK banks have been able to abolish ATM fees while Australian banks say they cannot.

The Government accepts that it is not costless for financial institutions to provide electronic banking services to their customers. It considers that consumers should be prepared to pay a reasonable and transparent price for access to the benefits and convenience that these services provide.

If ATM transaction fees were removed in Australia, as in the United Kingdom, this would mean that other banking customers would have to subsidise the cost of providing these services. This could lead to higher fees and charges for non-electronic banking services, such as over-the-counter banking transactions, which would adversely affect those customers unable to utilise electronic banking services. Alternatively, it could lead to higher margins on lending products, which would have an adverse impact on home buyers, small business and other personal borrowers.

While, as a result, the Government does not believe it is necessary to direct the ACCC to hold an inquiry into this matter, it encourages financial institutions to re-evaluate existing fee structures and pursue innovative solutions that would enable cost savings to be passed onto consumers through fee reductions.

Minority Recommendation
3 Labor members of the PJSC recommend that banks offer fee free banking to pensioners and social security recipients.
The Government considers that the banking industry should endeavour to address community concerns about the affordability of banking services, especially for pensioners and people obliged to operate accounts so that they can receive social security payments.

It therefore welcomes the recommendation of the Final Report of the Review of the Code of Banking Practice that the Code require member banks to provide details of their accounts which are most suitable to low income or disadvantaged persons who are prospective customers, as well as to existing customers whose present facilities may not be optimal.

It also notes that in March 2001, the Australian Bankers’ Association (ABA) proposed to seek authorisation from the Australian Competition and Consumer Commission (ACCC) for banks to agree to provide basic bank accounts with certain minimum features, including allowing pensioners and other social security recipients to withdraw their government payments over-the-counter at no cost, within reasonable usage limits.

The Government encourages financial institutions to go beyond minimum standards for the provision of low cost banking products, and commends those institutions that have taken steps to improve the availability of their concessional banking products. It strongly encourages all financial institutions to pursue initiatives that will deliver affordable banking to the community.

It looks forward to the implementation of a revised and improved Code of Banking Practice and will be examining measures that banks take in this area.

DOCS
Auditor-General’s Reports
Reports Nos 59 and 60 of 2001-02


COMMITTEES
Membership

The DEPUTY PRESIDENT—Order! The President has received letters from party leaders seeking variations to the membership of committees.

Senator HILL (South Australia—Minister for Defence) (3.35 p.m.)—by leave—I move:

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

Economics Legislation Committee—

Participating member: Senator Cook

Environment, Communications, Information Technology and the Arts References Committee—

Substitute member: Senator Crossin to replace Senator Mackay for the committee’s inquiry into environmental performance at the Ranger, Jabiluka, Beverley and Honeymoon uranium operations.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator HILL (South Australia—Leader of the Government in the Senate) (3.36 p.m.)—I move:

That government business order of the day no. 2 (Social Security and Veterans’ Entitlements Legislation Amendment (Disposal of Assets—Integrity of Means Testing) Bill 2002) be postponed till a later hour.

Question agreed to.

SECURITY LEGISLATION AMENDMENT (TERRORISM) BILL 2002 [No. 2]
SUPPRESSION OF THE FINANCING OF TERRORISM BILL 2002
CRIMINAL CODE AMENDMENT (SUPPRESSION OF TERRORIST BOMBINGS) BILL 2002
BORDER SECURITY LEGISLATION AMENDMENT BILL 2002
TELECOMMUNICATIONS INTERCEPTION LEGISLATION AMENDMENT BILL 2002

Second Reading

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

That these bills be now read a second time.

(Quorum formed)
Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.39 p.m.)—This package of legislation, the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and related bills, is designed to deal with the threat of terrorism—a threat brought home by the events of September 11 last year. Many people have said that the world changed on September 11 but the threat of terrorism is not new. Governments have long been aware of the very real possibility that terrorists might acquire and use weapons of mass destruction. The proliferation of technology relating to chemical, biological and radiological weapons has transformed the global security environment. But for sheer good fortune, the 1995 sarin gas attack in the Tokyo subway could have killed tens of thousands of people. That was more than seven years ago. The danger that terrorists might seek to kill not tens or hundreds of people but thousands of people has been with us for at least a quarter of a century.

We must not forget that the attacks on the World Trade Centre were an act of mass destruction perpetrated without resort to nuclear, chemical or biological weapons. On September 11 the scale of international terrorism did change: what had previously been considered only in the realm of possibility and conjecture became a reality. The consequence is that Australia has had to urgently recalibrate its domestic security laws and capability. The September 11 attack and the ongoing threat of international terrorism require a response. We need to nail our colours to the mast. We need to state loudly and clearly that we will not tolerate such acts. The groups responsible for such atrocities put themselves outside the bounds of civilised society. We must deter those who would contemplate such acts and punish severely those who participate in them.

While it is clear that we are fighting against terrorists and terrorism, we must also be clear as to what we are fighting for. Terrorism does threaten our values, but in responding to such a threat we must ensure that we do not overreact and in so doing threaten these values ourselves. Our response must be strong, must be effective and must be consistent with our democratic values and freedoms. From the outset, this has been our perspective as we have assessed the government’s proposed antiterrorism legislation. In the aftermath of September 11 the opposition strongly supported Australia being an active participant in the international war on terrorism. We did not doubt that we too could become a target of such attacks. We recognised the need to equip ourselves not only with the operational capacity to fight terrorism but also with the legislative capacity and capability to suppress terrorism within our own borders.

We were surprised that the government did not produce its legislative response to September 11 until 12 March this year. When it did introduce this package of bills, it was obvious that the government was more interested in extracting political gain from the issue than in getting the legislation right. It tried to force the opposition to take a position on the legislation within 24 hours of the bills’ introduction, by bringing them on for debate in the House of Representatives on 13 March. Despite the fact that it is clearly in the national interest for such significant legislation to be properly reviewed by parliament, no time was allowed for scrutiny, no time for discussion or consultation and no time for considered thought. As we have seen so regularly under this government, when the Liberal Party’s interests are competing with the national interest, you can be almost certain that political interests will win out.

In an attempt to focus the government on the national interest and the public policy benefits of proper parliamentary scrutiny of this legislation, the Leader of the Opposition, Simon Crean, wrote to the Prime Minister on 13 March 2002 setting out the opposition’s concerns about the legislation and the way in which the government was dealing with it. Fortunately, the opposition was able to insist on the bills being referred to the Senate Legal and Constitutional Legislation Committee for examination. In acknowledgment of the urgency of the legislation, we agreed to a reporting date that facilitated consideration of the bills as soon as the Senate resumed on 14 May. In the short time available to it, the
committee did an excellent job in examining the bills. Its unanimous report, tabled on 8 May this year, highlighted significant flaws in the legislation. The government could not ignore the unanimous report of the committee.

On 13 May 2002, the Leader of the Opposition again wrote to the Prime Minister setting out in more detail our concerns with the proposed legislation. That letter proposed that the opposition and government enter into constructive discussions over the legislation. The government agreed to such discussions, and I take this opportunity to express the opposition’s appreciation to the Attorney-General for doing so. In our discussions with the government and with other parties, in public debate and in our correspondence with thousands of ordinary Australians who have written to us with their concerns about this legislation, Labor’s position has been consistent and it has been principled.

We have been determined to ensure that Australia and the international community are safeguarded from terrorism. We have been equally determined not to sacrifice any of the democratic freedoms we cherish in Australia. Firstly, we argued that the government’s definition of ‘terrorist act’ was too broad and did not focus sufficiently on the real intent of terrorists; the definition needed to be significantly tightened to ensure only terrorists were targeted. Secondly, we argued that the offence provisions in the legislation were unacceptable as they reversed the onus of proof and imposed liabilities on those accused of serious offences in a way unprecedented in our legal system. Thirdly, we argued that the proposed proscription regime gave the Attorney-General extraordinary and unwarranted power to unilaterally and arbitrarily ban organisations and make their activities illegal. Labor remains strongly opposed to any such executive proscription regime. Fourthly, we argued that the review of the legislation must be public, must be independent, must be accountable and must apply to the whole legislative package. We also argued that the regime which the government proposed for the interception of emails and SMS messages did not offer sufficient protection for the privacy of such communications.

Since mid-May, in discussions with the government, the opposition has been able to reinforce these principles, and I acknowledge that the government has moved a long way from its initial, flawed legislation. To be fair, the Senate committee report did stimulate debate amongst Liberal Party members, and a good deal of the pressure felt by the government has been from behind its own lines. The irony of the government driving a wedge into itself over a matter of national security is not lost on the opposition. Under frontal assault from the opposition and sniper fire from its own backbench over key aspects of its antiterrorism package, the government has belatedly agreed to amend its own legislation. The government amendments contain many significant changes to the bills the government tried to ram through the parliament in March. Nevertheless, a number of outstanding issues remain unresolved, including the government’s insistence on giving the Attorney-General the power to unilaterally and arbitrarily ban organisations and make their activities illegal.

In relation to a number of other key provisions of the bill, opposition concerns have been accepted by the government. With the redrafted treason offences, the government has agreed to ensure that humanitarian activities such as those conducted by Care Australia or the Red Cross are not caught up by poorly drafted, sweeping definitions. Often such groups are assisting people in a situation where politics and sides are unclear. Their motivation is to help people, and the definition of treason has been redrafted so they can do their important humanitarian work without risk of being inadvertently charged with treason. It is extraordinary that the government introduced and passed through the House of Representatives legislation that contained such weaknesses.

The definition of a terrorist act is crucial. It is at the core of these bills. The government’s original definition was sloppy and had the potential for significant and, we assume, unintended consequences. The opposition was concerned that civil protests might have been criminalised as terrorist acts under
the definition. For example, domestic political protests could have fallen within the definition as soon as they became unlawful in any way—for as little as trespass, nuisance or minor property damage. The original definition did not distinguish terrorist violence from offences or forms of violence covered in other acts. The opposition has successfully argued that the definition be improved by describing it as the use of ‘violence to influence the government, or to intimidate or coerce the public or a section of the public’. The opposition has also ensured that any possibility of protest or industrial action being dealt with as terrorist offences has been removed.

The opposition has never supported reversing the onus of proof for offences created by this legislation. The presumption of innocence is the cornerstone of our law. It is reasonable to expect the prosecution to prove the elements of an offence before a person is sentenced to life imprisonment. It is reasonable that the prosecution be required to prove the requisite intent for each of the offences. With any criminal offence, the prosecution has to show that a person did the act and also that they intended to do the act. Frankly, if someone does not intend to commit or be involved in a terrorist act, they are extremely unlikely to be terrorists and should be dealt with according to other laws as appropriate.

We are pleased that the government has agreed to remove references to ‘absolute liability’ from the bills and to restructure the offences so that the prosecution has to prove the elements of the offences. Nevertheless, while the offences are better structured in some respects and have been recast to include intent and knowledge, we are very concerned that the government is proposing to include offences where the relevant fault element is negligence. In the government’s proposed hierarchy for the offences, knowledge of a terrorist’s connection to activities would expose a person to a penalty of up to 25 years imprisonment. Recklessness—that is, having the foresight of a possible connection but acting irrespective of that foresight—would expose an individual to a penalty of up to 15 years imprisonment. Logically, both knowledge and recklessness require a particular mental state—or mens rea, as the lawyers call it—and, as such, a test as to an accused person’s knowledge or recklessness is subjective. That is appropriate in relation to these offences as terrorism is, in its essence, all about the intent and state of mind of the perpetrator. It is this mental element that distinguishes terrorism from other criminal offences and justifies the specific criminalisation of terrorism as a higher level of offensive behaviour.

In that context, the opposition opposes the introduction of offences based on negligence. In law, proving negligence would not require proof of a particular mental state. This is because the test for negligence is an objective one. It is based on an assessment of what a reasonable person may do in the circumstances, not on what the alleged perpetrator may have intended—and, frankly, we do not think a person can negligently commit a terrorist act. We will be opposing the government’s amendments introducing such an unacceptable threshold for terrorist acts.

We have objected to the government’s creation of an offence of membership of a terrorist organisation, notwithstanding attempts by the government to provide some limited safeguards. The opposition is concerned not to go down the path of criminalising passive affiliation. We do not support the harsh penalties proposed by this legislation being applied to a passive act of membership as opposed to an action intended to further a terrorist act. That the government does not define membership but proposes that it include the vague concept of ‘informal membership’ only heightens our concerns. There are two principles at play in relation to criminalising membership of alleged terrorist organisations. On the one hand, mere membership of an organisation without any active participation in their activities should not be criminalised. To do so may be criminalising people’s thoughts rather than their actions. On the other hand, Australia should play its role as a good international citizen in assisting other members of the international community to fight terrorism and international terrorist organisations.

While we have an in principle objection to criminalising membership per se, we are
prepared to make an exception in the case—and only in the case—of membership of organisations declared to be terrorist organisations by the United Nations Security Council. We have taken the view that, if the international community, speaking through the United Nations Security Council, declares an organisation to be a terrorist organisation, we will accept membership of that organisation as being a criminal offence. In all other cases, the opposition believes that the appropriate threshold for an offence of membership is ‘demonstrated willingness to assist a terrorist organisation in the commission of a terrorist act’. We have argued that these words should be included as an offence, maintaining a distinction between active involvement and passive membership. This would apply to organisations found to be terrorist organisations either by Australian courts or by the United Nations Security Council. The opposition will be moving amendments to that effect. (Extension of time granted)

In response to strong objections by the opposition, the Senate committee and the wider community over the government’s proposed proscription regime, the government now proposes to replace that regime with a definition of ‘terrorist organisation’ having three alternate limbs: limb 1, an organisation found by a court to be engaged in a terrorist act; limb 2, an organisation which is the subject of a decision by the United Nations Security Council that it is an international terrorist organisation; and, limb 3, an organisation which the Attorney-General is satisfied on reasonable grounds is engaged in a terrorist act. The second and third limbs require the Attorney to make a regulation which does not take effect until the period for disallowance has expired.

The government says such a decision would also be open to judicial review. The opposition is very concerned that the government’s approach still includes an executive discretion to proscribe organisations. The capacity for parliament to disallow any regulation nominating a suspected terrorist organisation does little to ameliorate the substantial problems identified by the opposition and by the Senate committee. While the government maintains that regulations would only be made on the basis of sufficient publicly available information, Professor George Williams argued in the Australian earlier this week:

Parliament is not the right forum for an independent review of a decision to ban an organisation.

He went on to say:

Parliament is neither a fair nor a sensible place to review volumes of sensitive national security information. It does, of course, include people from an attorney-general’s own party, who will likely support the decision on party grounds. The idea of a political and partisan debate on whether to ban on organisation and to criminalise its members is deeply disturbing.

Review by parliament and not by a court may actually prevent an immediate response in an emergency situation.

It is also unlikely that the courts would accept a merits review of a proscription decision where parliament had not exercised its right to disallow the relevant regulation. The opposition is of the view that this limb of the definition of a terrorist organisation is essentially the same as the government’s previous proposal for an executive proscription regime. It remains unacceptable. Labor does not support giving such wide and arbitrary powers to any minister of government. Such powers are too open to abuse. Australians need to think carefully not only about expanding the powers of a government that has so often abused the powers currently available to it but also about giving a blank cheque to future governments.

Historically, proscription has been a tool of political repression, not law enforcement. The motivation for Robert Menzies’ attempts to ban the Communist Party in the 1950s was to damage the Labor Party. Even though the vast majority of Australians did not like communists or communism, they voted this referendum down. They know proscription was antidemocratic. They knew it was inconsistent with Australian values. And they were right.

I note that the Prime Minister recently said in China that the Australian people ‘were right in voting down the 1951 Communist Party referendum’. The Australian people are very wary of giving executive
government too much power. Ministers should never be given the power to ban organisations and play politics with basic democratic freedoms. The hard-headed, effective approach is to cooperate with the United Nations, to tackle organisations they have identified as international terrorist organisations and, in Australian law, to properly define terrorist offences and let the police, the intelligence services and the courts do their job. Taking that approach, we can act swiftly against terrorist organisations listed by the UN Security Council such as Al-Qaeda.

In summary, the opposition will be moving amendments to make sure the offence regime is properly focused on terrorists, to ensure the offences have appropriate levels of intent, to excise the government’s executive proscription regime entirely from the bills and to ensure full public review of these laws in three years time. If appropriately amended, these bills will provide a package of very strong measures to combat terrorism. Australia will have an appropriate definition of terrorism that will focus law enforcement bodies on the real terrorists. We will have tough offences that will act as a deterrent and ensure those prosecuted under them are dealt with strongly but fairly. We will have a simple and appropriate mechanism through which we can swiftly take steps against terrorist organisations identified by the United Nations Security Council.

We will have strong tools to freeze the assets of terrorist organisations. We will have strong powers in the hands of our Customs services so they can trace and isolate terrorists or their equipment. We will act in accordance with our international obligations. Most importantly, if the bills are appropriately amended we will have struck the right balance between having a capacity to take effective measures against the real terrorists and ensuring our hard-won freedoms and liberties are maintained. I commend the opposition’s approach to the Senate.

**Senator SANDY MACDONALD (New South Wales)** (4.05 p.m.)—I rise to speak on this package of security legislation which comprises six bills and possibly two other related bills. This package of legislation is unprecedented in this country but not unprecedented amongst our friends and allies. It flows, of course, from the events that have followed September 11 and from the recognition by Australia, firstly, that world security assessments have changed fundamentally; secondly, that Australia was not immune from this fundamental change; and, thirdly—and frankly—that we do have some unreliable people and some dangerous groups in our society.

The government, on the best advice available, has taken the view that Australia is substantially underresourced in dealing with terrorism on a scale that has been evidenced by September 11 and in dealing with what has been discovered since about potential terrorist organisations which clearly extend much further than had previously been recognised. There is now an understanding that there is a much deeper penetration of potential terrorist threats in our Asian region than had ever previously been thought possible. There is also recognition that there is no point in being wise after the fact. The Australian community would not be very happy about a government that took its welfare so lightly.

Antiterrorism legislation usually deals with at least four topics. The first is intelligence, and three pieces of legislation in this package deal with that: the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, which deals with questioning; the Telecommunications Interception Legislation Amendment Bill 2002, which deals with intercepts; and the Suppression of the Financing of Terrorism Bill 2002, which deals with the financial aspects of terrorism. The second topic is prevention, which also has three pieces of legislation: the Border Security Legislation Amendment Bill 2002, dealing with border control; the proscription possibility, which is in the Security Legislation Amendment (Terrorism) Bill 2002 and the Suppression of the Financing of Terrorism Bill 2002 again. The third is crisis management and investigation, which includes laws dealing with law enforcement agencies and methods, offences and international cooperation. These offences are covered by the Security Legisla-

Australia already has some laws dealing with all these topics and has already dealt legislatively with crisis management and international cooperation. However, in blunt terms, either by default or design there are presently no specific antiterrorism laws in Australia. Even the word ‘terrorism’ is seldom used to describe terrorist acts or activities, but there is a comprehensive range of laws that may be applicable in anticipation of and in response to international terrorism that directly or indirectly affects Australia. This package of legislation forms part of a broader legislative package that is designed simply and absolutely to strengthen Australia’s counter-terrorism capabilities.

The government has been very aware that, in developing this legislation, there is a fundamental need to protect our community from the threat of terrorism without unfairly or unnecessarily encroaching on the individual rights and liberties that are fundamental to Australians and, certainly, to the way we think about ourselves and carry on our lives in every way. We are a society that remains determined to give a fair go to all views and creeds, and we are a nation of people who have come to this country to make a new life. Many of our citizens or their parents came because they had been subjected to oppression and discrimination from whence they came. We must balance the rights of our citizens against the potential threat from people and groups who do not want to play by our rules—in fact, do not want to play by any rules. Terrorism is cowardly; by its nature, it has to be. It does not call its shots. There is no indication or only a very small indication of when it might occur, and the response to a concealed threat must, by its nature, be well resourced and comprehensive. This package strikes the right balance.

It is important that we get the legislation right. The legislation and amendments reflect extensive and considered deliberation of the legislation by the Senate Legal and Constitutional Legislation Committee. The Joint Committee on ASIO, ASIS and DSD, on which I serve, has done an important report on enhancing ASIO’s intelligence-gathering capability and capacity. Also, there have been wide-ranging discussions with both coalition members and senators and, as we have heard from Senator Faulkner, with the opposition. I think the opposition finds itself in a particularly difficult position when dealing with legislation such as this, but I believe that the balanced and constructive approach which has certainly been taken privately by opposition members should be reflected in their vote on the legislation.

I look forward to the opposition’s support of the bills, which strengthen Australia’s ability to deter and protect against terrorism. I support the government’s approach and at the same time hope that this legislation will not be needed. I reassure those sections of the community which see all sorts of unbearable infringements on their rights and protections that the response to this new international threat is in this case appropriate and transparent. We would be abrogating our responsibilities to all Australians if we did not plan for the worst and hope for the best. That is, unfortunately, what you have to do when contemplating the response to future terrorism acts. I commend the legislation to the Senate.
since the bills were introduced has enabled the Senate Legal and Constitutional Legislation Committee to examine the legislation and take it to the community for public inquiry. I think that the committee’s processes have aided the development of the good legislation which we are debating here this afternoon.

It was an onerous task that was put on the committee—getting the public inquiry going and receiving submissions. The time lines which were given to the committee were very tight—far too tight—and that was something that was commented upon by a large number of the people who made submissions to the committee. The committee discussed the time lines and the time frame for the inquiry and, in response to the many representations we received regarding the time frames, the chair of the committee, Senator Marise Payne, at the commencement of each public hearing advised all those in attendance that:

... the timetable under which the committee works is one that is set down by the Senate and that the committee was provided in the last sitting week of the Senate with a program of 10 bills to inquire into and report on by early May ...

This committee has undertaken, as it always does, to inquire into and report on matters referred to it by the Senate in the most comprehensive and considered way possible within the guidelines that are provided to us by the Senate. As it proved, they were impossible guidelines for us to meet, but we did the best we could within the time frame given to us. We did have the opportunity to extend the public hearings schedule and hold an additional public forum in Sydney on 1 May 2002 to enable additional numbers of witnesses to give evidence to the committee.

I have spoken in this place about the time lines that are given to committees for their inquiries. I have expressed my concerns about the impossible deadlines that are sometimes set for committees. On these bills alone—a package of some five or six bills—we had that individual deadline. There were also other bills given to us for separate inquiries, and the committee was expected, not only by the Senate but by the community, to inquire into, examine and report on all those references in a very short period of time. That process might aid the government and it might help the departments involved, but I would suggest it is not good practice. I hope that the next parliament might look at this again—certainly the Selection of Bills Committee ought to give some consideration to it when they are considering dates for reporting. One of the things that I would strongly advise is that the chairs and deputy chairs of the respective committees be brought into the consultation, because they too have deadlines to which to operate and other commitments that they have to fulfil. Nonetheless, on this particular occasion, the committee did a valiant job, a tremendous job in the circumstances, on a very political inquiry. It was very serious legislation that was in front of us.

The committee received some 431 submissions to its inquiry. Those 431 submissions in themselves put great strain on the members of the committee. They had to read and get on top of the views that were being conveyed to the committee and to the community by way of submission. It also put tremendous stress on the members of the secretariat of the Senate Legal and Constitutional Legislation Committee. I think I am beholden in this, probably my last, contribution in this place on the affairs of the Senate Legal and Constitutional Legislation Committee to again pay tribute to the expertise, commitment and dedication that those people give to their task in serving the Senate Legal and Constitutional Legislation Committee. On this particular occasion, when these bills were in front of us, the committee was headed by Mr Neil Bessell. Just a short week or two before the reference was given, Mr Bessell was overseas serving the parliament in a different role—as secretary to the Inter-Parliamentary Union at a conference in Marrakech in Morocco. He then proceeded with the delegation on a bilateral visit to Kuwait. When he came back to Australia, rather than coming back to a rest he went into the intensity of the Senate Legal and Constitutional Legislation Committee and these particular inquiries. He had to get the inquiries going in a very short period of time—not only these particular inquiries but, as I indicated, other ones as well.
In the course of the inquiry Mr Bessell was assisted by Louise Gell, Peter Gibson, Saxon Patience, Michelle Lowe, Alison Carson and Carol Evans. Those people all worked under a tremendous strain. For a number of weeks in succession, weekends did not mean anything to them because they were in this place putting the work of the committee into order, preparing drafts of the report and assisting the committee generally in providing and servicing the obligations that it has to this chamber.

At the end of it, the committee produced what I thought, at the very beginning, after I returned from overseas, was the impossible task of getting an almost unanimous report for presentation to the chamber. There were great divisions. There were very pointed views on the issues before us. They are controversial matters when you talk about security matters. All of the issues contained in the bills were of great interest to all members of the committee. It is appropriate at this time that I also pay tribute to the members of the committee—in particular, Senator Ludwig, the Manager of Opposition Business in this place, who took my place on the committee from 13 March to 12 April 2002. Come 12 April 2002, Senator Ludwig did not go off and vegetate somewhere in Queensland; he maintained his contact with the committee and made a tremendous contribution during the development of the report. So I pay particular tribute to him. I also recognise the great chairmanship by the chair of the committee, Senator Payne, and by my colleague Senator Cooney, who, like me, will depart this place at the end of next week. I also pay tribute to Senator Greig, Senator Mason and Senator Scullion. Senator Bolkus was also a very active participating member of the committee who participated in the inquiries—the public hearings—and in the report deliberation itself.

The report deliberation was somewhat difficult, as one would imagine. It is a large document. It is not by any stretch of the imagination the largest report that has ever been presented in this place. It was 87 pages in total, without the appendices but including the comments by Senator Greig. But it takes some effort for committee members to get their heads around the content of that. One afternoon when we deliberated on the report I and some other members of the committee were in Sydney, Senator Ludwig was in Queensland, another member of the committee was in Canberra and another member of the committee was in Adelaide, and we met by the means of teleconferencing. We have been making use of that facility to aid the committee processes. I do not know how long we took to deliberate and finally come to our conclusions, but I know that when we came out of that meeting that evening I was pretty well exhausted, having had a fairly strenuous morning at a conference as well. But I think the work we did in developing this particular report was all to the good.

The report—and Senator Faulkner addressed it when he was leading the debate for the opposition this afternoon—did put some pressures onto the government to re-examine what was being put forward by the government early in March as being the direct answer to the terrorist threat that is seen by government to be facing Australia. The government, to its credit, took the report on board and has responded to it. On some of the more controversial aspects of what was being proposed in the security legislation amendment bill, there has been acceptance by government that they will be amended. It still has not gone all the way, and the opposition will be putting forward some amendments to this and other parts of the package of legislation. I am not going to address any of the amendments that are going to be moved by the opposition in this debate. I will leave that for others. I have not had a chance at this stage to get my mind across to them and develop them. But I do believe that we have come a long way in the development of legislation which will be appropriate for Australia in the year 2002 and the years ongoing.

The lobbying in regard to the bills before us is continuing. I accept that it is good way for the community to behave, to let their representatives in the parliament know how they feel. But actually a lot of the lobbying is wasted. It is absolutely wasted. My email is getting clogged up with continuous form letters from people who in many cases are members of Amnesty International. They
write to me in a form letter, tell me what their name is and tell me what they feel on it. It is the same thing over and over again. If they are from Western Australia I have an obligation to get back to them and respond as to how I am feeling on the legislation and what work I have done in this committee in suggesting amendments to the legislation, but there is no address. All we have is an electronic address and I do not know where these people are. I am also getting letters in a similar vein from others who would be coming from the opposite end of the political spectrum, like some of the people who signed the advertisement that was in the Australian newspaper on Wednesday last week. It delineated that we have a different Deputy Prime Minister than we have and also remembered some of the past members of various legislatures around Australia. There was a bit of deception in this because of the very tiny asterisks that were attached to names of people who were on that advertisement. Other form letters come in with no addresses, so one cannot respond to them. And I do not have the resources or the time to respond to each and every one of these, so those lobbying letters are going to waste as they hit my office. The ones that do attach an address who come from Western Australia are getting a response and are being offered the opportunity of reading the report that has been put in by the Senate Legal and Constitutional Legislation Committee.

There is another thing that I regret in regard to the ongoing lobbying campaign: I would have an expectation that an organisation such as Amnesty International would have kept abreast of affairs and would not now be encouraging their members and supporters to send the political representatives in this and the other place the same letters as were being sent out in March this year. There have been significant developments since the bills first saw the light of day in March. The committee has listened to the public. We have read the letters that came in. Many of them were form letters as well. I think, by way of our suggestions to the parliament and the cooperation of government, we have taken some of the hard edges off the legislation as proposed. But it does not appear that the organisation is telling its members and supporters that there have been developments, so some of the form letters that we are receiving now are not taking into account the very considered recommendations and proposals that were contained in the legal and constitutional committee report that was tabled in May of this year. I think that is disappointing. I do have some respect for Amnesty International. I think they are a force that can assist the development of thought processes within Australia. They can help to inform the community. But in order to inform the community they have to inform themselves.

For the other organisation on the extreme end of the spectrum, there are other representatives in this place, who are not present at the moment, who are in a better position to inform them of the views. It is in peculiar circumstances where you will get the extremes of politics, left and right, coming together in opposition to proposals such as this, but that is good. That will help the proposal to bring about better legislation. Whether it is good legislation in the end, I guess we are going to have to wait some time after passage of the bills in order that it can be tested in operation. I would hope that what we are doing here is going to be for the benefit of Australia and for the community. I am not going to say anything about the other piece of legislation that is associated with the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002. At the same time as the referral of these five pieces of legislation to the Senate Legal and Constitutional Legislation Committee, the ASIO bill was also referred to the committee. We reported on that reference earlier this week, but the committee, at the time of the reference, agreed that we would not engage in a double inquiry into the ASIO bill, that we would await the outcome of the Joint Committee on ASIO, ASIS and DSD to see what their report said and then come to conclusions. As I have said, we developed and lodged a report on that very important matter this week. Senator Faulkner and Senator Sandy Macdonald referred to that bill in passing. It is of interest as we debate this legislation and it is possible, in the few days I have left in this place, that we might
get an opportunity to talk about that bill as well.

In conclusion, I acknowledge the pressures that were imposed upon the secretariat of the Legal and Constitutional Legislation Committee with this reference and all the other references given to the committee at that time. These people are human beings. They too have families. They are entitled to some time off during the working week. Their working week should not be a seven-day week every week. I would hope that the next Senate, which commences after 1 July, will also take that into account and be really aware of that factor when they are sending references to committees.

Senator LUNDY (Australian Capital Territory) (4.32 p.m.)—Labor could not support the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and related bills in their original form and now, even though the coalition has backed down significantly—it scurried off and returned to us with a new version and changes—we cannot support this legislation in this form. I have listened to the arguments put forward in support of the legislation and have heard the Attorney-General tell us that since September 11 our world has changed forever and that we can no longer be justified in thinking that our counter-terrorism regime is adequate, and I agree. September 11 has opened our eyes to the threat of terrorism and, as legislators, we must respond to prevent anything similar from ever occurring in Australia. However, if I have learnt one thing from that terrible day, it is that extreme actions rarely provide the best solutions. Never should a single agenda be rammed home regardless of the cost to the lives and rights of others. This belief forms the basis of Labor’s opposition to the original bills, and it remains now. I urge my Senate colleagues on the crossbenches to support Labor in calling for their passage only with substantial and fundamental amendments.

It should be clear to this chamber that the coalition was not interested in the United Nations High Commissioner for Human Rights. Its package of legislation failed on both of these counts. The definitions of key terms such as ‘terrorism’ were too broad, encompassing a range of actions which ordinary Australians would hardly view as acts of terror. Additionally, the powers granted to the executive—specifically to the Attorney-General—were too wide. It was of great
concern that one member of the executive government should have the power to deem what organisations are legal and what organisations are to be prohibited and, furthermore, that this power be without any means of review. We doubt that an Attorney-General, even with the best of intentions, would be able to fairly determine which groups should be allowed and which should be banned. We fear the actions of an Attorney-General who possesses this power without the best of intentions.

Let us look at some of the ugly provisions which Daryl Williams originally tried to inflict on the Australian people. The Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and related bills, in their original form, found provisions covering treason which were so broadly defined that organisations such as the International Committee of the Red Cross and Amnesty International could have been exposed to criminal liability; provisions which could include so-called unlawful political acts such as participating in a union picket line or protesting against a detention centre, or any other abhorrent government practice within the definition of terrorist action; provisions which would levy a life sentence against those who have unknowingly performed an act which is later connected with terrorism; provisions that would allow one person, the Attorney-General, to proscribe, without any real avenue for appeal, groups as being terrorist organisations; provisions that would make terrorists of groups who oppose a government overseas, no matter how unconscionable that government may be; and, finally, provisions which would vastly relax the restriction of ASIO and the Australian Federal Police to read the private emails of Australians.

Under the original proposed bills, emails of private citizens would be easily obtainable when sitting on the computers of an Internet service provider—even before the recipient has read them. Electronic Frontiers Australia aptly described this ridiculous provision as being analogous to a rule declaring that postal mail remains protected from interception while being delivered by the postman and transported in Australia Post vehicles, but not while stored in Australia Post premises awaiting delivery. Under that legislation, groups supporting freedom movements in Burma could be declared proscribed organisations. Supporters of Aung San Suu Kyi in Australia could risk 25 years imprisonment. And under those original bills, one could envisage a situation where China formally asks the Attorney-General to declare the Falun Gong or Free Tibet movements to be proscribed organisations because they are ‘likely to endanger the security or integrity’ of that country. This would ban those groups and make terrorists of individuals who sign a petition or drop a dollar into a box to support them.

When he first encountered opposition to these bills, the Attorney-General seemed surprised. He tried to have us believe that the fears being expressed were groundless. The Attorney-General is quoted as saying at the time:

There are some who seem incapable or unwilling to accept the need for or the intent and application of the legislation.

He derided the majority of Australians who opposed the bills, grouping them as people:

… that delight in conspiracy theories about dark government plots.

He is also quoted as saying:

It is simply naive to suggest that what we are proposing is unnecessary or an over-reaction …

But I think the record shows that it was the Attorney-General who was being naive. He thought that his rhetoric would be enough to meet the concerns Australians have with this legislation. However, Labor is not so naive that we would entrust our democratic rights to the uncertain mercies of individuals with no mechanism for accountability.

The Attorney-General’s response to the threats facing Australia has been an uncompromising all or nothing approach to security. This, of course, has been tested and the Attorney-General has been forced to give ground. This is a positive outcome and is a result of intense political and social pressure on the government from people who have expressed their view; they have expressed it loudly, consistently, and we have seen some movement. The Attorney-General stood up
and said that those of us who are interested in protecting our rights are:

… deliberately misrepresenting the legislation to further their own political agendas.

He told us to:

… debate on the facts, not simplistic slogans.

He had the nerve to stand up and tell us furphies, such as:

… the community is prepared to make … sacrifices of individual civil liberties …

or that:

… the changed security environment has necessitated the type of legislation currently before the parliament.

Given we are talking about the original bills here, you can see that the coalition approach initially was to wind up rhetoric in a way that put fear in people—real fear that people are feeling—and exploit that fear, rather than to come forth with a sensible piece of legislation and actually try to solve some of the problems. It is interesting that, despite the coalition’s best efforts to use fear as their major political battering ram, the Australian people rejected it; they did not allow it. They demanded protection from terrorism and they also demanded that their parliament be responsible in putting those protections in place and not be extreme and ridiculous and deny the democratic rights that we have in this country.

Despite his willingness to rip up the civil rights of Australians, Daryl Williams has been forced to accept that his legislation was unacceptable. He was forced to go back to the drawing board. The coalition had failed to deliver a rational, considered approach to terrorism prevention. The measures proposed by the Attorney-General did not reflect a reasonable assessment of the threat. This was reflected in the committee report very clearly. Following consideration of this report, and abiding by Labor’s principles, Labor proposed amendments to bring the bills into line with those principles, with that report prepared by the Senate committee and, indeed, with the community views of this country. We have insisted on a range of amendments, and the coalition has agreed to many. However, there are some proposed changes that we have put forward that we anticipate will be rejected by the coalition.

Labor would like to see at least the cross-benches, if not the coalition, accept the changes we put forward as necessary and sensible, otherwise we will not be able to support these bills. Whereas the original bills represented an overreaction to the threat facing Australia, and trampled on the democratic rights of Australians in the stampede to protect them, these amendments are the result of a careful and considered approach. Labor have resisted the temptation to succumb to panic or to try and use fear to manipulate the public into accepting a bill that not only was incapable of addressing the real concerns in accordance with our fundamental democratic principles but sought to go over the top with its own extreme reaction.

Labor has taken into account the bipartisan recommendations released by the Senate Legal and Constitutional Legislation Committee. I would like to take this opportunity to congratulate the committee for being unafraid to criticise the bills in the environment of Mr John Howard’s khaki hysteria. We saw in the deliberations of that committee, particularly by Labor senators—and I acknowledge the work of my colleagues on that committee—but also by coalition members of this place, an acknowledgment of the folly of the original bills and pointers to a sensible way forward.

If our amendments are successful, we will have improved the effectiveness of the proposed legislation both in defending Australia from terrorism and by simultaneously removing the most abhorrent and outrageous aspects of the bills. Our amendments, if passed in full, will find the right balance between providing a secure nation and a secure democracy. I alert my fellow senators to five important changes we propose. Most importantly, we have deleted the government’s arbitrary proscription regime. These provisions were so repugnant that even the Senate committee which looked into this legislation recommended unanimously that they should not be enacted. However, we are mindful of the necessity to restrict the operation of terrorist organisations and for this reason Labor have recommended an alterna-
tive course that will effectively meet the threat posed by terrorist organisations without endangering every organisation which holds a political opinion. We propose to tighten up the vague and unacceptable definition of ‘terrorist act’. Under Labor’s amendments no unionist would be considered a terrorist merely for setting up a picket line; no protesters would be considered a terrorist for engaging in minor acts of civil disobedience.

Our amendments remove the elements of absolute liability for terrorist offences. This means that if a person unknowingly assists in the preparation of a terrorist act they will not face life imprisonment. Naturally, those people directly or indirectly planning an act of terror will still face the full brunt of the law. We propose to modify the provisions relating to treason so that no member of a humanitarian organisation, like the Red Cross or Community Aid Abroad, will be guilty of treason for rendering succour to injured parties. We have forced the government to concede that stored communications, such as email, are only ever to be made available to security agencies holding the appropriate telecommunications interception warrant. In fact, precisely because of our opposition to this particular aspect of the bill, the coalition have had to turn around and accede to that and put forward their own amendments to rectify the situation. It is quite right that they should do so.

There was no need for the offensive, broad-ranging ambit of the government’s antiterrorism legislation and I think the coalition now see that to be the case. I think they accept this. I think that their amendments being put forward today, whilst they do not go far enough, are an acknowledgment of their over-the-top approach initially. They also expose the coalition as being willing to exploit for some political advantage the genuine fear about terrorism held by members of the community. Worse still—to think the worst of the coalition, which I think is a very accurate way to view them—this piece of legislation was an attempt to divide people’s views about terrorism and particularly to provoke Labor into opposing the legislation all out. This gambit has failed for the government because not only have Labor stuck to our principles but we have made the government see our way and see that you cannot play with democracy in the way they have tried to. Had the Attorney-General insisted that those original bills go through, it would have been at the cost of our democracy. He was wrong. We now know, and I think the whole of Australia knows, that he was wrong in taking that approach.

Once again, with Labor’s amendments, and taking into account the government’s changes, there is an opportunity here—if not today, then soon—to bring this legislation into line with what is in the best interests of Australians. This will be with the government’s own changes but also with all of Labor’s amendments. I urge the Senate—those on the crossbenches and the coalition—to look at Labor’s amendments and to further consider the propositions we have put forward, as I do believe they genuinely achieve the balance between security and democracy that we are so keen to achieve through this exercise.

I would also like to comment on the community campaign and thank all of the rank-and-file members of the Labor Party who have been so active in expressing their views on this particular issue. There is nothing like a threat to democracy to inspire those who are committed to participating in the civic affairs of this country. Many of those people are of course Labor Party members, and I honour and respect their commitment to researching the issues and to sharing their opinions with their elected representatives in this place. I also acknowledge the community response. It is not very often that such a united voice is heard, whether it is from social commentators, from writers of letters to newspapers or from email, as my colleague Senator McKiernan mentioned. Many avid emailers have let their views be known. I have to say that that community campaign has been focused overwhelmingly on changing the coalition’s abhorrent approach to the original bills. I believe that many of the changes we were able to put forward will not only satisfy our own principles as a party but alleviate many of the tensions and concerns that exist in the commu-
nity about the threat to democracy that was in the original bills put forward.

It will be interesting to see how the coalition move through this debate. I know the committee stages will be fascinating for many people to watch not only around this building but also in the community. I hope to see further movement in the coalition, as this will be a real test of whether they are committed to putting in place an antiterrorist regime worthy of this great democracy or whether it is an exercise in making people fearful without providing a satisfactory solution. Once again, I urge my senatorial colleagues to give the strongest possible consideration to the amendments Labor are putting forward. I acknowledge that the coalition have moved somewhat and I look forward to their moving even further and supporting our amendments.

**Senator BRANDIS (Queensland)** (4.52 p.m.)—I have sat here for the last little while and listened to one of the most absurd, irresponsible and lamentable speeches I have ever heard in the Senate. I say through you, Mr Acting Deputy President, to Senator Lundy: there are some matters that are just too important to be made the subject of cheap, petty, political point scoring. The security of this nation, and the attempts of the Howard government to deal in a balanced way with the unique and new threat posed to that security, are far too important to be made the subject of such cheap and foolish remarks as we have just heard from you. What an absurd proposition it is and how offensive it is to a good and decent and liberal-minded man like Mr Daryl Williams, the Attorney-General, to suggest that this legislation—whether in its original or its ultimate form—was driven by some kind of covert desire to assault democratic values. It was driven by nothing of the sort; it was driven by a felt necessity—which we rather thought all political parties in the Senate would share—to defend and protect Australian national security.

**Opposition senators interjecting—**

**The ACTING DEPUTY PRESIDENT (Senator Forshaw)—** Order! Most of the debate so far has been conducted in relative silence. I ask senators to come to order, please.

**Senator BRANDIS**—I for one, as a government senator, did have some criticisms of the original form of this legislation, and I will come to that in a moment because the criticisms that I had—and that I know people like Senator Payne, Senator Mason and Senator Scullion on the Senate Legal and Constitutional Legislation Committee had—have been dealt with in a most cooperative, balanced and sensitive way by the Attorney-General. I will come back to the process whereby the Attorney-General and the government did accommodate proper criticisms—not criticisms, I might say through you, Mr Acting Deputy President, to Senator Lundy, that came from the Australian Labor Party; there has been no political party in this country more marginalised in this debate than the Australian Labor Party—that were made within the government and within the government backbench. Those criticisms that some of us had have been well and truly satisfied.

Let us look at the context in which this anti-terrorist legislation comes before the Senate. It comes before the Senate at a time when Australia is at war. Australian troops, as we speak, are deployed in Afghanistan. Already, an Australian life has been lost in the course of battle in that war. Australia is not merely engaged in Afghanistan but engaged—as it should be engaged and as the Labor Party and the crossbench parties accept that it should be engaged—in the global war against terrorism.

In situations of national emergency, at times when national security is at stake, it is very important that governments do not overreact. I share the view of those on all sides of politics who have expressed that opinion. Equally, it is important that governments not be deterred by fear of being accused of overreacting from taking appropriate and strong measures. That is why all sensible participants in this debate have called for balance. The legislation, in the form in which it comes to the chamber today, with the government amendments incorporated in it, reflects that balance. That balance reflects both the need for national security—
for the nation to be protected—and the need not to give governments a blank cheque so as to impose unnecessary restrictions on civil liberties. The legislation does achieve that balance.

I approach this legislation in the spirit of a very great judge, a judge who was born in my own state of Queensland, Lord Atkin. In the great case of Liversidge v. Anderson, during the course of the Second World War, somewhat similar legislation was considered by the House of Lords in 1941. Lord Atkin said:

... amid the clash of arms, the laws are not silent ... they speak the same language in war as in peace.
The laws of Australia are not silent; they do speak the same language in peace and in war. Those laws have to balance the requirement to protect our nation’s security with the need not to impose unjustifiable impositions on the liberty of the citizen.

The war on terrorism in which we are engaged today, which this legislation is designed to address, is a war like no other. There are five particular respects in which this is a war like no war that the world has ever seen. The first respect is that it is not a war against a visible enemy; it is not a war against an easily definable political unit. It is certainly not a war between nations. So, in dealing with the threat that terrorism proposes and in addressing the steps that must be taken to meet the dangers posed by terrorism, there will immediately be an obvious problem of definition. One of the things that this legislation seeks to do—and, I believe, in its ultimate form has accomplished—is grapple with the difficult problems of definition: the definition of a terrorist act, the definition of a terrorist organisation, the definition of the type of conduct that constitutes giving comfort to terrorist organisations.

The second respect in which this war is a war like no other is that this is a war almost exclusively against civilian populations. It has always been a war crime to wage war against civilian populations. But this war being conducted by terrorists is exclusively a war against civilian populations on their own domestic territories—like, obviously, the horrible acts of 11 September last year. The fact that the necessity in this war is not so much a necessity to protect territory but a necessity to protect civilian populations also raises a new and unique set of problems.

The third respect in which this war is a war like none the world has ever seen is that it is not a war about the conquest of territory; it is a war about the sporadic, episodic destruction of civilians. And, again, that produces new and unique difficulties. A fourth respect in which this war is different from all others is that it is not a war between armies; it is a war between isolated individuals who can merge into the population of a Western democracy such as ours and, with the assistance of merely two, three or four people, cause unimaginable suffering, death, terror and destruction, as we saw so horribly last year.

It follows from each of those unique circumstances that this is a war in which to protect ourselves we must anticipate the conduct of the enemy before that conduct is able to be engaged in. The victories in this war are victories of a negative kind. The victories of this war are the prevention of terrorist acts—not the success of armies in battles, not the conquest of territories, but victories of prevention. In order to secure those victories it is absolutely essential that Western democracies—indeed, all the peace loving nations of the world—have a capacity to anticipate, to intercept and to prevent harm to their civilian populations. As Senator Stott Despoja said in her speech on the condolence motion after the events of September 11:

The response—that is, to the terrorist threat—must be information led—we need to know the enemy.

So if there are unusual features in this legislation it is perhaps for the very reason anticipated at the time by Senator Stott Despoja. The key tools of all tools in this war—this war of prevention and anticipation rather than battle and conquest—is information, access to intelligence and the capacity to move into terrorist cells and prevent them doing their dastardly work.
I mentioned earlier in my remarks that, with respect to the original form of the bill—the bill to which Senator Lundy spoke so artlessly and, if I may say so, irrelevantly—there was a view among some on the government side that the right balance had not been struck. I have spoken in the warmest language of commendation about the spirit of cooperation shown by the Attorney-General and the government in meeting those proper concerns that the balance not be tilted too strongly in favour of security by unnecessary intrusions on the liberty of the citizen. The government’s response to those concerns—concerns not reflected in the ratbag rantings of people like Senator Lundy, but reflected in the judicious and considered observations of people like Senator Payne and Senator Mason—has been a splendid response. It shows that our democratic institutions have worked in a cooperative spirit to produce good legislation.

There are four particular respects in which the government’s amendments have met those concerns. The first respect is to create a defence to the offence of treason relating to the provision of humanitarian aid. In a foolish and scaremongering way, Senator Lundy suggested humanitarian organisations like the Red Cross could be caught by this legislation. The legislation comes before this chamber with the government’s amendments to prevent that from happening. It is an irresponsible thing to cause fear in the hearts of good men and women who put themselves in situations of hardship and risk, like those in the humanitarian organisations, to suggest that they could in some way be imperilled by this legislation as amended. They cannot be—that is the express purpose of the first set of government amendments.

The second effect of the government amendments is to remove the proscribed organisation provisions and to replace them with a range of specific offences in relation to terrorist organisations. I was one—it is a matter of public record; I published an article about it in the Courier Mail about three weeks ago—who believed that the idea of merely proscribing organisations by fiat rather than by requiring a prosecuting authority to prove that an organisation was indeed engaged in terrorist activity was a bad idea. That point of view, which was put to the Attorney-General by the backbench committee and by the Senate Standing Committee on Constitutional and Legal Affairs, was quite properly adopted by Mr Williams.

The third set of amendments which form part of the legislative package before the Senate today will tighten the definition of a terrorist act. We all know—everyone in this chamber is a legislator—that loose, porous and open textured definitions make bad legislation, particularly when one is concerned with the creation of offences which expose people to serious penalties. So the definition of a terrorist act has been made much more tight and it has been confined as it properly ought to have been.

Fourthly, the legislation in its amended form will remove absolute liability and remove the original idea of a reverse onus of proof in respect of fault from the terrorism offences and replace those with tiered offences carrying different fault elements and graduated penalties—once again, a prudent, proper and considered response which balances the absolute importance of protecting the liberty of the subject and the presumption of innocence against the vicissitudes of national security in the unique and challenging circumstances of the war on terrorism which I have outlined.

In closing, I must say that it always brings a smile to my lips when I hear people from the Left lecture the Senate or make public pronouncements about civil liberties. The parties of the Left have no credibility on the question of civil liberties at all. Throughout the 20th century the greatest invasions of the liberty of citizens of various nations were those perpetrated by the parties of the Left. Recently Senator Mason and I had cause to comment on that matter in a letter which we wrote to a community organisation which has lately received some notoriety. I will finish on this note because I think Senator Mason is going to follow me and he may have something to say about this as well. The letter said:

The greatest moral failing of the Left in the 20th century was its embrace of moral equiva-
— the view that cultural differences are a legitimate justification for moral and ethical elasticity. Thus Maoism and its forty million victims was for some on the Left merely a legitimate expression of Chinese cultural identity. Some among the Left leaning commentariat and political class still assert that America and the Soviet Union were as bad as one another—that liberal democracy is no better than communism, just different.

If you want to identify the greatest moral and intellectual failing of the 20th century it is that gross and elementary moral error. And it was not the people on our side of the chamber who made that error. It was the people of the Left and the latter day apologists, including still, I am sorry to say, some in the Australian Labor Party.

Senator MASON (Queensland) (5.09 p.m.)—It is wonderful to follow a colleague who has such a profound sense of history.

Senator Forshaw—Nelson Mandela was on the Left.

Senator MASON—It is interesting about Nelson Mandela. He eschewed a few things in recent years: one was communism, then socialism and then the culture of entitlement—all three I hope Senator Forshaw would also eschew. If I can get back to the topic—

Senator Mark Bishop—You’re the one who deviated from it.

Senator MASON—I like to address the arguments of the Left because they have not got too many left. I would like to make some general comments about the government’s approach to this package of legislation. My friend Senator Brandis has, as usual, eloquently outlined the legislation and the fact that the government’s approach is appropriate in this context. Australia is at war and in fact our military commitments are as extended as they have been since the end of the World War II. I want to quote from an article by Melanie Phillips entitled ‘How the West was lost’ in the Spectator of 11 May 2002. Ms Phillips says:

The mark of true decadence in the West is the fact that it is not prepared to fight for its own values but is falling over itself to appease both terrorist violence and cultural aggression.

Democracy is never imperilled by a balanced approach to external or internal threat. The worst thing a democracy can do is be afraid to defend itself. It must always assert its values and its integrity against internal and external aggression. Never again should liberal democracies do what Weimar Germany did, and that is to be scared to defend itself.

As Senator Brandis said, for some reason the Left in this country historically always gives the benefit of the doubt to someone else. They are not ever prepared to stand up and say, ‘This is an appropriate action for our country.’ I believe, and the government believes, that in these circumstances the benefit of the doubt should always go to liberal democracies and not to the intentions or supposed intentions of terrorists. This is a balanced proposal. As Senator Brandis said, it is a balance between internal security against, often, terrorists and fifth columnists that are very difficult to detect and, at the same time, civil liberties. That is the equation—civil liberties and security is the dynamic. It is a matter of public record that the government has had long and detailed discussions about the formation of this legislation. That I agree with. I concede also that the legislation as originally drafted did perhaps have some faults. But because of the workings of the Liberal Party and the coalition, those faults have been ironed out and the balance is now about right.

Senator Brandis mentioned the issue of proscription. I agree with him. It was a problem. The legislation as originally drafted was not supported by me. That is a matter of public record. I would like to praise the Attorney-General, Mr Williams, for his receptiveness of the views of party members.

Senator Hutchins—Didn’t he get rolled?

Senator MASON—It is not like that. The Liberal Party does not work like that. It is a consultative party. I cannot thank the Attorney-General enough for his willingness to listen and for the package that he ultimately came up with under, I must say, enormous pressure at times—pressure of time and pressure of community interest.

In this environment, we often look at legislation and wonder how it fits within the
context of the time. I suspect that, if this legislation had been debated on 12 September last year, it would have gone through in a flash and the Australian Labor Party would not have had any arguments at all. Indeed, I suspect that they would have been scared to raise any arguments in opposition because they know that community opinion demands that this country protect itself. That, I suspect, is the core. Until 11 September we—the government and, I suspect, most Australians—thought that we were relatively secure, in a safe part of the world and that our environment was largely safe and secure. But what do we now know? It is not.

Again, I am concerned that, on issues of security, the Labor Party always try to trim and straighten. They always do that because they are scared to back their own country. The government has not just proposed this package of legislation. It has done more than that: it has reviewed security arrangements across the board. In the budget, more money was given to security agencies. There has been finetuning of state and Commonwealth intelligence agencies. This has all been done not only to ensure that this country can withstand terrorist attack but so that we can determine whether there will be a terrorist attack. I do not mind saying this: this legislation will not make Australia safe—nothing will. Nothing will make Australia safe and secure as a matter of certainty. But, within the confines of legislative capacity, this package of legislation reflects a tempered and balanced response to the terrorist threat.

In short, the proposed legislation will create a specific offence for involvement in terrorism, dry up the funds that terrorists rely on, impose severe terms of imprisonment on those found guilty of delivering or placing bombs with the intent to cause death or economic destruction and strengthen the capabilities of our intelligence agencies to prevent and combat terrorism. More than that, the aim of this legislation is to allow security agencies to identify and deter terrorists. That is a very difficult thing to do in a liberal democracy. I agree with the Labor Party in this sense: you can mow down all the civil liberties and simply have a barren field left, but that is not a barren field anyone would want to live in. I accept that argument, but I have little doubt that the package of legislation here before us this afternoon is a tempered, moderate and appropriate response to the threat.

In conclusion, I hope that the Labor Party joins the government in supporting this package of legislation. I do not want to see Australia again divided between the Left and the Right on security issues, where the coalition constantly has to back Australia first and the Labor Party constantly says, ‘Oh gee, perhaps the threat isn’t there; perhaps the benefit of the doubt should not lie with a liberal democracy.’ This is a case where all parties in the chamber should join with the government. Finally, I want to congratulate the Attorney-General for what he has done, for the package of legislation. I think all senators would agree that it is a very good response to an awful threat.

Senator COONEY (Victoria) (5.19 p.m.)—The commitment of the Australian Labor Party to the security of Australia has been put in question by the last two speakers. It has been implied that the Australian Labor Party has not stood for Australia in its time of threat. How does that stand with the history of Australia? At its darkest hour, when the Japanese were coming south, when this country was in danger of being invaded, when a crumbling, conservative coalition fell apart, who was it that saved Australia? The Labor Party saved Australia. John Curtin gave his life as the leader of this country because the conservative forces were not capable of meeting the threat, not capable of meeting the challenge, that Australia then faced. The Labor Party, alone and unaided, saved this country in its darkest hour.

Senator Brandis—Are you saying there was not bipartisan support for the Second World War, Senator Cooney?

Senator COONEY—You have raised the question, Senator Brandis. In contrast to the situation in the United Kingdom, where there was a cabinet which consisted of people from the Conservative Party and the Labour Party, in Australia the cabinet consisted only of Labor Party people. When there is an attack made on that party, which saved Australia in the time of its greatest threat, then a
defence and vindication should be made of this great and glorious century-old party.

There has been talk again about the Left and the attack from the Left. Let us see who put aside the previous piece of legislation like the one that is now before this parliament—it was not exactly like this legislation but had the same general thrust. I refer to the Communist Party Dissolution Act—an act to provide for the dissolution of the Australian Communist Party and other communist organisations and to disqualify communists from holding certain offices and for the purposes connected therewith. That act was assented to on 20 October 1950, having passed through parliament by the votes of the coalition and the Labor Party. The major parties agreed on this. What did that act purport to do? It is worth reading some—I will not read all—of the preamble. It states:

AND WHEREAS the Australian Communist Party also engages in activities or operations designed to bring about the overthrow or dislocation of the established system of government of Australia and the attainment of economic, industrial or political ends by force, violence, intimidation or fraudulent practice:

AND WHEREAS the Australian Communist Party is an integral part of the world communist revolutionary movement, which, in the King’s dominions and elsewhere, engages in espionage and sabotage and in activities or operations of a treasonable or subversive nature and also engages in activities or operations similar to those, or having an object similar to the object of those referred to in the last two preceding paragraphs of this preamble.

So it goes on. That is what this act was meant to achieve. That was the legislation passed by a unanimous decision of the Australian parliament. We presume that what was said then was taken to be true. Hasn’t that got a very similar ring to the sorts of things that have been put forward in this chamber today? It has been said by Senator Mason and Senator Brandis that those from the Left have overthrown, have put aside, have damaged, have prejudiced that sort of legislation. That is the thrust of what they say. So let us have a look at the left wingers who put this legislation aside. Let us have a look at the left wingers that threw out this legislation: Dixon, McTiernan, Williams, Webb, Fullagar and Kitto.

Senator Brandis—McTiernan was a leftie.

Senator COONEY—McTiernan was a leftie; a good appointment, one of the youngest judges ever appointed by the Labor Party. I do not know whether the others would qualify, Senator Mason or Senator Brandis, as being from the Left. These are the sorts of people who put aside legislation with the same general thrust as that which we are debating now.

Let us think about the Left and what the Labor Party has done and think about the Second World War and who threw out the Communist Party Dissolution Act and then look at today’s legislation. This time next week, I will be spending my final time in this chamber. So I think it is appropriate that I go back to my first speech—it is no longer to be called a maiden speech—on 27 February 1985. I had this to say:

A sentiment becoming more pervasive in this society is that those who advocate the primacy of civil liberties weaken the fabric of society. I have not changed my mind on that because it is a fact that what is being put today is ‘a sentiment becoming more pervasive in this society is that those who advocate the primacy of civil liberties weaken the fabric of society.’

Senator Brandis—I never said that, Senator Cooney.

Senator COONEY—I accept that, Senator Brandis. I ought to put that denial on the record. I went on to say in my first speech:

In July 1983 Mr Frank Vincent, a leading Melbourne silk—he is now a member of the appeal court in Victoria, a most eminent jurist—in addressing the National Crime Commission conference in this chamber, said about civil liberties:

We need to appreciate that those liberties must not be conceived of as standing in the way of an ordered and properly run society but represent the values of that society and the value of that society.

The Victorian Bar has been and is a strong one.
I am not denying that the Brisbane bar is a strong one, Senator Brandis. The speech continues:

It has had many outstanding counsel over the years. Amongst the foremost has been Mr Laurie, of Her Majesty’s Counsel. He had particular sensitivity to the issue of civil liberties. At the height of the Cold War he appeared as successful counsel in the Australian Communist Party and Others v. the Commonwealth and Others. But for that case and the subsequent referendum, Australia would now be a less democratic and a more repressive society. Courage to undertake an unpopular action, willingness to suffer financially for principle, marked powers of persuasion, and the character of a true man were qualities he showed. They are priceless qualities and most worthy of emulation. Freedom, community and dignity for all would be close to realisation if such qualities permeated more widely.

I would not change what I said there in any way. The aim of us all must be to suppress terrorism. The idea is to get the terrorists, not to use the legislation that is enacted against terrorists to suppress those who are not terrorists. I think Senator Brandis would agree that it is a fearful, dreadful and horrible thing to punish someone as a terrorist if he or she is not a terrorist.

That is why the Crimes Act 1914 is amongst one of the greatest civil liberty documents in this country. The Crimes Act 1914 sets out a series of things such as forensic procedures, the issuing of warrants, how people are questioned, how long people can be taken into custody when arrested and so on. All those provisions in the Crimes Act 1914 are directed to seeking and obtaining a balance between the public interest in suppressing crime and the public interest in preserving our civil life.

It is because the Crimes Act is so important that I want to acknowledge some people here today because I have got great admiration for them. I see here a person I have known and admired for many years, Mr Keith Holland, who is central to this legislation. I also see Dr Karl Alderson, who has recently become a doctor in this area, and Sarah Chidgey. I would like to acknowledge the work that they and the Attorney-General’s Department have done over the years in striving to meet that balance. I would like to pay tribute to them and to the department for the way it has done that over the years because it is a function that is absolutely vital to the way we do things in this society. The way we get that balance is essential if we are going to live in the sort of society we want.

I have quoted myself, which is rather immodest, but at times of sentiment like this—and nostalgia and dreaming of the past—I think it is justified! But my next quote is Latin—and it is something I have wanted to do: quote Latin in the chamber. I hope the Christian Brothers do not get upset by this, I hope I have got it right. Juvenal wrote 2,000 years ago:

Quis custodiet ipsos custodes?

Who is to guard the guards themselves?

When we equip people with the ability to question us, when we equip people with the ability to take us into custody, when we equip people to proceed against us and to prosecute us and to put us into jail pursuant to laws which are oppressive—when we do that, we have got to ask ourselves the question of who ensures that they go about their task in a proper and right way.

The same sort of thing comes up again and again through history. I noted that Richard Nixon in his memoirs states that in March 1954 President Eisenhower, disturbed by the activities of Senator Joe McCarthy, wanted to make a public statement—which he ultimately did not do, but Richard Nixon says he wanted to say it:

... that those who investigated communism were as great a danger as the communists themselves, and that the methods of investigators were the same as communist methods ...

What we must always do is to ensure that we do not—

Senator Robert Ray—But he was a commie in the end.

Senator COONEY—Yes.

Senator Robert Ray—The KGB files at least proved he was a commie.

Senator COONEY—I am not going to reply to that—he is not here to defend himself.

Senator Ludwig—Does it really matter?
Senator COONEY—You ask whether it really matters—it does. It is a theme that we return to again and again. I would like to quote—again, in this context—from Mr Justice King, Chief Justice of South Australia. He told the Criminal Investigation Bureau of his state in October 1982:

I emphasise the need for retaining a proper sense of perspective and proportion because anti-crime zeal can easily degenerate into hysteria and bring in its train greater evils than those which it aims to cure. Crime to a great extent is a by-product of liberty. Wherever men and women are free, a proportion of them will misuse their freedom. Probably the crime rate could be considerably reduced by curtailment of the citizen’s freedom of expression and action. The price would surely be too high. Rules of law which protect the citizen against arbitrary arrest and detention, against unfair treatment while in police custody, and which protect his home against arbitrary invasion by persons in authority, must be maintained. Any reduction in the crime rate purchased at the cost of the loss or curtailment of genuine civil liberties would be purchased at too high a price.

I am putting these matters in as matters of principle, and we will return to them in the debate at the committee stage. To be fair to Senator Brandis and to Senator Mason, I would say that they would agree with those principles, and I take it that the area of debate is where the fulcrum of the balance should be placed. That is the sort of thing that we will discuss in the committee stage. I think the principles I have set out are the ones that we ought to talk about.

Can I return to that first speech of mine and to Mr Laurie. Since I gave that speech he has died. That is a matter of sorrow to me. He was a man of exceeding graciousness, of great ability and a person who sacrificed much for the principles he believed in. I think this legislation we are talking about is the subject of one of the great debates. I think the parliament and both party rooms ought to be congratulated on the way in which they have gone about the task of trying to get this legislation into the situation that it ought to be. Let us see what happens in the committee stage and let us hope that by the end of that process we have got legislation that not only vindicates our need for security but also vindicates our need to be free, proud and dignified people going about the great tasks of our lives.

Senator GREIG (Western Australia) (5.38 p.m.)—I rise to speak on the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and related bills. Following the events of September 11 last year, several social commentators warned that people around the globe should be vigilant and guard against governments responding quickly with draconian legislation that violates civil liberties. People are understandably concerned that the environment of fear and anxiety surrounding contemporary terrorism is not exploited by governments and their law enforcement and spy agencies in enacting legislation giving themselves exceptional powers in a way which would be unthinkable under normal circumstances. The war on terrorism must not become a war on democracy.

The Australian Democrats are very concerned that the original suite of antiterrorism bills is in fact a worrying sign of the very sort of ad hoc and ill-considered legislation that some gave warning of last year. It contained some of the most regressive and alarming pieces of alleged law enforcement proposals that we have seen in comparable jurisdictions. The ambit claim in that legislation seemed to go way beyond that which would appear to be necessary. Nobody, least of all the Australian Democrats, is suggesting that terrorism is acceptable, that terrorists should be shown leniency or that terrorists should be provided with an environment in which to flourish. But in framing laws to protect the freedoms and liberty we cherish—or perhaps too often take for granted—it is critical that we do not undermine the very freedoms and civil liberties that we aspire to enjoy and maintain. You cannot uphold freedom and democracy by asking people to give up that freedom and democracy in the name of border protection or antiterrorist mechanisms; the ends do not justify the means.

If Osama bin Laden and Al-Qaeda succeed, albeit indirectly, in getting countries around the world to introduce harsh, untrustworthy, draconian, knee-jerk laws that will erode the civil liberties of the citizens of
those nations, they will have brought about a global action, from despicable actions, that even they would never have dreamt of. Osama bin Laden may have brought down the World Trade Centre and damaged the Pentagon but we must not allow him to bring down democratic freedoms and damage the protections that we entrust elected governments to safeguard. Terrorism in all its forms is utterly unacceptable. Violence is utterly unacceptable. But in framing laws to address this we must first accept the reality that no amount of law and no penalty will stop it. Terrorists, by their very nature, are lawless and indifferent to codes of decency and socially acceptable behaviour. Whether this is a car bombing in Ireland, a suicide bombing in Israel, hijacked planes crashing into US skyscrapers or threats of anthrax being posted through the Australian postal service to people in public office, the stark reality is that law in and of itself will not stop this.

I wonder whether this legislation as proposed, if it were fully in place in the US one year ago, would have stopped the events of September 11. I do not think so. That attack was, for the most part, alarmingly simple. Flying lessons provided the training. Stanley trimmers, or box cutters as the Americans call them, were the principal weapons used to overcome flight crew. While hundreds of millions of dollars in war machinery and antinuclear defence shields were providing Americans with a false sense of security, the crudest of strategies brought down the twin towers and killed thousands. Like most people, I was horrified but transfixed by this imagery—largely because of the basic simplicity of it. You could understand the fear that rippled around the world as people asked themselves and their governments, ‘Are we safe from this? Might we be next?’ The question that parliament needs to address therefore is not what laws will stop terrorism but what measures can the authorities reasonably take to prevent it. What steps can reasonably be taken to intercept terrorism activity or planned activity and, if such activity is discovered, what penalties should apply to individuals and organisations?

There has been an enormous amount of rhetoric about how the world has changed forever in the aftermath of what we now refer to simply as S11. I am not so sure. I am not convinced that we live in a radically different world. The threats and opportunities for terrorism were as real before S11 as they have been since. The conditions that produce and nurture terrorism are still as real and as stark as they ever were. I think what has really changed is our perception of terrorism—or at least an awakening to the fact that it now exists more as an organised and foreign political entity as opposed to the more familiar but nonetheless shocking internal and ad hoc terrorist acts. Until recently, terrorist attacks on US soil have been internal; the Oklahoma bombing and the first bombing of the World Trade Centre are just slame examples. Other examples of internal terrorism are relatively recent bombings in Ireland and Israel. However, not since the early 1970s, which saw a spate of hijackings, has terrorism swung around into the sharp global focus that it has today. It has a particular emphasis on extremism emanating from the Middle East and a religious flavour. Regrettably, this stereotyping has caused all people of Middle Eastern background and Islamic faith to become the target of suspicion, mistrust and occasional abuse. As a nation, we need to take great care not to equate Islam with terrorism or Islam with religious extremism.

The suite of bills rushed into the House of Representatives to address the government’s administrative and political concerns with terrorism received bipartisan support. Both the government and opposition voted for the package of original antiterrorism bills. They were subsequently derailed and are now significantly altered following understandable community outrage and anxiety and scrutiny by the Senate Legal and Constitutional Legislation Committee, which produced a unanimous report of deep criticism and advocacy of wholesale reform to the legislation.

In essence, the bills were designed to update and expand the existing offence of treason, create new terrorism offences, allow the Attorney-General to proscribe an organisation that has a specified terrorist connection or is likely to endanger the security or integ-
rity of the Commonwealth and make membership and links with such organisations an offence. While at first glance this may seem reasonable as a means of addressing the violent crime of terrorism, the devil was in the detail or at least in the definitions. The legislation proposed to replace the existing treason offence defined by the Crimes Act 1914, modernise the wording of the treason offence and provide a new ground for the offence being that of 'engaging in conduct that is intended to assist and does assist, by any means whatsoever, another country or an organisation engaged in armed hostilities against the Australian Defence Force'. The Democrats have been deeply concerned that such a definition could conceivably include humanitarian aid and relief and similar non-military activities. This concern was also strongly argued by both the Criminal Defence Lawyers Association and the Human Rights Council. They argued that, in addition, the definition of the word 'assists' could well expose humanitarian organisations, such as the international Red Cross and its members, to criminal liability.

There is also the possibility that well-meaning groups here in Australia could fall foul of such a law simply by demonstrating in support of a country or organisation with which the ADF was in conflict. The Senate committee which inquired extensively into these bills acknowledged that there are serious problems arising from definitional issues in that regard. The committee rightly recommended that this aspect of the bill be amended so that the terms 'conduct that assists by any means whatsoever' and 'engaged in armed hostilities' are defined in order to ensure that the humanitarian activities of aid organisations are not caught within the ambit of the offence of treason. The Democrats wholeheartedly agree with that.

The definition of terrorism also drew strong reaction from those who participated in the inquiry. It became, in many ways, the critical point where many people saw the fine line between antiterrorist legislation and its blurring with the general antidissent powers of government. As it happens, defining terrorism seems to be problematic at a global level. Many definitions exist and some seem to conflict. The definition before us today, as I understand it, would have us believe that terrorism is an action done or threat made with the intention of advancing a political, religious or ideological cause, and the action involves serious harm to a person, involves serious damage to property, endangers a person's life other than that of the person taking the action, creates a serious risk to the health or safety of the public or section of the public or seriously interferes with, seriously disrupts or destroys an electronic system including an information, telecommunications or financial system, a system used to deliver essential government services or a system used by an essential public utility or transport system. For many people this definition sets off alarm bells.

It seems that this very broad definition of terrorism could catch a range of benign or simply dissident groups from protesting, marching and advocating on behalf of a cause. Certainly, exemptions appear in the legislation to exclude protests, advocacy and industrial action, but this too is problematic. It is very unclear, for example, whether a union picket, given that some are unlawful, might then fall under the definition of terrorism. For that matter, a garden variety protest march could get under way and then, through no fault of the organisers, might result in scuffles, some violence and possibly property damage, thereby bringing it within the orbit of the proposed definition of terrorism. Even a robust rally at some time in the future which gets under way without a permit could be threatened with the full force of the law. That is an alarming prospect when you consider that up to 25 years jail applies as a maximum penalty for this section of the proposed legislation.

Lawful advocacy is exempted from this bill. But what does that mean for unlawful advocacy, even when such an event is benign and only made unlawful by the political or government of the day? Today's freedom fighters can be tomorrow's terrorists and vice versa. Time and politics can change these things, as we have seen with groups as diverse as the IRA or the ANC, both of which were once regarded as terrorist organisations but which now are considered mainstream
social and political organisations with parliamentary representation. There is the great fear that a future government could use such a sweeping, broad and dangerous scope of definition to stifle dissent and to crack down on protest. It might even be possible for the current government to use such a definition and legislation, for example, to have those who damaged the perimeter fence at the Woomera detention centre charged with terrorism.

The Attorney-General has argued that he and the government have no intention of using the law in that way—that is, to crack down on dissent or objection to government policy, street protests and so on—and he is probably right. However, the chance for any future government to abuse such sweeping powers in this way must be removed. This legislation is not just about today or tomorrow; it will echo into the future for as long as it is maintained. Let us not forget that the reign of terror under way in Zimbabwe under Robert Mugabe is now being done using laws introduced by former Prime Minister Ian Smith more than 30 years ago.

As a way to circumvent this or to ensure that terrorism or a terrorist act is more clearly defined and less ambiguous, it is imperative that the notion of intent be used in any definition. The Senate committee went over this point extensively and concluded that the bill be amended to include a third element—namely, that the action or threat of action is designed to influence government by undue intimidation, undue coercion or to unduly intimidate the public or a section of the public. Certainly, there may be opportunities, and some might even say the right, for some forms of coercion or influence of government to take place. Lobby groups, protest groups and political parties from time to time will seek to coerce or influence government. However, the Democrats believe we can reasonably draw a line between that which is acceptable and that which is not or, certainly, to allow the courts that discretion. The proposal by the committee, therefore, that the definition of ‘terrorist act’ be amended to include an additional third element will assist in drawing this line and we support it.

However, an aspect of the legislation we cannot support is the proposal to give the Attorney-General sole power and discretion to proscribe an organisation as criminal and to have it banned. There is no effective appeal against this. We take the view that criminal behaviour can and should be proscribed, but to proscribe an organisation is Orwellian in nature and unnecessary in practice. The great danger to civil liberties, freedom of speech and thought in this nation is that future governments may use such proscription powers to ban any organisation with which it disagrees, of which it disapproves or by which it feels politically threatened. It is reminiscent of the Communist Party dissolution efforts of Robert Menzies. The Democrats argue there are perfectly adequate criminal laws currently in place to deal with conspiracy to break the law as well as breaking the law itself. Criminal law should always be about behaviour, not about belief or association.

The committee recommended sweeping reforms to this aspect of the legislation in recognition of the deep community anxiety about this part of the proposed bills, and also in recognition of the substantial concerns expressed by many eminent legal groups and individuals. In contrast, the Democrats consider that this proscription power should be removed from the legislation entirely. It is beyond repair in its current form. If an organisation breaks the law, or conspires to break the law, it can be dealt with. It would be the antithesis of our democracy if a member of the executive were to have the extraordinary power to ban an organisation not according to what it did but according to what it believed in and what its values were.

The proscription power in its current form is utterly inappropriate. The Law Council of Australia rightly characterised the power as:

A serious departure from the principle of proportionality, unnecessary in a democratic society, subject to arbitrary application, and contrary to a raft of international human rights standards including the right to personal liberty, the right to a fair trial, protection against arbitrary interference with privacy, freedom of expression, freedom of association and rights of participation.
The Democrats cannot support giving the Attorney proscription powers under any circumstances and have very serious reservations about the notion of proscription powers generally.

Other areas of real concern include the prospect of authorities accessing email, voicemail and SMS messages without a warrant. It is likely these would fall under the new provisions and be dealt with without a warrant, just as some 750,000 disclosures of information, such as phone records, were made last year. The Attorney-General has said this will not happen and that a warrant would be required. We are not satisfied with that and we point to the Telecommunications Act, which makes it clear that information may be disclosed under various provisions including ‘disclosure being lawful, if reasonably necessary, for the enforcement of criminal law’. This aspect of the legislation must be amended to ensure and to insist that a warrant must be required in the event the authorities believe they need to access such messages.

Strict and absolute liability is another key area of Democrat concern with the legislation. The traditional rule has been that the prosecution in a criminal trial bears the onus of proving all matters relevant to the defendant’s guilt beyond a reasonable doubt. It has always been considered crucial that certain safeguards, such as the presumption of innocence, be in place to protect the accused. The problem with imposing strict and absolute liability to offences is that it creates circumstances in which a person must be convicted under the law, even though the tribunal of fact has a reasonable doubt as to his or her guilt. It is very dangerous to impose strict and absolute liability in relation to offences that carry a sentence of life imprisonment. The committee recommendation that amendments are necessary to address the excessive and unjustified use of strict and absolute liability is supported by the Democrats.

The government has drafted a set of amendments to this legislation. We received those amendments only late last night but we will examine them very closely. On the face of it, they fall short of taking the steps necessary to ensure that these bills do not undermine important democratic rights. We are particularly concerned about the retention of the Attorney-General’s proscription power despite the very strong community opposition to it.

The Australian Democrats have repeatedly voiced our dissatisfaction with the process that has led to this debate. We believe these bills were drafted as an ambit claim for arbitrary executive power rather than as a considered response to any demonstrated deficiencies in Australia’s ability to combat terrorism. We believe the process really ought to start again in consultation with organisations like the Australian Federal Police, ASIO and the Attorney-General’s Department. The government should first establish where the gaps are in Australian law that prevent us from effectively combating terrorism, if indeed such gaps exist. The government needs to produce legislation that will address any genuine deficiencies in Australian law while not compromising fundamental freedoms. It is for these reasons the Australian Democrats are opposed to this legislation. The government is attempting to obtain extraordinary and unnecessary powers, and it is our intention to reject them outright.

Senator ROBERT RAY (Victoria) (5.57 p.m.)—This package of five security bills goes to the essence of what constitutes democracy. We have to balance the demands for effective measures to deal with terrorism yet not corrode the embedded civil liberties that we have both enjoyed and protected as parliamentarians. No democratic society can tolerate the threat of terrorism. Even if that threat remains low in Australia, terrorism knows no national borders. We, as a country, must do everything to assist the international community in combating terrorism.

We have all been subject to intense lobbying about this legislation. What has really struck me is how often the argument has been put to me that Australia is not really under threat; we do not have to worry about it. That has come from the very people who in every other circumstance are internationalists, who always argue the international cause, yet for their own purposes become
insular chauvinists to justify their position on this particular matter—that Australia is not under threat. I remind people that we all lost Australians in the World Trade Centre, so we are not immune from terrorism. I remind you of the discovered plots in India and Singapore for attacks that may well have cost Australian lives incidentally there. So we do have an obligation to the rest of the world to assist them in combating terrorism, and it is not good enough to argue that there is a low level of risk in Australia.

Of course, none of these bills can be looked at in isolation. Overall, we will have considered eight security bills by the end of this session; one has already been already passed. The most notable criticism of the need for these bills has come from the extreme right and the extreme left. As for the content of the bills, criticism has come from all political quarters, and that is because getting the balance right is extremely difficult. So there will be critics of the bills, as they currently exist, in the Liberal Party and Labor Party and, quite clearly, as we have heard, stronger criticism in other political parties.

These five bills were introduced by the government on 12 March. The first the Labor Party had seen of them was at 6.30 that night. Most caucus members did not receive a copy of the bills until 8.30 that night. We were required to hold a special caucus committee policy meeting at 10 that night and have our attitude finalised for a caucus meeting at nine the following morning. This was an onerous task, given that we had to deal with 60 pages of complex legislation covering five pieces of legislation and a further 60 pages of explanatory memorandum. Yet the government required that these bills pass the House of Representatives later that day. The fact is it took the government six to eight months to draft these bills. Why didn’t they draft them in a day if it was so easy for us to read, comprehend and analyse and make a decision in a day? Surely, it would have only therefore taken the government a day to do so. But, no, we were required to respond totally and unilaterally within 24 hours. I am not sure why this was. Maybe it was just an attempt to jam us up; maybe it was an attempt to wedge us. And we know how enamoured coalition parties are with the wedge. But I doubt that was the case. I think a more likely explanation is simply executive arrogance.

I have heard the Attorney-General go round and describe people—opponents of this—as naive. Well, who is naive now when you go back and read all the proposed government amendments to these particular bills? I am talking about the government ones, not opposition amendments or Democrat amendments. Who is naive now? At some stage the government did change its attitude. Having jammed them through the House of Representatives, they then showed a willingness to have this package of five bills and, coincidentally, the ASIO bill—which we are not discussing today—referred off to a variety of appropriate committees. But even having done that, the timetable allowed for consideration was almost a joke. It gave very little opportunity for various people with grievances and very little time for people doing detailed analysis, like Professor Williams and others, to get in their public submissions. I know it happened at the joint intelligence services committee. We simply extended the timetable, unanimously amongst us, to allow people to get their submissions in and to get ready for public hearings et cetera. The Senate legislative committee did a wonderful job in considering all this, given the very tight timetable.

I have talked about what the motive is for ramming this through. I heard Senator Brandis this afternoon. People on my side cannot understand why I admire him, but I do. I heard him say here at 4.47 this afternoon—‘There are some issues that should not be subject to cheap political point scoring,’ Hear, hear, Senator Brandis! I agree with that. Well, let’s have a look at the debate in the other place when these bills were considered. Let’s have a look at the member for Mitchell, Mr Cadman. He put a proposition in response to the fact that the Leader of the Opposition and the Labor Party, Simon Crean, said: ‘Whilst we will give this support in principle we cannot guarantee support for all the details. We have
not had time to analyse them.' What did Mr Cadman say in the other place? He said:
That lacks integrity, that lacks a sense of direction, that lacks commitment, that lacks loyalty, that lacks understanding, that lacks patriotism and that lacks a commitment against terrorism.
That is what he went in and said, that was his considered position, after we had had less than 24 hours to consider these matters. If you read the rest of his speech there is not the slightest bit of evidence he had read even one line or one phrase of the bills. It is all polemic, it is all rhetoric, and it is all meant to go in there to make a political point and to get political advantage for his own political party. What else motivates him to say that?

Of course, this is very similar to the statements made last September and October by Mr Slipper, who again went out and impugned the patriotism and the loyalty of the Labor Party to this great nation that we live in. I find that massively offensive. I find it especially offensive coming from a member who deserted and ratted on the National Party and went and joined the Liberal Party. I at least acknowledge he is an expert in treachery, but I object to him accusing us of that. We have our faults on this side of the chamber and we must be subject to proper and considered criticism. But I do not think one of our faults has ever been not to have a patriotic and loyal attitude towards our country. To imply otherwise is quite disgraceful.

This debate has to be conducted on the merits of the case. On several occasions during the joint intelligence committee inquiry, and I note also during the legislative committee inquiry, witnesses attacked the Australian Security Intelligence Organisation. But when you looked at their attacks, where was the depth to them? Where was the intellectual rigour? I pressed some of them and said, ‘How many complaints have you made to the inspector-general?’ They said, ‘Oh, none.’ I asked, ‘What are your specific complaints?’ They did not come forward with them. There is this paranoia out there in the community that in some way ASIO is massively out of control. I have to say that in the fifties and sixties ASIO was, on occasion, guilty of political bias because of the mind-set of the time; it was not strictly a partisan political bias but it did have a mind-set. But ASIO has gone through a whole series of changes that mean it is a much more responsive organisation with a complete consideration of what is lawful and what is not lawful. I noticed that every time those witnesses were asked for a specific criticism of ASIO they moved into generalities, not into the specifics.

Much of this legislation is going to depend on the quality of the people who administer it. I have been extremely critical of many government appointments and the political bias contained therein. Look at all the lackeys and lickspittles that have been appointed to the ABC board, the National Museum board—the list could go on forever. What about the actual appointment process?

Who can remember the appointments to the Eastern European reconstruction bank or the Olympic media committee or, in fact, the Electoral Commission? They were absolutely appalling processes, processes perverted by political intervention.

Yet I have to admit that this government’s appointments to head the fairly various security agencies have been exemplary. Have a look at the quality of the people they have appointed: Mr Kim Jones, a really brilliant career diplomat, is heading up ONA; Mr Allan Taylor, one of the best ambassadors we have ever had in this region and one of the most decent public servants you could ever meet, heads up ASIS; heading up ASIO is Mr Dennis Richardson, a veteran bureaucrat with a tremendous track record who has always allowed for procedural fairness and always tried to do the right thing; Mr Bonighton, of DSD, is another person who is happy to embrace modern, proper values. These people would not conceive of going outside the law, breaking the law or perverting Australian liberal democracy. They are all people of top qualities—and I should also not leave out the head of DIO—all overseen by the Inspector-General of Intelligence and Security, Mr Bill Blick, another outstanding public servant. In these security agencies we have the crème de la crème. I wonder why they are there—maybe they are not trusted in other parts of the Public Service; I have no
idea—but they are top quality. But no amount of legislation can guarantee that those top-quality people or similar people will be there in five years time, and that is of major concern. Therefore, we have to ensure that this legislation has all the proper protections within it, because we do not know which individuals will be running that legislation in five or 10 years time.

The same can be said of future attorneys-general. Maybe some of our colleagues opposite are naively of the view that Mr Williams would never, ever trespass in the powers that are contained in the bill as it currently exists. But I have such concerns. I know Mr Williams can be influenced by people outside, as the whole episode over the film Baise-Moi shows. It has already passed, it is already in the picture theatres, a couple of people lobby him and he panics and refers it back. During the Heffernan attack on Justice Kirby, Mr Williams did not act as the No. 1 law officer in the land. He said he was subject to all sorts of political pressures and that he was a political person. Let me hasten to add that I do not disagree with him, and I do not criticise him for it, but you cannot say that you can have these powers because the No. 1 law officer in the land will be independent of politics; he clearly is not. Thirdly, I would want of the Attorney-General an attention to detail. Having gone through the ASIO bill—which is not under discussion now—and seen such massive defects in it, I wonder how he produced it. How did he put it into the House of Representatives with so many acknowledged faults? So he does not have that attention to detail.

Finally, how am I supposed to trust a minister’s judgment when he sights and signs off documents relating to the Colston matter, sends them around to the Prime Minister’s office, cannot tell us who sent them and cannot tell us how they got lost and why they were never passed on to Mr Beazley and Mr Gareth Evans? This then allowed the Prime Minister to get away with blue murder in the other chamber by accusing those two people of being perverters of the course of justice, when the two documents that disappeared from Mr Williams’s office on the way to Mr Beazley’s office via the Prime Minister’s office cannot be accounted for. There is not enough trust in me to allow any powers under this act to be exercised in that way.

In considering this legislation, especially the main antiterrorism bill, we have to be satisfied as to its constitutionality. On balance, there are probably enough elements in the Constitution to make the bill constitutional, but whether those aspects covering proscription would survive such a test must be in considerable doubt. The definition of terrorism has plagued everyone around the globe, let us face it: it has been very hard to get right. The UN cannot agree on a definition; there are different definitions in the United Kingdom, Canada, New Zealand and the United States. They are all decent countries, but all have different definitions. We regard the Australian model as being too broad and therefore it must be remedied in terms of intent.

We believe proscription, of course, will simply drive organisations underground. If organisations are terrorist in nature, they should not be banned; they should be prosecuted and its members should be jailed. The proposal to give the Attorney-General the sole power to proscribe is flawed, as I indicated earlier in this speech. But, even if I did trust Mr Williams, what is to say I would trust a future Attorney-General? And what of the right to delegate this power to other ministers? Imagine giving it to Senator Alston, who came down to this chamber and naively accepted the Colston explanation of his rorted travel allowances. Fancy giving it to Senator Alston, who believed Senator Heffernan’s false Comcar documents. Fancy giving it to a minister who signed off a submission without, unlike Ros Kelly, even reading the cover before he sent it off to cabinet. Who would trust such a doormat? And what about that master of mendacity, Peter Reith? Would you really want him having the power of proscribing organisations? Who would he proscribe? Telstra, probably, after the telecard affair.

Senator Brandis interjecting—

The ACTING DEPUTY PRESIDENT (Senator McLucas)—Senator Brandis, you are not in your chair.
Senator ROBERT RAY—What about the MUA? He would probably end up proscribing the Navy! Who would want Senator Abetz or Mr Tony Abbott to have these powers of proscription? Fair dinkum, I would have to start getting a travel voucher for Wellington, New Zealand if they had those particular powers.

I want to say a few more things. Senator Brandis said during his speech, ‘The ALP is marginalised on this position.’ Go out and have a look at the carpet, Senator Brandis. It has been worn down with your Attorney-General and others coming to negotiate with us on this particular bill. We saved you on this; we are not marginalised on it. Senator Greig said in his speech, ‘The ALP just let this through the House of Representatives.’ I invite him to go back and look at the debate. We said, ‘Yes, we have to let it through subject to all sorts of changes; we could even oppose it in the Senate.’ To be fair to us, we did not just give it a tick and a flick to get it through the House of Representatives.

I would like to acknowledge—and this has not been discussed so far—that the proposal for air marshals has my absolute support. We are doing more in this area than many comparable countries. I hope we are able to get this under way as quickly as possible on a proper legal basis. I would also like to acknowledge the excellent work done on this proposal by the Senate committee—I have to include all senators from all parties. I also want to congratulate my leader, Senator Faulkner, who has put an intense effort in trying to get these measures right.

Finally, I would like to thank Senator George Brandis for giving me the only laugh of the week when he and Mr Bean sent that letter to Amnesty International describing them as pompous. Dear oh, dear oh, dear—Senator Brandis describing someone as pompous! We have had a shocking couple of weeks. Senator Brandis, but, after all, you have given us the one laugh.

Senator LUDWIG (Queensland) (6.16 p.m.)—Senator Brandis should resume his seat if he is going to interject. I am sure he would not wish to offend standing orders in such a manner. I concur with Senator Ray. Now that I have heard the description of the Senator Brandis’ humour during the week, I only wish I had been able to read that letter as well and join in the joke. It would have brought mirth to my face as well.

I rise to speak on the package of legislation which has now come to be known as the antiterrorism laws. The bills include: the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2], the Suppression of the Financing of Terrorism Bill 2002, the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002, the Border Security Legislation Amendment Bill 2002 and the Telecommunications (Interception) Legislation Amendment Bill 2002. The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 was not brought forward in this package of legislation. It will be dealt with separately. The bill was referred to both the Senate Legal and Constitutional Legislation Committee and the ASIO committee. It was dealt with fully by the ASIO committee. A number of recommendations were made in relation to that piece of legislation. As I understand it, this chamber will deal with it at some future time. This bill, together with a couple of others, including the Proceeds of Crime Bill 2002 and the one on espionage, are also to be dealt with separately. They deal more broadly with what could be described as the antiterrorist laws. More generally, the bills before the chamber this evening go to what is proposed to be the essence of the antiterrorist laws. The House passed the bills on 13 March 2002 and 14 March 2002.

The bills were introduced into the Senate. As I have said, they were referred to the Senate Legal and Constitutional Legislation Committee for inquiry and report. If it has not already been commented on earlier in this debate, it is worth pointing out the time frame was short, to say the least. However, the committee did, in the time available, take its task very seriously and produced a fine report. I was both a participating member and a member of that committee during its deliberations on the bills. Senator Ray congratulated the members of the committee, both government and non-government members. I do not wish to be congratulated. I think the secretariat, the chair and all mem-
bers of the committee should be congratulated for their work. They spent a considerable amount of time and energy and had a good deal of debate to arrive at a report which is both comprehensive and detailed considering the time available.

I would prefer to congratulate all the members for the work they did during this inquiry. It exemplifies in part what legislation committees can do. They took the bills provided to them by the government and scrutinised them. It shows one thing quite clearly: the work of the Senate enables us to scrutinise legislation, to deliberate and debate in a committee process and come up with a report to improve the legislation. It shows that the process can and does work very well for the Senate. It shows that the Senate can very effectively produce what is, in the end, a better outcome.

The final supplementary memoranda showed that many, if not all, of the recommendations of the committee were picked up in some form or other. It does highlight that a committee report such as that, if taken seriously by the government, can produce a better result. I think it has done so to a certain extent. As Senator Faulkner highlighted in the debate earlier, there are some shortcomings in the legislation. The government was not able to agree to all the matters that both the committee and the ALP put forward to make the legislation far better. Be that as it may, it is worth highlighting, during the second reading stage of this bill, some of the issues I have mentioned and the process itself.

In the short time that we had, the package of measures to address important changes to the security environment provided the committee with much information. A broad range of submissions were provided to the committee. The committee, as I have outlined, produced seven major recommendations. The government has not, as I understand it, provided a comprehensive response to the recommendations. I think the time frame has probably failed to produce what would normally be the ordinary course of events where a report would be produced and recommendations would then flow. The government has picked those recommendations up in the amendments that have been proposed and circularised in this chamber. I will hold some of the comments I have for the committee stage of the bill so as to deal with those recommendations and the responses by the government in its amended legislation in a more considered and detailed way.

In terms of the security environment that we now face, I would say that governments of all persuasions have been less than energetic in addressing these matters. However, since September 11 it is no longer permissible to ignore the issue. The United Nations General Assembly has for many years been encouraging nations to address the subject of terrorism in a more comprehensive and coordinated way. September 11, sadly, produced the circumstances by which member states saw a need to act. Australia is now, in my view, in a position where it must act and that action should be clear and unequivocal. There is no room to procrastinate on the subject and bring down half-hearted measures that will address our responsibilities in this area in a minimalist way. It is argued in other quarters that Australia does not have significant threats against it to warrant the decisive action that is being contemplated here. But I do not share that view. An obligation to join in the global push to limit terrorism requires us to act both responsibly and with sufficient measures to combat the spread of terrorism.

United Nations resolution 1373 called for stronger and more cooperative measures among states. That is clear. This resolution requires Australia to ensure that its laws criminalise terrorist activities and that Australian laws deal with terrorist financing and material support for terrorist organisations. Resolution 1373 is not an overly onerous requirement. Notwithstanding this requirement, I think a broader obligation does exist, which is both local and global, to act against terrorism in a comprehensive and effective way. It is incumbent on us to ensure that this task is balanced with the requirements of liberty—the need to not unduly trespass on civil liberties and to ensure there is protection of the rule of law. The arguments in favour of doing nothing are certainly unconvincing. The need is to ensure that the right
balance is struck between the requirements of security and the rights and liberties of the individual. In my view, this is the better course to follow.

There are no laws in Australia, or very few, which are directed at dealing specifically with terrorism in Australia. There are, of course, many laws on the statute books which can be directed to terrorism more generally. Clearly, the initial response prepared by this government drew a lot from both the US and UK experiences. However, the more considered approach is to ensure that the response that is finally put forward through this house is necessary, sufficient, and proportionate to Australia's need. The Senate Legal and Constitutional Legislation Committee, as I have said, highlighted a number of issues in respect of the bills that the committee was required to address. In the Security Legislation Amendment (Terrorism) Bill 2002, a new updated definition of terrorism was proposed together with new terrorist offences and a new power to declare an organisation to be proscribed. Along with this new power, there was a suite of offences concerning activities in relation to proscribed organisations. That was the form of the bill that was put before us originally but things have, as they do sometimes in this place, moved on. I would like to deal in essence with where we were at and deal with where we have now ended up.

That suite of bills included the Suppression of the Financing of Terrorism Bill 2002, which is designed to address the financing of terrorism. It principally creates an offence directed at those who provide or collect funds with the intention that they be used to facilitate terrorist activities. It requires cash dealers to report on transactions that are suspected to relate to terrorist activities. The suite of bills also included the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002. This bill is based on the International Convention for the Suppression of Terrorist Bombings. It is designed to give effect to the convention and create offences of international terrorist activities using explosive or lethal devices. Also part of that package is the Border Security Legislation Amendment Bill 2002. Notwithstanding the broad number of amendments contained within it and the disparate range of those amendments, primarily it amends the Customs Act 1901. The main thrust of the bill is to ensure that Customs have sufficient power to deal with the additional security measures at airports and at other Customs locations throughout Australia. It would be remiss of me to say that it only deals with that. That bill cuts across a range of areas.

The other two main pieces of legislation in this package were the Telecommunications Interception Legislation Amendment Bill 2002 and the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, which is now no longer part of this package but was originally contemplated to be part of the package and was to be dealt with separately in this house. It was subject to a separate inquiry by the Parliamentary Joint Committee on ASIO, ASIS and DSD. It was also a matter that was going to be before the Senate Legal and Constitutional Legislation Committee, and I understand that a short interim report was provided in respect of that. The telecommunications interception legislation is more of a collection of disparate amendments to improve the overall operation of the telecommunications interception legislation. Its main claim in being part of this suite is that it extends telecommunications interception to include terrorist offences.

In the course of the inquiry, many submitters opposed the package in its entirety and I am sure that many of the senators here tonight have had many submissions by email and letter to the same effect. However, the real crux of the debate is that the existing laws are not sufficient to meet the existence of the current threats that we have before us today, and I have not been persuaded to adopt that view by the submitters in the course of the Senate Legal and Constitutional Affairs Legislation Committee. Many other submitters took a more pragmatic and practical course in the inquiry when they pointed to the present legislative framework that was put before us and pointed out gaps and indicated that it did not provide a complete framework. The most compelling ar-
argument was put by the Law Council, which essentially required the government to justify the need for the new offences and to demonstrate that these strike the right balance between the needs of security and the rights and liberties of the individual.

Many other second order issues were raised about the security bills. These included whether they were constitutionally valid and whether the bills would be in breach of international law or offend conventions that Australia had signed. Perhaps Professor George Williams had the most to say in respect of at least those last three issues. To put it poorly, he expressed the view that the laws needed to be reasonably appropriate and adapted to that purpose. The real question which comes from this analysis is: are the original bills reasonably appropriate and adapted to the purpose in Australia at the present time? The committee struggled with that question over the time it had available and came to the conclusion—as stated in the recommendations—that, in essence, the bills were appropriate and were adapted to the issues that face Australia, save for some fundamental matters that did need addressing. Those recommendations encapsulate the entirety of those matters. The real question that then poses is the government’s response to those recommendations, and those issues will be dealt with more fully in the committee stage.

The committee recommended that the Attorney-General amend the definition of ‘treason’ as contained in the bill. Similarly, the definition of ‘terrorism’ was also considered too broad and therefore should be amended to ameliorate some of its effects. The other element of the Security Legislation Amendment (Terrorism) Bill which caused significant interest by submitters to the inquiry was the proscription power. The committee heard from many organisations and persons about this power. I cannot remember an organisation that came before the inquiry that did not include a dissertation on the proscription power—but there may have been some. The overwhelming view was that the provision as currently drafted is inappropriate, is not adapted to the purpose and should be rejected. In essence, section 102.2 allows the Attorney-General to declare an organisation to be a proscribed organisation if he or she is satisfied on reasonable grounds that the organisation or a member of the organisation has committed or is committing a terrorist offence, and:

(c) the declaration is reasonably appropriate to give effect to a decision of the Security Council of the United Nations that the organisation is an international terrorist organisation;

(d) the organisation has endangered or is likely to endanger the security or integrity of the Commonwealth or another country.

This power, on its face, seems unfettered. It is not in proportion to the threat. It is subject to an arbitration application and would, on its face, appear to offend international human rights conventions. The power is not a power that the executive arm of government should have. The proscription power also comes with many new offences—being an informal member of a proscribed organisation or assisting a proscribed organisation becomes an offence. These are extreme examples, but they demonstrate the ridiculousness of the power in truth. The committee came to a conclusion and recommended, in essence, that the Attorney-General should reconsider the whole of the proscription power. The sticking point will always remain as to how that power should be utilised and whether it is utilised in a fair way. When you consider the bill and the power that has been given to the Attorney-General, I think Senator Robert Ray summed it up very well when he said, ‘Would you give this power to Senator Abetz?’ The answer is no, you simply would not, and I do not know anybody in this chamber, other than perhaps Senator Abetz, who would agree with that.

The proscription power was the most unsettling of all the powers that I have seen attached to these cognate bills. In fact, they were so unsettling that, when you read them, it was like peeling an onion—the more you read them, the more onerous they became and the more troubled you became with them. Once the Attorney-General is ‘satisfied on reasonable grounds’, it is very difficult to determine what reasonable grounds would be, whether the point is appealable and on what basis you could intervene to
argue whether or not the Attorney-General is exercising that power on a reasonable basis. In the end the government did cave in; it did come to its senses. It looked at the report and the recommendations and then engaged with Labor to come to a far better result. It is not the best result. Labor is still pushing for more amendments. (Time expired)

Senator FORSHAW (New South Wales) (6.36 p.m.)—I rise to speak on the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and related bills, which deal with Australia’s security and the threat of terrorism. As we are all aware, this is a most important debate. Indeed, it is probably the most important debate and legislation that this parliament has had to consider for some time. Therefore it is unfortunate that after some excellent speeches, firstly by Senator Faulkner on behalf of the opposition and then the very measured and considered contribution from Senator Sandy Macdonald, we then had to listen to the rantings and ravings of Senators Brandis and Mason. Rather than focus on the legislation and on the complex and important issues that have been acknowledged by the government, the opposition, the other parties and the committees of this parliament, Senators Brandis and Mason resorted to their usual diatribe about the Left versus the Right and making some scurrilous allegations about the role of the Labor Party.

Senator Barney Cooney, a person who has contributed so much to reasoned debates in this parliament and this chamber during his time in this parliament, demonstrated adequately the paucity of the arguments being put by Senators Mason and Brandis. Senator Cooney pointed out that, at Australia’s darkest hour, it was the Australian Labor Party and our greatest Prime Minister, John Curtin, who led this country in its defence against the invasion from the north—or wherever else it might be—and have attacked the Labor Party. Well, we stand on our record.

Where it has been necessary to stand this government up, when it has sought to abuse its power in government, we have done so—as we did during the years of the Vietnam War. It was the coalition parties that got this country into that dirty war, where the lives of Australian soldiers were lost needlessly. The Australian Labor Party has supported, where necessary, the commitment of our troops, such as in the Gulf War to liberate Kuwait when Bob Hawke was Prime Minister. We have supported constantly Australian troops being involved in peacekeeping operations around the world, such as in Cambodia, in the Middle East, in Somalia. It was the Australian Labor Party in opposition, when Laurie Brereton was the shadow minister for foreign affairs, that was calling for the commitment of peacekeeping troops to East Timor to prevent the sort of massacres that we saw after the election was conducted. But the government at the time did not listen; it acted too late—just as it took some time to convince the coalition government, when Andrew Peacock was the Minister for Foreign Affairs, to withdraw its recognition of that murderous, genocidal regime under Pol Pot in Cambodia. So one thing the coalition cannot do is lecture the Australian Labor Party about commitment to defending this country, acting in the interests of preserving democracy and human rights around the world, and standing up to dictators and tyrannical regimes. Senator Ray picked up on that theme and responded so well to those outrageous allegations.

It is also interesting that, in his contribution to this debate, Senator Mason, in trying to suggest that the position of the opposition was disingenuous, said that if this legislation had been debated just after September 11 then we would have been in here supporting it. Firstly, what does that actually say about the position of Senator Mason himself and his colleague Senator Brandis? They themselves, in that report of the Senate Legal and Constitutional Legislation Committee, drew attention to the flaws and the totally outra-
geous extension of powers that was contained in the original legislation proposed by the Attorney-General. So what Senator Mason was actually admitting when he made those comments I just referred to was that he would have been prepared, back then, to support any legislation, no matter how draconian, no matter how repressive. At least he has, with the benefit of some time, had the good sense to realise that no matter how terrible the situation—as it was after September 11—if you are going to combat terrorism, the last thing you should do is adopt the sort of approach that the terrorists themselves support. They do not believe in human rights, they do not believe in democracy, they do not believe in individual freedoms. In fact, they are sponsored, as we have seen, by some of the most repressive, draconian regimes in this world.

I also remind the Senate, and Senator Mason and Senator Brandis in particular, that when this government, in a similar tactic, first introduced the Border Protection Bill we opposed it. As we know, that cost us politically to some extent, but we opposed it on the principle that the legislation went too far. It was only after the government accepted the type of amendments that we had been proposing and brought the bill back again that we supported it. And that is what has happened on this occasion. We said at the outset, when we first saw this legislation, that we were not prepared to support it but we were prepared to examine it and come up with constructive proposals to make it better.

As our leader, Senator Faulkner, has said, we are serious about combating the terrorist threat and we recognise that, particularly after September 11, measures have to be introduced through legislation to improve the security of the citizens of this country. We are prepared, and we have worked damn hard, to get to a situation where we believe that, if the government is prepared to take on board our proposals through our amendments, we can bring about an improved legislative position. People such as Senator Faulkner and members of the legislation committee such as Senators Cooney, McKiernan and Ludwig have put a lot of time and effort into bringing about what we believe will be improved legislation.

Let me turn to the legislation. To again pick up the theme of Senator Mason’s comments, this was the legislation that the government said was so urgent that it was going to bring it in as soon as possible. That was the statement made by the Prime Minister last year. The legislation was not produced till 12 March 2002, six months after those terrible attacks in New York on 11 September 2001. Then the government said, ‘Here is the legislation. We want it passed by the parliament in 24 hours.’ Those are the tactics that this government is prepared to use to play politics with these issues. Fortunately, on this occasion it has not worked. Because of the government’s delay, people have had an opportunity at least to look at the government’s proposals and, as has been mentioned, the community has had an opportunity to consider what this government had in store and express its views.

There was not enough time, as Senator McKiernan pointed out, for the committee to do its work in an orderly way and in a time frame where the pressure would not have been so great. Nevertheless, they came up with an excellent report, because they and the committee secretariat—and I also pay tribute to the government senators on that committee—worked hard to bring about a unanimous report. That report was itself highly critical of the government’s original legislation. In particular, it identified the definitions dealing with terrorist activity as too broad and needing to be better defined. The committee members stated that the provisions relating to offences needed to be significantly amended. They proposed that the provisions dealing with the proscription of organisations and the power of the Attorney-General in that regard had to be curtailed. They made specific recommendations in regard to the accessing of data obtained through telecommunications interceptions and the need for warrants to be issued. They recommended that the provisions dealing with the financing of terrorism should include an element of intent so that people did not unwittingly get caught up in committing offences by making donations to what, at
least on the surface, appeared to be legitimate organisations involved in aid or whatever only to find out later that the money was going to terrorist activities. They also made other recommendations in regard to the seizing of financial assets and so on.

We as a parliament have a responsibility to take on board the recommendations of that committee report and also to listen to the considered views that have been put by a wide range of people and organisations—not left-wing rabble, as Senator Brandis might refer to them. I am referring to groups such as the National Council of Churches, the Australian Catholic Bishops Conference, Community Aid Abroad and Amnesty International, of which Senators Mason and Brandis are members. These groups have all expressed their concerns about that original legislation. Under those original proposals, people such as Nelson Mandela, Mahatma Gandhi and Xanana Gusmao would probably have been jailed for unlawful activity. They might have even been declared as fitting the definition of a terrorist. As I have said, we have undertaken a thorough examination of the legislation and come up with a range of amendments which we will be moving and which we believe should be supported by this chamber and accepted by the government.

In particular, in regard to the Security Legislation Amendment (Terrorism) Bill 2002, we will be proposing amendments that will ensure that humanitarian organisations are not unfairly affected by the treason provisions. We will propose that the definition of a terrorist act be redefined. We need to remove the elements of absolute liability and add the requirement of actual knowledge to ensure that alleged actions are for the purposes of terrorist acts. We need to ensure that the onus of proof is not reversed. We will propose that the five terrorism bills be subject to public review three years after they have commenced. We will also be proposing amendments to the Suppression of the Financing of Terrorism Bill 2002 which will specify that the offence of financing terrorism requires a demonstration of intention rather than mere recklessness, who financial information can be disclosed to and that consultation by the Australian Federal Police with the financial institutions be required before any decision is taken to freeze assets. There are other matters which will no doubt be brought up during the debate.

It is important that this legislation be amended and then carried by the chamber. But we have to avoid a situation where this government just relies upon the rhetoric that there is a potential terrorist threat to Australia and its citizens and that therefore anything goes. That seems to be the thinking of some members of the government. I am pleased to say it is not the thinking of all members of the government, but it seems to be the thinking of some of them. They seem to think that, well, because there is a threat of terrorism then for instance the Attorney-General should be able to proscribe any organisation that he thinks fits. I will repeat what has been said by so many others: that power, resting in the hands of decent, honourable Attorneys-General, one could feel safe would not be abused. But that is not the point. There is the potential for that power to be abused.

We have seen that happen in this country before in similar sorts of situations. The Petrov affair was deliberately manipulated for electoral purposes, so do not ever think that it cannot happen. Indeed, that is the lesson of September 11. You should never, ever think that it cannot happen, whether it is a terrorist attack or whether it is a government using powers to suppress the liberties and freedoms of its people for political purposes.

Senator Brandis, in his address—in his usual manner—quoted from Lord Atkin. I would like to quote from Winston Churchill, the man whose first name the Prime Minister takes as his middle name. When he was Prime Minister of Great Britain during World War II, Winston Churchill warned against using the fear generated by war to bring about unnecessary and unwarranted legislative changes. He warned against what he referred to as a ‘side-wind’. Whilst that was previously a nautical term, he refers to it as using the pretext of war to ‘introduce far-reaching social or political changes’. He said:
What holds us together is the prosecution of the war. No man has been asked to give up his convictions. That would be indecent and improper. We are held together by something outside, which rivets our attention. The principle we work on is: ‘Everything for the war, whether controversial or not, and nothing controversial that is not bona fide for the war.’ That is our position.

He continued:

We must also be careful that a pretext is not made of war needs to introduce far-reaching social or political changes by a side-wind.

We would be wise to remember today the words of Winston Churchill. We must remain focused on the war against terrorism, and it should not be used as a basis on which to introduce far-reaching laws which threaten the individual liberty that underpins our representative democracy. The difference between us and the terrorists, and the regimes that support them, is that we believe in individual freedoms and democracy, protected by security measures that are necessary and accepted by the people. The terrorists do not.

Senator HUTCHINS (New South Wales) (6.56 p.m.)—I would like to follow on from that fine contribution of Senator Forshaw particularly in relation to, as he made clear, what we stand for and what generations have fought for and what is, in a significant way, being undermined by this anti-terrorism legislation. It strikes me that we are being put into a position that, in one form or another, deprives us of certain rights that we hold inalienable to make sure that they are protected. In a way, we are going to be deprived of these things in order to protect them. What value have they if we no longer have access to them?

The people who perpetrated that outrage on 11 September last year do not hold the same values as we do. I do not know that we could in any way, shape or form categorise them politically. I am sure that there are various groups of the left persuasion who would hold some sympathy with their cause, but these men—and, essentially, they are men—stand for a number of things that we on the left of politics, and I am sure those on the right of politics as well, hold abhorrent. The way they feel on the position of women, and the way they feel about the position even of democracies, is not consistent with what we believe. The threat of terrorism in Australia, as outlined by Senator Ray, did affect us through the number of deaths in those bombings and the potential threats that our embassies and high commissions in South-East Asia have been subject to. We are not immune to what could be potentially life threatening situations.

I have for some time tried to work out in my own mind what motivates these people. This bin Laden fellow seems to have come from quite a wealthy background. It does not look like he ever struggled for anything in his life. He never had any problem with money, position, power or any of the things that most ordinary people in this country have to strive for. This man was a privileged man born into a privileged family. He is a millionaire or maybe a billionaire—I am not sure. These people are intent on threatening our way of life and the values and traditions that we hold dear.

That is why we need to put checks on the legislation that the government has introduced. If we do not check the legislation, what is it all about? They will have won. They have forced us into a situation where we are being asked to abandon law and centuries of struggle by our forebears to get access to the rights we hold dear. People like to protest in this country. They are members of organisations that like to protest. They disrupt the flow of traffic and they disrupt people’s lives sometimes. We have seen them here on many occasions at the front of Parliament House—farmers, truckies, students and people who have sometimes acted violently. Both sides object to the use of violence but it is their right to protest.

It is our obligation to be tolerant of people who do not necessarily hold the same beliefs that we hold. We allow them to do that. The people who abhor us—like the bin Ladens—do not tolerate protest. They do not tolerate dissent in their own organisations. They are some sort of religious oligarchy or whatever. Tolerance is something that we hold dear, and that is what is under threat with the introduction of this legislation. I wonder whether our resident right wing intellectuals
in Senators Brandis and Mason can, at some point, explain that moral confusion that I believe they are in. They are both practiced solicitors or barristers but they have not, at any stage in their contribution to this debate, tried to resolve what I believe is their dilemma—that confusion, as I said, where we have been presented with legislation that deprives us of the right to preserve our rights. How can that be logical? I do not know that it can.

Senator Mason, in his contribution, threw out some remarks about the Weimar Republic and how, if the German people had only challenged the situation at the time, all that followed from it may not have occurred. But, if my history is correct, Chancellor Hitler was voted into power. Not only was he voted into power but the German nation at the time was—and may still be—the most educated nation in Europe. So the most educated nation in Europe at the time voted in one of the most totalitarian regimes, one of the most horrendous regimes in the history of humankind. So do not say that these things are without consequence. I believe it is essential that, at some point, Senators Brandis and Mason resolve that issue—that is, that moral confusion that they have dug themselves into.

We have also been told of the urgency of this matter. This legislation came about as a result of those horrendous attacks on 11 September last year—nearly nine months after that we are being presented with this bill. That act has not been easy for Western and democratic nations to deal with. It has been difficult for us to deal with because of the consequences of the potential for deprivation of liberties and tolerance. You only have look to the United States: Congress passed their antiterrorism laws within two months of September 11 but they encountered opposition from both Democrat and Republican representatives, in the Senate and the House of Representatives, who were concerned about the impact on civil liberties.

In Britain, Labour Prime Minister, Tony Blair, introduced his antiterrorism legislation at the end of last year. That bill was opposed by 21 Labour MPs who crossed the floor. The House of Lords rejected the bill several times before passing it. I make the point that by the end of 2001 both Britain and the United States were sufficiently moved to make sure that their antiterrorism legislation was carried and that it was in place. Yet here we are nearly nine months after that terrible act was perpetrated being presented with that legislation. Suddenly, it is important and urgent. Why wasn’t it urgent last year? Why didn’t the Prime Minister call parliament back at the end of last year if it was so important? We all know why he did not want to call it back: he wanted to extend his term. How disingenuous of the coalition to come in here and say this is important legislation when they could have called back parliament and passed that legislation late last year.

The British were able to do it, the Americans were able to do it and only three months ago the Indian parliament passed antiterrorism laws in a special joint sitting of their parliament. The legislation was passed in the Indian parliament by a vote of 425-296. It was a special joint sitting: only the third special joint sitting of the Indian parliament since independence from Britain in 1947. The introduction of this legislation has not been without difficulty in Western and other democratic countries. As I have said, in Britain, the US and India the legislation has, at some point or another, been questioned on its civil libertarian aspects. It was so important, so urgent, that this government introduced that bill that we are now dealing with it at this late stage. I think it is absolutely terrible that this has been done.

As my Labor colleagues who spoke previously have said, we have had a lot of debate and deliberation on this legislation. It is acknowledged by Labor that some form of special antiterrorist legislation is required. But we want to make sure—and I challenge again Senators Brandis and Mason—that we do not get caught in that moral confusion of depriving rights to preserve them. We have been consistent on that since this legislation was first proposed by the coalition. We in Labor want to be tough but fair on terrorism. We would have acted quickly and efficiently. We have not been plagued by division and infighting when it comes to the issue of dealing with terrorists.
Our amendments will ensure that humanitarian organisations like the Red Cross are not caught by the provisions of these laws, will change the definition of a terrorist act to prevent innocent individuals or groups who do not intend to commit terrorist acts being caught by this legislation and will remove the power of the Attorney-General to proscribe organisations. Our amendments will instead create offences for individuals who knowingly associate with or assist terrorist organisations. We will ensure, when an individual is accused of financing terrorism, that if their assets are frozen it is done in a fair and open manner. We will ensure, when supplying financial information to other countries, the individual’s privacy is not infringed by those countries. And we will clear up the discrepancy that may have existed in regard to seeking warrants to have access to stored communications: our amendments will require an interception warrant to be sought.

We are being consistent. We are supporting a form of antiterrorist legislation that is, unfortunately, needed as a result of this attack on our liberties. But we do not take liberties away; we make the state argue a position. Under our amendments, any individual who has somehow or another been pointed out as a terrorist has a right to say that that is not the case. He or she has a right to go to some judicial body and claim that that is not the position. We will not wear a situation where people will be able to point the finger and then somehow or other incarcerate a man or a woman for any length of time. We have opposed that and will continue to do so, but we do not oppose antiterrorist legislation.

The member for Mitchell, Mr Cadman, is normally quite a reasonable fellow, but let me read out what he said in the House when this bill came in. He said:
The Australian Labor Party shows no commitment or patriotism. They are anti-Australian in every action they have taken today here.
Later in that same paragraph he said that the ALP has:
... no sense of responsibility or commitment at all. Not patriotic, not committed, not antiterrorist—just prepared to let things roll along and just hope that there are no terrorist actions in Australia that we have to deal with.

I would point out that it has taken the government nine months to get around to this antiterrorist legislation. We know why the government did not recall parliament last year when it was so important: they wanted to give themselves a few more months on the government benches. That is all it was about. If it was so important, you should have called parliament back—like it was dealt with in Britain, like it was dealt with in the United States and like it was dealt with three months ago in the Indian parliament. No, not you lot. All you worry about is keeping your bums on those seats over there.

I am very offended by this allegation of being antipatriotic. My colleagues have mentioned already who the Australia people trusted with the conduct of World War II and who they put in power in World War I. As I recall it, two conservative independents—I cannot remember their names—ratted on Robert Menzies and crossed the floor to put John Curtin into power. That is how much they were concerned about the prosecution of the war. I am offended by these suggestions because, as you would be aware, Mr Acting Deputy President, many of us are the sons and grandsons of men who served in World War II and World War I. Many members of this parliament have actually served in theatres of war, and I know that someone like Mr Graham Edwards would be offended that anybody could suggest that he is unpatriotic or not prepared to risk his life for his country. It is outrageous that you lot come in here and even suggest that.

I say again: resolve your confusions about this. This nasty and brutish legislation you are introducing will not have the effect that you think it will. All it will do is potentially deprive individuals of their rights, and that will be a victory for the people whom we are opposing. It will be a victory for the bin Laden; it will be a victory for those scumbags who are taking our liberties away. My colleagues have already gone through what we will do when this legislation gets to the committee stage. I believe that our considered and thorough position on these bills is the proper one and the appropriate one for
the country. I will be supporting our amendments when they are put forward.

The ACTING DEPUTY PRESIDENT (Senator Calvert)—Senator Hutchins, before you sit down, perhaps you would like to withdraw one particular word you used there. I understand your feelings, but in the heat of the moment I think you may have used a word that would be unparliamentary.

Senator Schacht—Which word?

The ACTING DEPUTY PRESIDENT—I am not going to repeat it, but I think Senator Hutchins should withdraw it.

Senator Schacht—How can he withdraw it if he does not know which one?

The ACTING DEPUTY PRESIDENT—I think perhaps if he were to withdraw that, it would show in the Hansard.

Senator Schacht—How can the Hansard know which one it is?

The ACTING DEPUTY PRESIDENT—It will show in the Hansard, so we will leave it.

Senator SCHACHT (South Australia) (7.15 p.m.)—Thank you, Mr Acting Deputy President. I rise to—

Senator McGauran—Baise-Moi!

Senator SCHACHT—Do you want to start that again?

The ACTING DEPUTY PRESIDENT (Senator Calvert)—Senator McGauran, I would like you to stop interjecting. I did not hear that.

Senator SCHACHT—Mr Acting Deputy President, Senator McGauran interjected. He said the title of a movie that I have spoken about in this place before. He said in French what is unparliamentary in English. Is he able to say in French what is unparliamentary in English?

The ACTING DEPUTY PRESIDENT—I understand there are quite a number of different translations of that particular word.

Senator SCHACHT—On a point of order—

The ACTING DEPUTY PRESIDENT—You chose one particular translation.

Senator SCHACHT—On a point of order: saying that there were other translations is a limp excuse used by Minister Ellison. Since the publicity that I received about the title, I have received many emails and communications to say there is only one translation of Baise-Moi and it is to use a four-letter word followed by the word ‘me’. The four-letter word starts with F.

The ACTING DEPUTY PRESIDENT—Senator, your point of order is not taken because the President has already ruled on this and I would not want to overrule a ruling that she has made. Perhaps we could get on with the debate.

Senator SCHACHT—On the point of order: this is getting to the stage of ridiculousness in the Senate. Senator McGauran can swear in French, but you cannot say it in English. What advantage do the French speakers of this country have over English speakers? I would like consistency in the ruling that if Baise-Moi translated into English is unparliamentary, it must be unparliamentary in French.

The ACTING DEPUTY PRESIDENT—My understanding is that we are not allowed to use foreign language in this chamber anyway. Senator McGauran was out of order. I have already told him to stop interjecting. Senator Schacht, I have called you to speak. Perhaps we could get on with the debate, which is far more interesting than your views on French words and their interpretations.

Senator SCHACHT—On the point of order: this is getting ridiculous. Whether I speak French or not, I am asking for some consistency. You are now ruling that it is unparliamentary to say Baise-Moi in this chamber.

The ACTING DEPUTY PRESIDENT—I am saying that you have taken one translation and others have taken others. The President has already ruled on this. I think this is irrelevant to the debate anyway and we should just get on with it.

Senator SCHACHT—Of course it is irrelevant to the debate but he interjected.
The ACTING DEPUTY PRESIDENT—I have already asked Senator McGauran to withdraw.

Senator SCHACHT—And has he withdrawn?

The ACTING DEPUTY PRESIDENT—I am sure he will.

Senator McGauran—I withdraw.

Senator SCHACHT—You will not have to wash your mouth out now when you go home, Julian; you have not sworn. I rise, Mr Acting Deputy President, to speak on the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and related bills. I rise to support the position explained eloquently by the Leader of the Labor Party in the Senate, Senator Faulkner, about why we will support the second reading, but we will be moving important amendments in the committee stage. I also rise to point out that if one amendment in particular is not successful—the amendment on the power of the Attorney-General to proscribe, of his own volition, so-called terrorist organisations—then we will insist on our amendment.

Before I get to the detail of the bill, I will make some remarks about the balance on this issue of terrorism. No-one supports terrorism. The dreadful events of last year on September 11 have been a wake-up call to most of the world that there are people who, through fundamentalist zealotry, are willing to carry out such unbelievable acts as those that occurred on September 11. That is probably the biggest and most awful terrorist act, in a single act, in outright history. But you might also argue that there have been many other broader atrocities that might not be called terrorism but where many more people have been killed. We have had debates in this place about what is genocide. Some might say the Holocaust, in which the German Nazis killed six million Jews, was a terrorist act against the Jewish religion. Some of this is a bit like arguing over how many camels can go through the eye of a needle. But whether it is a terrorist act, an act of genocide, a murderous act or a barbarous act, whichever way you look at it, lots of innocent people get killed.

What I wish to comment on is that the terrorist act is in the eye of the beholder. Unfortunately, various people at various times feel very strongly that their views are not being properly received and that they are suffering oppression, and they are willing to carry out outright terrorist acts to advance their political cause. Regarding the violence in Northern Ireland, you do not apportion blame to one side or the other in that sectarian dispute. It is ironic that both sides claim to be Christian and are willing to cheerfully murder each other—and have been doing so for several decades—and thousands of innocent people have been killed. Both sides have committed terrorist acts. Both sides claim they are defending and protecting the rights of their people, including the right to have their view or particular position adopted.

Just yesterday and today, terrorist acts have been committed in the Middle East. There, in Israel and Palestine, the act of terrorism has been taken to a new high. As part of that act, people are willing to commit suicide: as innocent people are blown up, so also are the terrorists—as occurred on September 11. This has taken terrorism to a new level in the world. Unfortunately, though, throughout the history of the world, it has not been unusual for people to be willing to sacrifice themselves to achieve a political end, to achieve martyrdom.

What is happening in the Middle East is terrible and cannot be condoned in any way. But one should remember that back in the late 1940s, in what is now the state of Israel, when the Jewish people were trying to create that state, a couple of organisations called the Stern Gang and the Irgun carried out terrorist acts against soldiers of the British occupation forces, as they called them. I think they blew up the King David Hotel in Jerusalem, killing innocent people. The state of Israel, some people could say, was created partly as the result of successful acts of terrorism. That might be a very colourful way of describing it—I would not automatically describe it that way. I believe that Israel was established by a democratic vote of the United Nations to partition certain land. Whether that was a successful decision or not, there was a vote...
in the United Nations over the Palestine mandate held by the United Nations to create a state of Israel and also provide a place for Palestinians.

In recent times—and the present—there have been people in the world who have believed that the use of violence is the only way to overcome oppression. We know that in the seventies, the eighties and the early nineties, but particularly in the eighties, the African National Congress had to take up arms to achieve the end of apartheid. Its armed wing was called, I think, the Spear of the Nation, and it carried out a number of acts in South Africa in which people were killed. It claimed that those acts were always carried out against military targets that represented the oppressive regime of the apartheid state. The South African government called the members of that arm terrorists, demanded that they be treated as such and, if they were caught, treated them very severely. There are people in this country who supported the ANC in trying to get rid of apartheid—and I have to say that I was one of them. For a period in the eighties I made donations to the African National Congress. I cannot absolutely guarantee that some of the money that I paid monthly to the ANC might not have ended up in the Spear of the Nation, helping fund its activities in attacking, as its members called them, ‘military and oppressive targets representing the regime’. I mention that because I think later on it comes back to this issue of what is a proscribed organisation which people wittingly or unwittingly are members of.

Some Australians may well have been responsible for sending resources recently to Fretilin in its over-20-year fight for independence in East Timor. The Indonesian government of the time called them terrorists and treated them as such. Again, are those Australians who supported independence for East Timor and who paid those funds to this country’s East Timor friendship groups terrorists? Under this legislation, can such persons be accused of being terrorists?

In Burma there are insurgent groups representing that country’s ethnic minorities. These groups are fighting the Burmese government along the country’s border and in several of its regions to achieve either independence for the ethnic minorities or a democratic government overall for Burma. People in Australia, including some in the Burmese community, I think are sending money to those ethnic minorities to help them with food and humanitarian aid. But one cannot be absolutely certain that some of that money might not end up helping to arm some of the ethnic insurgent groups fighting in Burma. Does that make the people in Australia who are funding such organisations terrorists? If the Burmese government—as did the previous Indonesian government and the previous white government in South Africa—declares that these people are insurgents, terrorists, does it expect Australia to take action against Australian citizens who may be connected with such activity?

With the terrible events of September last year and, unfortunately, the new level of terrorism where people are willing to sacrifice themselves to kill innocent people in order to make a political statement, there is still a broader issue. That is, in protecting the civil liberties of our citizens in a democracy such as Australia, we must make sure that, as some would say, we do not throw the baby out with the bath water. But we also have to get the balance right. We have to have laws that ensure that, if there are people in this country who are deliberately involved in a terrorist act such as September 11, they can be dealt with. But I believe that such people should be dealt with under the criminal law, even if it has to be amended. They should not be dealt with under the powers given to a single member of government, the executive—in this case, the Attorney-General—to proscribe. I believe that is a fundamental point.

There has only been one occasion in Australia where the public have expressed a view about proscription, and that was in the 1951 referendum on a bill to ban the Communist Party of Australia. That referendum was defeated. The Australian people, though they had no love for communism, believed that you could not establish arrangements whereby the government of the day could take action to proscribe an organisation. During that time there were ludicrous situa-
tions where people and organisations were named by the government of the day as communists but where that was subsequently found not to be the case. But if the referendum had been passed and the legislation had come into force, we would have had an arrangement where people would have been arrested and charged because they were members of a proscribed organisation. That has features that are undemocratic, and a country such as Australia should never ever accept those arrangements or that principle.

During the 20th century, 100,000 Australians died in several wars defending a democratic system whereby the executive itself is proscribed in its power to arrest citizens and claim that they are acting against the interest of the state. In the early nineties I led two delegations to China on human rights issues. In China—an authoritarian one-party state—the government had a wonderful description for a law under which you could be charged for being ‘opposed to the sovereignty of the socialist state’. When the delegation asked senior Chinese officials what that meant, they said that, if a citizen said they disagreed with the personal lifestyle of Deng Xiaoping, the paramount leader, that was not against the sovereignty of the socialist state; but if they said they opposed Deng Xiaoping because he was a communist and he was the leader of the country but they disagreed with his policies, then that was a crime against the sovereignty of the socialist state. We then asked, ‘Who decides?’ They said, ‘That is for the local government official.’ It was not written in law anywhere what the description is; it was what the local party official, at any level, decides it is at a particular time.

So the system operating there was the complete antithesis of what we in a democracy have. It was up to the citizen to prove to the government that they were not against the sovereignty of the socialist state; it was not for the state to prove it. Once the official said, ‘I believe that is the case,’ you had to try and prove your innocence. That is undemocratic and is something we would not tolerate in Australia. But once you move to start giving the power to a member of the executive to proscribe an organisation or an activity without reference to a judicial process, you are on the slippery slope to what the Chinese government is all about. Authoritarian regimes everywhere always like to write a law which says what you cannot do, and then they leave you to make the judgment in fear that you might transgress. Therefore, the particular amendment to this bill that I believe must be carried—and there are a number of good amendments by the opposition—is the one to remove the power of the Attorney-General to proscribe an organisation. The bill with that power in it is unacceptable to the democratic process in Australia.

I believe that the proposals put forward by the opposition show that, if a body such as the UN Security Council names an organisation as being an international terrorist organisation, it is separate from the Attorney-General. There are then processes put in place in this legislation to take account of that. But if you say to the Attorney-General, ‘I hope you would not do this in a slipshod manner,’ and he receives some information and then acts to ban an organisation, that is what it really is: it is not proscription, it is banning. I mentioned South Africa earlier. Under apartheid, the South African regime operated a banning process. As an individual you could be banned if you had a view against the apartheid system. Whether you were black, white, blue, brindle, yellow, whatever race, if they thought you were opposed to the policy of apartheid a decree would be issued that Mr or Miss So-and-So was banned. What did the banning mean? You could not meet with more than two people at a time; you could not leave your house without permission. Many people suffered that banning for years. It was a particularly cruel form of psychological deprivation.

In my view, proscription and banning are only marginally different. That is why this is an iniquitous piece of the legislation. And it is unnecessary. We should rely on the judicial processes of the courts, where people have to prove something, whatever the difficulty may be. Judicial separation from the executive over proof is the fundamental tenet of democracy and the protection of individual human rights. I believe the Australian people will not tolerate terrorism, but I also
believe they will not tolerate an individual member of the executive having the power to proscribe an organisation. Therefore, the amendments moved by Senator Faulkner in this particular area are fundamental.

It has been a long time in this parliament’s history since we have had such a fundamental debate about how we balance the rights of a society to protect itself against the rights of the individual. I suspect 1951 was the last time such a debate took place, during the debate to ban the Communist Party. The people decided the issue against banning. That did not mean they were all communists or that they all supported the Communist Party. No, they supported the right for individuals to have some protection. Therefore this debate is about that right being maintained. If this proscription clause is not removed, then we are back to where we would have been if the referendum in 1951 had been carried.

The opposition has put up good amendments and has accepted much of the legislation. I note that Senator Faulkner said there has been good cooperation and discussion with the Attorney-General. The committee of the Senate that looked at this legislation made a number of unanimous recommendations in line with what the opposition is saying. So there has been good discussion.

I hope the Senate supports all the opposition amendments and, in particular, the deletion of the proscription provisions. When the bill is sent back to the House of Representatives, I hope that at that stage the Attorney-General will realise that he should accept the amendments and also that he should not be remembered in history as the Attorney-General that removed one of the sacred pillars of democratic process in this country—that is, the ability of people to have protection through the court and not be under suspicion from an executive which has the power to proscribe them or deal with them without the initial protection of a court. I do not know what Mr Williams’s history is as an eminent QC or senior counsel but I have to say that, whatever it is in the future, I am not sure that he will want to be remembered as insisting that the power of proscription be in this bill.

The debate on this legislation is a very serious one. The principle we are debating here today is going to last a long time. I hope the Senate and then the House of Representatives can accept the opposition amendments, then we will have a bill which makes it clear we will not tolerate terrorism but which means we can also guarantee the protection of the liberty of ordinary Australians and that means our democracy and powers. (Time expired)

Senator HOGG (Queensland) (7.38 p.m.)—I rise to participate in the debate this evening particularly as I was in New York at the time the terrorists hit the world trade towers. I experienced the emotion of the people in New York on that very day. I was walking amongst them in the street; I felt their anguish. I felt, for part of the time, the difficulties that they were going through. Whilst I was not personally affected in a direct sense, I understood the emotion that was taking place and the loss that was taking place. It would be less than honest of me, because I have said it here before, to deny that I did feel fear—real, personal fear. But, having felt that fear, later on I felt a degree of security, having overcome the unknown on that particular day.

I want to make some very general comments about the legislation that is before the parliament. Firstly, there is a need to defend one’s country and there is a need to defend one’s self. It is one of our fundamental rights; it is one of our basic instincts. I have been emailed by a number of people, as have others in this chamber, urging me to deny any passage of these bills. That has been in the extreme. I must admit. Then there are others who have urged amendments to the bills—I believe, for quite justifiable reasons. In wanting to protect oneself against terrorism, one is reacting to a basic, fundamental and innate instinct.

But, in reacting to such a basic and natural instinct, it is not natural to go as far as to extinguish the fundamental rights of others in our community. Terrorism and terrorists stand rightly condemned, properly condemned—and they should be condemned. They have no place in our society. A civilised society that allows that sort of behav-
our will fall indeed. Terrorists and terrorism do not deserve a place of any standing in any community. But if we are going to have laws to cover terrorism and terrorists, we need to have good, sound and reasonable laws. We do not need the initial response that we had from the government in this area, which was over the top. But it now, pleasantly, has been revised in a substantial way and moderated to be more reasonable in its approach—except, as my colleague Senator Schacht alluded to, for the proscription that is still in the bill before this chamber.

What has driven us down the path of specific legislation? I think that is sometimes overlooked. I do not know if many of my colleagues have traversed this area, but I thought it was particularly well covered in the Senate Legal and Constitutional Legislation Committee report of May 2002. Initially, they referred to UN Security Council Resolution 1373. Even though some others may have recorded this, it is worthwhile going through those parts of the resolution which look at the issue of terrorism and terrorists. In the committee’s report on that issue, at paragraph 2.4, the first dot point, it talks about the resolution’s call to:

• prevent and suppress the financing of terrorist acts, criminalize the wilful provision or collection of terrorist funds by their nationals or in their territories and freeze the assets of those connected with terrorism ...

Of course, no-one could disagree with that. At the second dot point it talks of the need to:

• refrain from providing any active or passive support to those involved in terrorist acts and take necessary steps to prevent the commission of terrorist acts; and

• ensure that terrorists, their accomplices and supporters are brought to justice, that terrorist acts are established as serious criminal offences in domestic laws and that the punishment duly reflects the seriousness of such acts.

That is the call of the United Nations in resolution 1373, and it was adopted on 28 September, I understand. That is the response in which they are calling upon all civilised persons, all democracies and even those who do not espouse the democratic principles that apply in this country to take up the cudgels against those who would perpetrate terrorist acts upon us. The resolution also called for states to cooperate to prevent and suppress terrorist acts, particularly through bilateral and multilateral agreements. So there is no doubt about the will, the desire and the necessity to address this canker that is out there in certain parts of our society. Given the global nature of society today, no part of the world can feel immune from the outrages of these terrorists and the terrorist acts that they perpetrate upon us. Having said that, though, in the report at 2.9 it says:

2.9 On 27 February 2002, the High Commissioner for Human Rights confirmed the importance of ensuring that innocent people do not become the victims of counter-terrorism strategies. I believe that that is absolutely paramount. One cannot become totally paranoid about the effect that terrorists and terrorism might have upon the community. One also must balance that very carefully to ensure that innocent people do not become the victims of the strategies. Point 2.9 goes on to say:

In order to assist States in complying with international human rights standards in implementing of Security Council resolution 1373, the High Commissioner proposed the following criteria. Those criteria are listed here but I am not going to read them all. However, there are certain things that stand out, that hit one, and really drive home the need to get the balance right. Point 2 of those listed criteria says:

2. Human rights law strikes a balance between the enjoyment of freedoms and legitimate concerns for national security.

So there are competing interests there. But the important thing is that a balance must be struck between the enjoyment of freedoms and the legitimate concerns of national security. As I say, there are legitimate concerns of national security. It is an innate feeling, a basic instinct, that we want to protect ourselves, our lives and our freedoms, but the balance has to be attained. At point 4 it goes on to say:

4. For limitations of rights to be lawful they must:

(a) be prescribed by law;

(b) be necessary for public safety or public order, i.e. the protection of public health or morals and for the protection of the rights...
and freedoms of others, and serve a legitimate purpose;
If they do not serve a legitimate purpose then those laws in themselves work against the best interests of our society. At subclause 4(g) it says:
(g) be appropriate to achieve their protective function, and be the least intrusive instrument amongst those which might achieve that protective function;
Last but not least, at point 4(j) it says:
(j) not be arbitrarily applied.
So, if one sees the criteria as outlined by the High Commissioner in the wake of Security Council resolution 1373 as talking about balance between the enjoyment of freedoms and the legitimate concerns of national security—and implicit in that, of course, is one’s personal security—and the limitations of rights to be lawful, they must, as I said, outline a number of points there. It all comes down to getting the balance right. It was interesting in reading the report of the Senate Legal and Constitutional Legislation Committee to note what it said at 2.10:
2.10 In addition to the human rights criteria proposed by the High Commissioner for Human Rights ... in assessing the proposals for new security legislation it is useful to have regard to the following principles formulated by Lord Lloyd of Berwick for applying the rule of law to the challenge of terrorism—
A number of points are outlined there. Again, I think it does well for these to surface in this particular debate. At 2.10(a) it says:
(a) legislation against terrorism should approximate as closely as possible to the ordinary criminal law and procedure;
I think that is fundamental. You cannot have people having confidence in your laws when the laws are quite outlandish and outrageous. They must approximate, as Lord Lloyd said, as closely to the ordinary criminal law and procedure as possible. Point 2.10(b) says:
(b) additional statutory offences and powers may be justified, but only if they are necessary to meet the anticipated threat.
I think that that is a good part of this report—that, later on, they deal with the issue of the anticipated threat. They raise the issue properly that there is a threat. It is not something that has been manufactured in some backroom. It is a real threat; it is something that can touch every one of us. Point 2.10(b) goes on to say:
They must then strike the right balance between the needs of security and the rights and liberties of the individual.
That really says it all: strike the right balance. You must have the right balance. You cannot have something that is out of kilter. It must address both the needs of security and the rights and liberties of the individual. It goes on to say:
The need for additional safeguards should be considered alongside any additional powers;
And so it continues. I think that is terribly important in this whole debate, because there have been a number of erroneous ideas, a number of quite inflammatory ideas, floating around, but in this report we have a reasonable and well balanced approach. It goes on to say:
... in striking the right balance between the needs of security and the rights and liberties of the individual, the possibility of other means of combating the perceived security threat should always be considered.
In that there is a very balanced and logical approach indeed. One would hope that that logic will prevail out there in the broader community. The report of the committee outlined a very detailed submission that had been put by the Law Council of Australia, which:
... referred to the range of legislative and administrative measures already in place in the event of a mainland terrorist incident in Australia, noting:
I am not going to read those points into the Hansard, but it important that people should be aware that, even prior to the passage of this legislation, there are measures in place to deal with the issue of terrorism. What we are being asked to do in this piece of legislation is to put additional measures in place to meet the perceived threat that is now there.
That is the essence of the stance that has been taken by the Labor Party in this debate: striking the right balance between the need for national security and beefing up those provisions that are already there in law and meeting the needs of the individual liberties and freedoms that we enjoy in our society here in Australia. One should never in any
way devalue or undervalue those benefits of freedom and liberty that we have in our society. They are second to none, and one would have thought that a better conceived piece of legislation in the first place would have obviated the need for what we have finally gone through to get to the stage that we are at now. But, having reached the stage that we are at now, I think it is important for the Australian people to understand that there has been a fairly incisive look at the whole issue, that there has been a debate surrounding the issue, and that we as legislators have the responsibility to ensure that at the end of the day we do achieve the right balance, that we do bring about legislation that will protect the individual’s security and the individual’s freedom.

When I went into New York on the night of Monday, 10 September, I of course had no inkling of what was going to happen on 11 September. It would have seemed unfounded fear to have believed that there were terrorists lurking in different parts of the United States at that particular time. But it was driven home very much to me the next morning when I awoke to learn, probably in much the same manner as many people in Australia did, through the TV set in looking at the local news, of the tragedy that had just taken place. One can be complacent but complacent in the sense that one does not really expect it to happen. But it having happened does not mean that one overreacts to the situation, that one necessarily becomes embroiled in a debate where you are limiting the basic rights and basic freedoms of a lot of people in our society.

As time on this debate this evening is about to draw to a close, I want to make the point that the amendments that have been arrived at and agreed to by the government are welcomed. I believe that we now have a bill that will enable people in our community to feel that they are safeguarded as best as reasonably can be expected against terrorist attacks and terrorism as such. I believe that, as Senator Schacht said, the issue of proscription is an important issue. It is one of those issues that tips the balance of the scales the wrong way. One would hope that before we get down to considering this legislation in more detail the government will reconsider its position on the issue of proscription. It is an issue where there can be an overkill, and one would commend the legislation subject to something being done about proscription.

Debate interrupted.

NOTICES

Presentation

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

That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 12 December 2002, taking into account the findings of the Private Forests Consultative Committee’s review of the ‘Plantations for Australia: The 2020 Vision’ which is due to report to the Primary Industries Ministerial Council in November 2002:

(a) whether there are impediments to the achievement of the aims of ‘Plantations for Australia: The 2020 Vision’ strategy;
(b) whether there are elements of the strategy which should be altered in light of any impediments identified;
(c) whether there are further opportunities to maximise the benefits from plantations in respect of their potential to contribute environmental benefits, including whether there are opportunities to:
   (i) better integrate plantations into achieving salinity and water quality objectives and targets,
   (ii) optimise the environmental benefits of plantations in low rainfall areas, and
   (iii) address the provision of public good services (environmental benefits) at the cost of private plantation growers;
(d) whether there is the need for government action to encourage longer rotation plantations, particularly in order to supply sawlogs; and
(e) whether other action is desirable to maintain and expand a viable and sustainable plantation forest sector, including the expansion of processing industries to enhance the contribution to regional economic development.

Senator O’Brien to move on the next day of sitting:

That—
(1) The following matter be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 27 June 2002: Quota management control on Australian beef exports to the United States.

(2) The committee have power to consider and use for its purposes the minutes of evidence, records and documents of the Rural and Regional Affairs and Transport Legislation Committee in relation to a similar matter, referred on 16 May 2002.

(3) The reference of a similar matter to the Rural and Regional Affairs and Transport Legislation Committee be withdrawn.

ADJOURNMENT

The PRESIDENT—Order! There being no further consideration of government documents, I propose the question:

That the Senate do now adjourn.

Immigration: State-Specific Mechanisms

Senator EGGLESTON (Western Australia) (7.58 p.m.)—The government today tabled its response to the Joint Standing Committee on Migration report *New faces, new places: Review of state-specific migration mechanisms*. State-specific migration mechanisms are arrangements to promote skilled migration to regional Australia and also to encourage the establishment of businesses in regional Australia by migrants. This is very important because most of our migrants who come to this country tend to go to the two big capital cities on the east coast—Sydney and Melbourne. While the population of both of those cities is increasing, in regional Australia the population is decreasing, so there is a lot of sense in seeking to attract migrants to regional Australia. State-specific migration mechanisms allow regional employers to find suitably skilled migrants when job vacancies exist which cannot be filled locally. They enable migrants to establish businesses outside Australia’s major cities and the state and territory governments to sponsor migrants to meet identified skills shortages and business opportunities.

Attracting new faces to new places—namely, skilled migrants to regional Australia—is an important policy objective of the Howard government. The government has had considerable success in promoting this migration program. Since 1996-97, over 15,000 visas have been issued under these programs, bringing a great number of skilled people to regional Australia. Regional areas have been experiencing population decline. This program has been very helpful in some areas of Western Australia and has led to, for example, the recruitment of speech pathologists and nurses to Kalgoorlie in the south-east. The state-specific migration schemes bring people with important skills to Western Australia. They have led to over 800 persons with specific job skills coming from overseas to settle in the regions of Western Australia, filling important needs in the community.

In its report, the committee made a series of more than 20 recommendations by which state-specific migration mechanisms might be improved. I am pleased to say that the government has seen fit to adopt all of them. The committee, in general terms, is supportive of the government’s endeavours. We are very pleased to see that the government response has been so positive. The committee found there had been good cooperation between the Commonwealth and the state and territory governments with the existing consultation processes being regarded as adequate, well used, productive and responsive, which is very good to see. The government believes that more can be done to improve the operation of these schemes and has made regional migration a priority in terms of the migration program. The Department of Immigration and Multicultural and Indigenous Affairs notes that these arrangements have resulted in a steady increase in migration to regional areas. In 1996-97, almost 1,130 people and their families arrived under these programs and by 2000-01 the number of skilled migrants plus their families going to regional areas was almost 3,850.

The Department of Immigration and Multicultural and Indigenous Affairs conducts a wide range of awareness raising activities about the needs of regional Australia both onshore and offshore among the incoming migrants and recognises that the provision of information to meet the needs of the client or
potential client, whether in Australia or overseas, is vital to the success of the state-specific migration program. In partnership with state and territory government agencies, regional development agencies and local government, the department plans to build on its existing promotion and increase its use of regional media to inform employers how they can access skilled migrants, to undertake more regular visits to regional centres, to provide information on regional migration and to work more closely with and provide more assistance and information on regional migration needs to key regional business and community groups.

Currently, the government is considering a package of enhancements to regional migration initiatives to enable a higher number of skilled and business migrants to settle in regional Australia. These enhancements include ways to attract more overseas students who are now a very important skill stream feeder group to regional universities and TAFEs. The government is consulting on possible adjustments to the bonus points regime for successful overseas students applying to remain permanently in this country as skilled migrants. This would encourage a greater proportion of them to consider studying and eventually settling in regional Australia. The government is also consulting on a possible two-stage process for the entry of business migrants in conjunction with greater emphasis on state and territory government or regional authority sponsorship.

Other measures involve improving the effectiveness of the skill matching database with the state and territory nominated independent schemes, arrangements to increase the numbers of temporary residents going to regional areas and facilitating the entry of health professionals to regional areas. That is very important when one sees the headline on yesterday’s West Australian, the one and only daily newspaper in Western Australia, reporting a crisis in the provision of regional health services in that state. It is very important to get more doctors, nurses and other paramedical migrants into regional areas of Western Australia. The last item of the enhancement scheme includes increasing our awareness of the need to use regional migration initiatives. The Minister for Immigration and Multicultural and Indigenous Affairs, Mr Philip Ruddock, has said that he intends to meet with state premiers to discuss how the government can work more closely to effect a more balanced dispersal of skilled and business migrants.

In conclusion, I am pleased that the government has been so receptive to the report of the Joint Standing Committee on Migration. I feel that the government’s positive response augurs well for a new era of encouragement of skilled migrants to regional Australia, which will bring benefit to the regions and to Australia as a whole.

Health: Disability Services

Senator FORSHA W (New South Wales) (8.07 p.m.)—Tonight I rise to speak on the issue of disability services funding. In particular, I refer to the question I asked yesterday during question time of the Minister for Family and Community Services, Senator Vanstone. The question that I asked her, to paraphrase it, was why wouldn’t the federal government meet its share of responsibilities by providing funding to ensure that workers employed in New South Wales under the social and community services award would continue to be employed?

The background to this issue is that on 28 November last year a decision was handed down which granted wage increases of between 5.5 per cent and 7.5 per cent to workers employed under that social and community services award. These workers are employed in centres and provide vital services such as disability care, supported accommodation, some child care and meals on wheels. Funding for these services, along with a lot of other disability services, as we know, is covered under the shared arrangements pursuant to the Commonwealth-State Disability Agreement. The decision of the New South Wales Industrial Commission meant that a substantial amount of funds would need to be found to pay those workers those increased rates of pay. The state Labor government has quite clearly accepted its responsibility and has agreed to pay its fair share of these wage increases. That will cost the New South Wales government around $30 million to $40 million a year. That is extra funds that
the New South Wales government has to find.

The New South Wales Treasurer, Mr Egan, quite appropriately, wrote to the federal Treasurer in November 2001 and requested that the Commonwealth confirm that it would meet its share of these pay rises—around half the total cost. Mr Costello eventually replied, I think it was around 21 December 2001, and indicated that the Commonwealth government would not agree to provide any such funds and claimed that, because the Commonwealth was already indexing funds that were provided under the agreements, there was no obligation to provide any more.

I think all senators realised Senator Vanstone’s answer yesterday was really another one of those situations where she just went completely over the top and used bluster and unparliamentary language to try to cover up the inefficiencies of the federal government and her deficiencies as a minister. She referred to the indexing arrangement. I would like to read the letter that the New South Wales Treasurer wrote to Mr Costello on 4 February this year which debunks this excuse of the federal government. He said:

I thank for your letter of the 21 December concerning the Commonwealth’s position not to fund wage increases arising from the new Social and Community Services (SACS) Award.

Your decision is based on a view that indexation provided under the three Commonwealth-State Agreements that fund social and community services is likely to have been to the advantage of the State over the last five years. This is on an assumption that the index has increased yet wage costs associated with Social and Community Services have remained unchanged.

While there have been no increases in the SACS Award prior to November 2001, the Commonwealth’s position ignores the NSW state wage increases that have been provided to employees under the SACS Award as determined by the NSW Industrial Relations Commission (which generally follow Safety Net decisions of the Federal Industrial Relations Commission).

Indexation provided by the Commonwealth under these Agreements is in effect the Safety Net Adjustments that have been passed on in arrears to meet the flow-on effects of the Federal Safety Net decisions.

New South Wales has thus not been advantaged by prior indexation of the grants provided under these Agreements.

There is an underlying and immediate need that the Commonwealth meet its share of the costs resulting from the SACS Award decision. Unless the Commonwealth increases its funding to these vital services, many non-government organisations will face significant funding shortages that will impact directly on service provision.

I therefore ask that you reconsider the Commonwealth’s position and confirm that the Federal Government will meet its fair share of the costs resulting from this wage decision.

The letter is signed by Michael Egan, the Treasurer of New South Wales. To date, the federal government has continued to refuse to meet that obligation, despite the many requests that have come in to members of parliament and the representations that have been made to the minister and the government on this issue. Indeed, as I am sure senators are aware, there was a rally held outside this building yesterday at which disability organisations were complaining about the actions of this government in respect of this issue and other issues such as the proposals in the budget affecting people receiving disability pensions.

When I asked the question yesterday, it was a straightforward question and a question on a matter of vital interest to a lot of people in the community. What was the minister’s response? In her usual manner, when she does not really have an answer, she engaged in a bit of a personal jibe. Well, I am used to that. She suggested that I may have only just discovered an interest in disability services. I will not go into the history of the work that I have been involved in but, as I pointed out, on many occasions I have had representations from people—including candidates for the Liberal Party in the Sutherland Shire—complaining about the impact of decisions made by this government, both recently and in the past, upon the disabled.

I will not digress too long on this, but it is a common tactic of the minister. She uses bluster, personal insults and whatever she can to try to ride over the top of people to ignore the issues. It does not work because the minister is still exposed on this issue. As I pointed out in my question, the Prime
Minister indicated on the Alan Jones program on 3 June that he had discussed this issue with Senator Vanstone and that Senator Vanstone was working on the issue and hopefully would soon have a sensible response to it. Alan Jones has got onto this issue. I am not normally one to go around quoting Alan Jones as he normally is not on our side of the political fence, but I would like to quote what he said on the radio this morning. Alan Jones was commenting on information about yesterday’s rally that had been supplied to him by the member for Sydney, Tanya Plibersek. He said that Tanya Plibersek said to him:

You’ve probably noticed that while the Prime Minister was very conciliatory in our Question Time today, and restated that he’d asked for advice from Senator Vanstone on how to solve this impasse; the minister was her usual belligerent self in Senate Question Time.

Tanya goes on to thank Alan Jones for standing up and fighting for people who will be affected by the disgraceful refusal of the government to provide the funds. Then Alan Jones said:

Amanda Vanstone—she no longer really can justify a place in any ministry. You can’t treat people like that and continue to call yourself a servant of the people.

Well, for once, I agree with Alan Jones; he got it right on this occasion. It is about time that Senator Vanstone decided to focus on her ministerial responsibilities and agreed to sit down and negotiate with the New South Wales government to avoid a crisis in the disability services industry in New South Wales.

Henderson, Hon. Ann
Austin, Mr Tom
Lockett, Mr Jack

Senator TCHEN (Victoria) (8.17 p.m.)—During the time between the budget sittings and this sitting of the Senate, a number of Australians whose lives have been of importance and great significance to many people have passed away. Of course, I do not mean others who might have been lost to us during the same period are unimportant or insignificant; all lives are important and significant to those who are near and dear to them. Nevertheless, because of their abilities, fortune or desire, some have had a greater impact on other lives and, perhaps, more lives through their actions and activities. Amongst the great Australians whom we have lost was Sir John Gorton. His passing has already been noted by the Senate and his deeds spoken of by many who knew or knew of him better than I did. There is nothing that I need to add.

Tonight I wish to speak about a number of other Australians who have performed important deeds during their lifetimes which have impacted on many people and society. I am proud to say that three were Victorians. The Hon. Ann Henderson lost her long battle with cancer on 4 June 2002. She was a member of the Victorian Legislative Assembly in the seat of Geelong from 1992 to 1999 and Minister for Housing and Aboriginal Affairs in the Kennett government from 1996 to 1999. I had the privilege of serving in her department during this period until I resigned in 1998 to stand for the Senate as a Liberal candidate.

Ann Henderson was caring and passionate about her local community and the community of Geelong responded to her in the same way. Geelong, being a union town, is what is politically termed a ‘Labor seat’. Rarely has it been held by a member from the conservative parties. But that is far too simplistic a description. Notwithstanding their industrial links, the people of Geelong are well able to recognise quality when they see it. Ann Henderson was a perfect example. She gave the people of Geelong great service before, during and after her parliamentary service. As the Geelong Advertiser said in its headline tribute to her, she was ‘A passionate fighter for her beloved Geelong.’

Ann Henderson’s generosity with her caring and energetic nature was not limited to Geelong alone. As minister for aboriginal affairs, which in Victoria is a part-time ministerial portfolio, she made her mark with the Koori community of Victoria as a caring and understanding minister—she understood their problems. She even extended her contact with the Aboriginal community by making trips to the Northern Territory during her holidays to meet with Aboriginal communities. My understanding is that every-
where she went she was welcomed because her caring personality would just come out and she was accepted for that. Her family remembers her as a person who fought adversity with character, strength, vibrancy and an enthusiasm that radiated in every aspect of her life. So, too, do all of us who have known her.

The Hon. Tom Austin died on 1 June 2002. He was aged 78. He was a member of the Victorian Legislative Assembly for 20 years, first representing Hampden between 1972 and 1976 and then Rippon after Hampden was abolished as a seat. Both seats were partly within the present federal electorate of Bendigo, with which I have the pleasure of being associated. Tom Austin came from one of Victoria’s oldest families of the Western District, but he was no silvertail, having built his property near Camperdown—which produced some of the finest wool in Australia—with the help of a soldier settlement grant and his own hard labour after the Second World War. Tom Austin was the Victorian Minister for Public Works between 1978 and 1980 and Minister for Agriculture between 1980 and 1982. He was subsequently Deputy Leader of the Liberal Party in opposition until he retired in 1992.

Tom Austin’s most important contribution to Victoria and to Australia was through his ability to not only recognise abilities and greatness in others but also set aside for the greater good of society his own advancement to support those he had so recognised. He was credited with bringing Jeff Kennett to the leadership of the Victorian parliamentary Liberal Party and eventually to Premier at a time when both Victoria and Australia were in desperate economic straits. It is now a matter of history that Kennett’s stewardship of Victoria was crucial for not only the restoration of that state’s fortune but also giving a lead to the rest of Australia in recognising that economic responsibility and social justice are for all people, not just for those holding trade union memberships, and are the prerequisites of good government. As with all mentors, Tom Austin’s contribution to society was greater than his personal efforts—substantial though they might have been.

The third Victorian—but perhaps the greatest of them all—was Jack Lockett, who passed away on 25 May 2002. Jack Lockett was, according to Jonathan King, the Australian newspaper’s history writer, ‘one of Australia’s most extraordinary men’. King said of Jack Lockett that he was:

... a miracle man, he lived longer than any other man in Australia. He was 10 years older than the Australian nation when he died ... won the coveted French Legion of Honour for bravery on the battlefields of Somme, led the Anzac Day march in his home town of Bendigo at 110, and carried the Olympic torch at 109, becoming history’s oldest torch bearer.

All this is true, and yet if that is all Jack Lockett meant to us then we have shortchanged him and do not deserve this man of honour. Jack Lockett achieved much more than having lived on and on and on. His life story is a story of facing adversities—and what adversities they were—and never backing away. He was indeed the quintessential Australian battler. Whatever hand of cards fate dealt him, his response was, ‘No worries.’ There were never complaints; there was no charity sought nor blame assigned.

The life story of Jack Lockett has been reported many times: how he was born illegitimate, left school at 12, did hard labour for a pittance, cleared Mallee scrubs and went to war not as a young hothead looking for adventure but as a mature 25-year-old with a game leg because ‘it was the right thing to do’. He survived Marrett Wood, Passchendaele, Bray, Curlew, Clery-sur-Somme—all battles many did not survive—not staying in the rear but in the thick of battle as a bomb thrower in raiding parties. He started as a private and, in one year, he was sergeant. He won the Meritorious Service Medal for Valour, which probably meant more to him than did the French Legion of Honour he received later in life. He went back to the Mallee after the war, where—with his wife, Dolly, whom he married in 1923—he not only survived droughts, dust storms, plagues of rabbits and locusts and the Depression but also raised a family of three boys, Kevin, Jack and Ron, and one girl, Joyce, in. I have no doubt, his and Dolly’s image. I still have much to say about Jack
Lockett, but I see my time is out, so I will seek further opportunity to continue.

**Sport: Referees**

**Senator LUNDY** (Australian Capital Territory) (8.27 p.m.)—A recent newspaper article on sport began by posing the question: who would be a referee? The question was asked in light of reports of some rather awful and very unsporting attacks on referees, umpires and officials. For example, Bill Harrigan, one of the best referees in rugby league, told of receiving a death threat via his son’s mobile phone several hours before an important game. His story was one of many shocking revelations that came out of a series of forums being conducted by the Australian Sports Commission into harassment of sporting officials. As part of these forums, the Sports Commission conducted a survey which found that the most common triggers for harassment of sporting officials were disagreements over rules and perceived incompetence.

Anyone who follows sport would know that players and fans alike have been disputing decisions and debating competence forever and a day. What has changed over the last few years is that these disagreements and disputes have reached a point where they are endangering the very structures and fundamental principles of organised sport. I do not want to overstate this, but it is becoming a serious problem and this inquiry has shown that it is not a problem that is going to go away by itself. In this context, I welcome the proactive approach being adopted by the Sports Commission in confronting this issue before it really does get out of hand.

The prevalence of attacks on and abuse of referees and umpires is quite dramatic. Given there has been a 25 per cent decrease in the number of referees in the past five years, it is reasonable to conclude that there is a correlation. For example, there has been a 75 per cent desertion rate amongst first-year umpiring recruits in rugby league. New South Wales soccer is losing about one-third of all referees each season, and basketball estimates about half of their officials have already left. These figures paint a disturbing trend in Australian sport over the past few years.

It is worth canvassing the history of what has happened to sport over the last few years, particularly under a coalition government. First of all, sport suffered a major decrease in volunteers as a result of coalition policies that undermined grassroots sport, including cuts to federal sports budgets that targeted participation programs and regional sports organisations. The second blow was the introduction of the GST, which had a really big impact on local clubs, as they are volunteer organisations. The accounting task was way too daunting for many people to contemplate. They were there to make a contribution, and the need to re-learn a whole series of skills forced many of them out of those roles, and many sports found it very difficult to find volunteer accountants and bookkeepers. Finally, the coalition’s negligence in the handling of insurance regulations has seen devastating increases in public liability insurance for sport and recreation organisations. I think one of the issues about public liability is that it does relate to how sports manage their affairs and, particularly, the sorts of safe and secure environments they are able to provide during sporting events.

We have already seen, as a result of the coalition government’s policies and, in large part, the neglect of grassroots sport, a decrease in the number of Australians acting as administrators. Now we are hearing evidence that elite sport is also suffering from a similar reduction in officials, referees and umpires. As Bill Harrigan rightly stated:

If we don’t address this now, we will not get the officials out there. Sport will not be played, there won’t be a game.

These comments point to the seriousness of the problem. Organised sport cannot function without referees and umpires and, if we cannot attract the best officials, sport will continually be plagued by acrimonious disputes between players and officials. As I sit watching the World Cup, I am quite outraged by some of the displays by players against referees and linesmen, particularly if there is verbal or physical abuse involved. I can see that there is a clear argument for FIFA, the world body that governs soccer, to act upon their responsibility to set an example and impose the appropriate level of penalties on
players and teams who threaten or abuse referees and linesmen.

Abusing a referee has never overturned a decision and it is not just the athletes who should be penalised for abuse. Team officials in national sporting organisations carry equal responsibility towards the administrators and officials who control sporting matches. The onus is on elite sport to produce not only athletic champions but role models as well. As part of any athlete’s development, appropriate behaviour and respect for officials must be a priority. Unfortunately, behaviour in some sporting events has declined to the point where the simple rule in sport that the referees’ decision is final is no longer respected. I have no doubt that young people in particular are influenced by the sporting behaviour they witness on television. The only way young players will learn that abuse and harassment in sport will never be tolerated is to lead by example and punish those who break the rules. It is paramount that sporting organisations at every level reinforce this basic tenet that the referees’ decision is final.

The national sporting organisations of this country must ensure that young people involved in sport are taught this lesson early. National sporting organisations must act in the swiftest way to eliminate abuse and harassment of officials, both off and on the field. They need to act now because we are at a point where we are demonstrably already losing our officials. One thing has become obvious: Australia’s love affair with sport certainly does not extend to sporting officials. But I believe that the Sports Commission understands this, and I am confident that the forums they are running will serve as a platform for at least tackling and hopefully eradicating this unacceptable harassment.

Senate adjourned at 8.34 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Regional Forest Agreements between the Commonwealth and—


Tasmania—

Reports—


2000—Tasmanian Government implementation.


Victoria—Reports—

1998.

2000.

Tabling

The following documents were tabled by the Clerk:


Public Service Act—Public Service Commissioner’s Amendment Directions 2002 (No. 1).

Remuneration Tribunal Act—Determination—

2002/03: Remuneration and allowances of the Australian Submarine Corporation.

2002/04: Remuneration and allowances for various public office holders.

2002/05: Remuneration and allowances of the Solicitor-General and the Director of Public Prosecutions.

2002/06: Remuneration and allowances for various public office holders.

2002/07: Specified Statutory Officers—Remuneration and allowances.
2002/08: Parliamentary office holders—
Additional salary.
2002/09: Remuneration and Allowances
for Holders of Full-Time Public Office.
2002/10: Remuneration and Allowances
for Holders of Part-Time Public Office.
2002/11: Principal Executive Office
(PEO) Classification Structure and
Terms and Conditions.
Report No. 1 of 2002—Ministers of State:
Salaries Additional to the Basic Parlia-
mentary Salary.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Immigration: Detention Centres**

(Question No. 130)

Senator Bartlett asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 20 February 2002:

[Question amended by Senator Bartlett on 23 May 2002. Parts (1) to (39) withdrawn]

(40) (a) How many deaths have there been in immigration detention centres since 1996; and (b) can details of each death be provided.

(41) How many attempted suicides have there been in immigration detention centres since 1996.

(42) How many injuries have been recorded in immigration detention centres since 1996.

(43) How many teeth extractions have been performed in immigration detention centres comparative to other dental procedures.

(44) How many births have there been in immigration detention centres.

(45) How many immigration detainees have given birth in hospitals.

(46) How many times are pregnant asylum seekers seen by doctors before their confinement.

(47) How many times are pregnant asylum seekers seen by other medical staff (for example, nurses) before their confinement.

(48) How many times were chemical restraints used on immigration detainees in the year 2001.

(49) In what circumstances are chemical restraints used.

Senator Ellison—The Minister for Immigration and Multicultural and Indigenous Affairs has provided the following answer to the honourable senator’s question:

(40) (a) and (b) There have been seven deaths of persons in immigration detention since 1996. Details are as follows:

- A male detainee from Villawood IDC died on 15 May 1998 in Liverpool Hospital. The Coroner’s report states that the cause of death was alcohol induced disease of the liver.
- A male detainee died on 22 December 2000 at Maribyrnong IDC after sustaining injuries in a fall from a basketball pole. The Department is awaiting the Coroner’s report.
- A male detainee, who was being held in Port Phillip prison, died on 24 January 2001 in Western General Hospital. The Coroner’s report confirmed that the detainee died from chest infection related to persistent sinus.
- A male detainee from Port Hedland IRPC died on 23 June 2001 in Hollywood Private Hospital, Perth during surgery. The Department is awaiting the Coroner’s report.
- A male detainee from Villawood IDS was found hanging in the centre on 26 July 2001. The Department is awaiting the Coroner’s report.
- A female detainee from Villawood IDC died in the centre on 26 September 2001. The Department is awaiting the Coroner’s report.
- A female detainee from Villawood IDC died on 13 January 2002 in Liverpool Hospital as a result of injuries sustained in a fall on 8 January 2002. The Department is awaiting the Coroner’s report.

(41) There is no specific data available regarding the number of attempted suicides in immigration detention centres. An incident tracking database is used to record incidents of self harm. Self harm is defined as “self inflicted injury or the act of causing harm to oneself (includes cutting of body parts, voluntary starvation, etc)”. The incident tracking database does not distinguish between the various types of self harm nor the seriousness of those incidents and therefore information on suicide attempts is not available. The incident tracking database only provides statistics from 1 March 2001 when it was first implemented.

(42) In order to obtain statistics in relation to injuries recorded in detention centres DIMIA would need to examine the individual files of every detainee that has been in immigration detention since 1996.
As the time and monetary cost of fulfilling the request will substantially and unreasonably divert
the resources of the agency from its other operations, DIMIA is unable to provide the information
that you have sought in relation to injuries.

(43) In order to obtain statistics in relation to teeth extractions performed in detention centres com-
parative to other dental procedures DIMIA would need to examine the individual files of every
detainee that has been in immigration detention.

As the time and monetary cost of fulfilling the request will substantially and unreasonably divert
the resources of the agency from its other operations, DIMIA is unable to provide the information
that you have sought in relation to teeth extractions.

All detainees are provided with necessary medical or other health care when required. Detainees
are also provided with reasonable dental treatment necessary for the preservation of dental health.
The level of dental care is consistent with that available to the general Australian population.

(44) There have been no births in any immigration detention centres.

(45) Since July 1999 to date, there have been a total of 70 births by immigration detainees in hospital.
A breakdown of the number of births by initial detained location for the financial years 1999-
2000, 2000-2001, and 2001-2002 (year to date) is available in Table A below.

(46) There is no set number of consultations by doctors of pregnant asylum seekers as each case is
managed individually. As such, pregnant asylum seekers are seen by doctors as and when a con-
sultation may be required, depending on the individual needs of the patient and is a matter be-
tween the medical practitioner and the patient. Factors which may influence the number of con-
sultations by a doctor include when the pregnancy is detected and the health of the mother and/or
baby.

(47) There is no set number of consultations by other medical staff of pregnant asylum seekers as each
case is managed individually. As such, pregnant asylum seekers are seen by other medical staff
(eg nurses) as and when a consultation may be required, depending on the individual needs of the
patient and is a matter between the medical staff and the patient. Factors which may influence the
number of consultations by other medical staff include when the pregnancy is detected and the health of the mother and/or
baby.

(48) Please see answer to Question 49.

(49) The Immigration Detention Standards (IDS) specify that all detainees in immigration detention
facilities are provided with necessary medical or other health care when required.
Any use of medication in immigration detention facilities must be prescribed by appropriate medi-
cal professionals in accordance with the relevant Australian medical and legal requirements and
the IDS.

There is a provision in the Migration Regulations (regulation 5.35) allowing for the use of reason-
able force, including the use of sedatives, for the purposes of giving non-consensual medical
treatment to a detainee in limited circumstances. The following conditions must be met:

- The medical treatment must be authorised by the Secretary to the Department.
- The Secretary must be acting on the written advice of a medical practitioner; and
- The Secretary must have formed the opinion that a detainee needs medical treatment because
  there is a serious risk to their life or health.

Chemical restraints, such as sedation, are not used in immigration detention centres. Chemical
agents such as tear gas are, however, used on occasion with the purpose of containing major dis-

Table A
Births by detainees by initial detained location by financial year
Figures as at cob 1 March 2002

<table>
<thead>
<tr>
<th>Initial Detained Location</th>
<th>Detainees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999/2000</td>
<td></td>
</tr>
<tr>
<td>Villawood IDC</td>
<td>3</td>
</tr>
<tr>
<td>Woomera RPC</td>
<td>4</td>
</tr>
<tr>
<td>Maribyrnong IDC</td>
<td>1</td>
</tr>
<tr>
<td>Initial Detained Location</td>
<td>Detainees</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Curtin IRPC</td>
<td>9</td>
</tr>
<tr>
<td>Port Hedland IRPC</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>24</td>
</tr>
<tr>
<td>2000/2001</td>
<td></td>
</tr>
<tr>
<td>Villawood IDC</td>
<td>2</td>
</tr>
<tr>
<td>Woomera IRPC</td>
<td>6</td>
</tr>
<tr>
<td>Curtin IRPC</td>
<td>13</td>
</tr>
<tr>
<td>Port Hedland IRPC</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>25</td>
</tr>
<tr>
<td>2001/2002 (year to date)</td>
<td></td>
</tr>
<tr>
<td>Christmas Island IRPC</td>
<td>2</td>
</tr>
<tr>
<td>Villawood IDC</td>
<td>1</td>
</tr>
<tr>
<td>Woomera IRPC</td>
<td>13</td>
</tr>
<tr>
<td>Maribyrnong IDC</td>
<td>1</td>
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Communications: 1300 Phonewords

(Question No. 301)

Senator Bartlett asked the Minister for Communications, Information Technology and the Arts, upon notice, on 13 May 2002:

(1) How many 1300 phonewords are currently available in the number pool managed by Industry Number Management Services Ltd (INMS) under the Australian Communications Authority (ACA).

(2) (a) What are the current processes, procedures and fees involved in businesses and not-for-profit organisations obtaining 1300 phonewords; and (b) do the processes, procedures or fees differ between businesses and not-for-profit entities.

(3) (a) Why is it possible to obtain 1300 phonewords only within the existing number pool; and (b) why will neither INMS nor the ACA consider or permit the issuing of specifically requested 1300 phoneword combinations outside of the available pool.

(4) Can the Minister please confirm that the 1300 phonewords yet to be released will not be subject to any public tendering or public auction process in the future.

Senator Alston—The answer to the honourable senator’s question, based on advice from the Australian Communications Authority, is as follows:

(1) A phoneword is a combination of letters represented by numbers which is of value to the customer. This includes real words, names of businesses and even acronyms. Given this definition, the number of phonewords available is impossible to quantify as it is not possible to identify all the combinations that may potentially be of meaning or value to a customer. However, the total number of local rate numbers currently still available from the INMS number pool is approximately 100,000. As at 28 May 2002, the number of local rate telephone numbers allocated was 1,792 13-numbers (six digits) and 29,361 1300–numbers (ten digits).

(2) (a) INMS manages the allocation of freephone and local rate numbers to carriage service providers (CSPs). It does not allocate numbers to individual consumers. If individuals wish to obtain a specific 1300 phoneword number for their own use, they can do so by applying to their preferred CSP who will apply for the number from the INMS. If the number is available and is held by INMS for allocation, the CSP can issue it to an individual customer. The ACA administers an annual numbering charge for most telephone numbers, excluding geographic numbers, but including freephone and local rate numbers, payable by CSPs. In 2002, this charge was approximately $1.10 for ten-digit numbers and $10,963.40 for six-digit numbers. CSPs can in turn impose a charge, as determined by them, on customers to recover this cost.
(b) The processes, procedures and fees of the INMS only apply to CSPs. INMS currently charges CSPs $14.91 for each database transaction that occurs as part of the number allocation process. The processes, procedures and fees for end-users ie businesses and not-for-profit organisations are determined by the individual CSPs.

(3) Numbers are released into the INMS by the ACA in response to overall levels of demand. The ACA has advised that currently there are sufficient numbers available in the INMS pool.

(4) The ACA is responsible for managing the efficient allocation of all freephone and local rate numbers. The ACA is currently investigating the processes for allocating the numbers that are presently unreleased. A public discussion paper was released in December 2000 and a public meeting held in April 2001. The ACA is proposing to consult further with industry and the community on possible allocation methods for particular freephone and local rate numbers that are keenly sought.

Telstra: 1900 Phone Numbers
(Question No. 313)

Senator Harris asked the Minister for Communications, Information Technology and the Arts, upon notice, on 15 May 2002:

(1) Why are certain premium phone numbers (1900) not available to prepaid mobile phones, while account customers have unlimited access to them.

Senator Alston—The answer to the honourable senator’s question is as follows:

(1) Telstra has advised that premium rate (1900) telephone calls are charged at varying rates set by the 1900 information providers. The calculation of the cost of these calls is undertaken on the 1900 platform at the end of the call and billing information is then passed to the appropriate service provider. If prepaid services were able to access 1900 services, the cost of the call could well exceed the prepaid amount. There is not way of terminating the call when the value of the pre-paid amount has been reached.

Defence: Contracts
(Question No. 339)

Senator Chris Evans asked the Minister for Defence, upon notice, on 21 May 2002:

With reference to the list on the Defence web site of all contracts signed by Defence worth $100 000 or more. The table for the 2001-02 financial year includes the value of each contract, yet the table for 2000-01 financial year does not include this value: Can an updated version of the table of contracts for the 2000-01 financial year, which includes the value of each of the contracts signed, be provided.

Senator Hill—The answer to the honourable senator’s question is as follows:

The value of each of the contracts listed on the Defence web site for the 2000-01 financial year will be made available through an update on the Defence web site at:

The contract values for all of the contracts listed on the web site are already publicly available through the Gazette Publishing System.