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

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 20 June, on motion by Senator Ian Campbell:

That these bills be now read a second time.

Senator BOLKUS (South Australia) (12.31 p.m.)—It has now been some 10 months since September 11 and the events that led to this legislation, the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and related bills, being brought before this parliament. Fortunately for democracies like Australia, the intervening period has provided some time for sober reflection on the events of that day. Hopefully that time for reflection will enable us to more rationally handle the issues, which confront legislators worldwide, that have been raised because of the acts of terrorism of September 11 2001.

It is important for those of us deliberating these initiatives to do so soberly, calmly, after balanced consideration and with continued respect for the democratic values that are held so dearly by Australians. We must do so with the long-term view in mind. We are not passing legislation to handle retrospectively what happened some 10 months ago; we are not passing legislation that has a sunset provision; we are passing legislation which we could expect will endure for decades. In short, we must not be spooked into overreaction one way or another when we are deliberating on the legislation before us. It is momentous legislation; it is legislation which I do not think was necessary—because Australia has been well equipped over the years to handle these sorts of situations—but September 11 did engulf the world in a sense of hysteria, fear and xenophobia. People were genuinely afraid. Fortunately for all of us, the fears that were spawned at the time have not been realised, but we need to ensure that some of the concerns that our agencies have are not realised in the future.

Having said that, I also place on record my concern that the hysteria, fear and xenophobia have sometimes been fanned by politicians for base political motives, and scaring the public has been part of their agenda. I am concerned at the way national leadership has handled the situation. Arguments have been expressed, particularly by the government in this debate, but we should be mature enough to realise that it is not simply a matter of being pro- or anti-terrorist, as President Bush simplistically put it at the time. It is not a matter of hairy-chestedness on the one hand or of being soft on terrorism on the other. There are some real issues that go to the heart of our democracy, and we in this place should be able to assess and consider them without being spooked into overreaction.

The fact of the matter is that the world did not change on September 11. We all got a massive shock and there was a tragedy of monumental proportions, but we should all be honest enough to accept and acknowledge that nation states like Australia and the US had been anticipating acts of terrorism on such a scale for quite some time—in fact, for a number of decades. For instance, many of us have acknowledged that, with the collapse of the rigid power blocs of East and West, small nation states with access to a whole host of arms and weapons, together with splinter terrorist movements, would be present and would be harder to control. That is why, when I was immigration minister between 1993 and 1996, I initiated a wholesale upgrading of technology, systems, equipment and networks to ensure that we in Australia and Australians generally were protected from acts of terrorism. However necessary—and it was necessary—we in government
were keen to ensure that we had the state-of-the-art systems, equipment and networks to protect this nation. That of course has been upgraded by this government since those days.

I make this point not to devalue the importance of this debate, not to devalue the extent of the tragedy of September 11, but to make two fundamental points. One, we are not starting with a blank sheet. We have had legislative responses, systems and networks in place for decades. Two, we should not overreact. When we debate measures such as the ones before us today, we need to ensure that we are serving the democratic values that our system has cherished for such a long time. As I said earlier, I fear that much of the legislation before us is in many respects unwarranted. It reflects an unholy alliance between politicians wishing to seize political advantage by seizing the political moment and a bureaucracy which is always keen to seize more power. That is a lethal combination for any democracy.

You would have hoped that there would be in the system, up to this stage of Senate debate, greater concern for democratic values. You would have hoped that you could rely on the traditional defender of rights in our system, the Attorney-General. But once again we see the ineffectiveness of the Attorney-General, Daryl Williams, who has held the position in this government for some five years. One of my colleagues was quoted as saying recently that he did not think that these were not the preferred measures of the Attorney. But the fact of the matter is that he has not been able to stand up for whatever measures he does prefer, and we should take him on the basis of his public record. He has been seen to be totally ineffectual in this debate. He has been a dismal failure when it comes to, for instance, defending the national legal aid system. In fact, on every point of issue in the public debate, this Attorney has been more of a doormat than a defender of the legal system. We should have had some confidence in him to be able to defend rights, but that has not happened.

We should also have been able to have some confidence in some of the more moderate voices in the government, like Senators Hill and Vanstone, who portray themselves as being soft liberals. We should have had more confidence in them to achieve greater balance in this legislation, but we have not had that outcome. We have before us now a situation where the Senate is playing quite a critical role in the defence of rights and making up for the failures of the Attorney and of the moderate voices in cabinet. I find it quite objectionable that this hysteria that was generated post September 11 has been spawned at home, has been fanned at home and has spawned division at home. We had the objectionable behaviour of ministers before the last election claiming that some of those poor, hapless people coming to our shores by boat ‘could be terrorists’. That was all generated to ensure that people were afraid and would accordingly vote in a conservative way. That campaign at the time had its effect. But, as well as serving the purpose of having the Howard government re-elected, what that campaign has done and continues to do is to divide our community. There is enormous damage to our reputation internationally, but there is also enormous damage to the fabric of our society.

Such vilification continues. Only last week the irrepressible Mayor of Port Lincoln, Peter Davis, made the national headlines claiming that these people—who he says have no right to be here—should be used as shooting targets. This Peter Davis is no different from the Peter Davis from whom, some six or seven years ago, I as immigration minister took away the right to confer citizenship because of his offensive and what I thought to be totally anti-Australian, antidemocratic statements at the time. But, no matter how offensive the comments of Peter Davis last week were and continue to be, Peter Davis actually served a public purpose because he said publicly what many others have been saying privately. He expressed views that, time and time again, have come to me and my office by way of anonymous phone calls. He expressed the views that anonymous callers relay on talk-back radio. For the first time they have come from a public figure and for the first time the political system in this country and those with concern for civilised debate in this
country had a chance to rebut those arguments.

What is quite sad and pathetic is that, though we got the rebuttal from civic leaders—in South Australia we got the rebuttal from, amongst others, the President of the Law Society of South Australia, Chris Kourakis, from leading institutions, from the Attorney-General and from the state Premier—we have not heard the rebuttal from the Howard government; a government that always defends the rights of those who want to spread racism but is very slow to attack those sorts of sentiments. As I say, Peter Davis was as offensive as usual, but he got these matters out into the public debate. They should be rebutted and they should be recognised as being spawned by much of the hysteria that was generated in Australia when people brought together the combination of those who flew planes into the World Trade Centre and those hapless people who were trying to get to Australia to seek asylum status. Davis needs to be condemned, but he needs to be condemned from the top; he needs to be condemned by the Prime Minister and leading government ministers.

Also last week we had what I thought was a disturbing domestic development where the Leader of the Government in the Senate, Senator Hill, said in this place:

The United States and others within the civilised world have been seeking to respond to that— he is referring there to the situation in Iraq—through diplomatic means ... and in other ways.

This distinction between a so-called civilised world and the rest of the world is something that we should be concerned about. It reflects the mentality of Huntington’s ‘clash of civilisations’. We in Australia ought to recognise that we do live in the Asian region. An arbitrary line between what is a civilised country and what some people think may be uncivilised is one that does not resonate all that well in our region. It is also one that is based on a fiction. When Senator Hill talked about the civilised world, as opposed to the non-civilised world, who was he talking about as being uncivilised? Is he talking, for instance, about Iran or Iraq—countries with great cultural histories and not only literary but also political traditions? We may be going through a bad time now with Iraq, and maybe Iran seems to be going through a bad time now, but it was only six months ago that the Western world was saying that we should open our doors, open channels and engage with Iran. This distinction, which Senator Hill brought into the debate last week, between civilised and non-civilised countries is something that we should check against.

It has not just been a domestic agenda that has been pursued by those who spread this campaign of hysteria. One of the other concerns that I think we should have in this place as we engage in debate such as this, keeping in mind our democratic values, is the need to be very cautious about how foreign affairs are handled from this level and that the hysteria that was generated post September 11 does not infect, influence or override sober considerations in our foreign relationships. I fear that the campaign of ‘us versus them’—which has been continued by the Bush administration mainly, with leading support from the Howard administration here—is serving another purpose. That purpose is to lead to an invasion of Iraq. I think that would be madness at this particular time in our history. To extend the conflict in the Middle East in current circumstances would be, I think, taking on much too much. The Middle East is at boiling point already. Europe is reluctant to go with George Bush down the road of further engagement with Iraq or an invasion of Iraq. In Australia, once again, the Howard-Hill administration has been very quick to fall into line behind President Bush.

What we should be saying to President Bush is that it is time for sober reflection on how we handle the Iraq situation. I do not say this as someone who is inexperienced in this area; I supported the last Gulf War publicly and privately and I was on the cabinet war committee of the Hawke government at the time. I do not think that Europe, for instance, is as ready to hit the missile buttons in respect of Iraq as it was in the previous engagement and before the previous engagement. Australia’s indecent haste in lining up behind the hawks of the Bush administration as opposed to others in the admini-
So we come back to this legislation—legislation which has generated a period of hysteria but which this Senate has taken a very keen interest in and which has led to much amendment. In respect of the Senate process, I would like to place on record my appreciation of the work done by Senator Marise Payne. She stood up when others were not prepared to. She has managed to work with members of the committee such as Senators McKiernan, Ludwig, Cooney and me and to get a unanimous position recommending wholesale amendment to this legislation. She did what her colleagues in cabinet were not prepared to do, she did what the Attorney-General was not prepared to do, and we should acknowledge that. On my side, this issue is not an easy one to handle in a climate of xenophobia and fear. Recognition needs to be given to the shadow ministers involved, Senator Faulkner and Daryl Melham, and to their staff, particularly Antony Sachs and Phil Dorling, for the way that they have applied themselves to get concrete, workable and democratic alternatives to the government’s proposals. Recognition also needs to be given to Simon Crean. It is not easy for political leadership to swim against the tide and it is a pity that the press gallery has not woken up to it. But on this particular issue Simon Crean is standing up, and standing up for a more democratic solution to this problem before us, and that courage needs to be acknowledged.

On the one hand, there has been hysteria about this issue; on the other hand, we should not be spooked by the number of emails that we seem to be getting on this particular issue. There seems to be a new elite developing in our society: those who can use emails and PCs. If you have a PC, you have a voice. I do not want to name any of them individually because it probably encourages them to send more emails, but having access to email does not equate, on the assessment of the emails that I have seen, with having any greater intellect. There are probably three categories of email that we are getting. There is one that seeks to blackmail: ‘We have voted for you forever’—that is something we cannot prove—‘Vote against this legislation or else we will never vote for you again.’ That sort of immature, undergraduate politics is not something that will hold water with me, nor will it hold water with most mature people in this parliament. Then you have the form critiques, the ones who have obviously picked up their note from someone else and they just forward it. They will not be taken seriously either, because we do spend a lot of time in this place and on committees assessing these issues. A form, ignorant representation is one that will not be taken seriously. Then of course we have the ones that say to us, ‘You are all hopeless. Both major parties are hopeless. The only ones really worth listening to in this debate are the Greens and the Democrats, and we want you to support their position.’ That grates enormously, particularly when you have been through the committee process, when you have actually spent the hours in deliberations and in discussions and someone says to you: ‘You ought to follow Bob Brown.’ I do not know why. He has not been seen on those committees or in those deliberations at all. I will say to them as well: do your homework before you send your emails to us.

The committee process that we had in this place was quite valuable. Organisations like the Law Council of Australia need to be acknowledged for the enormously high quality of their submission. Comprehensive, detailed, based on experience and knowledge of the law, it is probably one of the most valuable submissions that I have seen in my 21 years in this place. There were other submissions. Common to all submissions was that they seemed to oppose the government’s position and the government’s legislation. A lot of people did a lot of good work, and when I criticise those simplistic, ‘flick a switch’ email senders I am not criticising those who did an enormous amount of critical assessment of this legislation.

As I have said, we have concerns about this legislation. They are concerns that have already been mentioned by Senator Faulkner and that will be taken into account by the opposition in its deliberation in the committee stage. We will be moving amendments
that go very much to the heart of some of the government’s propositions, and I hope those amendments will be carried. If they are not, I hope that this legislation does not proceed any further.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.50 p.m.)—I table a correction to the explanatory memorandum relating to the Border Security Legislation Amendment Bill 2002. The correction was circulated in the chamber on 20 June 2002.

Senator HARRIS (Queensland) (12.50 p.m.)—Before commencing my comments on the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and related bills, I would like to take up from where Senator Bolkus left off in relation to emails. I actually have quite a different position: I actively encourage people to use the IT system to get their point of view across to their members and also to their senators. One Nation took the position of sending out the entire package to all of the legal fraternities and to those in positions in higher education in our universities, and we have been most surprised and thankful for the substantive responses that we have received from them.

Before I make some comments on the packages of bills before us, I would like to remind Senate of the origin of the word ‘terrorism’. The word ‘terrorism’ originated in the French Revolution when the government instituted the Reign of Terror to execute political opponents, seize their properties and terrorise the rest of the population into submission. Terrorism can be considered both in terms of international terrorism, such as the attack on America, and in the original sense of the word: state terror. Public apprehension of impending violence is the terrorists’ most valuable weapon. Such apprehension can lead to personal fear, changes in business or other practices which are unnecessary and damaging to economic or social life, and eventual government action which may undermine our democratic institutions.

I am not suggesting that the current government is about to unleash a reign of terror. What I wish to point out is that the antiterrorism legislation package, if passed in its present form, will remain on the statutes for the next 20 to 50 years or forever. Checks and balances are needed to ensure that civil and political rights cannot be suffocated at some time in the future. There is already a wealth of legislation and administrative measures in place in Australia in the event of a mainland terrorist incident.

Prior to the 2000 Olympic Games, the government conducted a comprehensive review of Australian security arrangements, including the passage of the Defence Legislation (Aid to Civilian Authorities) Act 2000 giving the Prime Minister and other appointed members of the executive the power to call out the troops. The act also gave Australia’s defence personnel the authority to shoot to kill Australian citizens. The Attorney-General’s statement indicated that there is no known specific threat of terrorism and that Australia has ‘well practiced and coordinated security arrangements’. Given this statement, one wonders exactly whom this proposed legislative package will benefit.

In its submission to the Senate Legal and Constitutional Legislation Committee, ASIO advised:

None of this is to suggest that there is any reason for assessing that Australia is a prime terrorist target. Clearly, the interests of a number of other countries are at considerably greater risk, such as the United States. At the same time, 11 September does mark a profound shift with real implications for Australian interests themselves and in respect of our responsibilities for foreign interests in Australia.

There are a number of points that I would like to make in relation to all of these bills before us. I will turn first to the time frame for discussion. The two-week time frame allowed for the preparation of submissions and for them to be made to the Senate Legal and Constitutional Legislation Committee is a national scandal. This is not a criticism of the committee itself, which did a good job in what could be considered to be onerous circumstances. What I want to emphasise is the fact that some witnesses at the hearing chose to focus their attention on specific legislation—for example, the Security Legislation Amendment (Terrorism) Bill 2002—because they simply did not have time to prepare submissions on the other bills. It is an indictment of the government when members...
of the public express regret over the fact that they could not comment on some bills due to the short consultation period. Two weeks is an affront to the democratic process, an absolute facade.

I wish to emphasise a remark made by the Customs Committee of the Law Council of Australia, which stated:

It seems to have become the standard practice of the Federal Government to foreshadow the introduction of legislation for some time then introduce the Legislation and expect that it be passed through both Houses of Parliament as a matter of urgency without ample opportunity being provided for review of the Legislation and community comment.

There is also the issue of the way in which the bills are presented. Again, the Law Council, the peak body for Australian lawyers, pointed out in its submission to the Senate committee on the legislative package:

The legislation is only presented as amendments rather than specifically in the context of existing Legislation. Given the practical difficulties associated with properly reviewing the Legislation, the Customs Committee—

that is, the Customs Committee of the Law Council—

inquires whether it is possible, as part of the package of information made available to the public (together with the proposed Bill and Explanatory Memorandum) for the Federal Government to also issue those parts of the Legislation proposed to be amended which have been marked-up to show the effect of the proposed amendments.

It is commonly accepted practice in many environments (including commercial law) that documents which are changed are issued with marking-up to show appropriate changes. Given the resources available in terms of word processing and Legislative drafting, there appears to be little practical reason why such proposed marked-up Legislation should not be issued together with the amending Bill and Explanatory Memorandum.

This legislative package constitutes the most historic change to Australia’s security environment in our nation’s history, and yet we as the people’s representatives are not allowed to debate each bill individually. Debate is being stifled in order to meet the convenience of the government—the heavy-handed tactics are almost as bad as the authoritarian legislation. It is an indictment upon the government that proper debate on each and every bill individually has not been allowed.

I will now address some specific concerns with each of the bills. The Suppression of the Financing of Terrorism Bill 2002 amends five acts and gives effect to the United Nations Convention on the Suppression of the Financing of Terrorism. The origins of the bill follow the attacks on the World Trade Centre and the Pentagon. The United Nations Security Council invoked chapter VII of the United Nations Charter, which says that the Security Council may determine the existence of any ‘threats to the peace, breaches of the peace, and acts of aggression’, and decide on measures to be taken to ‘maintain or restore international peace and security’. After invoking chapter VII, the Security Council unanimously adopted resolution 1373 on 28 September 2001. In that resolution, the council calls upon states to take action. I think it is important here that the people of Australia understand the United Nations terminology. Where this decision refers to a ‘state’, it is referring to the Commonwealth of Australia, not an individual state within that Commonwealth.

So in that resolution the council calls upon states to take action, both multilaterally and through national laws and regulations, to prevent and suppress the financing of terrorism acts and to implement other wide-ranging counter-terrorism measures. The resolution urges states to:

- Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism on 9 December 1999 …

It is not usual for the Security Council, acting under chapter VII, to direct such a request to all member states; indeed, it may be one of the few instances where this has occurred. Since then it appears that every country has felt compelled to change their rules so that they can ratify various UN conventions on terrorism, including the Convention on the Suppression of the Financing of Terrorism. I would like to point out that the Law Council of Australia has stated:
It is by no means clear that Australia’s international obligations require the creation of separate terrorism offences … The Law Council considers that the onus is on the Government to justify the creation of new statutory offences and powers as necessary to meet existing and anticipated threats, and to demonstrate that these strike the right balance between the needs of security and the rights and liberties of the individual. Anti-terrorism measures adopted in Australia should not exceed our obligations to the international community.

The convention on the financing of terrorism was originally adopted by the United Nations General Assembly in New York on 9 December 1999 and was opened for signatures on 10 January 2000. As of 2 April 2002, 132 countries have signed the convention and 26 countries have completed the ratification process, becoming state parties. The convention calls for effort to identify, detect and freeze or seize any funds used or allocated for the purpose of committing a terrorist act. It also asks that states consider establishing mechanisms to use such funds to compensate victims and/or their families. It calls upon financial institutions to pay special attention to unusual or suspicious transactions and to report to the government any such transactions that they suspect may be connected to criminal activity. The convention obliges state parties to prosecute offenders or to extradite them to the parties that suffer from the illegal acts.

The UN resolution has had a catalytic effect and has contributed to the speed of ratification and the influx of national terrorism legislation across the globe. The swift timing and draconian nature of the antiterrorist legislation that we are debating in this sitting is not unique to Australia. Canada, for example, instituted legislation to comply with this UN convention. Canada’s legislation was extremely broad in scope and raised important issues of civil liberties violations, and citizens were given a very compressed time for consideration. Are we, in effect, seeing legislative actions designed to appease the Security Council? The UN has submitted to Australia, and to other member states, a long list of demands to suppress and prevent terrorism. Australia is now adopting whatever measures may be necessary to bring domestic law into harmony with various UN conventions.

The UN Security Council examines reports on how governments are complying with its requests for strengthening national laws against terrorism. To aid in this process, the UN has set up the Counter Terrorism Committee, headed by British ambassador Jeremy Greenstock. The committee’s goal, according to the UN Newswire, is:

… upgrading the capacity of each nation’s legislation and executive machinery to fight terrorism.

Mr Greenstock has stated:

… every government holds a responsibility for ensuring there is no weak part of the chain.

The UN Counter Terrorism Committee is not a tribunal for judging states and it cannot settle issues of political controversy, but it submits them back to the Security Council. I want to quote what UN Secretary-General Kofi Annan has said about the committee on counter terrorism:

Through the work of this committee, member states are for once really using this organisation in the way its founders intended—as an instrument through which to forge a global defence against a global threat.

My question is: what other threats are on the horizon where the UN might require the same sort of action? Today we are debating much more than a bill to change Australian legislation; we are debating whether we are going to allow ourselves to conduct our internal affairs according to a UN resolution, which involves some duties that are domestic in character.

To turn now to the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002, I find that, as with other bills, it is necessary to point out that law enforcement agencies have been operating effectively for eight months without this legislation. The UN has submitted to Australia, and to other member states, a long list of demands to suppress and prevent terrorism. Australia is now adopting whatever measures may be necessary to bring domestic law into harmony with various UN conventions.
legislation be administered in light of good privacy practice. If a person explodes a device and does fearful damage, then they will be punished according to the section 72.3. Further along, 72.7 says proceedings for an offence under this division must not be commenced without the Attorney-General’s written consent. A person can be arrested, charged, remanded in custody, or at least on bail, in connection with an offence under this division before the necessary consent by the Attorney-General has been given.

There are two problems here. Firstly, proceedings cannot be brought without the Attorney-General’s written consent. A person could bomb a building, but the Attorney-General has to give his permission before proceedings can commence. Secondly, it also gives the Attorney-General power to decide who is to be prosecuted. If any offences were committed by one group, the Attorney-General has the power to proceed against it. If it is committed by another group, the Attorney-General has the power to not proceed. It seems the powers conferred upon the Attorney-General would enable him or her to pick and choose which groups or individuals could be prosecuted. The executive powers are being greatly expanded.

I might add that the legislation does not specify how long the Attorney-General has before giving permission to prosecute. Would it be that a person could be arrested, charged and remanded for a day, a month, a week? What is the specific time frame? How long could a person be held in limbo? As with other bills, I feel it is necessary to point out that law enforcement agencies have been operating effectively for more than eight or nine months without this legislation and that there are already state and federal criminal laws which deal with these proceedings.

On the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2], let me make it clear that One Nation opposes any form of proscription of organisations and the consequential criminalisation of membership in and assisting to proscribe organisations. The government’s amendments in relation to the proscriptive powers are weak and compromised. One Nation believes that the amendments do not go far enough. An organisation can still be specified although subject to disallowance by both houses of parliament within 15 sitting days of the regulation being tabled. We are also concerned that an organisation can be reviewed and outlawed again immediately when its two years as a specified organisation are up.

The legislation is not necessary and may be abused by governments in the future. It has been dressed up to look like it is going to combat terrorism and increase security but, instead, will allow the government to ban virtually any organisation in Australia. This legislation should be treated with the same contempt as the previous efforts to ban the Communist Party of Australia.

I now turn to the Telecommunications Interception Legislation Amendment Bill 2002. In the year 2000-01 a staggering 733,485 disclosures of information or documents by carriers, carriage service providers or number database operators were made under the provisions of part 13 of the Telecommunications Act 1997 and reported to the Australian Telecommunications Authority. In the 2000-01 year, 524,253 disclosures of information or documents were made under section 282(1) and 282(2) of the Telecommunications Act without a warrant or certificate. It should be a reasonable question to ask of the government: why does it need to amend the present legislation? It seems the existing legislation more than adequately gives law enforcement agencies access to private telephone data.

To turn briefly to the Border Security Legislation Amendment Bill 2002, our concern with this legislation, as with all of the government’s antiterrorism bills, is to ensure that any tightening of existing loopholes does not impinge upon the common law principles and the democratic rights and freedoms that Australians enjoy.

The clear onus and unequivocal judgment is on the government to justify and to prove that we need these new laws in Australia. Until sufficient and precise evidence is received, One Nation will be voting against all of the bills in this legislative package.

**Senator Brown** (Tasmania) (1.10 p.m.)—I commend Senator Harris for much
of what he had to say. I, on behalf of the Greens, express at the outset total opposition to this antiterrorist legislation. Our nation has very strong laws in place to deal with criminals, including terrorists, and very strong laws in place to surveil people who might be plotting against the country or against persons, organisations or institutions in the country. The impulse for this legislation has, of course, come from the Bush administration in the United States. I was recently in South Korea, which is a country that has a fledging democracy in the wake of many years of military government—

Senator Abetz—And a great soccer team.

Senator BROWN—I will ignore the flip-pant comments from the member opposite. The South Korean people have demonstrated so strongly against so-called antiterrorist legislation in their country that it has been shelved—but not here in Australia. The outcome of this debate is going to very much depend on the Labor Party. I would ask the Labor Party to consider very carefully the amendments coming from the crossbenches, not least those from the Greens—I will enumerate them in a moment—because if the legislation is to pass then it does need to be amended very strongly to defend our institutions, community rights and democratic rights in this great democracy of Australia.

Let me quote from a recent speech from the United Nations High Commissioner for Human Rights, Mary Robinson, commenting on issues just like those that we are dealing with in the Senate today. She was addressing the World Conference on Human Rights through a report of the United Nations High Commissioner for Human Rights. Mary Robinson said:

The issue of terrorism is not new on the human rights agenda. Terrorism is a threat to the most fundamental human rights. Finding common approaches to countering terrorism serves the cause of human rights. Some have suggested that it is not possible to effectively eliminate terrorism while respecting human rights. This suggestion is fundamentally flawed. The only long-term guarantor of security is through ensuring respect for human rights and humanitarian law. The essence of human rights is that human life and dignity must not be compromised and that certain acts, whether carried out by State or non-State actors, are never justified no matter what the ends. At the same time human rights and humanitarian law are tailored to address situations faced by States, such as a public emergency, challenges to national security, and periods of violent conflict. This body of law defines the boundaries of permissible measures, even military conduct. It strikes a fair balance between legitimate national security concerns and fundamental freedoms.

These balances are most notably reflected in the International Covenant on Civil and Political Rights (ICCPR). As you know, the ICCPR recognises that States could take measures to derogate from certain rights at a time when the life of a nation is threatened, or to restrict rights in other defined exceptional circumstances. There are conditions however to ensure that transparency, proportionality and necessity of the measures taken. Some rights such as the right to life, freedom of thought, conscience and religion, freedom from torture or cruel, inhumane or degrading treatment, and the principles of precision and nonretroactivity of criminal law, must be safeguarded at all times. The right to fair trial is also explicitly guaranteed under international humanitarian law. The principles of legality and rule of law require that the fundamental requirements of fair trial must be respected even under an emergency.

She goes on to say further in that speech:

I am particularly concerned that counter-terrorism strategies pursued after 11 September have sometimes undermined efforts to enhance respect for human rights. Excessive measures have been taken in several parts of the world that suppress or restrict individual rights including privacy, freedom of thought, presumption of innocence, fair trial, the right to seek asylum, political participation, freedom of expression and peaceful assembly. On 10 December 2001, on the occasion of Human Rights Day, 17 special rapporteurs and independent experts of the Commission on Human Rights expressed their concern over reported human rights violations and measures that have targeted particular groups such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media. Ensuring that innocent people do not become the victims of counter-terrorism measures should always be an important component of any anti-terrorism strategy.

It is that last comment by Mary Robinson that must focus our attention in this debate. Let me read it again:

Ensuring that innocent people do not become the victims of counter-terrorism measures should
always be an important component of any anti-terrorism strategy.

I submit that the legislation before us does not ensure that. In fact, it is open in many ways to abuse down the line by authority to ensnare people who are expressing their point of view in a way which is not acceptable to the government of the day.

Before I get on to the amendments to the government’s legislation, I want to point out a backdoor method of proscription which has already passed into effective law in Australia. Last October, the government passed regulations that allow it to effectively ban organisations by freezing their assets and banning their fundraising without any reference to the parliament. These regulations allow for organisations to be banned and already included here is the PKK, the Kurdish freedom organisation, and the Sikh Youth Federation. In the future the government could ban separatist Papuan or Tibetan organisations under these provisions. In the past they could have banned Fretilin and the African National Congress. We will be moving amendments to close this loophole so that any such banning will have to come before parliament through regulation, and I particularly commend that to the Labor opposition and my colleagues on the crossbench.

It is very important, with loaded legislation such as this counter-terrorism legislation, that parliament be the vetting authority: the safeguard of human rights and organisational rights. The judgment of the executive should not simply be sufficient. Already that regulation allowing backdoor proscription through effectively financially obliterating organisations ought to come before the parliament and the parliament should be given the opportunity to disallow it if needs be.

The new proscription provisions in this legislation effectively remove from parliamentary overview the power of the Attorney-General to ban any organisation in the future which falls foul of the definitions in this legislation. I note that there are amendments by the Labor opposition which would still allow the Attorney-General to ban organisations listed by the United Nations. I will be moving to ensure that that does not happen without the vetting of the parliament.

As Senator Harris mentioned, in 1954—and remember this was in the wake of the Korean War—the people of Australia voted at a referendum against proscription of the Communist Party, which at that time was being vilified as un-Australian and as supporting a violent approach to the takeover of the rest of the world. The country had been at war effectively against the communists in Korea with a great loss of life. Nevertheless, the people voted not to proscribe under those circumstances. Here we are now not in a state of war but with legislation before the parliament to allow the Attorney-General to proscribe just such organisations in the future. They will not have redress. This will be a considered decision by the Attorney-General, no doubt with reference to his cabinet colleagues, and I submit that that power should not be there. That is one of the reasons we will be voting against the bill. But, if it is going to remain, I urge in the strongest terms that the Labor Party without exception require any proscription to come before this Senate and the House of Representatives. This is too serious a matter to leave to the executive.

One of the arguments used back in 1954—and it is as good an argument now as it was then—was that, if you proscribe organisations that you think are terrorist organisations, you simply send them underground. They are more difficult to follow and track down, and so it is much better to have those organisations functioning. When individuals go past what is permissible, they get netted under our surveillance laws and charged under the criminal laws that have worked in this country for so many decades.

I will also be moving amendments which will obviate the government’s intention that protesters who threaten the health and safety of the public can be charged with terrorism. I do not believe that the ALP amendments will effectively get around the difficulties entailed in opening up that avenue. I have said publicly in the last couple of days that this could, for example, ensnare nurses who are picketing, because they are obviously not attending to public health and welfare while...
doing so—or at least ministers could argue that. Also, people protesting in the trees against the logging of forests in Australia have frequently been claimed to be endangering life and limb by the logging corporations—who, by the way, have a pretty horrendous record on endangering life and limb through their invidious activities which is second to almost none in the country. However, that is not the matter at hand.

We have here a prescription for a government in the future to move in on such protests, brand the people involved as engaged in terrorism and close them and their organisations down. Whatever one might think about the issue, that is unthinkable in a democracy which values protest—and vigorous protest—even if it is not within the ambit of the written law at the time. Let those people have their day before the courts if they are arrested, but let them not be arraigned under this legislation which would label them terrorists and put them into a category where they never have belonged and never should belong in the future.

Such legislation, which would potentially pick up unionists who are picketing or conservationists who are protesting, would flow on to people who supplied those people with goods, businesses that supplied them with goods, people who supported them and people who knew about their activities—family, friends and the like. We do not accept that there is a need to create such new offences relating to terrorism; that is, the threat to health and safety. The existing criminal law, with offences such as murder, criminal damage, conspiracy, and aiding and abetting, can and should be used to prosecute and penalise anything that can sensibly be described as terrorism. However, given ALP support for the government’s legislation in the widest sense, we want to ensure, as far as possible, that protest, dissent and union action cannot be labelled and prosecuted as terrorism. We also want to ensure that anyone who is prosecuted will have to be proven to be knowingly involved in terrorist acts.

As many members in the Labor Party will know, the recent ALP state conference recognised and expressed great concern about this legislation—and, in fact, opposed it. The conference called on federal ALP members of parliament to oppose the Security Legislation Amendment (Terrorism) Bill 2002, the Suppression of the Financing of Terrorism Bill 2002 and the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002—which we are not dealing with today, but which is coming down the line, and which is an outrageous undermining of basic human rights recognised not just in this country but right around the world. It provides, amongst other things, for people to be taken off the street, interrogated without their own lawyers, held incommunicado and charged with criminal offences with the potential of up to five years in jail simply for not answering questions. We will deal with that another time.

We Greens will also be moving to protect Australians and their families caught up in overseas conflicts. This is a very difficult matter. But the legislation, as it stands, would mean that any Australian caught up in an overseas conflict in which the Australian Defence Force was directly or indirectly engaged could be charged with treason. Any friend or family member who did not tell the Australian authorities about that person would also be charged. Where is the dividing line here? Does this mean that, if America had this on the books, Jane Fonda would have been charged during the Vietnam War? It is wide open to it. What about the small band of Australians who went and stood on the border between Kuwait and Iraq during the Gulf War to try and prevent war? They were effectively in the wrong place at the wrong time, according to this legislation, and could have been charged with terrorism. We are concerned about that.

I express again my concern about the two Australians currently at Guantanamo Bay without any rights whatever. That is an outrageous breach of basic human rights by the United States administration, aided and abetted by the Howard government. The government’s complicity through silence on this occasion is simply untenable for people who value human rights and believe that people should be brought to trial if they are charged with an act as serious as terrorism or treason—and tried in the Australian courts, if
we are to follow the logic of the current government’s thinking.

Finally, the Greens will move a sunset clause. It is a very generous one. It says that we should review this legislation in five years time. There is enormous concern about the ramifications of the legislation. We believe it breaches not only Australian ethos but also a number of international covenants to which we are signatories—and it is unnecessary. But if, as it appears, Labor is going to shepherd some form of this legislation through the parliament, it is very important that it be under review. A sunset clause in five years time will ensure that that review takes place.

The Greens oppose this legislation. We have major amendments. We will be seeking information from the government in the committee stage. We commend our opposition and our amendments to the chamber.

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (1.30 p.m.)—I rise to add to the comments that have already been made by the Democrats’ attorney-general and justice spokesperson, Senator Brian Greig, who outlined the Democrats’ stance on this bill in general and who specifically has talked, and in the committee stage will talk, about the amendments that the Australian Democrats have proposed. Since the introduction of the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and related bills, the Australian Democrats have campaigned very strongly to have these bills withdrawn. We did not do so lightly. We are aware of the security implications of the tragic events of September 11 last year. We are mindful of the obligation of this parliament to ensure that our laws are adequate to deter and to be able to pursue terrorists. The Australian Democrats, like all parties and all members in this place, abhor terrorism and would enthusiastically support legislation that was balanced to address any demonstrated deficiencies in Australian law in relation to terrorism. But the bills that have been introduced are not balanced and they do not address demonstrated deficiencies in Australian law. These bills, when introduced to the House of Representatives, were fundamentally flawed and they represented a poorly targeted response to terrorist activities in the United States.

The Democrats’ campaign against this legislation was prompted by the attack that these bills represent on the rights of Australian citizens. Our campaign was spurred on by the many faxes, phone calls and emails that we received in Democrat offices. We had people all over Australia campaigning Democrats and Democrat senators because of their concern about what this government was proposing and about the impact it would have on their rights as citizens and on democracy in our country, because these bills proposed an extraordinary set of measures that were utterly inconsistent with core civil rights and the rule of law. Community concern about possible terrorist threats should not be used as an excuse to enact unwarranted, unnecessary and undemocratic legislation. The legislation represented an ambit claim for arbitrary executive power and deserved to be rejected by this chamber. We would do well to heed the words of Justice Michael Kirby, speaking of that failed referendum relating to the Communist Party Dissolution Act—and I know it has been referred to by the most recent speakers before me—when His Honour said:

Given the chance to vote on the proposal to change the Constitution, the people of Australia, fifty years ago, refused. When the issues were explained, they rejected the enlargement of federal power. History accepts the wisdom of our response in Australia and the error of the overreaction of the United States. Keeping proportion. Adhering to the ways of democracies. Upholding constitutionalism and the rule of law. Defending, even under assault, the legal rights of suspects. These are the ways to maintain the love and confidence of the people over the long haul. We should never forget these lessons ... Every erosion of liberty must be thoroughly justified. Sometimes it is wise to pause. Always it is wise to keep our sense of proportion and to remember our civic traditions as the High Court Justices did in the Communist Party Case of 1951.

The Senate Legal and Constitutional Legislation Committee recently concluded its inquiry into this legislation. The committee was inundated with many hundreds of submissions calling for the bills to be scrapped. I congratulate all the members of the committee on a quality report. That assisted us and
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the parliament as a whole in exposing the many flaws of this legislation. In particular, I congratulate and applaud the many individuals and organisations who took the time to provide submissions to the inquiry, standing up for the rights of all Australians. It is ironic that this legislation should come at a time when the government is yet again criticising the role of the Senate. The government does not seem to accept the fundamental right of the parliament to have a house of review. However, it was actually a Senate committee—the house of review’s committee—that provided the mechanism for public consultation on this legislation and ultimately produced a report exposing the fundamental flaws in the bills. It is the Senate, once again, that has stood in the way of the passage of some of the most draconian legislation ever introduced in this place.

I will reflect briefly on the processes that have led up to today’s debate. We all know that the government rushed these bills through the House of Representatives with no real scrutiny. If there is any doubt about that, I think the Senate committee process revealed that that was the case. The Leader of the Opposition in the other place said at the time:

"The bills in question before the House amount to over 100 pages of legislation and over 100 pages of explanatory memoranda. To give some indication, this was introduced into the parliament at 8 o’clock last night and we are expected to consider those 200 pages and form a position about them to debate in this chamber at 12 o’clock the next day. That is not how you run modern government."

I support the Leader of the Opposition’s comments on this matter. I have already alluded to the Senate inquiry. Many organisations and individuals who made submissions to the committee complained about the lack of time for the proper scrutiny of those bills and the preparation of their submissions. Liberty Victoria said in their submission:

"The time frames in which to respond to these bills, along with other related bills including 13 proposed international treaties, is extremely short. As a result, we have been unable to examine all the terrorist related bills. We draw the committee’s attention to the fact that short time frames are essentially undemocratic and they severely curtail public participation and consultation. Liberty hopes that the situation will be remedied in the future to allow proper scrutiny of bills."

In a similar vein, Amnesty International said:

"Amnesty International considers this exceedingly short period for public consultation to be completely inadequate. The lack of time for public consultation and debate is of particular concern, given the seriousness of the proposed legislation."

So a number of submissions raised this issue. I make it clear that I do not raise it in order to reflect unfavourably on the committee; as I have already said, the committee produced a quality report. However, it is important to consider whether the process leading up to today’s debate has been satisfactory from the community’s perspective.

The next step in the process was the government’s response to the committee report. The Attorney-General issued a press release on 4 June. It stated that the government had finalised its amendments to the counter-terrorism package of legislation following the report of the Senate Legal and Constitutional Legislation Committee. I—among many others, but on behalf of the Democrats—was extremely surprised that while the government had produced these finalised amendments it was refusing to release them for public scrutiny. My office, along with Senator Brian Greig, contacted the Attorney-General and sought to obtain a copy of these amendments but we were told that they would be made available to the Australian Labor Party but not to us. I wrote to the Attorney-General the following day indicating the need for a transparent process for the redrafting of the legislation. I indicated that, as the government was keen to debate the bills in the June sitting, it was a matter of great urgency that the amendments be released to us to allow proper scrutiny. My office, along with Senator Brian Greig, contacted the Attorney-General and sought to obtain a copy of these amendments but we were told that they would be made available to the Australian Labor Party but not to us. I wrote to the Attorney-General the following day indicating the need for a transparent process for the redrafting of the legislation. I indicated that, as the government was keen to debate the bills in the June sitting, it was a matter of great urgency that the amendments be released to us to allow proper scrutiny. It has been weeks. Those amendments were not made available to us until 7.30 last Wednesday night, less than 24 hours before the commencement of debate on this legislation in the Senate.

These amendments propose a significant rewrite of the package of five bills. This has not been a satisfactory process. Time should have been allowed for proper scrutiny of the reviewed and revised legislation. Given that there are fundamental rights at stake in this
debate, we believe the government should be 
treading very carefully. With so much at 
stake it is ill conceived to rush through this 
legislation at such a pace. That is clearly 
what happened in the House of Representa-
tives: the legislation that passed through the 
House of Representatives was appalling. I 
was concerned to hear the comments by the 
Attorney-General last Friday. Referring to 
the need to maintain a balance between pro-
tecting civil liberties and bolstering Austra-
lia’s ability to combat terrorism, the Attor-
ney-General said:

I stand by the view that the Government’s original 
package struck a fair balance between these im-
peratives. But I respect the committee process and 
I respect the concerns that were put forward.

That is an incredibly disturbing perspective 
and is one that I doubt the Senate committee, 
for obvious reasons, would agree with. I 
doubt that a majority of Australians would 
agree with that disturbing perspective. Given 
the number of flaws that have been identified 
in the legislation since it was introduced to 
the House of Representatives, I have no idea 
how the Attorney-General can maintain such 
that balance was being struck. The government has been pressured by its 
own backbench and by the Senate into 
amending these bills. The fact is that it is still 
inappropriate to show disrespect and disre-
gard for basic civil liberties.

One of the most striking problems with 
the legislation as introduced—and Senator 
Greig has made reference to this—was the 
proposed definitions of terrorism and trea-
sion. We were very concerned about the ex-
cessively broad definition of terrorism and 
the very narrow scope of the exceptions for 
industrial action and lawful advocacy, protest 
and dissent. There is a range of situations 
where the definition of terrorism could be 
met, where the conduct in question would 
fall well short of accepted notions of terror-
ism, and I know groups have already been 
mentioned in this debate that could possibly 
fall within that broad definition. It is clear 
that the legislation could have been used to 
prosecute those involved in public demon-
strations designed to further political, relig-
ious or ideological causes. It is an outrage 
that that definition was so broad that it would 
scoop up in the net those kinds of groups. 
Certain forms of industrial action, such as 
picketing, could have been open to prosecu-
tion under that broad definition.

The offence of terrorism is one of the cor-
erstones of this legislation. It was a major 
flaw and a cause for grave concern that it 
would have included all sorts of protests and 
activism that anyone would consider to be 
part of a healthy, robust democracy. The po-

titical nature of the offence gave it the clear 
potential to be used to stifle opposition and 
dissent. It is vital to establish a sound defini-
tion of terrorism that does not extend to po-
itical activity unconnected with terrorism. 
Also concerning was the proposed definition 
of treason. It raised the possibility that peo-
ple providing humanitarian aid during armed 
conflict could be convicted of treason. That 
is clearly unacceptable.

Perhaps the most controversial aspect of 
this legislation, though, is the proposed pro-
scription power of the Attorney-General. 
This allows the Attorney-General to ban or-
ganisations and criminalise membership of 
those organisations. It is inappropriate in the 
extreme that the power to proscribe organi-
sations should rest solely in the hands of one 
member of the executive. It is an arbitrary 
power with very significant potential for 
abuse. There are clear parallels—again, some 
of which have been mentioned—between the 
legislation and the Communist Party Disso-
lution Act 1950. The Law Council of Aus-
tralia rightly characterised the power as: 

A serious departure from the principle of propor-
tionality, unnecessary in a democratic society, 
subject to arbitrary application, and contrary to a 
raff of international human rights standards in-
cluding 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.

These bills also sought to create a number of 
strict and absolute liability offences. Such 
offences are at odds with the presumption of 
innocence. They require the conviction of 
individuals in circumstances where the tribu-
nal of fact is left with a reasonable doubt as 
to the person’s guilt. Strict and absolute li-
ability sometimes applies in relation to of-
fences of a regulatory nature. Such liability, however, has no role in serious criminal offences that carry life imprisonment.

The Australian Democrats were one of the first groups to highlight the proposed changes to SMS and email interception powers, and we have been campaigning strongly to have those powers withdrawn. Thankfully, the government have withdrawn those powers for now but have indicated that they would like to proceed with them at some point in the future. We welcome the withdrawal of that element of the legislation. When it returns for separate consideration, we hope that it will be very carefully scrutinised by the Senate and ultimately opposed.

These bills in their original form undoubtedly represented an attack on the fundamental democratic principles of this country. The proposed definition of terrorism was incredibly broad and could have caught in it a range of political activities that did not have anything to do with terrorism; the exceptions for advocacy, protest, dissent and industrial action were totally inadequate. It is dangerous to assume that no future government would use these excessively broad powers to suppress opposition and dissent, because that is a possible consequence of having these laws on the books. The very broad proposed power of the Attorney-General to ban organisations was entirely inappropriate and is reminiscent, as I have said, of the failed Communist Party Dissolution Act 1950. It has no place in a democratic nation.

These bills also took the unprecedented—and, I believe, unjustified—step of imposing absolute liability in relation to offences carrying life imprisonment. The proposed changes to the privacy of email, text messages and other forms of digital communication were completely wrong. Many of these issues will be addressed during the committee stage discussions on these bills and through amendments that have emanated from a number of parties, including the government. It is important to remember that, if the Senate were the rubber stamp that the House of Representatives is, these extraordinary bills would have passed unamended—and that is a frightening thought for many in this place and, indeed, for many Australian citizens—but, as it happens, a number of the defects in this legislation will be remedied. The Democrats believe that, even if all the government and opposition amendments are successful, there will still be areas of outstanding concern. We will attempt to address some of those areas of concern, inasmuch as they can be addressed.

We remain particularly concerned about the banning of organisations and, more specifically, about the criminalisation of membership of an organisation. Punishment because of mere membership of an organisation is determining guilt by association and should be opposed. Not all members of an organisation share the intentions or support the activities of other members. It is disappointing that, we have heard, the Australian Labor Party will be supporting this provision. We are also clear on the need for a sunset clause to take effect following a comprehensive inquiry and an independent review of this legislation. Senator Brian Greig, the law and justice spokesperson for the Democrats, will be exploring these and other issues that the Democrats have indicated are of concern. We will be moving a number of important amendments in an attempt to significantly improve this legislation.

In closing, I wish to touch briefly on the theme of excessive executive power. It is an unfortunate reality that all people are fallible and some people are corrupt. History teaches that, when authorities are given excessive and unchecked powers, those powers tend to be wrongly exercised or wilfully abused. Concentrations of executive power must be checked; arbitrary executive power should be eliminated. The rights and liberties of our citizens are the lifeblood of a democracy, and any attack upon those rights and liberties presents a clear danger to our way of life. The Australian Democrats believe it is vital that, in defending democracy, we do not compromise the very ideals we are seeking to preserve.

Senator HARRADINE (Tasmania) (1.49 p.m.)—The Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and related bills are very vital and very important. We have to get this right. The legislation as it is drafted and as it is before us is not adequate.
The attacks upon New York, Washington and Pennsylvania on September 11 last year have had a profound effect and have been the catalyst for the drafting of these bills. In reviewing the bills, the Senate—with its powers embedded in the constitution—has an extremely important role to preserve the rights of individuals, especially when they come under attack.

I understand that it was not the intention of the government to subject those rights to an attack, but that effect has found its way into the legislation. I am certainly mindful of the fact that the government has been acting in cooperation with the US and the UK, for example, and with the United Nations to put in place more stringent measures to deal with terrorism—which threatens to become global in its impact. I acknowledge that terrorism is a global problem requiring global solutions. Whilst the rapid development in modern communications in the last decade—such as the development of the World Wide Web, the use of email and mobile phones and the growth in electronic commerce—has brought many benefits, modern communications can be and are used by those seeking to spread terrorism more widely. I acknowledge that Australia cannot be ignorant of those facts. Australians have always valued their freedom; many of our citizens have sacrificed their lives in war to defend our way of life. As the government would know, it has the responsibility to protect the lives, liberties and properties of citizens when threatened without invading their privacy by spying on them or detaining them without warrants.

However, there is no point in defending freedom against threats by threatening freedom itself, and it did seem to me that this package of legislation tended to do that. Whenever questions of national security arise, the importance of the individual and the dignity of each and every human being must remain paramount. Throughout human history there are many examples of totalitarian regimes where the interests of the state are deemed to be more important than individual rights and freedoms. As we all know, the state exists—or should exist—to serve the individual and, if the individual becomes subservient to the state, human rights, human dignity and the respect for human life itself are lost. We all know that, and we all acknowledge it. Not only does the state exist for the individual: it also exists for those fundamental institutions such as the family, in which individuals can flourish.

Thankfully, Australia, up until now, has been able to maintain a reasonable balance between national security and civil liberties. The bills that we have before us, unless they are amended—and proposals have been put forward by the government themselves, the opposition and others—have got the potential to threaten the delicate balance and the very freedoms which we have enjoyed and defended. The right to privacy, the right to freedom of association and the right to protest—these are rights that are basic to a healthy society. The role of the Senate, in protecting the rights and freedoms of individuals by scrutinising these bills and making changes, is of paramount importance.

My views have been longstanding on these matters. I remember arguing certain cases 20-odd years ago. I was also interested to read and appreciate what the Legal and Constitutional Legislation Committee report said, and I consider that it was a job quite well done. I do appreciate, as an individual senator, the work that is done by these committees. Although I was not on that particular committee at its hearings, I have the advantage of being a participating member on all legislation committees and, of course, I am a member of the Foreign Affairs, Defence and Trade Committee.

I want to acknowledge the government, the minister, Senator Ellison and others for their work. There has been a considerable amount of work done since that time, and amendments have been proposed. I also wish to acknowledge that the opposition have been involved in discussions. There has been much debate internally and with the government. Those discussions have been on some of the major sticking points such as the definition of terrorism, the power to proscribe an organisation, and the reversal of the onus of proof. I look forward to the committee stage debate when these particular matters will be thoroughly canvassed and when there will be an opportunity for the minister at the table to
respond to questions. I have always found the minister, Senator Ellison, to be very forthcoming in respect of questions that are asked in this chamber and elsewhere. That, to me, is a far better approach than some of the approaches that we get from one or two other ministers. I would like to go for another minute and a half, but I understand that we will have closure of the debate by the minister representing the Minister for Foreign Affairs in due course—presumably after questions to take note of answers.

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Health: Pharmaceutical Benefits Scheme

Senator WEST (2.00 p.m.)—My question is to Senator Patterson, the Minister for Health and Ageing. Does the minister recall that recently, when asked at Senate estimates, ‘What happens to behaviour as a result of those PBS price increases?’ Mr Charles Maskell-Knight, the First Assistant Secretary, Health Access and Financing Division, said, ‘I think it is fair to say that the impact does not last very long?’ In light of this clear statement by a senior health department bureaucrat, can the minister tell the Senate: do these increases in PBS copayments do any more than add to the government’s coffers at the expense of the poorest and sickest members of the community?

Senator PATTERSON—Senator West knows only too well, as do all the people on the other side, that the Pharmaceutical Benefits Scheme has increased from $1 billion in 1990 to over $4 billion—almost $5 billion—this year. Earlier this year we had some research undertaken, and we found that most Australians do not understand how much their medications are subsidised. The most commonly prescribed medication—I have said this a number of times—costs $80 per person per script. For people on a concession card who pay $3.60 for their prescription, we were proposing that they pay $4.60 up to 52 scripts and then they get their medication for free. When we did the research, they indicated that they thought $20 was an expensive medication. People who did not have a concession card—and 85 per cent of scripts are written for people who are on a health care card—thought that they paid the full price of their medication. Very few people are aware that some medications, for diseases like diabetes and multiple sclerosis, cost from $1,000 to $1,100 per script. The Pharmaceutical Benefits Scheme is not sustainable in its current form.

You would believe, from the other side, that we had no other measures in the budget to rein in the cost of the Pharmaceutical Benefits Scheme. We are not taking money out of the Pharmaceutical Benefits Scheme. What we are proposing is that we spend the same amount of money on the Pharmaceutical Benefits Scheme this year as we did last year, and more into the out years. Ms Macklin has joined in the debate—we might imagine she would join in the debate—and has refused to rule out increasing Pharmaceutical Benefits Scheme copayments if Labor were to win government. She said that when Labor brought in the copayment they gave pensioners a benefit. She forgets to mention that the Pharmaceutical Benefits Scheme goes up by the CPI, and we introduced the fact that pensions go up by male average weekly earnings. The Labor Party’s approach is: tell only half the story; do not tell the whole story.

The sickest and the poorest in this country will be affected if we are unable to sustain new medications coming onto the Pharmaceutical Benefits Scheme, if we are unable to look at some of the medications that are lining up that will cost thousands of dollars per person. I have said before that the community has to make a decision about whether we spend more on the Pharmaceutical Benefits Scheme as a government. We are not taking money out of the PBS, and in the out years we are spending more. Will we need to spend more as a nation, and will we as individuals need to spend more of our household budgets? I know it is not easy, I know it is difficult, but we have all got a difficult decision to make. If we want access to very expensive medications, we all have to make some sort of contribution to them. The sickest and the poorest—and we have crocodile tears on the other side—will be the ones who will be affected. Senator West said that one of the bureaucrats said that it will not change
behaviour. What it does is to bring people’s attention to the fact that medications are very expensive and that we have to use them wisely.

We have got not just the instrument increasing the copayment; we have brought in measures to address the very few pharmacists who are engaged in fraud and measures to improve the prescribing of medications by doctors so that they more clearly understand the guidelines, with information that will be provided by us and information that will be provided by the pharmaceutical companies. We are looking at a raft of measures, including, as I have said before, better management and better use of medication.

Senator WEST—Madam President, I ask a supplementary question. Does the minister recall saying in the Senate, on 18 October 1990, when speaking against the imposition of PBS copayments, ‘There is growing evidence to suggest that this change will not necessarily help stop the blow-out in the pharmaceutical budget’? That was in the Senate Hansard of 18 October 1990, page 3421. When and why did the minister change her mind on this issue?

Senator PATTERSON—The Pharmaceutical Benefits Scheme was $1 billion then. It is now almost $5 billion. The other thing is that we have talked about a raft of measures, not just increasing the cost of the copayment. We have a raft of measures, including the National Prescribing Service—$45 million over four years—that Labor never had, to improve the use of medications. We also have the Home Medicine Review Program, with over 1,500 accredited pharmacists and another 500 or 600 in the pipeline, so that pharmacists can go into people’s homes, in conjunction with the person’s doctor, and go through their medication to ensure that they are taking the right medication. We have a whole program for the better use of medicines; it is not just the instrument increasing the copayment. We have a raft of measures, unlike Labor, to improve the use of medications to make sure we get the best outcome from the dollars that we are spending on a highly subsidised program for the public.

Workplace Relations: Reform

Senator BARNETT (2.06 p.m.)—My question is to the Leader of the Government in the Senate, the Hon. Senator Robert Hill. Will the minister inform the Senate how the Howard government’s industrial relations reforms have delivered benefits to Australian workers? Is the minister aware of any threats to the personal freedoms of Australian workers, and is there anyone who has given support to these threats?

Senator HILL—That is a very good question. It does give me the opportunity to remind the Senate, particularly the ALP, that the Howard government has delivered major benefits to Australian workers and their families.

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left!

Senator HILL—This upsets them, of course, but they can hear it. The Howard government has delivered those major benefits to Australian workers and their families through responsible management of the economy and through our commitment to sensible workplace relations reform. The most obvious result of this ongoing commitment has been the creation of more than 970,000 new jobs since the election of the Howard government. Compare this with Labor. We will never forget Labor’s legacy, at its worst, of over one million unemployed. Under Labor, unemployment went up to over one million. Under the coalition government, we have created almost one million new jobs in just over six years. Our industrial relations reform has also brought better wage justice for Australian workers. In Labor’s 13 years of office, average weekly earnings grew by just 0.41 per cent per year. The same figure under the coalition government is two per cent. That is five times as high as Labor. So, apart from getting more jobs, Australian workers in employment have been five times better off under the coalition. In addition to that, Australian workers have experienced record low home loan interest rates, $12 billion of income tax cuts and sustained low inflation. So not only are workers getting
more money in their pay packets but they get greater freedom as to how to spend it.

It is true that there is a new threat to the personal freedom of Australian workers and, regrettably, that threat is endorsed by the Australian Labor Party. It arises from a decision by the Federal Court which has opened the way for unions to charge Australian workers a service fee even if they do not choose to join the union. What that means for Australian workers is a slug of several hundred dollars a year going straight into the coffers of the trade unions. This outrageous attempt at backdoor compulsory unionism—

Opposition senators interjecting—

The PRESIDENT—Order! There is too much noise on my left.

Senator HILL—It is not surprising that Australian workers have voted with their feet. They are getting out of unions in their droves. Down to one-quarter of Australian workers are now in unions. Anyway, who was the first to endorse this new policy? It was the Leader of the Opposition, Mr Crean. We thought that Mr Crean was going to stand up against trade unions. We thought he was the one who was going to reform the Labor Party, shaking it free of trade union influence. But at the very first test here he is falling over himself to do the bidding of the trade union bosses. We all know why: it is because this has the potential to channel more money, millions of dollars, into the trade union coffers. From where does the money then flow? It is to the Australian Labor Party. So Australian workers, most of whom probably do not even vote for the Labor Party, would be funding the Labor Party’s next election campaign. It is all very cosy. By contrast, this is a government that has stood up for the rights of Australian workers and their families. Australian workers now know what they will get under a Labor government: compulsory unionism, whether they like it or not.

Health: Pharmaceutical Benefits Scheme

Senator CROWLEY (2.11 p.m.)—My question is to Senator Patterson, the Minister for Health and Ageing. Can the minister confirm that Celebrex is a significant factor in the cost blow-out in the PBS, confirming expert PBAC opinion at the time of listing that controls such as HIC authorisations should have been attached to the listing of this drug? Can the minister confirm that Pharmacia, the manufacturer of Celebrex, actually sought to have this medicine prescribed under authority when it was first listed? Wasn’t this request rejected because the Health Insurance Commission advised that it could not handle the expected volume of phone calls from doctors requesting this authority?

Senator PATTERSON—The Labor Party’s questions indicate that they are concerned about the PBS but they are not prepared to do anything or to support the government, as we supported them when they increased the cost of the pharmaceutical benefits copayment. I think it went up 420 per cent under Labor for people on the general copayment.

Senator Chris Evans—You will only have to come in and retract it after question time, so get it right.

The PRESIDENT—Order! Senator Evans!

Senator PATTERSON—Now they are going to try and wind back the clock.

Senator Knowles—Are they going to take Celebrex off?

Senator PATTERSON—Good question, Senator Knowles. Will they take Celebrex off? With the suite of changes that we have brought in with the budget—not just, as I said, the increase in the copayment—we will be reviewing a number of medications. When a company applies to the PBAC to put a medication onto the PBS, they go through a process. The PBAC is a group of people who work incredibly hard for very little reward. I believe they do it because they want to make a commitment to Australia and to the PBS. They evaluate the information provided to them by the companies, using their skills as oncologists, doctors and people with a background in pharmacy. They use their skills to ensure that when medications go on they are cost effective, and they outline guidelines.

In the budget papers we have indicated that we will have improvements in the guidelines being put to doctors before medi-
cations go onto the PBS. I think that needed improvement. We will ensure that those guidelines are much more clearly outlined to doctors through a number of mechanisms. I think there was a problem in the sense that doctors were not always fully informed of the guidelines and the guidelines for prescribing those medications. In the budget papers we have outlined that a number of those medications will be reviewed to ensure that they are cost effective and to ensure that, as they have claimed, they have a better outcome than other medications which may be cheaper. For example, Celebrex argued that there would be less gastrointestinal problems as a result of it compared with other anti-inflammatory medications.

Senator Hill—They did what?

Senator PATTERSON—That was not terribly helpful, Senator Hill. Thank you very much. If you want to answer questions on health, I would encourage you to do so. What they will do is assess whether these medications are in fact better than the anti-inflammatory medications already on the PBS or whether their claims have not been sustained. We have that review process. As I have said a number of times, just increasing a copayment is not the only thing we have in the budget. There are a range of measures, including reviewing some of these medications. Let me just say to the Labor Party that they did not put in place some of the measures that we have put in place to ensure that medications are prescribed appropriately—with the Home Medicine Review Program and the National Prescribing Service. Under Labor, we saw antibiotics being prescribed at a rate that means that we now have in our hospitals bacteria that are resistant to antibiotics. We will wind back the clock and ask: where does the blame lie? It lies with the Labor Party in that they did not bring in appropriate prescribing regimes to ensure that we did not see the overuse of antibiotics.

Senator CROWLEY—Madam President, I ask a supplementary question. I note the minister argues that not enough has been done. I ask again: can she confirm that Pharmacia, the manufacturer of Celebrex, actually sought to have this medicine prescribed under authority when it was first listed—a very good thing to do to try to restrain pharmacists and doctors? What additional resources have been provided to the HIC so that expensive PBS medicines can be more readily prescribed on authority—a system to restrain the doctors’ practices? What action has the minister taken to ensure that administrative excuses are not used to reject valid recommendations for controls, with the result that this government is just slugging the poorest and the sickest in the community?

Senator PATTERSON—I will keep repeating that the poorest and sickest in our community will be slugged if we are unable to put new medications onto the Pharmaceutical Benefits Scheme because it is unsustainable. That is who will be slugged: the sickest and the poorest.

Senator Crowley—Did you deny the authorities?

Senator PATTERSON—Senator Crowley is asking about authority. Let me say to you that doctors find it a bit galling to have to ring up to get authority because it takes time. What we have done is to put in place an online authority system that facilitates that authority for doctors by speeding it up so that they are able to get the answer as quickly as possible—something that was not done under Labor. It ensures that they get the answer to the question about whether or not their medication can be prescribed for this particular patient as quickly as possible. The sickest and the poorest in our community will suffer in the next three, four or five years as a result of the fact that we will have to look at medications going onto the Pharmaceutical Benefits Scheme because it will not be sustainable into the future. (Time expired)

Telecommunications: Services

Senator MASON (2.17 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. How is the Howard government working cooperatively with Telstra and other telecommunications companies in providing world-class phone services to all Australians? Is the minister aware of any alternative approaches and what would be their impact?
Senator ALSTON—Senator Mason has asked a very important question because we all understand the fundamental importance of Telstra to the telecommunications environment in this country. What you need to do overwhelmingly, if you are to make progress in reform, improving standards of services and the like, is to work cooperatively with as many of the players as possible. Given Telstra’s very powerful position in the marketplace, it clearly follows that you have to be working closely with Telstra on almost a daily basis. We have managed to make very significant progress as a result in delivering untimed local calls, reaching vast parts of regional and rural Australia and improving the customer service guarantee. This has meant ever increasing levels of quality of service as objectively determined.

There is a number of very important areas where cooperation is absolutely crucial. The Australian public expect no less. They do not want open warfare between prima donna politicians and very important players in the marketplace. So what are we to make of this extraordinary story on the front page of today’s Australian which says that Mr Tanner, the opposition spokesman, has threatened to sue Telstra for defamation? Actually, the headline is a beat-up because it is really Mr Tanner who claims:

It was a clear attempt to intimidate me and to use the threat of legal action ...

On the evidence available to me, there was no threat of legal action, simply a pointing out that Mr Tanner was fundamentally incorrect in some very important statements that he made. He put out a press release saying:

Telstra has been caught red-handed deceiving the Senate ... Telstra’s Finance and Administration Director ... misled the Senate and the Australian public by giving inaccurate evidence ...

What is any responsible telco, or any company for that matter, supposed to do when faced with that allegation of deliberately and seriously misleading? They get independent advice. That is what happened. They were advised that there was not a skerrick of evidence to support Mr Tanner’s allegation, that they were highly defamatory of their director of finance and administration. What we have here is not Telstra being caught red-handed deceiving the Senate; it is Mr Tanner being caught red-handed deceiving the Australian public.

It is a very serious matter. You look at that story and you see that this alleged threat was made some three weeks ago. You ask yourself: why on earth is Mr Tanner leaking it to a journalist at this point in time? All became clear when I received an email the other day which says that the anti-Tanner forces led by Senator Sue Mackay—who just happens to be from the CPSU; she is their representative in parliament and looks after their interests, as of course do all the other constituents on the other side of the chamber—are marshalling their troops to roll Mr Tanner on structural separation in caucus this Tuesday or the following week. There is cross-factional support to kneecap him.

It ought to be abundantly plain that what is happening here is that Mr Tanner is launching a desperate smokescreen to try to distract attention from his own very serious internal problems. We know that there is any number of people lining up for the leadership of the Labor Party, given that the current leader is dangling in the breeze, but I would have thought, after this effort today, it is clear there is one less contender. Mr Tanner needs to understand that from now on any criticism he ever makes of Telstra will be seen through that prism of him trying to get his own back. This is a man who has accused Telstra of almost everything under the sun in recent times: opportunistic and greedy corporate behaviour, abandoning social obligations, letting profitable customers languish— in other words, all the sorts of things that vent his own political prejudices. The minute they take independent advice, he cannot cop it. (Time expired)

Health: Pharmaceutical Benefits Scheme

Senator CHRIS EVANS (2.22 p.m.)—I wish to ask Senator Patterson, the Minister for Health and Ageing, a question. Can the minister confirm that plans to improve the transparency of the processes of the Pharmaceutical Benefits Advisory Committee have recently been proposed, and what are those plans? Can the minister reassure the Senate that this will not be just another Howard government move to open up the door to
greater influence from lobbyists and drug companies over PBAC decisions? Given that all the transparency problems in the recent past have been on the part of the then minister, not the PBAC, will this new transparency regime also be extended to the decisions that are made by the minister about which medicines recommended by the PBAC ultimately end up on the PBS?

Senator PATTERSON—The PBAC, as I said before, is a body of experts who use the information they gather to make a decision about whether a medication is cost effective before it goes onto the PBS. Those people do so, and the pharmaceutical companies claim that a lot of the information they provide to the PBAC is commercial in confidence. Professor Sansom, who is the chairman of that committee, has indicated that the PBAC would like to have a more transparent process. The PBAC is in the process of looking at that because, as I have said, the pharmaceutical companies believe that they have commercial-in-confidence information that they provide to the PBAC, and yet the PBAC believes it is important for the community to understand more fully the reasons for not putting a medication on.

I am sure Senator Evans understands that there is an enormous amount of emotional involvement in medications, especially those that are very expensive, are life extending and there are questions about—for example, whether a medication does extend life. Sometimes one of the problems that the PBAC faces is that there is not sufficient evidence or information available to it when making that decision, because the medication has not been around long enough for that to happen. They are very difficult decisions it has to make. They are decisions on the basis of whether the medications are cost effective. Some of the pharmaceutical companies put people on trials and then take them off those trials, and that is an emotional issue for many people.

This is a very sensitive area which has to be handled very carefully, as independently as possible and as fairly as possible to ensure that Australians have access to new medications that are cost effective and that do what the pharmaceutical companies say they do and to ensure that as many Australians as possible have access to those medications. But it is very difficult in terms of the PBAC, because they do handle commercial-in-confidence information, and to get that balance right is very important. We know in some countries pharmaceutical companies have refused to actually launch new medications onto the market because of the difficulties they encounter. We want to make sure that we have a reasonable relationship with pharmaceutical companies, that they behave in a reasonable way and that the PBAC can be as transparent as possible under the circumstances.

Senator CHRIS EVANS—Madam President, I ask a supplementary question of the minister. Isn’t it true that former Minister Wooldridge was the decision maker without accountability or transparency in his decisions on drugs like Celebrex and refused expert advice and—we now know—the request of the company itself to attach volume controls when listing Celebrex that would have prevented the huge blow-out in costs that occurred last year? Why won’t the minister take real action on ministerial transparency on PBS listing to ensure that former Minister Wooldridge’s failures on Celebrex are not repeated?

Senator PATTERSON—I hope Senator Evans never becomes health minister but, if he ever does, he will realise that there are constraints on the health minister. One of the constraints on the health minister is that, if the PBAC does not recommend that a medication go on authority, the minister has no power to ensure that medication goes on authority. I have been advised that Celebrex was not put on authority by the PBAC and that then meant that the then minister was not able to put it on authority. So let us get the facts straight. Let us understand that we have an independent committee that makes these decisions to make it transparent, to put the minister at arm’s length from those decisions, and the PBAC, I am advised, did not agree to Celebrex going on authority. Therefore the then minister, Dr Wooldridge, was unable to put it on authority.
Immigration: Asylum Seekers

Senator BARTLETT (2.27 p.m.)—My question is to the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs. Is the minister aware of the recent Federal Court findings in two cases dealing with people seeking asylum where, in one instance, the court found that a decision by a member of the Refugee Review Tribunal had shown actual bias against acceptance of an applicant’s claim and that, in another case, a decision made by the tribunal had not been made in good faith? Does the minister agree that it is a very serious thing if a member of the Refugee Review Tribunal—that literally makes life and death decisions—makes those decisions in a biased way or in bad faith? What action will the minister take in relation to this finding?

Senator ELLISON—I am aware that there were two recent cases in the Federal Court where Justice Mansfield found that a Refugee Review Tribunal decision maker was biased and another had not acted in good faith. Based on counsel’s advice, appeals to the full Federal Court have been filed on both matters. The court has not yet allocated dates for the matters to be heard and, as these matters are before the full Federal Court, it would not be appropriate for me to comment.

Senator BARTLETT—Madam President, I ask a supplementary question. Could the minister outline what sorts of actions the department takes and the minister takes to ensure that tribunal members—whether Refugee Review Tribunal members or Migration Review Tribunal members—make their decisions in a proper way? Is there any course of action for dealing with people who do not follow those sorts of procedures?

Senator ELLISON—I recall this matter was canvassed at length at the estimates hearing and of course the government does want to ensure that its tribunals act fairly, and it keeps a close watch on that aspect. Senator Bartlett’s question really does invite me to go further into the two matters at hand, and I think it would be inappropriate for me to do so for the reasons I have outlined. Suffice it to say that it is the government’s intention that of course any government tribunal should act fairly and in an unbiased fashion.

Health: Pharmaceutical Benefits Scheme

Senator JACINTA COLLINS (2.30 p.m.)—My question is to Senator Patterson, the Minister for Health and Ageing. When did the minister authorise the printing and distribution to doctors, pharmacists and electorate offices of this glossy pamphlet selling the government’s proposed changes to the Pharmaceutical Benefits Scheme? Why was this done prior to agreement by parliament? How much was spent on this promotional campaign pre-empting decision of this parliament? And what measures has the minister taken to address the confusion she has caused?

Senator PATTERSON—I asked that a brochure be prepared, to be distributed as soon as possible after the budget, basically because pharmacists in our community play an important role in public education. As I have said, they have played a very important role in telling people about better use of medicines in the Home Medicine Review Program. The first people that the community would go to when there was a proposed change in the budget were, I believed, their doctors and their pharmacists. And rather than have them have to interpret what the budget said through the newspapers, it was more important, I believed, to have our proposals in a correct form in a way in which they could actually communicate with the community. The community goes straightaway to the pharmacist. What does the pharmacist do? Use some sort of filtered version of the budget, through the press. I would suggest that it most probably is not, with all due respect to the press, the best source of information.

We believed that the community ought to receive accurate information on the PBS and the proposed changes, and it has not been helped by the unfortunate scaremongering of the Labor Party. It is true that we intended to educate members of the public about our proposals to ensure that we had the information out there clearly in the public arena and to ensure that medicos and pharmacists were able to tell the public, clearly and correctly, about what our proposals were, rather than
hearing about it from the press or the Labor Party, which, again with all due respect, was spreading around very false information and misinformation.

I did actually ask the department to do that; there was some delay, apparently, in that brochure getting out. I thought it was important for people to know exactly what the government was proposing, because it is a very serious issue. The Pharmaceutical Benefits Scheme has increased, as I said, from $1 billion to nearly $5 billion in the last 12 years. It is not sustainable at that rate. The Intergenerational Report indicates that it will be billions and billions and billions of dollars in 40 years time unless we curb the spending on the PBS, unless we ensure that the public understand the PBS. It was quite clear from earlier research that people did not understand about the PBS, and we need to ensure that they are informed.

Senator JACINTA COLLINS—Madam President, I ask a supplementary question. The measures described in this brochure are not described as proposals but rises which will come into effect from 1 August this year. In addition to the $130,000 spent on this glossy and inaccurate brochure, this precipitous campaign, what is the cost of distribution, handling, departmental time et cetera, and how much will be spent on undoing it?

Senator PATTERSON—Do you know what I did? I believed that the Labor Party and the Democrats and the Greens would be responsible, that they would accept the fact that we would increase the PBS only when we believed it was necessary. And I believed that they would actually come along and, as we did when they increased the Pharmaceutical Benefits Scheme by 420 per cent over 13 years for people who were not on a concession card, that the Labor Party and the Greens and the Democrats would act responsibly. But I was wrong. They do not act responsibly. They are prepared to watch the PBS go down the tube because they are not prepared to make the hard decisions. They were not prepared to make the decisions on the GST; they are not prepared to make the hard decisions on the PBS. Do you know what they would have done? They would have borrowed money from overseas, as they did in 1996—$10 billion—to pay for the PBS: borrowed from the next generation to pay for medication for Australians today. We are not prepared to do that, and I thought they would be responsible and agree to increase the copayment.

Budget: Retractable Needle and Syringe Technology

Senator MURPHY (2.34 p.m.)—My question is addressed to the Minister for Health and Ageing and relates to the government’s Tough on Drugs strategy. The minister would be aware of the very significant concern in the community, particularly from parents of young children, about the potential for people to acquire blood borne viruses from needlestick injuries from discarded syringes in public places, such as parks and beaches. On 7 December last year, the minister announced a four-year funding program for the development and introduction of retractable syringes, which was confirmed in the budget. Given the seriousness of this issue, and that the bulk of expenditure does not commence until 2004 and beyond, can the minister advise the Senate whether the government will bring forward the expenditure program should suitable retractable syringe technology become available within the next few months?

Senator PATTERSON—The government remains fully committed to progressing the $27½ million initiative announced in the 2002-03 budget to fund a project development and implementation strategy for the introduction of retractable needle and syringe technology in Australia. The initiative is intended to address community concerns about the risk of acquiring a blood borne virus from discarded needles and syringes in public places and about the risk of injury to health care workers. There are three main groups in Australia to whom this announcement relates directly: health care workers, people with diabetes who inject insulin, and people who inject drugs illicitly. To ensure the development of retractable needle and syringe technology that is appropriate to the specific product applications of the three groups, a program of public health research will first be undertaken. It will inform the ministry in product research and develop-
ment and will include full economic analysis, social and behavioural research into product acceptability, including disposal, disease surveillance, national audit of public disposal facilities and implementation and evaluation of trials of retractable technology.

There are a number of designs of retractable needle and syringe technology, either in the prototype stage or currently available for use in Australia, and these are predominantly suitable for use in health care settings by health care workers and not by people who self-administer injectable drugs. Uptake of currently available technology in health care settings has been low. An audit and review of the existing technology will be undertaken. Work in this area will proceed in full cooperation with state and territory governments and with key stakeholders in the context of the national drugs strategy and the existing needle and syringe program.

This measure represents a major preventative health landmark, but it is absolutely vital that the Commonwealth ensure that its implementation guarantees that we will get the best outcome we can from retractable needles. We have a problem that if people are able to rejig those needles and use them again, they may be no better than ordinary syringes. We have to ensure that they are fail-safe and that they actually achieve what they set out to achieve.

Senator MURPHY—Madam President, I ask a supplementary question. I thank the minister for at least reading from a lot of the budget brief. But I again ask the question: if the technology becomes available in the next few months, will you bring the expenditure program forward?

Senator PATTERSON—I have indicated that we have to ensure that the technology is appropriate for the three user groups, and what may be appropriate for health care workers may not necessarily work for people who are using drugs illicitly. The government will not introduce the use of retractable needles without ensuring that we get the best outcomes: protection for children on beaches, protection for health care workers and to ensure that such needles cannot be reused by people who are using drugs illicitly. As I have said to Senator Murphy, there are a number of types of retractable needles, and I presume he has been lobbied by the many groups involved in producing them. But we want to make sure that we get the best outcomes from this very new, innovative development—again not undertaken by Labor.

Senator Crowley interjecting—

Senator PATTERSON—Senator Crowley shouts out. Thank heavens that, by the end of the week, I will not have to hear her shouting out across the chamber again. (Time expired)

Taxation: Mass Marketed Schemes

Senator CONROY (2.39 p.m.)—My question is directed to Senator Coonan, the Assistant Treasurer and Minister for Revenue. Is it true that the minister rang the Tax Commissioner on the evening of Saturday, 25 May this year, shortly after she had attended a cosy Royal Perth Yacht Club gathering that same evening with 14 selected investors? As a result, did Mr Carmody, the following Monday, announce an extension of the deadline for settlement of mass marketed scheme debts?

Senator COONAN—Thank you, Senator Conroy, for the question. Unlike Senator Conroy and no doubt a lot of those on the other side, some ministers on this side actually work on weekends. As Senator Conroy well knows from extensive questioning at estimates, the commissioner, in fact, confirmed that on a Saturday evening, when I was in Perth, I telephoned the commissioner in relation to a number of concerns that had been raised by certain investors in Western Australia on the mass marketed schemes issue.

Senator Robert Ray interjecting—

Opposition senators interjecting—

The PRESIDENT—Order! Senator Ray and other senators on my left will cease shouting.

Senator COONAN—I notice there is some suggestion that the location of this meeting was somehow or another generic to all of the meetings I had in Western Australia; I actually had meetings right throughout the city of Perth in various electorates to do
with mass marketed schemes. Following certain matters having been brought to my attention, I rang the commissioner. There was a deadline for the existing offer that the commissioner had published and communicated to investors. The commissioner had, as I understand it, decided that offer would be extended until 21 June, which was last week. I am happy to say that some 70 per cent of investors have now taken up the offer.

But it ill behoves Senator Conroy to be casting aspersions on the efforts made on behalf of taxpayers. Of course, the Labor Party have absolutely no credibility on the issue of tax—not even amongst their own rank and file. We know from the Wran Report, prepared by their own party in New South Wales, that Labor has simply failed the tax policy test—failed it miserably. And what does the report have to say about tax? If you look at it, Madam President, the report is not that interested in mass marketed schemes. What it is interested in is the fact that Labor’s rollback, which has only recently been dumped, was a dismal failure. It says, ‘We failed to realise that significant sections of the electorate had adapted to the GST.’ Labor once again failed to listen to the people, just as they would do—and they failed to listen to anyone who even had a concern about the tax office. They spend far too much time listening to their majority shareholders at Trades Hall and far too little time listening to the people who actually elect them.

Senator CONROY—Madam President, I ask a supplementary question. Is the minister aware of the comments of Clive Ross, paid representative of the tax minimisers and one of the 14 selected investors at the yacht club function, that:

... and an extension has coincidentally, or otherwise, been announced ... as reported in the *Australian Financial Review* on 28 May 2002. How is the Senate to have any confidence in the capacity of the tax commissioner to operate independently, if the minister acts in this way?

Senator COONAN—Thank you for the supplementary question, Senator Conroy. What happens in the *Australian Financial Review* and what, in fact, happened at a particular meeting to do with concerns of certain taxpayers do not necessarily coincide. The situation is that the commissioner has advised the Senate estimates committee that my phone call to him had absolutely no impact on his decision to extend the time for investors to take up the settlement offer and that he had already extended the offer. It is clear that that call had no impact at all on whether or not the extension was granted. But, even if it had, I am quite entitled to advocate on behalf of taxpayers a certain position that delivers a fair outcome to them. In fact, if the Labor Party only listened to the people who elected them and took a bit of care and trouble over people who have concerns, they would do very much better. *(Time expired)*

Forestry: Tasmanian Regional Forest Agreement

Senator COLBECK *(2.45 p.m.)*—My question is to the Minister for Forestry and Conservation, Senator Ian Macdonald. Will the minister outline recent developments in relation to the progress of the five-year review into the Tasmanian Regional Forest Agreement? Is the minister aware of any alternative approaches concerning forestry management?

Senator IAN MACDONALD—Senator Colbeck is obviously very interested in forestry matters and, certainly in Tasmania, it is a very important part of the economy and the environment. Indeed, all of my Liberal colleagues from Tasmania are very interested in forestry issues. That is why the Howard government and the previous Liberal state government entered into the first regional forest agreement some time ago, and it is now up for its five-year review. It is the first to reach that point, and it is indicative of the thoroughness of the RFA that this review is going ahead. That review will involve extensive consultation, and I do congratulate the current Tasmanian government and the Liberal opposition for that bipartisanship on forests, particularly on the RFA. The Tasmanian government has legislated to complement the Howard government legislation because it gives a balance between jobs and the environment. It is important that areas are pro-
tected. Old-growth reserves have increased by some 25 per cent since the RFAs were signed. Sixty-eight per cent of old-growth forests in Tasmania are now in reserves. More than 8½ thousand people are employed in that industry.

That bipartisanship on the forests has done a lot of good in the past—that is what we thought about the bipartisanship, but it is too good to be true. The true Labor fraud on the forest is now starting to emerge from the undergrowth: it shows that you cannot trust Labor, particularly around election times. For example, last election the member for Denison, Mr Kerr, backed the RFAs. Now he has abandoned the workers for a new green lobby, and that will put some 8½ thousand members of the CFMEU out of work. In fact, the CFMEU has said that this Labor man should join the Greens. Coming from a powerful union like that, and with the 60-40 rule in place in the Labor Party, that is a fairly powerful suggestion.

This begs the question: what will the Leader of the Opposition, Mr Crean, do? Madam President, you will remember that it was Mr Crean who stopped Mr Kerr from leaving the federal parliamentary Labor Party. It was Mr Crean who vetoed Mr Kerr’s leaving. Under the 60-40 rule, the unions have all the say, so when the union says, ‘Get rid of Mr Kerr, put him in the Greens,’ what is Mr Crean going to do? It will be another test of leadership for Mr Crean, but we know that he has failed. The CFMEU says that the member for Denison is two-faced: he wants two dips at it. It shows Labor’s double-Duncan on forests during elections. In regional seats the Labor Party is the workers’ mate but in the city seats—down amongst the Salamanca cappuccino set—the environment is all the go.

As Tasmania heads to the polls on 20 July, it is overdue that we expose Labor’s fraud on the forests. I ask members of the Labor Party: which is it going to be? Is it going to be the comrades or is it going to be the café latte set? Labor has to answer that question prior to 20 July. There is a difference between the two parties in this: with the Liberals you know you will get balance, you will get jobs and you will get good results for the environment; with the Labor Party all you do is play off special interest groups, one against the other. I have to tell the Labor Party that on this issue there is no place to hide in the forests.

**Superannuation: Contractors**

_Senator SHERRY_ (2.50 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Given that the Australian Quarantine and Inspection Service, by its own admission, will cut the pay of its meat inspectors and vets to cover its superannuation obligations, will the government be encouraging private sector employers to cut wages when the superannuation guarantee increases from eight per cent to nine per cent on 1 July?

_Senator Coonan_—I am sorry, I did not hear the question, Madam President.

_The PRESIDENT_—Will you repeat the question, Senator.

_Honourable senators interjecting—_

_The PRESIDENT_—Order! Less noise in the chamber would be of assistance. Senators sitting in the vicinity of Senator Coonan—

_Senator Kemp interjecting—_

_The PRESIDENT_—Senator Kemp! Senator Coonan did not hear the question when asked previously because of the amount of noise in her vicinity.

_Senator SHERRY_—I notice the minister is looking up a brief. Given that the Australian Quarantine and Inspection Service, by its own admission, will cut the pay of its meat inspectors and vets to cover its superannuation obligations, will the government be encouraging private sector employers to cut wages when the superannuation guarantee increases from eight per cent to nine per cent on 1 July?

_Senator COONAN_—Thank you for the question, Senator Sherry. Certainly, the government is not going to be encouraging employers to cut wages—what absolute nonsense. The mere fact that Senator Sherry has the gall to ask a question about the superannuation guarantee I think really shows just how much those on the other side have lost the plot on the superannuation package that we took to the last election. Despite railing
against the introduction of the superannuation surcharge, the ALP now does not want the government to lower it. The government went to the polls having outlined in detail our plan for a phased reduction in the superannuation surcharge, and the measures were fully costed in the budget.

Senator Sherry—Madam President, I raise a point of order. My question went to the superannuation guarantee and the payment of that by the government. It had nothing to do with the surcharge. The minister is not answering the question. My point of order goes to relevance.

The PRESIDENT—I am sure the minister is aware of the question and is leading to it.

Senator Robert Ray interjecting—

The PRESIDENT—Senator Ray, you have been interjecting persistently since the beginning of question time.

Senator COONAN—The superannuation guarantee is going up by one per cent. That is not going to have any impact whatsoever on the ability of employers to meet that. That has been the policy for a number of years, and so it is almost impossible to see how employers could not be ready for it. It is certainly not going to affect any employer who needs to pay it.

In respect of superannuation, we are just seeing the same old carping and whingeing from those opposite; the same old opposing of measures for the sake of it, trying to frustrate the policy agenda of the government that the people elected just a few months ago. I do not know whether senators opposite have been keeping up with the news, but the electorate rejected the ALP yet again. The voters considered our policies and then voted us in so that we could implement them. Yet the Labor Party wants to oppose simply for the sake of it, particularly with regard to the surcharge. The community simply did not want Labor senators to try and set up their own alternative government to be able to oppose every superannuation policy that the government puts up.

Employers will be able to meet their obligations under the superannuation guarantee, and Australians will have a more attractive and a better superannuation system. If those opposite will simply allow the government to implement an attractive package of measures that includes the reduction of the surcharge and the introduction of a co-contribution for low income earners, all of those measures—together with the increase in the superannuation guarantee to nine per cent—will mean better adequacy, better protection for employees and a superannuation system that meets the needs of Australians into the future.

Senator SHERRY—Madam President, I ask a supplementary question. I will ask the question for the third time, and maybe the minister might be able to answer what I actually ask. The Liberal-National Party government has been exposed in its illegal attempt to avoid paying superannuation for hundreds of quarantine meat inspectors and vets and, potentially, many thousands of contractors throughout the public sector. How can it claim any credibility at all with regard to ensuring employees in the private sector receive their superannuation entitlements or with regard to superannuation more generally? I ask this for the third time. Can she give it a go?

Senator COONAN—Senator Sherry, I will certainly give it a go. To start with, all issues to do with AQIS are not in my portfolio, and so perhaps you had better go back and have a bit of a look at the issues to do with AQIS. They are actually in Senator Ian Macdonald’s portfolio. But, as to the general safety and adequacy of the government’s superannuation policies, the opposition would do well to look to the fact that, guess what, we over here won the election. Those who were not elected and are in opposition are now seeking to oppose every measure to enhance the adequacy and safety of superannuation for all workers in Australia, together with the superannuation guarantee.

Lucas Heights: Nuclear Reactor

Senator ALLISON (2.58 p.m.)—My question is directed to the Minister representing the Minister for Science, Senator Alston. Now that ARPANSA has discovered that the new reactor at Lucas Heights is being built on an earthquake fault line, will the
government withdraw its construction licence?

Senator ALSTON—I think it is a serious overstatement to suggest that it is being built on an earthquake fault line. The facts of the matter are that, after very exhaustive inquiries and studies over a significant period of time, there was no evidence to indicate that there would be any lack of safety in proceeding on that site. It was only during the course of inspections of the excavations at the site in recent weeks that ANSTO noted a possible fault that could be of significance from a seismic perspective. It is really that which is being investigated: the mere possibility. It is an abundance of caution that, quite justifiably, requires further investigations to take place. But Senator Allison’s question jumps from the very premise of a possibility to a concluded judgment that is adverse. I think that is a very big leap of faith. I know it might suit certain political proclivities, but the fact is that every precaution will be taken with regard to construction of the reactor. That process will clearly be an exhaustive investigation. Once the results of that are made available and public by ARPANSA, we will all be able to make appropriate judgments.

Senator ALLISON—Madam President, I ask a supplementary question. Will the exhaustive further investigation determine what would happen if an earthquake of the magnitude of the one in Newcastle a few years ago took place at Lucas Heights? In those circumstances, what radioactive material would be released into the atmosphere? Will the government prepare studies showing the number of people likely to be killed in the event of an earthquake? Why was that fault not discovered at an earlier stage?

The PRESIDENT—There are some aspects of that question that seem to me to be hypothetical, but is there anything the minister wishes to add?

Senator ALSTON—Putting the hysterics to one side, clearly there is a need for a serious investigation into the seismic implications. Those conducting it—it is being done by a firm of consultants—will be aware of all the possibilities and they will take those into account. It is not meant to be a quick and narrow investigation; it is meant to be one that takes account of all the possibilities, and I am sure that that is what will occur.

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

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Health: Pharmaceutical Benefits Scheme

Senator CHRIS EVANS (Western Australia) (3.01 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Health and Ageing (Senator Patterson) to questions without notice asked today relating to the Pharmaceutical Benefits Scheme.

The government has tried to defend its 30 per cent hike in the cost of pharmaceuticals to Australian families and pensioners by arguing that this is the way to stop the blow-out in the costs of pharmaceuticals in this country. We know from historical experience and from the evidence of Department of Health and Ageing officials in the Senate estimates process that this move will have no impact on the long-term trend of increased costs of the PBS. What we know is that there will be a spike, that demand for drugs will fall in the short term and then growth in demand will continue to rise in the longer term. The reason there will be a short-term drop-off in demand is that poorer people—people on low incomes, pensions and disability support—will decide that they cannot afford pharmaceuticals, that they cannot afford to get all their scripts filled and that they will make decisions about their health care based not on their doctor’s advice or on their medical need but on what they can afford. The 30 per cent increase driven by government policy, if adopted, would have that impact on their costs, but it would have no impact on the long-term trend in the PBS.

The government is failing to tackle some of the real issues that exist in this area. I do give credit to the government in the sense that there were some initiatives in the budget which will help. There were some budget policy decisions which will go towards making the PBS more efficient and towards attacking unjustifiable increases in costs and some of the practices that have become asso-
associated with drug manufacturing, production and marketing in this country, but they fail to tackle a whole range of the key issues.

The debate today around some of the questions asked of the minister related to the drug Celebrex. This is a classic example of where a drug was brought onto the market, the government estimated in the first year a cost of $40 million and the real cost was in the order of $160 million: a massive blow-out in the cost of the drug and in the cost to the PBS. Yet somehow the argument today is that the cost blow-out caused in Celebrex and other drugs such as Zyban is going to be addressed by slugging pensioners and families. Slugging them for that extra cost is somehow going to address those problems. These problems come back to the government’s management of the introduction of those drugs, such as its failure to take the necessary precautions on price and volume controls. Now pensioners and families have been asked to bear the cost of this mismanagement—and, quite frankly, with the former Minister Wooldridge it was more than mismanagement. We all remember the very political interference in the membership of the PBAC. We saw a large number of members of that organisation resign because of the minister’s interference and his attitudes to their work and, while there was a defence by the current minister of the good role that they play, we all remember the interference that occurred and the appointment of a pharmaceutical industry representative to that body, which caused a great deal of disquiet about maintaining the independence of the PBAC and the effect on its ability to do its work effectively.

We know that, with drugs like Celebrex, the government did not introduce the price and volume controls that would have protected the budget from the blow-outs that have occurred. We now have a massive blow-out in the costs because those drugs have been inappropriately prescribed for people who could have done with other drugs that were cheaper or more appropriate to their needs. The government comes back and says that because of that mismanagement, because of that failure, the pensioners of Australia have to suffer. They have to have a 30 per cent hike in the price they pay for the drugs, because the government did not tackle that issue properly. What we know is that there will be other drugs where we will have the same problems.

The questions at stake are questions of proper public policy, proper management of the PBAC, proper price and volume controls and proper use of authorities with drugs. Zyban is the other one where authority was required, but the counselling services et cetera that were supposed to go with the authorisation for these drugs did not occur. There was a huge blow-out in the use and the cost of Zyban and, consequently, the taxpayers had to pay much more for that drug than was anticipated because of the failure to put in place the proper public policy. We are saying to the government that slugging pensioners and families with a 30 per cent increase in their costs is not the answer to these issues; it lies in proper public policy solutions. *(Time expired)*

**Senator KNOWLES** (Western Australia) *(3.06 p.m.)*—Anyone would think that we have just pressed the replay button from a debate last week on this particular subject. We have heard the Labor Party today repeat the same falsities as last week, that it is somehow the government’s fault that Celebrex, Zyban, Vioxx and all of those drugs have been prescribed. I repeat what I said last week: governments do not prescribe; doctors do. I might add that Labor senators do not prescribe. The Labor senators think that they are above all of that and that they are better equipped to know what a patient requires. What worries me, worried me last week and has worried me ever since the announcement of the PBS copayment came in is that the Labor Party are going to take Celebrex, Vioxx and Zyban—and probably a whole lot of other drugs important to diabetes and asthma—off the PBS. That is what they are driving at. They have refused point-blank to deny it, and they continue to say that Celebrex, Vioxx and Zyban should not be on the PBS.

They say that people will not be able to afford these drugs. What a lot of nonsense. We heard today Senator Evans and some of the carping canaries over there talking about
the cost of these drugs. What they do not understand is that there are many drugs for which the PBS level does not even cut in, because they are of lower value than the PBS payment. The Labor Party cannot get it through their thick scones that many drugs do not get to the PBS, so people who are non health care cardholders might have to pay $28.60 for a drug that costs $1,200, $600, $300 or $400. That does not matter to the Labor Party. They just keep saying, ‘Let’s just run the bill up. It is not our worry.’ If they were in government that is exactly what they would do. As Senator Patterson said at question time today, they would just go overseas and borrow more money to pay for this; they would not care less. That is what they did when they were in government for 13 years. Any time they wanted to do something, they would either jack taxes up or go overseas and borrow more money.

For non health care cardholders in this situation we are talking about a maximum of about 31 scripts per year—and all of those scripts would have to be written for drugs that are on the PBS and not below, before they actually got to the safety net. That does not worry the Labor Party; that is not news. ‘We will go out and tell fibs about it’—that is what they have done today, what they did last week and what they have done every day since the budget announcement. It is about time people understood what the Labor Party are coming at. No wonder they are in opposition. No wonder Premier Carr and Barry Jones think you have nothing to offer the people of Australia: you cannot even get a policy like this right. You cannot go out and tell the truth: that people who are on health care cards simply have at maximum one script per week before they hit the safety net. The average number of scripts written for health cardholders is 19 per year, so most cardholders will only be paying $19 a week more—

Senator Crowley—A year.

Senator KNOWLES—Thank you, Senator Crowley, that was a useful interjection for a change. Nineteen dollars a year is the maximum that most of them will be paying on average, yet listening to the Labor Party it sounds as though they are going to be paying hundreds of dollars instead of $19. Even if they are high script users—and some people are on a combination or a cocktail—the maximum they are going to pay is $52 a year. Listening to the Labor Party you would think it was $520 a year. It is about time some honesty came back into this debate from the opposition parties, and time they realised that if they did have the responsibility of government—they should take appropriate action. (Time expired)

Senator CROWLEY (South Australia) (3.11 p.m.)—I was fascinated to hear Senator Knowles abusing the Labor Party because we say that governments do have a role in how pharmaceuticals and the costs are managed. You are right, Senator Knowles, senators do not actually prescribe—with stunning exceptions, and I could be one—

Senator Knowles—But you don’t prescribe any more.

Senator CROWLEY—Senator, you should not rabbit on when you don’t know what you’re talking about. Despite what you say, it is the government’s responsibility to help manage prescribing practices. That is one of the things that the Labor government set out to do, and they did it very successfully, first of all encouraging the use of generic brands—much cheaper drugs than the full tot, nongeneric, private brands with all their labelling and so on. The Labor Party started that. To give it its due, the Liberal Party has continued it, but it is silly for Senator Knowles to insist that the government has no role in it. It certainly does. As we pointed out today, if the recommendation for Celebrex to be a drug prescribed on authority had gone through then the number of those prescriptions would have been significantly less. At least, that was the evidence when the Labor Party introduced authority requirements for the prescription of many other drugs in times past. The doctors complained very extensively about it, so the Labor Party when in government took off the requirement for authority. It watched the number of prescriptions go through the roof so it put the requirement back in again. Yes, governments can make a huge difference on the cost of prescriptions and also the prescribing practices. Properly, the Labor Party
in government started that process and the Liberal Party continues it. But it is ridiculous to insist that we did nothing and they are all pure.

I would hope that the Labor government would never introduce what is in this budget, which is so unfair and is so skewed toward making the biggest hit on the poorest and the sickest in this community. It is well and good for Senator Knowles to say that the pharmaceutical safety net will only go up by $1 a week for people on health care cards; for people on health care cards there is no margin, there is no disposable income. To increase the general safety net for the poorest in this country from $187.20 to $239.20 is an increase of $52 a year once people get onto the number of prescriptions that allow them to have that safety net. That $52 a year is not small for people living on a pension. ‘Just a dollar a week’: if you say it like that it does not sound much—to people who have some disposable income. But to people on health care cards $52 a year is a significant amount of money.

Why would you want to take money from the poorest people in our community when you could certainly do much better by, for example, requiring authority on the prescriptions for Celebrex? That would save a considerable amount of money on pharmaceuticals overall. The government’s response to all of this is, ‘We’ve got to save money, we won’t be able to afford the cost of pharmaceuticals in time.’ That is why the Labor government in the past introduced steps to modify the prescribing practices of doctors. That is the most efficient and best way to restrict the cost of pharmaceuticals: getting the doctors to think about what they are prescribing. The first big battle was to get them to prescribe the cheaper generic brands.

Finally, Minister Patterson today, in trying to explain why she put out a bit of paper explaining all of these changes, said she did that to explain the proposals. But nobody reading it would think they were proposals when it reads, for example, ‘from 1 August the prices will rise by ...’. That is not the statement of proposals; that is a statement of what will happen. The minister went on to say that she really put out this bit of paper not to explain proposals—and, indeed, facts—but because she believed that nobody in this Senate would defeat it. That is a quite contrary series of arguments and, I must say, a very disappointing one. The government jumped the gun on this and they have been caught, because this Senate—this Labor opposition—is not going to allow the poorest and the sickest to bear the burden of the pharmaceutical costs and the mismanagement of the budget under Mr Howard and Mr Costello. If they want to restrict the cost of prescriptions, they should bring in a policy that spreads those costs amongst the richest people, the people who can afford it, and not amongst the sickest. (Time expired)

Senator EGGLESTON (Western Australia) (3.16 p.m.)—Australia has one of the finest pharmaceutical benefit schemes in the world. People in this country have the great benefit of being able to get medications very cheaply through the Pharmaceutical Benefits Scheme. That is very unusual in the world, because in most countries medications are very expensive and in many cases people simply have to go without because they cannot afford them. The government, with these measures, is ensuring that Australia’s fine record of providing pharmaceutical medications to the population of this country who need them at a cheap rate is maintained. I find it very hard to understand why the ALP—which likes to promote itself as the party of the poor and underprivileged and as the party which cares about people who need to be assisted in many ways, including in the provision of purchasing medications—is opposing the measures the government is introducing when the purpose of them is to ensure that the most needy people in Australia are still able to get medications at very cheap rates by world standards.

As an example of how different from other countries the cost of medications is in this country, one of our colleagues had a prescription filled last year for an antibiotic called Rulide, and it cost him around $16 at a pharmacy in Manuka. He went to Thailand, I believe, and to get a second prescription filled for the same drug it cost him SA132. That is an example of the enormous differ-
ence in the costs of medication between this country and other countries.

Because science is improving, more and more new drugs are being found and the cost of medications is increasing. Because the cost is increasing, the forward projections of the expenditure required to maintain the Pharmaceutical Benefits Scheme are increasing as well. Over the last 10 years, the cost of the Pharmaceutical Benefits Scheme has increased by an average of something like 14 per cent per annum. Over the last two years, the expenditure has increased by between 20 to 26 per cent per annum. The Pharmaceutical Benefits Scheme is the fastest growing component of Commonwealth health expenditure. For example, there are drugs for common conditions now being developed which are very effective compared to those available in the past and which cost a great deal of money. It seems to me quite obvious and logical that, if we are to maintain the level of expenditure on the health scheme, we have to control that expenditure to some degree by increasing the patient component paid for medication.

Something like 85 per cent of the prescriptions written in Australia are for people on concession cards. Those people, it is proposed, will pay $4.60 a prescription, which is an increase of $1 from $3.60 a prescription. A single prescription for diabetes, for Humulin insulin, may cost the federal government $391 but the patient will only pay $4.60; the prescriptions of people who have asthma commonly cost the government $52 or $85. To ask people to pay just $1 extra to meet those increased costs I do not think is a very great ask. What Australia has done in terms of pharmaceutical benefits, as I have said, is the envy of the rest of the world. The federal government is managing the projected increased costs in the Pharmaceutical Benefits Scheme in a very prudent way by proposing to slightly increase the patient component of these costs. That is a very responsible and sensible process to adopt so that Australians continue to have excellent service. (Time expired)

Senator McLUCAS (Queensland) (3.22 p.m.)—I would like to take note of the answers from Senator Patterson today to questions put to her by the Labor Party on the issues of the Pharmaceutical Benefits Scheme and, in particular, go to the issues of Celebrex and advertising. We know that the PBAC, the Pharmaceutical Benefits Advisory Committee, goes through a process of assessing a drug in terms of its cost-effectiveness and whether or not it is an appropriate drug to list as a publicly funded drug on the Pharmaceutical Benefits Scheme. The PBAC, as we know, recommended to the minister some years ago that Celebrex should be listed. The minister then asked the Pharmaceutical Benefits Pricing Authority to negotiate with the company. What the minister did not tell the Senate here today, when given the opportunity through the questions, was that the Pharmaceutical Benefits Advisory Committee recommended to the minister that Celebrex be listed but with conditions: acceptable cost-effectiveness at a price not significantly greater than $1 per day; and that the arrangement should be subject to a price volume agreement based on the estimated proportion of current NSAID use by patients with the approved indication who are 60 years of age and above. The Pharmaceutical Benefits Advisory Committee recommended to the minister that that drug be listed with conditions. The minister today said to us that the PBAC did not recommend that it have an on authority condition— that is correct—but why would the authority recommend to the minister that an on authority condition be attached when in fact it had recommended an alternative control arrangement—the price volume agreement?

History tells us that the price volume agreement was not adopted by the government. The minister did not take the advice of the Pharmaceutical Benefits Advisory Committee and the minister did not put in place any controls. He put no controls in place to control the prescribing of Celebrex. As we know, as a direct result of the minister’s actions, the expected estimate of the market was $40 million for the first year, but $170 million was, in fact, spent through the Pharmaceutical Benefits Scheme on Celebrex. The minister did not get a recommendation about an on authority condition—he got a very clear message about a price volume agreement.
agreement and he did not take it. If we had had a price volume agreement the manufacturers of Celebrex—the company Pharma-
cia—would have got two different levels of payment. For their first $40 million they would have been paid at a higher figure and for the second amount of money they would have been paid at a lower rate.

That price volume agreement arrangement sends a message to the manufacturers and the marketers of pharmaceutical drugs that it is not worthwhile for you to spend a lot of time and effort marketing your pharmaceutical product to both consumers and doctors. That does not happen in the United States and the blow-out and the enormous expense that pharmaceutical companies go to to advertise their products to both consumers and doctors is larger than any other vote—any other amount of money—spent by any other in-
dustry in America. At least we have some control but it is not absolute and the pharma-
ceutical companies do spend a lot of money advertising to the community. This govern-
ment took no notice of the Pharmaceutical Benefits Advisory Committee on the issue of Celebrex. So it is wrong for Senator Knowles to say that they are completely blameless. She says that it is not the Senate but doctors who prescribe drugs. That is true but it is governments who manage pharma-
ceutical benefits schemes and it is this gov-
ernment that has mismanaged this Pharma-
ceutical Benefits Scheme.

Question agreed to.

**Immigration: Asylum Seekers**

Senator BARTLETT (Queensland) (3.26 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Justice and Customs (Senator Ellison) to a question without notice asked by Senator Bartlett today relating to decisions of the Refugee Review Tribunal.

That question related to two court findings by Justice Mansfield in the Federal Court of Australia regarding decisions by the Refugee Review Tribunal. One case dealt with an applicant from Iran who was fleeing and had been knocked back by the Refugee Review Tribunal. The second judgment, handed down on 30 May in Adelaide, also related to a person who was seeking asylum. The question went to the findings of the judge which basically emphasised that in both cases the decision made by the Refugee Re-
view Tribunal member was either showing clear bias in one case or not made in good faith in the other. As senators would be aware this parliament passed, last year, leg-
islation which dramatically restricted the grounds of appeal to the courts on Refugee Review Tribunal decisions. Those grounds had already been significantly curtailed: for example, there were already no grounds for people to be able to appeal a decision to the courts, even if they could establish that the decision made was so unreasonable that no reasonable person could have made it. There is a bill before this parliament at the moment to ensure that no-one can appeal on the grounds that natural justice was not fol-
lowed.

We have an extended history in this area of jurisdiction in migration law of trying to prevent any sort of judicial review of a tribu-
nal decision. In justifying that, the govern-
ment always says that the tribunal acts properly. While that is not something that I would accept, and the Democrats would not accept, you could at least say that there is some argument for avoiding double dipping, if you like, if you can be confident that the tribunal acts properly. Given that we have had two findings just in the last month alone by one judge finding bad faith—or not good faith—in the case of one tribunal judgment and actual bias in the case of a second tribunal judgment, that obviously is a cause for concern.

That does need to be emphasised that Refu-
gee Review Tribunal decisions are often life and death decisions. One of these is about a person who fled Iran who was being chased by the police. He was suspected of being against the government and having stolen a policeman’s hand gun. None of those facts were particularly disputed by the tribunal, yet they found not that the person might be in a bit of difficulty if they went back but that it was not for a convention related rea-
son. In a situation like that it is pretty clear to suggest that when, the facts are put forward,
when there is a serious risk of the person facing persecution, it is potentially quite literally a life and death decision that is being made by the tribunal. In that sort of circumstance, it is an incredibly serious thing for it to be determined by the court that decision makers who make life and death decisions are acting in bad faith or with bias. It really needs a serious response from government.

The government’s response, as it often is with court decisions it does not like, is to appeal them again. Presumably if they lose in the full court of the Federal Court they will appeal it to the High Court. It is acknowledged by the community that an enormous amount of the legal expense in migration decisions is incurred because of the minister and the department continuing to pursue appeals against decisions they do not like. In many cases it is not the applicants but the department that keeps appealing and generating enormous cost to the taxpayer, because they do not want to have legal precedents established that might mean that people can have a better chance of getting refugee status. That is the absurd situation things have degenerated to. That is what is being done with this: further appeals again. In the meantime, those tribunal members will keep making decisions without, it appears, any examination—(Time expired)

Question agreed to.

NOTICES

Presentation

Senator Mason to move on the next day of sitting:

That the time for the presentation of reports of the Finance and Public Administration Legislation Committee be extended as follows:

(a) Charter of Political Honesty Bill 2000 [2002] and 3 related bills—to 29 August 2002; and


Senator Sherry to move on the next day of sitting:

That there be laid on the table, on the last sitting day of the 2002 winter sittings, the modelling, including information on projected spending for payments to individuals, education, health and aged care spending, prepared for the draft Intergenerational Report in early 2002 before budget changes were factored in, prepared by the Retirement and Income Modelling Unit, Treasury and identified in Treasury’s evidence before the Economics Legislation Committee on 6 June 2002.

Senator Ridgeway to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) Aboriginal and Torres Strait Islander Peoples have only been counted in the national census for the past 30 years (since 1971), even though Australia has been a federation for 100 years,

(ii) the results of the 2001 Census of Population and Housing shows the Indigenous population of Australia has increased 16.2 per cent since 1996 and now stands at 410,003 people,

(iii) Indigenous people now represent 2.2 per cent of the national population and the Indigenous population is growing at a rate more than twice that of the general population (which stands at 6 per cent),

(iv) 58 per cent of the Australian Indigenous population is under 25 years of age, which is in stark contrast to the non-Indigenous population where only about one-third (35 per cent) is aged under 25 years, and

(v) 40 per cent of the juvenile detention centre population is Indigenous and 20 per cent of the national adult prison population is Indigenous; and

(b) expresses its concern at the disparity in rates of attendance at secondary school between Indigenous children (46 per cent) and non-Indigenous children (70 per cent), which is contributing to the relatively low percentage of Indigenous Australians who complete Year 12 (10 per cent) compared with the rate for Year 12 completion in the total population (30 per cent), and notes that both rates are of concern; and

(c) calls on the Government to:

(i) recognise the longer term implications of these figures, especially as they relate to the provision of educational opportunities
and the need to foster the emerging young Indigenous leadership, and
(ii) use these figures, in conjunction with the recommendations of the Commonwealth Grants Commission Report into Indigenous Funding, when planning for the development and delivery of Indigenous programs and services.

Senator Allison to move on the next day of sitting:
That the following matter be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by the last sitting day in March 2003:
The role of libraries as providers of public information in the online environment, having particular regard to:
(a) the current community patterns of demand for public information services through libraries, including the provision of such information online;
(b) the response by libraries (public, university, research) to the changing information needs of Australians, including through the provision of online resources;
(c) possible strategies which would enhance the wider use and distribution of information resources held by libraries, including the establishment of library networks, improved online access in libraries, online libraries, and greater public knowledge and skill in using library resources;
(d) the use of libraries to deliver information and services over the Internet to more effectively meet community demands for public information in the online environment; and;
(e) the roles of various levels of government, the corporate sector and libraries themselves in ensuring the most effective use of libraries as a primary public information resource in the online environment.

Senator Allison to move on the next day of sitting:
That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts References Committee on urban water management be extended to 29 August 2002.

Senator Ian Campbell to move on the next day of sitting:
That, on Tuesday, 25 June 2002:
(a) the hours of meeting shall be 2 pm to 6.30 pm and 7.30 pm to 11.10 pm;
(b) the question for the adjournment of the Senate shall be proposed at 10.30 pm; and
(c) the routine of business from 7.30 pm shall be government business only.

Senator Sherry to move on the next day of sitting:
That the following matters be referred to the Legal and Constitutional References Committee for inquiry and report by 29 August 2002:
(a) the implications of excision for border security;
(b) the effect of excision on affected communities, including Indigenous communities;
(c) the nature of consultation with affected communities in relation to the Government’s excision proposals; and
(d) the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002.

Senator Allison and Senator Mackay to move on the next day of sitting:
That the following matters be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 21 February 2003:
(a) the capacity of the Australian telecommunications network, including the public switched telephone network, to deliver adequate services to all Australians, particularly in rural and regional areas;
(b) the capacity of the Australian telecommunications network, including the public switched telephone network, to provide all Australians with reasonable, comparable and equitable access to broadband services;
(c) current investment patterns and future investment requirements to achieve adequacy of services in the Australian telecommunications network;
(d) regulatory or other measures which might be required to bring the Australian telecommunications network up to an adequate level to ensure that all Australians may obtain access to
adequate telecommunications services; and
(e) any other matters, including international comparisons, which are deemed relevant to these issues by the committee.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.32 p.m.)—I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, allowing it to be considered during this period of sittings.

I also table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—

MIGRATION LEGISLATION AMENDMENT (FURTHER BORDER PROTECTION MEASURES) BILL 2002

Purpose of the Bill
This Bill is designed to expand the definition of “excised offshore place” in the Migration Act 1958 (the Act) to include the Coral Sea Islands Territory and certain islands of Queensland, Western Australia and the Northern Territory.

The Bill will also specify an “excision time” for the places that are added to the definition of “excised offshore place”.

Reasons for Urgency
On 7 June 2002, the Governor-General made regulations that expanded the definition of “excised offshore place” in the Migration Act 1958 (the Act) to include the Coral Sea Islands Territory and certain islands of Queensland, Western Australia and the Northern Territory.

The expansion of the definition of “excised offshore place” is necessary to build on the effective border control measures to combat people smuggling operations which have been put in place over the past three years.

The need for this to be undertaken as a matter of urgency is because the Government has credible intelligence information that people smugglers are moving to target areas closer to the Australian mainland.

Therefore, the purpose of this Bill is to make sure that this important amendment to the Act is implemented in the current parliamentary sittings.

(Circulated by authority of the Minister for Immigration and Multicultural and Indigenous Affairs)

Senator Brown to move on the next day of sitting:

That there be laid on the table, no later than the end of question time on Wednesday, 25 June 2002, the study commissioned by the Australian Nuclear Science and Technology Organisation, on behalf of the Australian Radiation Protection and Nuclear Safety Agency, of the preliminary evaluation of the construction site for the replacement research reactor at Lucas Heights, carried out by the New Zealand company, the Institute of Geological and Nuclear Sciences, which included geological mapping of the excavation of the construction site and has revealed a geological anomaly or ‘fault’ at the site.

COMMITTEES
Economics Legislation Committee
Extension of Time
Senator McGauran (Victoria) (3.34 p.m.)—by leave—On behalf of Senator Brandis, I move:

That the time for the presentation of the report of the Economics Legislation Committee on the Diesel Fuel Rebate Scheme Amendment Bill 2002 be extended to 26 June 2002.

Question agreed to.

NOTICES
Postponement
Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Bartlett for today, relating to the disallowance of the Environment Protection and Biodiversity Conservation Amendment Regulations 2001 (No. 2), postponed till 21 August 2002.

Business of the Senate notice of motion no. 2 standing in the name of the Minister for Forestry and Conservation (Senator Ian Macdonald) for today, relating to the reference of matters to the Rural and Regional Affairs and Transport References Committee, postponed till 27 June 2002.

Business of the Senate notice of motion no. 3 standing in the name of Senator O’Brien for today, relating to the reference of a matter to the Rural and Regional Affairs and Transport References Committee, 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 25 June 2002.

SUPERANNUATION: POLICY

Senator SHERRY (Tasmania) (3.35 p.m.)—I move:

That there be laid on the table, on the last sitting day of the winter sittings 2002, the revised costings document, including the correct phasing-in arrangements, of the Australian Labor Party’s plan for a fairer superannuation system, prepared by Phil Gallagher (Manager, Retirement and Income Modelling Unit, Treasury) which was sent to the Treasurer’s office in the week beginning 20 May 2002 and identified in Mr Gallagher’s evidence before the Economics Legislation Committee on 4 June 2002.

Question agreed to.

ENVIRONMENT: SHIPMENT OF NUCLEAR FUEL

Senator ALLISON (Victoria) (3.36 p.m.)—I move:

That the Senate—

(a) notes that:

(i) a shipment of plutonium mixed oxide was delivered to Japan in 1999 from British Nuclear Fuels Limited (BNFL) but, because crucial safety data was found to be falsified by BNFL, Japan refused to accept the fuel and it is now being returned to the United Kingdom, and

(ii) the fuel is proposed to be shipped through the exclusive economic zones of several Pacific nations, despite their opposition, and will compromise the integrity and safety of those nations’ marine environments; and

(b) calls on the Government to:

(i) expressly deny permission to transport this shipment of mixed oxide plutonium nuclear fuel through our region through the bilateral nuclear cooperation agreement, ‘Australia/Japan Nuclear Safeguard Agreement’, and

(ii) conduct an urgent public review of Australia’s bilateral nuclear cooperation agreement with Japan.

Question negatived.

Senator Brown—I would like to have my support for Senator Allison’s motion recorded, please.

DELEGATION REPORTS

Official Visit to the Federal Council of Austria

The DEPUTY PRESIDENT (3.37 p.m.)—On behalf of the President, I present the report of the official visit to the Federal Council of Austria which took place from 4 to 7 April 2002.

COMMITTEES

Treaties Committee Report

Senator LUDWIG (Queensland) (3.37 p.m.)—On behalf of the Joint Standing Committee on Treaties, I present the 46th report Treaties tabled 12 March 2002, together with the minutes of proceedings.

Ordered that the report be printed.

Senator LUDWIG—I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

Madam President, today I present a report to the Parliament which contains the results of an inquiry conducted by the Treaties Committee into thirteen treaties tabled in the Parliament on 12 March, 2002.

Specifically, the Report deals with:

• the Pacific agreement on closer economic relations (PACER);

• a Status of Forces Agreement with the Kyrgyz Republic;

• a treaty to amend an existing agreement with New Zealand on joint food standards;

• a Protocol to the Double Taxation Agreement with the United States of America;

• an agreement on customs law with the Netherlands;

• an agreement with France on the employment of dependents of mission officials;
• a social security agreement with the USA and amendments to an existing social security agreement with New Zealand;
• agreements with Egypt and Uruguay on the promotion and protection of investments;
• a Child Protection Convention;
• a Convention on the recognition of higher education qualifications; and
• a Convention for the suppression of terrorist bombings.

Madam President, in the view of the Committee, it is in the interests of Australia for these treaties to be ratified, and the Committee has made its recommendations accordingly. More specifically, the Committee considers that:

• the Pacific agreement on closer economic relations (PACER) will ensure Australia’s trade interests are not disadvantaged when island states in the region begin to negotiate free trade agreements with other countries;
• the Status of Forces agreement (SOFA) with the Krygyz Republic will protect Australian Defence Force (ADF) personnel deployed there to support coalition forces’ operations in Afghanistan;
• amending the existing agreement with New Zealand on joint food standards will update the joint Australia New Zealand Food Standards System and give effect to food regulatory reforms which will have health benefits for Australians;
• amending the Convention with the United States of America on double taxation will benefit Australian companies by significantly reducing US-withholding taxes;
• the agreement on customs law with the Netherlands will facilitate the exchange of intelligence and information to help Australian customs services to combat terrorism and transnational crime;
• the agreement with France on the employment of dependents of mission officials will address what has been a significant disincentive for people interested in applying for overseas postings, and thus enable the Australian Government to have the best possible representation overseas;
• the social security agreement with the USA and amendments to the existing social security agreement with New Zealand will enable Australian residents to move between these countries, confident in the knowledge that their entitlements to benefits will be recognised in each country, and that each country will contribute fairly to support for which they are eligible;
• the promotion and protection of investments agreements with Uruguay and Egypt will benefit Australian investors by providing them with a range of guarantees relating to non-commercial risk;
• the Child Protection Convention will help resolve a number of problems encountered by Australian authorities and parents embroiled in international child custody cases;
• the Lisbon Convention will facilitate the recognition of Australian academic qualifications overseas, and help Australians wishing to work in countries that are parties to the Convention; and
• the Convention for the suppression of terrorist bombings will enhance the security of our citizens by placing an obligation on Australia to aid investigations and prosecutions of Convention offences by other states and, where appropriate, to investigate, prosecute and punish alleged offenders within our jurisdiction.

I commend the report to the Senate.

DELEGATION REPORTS

Parliamentary Delegation to the 107th Inter-Parliamentary Conference, Marrakech, Morocco and a Bilateral Visit to Kuwait

Senator CHAPMAN (South Australia) (3.38 p.m.)—by leave—I present the report of the parliamentary delegation to the 107th Inter-Parliamentary Conference in Marrakech, Morocco from 17 to 23 March 2002 and a bilateral visit to Kuwait from 25 to 28 March 2002. I seek leave to move a motion in relation to the report.

Leave granted.

Senator CHAPMAN—I move:

That the Senate take note of the report.

The report I have just tabled sets out in detail the work of the Australian delegation to the Inter-Parliamentary Union Conference held in Marrakech, Morocco and a bilateral visit to Kuwait. I had the honour of leading this delegation and I commend my colleagues—Senator Ferris, Senator Gibbs, Senator McKiernan and Mr Con Sciacca, the member for Bowman—for the contribution they made to this very successful delegation. As leader of the delegation I addressed the plenary ses-
I informed what is often called the world parliament of parliaments that Australia has made a substantive military commitment to the war against terrorism, including the deployment of a special forces detachment on the ground in Afghanistan. However, I reminded the IPU that not only will the war against terrorism be fought through military action but also governments must continue to work nationally, regionally and globally. My speech concluded on an optimistic note by stating:

It seems to me that the terrorism crisis the world faces today has given many countries a willingness to do things differently—to cooperate with previously unlikely partners, to be open to new strategies, and to be resolute in action. I therefore see cause for some optimism about the prospects for states dealing with this, and the other security challenges that confront them. In doing so, they can then contribute not only to the security of their own region, but also, as recent tragic events have highlighted, to the security and prosperity of an ever more connected globe.

Senator McKiernan—who I see in the chamber—was included in the delegation specifically to relay the views and concerns of the executive and the Australian IPU group as a whole about the reform of the IPU, particularly in relation to its financial and budget situation. I notice Senator McGauran’s support for my comments there. I know that, in past Inter-Parliamentary Union delegations, Senator McGauran has been active on this issue. I know that, in past Inter-Parliamentary Union delegations, Senator McGauran has been active on this issue. I know that, in past Inter-Parliamentary Union delegations, Senator McGauran has been active on this issue. I know that, in past Inter-Parliamentary Union delegations, Senator McGauran has been active on this issue.

The bilateral visit to Kuwait was a short one—only four days—but I believe it was very successful. The delegation met with the Speaker of the National Assembly of Kuwait, several ministers, members of the Australia-Kuwait Parliamentary Friendship Group, the Chief Executive Officer of the Kuwait Petroleum Co. as well as visiting local industries—in particular a dairy industry that has relevance to Australia—and research institutes. The delegation also had the moving experience of meeting with members of the National Committee on Prisoners of War and Detainees, who told us that over 600 persons were taken by withdrawing Iraqi forces following the Gulf War in 1991 and that, to this day, their fate is unknown.
Dr Sultan Al-Khalaf, the chair of the national committee, expressed his optimism that one day the detainees will be released. He also emphasised the importance of raising in all possible forums the need for Iraq to address this issue. The delegation also appreciated Dr Al-Khalaf’s comment during this meeting that ‘it is well known to everyone in Kuwait that Australia did everything to help in the liberation of Kuwait’.

The delegation was left in no doubt that relations between Kuwait and Australia are very strong and should be developed further. In almost every meeting the issue of Australia’s lack of residential diplomatic representation in Kuwait was raised with the delegation. Indeed, when I was interviewed by Ms Nadine Sidani on the Good Morning Kuwait television program, which is telecast throughout the Gulf region, this issue was one of the first raised with me. This is not surprising when it is recognised that over 30,000 Kuwaitis visit Australia each year as it is seen as a safe and family oriented tourist destination. In order to obtain a visa to visit Australia, Kuwaitis must apply to local Kuwaiti travel agents contracted by the Department of Immigration and Multicultural and Indigenous Affairs. The travel agent then sends the applications to the Australian Embassy in Beirut where the visa applications are eventually processed. This process is subject to delays.

Australia has significant and increasing trading interests with Kuwait, amounting to some A$485 million in exports. Kuwait is now ranked 31st on Australia’s list of top export destinations. Australia has significant strategic and military relations with Kuwait, responding decisively to Kuwait’s plight in 1990 by condemning Iraq’s invasion, committing military forces to the Gulf War and continuing support for the UN-mandated multinational interception force enforcing the UN Security Council sanctions upon Iraq. Australia has residential diplomatic representation in several countries whose trading, tourist and strategic relations seem not as strong, either in real or potential terms, as those with Kuwait. Furthermore, the Canberra based Kuwait Liaison Office was upgraded to an embassy in January 2002. The delegation therefore recommends that the Minister for Foreign Affairs consider establishing residential diplomatic representation in Kuwait, based on the important and increasing trade, tourism and strategic relations.

On behalf of the Australian delegation, I record our thanks to the Speaker of the National Assembly of Kuwait for an excellent program, a very warm welcome and generous hospitality.

Senator McKIERNAN (Western Australia) (3.46 p.m.)—I thank my colleague Senator Chapman, the leader of the delegation, for the kind words that he said about me. I also recognise that all the members of the delegation—Senator Chapman, my colleague from the other place Mr Con Sciacca, Senator Jeannie Ferris and Senator Brenda Gibbs—made up a formidable team at the IPU conference and while we were there we got along with each other very well. Very importantly, we also worked extremely hard on behalf of the parliament of Australia. Our work would have been in vain had it not been for the assistance given to the delegation by Mr Neil Bessell, who was secretary of the delegation; Mr Peter Keele, a former secretary of the IPU delegation, who attended the conference with us as an adviser on IPU reform; and Mr Phillip Allars, an adviser from the Department of Foreign Affairs and Trade, who attended only the IPU conference. I will just make a brief mention of Mr Peter Keele, who was a senior clerk in the Senate. Since the attendance of the delegation in Marrakech, Morocco, in March this year, Mr Keele has retired from this place and has moved on to do other things. Peter has provided the committee and this chamber with exceptional service over the years. On behalf of the delegation, I wish Peter and his spouse all the very best for the future and I trust that they will enjoy his retirement.

As Senator Chapman said, I attended the conference as an additional representative of the delegation, with the four permanent members of the Australian delegation to the IPU. I am grateful to Madam President and Mr Speaker for selecting me for that role, even though it did mean an additional workload which I probably could have done with-
out. The reason for my selection was that I had participated at earlier IPU conferences on the matter of IPU reform. The reforms proposed some years ago did cause Australia very grave concern, because it seemed to us that what was being proposed was irresponsible, to say the least. It was irresponsible in the sense that none of the proposals being brought forward were costed in any shape or form. The Australian delegation at previous conferences asked questions about the costing of the proposed reforms and we were also extremely concerned to find out that there is no budget process in place within the IPU itself. That of course caused us great concern.

Following the report of the previous conference of the IPU, I had cause to report that the IPU had adopted a proposition from the then Australian delegation that the IPU institute a system of accrual accounting, to give member parliaments of the IPU the opportunity to fully understand where the finances were and to better measure how the reserve funds of the organisation were being spent. That was one measure of reform that we can claim on behalf of Australia. I attended the conference and put forward the argument and, at the beginning of this particular conference, it seemed to be a pretty lonely argument not only at the council meeting but also in the geopolitical groups where Australia plays a part—that is, 12 Plus, which is essentially a European orientated organisation, and the Asia-Pacific grouping. I am very pleased to say—and the delegation has noted this in the report—that at the conclusion of the conference the concerns that we had expressed at previous conferences and at Marrakech were being taken up by other delegations, who were looking with even greater scrutiny than perhaps they had been before at the propositions being put forward by the IPU.

In the report itself, which is tabled, we outline on page 35, at points 6.17, 6.18 and 6.19, our specific concerns about where things are going within the IPU. This was a somewhat disappointing conference because the conference at Marrakech was supposed to be the decision making conference. In many respects we are grateful that the decisions on reform were not actually made at this conference because they may not have been the correct decisions. But in the traditional way of bureaucracy when it is in trouble, the decision making processes are deferred to another day, and indeed the decisions on IPU reform have been deferred until the Geneva conference in September. I will not be attending that conference but I do urge Mr Speaker, Madam President and the IPU executive—the delegation itself—to give really serious concern to formulating proposals on the IPU position that can be circulated to other parliaments and other IPU delegations well prior to that council meeting in September in Geneva.

One area we expressed our concern about—and have previously expressed our concerns about—was the relationship between the IPU and the United Nations organisation. We detail at paragraph 6.29 some of our concerns. We pressed this matter again at the geopolitical groups meetings, which meet before the council meeting itself starts, and we gave notice during the council, and indeed at the conference itself, that we would be raising our concerns. We had heard through the grapevine that the instructions that had been given to the negotiators—the people appearing on behalf of the IPU at the United Nations at the end of last year had not been followed. It was of great concern not only to the Australian delegation but also, I would say without fear of contradiction, to the whole of the council members assembled. They were aghast when they found out that what we had heard was in fact true: the Indian ambassador in the United Nations had acted outside of the instructions given by the last council meeting of the IPU. We understand that he was acting on the instructions of the IPU President, Mrs Heptullah, but she did not have the authority to issue those instructions. So our concerns resonated throughout the floor of the IPU council meeting.

I would have liked to say, at the time of Mrs Heptullah’s retirement from the position of President of the IPU, that she had served the organisation well. Regrettably, I cannot say that. In fact, I think that it was a very poor choice of leader for the IPU itself, and
her position as President of the IPU has taken the organisation backwards rather than moved it forwards, and that is regrettable. Decisions will need to be made at the next council meeting on who will be the next president of the organisation, and I wish the Australian delegation and all delegations good counsel in making that decision.

The leader, Senator Chapman, made mention of the fact that the UN High Commissioner for Refugees did mention me in the opening statement of the conference. I was obviously very humbled that I should be singled out in that manner. The mention was made because of my role—the role that I played over a good long period of time—in developing a handbook for parliaments on international humanitarian law for refugees. I have tabled that handbook on a previous occasion and, regrettably, the elections in Australia last year did not allow us to have a launch of that particular handbook in this country. It was relaunched by the UN High Commissioner at a forum on the Sunday at the women’s meeting.

I have also participated over a period of time in working on a handbook on eliminating the worst forms of child labour. That was launched at this recent conference, and I seek leave to table a copy of that handbook for the consideration of all honourable senators. I commend the handbook to them. I thank the parliament for giving me these opportunities over the years. I have attended seven IPU conferences and I am also grateful to the IPU for giving me those opportunities. I think I have delivered on the task that was set me when I attended those conferences.

Leave granted.

Senator GIBBS (Queensland) (3.56 p.m.)—I am not going to speak very long—probably because my voice will not survive—but I did want to say a few words, because this is my third and last IPU conference. Our leader, Senator Chapman, has given an excellent report and so has Senator McKiernan. I would particularly like to thank my colleagues for the company that they provided on this trip. We did work very hard, as usual. The IPU is a fascinating place and one does work hard, but one also has a chance to have a look at the places that we go to. Marrakech was extremely interesting. Senator Chapman was our leader, and Senator McKiernan, Mr Con Sciacca, Senator Ferris and I were accompanied by Mrs Sally Chapman and Jackie McKiernan, who were always good company and excellent to be around. Sally is a wonderful hostess. We were once again looked after very well by the staff of the Senate. Peter Keele was there to advise on the IPU and Neil Bessell, who was the secretary of the delegation, looked after us extremely well, as he always does—he is like a mother hen. Once again, we just could not get by without Mr Phillip Allars from the foreign affairs department.

When you go to these countries which are French speaking and you cannot speak a word of French, to have somebody like Phillip there is wonderful; it is a great help. Both Phillip and Neil could never do enough for us—they were always there. I do not know when they ever slept because they were constantly looking after us, the whole time. I will not really say much more about the IPU except it was a wonderful experience. I am sorry I will not be going on any more.

I would like to touch on the Kuwait bilateral visit. After Marrakech we visited Kuwait, and I had never visited that part of the world before. I must say that the Kuwaitis were absolutely charming people. They were so friendly and they could not do enough for us. As Senator Chapman has said, there are strong ties between Australia and Kuwait and, in all the meetings we had with the different ministers, they wanted not only to maintain that friendship and those ties but also to increase them. During the trip we were very honoured to be invited to the home of Mr Ali al-Qabandi for what they call the ahmadi diwaniah. Diwanias are family based discussion groups, and this particular one was held on a Monday night. The idea is that they can take the parliament to the people. They have the discussion groups and then that is taken back to people within the parliament. It is a sort of grassroots meeting to actually find out what the constituents or what the people are talking about.
While we were there we were shown a memorial wall of the ahmadi diwaniah, which consists of three separate displays. The first contains the names of all Kuwaiti nationals who lost their lives as a direct result of the Iraqi invasion and occupation. The second display lists all known allied service personnel who gave their lives to contain Iraqi aggression and liberate Kuwait. The third display lists the family names of more than 600 individuals unaccounted for by the Iraqi regime in the wake of the conflict. None of these have been seen since their disappearance. During our visit we received several poignant instances of the continuing grief of the people for the prisoners of war in Iraq. This was very distressing to us and, of course, very distressing for the Kuwaiti people because they have not seen their families, they do not know if they are dead or if they are still alive. It is quite terrible. To see this was very moving.

As you would imagine, the diwaniah meeting itself is male. Senator Ferris and I, as women, were invited because we were part of the delegation. Towards the end of the night, Senator Ferris and I were absolutely delighted because we went upstairs into the home and we spoke to the wives of the men who were at the meeting. It was absolutely fascinating. Mr Acting Deputy President, you would well know that in Kuwait the women do not yet have the vote, but the women we spoke to were highly educated, highly intelligent and professional women. They said that it will come soon, there is only a couple of what they call ‘the long beards’, not in a disrespectful way, who are stopping it. They are quite confident that they will be receiving the vote. I said: ‘Well, why don’t you get your husbands on to this? This is a male dominated society—get your husbands into gear.’ They said: ‘Oh, we don’t have a problem with our husbands, they want us to have the vote. It is just a few people and it is just changing a few ideas.’ But we all know that; we have all gone through that process over the years. So that was excellent for us, and the things we talked about were absolutely fantastic. We inquired about family life and it was very enlightening. I will not go into a lot of that because a lot of it was women’s discussions, so it is best not to put it on record, but we did have a great time.

When we spoke to Kuwait’s minister for education, he said that, unlike Australia, where we have an ageing population, in Kuwait they have a young population because they have a lot of children whereas we do not seem to do that anymore. They do have a good education system and this, of course, is funded totally by the government, but they are looking at arrangements for private colleges in Australia so they can send their students here. I think that is something we could look at: taking students from Kuwait into the colleges and universities of Australia.

My time is running out, but I must say Kuwait was a really wonderful experience. Once again, the people were absolutely delightful and could not do enough for us. They spoke so highly of Australia and we were made to feel so very welcome. Before I conclude, I must thank Mr Ridwaan Jadwat. Ridwaan was absolutely excellent. He met us when we first went to Kuwait and he accompanied the delegation everywhere and assisted us in whatever we wanted. He stayed with us the whole time and provided us with information. We really would like to thank him. That is basically all I have to say. It was an excellent IPU, as the previous speakers have said, and the bilateral in Kuwait was really something not to be missed.

Senator COONEY (Victoria) (4.05 p.m.)—I take this opportunity to pay tribute to the deputy president of the IPU delegation over the last few years, Senator McKiernan. I have sat next to Senator McKiernan for many years now. He is a man of immense charm and grace, and intelligence, may I say. He is not formally trained in the law but he has been on the Senate Legal and Constitutional Committee with me and has done outstanding service. I have got some consolation in the fact that Senator Ludwig has come upon us, and I think he is going to be outstanding in this area, but I just want to concentrate at this stage on Senator McKiernan.

I think you have travelled overseas with him, Mr Acting Deputy President Ferguson, and you would agree he and his wife, Jackie, who accompanied him on this trip, are people of the utmost charm. I would like to take
this opportunity to pay tribute to the work that he has done in this Senate. I have sat next to him; I have flattered him at times. I do not think his rent has ever got to the point where you would call it rack rent—and to even suggest that, given his Irish background, is perhaps a slander, so I immediately withdraw it. But I do want to use this opportunity to express my utmost regard for Senator Jim McKiernan and his wife, Jackie. He has done great work in the Inter-Parliamentary Union area—but not only there; he has had a most distinguished career in this place. I would like to take this opportunity to pay that tribute to him.

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Thank you, Senator Cooney. I guess we could count that as an early valedictory.

Senator McKiernan—Just as long as I have right of reply!

Question agreed to.

HEALTH: ANIMAL RESEARCH

Return to Order

Senator Ellison (Western Australia—Minister for Justice and Customs) (4.08 p.m.)—Mr Acting Deputy President, pursuant to orders of the Senate of 18 June 2002, I table the following documents relating to the NHMRC primate colonies. The documents are copies of the non-human primate colonies site visit reports by the National Health and Medical Research Council’s animal welfare committee. Names of individuals mentioned in the reports have been deleted for privacy reasons.

COMMITTEES

Membership

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

Senator Ellison (Western Australia—Minister for Justice and Customs) (4.09 p.m.)—by leave—I move:

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

Rural and Regional Affairs and Transport Legislation Committee—

Appointed: Senator Crane
Discharged: Senator Heffernan

Employment, Workplace Relations and Education Legislation Committee—

Substitute member: Senator Stott Despoja to replace Senator Murray for the consideration of the Workplace Relations Amendment (Paid Maternity Leave) Bill 2002.

Question agreed to.

ADVISORY COUNCIL ON AUSTRALIAN ARCHIVES

Appointment

The ACTING DEPUTY PRESIDENT (Senator Ferguson) (4.09 p.m.)—The President has received a letter from a party leader nominating a senator to be a member of the Advisory Council on Australian Archives.

Senator Ellison (Western Australia—Minister for Justice and Customs) (4.09 p.m.)—by leave—I move:

That, in accordance with the provisions of the Archives Act 1983, the Senate elect Senator Faulkner to be a member of the Advisory Council on Australian Archives for a period of 3 years, on and from 27 June 2002.

Question agreed to.

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (No. 1) 2002-2003

APPROPRIATION BILL (No. 1) 2002-2003

APPROPRIATION BILL (No. 2) 2002-2003

First Reading

Bills received from the House of Representatives.

Senator Ellison (Western Australia—Minister for Justice and Customs) (4.11 p.m.)—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 ELLISON (Western Australia—Minister for Justice and Customs) (4.11 p.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—

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (No. 1) 2002-2003

The purpose of the Appropriation (Parliamentary Departments) Bill (No. 1) 2002-2003 is to provide funding for the operations of the five Parliamentary Departments.

The total amount sought is $166.1 million. Details of the proposed expenditure are set out in the Schedule to the Bill.

I commend the Bill to the Chamber.

———

APPROPRIATION BILL (No. 1) 2002-2003

It is with great pleasure that I introduce Appropriation Bill (No. 1) 2002-2003, which, together with Appropriation Bill (No. 2) 2002-2003, is one of the principal pieces of legislation underpinning the first Budget of the third term of the Coalition Government.

Appropriation Bill (No. 1) 2002-2003 provides authority for meeting expenses on the ordinary annual services of Government.

This Bill seeks appropriations out of the Consolidated Revenue Fund totalling $43,446.0 million. Details of the proposed appropriations are set out in the schedule to the Bill, the main features of which were outlined in the Treasurer’s Budget speech on 14 May.

I commend the Bill to the Senate.

———

APPROPRIATION BILL (No. 2) 2002-2003

It is with great pleasure that I introduce Appropriation Bill (No. 2) 2002-2003, which, together with Appropriation Bill (No. 1) 2002-2003, is one of the principal pieces of legislation underpinning the first Budget of the third term of the Coalition Government.

Appropriation Bill (No. 2) 2002-2003 provides funding for agencies to meet:

• expenses in relation to grants to the States under section 96 of the Constitution and for payments to the Northern Territory and the Australian Capital Territory;
• administered expenses for new outcomes;
• departmental equity injections, loans and previous years’ outputs; and
• to create or acquire administered assets and to discharge administered liabilities.

Appropriations totalling $6,120.8 million are sought in Appropriation Bill (No. 2) 2002-2003. Details of the proposed appropriations are set out in Schedule 2 to the Bill, the main features of which were outlined in the Budget Speech delivered by my colleague, the Treasurer, earlier this evening.

I commend the Bill to the Chamber.

Debate (on motion by Senator Crossin) adjourned.

WORKPLACE RELATIONS AMENDMENT (SECRET BALLOTS FOR PROTECTED ACTION) BILL 2002

TAXATION LAWS AMENDMENT BILL (No. 2) 2002

First Reading

Bills received from the House of Representatives.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.12 p.m.)—I indicate to the Senate that those bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.12 p.m.)—I table a revised explanatory memorandum relating to the Taxation Laws Amendment Bill (No. 2) 2002 and 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—
The secret ballot process proposed by this bill will create and protect jobs by preventing unnecessary strikes. It will enhance freedom of choice for workers and strengthen the accountability of unions to their members.

A secret ballot is a fair, effective and simple process for determining whether a group of employees at a workplace want to take industrial action. It will ensure that the right to protected industrial action is not abused by union officials pushing agendas unrelated to the workers at the workplace concerned.

Australia has previously had provisions allowing secret ballots at the federal level, but they have not been a compulsory precondition to industrial action. Since 1994 some industrial action—that associated with genuine workplace bargaining—has been protected.

In view of the protections that the Workplace Relations Act 1996 provides against civil liability for industrial action taken in pursuit of enterprise agreements, it is fair that secret ballots are a precondition for protected industrial action.

Secret ballot arrangements exist in the United Kingdom, Canada, Japan, Germany and Ireland.

Secret ballot provisions have been operating in the UK since 1984. The Blair Government’s Employment Relations Act 1999 retained them. Legislative requirements for secret ballots have:

- helped to significantly reduce strike activity—strikes which ultimately cost jobs;
- given union members a direct say in the authorisation of industrial action;
- encouraged greater consultation by unions of their members; and
- had the support of UK trade union leaders.

The Government’s previous attempts to implement secret ballots aspects have failed. However, the issue remained a core aspect of our 2001 election policy and this bill fulfils our promise to the Australian community.

Introducing a previous secret ballots bill, the then Minister for Employment, Workplace Relations and Small Business, the Hon Peter Reith MP, welcomed further Senate Committee scrutiny, so long as such a review focussed on achieving a workable scheme, rather than providing a platform for union opposition to fundamental democratic principles.

In this bill, the Government is proposing key changes in response to concerns raised during the Senate Inquiries into the 1999 and 2000 bills. The bill also incorporates measures which ILO officials have indicated would be consistent with ILO standards.

The bill allows applications from a union or an employee who is a negotiating party for ballot orders to be made up to 30 days prior to the nominal expiry date of a current certified agreement (if any), provided a bargaining period is in place. It requires the Industrial Relations Commission, as far as reasonably possible, to determine all applications within 2 working days.

Secret ballots will not impede access to lawful protected action, but will simply provide a mechanism to ensure that protected action is a genuine choice of the employees involved.

The 2000 bill contained a strong preference for postal voting. This bill provides postal ballots as a default, but gives the Commission discretion to approve a proposal for a more effective method in a particular case. In some circumstances, the Commission could order on-site ballots. The 2000 bill required precise details of the nature of the proposed industrial action. This bill eases these requirements.

If a union applies for a ballot, only union members whose employment would be covered by the proposed agreement would be entitled to vote. Where employees seeking a non-union agreement make an application, all employees whose employment would be covered by the proposed agreement would be entitled to vote.

In addition, employees can appoint an agent to advance these processes in order to ensure their anonymity.

Only those union members or employees entitled to vote would be able to take any subsequent authorised protected industrial action.

Following discussion with ILO officials and concerns raised during the Senate review, only 40 per cent of eligible voters need to participate.

The 2000 bill required ballot questions to include the date on which industrial action would commence. Concerns were raised that this locked parties into a pre-determined path that may not reflect progress made during agreement negotiations. This bill allows for industrial action to commence within a 30 day period, beginning from the date the ballot result is declared, or the nominal expiry date of the relevant certified agreement (whichever is the later). The Commission may extend this validity period once, with the agreement of the parties.

The bill makes the Commonwealth liable for 80% of the reasonable ballot cost, which the Com-
monwealth will pay directly to the ballot agent. This adjustment addresses accessibility concerns by requiring the Commonwealth to bear the majority of the cost, and limiting the impact which upfront costs would otherwise have on applicants.

The bill will allow ballots to be conducted by an applicant. Usually this will be a union. To ensure the ballot is fair and democratic in these situations, the bill will also require the Commission to appoint an authorised independent advisor to oversee the ballot process.

To ensure democratic principles are upheld, challenges to ballot orders and ballots will only be possible in exceptional circumstances, for example, in cases of a substantial contravention, fraud, providing misleading information to the Commission, or an irregularity that affected the outcome of a ballot.

At the completion of the ballot, both the authorised ballot agent and the authorised independent advisor, if any, will provide the Industrial Registrar with a written report about the conduct of the ballot.

These reports will set out details of any complaints received or irregularities identified in the conduct of the ballot. These matters will not impact directly on the validity of the ballot unless they would have had a significant impact on the integrity or outcome of the ballot. However, the Commission will be able to take these reports into account in deciding whether the ballot agent is a fit and proper person to conduct future ballots.

It should be clear to the Parliament and to the Australian community that the Government has addressed the reasonable concerns raised about previous bills.

——————

TAXATION LAWS AMENDMENT BILL (No. 2) 2002

This bill makes amendments to the income tax law and other laws to give effect to the following measures.

The imputation rules in the Income Tax Assessment Act 1936 will be amended to take account of the reduction of the company tax rate from 34% to 30%. The measures preserve the value of franking credits accumulated prior to the rate change whilst minimising compliance costs for corporate taxpayers. These amendments will apply from 1 July 2001.

As a consequence of the deferral in the Review of Business Taxation life insurance policyholder proposals until 1 July 2002, the commencement date of the proposals to tax friendly societies on investment income received that is attributable to funeral policies, scholarship plans and income bonds sold after 30 November 1999 will also be deferred. Friendly societies will remain exempt from tax on that investment income until 30 June 2002. In addition, the change in methodology for working out the capital component of ordinary life insurance investment policies will also be deferred until 1 July 2002.

This bill further amends the Income Tax Assessment Act 1936 so that neither the intercorporate dividend rebate nor a related deduction are allowed in respect of any unfranked dividends paid to or by a dual resident company.

The Income Tax Assessment Act 1997 will be amended to remove scope for double refunds of excess imputation credits to both a trustee and a beneficiary and a consequential amendment will be made to the Income Tax Assessment Act 1936.

Amendments to the Income Tax Assessment Act 1997 are also required to deny refunds of excess imputation credits to non-complying superannuation funds and non-complying approved deposit funds. It has become apparent that, if their access to excess imputation credits is not prevented, these entities could be used as a vehicle to access tax benefits inappropriately through artificial schemes to produce surplus imputation credits in respect of which they would be entitled to refunds.

The technical amendments are required to the Income Tax Assessment Act 1936 to enable the franking rebate provisions to clarify that registered charities and gift-deductible organisations which are trusts, are eligible for refunds of imputation credits in respect of distributions received indirectly through another trust.

The amendment to the Income Tax Assessment Act 1936 will broaden the class of taxpayers eligible to claim the Senior Australians Tax Offset. The following taxpayers will also be eligible to claim the Senior Australians Tax Offset:

- Veterans who were eligible to receive a pension, allowance or benefit under the Veterans’ Entitlements Act 1986 but did not receive one; and
- persons who were eligible to receive an age pension on alternative grounds to the residency test.

The amendment to the Medicare Levy Act 1986 will make a minor technical correction.

This bill further amends the Income Tax Assessment Act 1997 to ensure that taxpayers who received shares in Tower Limited as a consequence of the demutualisation of Tower Corporation (a former New Zealand resident mutual company) in
October 1999 are not subject to capital gains tax at the time their membership rights ceased to exist. The amendments also specify the cost base for shares received in Tower Limited as a consequence of giving up those membership rights.

The bill also contains amendments to the gift provisions of the income tax law to give effect to announcements the Government has made over the past several months that gifts of $2 or more to certain organisations are to be tax deductible. These organisations include those engaged in health and education, and those that recognise the contribution our war veterans have made to Australia.

The bill amends the income tax law to recognise a new demutualisation method for non-insurance mutual entities. Members of non-insurance mutual entities that demutualise using the new method will qualify for the concessions currently available to members of such entities that demutualise using one of the existing demutualisation methods.

The bill will amend the Income Tax Assessment Act 1997 to insert a capital gain tax roll-over for a policyholder/member of a mutual insurance company who becomes absolutely entitled to certain shares held on trust as part of a demutualisation. The amendments will apply from 10 December 1999.

Lastly, this bill makes a number of technical corrections to the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997 and other tax related legislation.

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

Bill read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.13 p.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—

Last year the Parliament passed amendments to the Migration Act which in effect excised the ability of a person arriving without authority at certain offshore places, such as Christmas Island and Ashmore and Cartier Islands, to apply for a visa to enter and remain lawfully in Australia. These amendments also included authority for regulations to be made to extend this visa application bar to other islands and external territories, by including those islands within the definition of excised offshore places.

On 7 June 2002 I recommended to the Governor-General the making of regulations to extend the area of excised offshore places to cover islands off the north west of Western Australia, islands off the Northern Territory, and islands off far north Queensland, and the Coral Sea Islands Territory.

These regulations were made following receipt of advice from the Government’s people smuggling taskforce, who were concerned that people smugglers were intending to attempt to send boatloads of unauthorised arrivals either to Australia, or to other countries such as New Zealand via waters off Northern Australia.

Yesterday the opposition and minor parties combined in the Senate to disallow these regulations. This is an extraordinary outcome. An Act that received the support of the opposition last year to fight the invidious trade of people smuggling is in effect being overturned by the very same opposition.

It is like saying that we were serious about fighting people smuggling last year, but we are no longer serious. Be assured that people smugglers monitor very closely to what we are doing in this Parliament. They may well interpret the actions of the opposition and minority parties as a green light to attempt to recommence their operations and move to target areas closer to the Australian mainland.

Such a signal would have disastrous consequences not only for our efforts to thwart the ac-
tions of people smugglers but for those people being smuggled. Our intelligence suggests that some of the boats are poorly equipped. Now that the smugglers have been given a green light to attempt to send these boats to an island closer to the Australian mainland, they may well attempt to do so.

This Government will not allow this. This is why we are introducing this bill.

This bill is just the latest of an integrated set of legislative and administrative measures the Government has undertaken over the past three years to combat this growing trade of people smuggling.

Initiatives taken within Australia, and with other countries in the region over the past three years include:

- Introduction of border protection legislation in 1999, and increased resources to ensure improved Coastwatch, Customs and Navy capabilities to detect, pursue, intercept and board boats carry unauthorised arrivals
- Further enhancements to these legislative measures in September 2001
- Changes to the Migration Act to increase the maximum period of imprisonment for people trafficking to 20 years with a mandatory minimum sentence of five years imprisonment for those found to be organising the people smuggling; and fines of up to $220,000
- Increasing the number of specialist compliance officers in key overseas posts, to work with local police and immigration officials to identify foreign nationals trying to enter Australia illegally—resulting in the disruption of many people smuggling operations
- Placement of departmental officers in key overseas airports where they train airline check-in staff to identify bogus documentation and advise airlines on Australia’s entry requirements, so preventing the illegal travel of thousands of people to this country
- Posting specialist liaison officers to key overseas posts for bilateral and multilateral liaison on readmission and resettlement, technical and border management capacity, processing of the humanitarian caseload, and government identity, character and security checking
- Ongoing short term visits to key countries by departmental document examiners to provide specialist training and technical support to overseas immigration services and to airline and travel staff
- Maintaining multi-function task forces both in Australia and overseas which coordinate investigations, collect intelligence and maintain close liaison with law enforcement agencies investigating immigration fraud, and
- Frequently updating Australia’s movement alert list, a key tool governing the entry of non-citizens who are of security and character concern.

Australia is also an active participant in a number of international programs that work to combat people smuggling. These include:

- The inter-governmental consultations on asylum, refugee and migration policies in Europe, North America and Australia;
- The Asia-Pacific consultations on refugees, displaced persons and migrants;
- The irregular migration and migrant trafficking in east and south east Asia; and
- The Pacific Rim immigration intelligence officers conference.

In February 2002, Australia co-hosted, with Indonesia, the regional ministerial conference on people smuggling, trafficking in persons and related transnational crime, held in Indonesia.

All this activity, together with legislative measures passed by Parliament over the past year has had a dramatic effect on people smugglers targeting Australia as a favourable destination. There have been no boats arrive at the Australian mainland since August last year.

However, we can not be complacent as our intelligence indicates that there are still people smugglers active in our region who are exploring ways of continuing their trade, either to Australia or to other countries.

Without going into detail, we have credible information that people smugglers are still operating in Indonesia. There are several thousand people who are seeking movement by people smugglers. These smugglers are still actively seeking to put together boats to travel either to Australia, or through the Torres Strait to other destinations in the Pacific.

These activities have also been reported in the Indonesian media.

There have also been reports of a boat which is believed to be currently attempting a journey towards Australia with the reported aim of sailing through the Torres Strait to New Zealand.
Without the amendments made by this bill, should that vessel, or any other attempt to come either through the Torres Strait or to outlying islands of Australia, it would be possible for these unlawful arrivals to gain access to Australia’s extensive visa application processes, and the accompanying very liberal interpretation of the Refugees Convention in Australia.

Turning to the amendments made by the bill, the definition of ‘excised offshore place’ is expanded to include the same islands off the coasts of Western Australia, the Northern Territory and Queensland and the Coral Sea Islands territory that were covered by the earlier regulations.

There has been a considerable amount of scare mongering by the opposition about the Government reducing either Australian territory or Australia’s borders. This is plainly absurd and merely demonstrates opposition members’ inability to understand the laws which they have passed.

In order to educate opposition members, I will make the following comments about the effect of these amendments.

The provisions of the Migration Act continue to apply to these islands. The legislative changes made by this bill do not affect Australian sovereignty over these islands. The islands remain integral parts of Australia.

What will be ‘excised’ is the ability of a person arriving without authority at one of the new excised offshore places to apply for a visa to enter and remain lawfully in Australia. In short, these people have no right to make any application for the grant of a visa under the Migration Act.

This visa bar is set out in section 46a of the Migration Act. This bar continues to apply to those persons while they remain unlawfully in Australia. This section was inserted into the Migration Act by the amendments that were passed by this Parliament in September 2001.

The bill will not restrict any Australian citizen or valid visa holder from moving about within Australia, including to or from these islands. Visa holders can also continue to make any visa application permitted by the Act.

As the Act continues to apply in these islands, there will be no impact whatsoever on the traditional movements of inhabitants of the Torres Strait protected zone. These people will continue to be able to move about as freely as before.

Expansion of the excised offshore places by this bill sends a very strong message to people smugglers that we remain alert and are prepared to move quickly to take measures to counter their operations.

The expansion also makes it significantly harder for people smugglers to get to an area where visa applications may be made, where they can dump their human cargo and escape without detection.

The risks to people smugglers of capture and prosecution are far greater with these regulations. The choice for the opposition is clear. They can either support strong and effective border controls, or they can contribute to the weakening of Australia’s borders and the perils arising from this action.

I would like to stress that all the measures outlined in this bill and that have been initiated by this Government over the past three years to combat people smuggling are done so that we can most effectively resettle those persons seeking refugee who are most in need and most at risk.

Currently UNHCR estimates there are some 23 million persons of concern around the world. Australia aims, through its humanitarian program, to resettle some 12,000 persons each year, who are in greatest need. Those who are at risk if they remain where they are and have no other means of escape other than resettlement to a third country.

While our desire to assist these persons is strong, Australia has a finite capacity to give practical effect to this. The pressure placed on our resources by those arriving in Australia without authority, and seeking to engage our obligations to provide protection, limits our capacity to assist those at greatest risk.

People smugglers seek to exploit the situation by manipulating those persons who can afford to and are prepared to pay comparatively large sums of money to enter Australia without authority.

People smuggling is a big business. The International Organisation for Migration estimates the worldwide proceeds of people smuggling to be $US10 billion a year.

On average, it costs the government $50,000 for every unauthorised arrival by boat from the time of arrival to the time of their departure from Australia.

Some asylum seekers come here from countries where there is little risk of persecution, but which are less prosperous than Australia. They are encouraged by people smugglers to believe that they can use our refugee determination processes to obtain the right to work in Australia or to access health services and other support at Australian taxpayer expense while their claims are assessed.
One of the core values underpinning Australia’s immigration policy is that we must have the capacity to manage the movement of people across our borders in an orderly and efficient manner. Otherwise, the idea of a managed immigration policy rapidly becomes meaningless.

The Government is well aware of its obligations not to refoule—we never have, and we never will. We are equally aware, however, that our international obligations do not give people any right to demand residence in Australia.

In closing, I would like to reiterate that this bill is the next step in the government’s considered and comprehensive strategy to maintain the integrity Australia’s borders and its migration program.

The opposition has the choice of either contribute to Australia’s national interests through supporting effective immigration controls, or send the signal that Australia is a soft touch.

I commend the bill to the chamber.

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

BUSINESS

Rearrangement

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.14 p.m.)—I move:

That business of the Senate order of the day no. 2, relating to the reference of a matter to the Rural and Regional Affairs and Transport References Committee, be postponed till 27 June 2002.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.14 p.m.)—I move:

That business of the Senate order of the day no. 3, relating to the reference of matters to the Rural and Regional Affairs and Transport References Committee, be postponed till 27 June 2002.

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.

(Quorum formed)

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.17 p.m.)—Firstly, I thank those senators who contributed to the debate on what is very important legislation. The events in the United States on 11 September last year marked a fundamental shift in the global security environment. Those events demonstrated the enormous loss of life and devastation to communities that terrorist acts can cause and highlighted the need for measures to be taken to prevent further attacks. Australia cannot afford to be complacent about the threat that terrorism poses to our community. The government has a clear responsibility to cooperate with global counter-terrorism measures and to provide our security and law enforcement agencies with the tools they need to combat terrorism.

The Howard government is committed to the war against terrorism and to ensuring that we have the best possible tools to fight that war. The Howard government is committed to delivering strong legislation to protect the community against terrorism. It is in this package of proposed legislation that we have the response by this government to meet these threats. This package contains, firstly, the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2]; secondly, the Suppression of the Financing of Terrorism Bill 2002; thirdly, the Border Security Legislation Amendment Bill 2002; fourthly, the Telecommunications Interception Legislation
Amendment Bill 2002; and, last in the package but not least, the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002.

The government has developed a strong and effective package of legislation that will ensure the identification, investigation and prosecution of persons involved in terrorist activities. This package and other measures taken by the government are designed to bolster our armoury in the war against terrorism and to deliver on our commitment to enhance our ability to meet the challenges of the new terrorist environment. In developing this legislation, the government has been conscious of the need to protect our community from the threat of terrorism without unfairly or unnecessarily encroaching on the rights of individuals and the liberties of individuals that are fundamental to our democratic system. We believe that we have got that balance right. The government has given very careful consideration to the formulation of the legislation and the legislation contains significant safeguards. We recognise, of course, that it is unusual legislation. It must be remembered, however, that we are not dealing with ordinary criminal activity. What we are dealing with here is an extraordinary set of events that may be repeated. The government cannot just sit on its hands. It has the responsibility to protect the people of Australia and we take that responsibility very seriously.

This package of counter-terrorism legislation fulfils the government’s commitment to preventing and deterring terrorism while safeguarding rights and liberties. In preparing the amendments, the government has given consideration to the report of the Senate Legal and Constitutional Legislation Committee, the views of the parliament and the community. No country has ever been immune to the threat of terrorism. We must ensure that we are prepared to deal with the new international security environment. The Howard government takes very seriously the responsibility to protect Australia against terrorism and this package of counter-terrorism legislation delivers on that commitment to ensure that we are in the best possible position to protect Australians against the evils of terrorism.

That summarises the government’s approach to this legislation and, of course, the amendments that we are proposing which will be dealt with shortly. However, a number of points were raised in the debate, and I shall turn to those now. Senator Forshaw argued that the government was slow to introduce the counter-terrorism bills into parliament and that we should have recalled parliament earlier last year. This is complex legislation that has required careful consideration. There would have been no logic in recalling parliament earlier last year and the government’s approach of course has allowed for full consideration by the parliament and the community of what is very important legislation. The suggestion that we should have dealt with this earlier is at odds with the suggestion from other opposition members that the legislation has been rushed and that there has been inadequate time for community consultation.

Senators Stott Despoja, McKiernan and Ray stated that there has been insufficient time for public scrutiny of the legislation and the proposed government amendments. The government’s package of antiterrorism legislation is vitally important. The government has spent significant time considering the formulation of the legislation and the proposed amendments to the legislation. It is now more than six months since the government outlined key features of the proposed legislation and more than three months since the bills were introduced into parliament. There has been extensive public discussion about these bills, including in the parliamentary committees that examined them.

There can be no credible suggestion that this legislation has not already been the subject of significant parliamentary and public scrutiny. The parliament and the public have had a significant opportunity to scrutinise and debate the contents of these bills. The government has always indicated that it supports this process, which is why we referred the bills to the Senate Legal and Constitutional Committee for consideration. In his press release of 4 June this year, the Attorney-General announced the government’s
proposed policy response to the Senate Legal and Constitutional Committee’s report. In accordance with Senate practice, we circulated the government’s proposed amendments as soon as they were finalised. A written briefing was also provided at that time.

Another point was made by several senators, including Senator Greig, who suggested that a minor protest could be caught within the definition of ‘terrorist act’. The government rejects any suggestion that the proposed legislation, if introduced, would catch minor protests within the definition of ‘terrorist act’. The bill expressly excludes legitimate protest from the definition. However, the government is moving amendments to the definition of ‘terrorist act’ to address other concerns that have been raised.

Opposition senators, including Senator Faulkner, suggested that the government intended to cover industrial action within the definition of ‘terrorist act’ and that the amendment to exclude industrial action is the result of pressure from the opposition. Opposition members should look at the amendments that have been circulated. This amendment is being moved by the government in response to concerns raised about this matter during the Senate committee hearings. To put the matter beyond doubt, I want to stress that the amendment was a result of those Senate committee hearings, not a result of opposition action. It was never the government’s intention that such actions be caught, and that is why the government has listened to concerns raised about this issue and is moving amendments to put this issue beyond doubt.

Senator Greig stated that these laws will not stop terrorism. The government is of the view that antiterrorism legislation can and should prevent the commission of terrorist acts wherever possible. The government’s ‘terrorist organisations offences’ are designed to deter, disband and shut down terrorist organisations so that they can no longer foster and engage in acts of terrorism. The proposed offences relating the financing of terrorism will ensure that terrorists are deprived of the resources they require to carry out these attacks. The offences relating to terrorist training and preparation will ensure that terrorists can be prosecuted for actions undertaken in planning and preparing for the commission of terrorist acts. If the worst happens, the government’s legislation will ensure that those responsible are prosecuted and punished.

Senator Lundy argued that humanitarian organisations like the Red Cross would be caught by the legislation. It was never the government’s intention that legitimate humanitarian activity be caught by this legislation. The government’s proposed amendment puts this issue beyond doubt. It is irresponsible to cause fear in the hearts of those who engage in humanitarian activity by suggesting that they could in some way be imperilled by this legislation as amended. They cannot be, and the express purpose of the amendment is to put this beyond doubt. Senator Lundy’s comments are unnecessary and reflect the reactionary way in which this debate was approached by some. I am sure that the rest of Senator Lundy’s party would not share her comments.

Senator Bolkus and Senator Stott Despoja stated that the counter-terrorism legislation is unnecessary and unwarranted. I have covered much in relation to the reason for this legislation, but I will say it again: the events of September 11 last year demonstrated that no nation can be complacent about the threat posed by terrorism. It is imperative that we act to ensure that our law enforcement and security agencies have the necessary tools to combat terrorism and cooperate with international counter-terrorism measures. The government’s antiterrorism legislation is designed to deter, prevent and punish those who engage in acts of terrorism. This legislation is prompted not by hysteria—as has been suggested by Senator Bolkus—but by a careful and considered review of Australia’s security needs. The resulting legislation strikes a balance between those security needs and the rights and liberties of all Australians.

Senator Brown argued that the asset freezing provisions could be used to ban separatist organisations such as Fretilin. The Greens suggestion that the asset freezing provisions are a backdoor form of proscrib-
ing or banning organisations is both untenable and ridiculous. The asset freezing provisions implement United Nations Security Council resolution 1373, which requires states to:

Freeze without delay funds and other financial assets … of persons who commit … or facilitate … terrorist acts … and associated … entities

The mechanism which enables the government to implement the Security Council resolution has existed since 1945. Enabling specific asset freezing listings to be disallowed by parliament could have serious consequences. Disallowance would have the effect of alerting terrorist organisations to the government’s intention to freeze their assets and would give those organisations an opportunity to remove their assets from Australia before a new listing could be made.

Disallowance in these circumstances could also place Australia in breach of its international obligations. The asset freezing provisions have no effect other than to implement our international obligations to freeze the assets of terrorists. They do not ban or outlaw listed organisations in some more general sense. These targeted measures to inhibit the flow of funds to terrorist organisations are a vital part of our international cooperation to combat terrorism—something that Senator Brown should recognise and support.

Senator Brown also argued that the counter-terrorism legislation is open to abuse and that the proscription power could be used against a range of organisations engaged in protest. I think he referred to such protests as those against logging. The terrorist organisations offences will apply only where there is compelling evidence that an organisation has engaged in or prepared for terrorist activities. The provisions have no application whatsoever to the protest groups mentioned by Senator Brown, and it is irresponsible of Senator Brown to suggest that the legislation could be used in this way. I would strongly suggest to Senator Brown that he have a closer look at this legislation. The listing of organisations will be subject to strong safeguards, including disallowance, judicial review and a two-year sunset clause.

Apart from those points made by various senators, can I say in general that the opposition has circulated an amendment to the offence relating to knowingly being a member of a terrorist organisation. The opposition’s amendment limits the application of the membership offence to the United Nations listing provision, as opposed to a court determined process. The opposition’s approach suggests that a person should not be found guilty of being a member of a terrorist organisation when a court determines that an organisation has engaged in acts of terrorism and the person had knowledge of this fact—a process which is subject to the strict standards of our criminal system. This suggests that our courts are not equipped to do their job and makes a mockery of our judicial system.

It is impossible to understand why the opposition thinks that a person should escape guilt where before an Australian court it has been proved beyond a reasonable doubt that the person was a member of an organisation knowing that it was in fact connected to terrorism, with that connection also having been proved beyond a reasonable doubt. It is ridiculous to suggest that relying exclusively on a UN list is a better safeguard than having all of the evidence directly considered by an Australian court according to the strict standards of evidence and proof. In the government’s view, a person who is a member of an organisation that he or she knows is engaged in terrorist activities should be subject to criminal liability. The government does not accept that the best means of determining guilt is to link the offence to a United Nations list as opposed to a court determined process.

The opposition has also circulated an amendment to remove the Attorney-General’s power to list a terrorist organisation in regulations on the basis of evidence that the organisation has engaged in acts of terrorism. This is despite the fact that any regulation would be a disallowable instrument and subject to the scrutiny of this parliament. We remain of the view that the ability of Australia to identify terrorist organisations by way of regulation made by the minister on reasonable grounds is essential.
particular, without the power to list organisations, the deterrent effect of the legislation is severely limited. Listing of organisations sends a clear and unequivocal message to those persons to stop their activities or risk the full weight of the law. It also allows Australia to list terrorist organisations without having to rely on the United Nations. It is important we have the flexibility to list terrorist organisations that may not have come to the attention of the United Nations Security Council: for example, if an organisation was active in our region but did not pose a sufficient international threat to be listed by the Security Council. Unlike the opposition, we do not consider this an unlikely scenario. On the contrary, we consider that experience bears out the need for a power to respond to domestic and regional developments swiftly and without dependence on United Nations Security Council action.

The opposition also proposes an additional review of the legislation to be conducted by a committee established for that purpose. The government considers that this additional review will be ineffective and unnecessary. We have proposed a review by the Parliamentary Joint Committee on ASIO, ASIS and DSD. This committee has the power to hear and consider the full range of evidence that will be relevant to a review of this important legislation, including security information. The PJC has the appropriate resources and established procedures and it is fully equipped to conduct such a review. The committee proposed by the opposition would not be able to hear and access the full range of evidence. It would not be able to hear the security evidence that is essential for proper consideration of this legislation. A review of the legislation by such a committee would be at best inadequate. We do not accept that such a review by the PJC does not provide an open and accountable consideration of the issues. To suggest otherwise detracts from the value of our parliamentary committee system. A further review by a separate committee would be a waste of resources.

This package of bills is an essential package for Australia’s security and welfare. These bills are, as I said, a response to those events which occurred on 11 September last year and they are measures which this government is totally committed to introducing for the protection of all Australians. I commend these bills to the Senate.

Question agreed to.

In Committee

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

Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.36 p.m.)—At the outset, I table five supplementary explanatory memoranda relating to the government amendments to be moved to these counter-terrorism bills. The memoranda were circulated in the chamber on 19 and 20 June this year.

The CHAIRMAN—There is a running sheet with the time 3.43 this afternoon on it. I draw senators’ attention to the fact that at this stage it does not include all of Senator Brown’s amendments and that a revised running sheet will be issued in due course.

Senator BROWN (Tasmania) (4.37 p.m.)—I move:

(1) Page 3 (after line 22), after clause 3, insert:

4 Cessation of operation of Act

This Act, unless sooner repealed, ceases to be in force at the end of 5 years after Royal Assent.

This is the sunset clause, which would ensure that, at the expiry of five years, were this bill to pass the Senate, there would be an end to it. That brings into play the review that is necessary—the review of the legislation and its workings, of what shortcomings it has and what advantages there might be from it. It is very important that we have a review like this. We are trespassing onto dangerous ground with this legislation even if the amendments, for example, that the opposition want to move are put into place.

I remind senators that as this legislation stands there are wide-ranging powers of discretion given to the Attorney-General and presumably to the cabinet of the day. Those powers would allow for organisations in the
Australian community to be banned. Keep in mind the 1954 exercise where, after both major parties voted to ban the Communist Party, the people of Australia overthrew that.


Senator Faulkner—It was not 1954; it was 1951.

Senator BROWN—No, they overthrew it in 1954, but the parties moved to ban it in 1951. Then there was a High Court procedure which led to 1954.

Senator Robert Ray—I don’t think so.

Senator BROWN—Well, I do think so. Here we have a situation in which the parliament is saying: let the Attorney-General have powers not too dissimilar from those involved in the banning of the Communist Party over any organisation in the country which she or he thinks is a terrorist organisation. Then we have a definition of terrorism and a number of matters which could be entertained as being of a terrorist nature. It is those that we in the Greens and others in this chamber are very concerned about, because the powers are far too wide and far too lax. As I say, even with several amendments that are coming through, they will remain under great question. Therefore I commend this amendment.

I should point out that, while it has taken the government a long while to get this legislation here after the terrible events of last September—it has shown no great urgency—the legislation is in response to the events of last September. Noting that, five years down the line it would be extremely prudent for us to review how that legislation was working and, indeed, what the passage of events had been. We are currently living in a world where people are made more fearful because of the almost weekly news coming out of the authorities in the United States of the threat of new attacks. None of those attacks have come to be so far, but we have seen news about threats to the Statue of Liberty, the Brooklyn Bridge, bridges in California, dams—to a whole range of people and institutions—none of which have come to be.

In a climate of fear like that, it is easy to respond with legislation which truncates long valued civil and human rights and democratic rights in this country of ours. We should be very careful about that. We should certainly insist that this legislation be under review. The impulse to ensure that review occurs ought to be the automatic end to the legislation unless there is shown to be good cause for keeping it in place, remembering that there will be at least one election between now and the expiry time of five years.

Senator ROBERT RAY (Victoria) (4.42 p.m.)—I was a little surprised to see these five controversial bills pass this chamber without a division. Indeed the only voice I heard against the bills was that of Senator Ellison, who was obviously so shocked at the silence that he thought he had to vote the other way out of practice.

Senator Ellison—I can never get used to voting with you, Senator Ray.

Senator ROBERT RAY—Which is going to be the point of my speech and contribution right now. I do apologise for not being here to hear your summing up, but we were in a committee considering the ASIO legislation; I am sure you will understand why we were absent.

Senator Brown—Madam Chair, I want to raise a point of order. Let it be on the record that I opposed the second reading of the bill but was temporarily out of the chamber at the time.

The CHAIRMAN—There is no point of order.

Senator Brown—The record is now corrected.

Senator ROBERT RAY—The lack of diligence by the minor parties in this matter can be understood, because they do not have a lot of numbers here. They could not work out that they had to be here and have two people here to call a division. I understand that.

Senator Brown—We don’t have two here. There is one.

Senator ROBERT RAY—Well, just one of you, but you usually have some colleagues to support you up there. That is bad luck.
Senator Brown—They have a policy of not supporting me.

Senator ROBERT RAY—Senator Brown now says that the Democrats will not support him on divisions. You poor, lonely person. I might just be tempted to give the Attorney-General the power to proscribe you.

Senator Ellison said he was a bit shocked to see us support the second reading. The reason for that is that bipartisanship has never been a well defined concept in Australia. It is much more discussed and analysed in the United Kingdom and the United States than it ever is here. Maybe that is because our own politics are more adversarial, which makes it less likely that people will want to enunciate what the principles of bipartisanship are. Bipartisanship on defence and security issues is based only on agreement on broad principles, not the minutiae. Bipartisanship means that governments can proceed with confidence into these areas of security. They are not going to be second guessed at every turn. They are not going to be subject to electoral opportunism the moment they have to take the more difficult course. On security issues, governments are not required to be as transparent as in other policy areas. Hence they are vulnerable to every conspiracy theory ever floated.

An example of an opposition opposing a government on a security related matter was the coalition’s rejection in, I think, 1985 of proposals by the then foreign minister, Senator Evans, to legislate against media disclosure—this was in terms of putting ASIS on a legislative basis. That was a matter of controversy. The then opposition refused to support the government but I do not allege—I did not then and I do not now—that that was a breach of bipartisanship. The government of that day did not roundly condemn the opposition for being unpatriotic or weak on security issues. We accepted that we had a difference of opinion and got on with life. For bipartisanship to work, oppositions and the public at large must invest a higher degree of trust in government than would normally be accorded. Such trust can be more meaningful if the legislative base on which governments act is balanced, with appropriate accountability mechanisms incorporated.

Our approach to this package of five bills, the most important of which, the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2], we are currently considering, is not to blindly agree with all that the government says. We should not do that; nor should we automatically oppose, out of some sense that that is the job of opposition; nor should we oppose simply because we are subject to a massive and targeted lobbying exercise that would go away if we threw up our hands and said, ‘We oppose all these bills.’ The way we must approach these matters is to look at them as if we were in government. We must strip everything away and assume for the moment that we are in government: what would we think was the most appropriate legislation then? We should not oppose out of opportunism; nor should we support out of weakness. The criterion that should govern our attitude to these bills is what we would do if we were in government.

After some initial obscene haste, the government has allowed one committee consideration of these proposals. I think that was very helpful, as was the work done by the legislation committee. Secondly, the government has been willing to start negotiations with the opposition. It has brought those negotiations almost to the point of completion. Those should see a far better bill emerge.

Of course, we have been given very little public encouragement or acknowledgement for our efforts at bipartisanship. Take for instance the comments of the member for Mitchell: when debating these five bills in another place, he targeted the Labor Party immediately. He said of the Labor Party position:

That lacks integrity, that lacks sense of direction, that lacks commitment, that lacks loyalty, that lacks understanding, that lacks patriotism and that lacks a commitment against terrorism.

I wonder what the member for Mitchell thinks now that there have been so many government amendments put up to this bill, which was rushed through with obscene haste on 13 March this year. The opposition
was given the bill at 6.30 p.m. the previous day. Most members were given copies of it at 8.30 that night. The Labor Party committee had to look at it at 10 o’clock that night; the caucus had to look at it at nine o’clock the next morning. Then it got rushed through the House of Representatives later that day. Instead of being able to say that we could respond on every detail and every piece of the 60 complex pages of legislation and the 60 pages of explanatory memorandum, instead of getting some understanding from the government that this might be a little difficult, especially as they had spent the previous six months drawing it up, we got these obscene statements from the member for Mitchell, saying that we lacked patriotism because we would not tick and flick the bill instantaneously.

And it is clear from his speech that he had not even read the bills. There is not one word in his speech that shows that he had even opened the front page of any one of these five bills. His sole purpose in getting up was to belittle the Labor Party by accusing it of being unpatriotic and weak in its opposition to terrorism. What could be cheaper and more sordid than trying to politicise these issues? Out of tragedy comes political opportunism from the member for Mitchell. After 28 years of mediocrity, his embittered sneers will appeal only to the weak-minded in the coalition. I wonder if his crass remarks were meant to impress the Prime Minister, someone who has deliberately and consciously overlooked him for promotion over these past six years.

I call on the Prime Minister to repudiate Mr Cadman, but of course he will not. He did not intervene to repudiate that other particularly nice type, Mr Slipper, who made similar statements at doorstops, calling us traitors. The Prime Minister is happy to let those further down the food chain make those accusations. The moment one of ours makes some crass remarks about Mr Staley, there is the Prime Minister out the front door within five seconds, demanding that the Leader of the Opposition rebuke the aforesaid member and discipline him; and yet he is quite happy to have these characters run out the door and question the Labor Party’s patriotism.

Now if anyone in this chamber thinks that I am going to go through the historical record to show that the Labor Party is patriotic, they are missing the point: I do not have to. The record stands. I do not want to do a comparative analysis of who said what where over the last decade or the last century in order to say who is the most patriotic. That is not the point of bipartisanship; the point is to have enough trust in the other side to know that they will handle these security and defence issues well. I do have that trust. I said in my speech in the second reading debate that I had looked at the appointments to the security agencies and I liked what I saw. I saw quality public servants holding down those positions. I also said that I could not guarantee that that would always occur—whether through accident or deliberate process, it might not.

We should in this and other debates give more conscious thought to what bipartisanship means. It should not be something afforded a government out of convenience; it should be given to a government to enable it to handle some of the very difficult issues with which it is entrusted. As I said earlier, there is less transparency in this area for any government, and that is understandable. Therefore, the trust has to be there. However, every time someone like the member for Mitchell goes out there and tries to get votes off the dead souls in New York and Washington, that trust evaporates. That is a great pity. I know most members of the coalition do not feel that way. I have never heard any of them express those views. It is a pity one or two of them do not rebuke people like the member for Mitchell and Mr Slipper for their very crass statements.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.52 p.m.)—First of all, for Senator Brown’s benefit, the date of the constitutional alterations powers to deal with the Constitution Alteration (Powers to deal with Communists and Communism) referendum was 22 September 1951. It might be 1954, in your view, Senator Brown—

Senator Brown interjecting—
Senator FAULKNER—I just thought a history lesson was in order here, of course. To be fair, Senator Brown was right to say that that referendum followed a High Court decision that the Communist Party Dissolution Act 1950 was unconstitutional. Australian electors were asked at that time to approve a new section in the Australian Constitution, section 51A of the Constitution, that would have empowered the Commonwealth parliament to make laws in respect of communists and communism. It is also fair to say—and this I think was part of Senator Brown’s point—that on 22 September 1951 when that question was put to the Australian people it was rejected. It was narrowly rejected. Of course, it was rejected in that great Labor state of New South Wales. It was also rejected in the state of Victoria. It was also rejected in the state of South Australia. In fact, it was a narrow overall minority of a little in excess of 50,000 votes. It is worth remembering what occurred at that time when proposals, which some would describe as proscription proposals, were put directly to the Australian people. I do not want to delay the committee too long but, given that Senator Brown would not respond to either Senator Ray’s interjection or mine in relation to the date of the referendum, I thought we had better correct the record, as I know Senator Brown would want us to do.

We are dealing with a very important package of legislation. As my colleague Senator Ray has said, as an opposition we have to look at such a package of legislation through the prism or the perspective of what we might do as an alternative government—what the Labor Party might do if we found ourselves not on this side of the chamber but on the other side. Clearly, there is a need for this parliament to deal with the issue of terrorism and to deal with it in relation to our domestic laws. We have said, and we mean it, that a business as usual response on the issue of terrorism is not adequate. We in the Labor Party say that an enhanced level of terrorism and terrorist related activity requires an enhanced response capacity. It requires that capacity in two ways: an enhanced operational capacity and an enhanced legislative capacity.

What occurred last year on 11 September focused minds on this issue all around the world. Previously, what had been thought to be just a possibility actually became a reality for the international community. We have said, and we stand by it, that there was a need for Australia—and other member states of the United Nations as well, of course—to recalibrate our domestic security laws and our capability. We need to send a very clear signal that we will respond appropriately to the threat and reality of international terrorism. We have to send a very clear signal in this country that we will not tolerate such acts. We are not ashamed to say that those who perpetrate terrorist acts like the one we saw on 11 September are outside the bounds of civilised society. People who contemplate those sorts of acts and people who perpetrate those sorts of acts should be punished severely, and no-one should be ashamed to say so.

I am like Senator Ray. I happen to think that our party, the Labor Party, has a proud record in this area both in peace and in war. In saying that, I am not going to suggest that other political parties do not have the same imperatives and the same objectives. But as far as I am concerned a tough response to terrorists and terrorism is absolutely an important Labor value. I will argue that anywhere and I will certainly argue it in this chamber as we deal with this package of bills. But, as always when one makes statements like that, you have to ensure you get the balance right. You have always got to get the balance right. There is no doubt in my mind that, in the legislation that was introduced into this parliament very hastily at the end of the last session when the government invited the Labor Party to give less than 24 hours consideration to a complex package of bills and then pass it through this parliament, the government did not get that balance right.

It is clear that we are fighting against terrorists and terrorism but we have to be very clear what we are fighting in favour of. While terrorism threatens our values, we cannot threaten other important values as we determine our response. We say that we should have a strong and an effective response but not sacrifice key elements of our
democracy. Do not sacrifice other key values and freedoms that Australians hold dear. That has always been the perspective with which Labor has approached their response on this package of legislation, the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and related bills. We supported Australia’s active involvement in the international war on terrorism. We recognised the need to equip ourselves with an operational capacity to fight terrorism and a legislative capability to suppress terrorism within our own borders. We also say that the current legislative framework is outmoded, inadequate and needs to be improved. We do not have a framework in domestic law that specifically criminalises the full range of terrorist acts, such as training and financing terrorist organisations, and we should.

We also say in relation to this important issue that we need to play our part as a good international citizen. That is absolutely crucial if we are going to combat the international scourge of terrorism. Two of the bills in this legislative package give domestic legislative effect to United Nations conventions: one is for the suppression of the financing of terrorism and the other is in relation to terrorist bombings. As well as that, we think it is essential that we act in accordance with those resolutions of the United Nations Security Council that have guided the international community as it deals with its response to the threat of international terrorism. That is the approach we have adopted.

I say unashamedly to this chamber that we believe that, with the right balance, such a package of legislation is necessary. We need a framework in domestic law to deal with the threat of terrorism, to focus on and target the terrorists and terrorist related activity. That is one of the reasons why we do not support the sunset clause after five years which Senator Brown is proposing. We certainly support a serious, public and thorough review of this legislation but not within the time frame that Senator Brown proposes. I understand, of course, the relationship between his proposal for review and the sunset clause. I commend the opposition’s amendments in relation to a thorough, public and independent review to commence three years after the commencement of these bills. That is what the opposition are proposing. Given the importance of this legislation and the nature of the amendments that are proposed to improve the bills, we believe that the future of these bills in the medium term is best assessed by that review process and not by a sunset clause. I will talk about that review at a later stage.

I commend the opposition’s approach in relation to this package of legislation. It has been developed with the benefit of not only a serious effort on the part of the federal parliamentary Labor Party and our caucus committee but also the very good report prepared by the Senate Legal and Constitutional Legislation Committee on these bills—even though the government did not approve of such a process. All of that has been useful in coming to the final position that has been unanimously adopted by the federal parliamentary Labor Party which is, as I say, strongly in accord with Labor traditions and values. I commend that approach to this chamber because the balance is right.

**Senator HARRIS** (Queensland) (5.07 p.m.)—I rise to indicate One Nation will support the Greens amendment to the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2], which states:

This Act, unless sooner repealed, ceases to be in force at the end of 5 years after Royal Assent.

The reason One Nation is doing that is that these bills could have a similar impact and long-term destabilising effect on the Australian nation to that which we had with the Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000, which was brought in as a result of the government saying that it was necessary to provide security for the Olympic Games. Section 101, subsection (1) of the Security Legislation Amendment (Terrorism) Bill 2002 states:

(1) A person commits an offence if the person engages in a terrorist act.

Penalty: Imprisonment for life.

I have a question for Senator Ellison: what if we get it wrong? What right of appeal does a person have under this legislation? If they are incorrectly incarcerated, this legislation says it is imprisonment for life. Can Senator Ellison indicate to the chamber whether that
is the natural term of a person’s life or whether it is defined as 25 years? In section 101 of the bill under ‘Definitions’, a terrorist act means, amongst other things:

... the action is done or the threat is made with the intention of advancing a political, religious or ideological cause

That is a terrorist act under the definition of this piece of legislation. It goes on to say that it does not include ‘lawful advocacy, protest or dissent or industrial action’ relating to those above headings. I find it a little difficult to ever imagine a situation where we could have industrial action in relation to a political, religious or ideological cause, unless our astute brethren among the churches decide to march down the street in protest. Then again, do they have to be members of a union for it to be classed as industrial action?

Before the chamber looks upon my words as flippant, they are not, because we are passing a piece of legislation that will stand on the statutes, as I said in the second reading debate 20, or 50 years from now if not indefinitely. Further through section 101 in the definitions, subparagraph (2) lists actions which fall within the subsection. They include actions which involve:

... serious harm to a person; or

(b) ... serious damage to property ...

Is the pulling of a picket off a front fence determined to be ‘damage to property’? Subparagraph (2)(c) goes on to say:

... endangers a person’s life, other than the life of the person taking the action;

(d) creates a serious risk to the health or safety of the public or a section of the public ...

Again, in (e) it says:

... seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:

(i) an information system; or

(ii) a telecommunications system; or

(iii) a financial system; or

(iv) a system used for the delivery of essential government services

Again I pose the question to Senator Ellison: does this ‘interfering with an electronic system’ include email? Is it a terrorist act to interfere with an email system for the purpose of advancing a political, religious or ideological cause? Because this definitely can be read in that manner under this act. I clearly say, for the benefit of the chamber and the Australian people, that One Nation do not in any form or shape support a terrorist act, no matter what the motivation for it is. We believe that people who willfully go and carry out those actions should feel the full force of the law. I indicate to the chamber that One Nation will support the Greens amendment proposing this sunset clause. I use this opportunity to ask Senator Ellison to put some definition to the questions that I have put.
through this exercise. It is a dreadful thing for a crime to be committed, and it is a dreadful thing to punish somebody who has not committed a crime for a crime that has been committed by somebody else. That is what we are on about: the issue of due process. That is why issues of the right to silence and of people having an ability to defend themselves are so important; that is why it is so important to make sure that, if a person is punished with any severity, he or she is punished for something that was intended to happen. This legislation, as it originally came before this chamber and this parliament, was bad legislation because it over-looked the issue of due process that should be buried in the very workings of the law and that informs the whole process.

How this legislation can upset people was brought home to me the other night when I was at Darebin, at the old Preston Town Hall; since the amalgamation, it is not the Preston Town Hall any more. I was speaking about this legislation, together with Jamie Gardiner, Damian Lawson and Alex Khouttab, and there were people from the Arab and Muslim communities there. I think the minister would take my point: in not only bringing forward but also debating legislation like this, it is important that we do that in a way that does not cause unnecessary unease to members of the community. Alex Khouttab, in particular—coming from an Arab background—was able to make this point more eloquently than the other three of us were. A young woman there of 17 or 18 years of age, who was born in Australia but who was Muslim in religion, came dressed as an Australian-Muslim woman would and said that this legislation was part of an overall package of things that made her feel almost unwanted in her own land. That is a tragic thing to happen. This legislation must be seen in the context of being an extension to the Crimes Act, to the Criminal Code Act and to the other relevant acts. It should be seen, as has been said, as needing to be tested against the proper balance.

It is important—and this point was made by Senator Ray the other day—to have the right people in charge. This will be particularly important in the context of the Australian Federal Police, who will get additional jurisdiction. I think that is an outstanding force, and I would like to use this occasion to pay tribute to the Australian Federal Police and to Mick Keelty, the Commissioner—who is, I think, an outstanding commissioner. There have been other great commissioners, too. I would also like to use this occasion to pay tribute to the Australian Federal Police Association, because—and I think the minister would agree—it has done great work not only for its members industrially but also in seeing that criminal legislation over the years has struck that balance. I think both Mick Keelty and Jon Hunt-Sharman have the sense of what is right and appropriate in this area.

When we are debating this over the next little or long while, let us remember that it is an extension of the criminal law—that it has to be looked at in that context—and that all the protections and all the due process matters must be attended to. I pay tribute to the minister in this area. I know that, when he was practising, he was conscious of the need for that; I know that, since he has come here and was on the Legal and Constitutional Committee with me—which he served with great distinction—he had the sense of what this is all about. Madam Temporary Chairman, I will go back to my room, where my grand-daughter little Emma is waiting for me with her mother, Megan, and her father, Joe. If she is awake, I might even bring her in to show you all.

Senator GREIG (Western Australia) (5.22 p.m.)—Senator Cooney, may young Emma grow up in a better Australia with a stronger regime of human rights and civil liberties. It is difficult to reasonably argue against the prospect of the sunset clause that Senator Brown has advanced. The opposition is arguing that a better proposal, a better regime would be a review process after three years. I have seen the review process amendment advocated by the opposition, which we will get to later—and I admit that it is attractive—but I do not think you can argue that it ought to be one or the other; they can coexist. For example, under Senator Faulkner’s proposal, there is the opportunity to comprehensively and independently re-
view the legislation that we are dealing with today. You could come up with a set of proposals and then, if necessary, incorporate it into the bills at the end of a five-year sunset clause. Then perhaps the bills, individually or collectively, might be reintroduced.

Senator West, who was in the chair before you, Senator McLucas, explained that not all of Senator Brown’s amendments had been circulated at this stage. I would indicate to the chamber that that is also the case with the Democrats; we have some amendments to move as well. It seems that the clerks are under the pump from some enthusiastic crossbenchers and the opposition and there are still some amendments to be brought forward. One of those—which is being advocated by the Australian Democrats and which we may get to later—is very similar to what Senator Brown is proposing. We, too, advocate a sunset clause, not just for this bill but for all of them.

If we are going to argue, as we have heard today, that balance is the key and the essential element here, in terms of responding to terrorism and protecting civil liberties and human rights, it is hard to reasonably argue against a sunset clause. I see no real administrative or political difficulty in ending this legislation completely after five years and then saying to the Australian community, through a consultation process, through the parliament and all members and senators: where do we go to now with this legislation? Has it become redundant? Is it in need of improvement? There is nothing particularly radical or unusual about that.

If in the electorate there is one strong mood, which I have sensed with those in the community who have involved themselves in this debate thus far, it is that there is a great sense of anxiety about what this legislation might mean for the future. The Attorney, on behalf of the government, said that it was neither his nor the government’s intention to go down the draconian path that many were saying would result from this legislation. But, as stated in my speech on these bills in the second reading debate and as correctly replied to by many in the community, this legislation is not necessarily about the here and now; it is not about what the current Attorney might do with the legislation or what the current government might do with the legislation. It is about what future governments might do with the legislation five, 10, 15, 25 years down the path—and we do not know who might then be in power or how they might exercise that power.

Having a sunset clause, such as was advocated by Senator Brown and me, is arguably the best way to address that very real anxiety. That is, we should say to the community unequivocally, ‘For those of you who are rightly concerned about where this legislation might be leading, we have this protective mechanism built into it where we’ll significantly and unambiguously address all of these bills after five years.’ That is entirely reasonable. For that reason, I am happy to support the amendment before us.

The TEMPORARY CHAIRMAN (Senator McLucas)—I have a message for the chamber. I understand that we are having some computer problems. That is why Senator Brown’s amendments, other than those on the paper, and Senator Greig’s amendments do not appear at this point in time.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.27 p.m.)—I will deal first with the Greens amendment which talks of a five-year sunset clause; the government opposes this amendment. It does not believe that a five-year sunset clause is appropriate. The government is of the view that this legislation is necessary for Australia, that the terrorism threat will not be over within five years and that this counter-terrorism legislation will continue to be necessary well into the future. As to what governments or parliaments in the future might do with this legislation, it remains for them to deal with at that time. But it is inappropriate for us to second-guess what might happen if a sunset clause were to be put in.

A number of issues were raised during the debate which I have dealt with in my reply on the second reading debate, and so I will not deal with them except for Senator Harris’s questions. Senator Harris asked, with the sentencing regime under this legislation, whether there would be an avenue of appeal and, if so, the situation in relation to it. I can
advise the Senate that what is being proposed is no different to other Commonwealth legislation. The term of life is a genuine life term. We already have that provision in relation to importing a commercial trafficable quantity of narcotics, and the question of a nonparole period is one to be determined by the courts. Sentencing is done in the various state and territory jurisdictions, and the appeal process lies within those jurisdictions. It would be dealt with just like any other Commonwealth conviction and sentencing.

The other point related to that aspect of ‘terrorist act’ which appears in 5.3 under terrorism. It deals with terrorist action involved in serious interference with an electronic system. That is what Senator Harris referred to when he asked, ‘Does this include an email?’ Of course, an email might be part and parcel of such interference with an electronic information system. You might have the denial of service through the use of emails. That is, a lot of emails are employed to cut off service of a government instrumentality, such as a water corporation or other entity. We have also addressed this in our cybercrime legislation. But terrorists can use the modern information age just as well as criminals can, and that is why it is important to have this provision. It does not necessarily say that an email in itself can be a terrorist act, but certainly an email can be part and parcel of an action which constitutes a terrorist threat. I think that deals with the questions raised by Senator Harris. Again, as I have said, the government will be opposing this amendment by the Greens.

Senator BROWN (Tasmania) (5.30 p.m.)—I would like to point out to the committee that this is not unprecedented. In the UK in the 1970s, terrorism legislation to deal with the IRA had a sunset clause and was dealt with then with a review. That is the course of action the Greens are suggesting the chamber should be taking on this occasion. Otherwise we put ourselves into a situation of permanently truncating rights which Australians have had over the last 100 years for a situation which inevitably, like all others, will be passing. That is the choice that there is here. I note that the Labor Party says, ‘We are in favour of the permanent truncation,’ but I think that is a bad course of action for the Labor Party to be taking. I think there ought to be a review and there ought to be a sunset clause in place to make sure that the government—whichever government is in place three to five years down the line from now—takes the review seriously and has to go through the process of justifying keeping on the books this truncation of rights in Australia.

Senator ROBERT RAY (Victoria) (5.32 p.m.)—On the question of a sunset clause, I do not think there is any great principle one way or the other as to which legislation it should be applied to. I think the attitude we have taken to this package of bills is to get the balance right and therefore it will not require a sunset clause. There is precedent in other legislation for sunset clauses. If, for instance—as now appears unlikely—the proposed legislation on ASIO were to be dealt with this session, there is no way I would vote for it unless it had a sunset clause, because it goes into unknown territory far more than these bills do. Therefore, whilst I hear the arguments put by Senator Brown, I am not totally convinced in regard to a sunset clause on this legislation. I think some of the principles we are trying to establish here go far beyond five years; whereas with the ASIO legislation, given the type of legislation it is, you would want to look at how it operates. In that case, the sunset clause would not be five years; it would have to be three years to satisfy any of us. But I am not convinced, in the case of these five bills, that you need a sunset clause. We have looked at it; I would hate for you to go away with the impression that we did not give it any consideration. We did, but collectively the caucus has taken the view that it is not required in this case.

Senator BROWN (Tasmania) (5.33 p.m.)—I agree totally with Senator Ray: there should be a sunset clause if the extremely worrying ASIO legislation passes in the Senate, and I would hope that the Labor Party will look at the better option there, which is not to allow it to pass. That is a matter for the Labor Party to decide on. But I would remind the opposition that we are dealing with legislation which allows the
Attorney-General, with or without the say of parliament, to ban organisations in a way that has never been done before and which allows the government to indict people for terrorism with very loose definition. It will be argued that it has to be a definition which could ensnare people who were never intended at this stage to be ensnared by that definition, because they had strayed outside the law or because they had strayed into an area which, it could be argued, is threatening to the health and safety of people somewhere in Australia. One can look at everything—from the shearers’ strike right through—where an argument could be very cogently drawn up to say that it was threatening to the health and safety of Australians.

We might argue in here, ‘That is not what the intention of the legislation is.’ I argue that you have to judge the merit of legislation like this by looking at the potential worst application of the legislation by a government in Australia. That is why I think the sunset clause is very important: it concentrates the mind of the government, three to five years out from now, on ensuring that this legislation is adequately and in a dinkum fashion reviewed. Otherwise we run the risk of having a government dismiss that. Remember that the law will be in place and the Senate cannot repeal it—it requires both houses of parliament. If the current conservative government is elected for another term, I can tell you that they will not be changing the legislation. They will be wanting to tighten it up, if anything. If there are measures in there which have been abused or which could be abused in terms of people’s civil liberties in Australia—quite unnecessarily and without preventing some form of treason or terrorism—I predict that this government, if they are still in place, is not going to be amenable to making changes. But if there is a sunset clause they will be forced to, because they will want to get the legislation through again, and the Senate will again have a say. By denying the sunset clause, the opposition effectively denies the Senate that say further down the line. It is an argument which I think needs to be clearly understood here, because once we give up the sunset clause we effectively give up the opportunity to have a dinkum review.

Senator ROBERT RAY (Victoria) (5.37 p.m.)—The two reasons put forward by Senator Brown—I do not want to verbal him—are the definition and the Attorney-General proscribing organisations, both of which we intend to remove from the legislation. So it occurs to me that it is a pity that Senator Brown’s sunset clause cannot be moved right at the end of the process rather than at the start because various amendments are going to be moved that we think will mean that a sunset clause is not necessary. Of course, if those amendments are not successful then there will be a very strong case for a sunset clause. Which comes first, the chicken or the egg? That is the difficulty we are having here.

If we have not made it clear yet, let us make it clear now: we do not favour having the Attorney-General proscribe organisations. We do not like it in principle and we do not like it in practice. I do not want to detail again—because it would be hurtful to Mr Williams—why I do not like it in practice, but it is a process that we do not want to support. We do not want to allow the Attorney-General that power. We have grave reservations about him then being able to delegate that power to Senator Abetz or someone like that. That thought is terrifying. So that is why we are almost arguing at cross-purposes here. That thought even hurts Senator Ellison.

Senator Ellison—I think Senator Abetz is a fine man.

Senator ROBERT RAY—I am glad you think he is a great man. He succeeded you in the job you did, Senator Ellison, and I have to say that he is making you look really good; so you should feel chuffed about that. We are looking back on your reign as Special Minister of State not fondly, but almost. Let me not get diverted. The only point I really wanted to make is that this amendment would make more sense coming right at the end of the process rather than at the start. I do not know if there is an opportunity for you to do it again. I am not trying to get you to put it off now but, once you see the context to the bill, making a decision then on a sunset clause makes a lot more sense.
Senator BROWN (Tasmania) (5.39 p.m.)—But the point here—maybe I have not put this directly enough; I will now—is that, even with the Labor amendments, we still find ourselves in the position where this needs review because the latitude will be there for abuse. The public health and safety clause, for example, is not removed by the Labor amendments. So I have real concerns about it and the legislation, even with the Labor amendments, demands review. When you go for a review three to five years down the line, you want to know that it is going to be a review which has to be taken note of by the government of the day. If we do not have a sunset clause in here, the government of the day does not have to take notice. I intend to move the amendment. There is an opportunity to apply a sunset clause later if we want to, but from our point of view now is the time to do it. While I am on my feet, I might foreshadow that I will be withdrawing the Greens’ second amendment because I think the Labor Party has a better prescription for that.

Senator Faulkner—Is this the form of the review?

Senator BROWN—This is the form of the review, the make-up of the review.

Senator ROBERT RAY (Victoria) (5.40 p.m.)—Now at least Senator Brown has put a more cogent argument—maybe he only had a limited argument before but he has now put further reasons on the table that at least people can consider. I did note that Senator Ellison winced a bit when I said, ‘What if this power was delegated to Senator Abetz?’

Senator Ellison—No, I did not. I said he was a fine man.

Senator ROBERT RAY—That is right. I think you winced at my attacking a fine man. That is what I am saying, Senator Ellison; I am not saying anything more than that. To push that argument a little further: what if the powers were delegated to Mr Tony Abbott? Half the Liberal Party would expire. Here we have someone who is a workplace relations arsonist. It is a long while since I have read science fiction, but I remember that great piece of work Fahrenheit 451 where fire stations are no longer to put out fires but there to go around and start them by burning books. That, in a metaphorical way, is what Mr Tony Abbott has evolved into. Fancy giving him the powers to proscribe, given his lack of sensitivity. He exists for one reason: to blow industrial relations in this country apart. No amount of protections and definitions as to industrial action would protect us if he were given this particular power; he would use and abuse it.

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

The committee divided. [5.46 p.m.]
(The Chairman—Senator S.M. West)

Ayes......... 12
Noes......... 49
Majority....... 37

AYES
Allison, L.F.
Bourne, V.W. *
Cherry, J.C.
Harris, L.
Murphy, S.M.
Ridgeway, A.D.

NOES
Barnett, G.
Bolkus, N.
Brandis, G.H.
Calvert, P.H. *
Carr, K.J.
Collins, J.M.A.
Cook, P.F.S.
Crane, A.W.
Crowley, R.A.
Eggleston, A.
Evans, C.V.
Forshaw, M.G.
Harradine, B.
Hogg, J.J.
Knowles, S.C.
Lundy, K.A.
Mackay, S.M.
McGauran, J.J.J.
McLucas, J.E.
Payne, M.A.
Reid, M.E.
Sherry, N.J.
Tierney, J.W.
Vanstone, A.E.
West, S.M.

Bartlett, A.J.J.
Brown, B.J.
Greig, B.
Lees, M.H.
Murray, A.J.M.
Stott Despoja, N.

Bishop, T.M.
Boswell, R.L.D.
Buckland, G.
Campbell, G.
Colbeck, R.
Conroy, S.M.
Cooney, B.C.
Crossin, P.M.
Denman, K.J.
Ellison, C.M.
Ferris, J.M.
Gibbs, B.
Herron, J.J.
Hutchins, S.P.
Ludwig, J.W.
Macdonald, J.A.L.
Mason, B.J.
McKernan, J.P.
O’Brien, K.W.K.
Ray, R.F.
Scullion, N.G.
Tchen, T.
Troeth, J.M.
Watson, J.O.W.
* denotes teller
Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs)  (5.50 p.m.)—I move government amendment (2):
(2) Schedule 1, item 1, page 4 (line 8), omit “integrity and”.

This amendment omits the words ‘integrity and’ from the proposed heading to chapter 5 of the Criminal Code entitled ‘The integrity and security of the Commonwealth’. The amendment responds to concerns raised during the consideration of the bill by the Legal and Constitutional Legislation Committee in relation to the ambiguity of the term ‘integrity’.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate)  (5.51 p.m.)—The Criminal Code chapter heading is one issue where we believe it is appropriate for the government to have accepted Senate concerns. Effectively, the government has now proposed an amendment to change the heading of the chapter being inserted into the Criminal Code from ‘The integrity and security of the Commonwealth’ to simply ‘The security of the Commonwealth’.

The view of the opposition on this particular issue has been consistent—that is, that the word ‘integrity’ has a wide range of meanings and does not describe the content of the new sections that are being inserted into the Criminal Code. It is for that reason that we proposed such a course of action. I am pleased that this has been accepted by the government, and the opposition will be supporting this government amendment.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs)  (5.53 p.m.)—I move government amendment (3):
(3) Schedule 1, item 2, page 4 (lines 20 to 25), omit paragraphs (a), (b) and (c), substitute:
(a) causes the death of the Sovereign, the heir apparent of the Sovereign, the consort of the Sovereign, the Governor-General or the Prime Minister; or
(b) causes harm to the Sovereign, the Governor-General or the Prime Minister resulting in the death of the

This amendment modernises the treason offence in proposed section 80.1 by including references to the Governor-General and the Prime Minister. Historically, treason has applied to persons who kill, harm, imprison or restrain the sovereign. This amendment will ensure that the offence also applies to persons who kill, harm, imprison or restrain the Governor-General or the Prime Minister. It reflects the importance of the Governor-General and the Prime Minister in Australia’s governmental framework. I commend the amendment to the Senate.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate)  (5.53 p.m.)—Like the previous amendment, this particular government amendment embraces a suggestion made by the opposition, which of course adds to the list of people for whom causing death or harm would be an act of treason. The arguments around this are simple. Originally, the only persons on that list were the sovereign, the heir apparent, or the sovereign’s consort. The amendment adds the Governor-General and the Prime Minister to that short list. This is just a matter of ensuring that the current constitutional and governmental arrangements that exist in this country are reflected in this legislation. It is appropriate in this circumstance to recognise the roles of both the Governor-General and the Prime Minister and, although this is a comparatively minor amendment, the opposition made the suggestion to the government that this course of action be undertaken because it is a step in the right direction.

Senator HARRIS (Queensland)  (5.55 p.m.)—In rising to speak to part 5.1, division 80, which relates to the issue of treason, I will seek some clarification from Senator Ellison on several issues. The first one concerns subsection (3) of section 80.1 where it says:
Proceedings for an offence against this section must not be commenced without the Attorney-General’s written consent.

Then under subsection (4) it has the words:

Despite subsection (3):

(a) a person may be arrested for an offence against this section;

or

(b) a warrant for the arrest of a person for such an offence may be issued and executed.

If it is the intention of the government to allow an arrest for an offence under this section, then why is the government even putting subsection (3) there in the first place?

The second issue I am seeking clarification on is in relation to subsection 2(b), which says:

(b) knowing that another person intends to commit treason, does not inform a constable of it within a reasonable time or use other reasonable endeavours to prevent the commission of the offence.

That section in relation to subsection 5 says:

On the trial of a person charged with treason on the grounds that he or she formed an intention to do an act referred to in paragraph (1)(a), (b), (c), (d), (e), (f) or (g) and manifested that intention by an overt act, evidence of the overt act is not to be admitted unless the overt act is alleged in the indictment.

What I am seeking clarification on from Senator Ellison is that, if the prosecuting department lays a charge and does not specify the issue in the indictment, could a person find themselves in the court charged with an offence without the court being informed of the actual act that they have carried out? Do we have a situation where somebody could be charged with treason and the basis of that charge not be made known?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.58 p.m.)—In relation to 80.1, subsection (3), which Senator Harris believes is in conflict with subsection (4), that subsection allows for a considered prosecution; where there is an opportunity for the authorities to assess the situation, it goes to the Attorney-General and he then provides the written consent. Subsection (4) provides for more of an operational reaction, where the police actually find someone who has committed the offence and they arrest that person on the spot. They do not have to go to the Attorney-General and get that written consent for proceedings to be taken. So it says that, in the normal course of events, you have the written consent for the prosecution from the Attorney-General, but we do not want to limit that entirely. We want to say that you can have a situation where a person can be arrested on the spot and be dealt with accordingly. So you have both of those aspects covered. We do not see those two as being in conflict but more complementing each other.

In relation to the second question, section 80.1 subsection (2)(b) versus subsection (5), we again do not see those really being in conflict because subsection (5) deals with a principal offender. You have a situation where, in subsection (5), you are dealing with someone who is manifesting the intention to do the act, and (2)(b) deals with someone who is not doing something. It is, to use legal terms, nonfeasance versus misfeasance. So there are two distinguishing features there. But, also, you could well have a person who is the principal offender intending to do something and, for some reason, they are killed, they are not around anymore, but someone who knew what they were doing still did not report it, and they could still be guilty of an offence. So you may well have someone charged under subsection (2)(b) without someone being charged under subsection (5). Really, the two are not in conflict with each other for those reasons.

Senator GREIG (Western Australia) (6.01 p.m.)—Can I ask the minister, out of curiosity, what the parameters for quarantining the definition have been? By which I mean: you are proposing to expand the notion of treason beyond the sovereign to include the Governor-General and the Prime Minister. I am wondering if there is any legal or administrative reason why that could not conceivably include any minister or, for that matter, any member of the executive or potentially the head of the defence forces.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.02
As Senator Faulkner mentioned, this amendment brings the provision up to an accordance with the times that we live in. We do not believe it should be extended to a minister of the Crown. We believe that the offices of Governor-General and Prime Minister are the modern equivalents, if you like, of what was regarded in previous times as the sovereign, or the sovereign’s consort, but we do not believe it should be extended. It was not a legal aspect at all; it was more a policy aspect. I think Senator Faulkner mentioned the opposition’s approach to this and I do not believe that was on a legal basis. Certainly, the government’s approach to it has not been that there is some legal imperative that it only be the Governor-General or Prime Minister.

Question agreed to.

Senator BROWN (Tasmania) (6.03 p.m.)—by leave—I move Greens amendments (3) and (4), which are on sheet 2512 revised 2:

(3) Schedule 1, item 2, page 5 (lines 4 to 9), omit paragraph (f).
(4) Schedule 1, item 2, page 5 (lines 21 to 24), omit paragraph (2)(b).

These deal with the definition of terrorism and our concern that that definition is too wide and will entrap people in a spirit which is quite outside the intent of this legislation. Through these amendments we seek to deal with the problems created by the government in what has been described as the ‘David Hicks amendment’. As the Senate would know, Mr Hicks and another Australian citizen, Mr Habib, are currently being held incommunicado in Guantanamo Bay by the United States government. I will come back to that in a moment. What has happened to these men is instructive because the government’s amendments could mean that many more Australians who are caught up or involved in or, indeed, actively participating in one side or another in civil conflicts overseas could be unwittingly and unjustifiably committing acts of treason under this legislation. I remind members that both Mr Hicks and Mr Habib were involved geographically before the events of September 11 last year, and certainly before Australian troops went to Afghanistan, and therefore were in a situation pre-existing the direct involvement of Australian personnel.

There are many civil wars and conflicts around the world in which Australians have been or are involved. East Timor is an obvious example, but others are in West Papua, Bougainville, and previously in Vietnam. Palestine is another one. In some instances the Australian defence forces have, or might have, intervened or might take on a role as peacekeepers at short notice. The government’s amendments mean that Australians involved in these conflicts could be labelled as traitors and charged with treason. If we look at the bill, under section 80.1, Treason, subsection (1)(f) will mean that a person commits an offence of treason if the person engages in conduct that assists by any means whatever, with intent to assist another country or an organisation that is engaged in hostilities against the Australian Defence Force. The question I put to the minister, which might cut right through this, is: were this legislation in place during the Vietnam War in the United States, would it not have paved the way for Jane Fonda—who, you will remember, visited North Vietnam at that time and gave support to the Vietcong—to be put in the position of being charged with treason?

Senator McGauran—It was treason!

Senator BROWN—The government member opposite says yes, but I want to hear that from the minister. I ask about the peace activists who intervened during the Gulf War, whose intent was to go to the Iraqi frontier, with great courage, to put themselves in the way of the potential conflict there. Would they have been in a treasonous situation under this legislation, remembering that there were Australian naval personnel directly involved in the Gulf War? Proposed section 80.1(e) already covers involvements in acts of war. We support the amendment on excluding humanitarian aid from attracting charges of treason, but there is a whole lot of assistance that is not covered by that—support that is not necessarily war-like or violent, for example, that cannot be characterised as humanitarian and therefore would attract charges of treason if the government of the day were so disposed. Our amendment
removes the lassitude here; it takes out the clause that would enable that to happen.

Perhaps, more importantly, the government amendments to the offence of treason will mean that friends or family who are aware that their sons, daughters, friends or partners are involved in a conflict in which Australia then intervenes will be committing treason as well. If you look at proposed section 80.1(2)(b) you will see that it says:

... knowing that another person intends to commit treason, does not inform a constable of it within a reasonable time or use other reasonable endeavours to prevent the commission of the offence.

These are serious charges—charges that could lead to someone being imprisoned for life. I challenge anyone in this chamber to suggest that the family of David Hicks should be given life imprisonment because they have not told police that their son was in Afghanistan. I would like to draw the minister out some more on the cases of Mr Hicks and Mr Habib, but I would first look for a response from the government or other parties to the amendments that the Greens have brought forward here.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.09 p.m.)—Firstly, the government opposes these amendments. They unduly narrow the offence of treason in the opinion of the government. The government believes that proposed subsection (f) which the Greens are attempting to delete is an important part of the definition. I ask that Senator Brown look at this proposed subsection. It says:

... engages in conduct that assists by any means whatever, with intent to assist:

(i) another country; or
(ii) an organisation;
that is engaged in armed hostilities against the Australian Defence Force ...

What you are talking about there is assisting, by any means whatever, with an intention to assist. Those are the elements of the offence and they have to be proven beyond a reasonable doubt.

Senator Brown mentions Jane Fonda’s visit to Vietnam. It could well be said that she could have gone there to see the other side’s story and that by sitting on the tank and having a photo taken it did not assist the cause of the Vietcong or that she did not have an intention to assist. But it must be remembered that these have to be proved beyond a reasonable doubt. If a person goes there with the intention to assist and has an intention that is proven beyond a reasonable doubt and assists and it is shown beyond a reasonable doubt, then under this subsection you can establish guilt. I will not go into the hypotheticals in relation to what happened 30-odd years ago, but I can say that there are strict requirements here which need to be proven—the act itself and an intention to act—beyond a reasonable doubt.

It is the government’s view that once that has been shown then guilt is established. It is as simple as that. I think that, in today’s modern context, you will increasingly find situations like Afghanistan where people end up in conflict with Australian defence forces and it is important that we have provisions to cover that. Senator Brown mentioned some concern about the retrospective nature of this. This is not retrospective and the cases that Senator Brown has mentioned, Hicks and another, would not be caught by this section if it came into law. I make that point very clear. The government opposes these amendments and it believes that they would unduly narrow the definition of treason.

Senator BROWN (Tasmania) (6.12 p.m.)—In the case of Hicks and Habib in their situation in Guantanamo Bay, is the minister aware that these two Australians are being denied access to legal rights that they would have if indicted in an Australian court?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.13 p.m.)—I understand that both of those people have seen representatives of Australian law enforcement and ASIO. I do not believe—and if it is not correct I will correct it—that they have had access to legal counsel. Senator Brown makes a comparison between the situation under which they are held and that under which they would be held on an indictable charge here in Australia. They are not held in Australia, it is not within the Australian jurisdiction and we do not believe that you can draw the analogy between being
Senator BROWN (Tasmania) (6.14 p.m.)—There is one at least and I think two American citizens, however, who have been apprehended in Afghanistan under similar circumstances and, instead of languishing in Guantanamo Bay in Cuba outside the ambit of American law, they have been repatriated to continental United States. Why have these two Australians not been repatriated to their home country in the same way?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.14 p.m.)—It is a matter squarely for the United States. They are holding these people under their jurisdiction, and if they choose to repatriate their own nationals that is a matter for the Americans.

Senator BROWN (Tasmania) (6.15 p.m.)—It is not. Does the minister mean to tell me that, regardless of what the law is in another country, we leave it to that other country to deal with Australian citizens—regardless of who they are? Does the minister mean to tell me that that is what the Americans do? Of course they do not. There is a double standard here. The Americans are applying a different standard to their citizens from these Australian men—whatever they may or may not have done. What has the Australian government said, done or insisted upon as far as the rights of these men are concerned vis-à-vis the Americans?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.15 p.m.)—At the outset, the Australian government has taken steps to ensure that these men are being looked after properly and that their welfare is attended to. But Australians often find themselves in strife in foreign jurisdictions and it of course follows that they are dealt with in that jurisdiction. We have seen that happen many times. There is nothing you can do when an Australian is apprehended in another country for offending the laws of that country and is being dealt with according to the laws there. That is entirely appropriate and straightforward. In this case it is alleged that these people were apprehended in a conflict situation and that the Americans are holding them pursuant to that. The President of the United States has issued a decree, which is the cause of their incarceration, and that is a matter squarely for the Americans. The Australian government has made representations in relation to the welfare of these people and will continue to do all it can to ensure that their welfare is looked after.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (6.16 p.m.)—It strikes me that Senator Ellison has not been very persuasive in dealing with Senator Brown’s questions. If I were the minister—and, of course, you could point out, Senator Brown, that I am not—Senator Brown—But I will support that proposition.

Senator FAULKNER—That is very generous of you, Senator Brown, but it takes a little more than your vote and I do not think we would have got that. In answer to important questions that you are raising in relation to these two Australians, if this package of legislation were to be passed in the amended form that at least the opposition contemplates—I think now that you have an understanding of those parameters which are different obviously to the approach that the government has advanced in its original legislation—we would have a situation where the two individuals you mention could be charged and tried under Australian law. That is a very important point, because that would mean that we could apply Australian legal standards to the individual cases. I do not know all the details about the individual cases, though in relation to Mr Hicks, for example, there has certainly been a great deal more publicity about his circumstances than the circumstances of the other individual you mention. You would have a situation where these two people could be judged by their peers. Of course, an extradition application would be far more likely to succeed if we had such a framework in domestic law. As I said, I am not the minister, so I cannot make those points, but if I were the minister that is one argument I would present to you in answer to the important questions that you ask.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.19 p.m.)—I must correct an impression that Senator Faulkner gave. Whilst a request for extradition might be available, it is always the case that the country that has that person has the first option of dealing with them and in that case would—

Senator Faulkner—But you would accept it would be far more likely to be a successful extradition if you had a strong framework in domestic law?

Senator ELLISON—Senator Faulkner has missed the point. You would still have to get past the Americans dealing with the person first.

Senator BROWN (Tasmania) (6.20 p.m.)—There are two things I will raise. First of all, we have the minister agreeing that the rights of these two men are not being met but would be met if they were in Australia and then his saying that they are being looked after properly. That is a total contradiction. Then the minister says that they are being dealt with by the American authorities under the American system. They are not. They were arrested in Afghanistan, not in America, and to circumvent American law they have been taken to Cuba.

The Bush administration’s publicly stated, deliberate intention is to avoid them having access to proper US law and to put them outside the ambit of law in the United States or in Australia. The Australian government has been a lackey to that. The Australian government has abandoned the rights of these two citizens without their having been charged or found guilty of anything. We can all make up our own minds on the paltry evidence that is available that Mr Hicks or Mr Habib may or may not be good or bad people and may or may not be responsible for this or that, but the fact is that the Howard government has abandoned these two Australians because it does not have the gumption to stand up for its Australian citizens to President Bush in the way that we know he would demand if two American citizens were being held by Australian authorities. We know they would be out of here in a shot. But we have this weak and pathetic grovelling to the Bush administration at the expense of these two Australians. It is manifestly wrong. It is a government abandoning Australian citizens in a situation where it should be applying maximum pressure to ensure that those citizens’ rights are upheld. Let us make no mistake about this: these two men are in a concentration camp in Guantanamo Bay.

Senator McGauran—Why?

Senator BROWN—The honourable government member opposite says, ‘Why?’ Exactly: they have been charged with nothing; they have been found guilty of nothing. If he or anybody else in this place says, ‘Well, let’s abandon the law; let’s abandon the rights of Australian citizens, not just under Australian law but under international covenants,’ because some leader of some other country—I do not care who it is—says so, then we are in a position of losing track of what it is to be an Australian. This nation is an independent nation. Its citizens have a right, no matter where they are, to know that their government will do the best it can to ensure that their rights are upheld no matter what the circumstances. If you move away from that, the law itself—and the responsibility of the government to uphold the law—has no safeguard. There is only one principle here: Australian citizens, wherever they are around the world, need to know that their government will stand by them and ensure that their rights are upheld—not get them off from some wrong that they may have committed, but stand by and make sure that their rights are upheld. This Howard government has totally failed to do that in this circumstance. If the government fails to do it with the Bush administration, where will it end?

It is outrageous that Mr Hicks and Mr Habib have been abandoned by Mr Howard. He has been to the White House just recently. What representation did he make for these citizens—who are being held deliberately outside the United States law in the concentration camp at Guantanamo Bay—to have their Australian rights upheld? It is an indignity to this country that the Prime Minister failed to do that and that the Attorney-General has failed to follow up with his counterpart in such a way as to insist that those Australians be repatriated and dealt with here, just as an American administration
would insist if we were holding their citizens in some place outside the law of Australia—and this government is moving to set up that sort of capability with asylum seekers. Were that the case, we would be under impossible pressure from the Bush administration to return those Americans home. This is not the end of the matter. This is an act of abandonment of Australian citizens by the Howard government.

I ask the minister: what is the maximum pressure that has been applied to the Bush administration about the legal, civil and political rights of these two men? I am not talking about their comforts. I am not talking about whether they are being fed. I am talking about their right to be treated as we would expect an Australian citizen to be treated here in Australia. I do not believe that there is any evidence that the Australian government is doing the right thing by these men. I can only imagine the frustration and anguish of the families of these men. It must be intolerable. It must be all the worse because so little is being said about it and because of the failure of the very person you would expect to insist, as the most powerful Australian, on going to the assistance of these Australians and seeing that their rights were upheld—not to find them innocent or expunge anything they might have done, but simply to see that their rights were upheld. The Hon. John Howard has failed them and, in doing so, he has failed this country. I again say: just consider for a minute what President Bush would have done in the reverse situation to see how short of the mark Prime Minister Howard has fallen in this matter.

Senator GREIG (Western Australia) (6.28 p.m.)—I ask the minister: at what point does the government step in in relation to this issue? Hopefully, there is some time frame in the government’s thinking. Mr Hicks has certainly been held for many months. At what point does detention become deprivation of liberty? At what point does questioning become harassment? The US government has said that it has detained Mr Hicks, in particular, for questioning. For how long will the government tolerate this questioning? At the very time it is saying to the Australian people in relation to the antiterrorism bills that civil liberties will be maintained by the government, it is not extending that to Mr Hicks.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.29 p.m.)—For the record, I should answer those questions. We have indicated to the United States that, at this stage—while we are working through legal issues and there are further investigations being conducted—we regard it as appropriate for Mr Hicks to remain in US military custody along with the other detainees. Whilst those investigations are pending, the current situation is appropriate. I cannot give any set time limit to the Senate as to when that will expire or when it will be determined. Whilst investigations are proceeding in this matter, the government believes that the current situation is appropriate.

Sitting suspended from 6.29 p.m. to 7.30 p.m.

The TEMPORARY CHAIRMAN (Senator Hogg)—The committee is considering the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and Senator Brown’s amendments (3) and (4) on sheet 2512. The question is that the amendments be agreed to.

Senator BROWN (Tasmania) (7.30 p.m.)—Before the dinner break I was questioning the minister about the particular case of Mr Hicks and Mr Habib being held at Guantanamo Bay in Cuba to avoid American law and their rights being afforded to them. I asked why the government had abandoned these two citizens in a way which has been humiliating for the country and which would never, ever be entertained by the American authorities were the tables to be turned. It just so happened that the ABC news tonight showed the father of David Hicks explaining further about his son’s situation. I ask the minister about that: is it true that David Hicks was held for 132 days in a cage? That is more than four months. Is it true that he has now been held for 31 days in solitary confinement? Is it true that he is allowed 15 minutes exercise twice a week? If this is the case, we are seeing cruel and unusual treatment which is an abrogation of this citizen’s rights. A case could be—and I think
would be—very strongly and cogently put forward by many psychiatrists, for example, that mental torture is being levied here on somebody who has not been charged or accused, let alone been brought before the courts and convicted of anything. In fact, David Hicks’s father said today that he had been told by the Australian police that there is no evidence that his son has committed a crime. I ask the minister: are any of the assertions that Mr Hicks’s father has made incorrect? If not, how can he possibly entertain leaving this Australian citizen in these circumstances?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.33 p.m.)—I note the issues being raised by Senator Brown and I will take them on notice.

Senator BROWN (Tasmania) (7.33 p.m.)—That is the time honoured way of ducking the issue. I ask the minister: is he going to report back to the committee tonight or will it be in the morning? If so, I will wait until I hear the report back.

Senator Faulkner—It will not be in the morning; we do not sit in the morning.

Senator BROWN—On the morrow. Thank you, Senator Faulkner; you are very helpful.

Senator Faulkner—I did not want the minister to mislead you, because he might say ‘in the morning’ and then you would be a goner.

Senator BROWN—It is a serious matter. I ask the minister: could he inform the committee as to when it might get answers to the questions I have put forward?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.34 p.m.)—I will obtain them as soon as I can.

Senator BROWN (Tasmania) (7.34 p.m.)—That is a very glib answer, isn’t it? I would expect better of Senator Ellison—not of the government, but of Senator Ellison. It is a glib answer on a very serious matter. I inform the minister that I will pursue the matter through this debate. I want to get answers to the issues I have raised. I expect that we will not get them, but there is a challenge to the government. The debate we are having about this legislation on treason and terror must be couched in the framework of the government’s proclivity towards ensuring that civil rights are upheld, notwithstanding this legislation. I am challenging the government to show its bona fides on this matter. There could be nothing more pertinent at the moment than its attitude towards two Australians citizens being—I submit—illegally held by a foreign country. The government is under enormous ethical and moral obligation to do something about it, not least to insist that those two citizens are repatriated to Australia. I will await further information on the matter, but not for very long.

I have given the reasons for moving these amendments to this definition of treason and the treatment of treason under this legislation. The government has given a very wide definition. It should have been tightened up; it is not tightened up. Therefore, I expect that the amendments will be entertained and, hopefully, passed by the rest of the Senate.

Senator HARRIS (Queensland) (7.36 p.m.)—I would like to return to an answer that Senator Ellison gave to my two questions earlier this evening. Senator Ellison referred to the definition of ‘life’ and ‘non-parole’. Senator Ellison did not, for clarity, indicate what that would be. Also, he briefly indicated that there would be a right of appeal under this same legislation. I seek further clarification from Senator Ellison: would those appeal rights go right through the Federal Court to the High Court if a person is aggrieved and is accused of a crime of which they are innocent? Let me place very clearly on the record that One Nation does not oppose the full force of the law being brought down on a person who purports to engage, or engages, in any act of terrorism or the support of any other person in relation to terrorism. Our concern, consistently, is to try and ensure that the Australian people understand with absolute clarity that in this legislation there is a right of appeal.

In that vein, I also go to Senator Ellison’s response to my questions relating to subsection (2)(b) and subsection (5) of section 80.1, ‘Treason’. Senator Ellison clearly set out—and I thank him for that—that the two sections refer to two different situations, the first
where a person may have knowingly known about an incident and not informed anybody, and the second under subsection (5) where the person has actually carried out the act. Through the way in which the DPP constructs the case against an accused, by not defining an alleged act in the indictment, is it possible that a person could find themselves in court charged with treason but not knowing the actual offence they are defending? That is the crux of the question. I would appreciate it if Senator Ellison could give us some clear understanding on that.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (7.40 p.m.)—I made it very clear earlier that the offences here operate just as any Commonwealth offences do in the criminal jurisdiction. There is a right of appeal; I would imagine it would be dealt with in the first instance by trial in the Supreme Court of the state dealing with it or where the trial is being heard. It then goes to the full court of the Court of Criminal Appeal and from there to the High Court. The normal procedure in the criminal jurisdiction would apply. In relation to a nonparole period, I said that would be set by the court. It is a matter for the court.

Senator Harris asked for the definition of the term of life. I say again, to make it absolutely clear, that it is the term of the person’s life, not 25 years. The other thing Senator Harris asked about is whether a person could be charged under this legislation not knowing what they are facing. That is just not possible—the elements of the offence have to be set out in the indictment, and the elements of the offence will spell out exactly what the basis is of that charge. Each element has to be proved beyond reasonable doubt. That is in the indictment; if it is not there then a judge will direct a jury to acquit. It is as simple as that. The same principles would apply as under criminal law.

**The TEMPORARY CHAIRMAN (Senator Hogg)**—Senator Forshaw—I beg your pardon, Senator Faulkner.

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (7.41 p.m.)—A case of mistaken identity! There has been plenty of other mistaken identity here tonight, I have noticed. In relation to the minister, I thought for a while he was impersonating an Australian Democrat. Let me go to the substance of the amendment, because the issue before the committee that goes to the question of the definition of ‘treason’ is an important one. Senator Brown, in some remarks he made prior to the dinner adjournment, talked about the circumstances that have been, in the first instance, I think, correctly identified by the Senate committee, and many who made submissions to the Senate committee, that humanitarian activities could be caught up in the definition of treason. There has been a real concern here about those sorts of humanitarian activities—and we are talking about those that might be conducted by the Red Cross, Care Australia or like organisations. We have to ensure that those activities are not caught up in the extraordinarily poorly drafted bill that this committee is dealing with.

The truth—let us be frank about it—is that groups like that do assist people in situations where the politics, or the sides that individuals might be fighting on, are absolutely unclear. That is just a fact of life and everyone knows about that. What you have got to look at is the motivation of those groups and of those who engage in such humanitarian tasks. Their motivation is to help people, so it is appropriate that the definition of treason be redrafted so that anyone in that situation can continue to undertake their important humanitarian work without the risk of inadvertently being charged with the offence of treason. This is a matter that this committee should not have had to deal with, with the amount of time available to the government—don’t you think?

**Senator Brown**—We should have done it.

**Senator FAULKNER**—Yes, of course. With the amount of time available to the government—as this legislation was introduced into the parliament six months after the September 11 attacks—I do not think we should have to clean this up, but we do. I want to acknowledge the work done by the Senate committee and by those who made submissions to and testified before the committee on this and other important issues.

I say this in relation to humanitarian aid and assistance: the potential for the crimina-
lisation of humanitarian aid is more acute now because of the increased deployment of the Australian defence forces in peacekeeping and because of their involvement in border protection activities, in disaster relief and in some other forms of non-military action as well. Senator Brown properly identified this weakness, as have many others, including the opposition and—as I have mentioned—the Senate committee and those who made submissions to it. It is a serious weakness, and it must be addressed. The opposition will not be supporting the amendments before the chair, although I accept absolutely the spirit of what Senator Brown is trying to achieve. The government has picked up the suggested wording in the next government amendment, which I think deals with this issue adequately and effectively, and has agreed to ensure that its original, very poorly drafted wording does not catch up humanitarian activities—as it should not. The defence set out in the government’s amendment is simple and absolute, and I think that is an effective and appropriate way to go.

It is a pity that they have been dragged kicking and screaming to this point, but we need to acknowledge that the weakness identified has been identified across the board. It is proper that it is addressed. As far as the opposition are concerned, we are comfortable that the next amendment will pick up that weakness in the wording. That is something that desperately needed to be addressed and, I believe, will be appropriately addressed in government amendment (4). That is the approach the opposition are taking on these matters. They are important, they are substantive and they have been properly identified by many before the Senate committee and in the public debate. They need to be addressed now; they should have been addressed previously. The opposition believe that they will be appropriately addressed in the next government amendment.

Senator GREIG (Western Australia) (7.48 p.m.)—I concur with what both Senator Brown and Senator Faulkner have said in relation to humanitarian aid, but the kind of assistance given to another country or another organisation may not necessarily be humanitarian. For example, there may be political support. I am thinking of fundraising events—of which I was aware in my former municipality, the Town of Vincent, when I was a councillor—for Sinn Fein and for the cause that it represented. I wonder whether, were this legislation in place then in its current form, those people who were actively and enthusiastically providing funds for Sinn Fein might have fallen foul of this legislation in terms of the financial and political support they were offering to an organisation which was unambiguously connected with the IRA. At 80.1(1)(f)—and Senator Brown’s amendment proposes that this paragraph be deleted—the bill identifies anyone who:

… engages in conduct that assists by any means whatever, with intent to assist:

(i) another country; or

(ii) an organisation;

that is engaged in armed hostilities against the Australian Defence Force ...

The pivotal point for me is what ‘armed hostilities’ might be interpreted to mean. Say, for example—and I am speaking hypothetically—some Australian troops were on some sort of exchange program with British forces and were stationed in Northern Ireland. I do not know whether or not that has been the case; I accept it could have been a possibility. I do not know whether in those two scenarios—Australian defence forces working with British forces in the trouble spot of Northern Ireland, and Australian citizens raising funds for Sinn Fein—given that some years ago the IRA was a criminal organisation deemed to be a terrorist organisation, Australian citizens would have fallen foul of this legislation.

That is the kind of grey area which has caused considerable community concern, which we heard a lot about during the Senate inquiry. I am privileged to be a member of the committee that conducted that inquiry, and I also acknowledge the tremendous amount of public input we had. That is the grey area which I think Senator Brown is trying to remove because of the possibility of the danger in invoking—perhaps unwittingly—anti civil libertarian measures. For that reason in particular I have no difficulty in supporting these amendments. But, if they
do not succeed, I concede that the next amendment in the running order might perhaps go some way to achieving what Senator Brown is trying to do, if not as comprehensively. Therefore, that too ought to be supported if these amendments fail.

Senator Brown (Tasmania) (7.52 p.m.)—The problem with the government’s measure at the moment is that it would certainly have given great comfort to the Germans in the First World War as they lined up Edith Cavell against the wall. She had aided the Allied and British soldiers to escape from the hospital precincts in Belgium, was found to have been a traitor in that sense and was shot. This legislation would not allow for her to be shot; it would simply open the way for her to go to prison for life. I think we have to think very carefully through precedents as well as what might happen in the future before passing legislation like this. I also listened carefully to what Senator Faulkner had to say, but what he did not mention was the clause which impacts on families, friends, loved ones, brothers, sisters, uncles and aunts who might know that somebody is involved in a situation like this. I do not think they are excluded by what the government is going to do—maybe I am wrong about that. We will get to it next time round. If that is the case, I think there is no harm in passing this amendment.

Finally, I want to come back to Mr Hicks and Mr Habib. Lest I forget, just before the dinner break, the minister said that it is appropriate that these citizens are held in US military custody, at least for the time being. Why is it appropriate that they be held in US custody, where they have been for many months, for the time being? Could he tell the Senate why?

Senator Ellison (Western Australia—Minister for Justice and Customs) (7.54 p.m.)—I did say it was appropriate that they be held while these investigations are pending. That is the reason.

Senator Brown (Tasmania) (7.54 p.m.)—What does that mean, ‘while investigations are pending’? Are there no investigations taking place? I cannot believe that. These people have been interrogated for months and months now with no rights. They have been abandoned by the Howard government. What investigation? What is further to be investigated about them? Or have we simply become lackeys of a foreign country who holds Australian citizens, at their pleasure, outside their own laws, while—by the way—they grant their own citizens access to their laws? They are double standards by the United States, which are being endorsed by the Australian government at the expense of two Australian citizens. I find that unfathomable; I find it derelict. I think that it is totally unacceptable of the government. If there were compelling reasons, I would expect that the government would be able to put those reasons forward. The minister has indicated that he might have further information to give to the committee as we proceed and, as I said, I will come back to it.

Finally, on this point, I want to point to the evidence of the Hon. Justice John Dowd, who is commissioner and president of the Australian section of the International Commission of Jurists, to the Senate committee in April. He said:

The first thing is to deal with the act of treason and the new offence set up by schedule 1. The first problem with treason is that it covers countries at war with the Commonwealth. The obvious example is Afghanistan, where you have a power to make a proclamation, which is not reviewable, to declare someone to be an enemy of the Commonwealth. Australia’s situation in Afghanistan is a questionable one in terms of international law. The Australians went there possibly—and I do not know—at the invitation of one side of a civil war, and at the invitation of the United States. The legality of that invasion is in question. I do not wish to reflect in any way on the integrity and capability of our defence forces; on the contrary, I am an admirer of them. Nevertheless, the question of whether someone in the Taliban is an enemy of the Commonwealth is a very real one. The fact that one may declare a person to be at war with the Commonwealth is a power that ought not to be there lightly.

He goes on to say:

In relation to treason, most of the difficulties are not in the principal definition in division 80.1; they are in 80.1(1)(f), (g) and (h). We are looking at the schedule which incorporates chapter 5, ‘The integrity and security of the Commonwealth’. If your book is the same as mine, it is on pages 006—the bottom of the page—and 007.
Looking at 80.1(1)(f) on page 007, it is very difficult to suggest that someone involved in that civil war in Afghanistan, where Australia is now with questionable legality, who is fighting against an Australian soldier is engaged in armed hostilities against the Australian Defence Force. So, even though there is no declaration under 80.1(1)(e)(ii), he is there. That makes that person who may simply be involved in a civil war in Afghanistan a terrorist, and the fact that Australia has come in—whether by invitation or otherwise—makes that person guilty of treason. Let me point again to the case of the two men in question, and certainly Mr Hicks. He was in Afghanistan, we are told—I do not know whether it is true—with the Taliban, before the events of September 11. They were ranged up against, amongst others, the Northern Alliance. If one has even a cursory look at their behaviour in the past, one will see that it is not very pretty. It is not a very pretty line of behaviour. But due to events one must think were not orchestrated or in any way in the hands of Mr Hicks the sudden arrival of troops or defence personnel from outside—including some from Australia—mean that under this legislation it makes him guilty of a very serious crime that he was not guilty of the day before. Could he escape from that situation or ameliorate the situation he was in? One would think not.

There will be many other complicated situations. One could look back at events in Bougainville, for example, or potential events in East Timor, and wonder just what entrapment this legislation could mean for Australian citizens—even those who were of high motivation, whose belief was not evil at all—and what the ramifications for their relatives would be. It is for those reasons that I commend these amendments. I agree with Senator Faulkner: the government should have come forward with something much better than this. They are making a review, but they are not removing the kernel of the problem as I see it.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.01 p.m.)—I move government amendment (4) on sheet DT340:

(4) Schedule 1, item 2, page 5 (after line 15), after subsection (1), insert:

(1A) Paragraphs (1)(e) and (f) do not apply to engagement in conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3).

(1B) Paragraph (1)(h) does not apply to formation of an intention to engage in conduct that:

(a) is referred to in paragraph (1)(e) or (f); and

(b) is by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1B). See subsection 13.3(3).

Now we do come to the amendment which deals with humanitarian aid. This amendment creates a defence to the offence of treason, which is in proposed section 80.1, for persons who provide humanitarian aid. It is the government’s belief that this was covered all along. It was the intention of the government that this be covered. It was raised by the Senate Legal and Constitutional Legislation Committee, as I understand it. To put it beyond doubt, the government has proposed this amendment, which ensures that people who provide assistance of this nature will not be guilty of the offence. It will provide a defence to them, and it follows on from the committee’s recommendation. I might add that the government has approached this and other matters in a very open manner, and we have taken on board constructive suggestions where they have been offered. It is not the first time in the history of the Commonwealth that a government has amended a piece of legislation because of a Senate committee report, and I hope it will not be the last. I think that aspect is one which demonstrates the government’s frankness in the way we have approached this.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.02 p.m.)—As I have indicated in speaking to the previous amendments, the opposition will support the government amendment. I do doubt the government’s
motivations in relation to this legislation. You only have to go back to when this package of bills was introduced into the parliament and the sorts of demands that were placed on the parliament at the time. That is the problem you have got, Senator Ellison, when you make statements such as the one you have just made. Perhaps it is an unintended consequence. I always believe in giving the benefit of the doubt. If a minister says, 'Look, there is sloppy drafting here'—in this case, very sloppy drafting—it is an unintended consequence. Okay. I think this committee would be completely willing to accept that explanation, and we always approach these sorts of things on the basis of goodwill.

But one of the problems we do face is that our memories extend back to what occurred in mid-March this year, when it became absolutely clear that what the government was about was politics and not a good policy outcome. What the opposition was asked to do—I cannot speak for the minor parties and the Independents in this chamber—was to come to a position on this legislation literally within 24 hours of it being introduced into the parliament. If we had done so, if we had done what the government had demanded that we do, think of the extraordinary legislation that would now be in place—without the advantages we have had of time for proper scrutiny. There was not any time allowed by the government for scrutiny. There was not any suggestion that consultation on or discussion of this legislation was appropriate. There was no time for a considered response if the parliament had caved in to the government's timetable. That is why I think it is proper that senators in this place do question that last statement that the minister has made. The demand of the government, once the bills were introduced, was: just pass them—literally within 24 or 48 hours. Imagine what the situation would be now with all the, I accept, unintended consequences that are contained within the original legislation.

I think the government is very fortunate indeed that the opposition took the decision to have this legislation referred to the Senate Legal and Constitutional Legislation Committee. We are fortunate that that committee took their responsibility seriously, and they came down with one of the better reports that we have seen in recent times from a Senate committee. It was a very good report. Not only did the committee treat their task seriously; so did those who made submissions and gave testimony in the public hearings that the committee held.

It is a very important point to make that, if we had not had that process, we would have had an extraordinary number of unintended consequences in the legislation that would have resulted. This legislation will be very much improved as a result of that close examination by the Senate committee and many others outside this parliament. We will be much better served in terms of the final shape of this legislation. That is why, Senator Ellison, so many people question the government's motivation in relation to these issues. But I accept what Senator Ellison says. I accept that the extraordinary weaknesses in the definition of treason—which would mean that humanitarian aid workers could be charged with treason when they were just going about a function that all of us, on all sides of the parliament, would want to see continue and would want to defend—are an unintended consequence.

Let us just be thankful that that has been fixed up. But surely no-one can criticise anybody in this place, when you start to question motivations, when you remember the demands that were placed on the opposition and on this chamber on 13 March when the government said, 'Just tick it through. Just put it through. This legislation deserves the support of the parliament.' The government has finally accepted that the legislation needs amendment in a whole range of areas, and major amendment at that. Minister, I think that, as you make those courageous assertions to the committee, you should remember that process. This is an example of how the legislation has been improved. There is an unintended consequence in relation to the definition of treason and it is being fixed by this amendment that was supported by the Senate committee, supported by the opposition and, I believe, will be supported by this chamber as it deliberates as a
committee on this legislation. Thank heavens we have had the capacity, the patience, the forbearance and the good sense to get it right.

Senator HARRADINE (Tasmania) (8.09 p.m.)—I mentioned in my speech during the second reading debate that the report of the Senate Legal and Constitutional Legislation Committee was a very apt report. As I see it, the Committee of the Whole is now dealing with recommendation 1 of that report, which says:

The Committee recommends that proposed section 80.1 in the Bill be amended so that the terms ‘conduct that assists by any means whatever’ and ‘engaged in armed hostilities’ are defined, in order to ensure that the humanitarian activities of aid agencies are not caught within the ambit of the offence of treason.

As I read the amendment now before us, that gives effect to the recommendation of the Senate committee. I agree with the recommendation of the Senate committee and therefore agree with the amendment.

Senator GREIG (Western Australia) (8.11 p.m.)—Further to the contribution of Senator Faulkner, I too would add: thank goodness for the Senate. It has been said a couple of times here tonight, and certainly in the public debate on this issue, that if it were not for the Senate committee and the largely unanimous finding from the cross-party support on that committee we might not have reached this point. I wonder, for example, what might have happened had the government had unfettered power in both houses. Where might we be if the original bills, as horrendous as they were, even if they had gone through some kind of Senate committee process—

Senator Faulkner—There would not have been any because we were asked to pass the bill within 24 hours. You know that.

Senator GREIG—Senator Faulkner interjects to say that the Labor Party had but 24 hours in the House of Representatives. I accept that, Senator.

Senator Faulkner—And here.

Senator GREIG—I accept that. It was open to Labor to vote against those bills in the House of Representatives on the very argument that you have presented here today that the time limit was outrageous and that there was no urgency for them. That option was open to Labor.

Senator Faulkner—It was open. But what we said we would do we have managed to achieve. We are not going to vote against the bills here; we are going to make sure that the bills, if we do support them—

The ACTING DEPUTY PRESIDENT (Senator Hogg)—Senator Faulkner, you should save your comments and answer Senator Greig later.

Senator GREIG—I was very much trying to make a different point, Senator.

The ACTING DEPUTY PRESIDENT—Senator Greig, make your points to the chair rather than to Senator Faulkner, and then Senator Faulkner, if he chooses, can respond to the points.

Senator GREIG—The key point I am trying to make is that we have heard much tonight and in public debate about the important role—and few people have denied it—of the Committee of the Whole in this debate in turning the legislation around, with public support and on the heel of public opinion, to the position we have currently. The point I make in particular is: might that not have been the case had the government unfettered power in the upper house; that is, if there was no requirement to rely on opposition numbers or crossbench support in this chamber? If the government were to have a majority in the Senate as well as in the House of Representatives, would we now be in this situation where we are looking at hugely revised legislation? Given Senator Ellison’s statements tonight in which he acknowledged the Senate has played a key role in this, I wonder why some of his colleagues are currently so keen to beat up on the Senate and argue, in part, that the Senate is obstructionist when in fact at the very same time other members, including the minister, are arguing that the Senate has played an important role in ensuring that the legislation is better reflective of community concerns and is certainly better legislation—and they have acknowledged this—than was first introduced into the House of Representatives. As
I say, we might have been looking at a very different dynamic were that not the dynamic of the numbers in the chamber.

Senator BROWN (Tasmania) (8.15 p.m.)—I ask the minister whether ‘humanitarian’ includes ‘environmental’?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.15 p.m.)—No.

Senator BROWN (Tasmania) (8.15 p.m.)—I point out again that that is an oversight. For example, in the Gulf War: who can forget the burning oil wells? In war situations these days, the environmental ramifications can be both local and global. If people are assisting a power at war with Australia in ameliorating an environmental tragedy that is an outcome of that war no less than a humanitarian tragedy, it ought to be covered here. Otherwise, environmental experts are potentially going to be captured by the limitations of this exclusion clause. Therefore, I would like to add the words ‘or environmental’ after the word ‘humanitarian’ on each occasion. I move:

After “humanitarian” (wherever occurring), insert “or environmental”.

Question negatived.

Senator Greig—Temporary Chairman, when the question was put, were you referring to Senator Brown’s amendment to the government amendment (4)?

The TEMPORARY CHAIRMAN (Senator Hogg)—Yes, that is what I was referring to, Senator Greig. That is the way in which amendments are put. The amendment was properly put and I called it for the noes. Senator Brown called it for the ayes and I heard only one voice calling for the division. The question is that the amendment moved by the minister be agreed to.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.18 p.m.)—by leave—I move government amendments (5) and (8):

(5) Schedule 1, item 3, page 7 (lines 20 to 26), omit the definition of terrorist act, substitute:

terrorist act means an action or threat of action where:

(a) the action falls within subsection (2) and does not fall within subsection (2A); and

(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and

(c) the action is done or the threat is made with the intention of:

(i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or

(ii) intimidating the public or a section of the public.

(8) Schedule 1, item 3, page 8 (after line 7), after subsection 100.1(2), insert:

(2A) Action falls within this subsection if it:

(a) is advocacy, protest, dissent or industrial action; and

(b) is not intended:

(i) to cause serious harm that is physical harm to a person; or

(ii) to cause a person’s death; or

(iii) to endanger the life of a person, other than the person taking the action; or

(iv) to create a serious risk to the health or safety of the public or a section of the public.

Briefly, these amendments modify the definition of ‘terrorist act’ by clarifying the exemption for advocacy, protest, dissent and industrial action, and by inserting an additional limb to the definition. I believe this is an important amendment. An action that is advocacy, protest, dissent or industrial action is excluded from the definition of a terrorist act unless it is intended to cause serious harm to or the death of a person, endanger a person’s life or create a serious risk to health or safety. For example, a protest which only causes property damage would not constitute a terrorist act. It was always the government’s intention to exclude advocacy, protest, dissent and industrial action from the operation of the legislation. It is the government’s view that the bill as introduced
achieved this. As I said earlier, with humanitarian aid, it was the government’s opinion that that was covered. Of course, there were some who thought that it was not spelt out. In order to accommodate those concerns, the government put forward that previous motion, as it does here.

The definition of ‘terrorist act’ will also be amended to insert the additional requirement that an action be done or a threat of action be made with the intention of coercing or influencing by intimidation a government or intimidating the public or a section of the public. The insertion of the additional limb will ensure that the definition of a terrorist act is consistent with the terms of the United Kingdom’s Terrorism Act 2000 and article 2 of the International Convention for the Suppression of the Financing of Terrorism. This amendment implements recommendation 2 of the committee’s report on the bill. I have only just seen the proposed amendment by the Democrats and I will reserve my remarks until we debate that amendment. In the meantime, I commend these government amendments to the Senate.

Senator GREIG (Western Australia) (8.21 p.m.)—I thank the secretariat for circulating the amendments. I move Democrat amendment (2) on page 2555, as circulated:

(2) Government amendment (8), omit paragraph (a), substitute:
(a) is lawful or unlawful advocacy, protest, dissent or industrial action; and

This amendment deals with the definition of a terrorist act and the exceptions for advocacy, protest, dissent or industrial action. The legislation as introduced contains an exception, as the minister has explained, for ‘lawful’ advocacy, protest, dissent or industrial action. The pivotal word is ‘lawful’ and it was widely criticised in the public debate and committee hearings as being far too narrow. Many protests, we would argue—and for that matter, industrial actions—are unlawful, although often in just a very minor way. I certainly do not think they ought to constitute terrorist acts. This would prevent many activists and protesters from having access to this exception. Seemingly, in response to that, the government has omitted the word ‘lawful’ from the redrafted exception. The Democrats are concerned that the exception may still be open to a limited interpretation, so we are proposing this amendment to clarify that it applies to both lawful or unlawful advocacy, protest, dissent or industrial action.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.22 p.m.)—I think this is one of the absolutely key issues in relation to this legislation. In fact it is relevant to the whole package that we are dealing with. It is fair to say that the definition of a terrorist act is at the core of the bills that we are dealing with. Again, we have to be frank about this: the government’s original definition was very sloppy and it certainly left the potential for significant unintended consequences. I say to the committee again, I am happy to be generous to the government and say that they were unintended consequences. I hope they were unintended consequences. They certainly were real and significant consequences. We had a situation where civil protests might have been criminalised as terrorist acts under the government’s original definition.

The government’s original definition did not distinguish terrorist violence from violent offences in other legislation. The opposition has consistently argued—and now I can say we have 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. This committee of course—as is the government—is faced with a very difficult task, and defining terrorist acts has proven beyond many other governments. It has been a challenge for decades in the international arena.

In addition to those issues, the opposition has ensured that the possibility of protests or industrial action being dealt with as terrorist offences has been completely removed from this legislation, as it should be. Advocacy, protest, dissent or industrial action could fall within the definition only if intended to advance a political, religious, or ideological cause and coerce or influence by intimidation the government or intimidate the public.
and cause serious physical harm or death or endanger a person’s life or create a serious risk to the health or safety of the public. Given that industrial action is not action intended to advance a political cause, it will fall outside the scope of this bill. Industrial action may use political means but it is not for a political cause. The action, of course, is economic and industrial as opposed to political, as senators understand. Action designed merely to influence the government or public, again, is not enough. The action must be intended to intimidate. I looked up the *Oxford Concise Dictionary*—there is one just in front of you, I think, Mr Chairman—and, according to the dictionary, to ‘intimidate’ is to frighten or overawe.

So this in my view is one of the absolutely crucial issues that this committee must deal with. We must get this right. Unamended, the government has this legislation horribly wrong. Again, to come back to the issue that this committee appears to be agreed on: the processes that have gone into closely examining and scrutinising this legislation have meant that horrible consequences—I accept unintended consequences; I hope unintended consequences—will not occur. It is for this reason that the opposition will be supporting this and a range of other amendments in relation to the definition of a terrorist act. This has to be fixed and it has to be fixed by this committee tonight.

**Senator Brown** (Tasmania) (8.29 p.m.)—I ask: what happens to the person who fasts and who therefore becomes a terrorist under the meaning of (2)(a) of the bill, as printed under the definition of terrorist, and under amendment 2(a)(b), section 1, both of which say that the action falls within this subsection if it involves serious harm to a person. Clearly, a person who fasts is in that situation and becomes liable to be defined as a terrorist. I ask the government: should that not be amended to have the words after ‘person’ in each case be ‘other than the person taking the action’?

**Senator Ellison** (Western Australia—Minister for Justice and Customs) (8.30 p.m.)—There are other aspects to the definition of ‘terrorist act’ and what constitutes an offence and I think you have to look to those as well. You have to look at subsection (2) and you are looking at other aspects of it, which would be:

(a) the action affects, or if carried out would affect, the interests of:
   (i) the Commonwealth; or
   (ii) an authority of the Commonwealth...

So there are other things that you need to look at as well. In the circumstance of someone fasting, where the only harm would be to themselves, I do not believe they would be caught by this section, but I will take further advice on that and advise the committee. Perhaps we could continue with the debate and I will confirm that what I say is correct.

**Senator Brown** (Tasmania) (8.31 p.m.)—I would be pleased if the minister did that. I can see the difficulties, even with the amendment. Quite clearly, we do not want to have people who might be fasting outside this place, or some other government premises or, indeed, any installation, netted by the definition of terrorist when manifestly they are not terrorists. In fact, fasting is a great institution for those people who are seeking peace; and we know the history of that, including Gandhi. I cannot see the exclusion clause that might help us out of this difficulty, but if the minister has got one I would be pleased to hear it. If not, it is an important matter and I would ask that the government look at how it can amend the legislation to get around it.

**Senator Ellison** (Western Australia—Minister for Justice and Customs) (8.32 p.m.)—Just to pursue that, the other government amendment we have here also is relevant. Government amendment (5) means that ‘terrorist act’ means an action or threat of action where the action falls within subsection (2), which I have referred to, and the act is done with the intention of:

(i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or …

(ii) intimidating the public or a section of the public.

I hardly think that fasting would intimidate the public.

**Senator Brown**—It does.
Senator ELLISON—I do not think that is a view the government would take; it certainly would not be regarded as intimidating the government of the Commonwealth. I think that would be an intention that could not be carried out. There also is a discretion on the prosecution. For the record, I will say that I do not believe there would be a prosecution in that case.

Senator BROWN (Tasmania) (8.33 p.m.)—That is exactly what the government said about asylum seekers or refugees who have been fasting: that they are attempting to intimidate the government—that is, this current government. But I remind the committee that we are dealing with legislation that will empower future governments as well. So you cannot draft legislation on what this government thinks or does not think; the legislation must contain clearly crafted words that do not allow for latitude beyond what we think in this parliament. It concerns me that we have not got around this problem and I would like to see it gotten around. When you look back at the suffragettes, they so intimidated the British government of the day with their fasting that they were carted off to prison and force fed, with tubes shoved down their gullets and into their stomachs, in terrible circumstances and with terrible outcomes, because they were said to be intimidating the government and the populace of the day.

Quite clearly there is a problem here. It does need to be attended to; it is a difficult area but it needs to be fixed. I have said to the minister that the government should consider, after the word ‘person’ in the bill as written, in section 2(a) of the definition of ‘terrorist act’, and then under amendment 2A(b)(i) in each case after the word ‘person’, inserting the words ‘other than the person taking the action’. I recommend that that amendment be made. I will take guidance from the chair on this matter: will we be able to come back and make such an amendment afterwards if this clause is accepted as is?

The TEMPORARY CHAIRMAN (Senator Knowles)—The legislation is before the chair, as you know, Senator Brown, but you can foreshadow that amendment of which you just spoke.

Senator BROWN—The government has suggested it might take advice on this. The question I am asking, however, is whether, if we have voted for the clause and the amendment, we can come back to it later and amend it again or whether we have to make the amendment now. I do not want to lose the opportunity, in other words. But I am very happy to wait for the government advice. The alternative, I would expect, is that we put this government amendment off until tomorrow so that we can make sure that this problem is sorted out.

The TEMPORARY CHAIRMAN (Senator Knowles)—Senator Ludwig, do you wish to add anything?

Senator LUDWIG (Queensland) (8.37 p.m.)—I am simply trying to help Senator Brown. As I understand it, going back to the original bill, part 5.3, terrorism, division 100.1, subparagraph 2(c) says ‘endangers a person’s life other than the life of the person taking the action’. I do not know whether you had in mind looking at that provision, but it seems to be already in the current bill. Then, looking at the definition that the government is proposing at page 009 of the pack, page 7 of the actual amendment, and going to 2(c) at the bottom—

Senator Brown interjecting—

Senator LUDWIG—No. While I was on my feet, I was going to go back and raise another issue. But, if you are going to move an amendment to the government’s amendment, you might perhaps write it down and circulate it in the chamber so that we can see what it is. I also take you to your view of ‘intimidating the public or a section of the public’. The view supported by The Oxford English Dictionary would be ‘to frighten or overawe’. I do not know whether that definition of ‘intimidating’ comforts the direction which you seek to take. I just do not think that definition stretches as far as you would like it to stretch.

Senator BROWN (Tasmania) (8.38 p.m.)—This current government has said that people fasting in detention centres have been
doing so to intimidate it. Maybe Senator Ludwig was taking advice when I spoke before, but I point again to the suffragettes who were taken with great violence and dealt with, because they were said to be intimidating the government through fasting. That is a real problem. Therefore, I will move the amendment to the bill and the amendment that I foreshadowed. I will do so because there is a real problem here. My suggestion to the committee is that the government hold this amendment over until tomorrow to have a look at it and then come back to us. If we deal with it now, we will force ourselves unnecessarily to make some very complicated decisions.

The TEMPORARY CHAIRMAN—Senator Brown, if you wish to postpone Senator Greig’s amendment, you can move to do so. You can also postpone the government’s amendments moved by Senator Ellison. Once they are dealt with, whenever the committee sees fit to deal with those, then you can move your foreshadowed amendment, if at that time it is desirable.

Senator HARRADINE (Tasmania) (8.40 p.m.)—When considering the matter, could we have from the government its interpretation of new 2A:
Action falls within this subsection if it ...
and then there is (a). Then (b) states:
is not intended ...
Finally, (iii) states:
to endanger the life of a person, other than the person taking the action
I would be interested to hear from the government whether that would cover Senator Brown’s situation. I can understand what he is saying. Perhaps we could have that under purview. We all know what grievous bodily harm is—there is precedent and there is judgment after judgment as to what grievous bodily harm is. In the government’s amendment to the bill, it talks about ‘to cause serious harm that is physical harm to a person’. Could the committee have an explanation as to why the normal words ‘grievous bodily harm’ were not used? The government has used instead ‘serious harm that is physical harm to a person’.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.42 p.m.)—Answering the last question first, I believe it is the more modern English, if you like, in the way we draft legislation. ‘Grievous bodily harm’ has connotations from years gone by. It is a term I sit very comfortably with, having dealt with it for a long time in criminal law. But ‘serious harm that is physical harm to a person’ is a term that is easily understood in the community and perhaps more easily understood these days than ‘grievous bodily harm’. That is the reason for that. As a creature of habit, I understand Senator Harradine’s question—but I can see the reason why the language has been changed.

With the other aspect, we are dealing here with a situation where perhaps you could have a suicide bomber. Senator Brown has perhaps cited an example at the perimeter. But if someone is protesting with a bomb strapped to them, intending to cause themselves physical harm but being well away from anybody else, that is a more salient point than a person who is fasting. I think it is a long bow to draw, to use Senator Ludwig’s expression, in relation to the intimidatory aspect of the action where someone is simply fasting. I will seek further advice in relation to Senator Harradine’s question. Perhaps the Democrats amendment, which we have just received notice of, the Greens amendment and the government amendment could be put off until tomorrow and we will get further advice. I move:

That further consideration of the amendments be postponed.

Senator BROWN (Tasmania) (8.44 p.m.)—I think that is sensible because it is complicated. I have already envisaged the problem that the minister was citing of, for example, a suicide bomber. We do need to find some resolution to the violent intentions of somebody as against the non-violent intentions of somebody. Fasting I would put into the second category—disputed as that may be—because it will happen and we need to ensure that people who engage in that activity for some strongly held belief are not labelled as terrorists.
I also reiterate the problem the Greens have with this whole matter concerning the terminology of a threat to health or safety. It is so broad and, again, it leaves open an interpretation which could ensnare a whole range of union and community organisation activities. I have cited the example of people who are protesting in trees or on tripods in forests. It is a common activity these days around Australia because logging is so widespread and it leads to such passion. But it is surely not the intention of the government to put conservationists who are acting in that fashion into the category of terrorists, because they are not terrorists. Similarly, some union pickets could be seen to very clearly threaten human health and safety. The example of a nurses’ picket at a facility where beds are being closed is obviously in line for being cited by government as a threat to the health or safety of the community. There are a number of other activities involving unions or community groups in a similar vein which are not excluded, as I see it, by this part of the legislation. One of the biggest problems, if not the central problem, with this legislation is that it is open to future governments to use this part of the legislation to label as terrorists opponents of the government who are engaging in behaviour which has historical precedent. We need to be careful we do not allow a future government, which may not be as accommodating as past governments, to utilise such legislation against citizens who are protesting about that government or about some activity that is taking place in the community at that time.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that government amendment (5) and Democrat amendment (2) be postponed.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.48 p.m.)—I move government amendment (6):

(6) Schedule 1, item 3, page 7 (line 28), after “serious harm”, insert “that is physical harm”.

This deals with the serious physical harm definitions and amends the definition of terrorist acts so that actions involving serious harm to a person are covered by the definition only where they involve serious physical harm. This will ensure that actions involving harm only to a person’s mental health do not constitute a terrorist act. So it separates the physical from the mental aspect. This amendment concerns physical harm which is serious and excludes, by definition, the mental aspect which I believe came up during the consultation. Senator Harradine asked why grievous bodily harm was not used. I think I have covered that and said why we are using this terminology.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.49 p.m.)—The opposition supports this amendment. The reason for this amendment goes to the question of psychological harm or harm to reputation and it is to ensure that psychological harm and harm to reputation are not caught up. It is something that has been identified for some time and it is a minor but important improvement to the bill.

Question agreed to.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.50 p.m.)—I move opposition amendment (2) on sheet 2503:

(2) Schedule 1, item 3, page 7 (lines 28 and 29), omit paragraphs (a) and (b), substitute:

(a) causes serious harm that is physical harm to a person; or

(b) causes serious damage to property;

The TEMPORARY CHAIRMAN (Senator Knowles)—Senator Faulkner, I am seeking some clarification because I have noticed that it indicates on the running sheet that government amendment (6), which was just carried, is in conflict with opposition amendment (2). I am somewhat puzzled by that.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.51 p.m.)—I think I can sort the matter out. The government amendment involves the serious harm that we are talking about and the opposition’s amendment says ‘causes’. I think we could have a situation where the opposition’s amendment could be successfully passed and it would simply amend the government’s amendment which we have just passed. I do not see them as being in conflict.
Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.52 p.m.)—I did not quite hear the minister’s explanation, but I assume that he mentioned the fact that this amendment involves changes to ‘causes’ in two clauses. It is for that reason that, as I look at the amendments before us, I do not believe that there is a conflict between the two.

As I was saying a little earlier in this committee stage debate, the foundational concept of the terrorism offences is of course the definition of ‘terrorist act’. It is the view of the opposition that there are two elements that need to be present for there to be a terrorist act within the meaning of the bill: an action that falls within the list of proscribed actions—better described, if you like, as the ‘action element’—and an action or threat of such action that is made with the relevant intent, perhaps better described as the ‘motive element’. The bill lists various actions that would satisfy the action element. They are actions which, for example, involve serious physical harm to a person, involve serious damage to property or cause a person’s death, but the use of the term ‘involves’ in the action element is, in the view of the opposition, a serious concern.

In our view, the term significantly loosens the nexus between the action of the person alleged to have committed the terrorist act and the serious harm or damage. In particular, the use of this term may mean that the action element is satisfied when an action of a person results in a third party inflicting the serious harm or damage. So we say that the causal link between the person’s behaviour and the alleged terrorist act must be direct. That is why this amendment proposes to replace the word ‘involves’ in subsections 2(a) and 2(b) of the definition with the word ‘causes’. Using ‘causes’ as the link between a person’s behaviour and an outcome will, in our view—and I do not think that there is any argument about this—make the definition internally consistent. It will thus have the effect of again tightening the definition of what a terrorist act is. It is for those reasons that the opposition has proposed this amendment. I commend this approach to the chamber.

Senator GREIG (Western Australia) (8.57 p.m.)—I happily support this amendment. During the Senate committee process we heard the very real concerns people had about inadvertent, unintended activity which might be deemed terrorism under this legislation. An example which was often given was the protest or rally on a general and supported cause which begins as benign, but which may involve some kind of scuffle, perhaps resulting in a broken plate glass window. It was never the intention of the organisers or those involved in the particular protest or advocacy movement to endanger or to damage, but these things can result as a consequence. Complicating this, we heard that, if such a protest or rally were to inadvertently find itself involved in some kind of property damage, and did not have a permit to begin with, for example, and was therefore unlawful, there was a risk of that dynamic falling foul altogether and potentially bringing the participants under the purview of terrorism.

In essence, I think that what the opposition is saying here—and what was strongly reflected in public submissions and Senate inquiries—is that there must be an element of intent. As it stands, the government proposes in this instance that the word ‘involves’ in terms of involving serious harm or involving damage is quite different from causing serious harm and causing serious damage—the pivotal difference of course being the notion of intent. For that reason, I think that the amendments being proposed are appropriate and go to the core of much of what we heard from community and legal advocacy groups in terms of their particular concerns about the absence of intent: that it was not part of the original legislation, but it clearly ought to be. I endorse the amendment.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.59 p.m.)—I move government amendment (7) on sheet DT340:

(7) Schedule 1, item 3, page 7 (after line 29), after paragraph (2)(b), insert:

(ba) causes a person’s death; or
This provision amends item 3 of schedule 1 to the bill as introduced to clarify that a terrorist act in proposed section 100.1 includes an act which causes a person’s death. It would involve an insertion between subsection (2)(b), which involves serious damage to property, and subsection (2)(c)—‘endangers a person’s life, other than the life of the person taking the action’. Although the existing reference to actions involves, as I said, serious harm to a person, and other aspects, it was thought appropriate that we include reference to causing a person’s death. It is really quite simple.

Question agreed to.

Senator BROWN (Tasmania) (9.01 p.m.)—I move Australian Greens amendment (5) on sheet 2512 revised 2:

(5) Schedule 1, item 3, page 7 (line 32) to page 8 (line 7), omit paragraphs (2)(d) and (e).

This amendment would omit paragraphs (2)(d) and (2)(e), which you will see are under the definition of a terrorist act. It includes any action which:

(d) creates a serious risk to the health or safety of the public or a section of the public; or

(e) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to ...

Then there are six subclauses starting with ‘an information system’ and ending with ‘a transport system’. We have great concern with that—I mentioned that to the committee before—and the reason is pretty obvious. There are many actions taken by community organisations or unions which, it could be argued, create a serious risk to the health or safety of the public. We have seen nurses’ strikes in the last month in both Tasmania and Queensland where it could be argued very cogently and very forcefully by a government that was so minded that there was a threat to public health or safety. Just before that, there was action by doctors worried about insurance matters which was also seen as a threat to public safety—that is, closing up shop and leaving whole towns without access to the medical facilities that that doctor had been offering.

Senator HARRIS (Queensland) (9.05 p.m.)—I rise to speak briefly on the Greens amendment because I need to take this opportunity to again go back to Senator Ellison. In his previous answer, he spoke of an email being part of a terrorist activity. My question was going more to a person who actually uses the email system to hack into and destroy a database or who maliciously targets a person, an entity or a political party in such a way as to alter their electronic database, their records or their programming. The clarification that I am requesting from Senator Ellison is directed towards using the email process to actually hack and destroy databases etcetera.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.07 p.m.)—Certainly subsection (2)(e) deals with the disruption of an electronic system, and emails could be used as a tool to do that, as I said earlier. But the destruction per se of an electronic system would not constitute a terrorist act in this case, because you would have to look at those other aspects which are dealt with in the definition. That is that the action is done ‘with the intention of advancing the political, religious or ideological cause’ and does not include ‘lawful advocacy, protest or dissent, or industrial action’. So, yes, an email could fall within subsection
(e), but you have to remember that those other aspects have to be there as well; it is not just that any email which interferes with an electronic information could give rise to a prosecution for a terrorist act. But certainly subsection (e) envisages an information system being interfered with in a number of ways, and one of them could be the use of an email.

Senator HARRIS (Queensland) (9.08 p.m.)—I thank Senator Ellison for his answer. The terminology of the act speaks directly towards progressing a religious belief et cetera. What if that action is actually used as a means to suppress a religious or political belief? Would that construe a terrorist attack?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.09 p.m.)—It is not ‘professing’; it is ‘advancing’. There is perhaps a slight difference. If one person were to say, ‘I am spreading the good word,’ that might be looked at differently to where someone says, ‘Anyone who does not believe in what I am saying should die.’ There is a difference there. What we are looking at is where the motivation was to advance a political, religious or ideological cause. If it was, and you were advancing one religious cause to thereby destroy another, that could give rise to this here.

Senator GREIG (Western Australia) (9.10 p.m.)—Minister, where does that leave the issue of computer hacking? Let us consider that a computer network such as the Internet or the web is an ‘electronic system’ and that you have culture jamming or hacking into a web site which has a political cause—for example, activists jamming or defacing the parliamentary web site, or the Nike web site, perhaps in protest over their slave labour exercises. Are we going down the path of bringing about a situation where activists, often kids or teenagers, might be deemed to have committed a terrorist act, or be engaged in terrorism, by engaging in hacking or cracking through the World Wide Web where it could be identified that behind that there was to some small degree political cause? I accept that both hacking and cracking, for example, are to various degrees unlawful in different jurisdictions, but there is a difference between defining these things as being ‘unlawful’ and being ‘terrorist’. Can you clarify.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.11 p.m.)—That is precisely the point of the provision for ‘lawful advocacy, protest or dissent’. I think Senator Greig is referring to the situation where you have someone who is advancing, say, a political cause. That could bring them within the section. But they could then say that it is a lawful protest, that it is not an unlawful protest but one which is exempted, if you like, by that section of the definition. We had this debate earlier, about making it very clear that these sorts of things would not be caught in the definition of a terrorist act. But if the action oversteps that, and you have serious interference with an electronic system and the threat is made with the intention of advancing a cause, then you could have some problem. You could face some liability, as I see it.

Senator GREIG (Western Australia) (9.13 p.m.)—Could I ask for some clarity? I did not fully understand the minister’s answer or at least I understood you clearly to be saying that, where protest is lawful, it would not fall foul of this provision. But, as I understand it, in certain jurisdictions, including some in Australia, hacking is unlawful. If someone is hacking into a web site and defacing it, changing it, rearranging it, or whatever, and there is political intent behind it—if it is a Nike protest, a McDonald’s protest or a protest against the federal government’s web site—is that activity brought under the ambit of this legislation? Could such people be charged with terrorist activity?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.14 p.m.)—I clarify my earlier remarks and say that there should be an intention to harm. In the previous debate we had about ‘advocacy, protest or dissent’ that ‘lawful’ was deleted and ‘intention to harm’ is still there. So if you are doing it with intention to harm then you fall foul of the subsection. Does that make it clear?

Senator GREIG (Western Australia) (9.14 p.m.)—Is that ‘harm’ quarantined to harm of the person or can it be economic harm, as in the case of some kind of hacking
procedure against a multinational corporation?

Senator ELLISON (Western Australia—
Minister for Justice and Customs) (9.14
p.m.)—In proposed subsection (2), we say:
Action falls within this subsection if it:
(a) involves serious harm to a person; or
(b) involves serious damage to property; or
(c) endangers a person’s life ... or
(d) creates a serious risk to the health or safety of
the public or a section of the public ...
Those are the sorts of harms, damages or
threats that we envisage should be the sub-
ject of the intention. Economic damage is not
really contemplated there; it is perhaps more
a means to an end. If you are saying the eco-
nomic damage or harm is the end then that
might be a different point: you might cause
economic damage to inflict the harm or the
damage on the utility. I will take some advice
on that. If economic harm is the goal of your
intention then you would not be included in
the provisions of this definition. We have just
passed the amendment which reads:
(2A) Action falls within this subsection if it:
(a) is advocacy, protest, dissent or indus-
trial action; and
(b) is not intended:
(i) to cause serious harm that is
physical harm to a person; or—
which I mentioned before—
(ii) to cause a person’s death; or
(iii) to endanger the life of a person,
other than the person taking the
action; or
(iv) to create a serious risk to the
health or safety of the public or a
section of the public.
Those are the intentions you have to have to
be caught. You can have your advocacy,
protest, dissent or industrial action, but you
must not have with it an intention to cause
one of those four things I have mentioned.
Economic harm is not one of them.

Senator FAULKNER (New South
Wales—Leader of the Opposition in the Sen-
ate) (9.17 p.m.)—I am very surprised to hear
that. I would have thought that, under this
legislation, you could not actually have a
terrorist act against a company or corporate
entity. I am not an eminent legal person like
you, Minister, but I wonder if you could as-
sist me on that.

Senator ELLISON (Western Australia—
Minister for Justice and Customs) (9.19
p.m.)—If you are looking at that in the con-
text of what we have been talking about—
that is, if you have the advocacy, protest,
dissent or industrial action—then you lose
the protection of that protest or action if you
have any of these intentions:
(i) to cause serious harm that is physical harm
to a person—
obviously, that does not include a corpo-
ration—
(ii) to cause a person’s death—
that is not a corporation—
(iii) to endanger the life of a person—
again, that is not a corporation—
(iv) to create a serious risk to the health or
safety of the public or a section of the public.
Including a corporation in that could render
you liable if your intention was to harm a
corporation—that corporation being part of
the public. The question is extent, because
we are talking about the public at large. Let
us equate a corporation with a person. Does
one person make a member of the public?
Yes. A corporation could form part of the
public. If you were going to harm or cause
serious risk to a big corporation—say, Co-
es—then that includes the public at large. If
you caused risk to the safety of a corpora-
tion, you could well then render a threat to
people involved with that corporation. I think
that, on the advice I have, a corporation would be included in a threat to the safety of the public.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.21 p.m.)—I am a little surprised to hear that. I accept what the minister says. I do not intend to delay the committee stage, Minister, let me assure you, but I would like you to assure yourself that the advice you have provided to the committee is correct. I am doubtful about it, but I do not claim to be expert in this area. I am surprised that, under this legislation, you could have a terrorist act against a corporate entity or company and I am surprised that companies would be considered part of the public. I do not want to delay the committee stage, but would you mind assuring yourself that that information is correct? I think it has some relevance to the issues that Senator Greig is raising. I would like to be satisfied on that point.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.22 p.m.)—I will check that and if there is any change I will get back to the chamber. Meanwhile, I bring to the committee’s attention division 100.2, section (2)(a)(iii), which refers to a constitutional corporation. That subsection says:

Without limiting the generality of subsection (1), an action, or threat of action, gives rise to an offence under this Part to the extent that:

(a) the action affects, or if carried out would affect, the interests of:

.......

(iii) a constitutional corporation ...

That would seem to address the situation squarely, but I will take further advice and make sure that is the case.

Senator LUDWIG (Queensland) (9.23 p.m.)—The bill then breaks that down to a public corporation and a private company. Perhaps when you take that advice you could advise the committee how you come to a conclusion that a constitutional corporation would be regarded as a public entity, if it were also a private company. I am not too sure how that could occur.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.24 p.m.)—I can see what Senator Ludwig is driving at. You might have a private company which is ethnically based: for instance, you might have a private company set up as a trustee for a fund administering scholarships for Jewish schools or something of that sort and the threat is carried out against that corporation. It could be dealing with not only education but a myriad things. It might be not Jewish but a company for the administration of scholarships for people studying the Islamic faith. The threats could be carried out against that corporation. That corporation could enjoy a personal entity at law, and the threats could involve acts of terrorism. As I said to Senator Faulkner, we will check on this and get back to the chamber if there is any change in that advice.

Senator HARRIS (Queensland) (9.25 p.m.)—To conclude the debate on that, what I was also driving at—and I think the minister picked up on half of it—is that a constitutional corporation in many statute books is not regarded as a natural person, and they usually use those phrases to differentiate between them. A natural person in my mind would be a person who would be regarded as part of the public at large. I will not go on because I understand you are going to look at that further.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.27 p.m.)—I think it was Senator Faulkner who raised the issue relating to a corporation. The issue that has predicated the necessity for all this legislation is the attack on the World Trade Centre, and that was made up of multiple corporations. So the attack was directly on those corporations and their employees, and most definitely there was a public entity because there were members of the public accessing those buildings. The point that Senator Faulkner raised specifically in relation to the definition of a corporation would, I believe, have to be picked up by these bills; otherwise the bills will not be able to give the protection that they purport to give.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.27 p.m.)—You might like to deal with something else while I take advice on that.

Senator BROWN (Tasmania) (9.27 p.m.)—I am happy to facilitate the minister
and ask a question back in the vein of what is meant by 'seriously interferes with, seriously disrupts, or destroys, an electronic system including’ a number of things? Would that include the folk who sat in on the web site of Lufthansa in Germany in protest about the airline facilitating the export of asylum seekers from Germany? They clogged up the web site and brought it to a halt effectively for use for other people for an hour or two. In regard to creating 'a serious risk to the health or safety of the public or a section of the public', a terrorist act is one which is 'done or the threat is made with the intention of advancing a political, religious or ideological cause'. Does that not include the Greenpeace protest at the oil shale plant in Gladstone in Queensland? I was there myself when they used high-speed craft to try to head off a tanker moving upstream to come abrest of that facility to take aboard shale oil which was then going on to be refined in Singapore.

Another example is blocking entry of a nuclear warship into a harbour. Would that not involve a significant threat to health and safety? What about those people who scale tall buildings? I was attendant on a number of very sterling Australian patriots who were up on the tower of the Victorian art gallery just some months ago and I can tell you exactly how far up they were—91 metres—because that is the height of the trees in the Styx Valley in Tasmania. Were those people not creating a risk to health and safety with a busy street below them?

The problem with this particular definition of 'terrorist act' is that it does not get just to terrorism. The net is thrown very widely, encompassing a whole range of legitimate community protests that have good intent, but it could be very easily argued by a government which did not like the protest—and governments by and large do not like protests—that the people involved were creating a serious risk to the health or safety of the public or that they were seriously interfering with or disrupting electronic systems. Indeed, what about the S18 protest around the World Trade Organisation in Victoria? That caused howls of rage from people, not least from Premier Bracks at the time, and it was seen by some people to be violent. It was seen to be absolutely creating a threat to public health and safety. How would you escape the potential for those citizens to be proclaimed terrorists under this legislation? I am very seriously concerned about this. It goes right to the heart of the Greens' objections, because it puts the spectre of the label of 'terrorism' right across the whole gamut of community protest in our democracy.

I foreshadow that if the Greens amendment fails I will come back again with an amendment to the definition of 'terrorist act'. Under 100.1(2), it says, ‘Action falls within this subsection’—that is, it becomes a terrorist action—if it 'creates a serious risk to the health or safety of the public’. I will predicate that with the words 'is primarily intended to create' so that it will say, ‘Action would fall within the subsection if it is primarily intended to create a serious risk to the health or safety of the public.’ I commend that to the opposition and to the government, because a terrorist act is one which does primarily intend to create risk and damage to the health and/or safety of the public. Similarly with 100.1(2)(e), I would predicate that with the words 'primarily aims to' so it becomes 'primarily aims to seriously interfere with, seriously disrupt or destroy an electronic system'. Protest very often is intended to be obstructive and can have risky consequences. The very nature of protest is to exhibit commitment and very often, in the process of exhibiting commitment, to involve oneself in risk, and potentially involve others in risk as well. I think that some degree of the problem would be gotten around if we added the words 'is primarily aimed to' or 'primarily intended to', because that is what the terrorists do. They are into havoc, destruction and bloodshed. That is not what peaceful protestors do. They are into political or ideological notice being taken and making a change, but they are not into doing that through creating damage to life or society.

I ask that the government look seriously at that flagged amendment—I have handed it to the clerks—and that the opposition look at it. It fixes to some degree the serious problem at the heart of this whole bill, which is the collateral risk that it poses for a whole range of groups: church groups, community
groups, social justice groups, unions, environment groups, Aboriginal activists and political activists. We should not have that spectre of the label ‘terrorist’ hanging over the heads of such people, who are fundamental to a functioning democracy and to the progress of civilised society.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.35 p.m.)—Firstly, in relation to Senator Harris’s query, which involved the World Trade Centre and the multiple corporations that were involved in that attack, I think Senator Harris was looking for confirmation that this bill would cover such an attack. It does, and there is no problem with that. There are a number of ways that this legislation would cover that.

In relation to Senator Brown’s query, Senator Brown’s amendment is not necessary because of the new subsection (2A) that we have inserted in section 100.1(2). I said this to Senator Greig earlier with regard to the question of where you have a protest, and Senator Brown mentioned protests, which he said all had good intent. If they have good intent, they do not fall foul of this legislation.

Senator Brown—Oh, yes they do.

Senator ELLISON—No, you cannot fall within the ambit of subsection (2A), which was passed earlier, and still have good intent. That subsection says:

(2A) Action falls within this subsection if it:

(a) is advocacy, protest, dissent or industrial action; and

(b) is not intended:

(i) to cause serious harm that is physical harm to a person; or

(ii) to cause a person’s death; or

(iii) to endanger the life of a person, other than the person taking the action; or

(iv) to create a serious risk to the health or safety of the public or a section of the public.

What Senator Brown would have us believe—and he cannot have it both ways—is that these protestors have good intent. Obviously they do not intend to cause a person’s death. They do not intend to cause serious physical harm to a person. It is obvious that they do not intend to endanger the life of another person, other than their own life, and they do not intend to create a serious risk to the health or safety of the public. If the people who hacked into Lufthansa had an intention to cause the death of someone through their protest, they throw away the good intent that Senator Brown is talking about and it is a very different situation. He is saying that they have good intent. Obviously he is dispelling section (2A) and its operation, because what he is saying there is that they have good intent and they do not have these other intentions.

What I say to the committee is that Senator Brown’s amendment is not necessary because we have covered the question of intent; it has to be proved beyond reasonable doubt. You cannot say that it is a protest which has good intent if its intention is to cause the death of someone or to cause serious physical harm. Senator Brown talks about ‘primarily’. You then have to ask yourself if it is okay if your secondary intent is to cause the death of someone; in that case is it all very well? I am afraid that is not acceptable to the government. What we say here is that if there is an intention to cause serious harm—that is, physical harm to a person—intention to cause a person’s death, intention to endanger the life of a person other than the person taking the action or an intention to create a serious risk to the health or safety of the public or a section of the public, you throw away that protection offered by having your protest, dissent, industrial action or advocacy.

Senator BROWN (Tasmania) (9.39 p.m.)—We are at odds here because the government ultimately gets down to leaving conservation groups, social justice groups and unions at the mercy of a third party, which is presumably a court charged with trying to sort this out. We do not think that is good enough. We are still left with the real difficulty of this legislation as it stands ensnaring a whole range of community groups. While section (2A) says that the action falls within this subsection if it is an advocacy, protest, dissent or industrial action and is not intended to cause serious harm and so on, I ask the minister: who is expected to prove...
that? Where does the onus of proof come in that situation? It is not intended ‘to create a serious risk to the health or safety of the public or a section of the public’. Let us drop the word ‘serious’ because that has to be evaluated by some third party. We come to ‘to create a risk to the health or safety of the public or a section of the public’.

How can you possibly have a protest of the sort I am talking about and have been talking about—which is scale a high building, get into trees above a logging operation or sail a boat in front of a nuclear warship—and possibly explain that in that action you did not know that there was such a risk to public health and safety. In those circumstances, the onus goes on to people to say that they did not know. If they did know, how can they explain that they did not intend, therefore, to create a risk? The nature of protest is the creation, very often, of risk to the persons involved, and sometimes it happens that it involves risk to people other than those directly involved. How could nurses who were on strike say that they did not know that there were some risk to some members of the public, as far as their health and wellbeing is concerned, when beds were actually being closed through that strike action? Can they say that they did not intend to have those beds closed?

We have seen in the recent strike action in Tasmania and Queensland—certainly in Tasmania—nurses actually saying, ‘We will take this action and these beds will be closed.’ So there is an intended action to compromise the health and wellbeing of somebody in the public. I cannot see how you could get out of saying that that was intended; it was part of the strike action. So while you leave these sections on the books it is inescapable that community groups like that will be netted. That is why the Greens are saying take them off, remove them. By the way, that is what we are dealing with here: the Greens amendment to delete sections 2(d) and 2(e) at the bottom of page 7 in the definition of ‘terrorist act’. It has not been thought through by the government.

I guess the consequences of this have not occurred to people in the government or in the bureaucracy simply because they have not been involved in protest action out in the field, changing things through flouting the norms in behaviour—which has been part and parcel of people in the past like Gandhi and Martin Luther King, who would run serious risk if they were to re-engage in their activities in this country after the passage of this particular part of this legislation. Let me go back to my original submission: we have laws in this country which enable us to dock people who are engaged in criminal activities.

We have very strong laws to allow the surveillance of people who might want to create terrorism. We do not need this legislation. But, if we are going to have this legislation, we have to delete these clauses, because not only are you unnecessarily adding to the excellent laws we have at the moment but the collateral problem is that you are endangering a whole range of social activities for the betterment of society in the views of parts of the society. That is what protest action is about.

Even if people are not indicted under this legislation when they act in the way that I have outlined, the spectre, the threat, of being indicted will hang over them. I can tell you, Mr Temporary Chairman Hogg, that there will be ministers of the Crown in this place condemning future social or environmental activists as terrorists and citing this bill if it goes through in this fashion. We should not allow that situation to arise. It will be to the detriment of our society if we do. I have a very clear memory of then prominent members of this parliament calling for the Army to be brought in against the peaceful protesters at the Franklin River. They were conservative members of this parliament. Can you imagine, with this legislation in place, that they would not resort to claiming that those protesters were terrorists because they were creating a risk to the health and safety of people down at the dam site or people moving along the Lyell Highway or people who were administering health laws made by the then Queenstown city council, who were repeatedly looking at such things as deep pit latrines with a view to public health and safety?
Then you come to the section which the government says it has fixed up because the section says you are okay if you do not intend to cause serious physical harm to a person. Let me tell you, Mr Temporary Chairman, that I was taken out of the courtroom in Hobart into a back room by the second senior police officer in Tasmania, the door was closed, I sat at the opposite end of the table and he said to me, ‘We have reason to believe that violence is going to occur in the Franklin blockade and you will be, ipso facto, involved with the blame for this if you do not get out of here and go and call off the blockade.’ Can you tell me that, with this legislation in place, under those circumstances the word ‘violence’ will not be relayed as ‘terrorism’, with life sentences hanging over people? Of course it will be. It is very dangerous ground we are trespassing on here. That is why the Greens do not support this legislation.

We will be trammelling long-held liberties which are absolutely fundamental to our democracy if we pass legislation like this, when we do not need to because we already have tough laws in place to deal with terrorists. When you look at it, we are in the situation where this legislation is here under pressure from the American administration and where President Bush is repeatedly calling anybody who is onside to the defence of democracy and freedom. And undermining basic democratic rights and freedoms in this country—I particularly point to the tradition of civil protest—we have this legislation as an outcome. It is an inherent contradiction. There is a difficulty: we all recognise we must be on the alert and we must be able to deal with terrorists. But if something is to be learnt from the American example, it is that the powers that already exist need to be employed and vigilance needs to be increased. You do not trammel the rights and freedoms of people in the wider society unnecessarily; certainly you think very carefully before you allow that to happen. That is why we oppose this legislation. That is why we oppose this clause. That is why we so vigorously appeal to the opposition to see that the particular subclauses cited in this amendment are deleted from this dangerous legislation. I have foreshadowed some amendments. I see difficulties with them because this is a difficult piece of legislation. It is flawed, and I hope that there will be some further consideration overnight to see what can be done to fix it if we are not going to drop it.

Progress reported.

**ADJOURNMENT**

**The DEPUTY PRESIDENT**—Order! It being 9.50 p.m., I propose the question:

That the Senate do now adjourn.

**Carige, Mr Colin**

**Moppett, Hon. Douglas**

**Senator BOSWELL** (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (9.50 p.m.)—I rise tonight to pay tribute to the lives of two of my former National Party colleagues. I refer to Colin Carige, a former member for the Queensland seat of Capricornia, and my colleague in the upper house in the New South Wales parliament, National Party stalwart the Hon. Doug Moppett MLC.

I knew Colin Carige very well and I heard only last week of his passing. He was a good personal friend of mine and he knew the issues of regional and rural Queensland well. He served in this parliament as the member for Capricornia for one term only, from 1975 to 1977. Capricornia has only ever been represented three times by the conservative side of politics, and Colin Carige was one of those very few people who had the tenacity and the political stamina to win that seat. He had a very marginal seat, and the pendulum of politics swings, and he was able to represent that seat for only one term.

I was deeply sorry to hear of his death on 14 May. He was dedicated to the country way of life and his press releases after his preselection to Capricornia demonstrated well the type of interest he had in that seat. He became a political representative of the National Country Party, then under the leadership of Doug Anthony, from a background of business and primary industry. At the time of his election he sold himself to his constituents as a correspondence-educated Biloela grazier, a clearing contractor and a
bulldozer driver. You do not see too many bulldozer drivers in parliament today; in fact, you do not see too many self-educated people coming into this place. Perhaps we should think about the greater representation that is required in this place.

Col was born in Mount Morgan. He was correspondence schooled, and he shared with me a strong interest in small business and the improvement of the regional and rural sectors. He wanted to improve communications services and opportunities for people in businesses based in rural and regional Queensland who wished to stay there and be based there. He also brought with him to the House of Representatives a great advocacy for the Australian mining industry. I suppose this grew from his childhood in Mount Morgan and his significant business knowledge. He had been involved in rural businesses with Dalgety’s and he ran a restaurant in Sydney as well as his own cattle grazing property at Biloela. He was a great source of information. He was a great friend of mine. I know that he really knew that it was an honour to be able to represent Queensland in the marginal seat of Capricornia in the federal parliament.

He will be sorely missed by a number of people around Rockhampton and Gladstone, where he had a building business, in Queensland by conservative politics and, of course, most of all by his family. I extend the sincere condolences of the National Party of Australia to his wife, Gloria, to his children and to all those who knew him. His passing will be a sad loss.

This brings me to my other now departed colleague, the Hon. Doug Moppett. Doug Moppett was a member of the New South Wales Legislative Council and he died just last week, on 18 June, at the age of 62 after a brave battle with cancer. Through his family and through various roles he held within the National Party, Doug Moppett remained dedicated to correcting the inequities faced by country people. He was a compassionate and tireless member of parliament and was held in high regard by both sides of politics. We all recognise the enormous contribution he made to the New South Wales upper house and as part of the parliamentary committee system.

His varied and distinguished roles included Vice Chairman of the New South Wales branch of the National Party between 1971 and 1986 and state chairman between 1986 and 1991. These were very difficult times faced by the National Party and the ‘Joh for Canberra’ campaign. Doug stood his ground and for what he believed in and took the right course of action. He was a member of the New South Wales Legislative Council for 13 years, from 1976 to 1978 and from 1991 to 2002. Both his parliamentary terms included many years of service on parliamentary committees. He was awarded a life membership of the National Party for his contribution to the party and its grassroots members.

His lifetime of commitment to country New South Wales, the National Party and his family has not gone unappreciated by all who had the pleasure of being associated with him. Doug truly has been a great inspiration to many people. On behalf of the National Party family, his colleagues and friends, I also extend our deepest sympathy to Doug’s family, his wife, Helen, and their two children. I know that they take great comfort from the legacy of courage and strength that Doug has left behind.

The DEPUTY PRESIDENT—Thank you, Senator Boswell. I would also like to associate myself with those words on Doug Moppett. I knew him well and he certainly was respected a great deal by both sides of parliament.
pic, those wonderful people up there who make us all look beautiful.

Senator Kemp—Some more successfully than others.

Senator CROWLEY—I thought if I paused here I would be absolutely sure to get some constructive interjections, so thank you all very much indeed. Thank you, Senator Boswell, for not saying anything at this point. But Auspic really are extremely wonderful and I totally love having around this place people who actually provide such a wonderful service—not just in making us look better rather than worse in the photos they take but so that we do have a photographic record of many of the things we get up to or want to get up to.

One day when I was passing through the Members Hall on the second floor, to my shock and delight I found myself asking a question photographically. I was extremely chuffed to find that they had used me as an example of how to ask a question. I am not sure that it was the best, but there I was and I must say, without any shame or blushing, I was pleased to see me there. I really liked looking at the way that we are represented around the place. But in particular I acknowledge and thank Auspic for the work they do in this place. But in particular I acknowledge and thank Auspic for the work they do in this place. I note that, while people might have been a bit rude about their success or not in getting me to look beautiful, I do not think that anyone is denying that the rest of them are made to look beautiful, so we thank Auspic for making us all look beautiful and more particularly for the serious work they do.

I want to thank Jetset. I know it has now got a new name. I am not sure what their name is at this moment, but they do assist us with our flights and so on. I was extremely chuffed to find that they had used me as an example of how to ask a question. I am not sure that it was the best, but there I was and I must say, without any shame or blushing, I was pleased to see me there. I really liked looking at the way that we are represented around the place. But in particular I acknowledge and thank Auspic for the work they do in this place. I note that, while people might have been a bit rude about their success or not in getting me to look beautiful, I do not think that anyone is denying that the rest of them are made to look beautiful, so we thank Auspic for making us all look beautiful and more particularly for the serious work they do.

I want to thank Jetset. I know it has now got a new name. I am not sure what their name is at this moment, but they do assist us with our flights and so on. The advantage of being as old as I am is that the terrible trouble is that I preferred it when—

Senator Kemp—You need to resign first.

The DEPUTY PRESIDENT—Senator Kemp! If you wish to hold a conversation, go outside for it, please. Your interjections were not provoked by anything, so please just cease and desist.

Senator CROWLEY—I was saying thank you to Jetset—now called Synergi, I believe. But I was actually saying that those of us who have been around here long enough, while not wishing to take anything away from Jetset, regret the passing of the Senate Transport days, when all was known and understood in Senate Transport and where all sorts of things, parliamentary and extra-parliamentary, happened in the old Senate Transport room. I have said it in this place, and I have campaigned around these corridors: I find it very depressing in a place as big and as grand as this that our Senate Transport staff actually serve from a dog box at the entrance to the Senate door. If there is one thing that could be changed in the future, it would be to provide a better space for the Senate Transport people. They are not assisted in their work by working out of such a tiny office. It used to be that Senate Transport was a place where we met, we swapped information, we left our bags, we had our flights booked and our cars booked, and all sorts of other things were done for us by the old Senate Transport, as it was called. In memoriam: the passing of better days. Thanks, Jetset, for your assistance—I am sorry, what am I calling them now? Synergi. Well, please don’t change your name again because people will not know whom we are talking about!

The next place I want to speak about is the reproduction unit. A doctor coming into this place and finding a reproduction unit would wonder what on earth goes on in there. I must say when I first came across the title ‘reproduction unit’ I had no idea that it meant the photocopying and printing place. I discovered that that is what it is. We appreciate enormously the work they do. I am advised that sometimes our Senate committee reports, for example, can be produced within a day and a half by our reproduction unit in this parliament, whereas it can be up to three weeks when the same sorts of printing requirements are put out to private enterprise. I think, for the record, we should note the extremely wonderful way the reproduction unit in this place does work, particularly under the terribly tight pressures that we often give them. So congratulations and many thanks to our reproduction unit.
That does make me lead into the All Party Parliamentary Group on Population and Development—a different meaning of reproduction altogether. I have been on that group for at least 12 years. I think it is a most wonderful initiative that we have parliamentarians from all parties who are members of that group and who actually worry about matters of concern about population and development. We are assisted by speakers of great expertise. Some of the best population experts in the world belong in the ANU—Mr Caldwell I am thinking of in particular—but any number of excellent speakers have assisted that committee to look at the concerns and conditions about matters of population and development. It is one of the rare places where we actually sit down in a very non-partisan way to talk about issues, to see how those issues can be promoted and to do that without having to have, as we do across this chamber, a dust-up or dispute almost for the sake of it in some cases. It is sometimes the case that in other committees we can have very fruitful discussions across party lines; in the all party parliamentary group that is particularly the case. There are more on my list to thank; I will come back to them later.

The last thing I want to raise tonight is a netball club in South Australia called Contax. This is one of the greatest netball teams in Australia and I am extremely honoured to be its patron. More than 30 teams play for that club and almost all of them are managed in a volunteer way by the parents, the mothers and fathers, of the girls who are playing netball in that great organisation. It has produced the Australian captains of netball over the last few years. Kathryn Harby-Williams, who is the current captain of the Australian team, has come out of Contax; Michelle Fielke, before her, was also from that team. In the last Australian team, of the group of people from whom the team was drawn, five came from South Australia and a number of them from the Contax team.

The reason I raise this, though, is that in recent times this quite wonderful team has agreed to and is in the process of ‘big sistering’, if you can call it that, or ‘sistering’ teams of netball players in a township in South Africa where many of the girls have absolutely no access to equipment of any sort—in particular, not good netballs. When you see the state of the courts they play on, you certainly know that, as bad as some courts are in Australia, they do not get as bad by far as those in South Africa. Many of those youngsters in the South African townships struggle to get any kind of access or equity, and I am so proud of the fact that the Contax team wants to contribute to improving the lot of other people playing netball, even if it does mean that in 10 years time Contax and the Australian team might be challenged by an emerging new group of champion netball players from South Africa.

I cannot speak too highly of this team. It is such an honour to be a patron of such a team. They constantly surprise me with their volunteer capacity and their wonderful generosity. I had hardly recovered from wondering how good they are at looking to ‘big sister’ teams in South Africa when I saw that they have become a promoter for an anti-asthma campaign for young people in sport. So many children get the message that if you are an asthmatic it is not a good thing to play sport—that, indeed, it can turn on your asthma, and that may make you turn away from sport. That is exactly counter to what might make you more healthy and better able to cope. This team is the first to come out with a program through which all the kids and the coaches will know how to manage asthma should anybody start wheezing during any of the games. I think that is quite wonderful. Other teams and other sporting groups will join them but, once again, Contax are the first with this wonderful health program.

I want to place on the record my appreciation of this netball team—indeed, of all netball. I am very proud to be the national patron of netball, and I certainly wish the Australian team every success in bringing home from Manchester another gold medal. They won the inaugural gold medal for netball, which, despite the fact that it is played by nearly one million people in Australia, had not been a Commonwealth Games sport until the last Commonwealth Games. Let us hope the Australian netball team can bring home back-to-back gold medals in that sport.
to honour the great sporting reputation of the
women of Australia.

Lockett, Mr Jack

Senator TCHEN (Victoria) (10.07 p.m.)—Last Thursday, I had the opportunity to speak about the passing of three great Australians and great Victorians—Ian Henderson, Tom Austin and Jack Lockett. The time was too short to do justice to all three men and I am grateful for the opportunity to finish speaking about Jack Lockett, who died on 25 May 2002, aged 112 years. He was the beloved son of Bendigo, a returned soldier, a farmer of the Mallee, a patriot and a hero of the nation—although perhaps not a hero to all of us, for example to Senator Brown, since he cleared Mallee bush in his younger days.

I spoke of Jack Lockett’s experience in the First World War and his life up to that time. When he returned from the war, he went back to the Mallee, married Dolly in 1923 and established a farm with his own hands. He survived droughts, dust storms, plagues of rabbits and locusts and the Depression to raise a family of four children. In 1956, Jack and Dolly Lockett handed their farm over to their sons and retired to live in Bendigo. That was nearly 46 years ago, when Jack was 64 years of age and was eligible for the age pension. In 1956 most of today’s 19 million Australians were not born or, like myself, had not yet migrated to Australia. The age pension that Dolly and Jack received was the only money they ever received from the public purse or ever asked for. That is probably the one thing that really marked the life of Jack Lockett: he never asked for anything from anybody. He relied on what he could do for himself and he never gave up.

Dolly Lockett died in 1981. Jack lived alone for another 21 years. Except in Bendigo, where he lived for over 45 years and was a familiar and well-loved figure, it was only in the last few years of his life that Jack Lockett became a household name, when he was recognised as the oldest man in Australia. When the public did come to know him, the Jack Lockett they found was a seemingly content man, well aged but fit, not having a care in the world and as self-reliant as ever. But few knew the man of steel underneath. He was a man of great morals, too. I had the privilege of meeting Jack Lockett twice. The first time was shortly after he had been Bendigo’s Olympic torchbearer, when I visited him in the aged-care hostel where he lived. The second time was the day after his 110th birthday, when I had the time to sit down with him and he talked to me for about half an hour about his life.

His amazing lucidity and humour aside, I came away humbled by his humanity and righteousness. Yes, righteousness—that is probably a strange word to use these days because, I suspect, we no longer understand what it connotes. Let me explain. I was looking at a photograph of a soldier who could have been the prototype of the ‘tall, lean, straight-limbed, intelligent, self-reliant and courageous’ Australian digger of First World War legend. Jack told me he had had it taken in Paris. Light-heartedly, I said to him, ‘You must have turned a few girls’ heads in those days. If you were around, Mel Gibson would not have got the role for Gallipoli.’ With great seriousness, Jack said to me, ‘No, I couldn’t do that. I was illegitimate, you know, and I was never going to get a girl into trouble.’ And that is the sort of man he was; he was never going to get anyone into trouble.

He reminds me of the legend of a leader of the early Roman Republic who, when his country was invaded, answered the call of the Senate, laid aside his plough on the field to go into the Senate. He donned the toga of the Consul, led the army and defeated the enemy. He then took off his toga and the insignia of office and went back to his plough, which was still sitting in the field, and continued ploughing. That is the sort of person Jack Lockett was—the sort of person we do not appreciate as much as we should.

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Jack’s friend—though a good many years younger—Alan Holmes, himself a veteran of World War II and a Bendigo identity, said of Jack Lockett that he was a ‘champion of the human race.’ I do not think there can be a more apt description of this remarkable man. At his state funeral, the Victorian Premier, Steve Bracks, was reported to have described the death of Jack Lockett as ‘a sad day for Mr Lockett’s family, a sad day for Bendigo
and a sad day for Victoria.’ I think Mr Bracks is wrong because it is only if you look at life as a journey to death that you will come to that conclusion. At the end of Jack’s day, we should not be mourning Jack Lockett’s inevitable death but celebrating his extraordinary life, because in his life is the image of Australia. Thank you Jack Lockett for being what you were and for making Australia what it is. Farewell. They do not make the likes of you any more.

Superannuation: Products

Senator SHERRY (Tasmania) (10.15 p.m.)—I rise tonight to draw the attention of the Senate to two particular cases that have been detailed to me concerning excessive fees and charges and unnecessarily inflated returns in respect to superannuation products. The first matter relates to a leading Australian superannuation company. I have written to the company, though I do not yet have a response. I do not intend to name the company yet. The recruitment of the individual concerned into the superannuation fund via a workplace agreement— I am yet to determine whether it was state or federal; I think it was a federal agreement—resulted in the payment of the employee’s superannuation guarantee contributions from 1 September 2000 to 31 August 2001 of the correct sum, as I understand it, of $1,609.02. On examining the statement that was provided to the member, there were two deductions from this contribution. The first was a sum of $44.34 in contributions tax, the second was a staggering sum of $1,313.39 in insurance premiums, leaving a balance of $251.29 for a superannuation product that is compulsory under law. I have written to the company, which is a large Australian company, seeking further details of these extraordinary charges that have been levied against this superannuation guarantee contribution. I will be providing further details to the Senate in the context of legislation that we will be considering later on in the year.

The second issue I want to raise concerns a Mr Naylor, who provided details of a so-called high-growth superannuation policy that was sold to him by a Mr D. Hutton representing Mercantile Mutual, now trading under the name of ING, back in 1980. The policy had two elements: firstly, an insured life benefit of $100,000 reducing over time as he grew older—nothing unusual in that—and, secondly, a superannuation retirement benefit funded by contributions initially of $1,000 per annum with a commitment that there would be an illustrative maturity value to be achieved at retirement age of $260,000. In 1988 the same adviser, Mr Hutton, convinced Mr Naylor to increase his contributions in order to increase the IMV to $350,000 on retirement. An ‘illustration’ of the high-growth superannuation product by way of a document projecting benefits was provided to Mr Naylor when he first signed up to the product. Aside from an annual statement that he received in 1983 that stated an IMV of $262,860, little other documentation was ever received by Mr Naylor despite persistent requests. There were no details of commissions paid to the agent—not that that was an industry practice or indeed a requirement under the law at that time. He had great difficulty despite persistent requests in obtaining further written details over the following years.

Mr Naylor sought independent advice in 1995 as to the value of the product and was informed that the likely IMV would range only between $50,000 and $70,000 at retirement age. This contrasts with the projected IMV when he signed up to the product of $260,000. In 1997, when Mr Naylor inquired with ING as to what they believed the value of the product would be at retirement age, a Mr Ian Hall—I do not know whether he still is but at the time he was senior manager of complaints and disputes resolution—confirmed that the projected maturity value supplied by the adviser back in 1980 was far too high. Of course, Mr Naylor experienced significant frustration over many years and his concerns had by this point grown significantly. There was a lengthy negotiation between Mr Naylor and ING which at one stage included a strategy by Mr Naylor of erecting protest banners at a major thoroughfare in the city of Sydney. Mr Naylor, under general financial pressure and becoming increasingly desperate, did reach a settlement with ING that included both a confidential payout and a confidentiality agreement.
I have written to ING seeking an explanation about what happened to Mr Naylor. I have entered into correspondence with ING and one response that I received was in July last year. It indicated that, yes, the illustrative maturity value that was given at the time was too high and it should have been subsequently retracted. ING claim that it was; Mr Naylor certainly in the initial years that he had difficulty with the policy does not believe that there was a retraction. But ING did point out that they made quite a generous offer as it substantially increased the withdrawal value. I do not know what the offer to Mr Naylor was, but I would certainly be very surprised if the ‘generous offer’ from ING came anywhere near the original IMV commitment that was provided to Mr Naylor back in 1980. I did receive a second piece of correspondence from ING—I think it was in February this year—which basically confirmed the details of the earlier letter that I received in July last year.

Why raise these two issues before the Senate? I have many more cases, I might say. In my capacity as Deputy Chair of the Senate Superannuation Committee and now as shadow retirement income spokesperson, I receive a significant number of complaints about projections made about returns and fees and charges. At the moment, the Australian system for the retail distribution of superannuation falls broadly into two categories. We have what is called a regulated retail membership—that is, membership determined by a particular industrial provision in the case of industry funds, many corporate funds and public sector funds. We also have a deregulated sector where an individual selects their own product and signs up to that product, usually through a commissioned agent.

This deregulated sector is one in which consumers have what is known as a ‘full choice’ model of fund membership. This full choice model of fund membership—I call it deregulation—is one that is advocated by the Liberal-National Party government and one that we will deal with in a legislative form later in the year. Thankfully, at the moment only a small minority of superannuation fund members are burnt by higher fees and charges, often through the deregulated, so-called ‘choice’ model. We should not forget that a one per cent fee over the whole life of a product means a reduction of final retirement income by 10 per cent. Fees and charges of up to five per cent are relatively common in what I call the deregulated sector where so-called ‘choice’ operates. (Time expired)

**Trade: Banana Imports**

**Senator O’BRIEN** (Tasmania) (10.25 p.m.)—Madam President, you will recall that, in the adjournment debate last Tuesday, I raised concerns about how the government was managing an application from the Philippines to export bananas to Australia. In that speech, I referred to a request I made of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry, Senator Troeth. I asked her to ask Minister Truss whether he was prepared to give the Australian banana industry sufficient time to properly consider and respond to a 391-page technical report on possible pest and disease threats from imported fruit. Senator Troeth told me during the estimates that she would put that request to the minister. If she did put that request before Mr Truss, she has not bothered to tell me. I took the trouble of writing to Senator Troeth on 11 June to remind her of my earlier request and again request that she ask Mr Truss to grant the industry an extension of just another 30 days. That was nearly two weeks ago and, as with my direct request of Senator Troeth, I have not received any response at all. So I take it that the answer is no.

Any mistakes made by Mr Truss in assessing the risk of disease from imported bananas could devastate this industry. The introduction of an exotic disease could not only destroy thousands of jobs in regional Australia but also have a major impact on the communities in which those workers live. The failure of the government to allow the industry adequate time to consider this technical report has put at risk the integrity of the import risk assessment process. This technical paper will provide the foundations upon which that assessment is to be built. If the paper is flawed in any way, it appears that those flaws will be reflected in the import
risk assessment. Given the minister’s own guidelines for 60 days to consider such reports, it is beyond me why the government would not allow the industry just 30 extra days to respond to this document. To provide additional time would ensure not only that the government was giving Australian banana growers an opportunity to respond but also that this report properly reflects the views of the industry and its advisers.

Given the record of this government in relation to import risk assessments, there is only one obvious reason for the minister choosing to limit input from local growers, and I will come to back that point shortly. The failings of this government in relation to quarantine protection have been exposed through a number of Senate committee inquiries. In 1996, the Senate Rural and Regional Affairs and Transport Committee commenced an inquiry into the proposed importation of cooked chicken meat into Australia. The findings of that inquiry—findings endorsed by all committee members, including government senators—were damming of the government’s position. The committee found that the protocol that AQIS planned to apply to imported product was flawed.

A second inquiry undertaken by the same committee looked at the manner in which AQIS conducted an import risk assessment of an application to import salmon products. The committee looked at what is called Australia’s appropriate level of protection—otherwise known as the ALOP—as part of that inquiry. The ALOP represents the level of risk the government is prepared to accept for an imported product. The committee stated in its report:

The Committee is strongly of the opinion that the ALOP is too vague a concept; it is poorly articulated, with no real guidance as to what it is in reality, how it is determined and by which agencies it is determined.

Again, that was the unanimous view of the committee. While the government was attempting to measure the risk to a key domestic industry from imported product, it could not tell us exactly what an acceptable level of risk was. Another important point was made during that inquiry. It was argued by the Australian salmon industry that, while the chance of a disease outbreak from imported fish products was slight, the consequences of an outbreak would be extremely serious. The industry was right. That point can be applied equally to the banana industry.

A third Senate inquiry looked at the government’s management of an application from New Zealand to bring apples into Australia. Like the assessments of chicken meat and salmon, the committee found that the Howard government’s import risk assessment process was dangerously deficient. It went so far as to recommend that Biosecurity Australia immediately commission further research into the matter by the CSIRO, the Horticulture and Food Research Institute of New Zealand or other independent authorities. Getting import risk assessment analyses right is vital, but the evidence clearly shows that the Howard government has consistently failed in that regard.

I want to go back to the reason why Minister Truss has denied this industry adequate time to have input into this assessment process. The reason is clear to me. The minister, Mr Truss, has given a commitment to the Philippine authorities that he will release a draft import risk assessment by 30 June. If Mr Truss had complied with his own guidelines and had given Australian banana growers adequate time to consider the information which was put before them in May, he could have not honouring his commitment to the Philippines and had a draft import risk assessment document on the table by 30 June. Clearly, he has not chosen to breach what I believe is an undertaking given to the Philippines. He has preferred to put the interests of the Philippine exporters ahead of Australian growers. In doing so, I believe he may have compromised the whole import risk assessment process.

If there is any indication that the assessment process is inadequate or that the government is seeking to accommodate trade pressures as part of the risk assessment process, I propose to move to initiate another Senate inquiry—just as this Senate has examined previous import risk assessments as outlined. I give Australian banana growers a
guarantee that the Australian Labor Party will use this place to ensure that this industry is not the victim of an inadequate import risk assessment process.

Finally, as a nation, we should not be apologetic about the legitimate use of the provisions of international agreements to protect our agricultural industries and our environment from the threat of disease and pests. We are quite within our rights to keep out goods that could pose a quarantine risk, provided we do so on the basis of sound science.

Roads: Funding

Senator FORSHA W (New South Wales) (10.32 p.m.)—Tonight I wish to address my remarks on the adjournment debate to this government’s disgraceful decision as proposed in the recent budget to reduce the funding under the Roads to Recovery program. When this program was announced in November 2000, the Prime Minister, Mr Howard, the Deputy Prime Minister and Minister for Transport and Regional Services, John Anderson, and the then Minister for Regional Services, Territories and Local Government in this place, Senator Ian Macdonald, all made wonderful statements about what a great program this would be. Firstly, I quote from a media release from the Department of Transport and Regional Services, dated 27 November 2000:

The Prime Minister John Howard and Deputy Prime Minister John Anderson today unveiled a $1.6 billion boost to the nation’s road network with the major emphasis on investment in the repair and maintenance of vital local roads. The Prime Minister and Deputy Prime Minister said every dollar of this funding would be over and above existing budget allocations from the Federal Government for local roads, Roads of National Importance and National Highways.

The Prime Minister said $1.2 billion of the $1.6 billion would be distributed directly to local councils and we will seek passage through the Parliament before Christmas of a special appropriation bill in relation to that funding.

Further, on the same day, we had Senator Ian Macdonald, saying in a media release:

Every New South Wales local community is a winner with a massive 72% increase in Federal local road funding as part of the $1.6 billion Road to Recovery programme, Federal Minister for Regional Services, Territories and Local Government, Senator Ian Macdonald said today.

Senator Macdonald said an extra $340 million in Federal funding will flow to NSW communities through their local Councils over the four year life of this programme.

They were wonderful announcements by this government about this great Roads to Recovery program and that it was all going to be done in addition to budget funding. Of course, the Prime Minister, the Deputy Prime Minister and Senator Ian Macdonald encouraged local councils to apply for that funding. They encouraged them to bring forward their road projects to access that funding, and a lot of those councils did. They prepared their budgets over the next three or four years on the basis of being able to access that funding.

But what happened? Once they had established their budget and commenced many of those projects, what did this government do in the most recent budget? It took out $100 million of that funding over the course of the next 12 months. It reduced the allocation for the next 12 months by 52 per cent, according to the portfolio budget statements.

Senator McGauran—they’re still getting the $100 million, though.

Senator FORSHA W—The problem with this, Senator McGauran, as you are interjecting, is that councils had brought forward programs on the clear invitation of this gov-
ernment and had budgeted for those projects over the course of the next four years—

Senator McGauran—Name one.

Senator FORSHAW—I am about to; thank you for the invitation—but then, having done that, they had the rug pulled out from under them. Let me take you to one example where this government has deceived a council by making the promise, getting the council to prepare the project and commence work on the project and then determining: ‘We are not going to pay you the money. We are going to make you wait for two, three or four years until you get the final payment.’ What has happened in the case of the Sutherland Shire Council—a council I am familiar with because I live in that area—is that the council, at the invitation of this government, applied for funding under the Roads to Recovery program. In total they were offered about $3 million. The major project that was submitted and approved was for the council to do major construction and maintenance works on Captain Cook Drive. As the name implies, Captain Cook Drive is a rather important road through the Sutherland shire. It is actually the road that leads to Kurnell. It is important not only because it leads to the road that takes you out to Kurnell—the birthplace of European civilisation in this country—but also because it goes straight past the Cronulla Sharks Leagues Club and the home ground of the mighty Cronulla Sharks rugby league team.

Senator Boswell—that is important!

Senator FORSHAW—that is important, Senator Boswell, because all through the winter months, whenever there is a home game and particularly when the Sharks are winning—as they are these days—you have something like 15,000 or 20,000 people streaming out of that major football ground onto that road. It is a major traffic thoroughfare. A lot of heavy traffic travels on that road, coming from the industrial plants at Kurnell such as the refinery and the other facilities out there. Because of this decision the council have to complete the project. It is already under construction; they have to complete it. They cannot leave it in the state that it is in; they are halfway through it. The council have already committed $1 million of their own funds towards this project. What is going to happen at the end of this financial year is that the council, because of this government’s decision to reduce the payment promised under the Roads to Recovery program for the next 12 months, are going to be in the vicinity of $250,000 to $300,000 out of pocket for this financial year.

That problem is then going to snowball, because the council had budgeted over the course of the next four years to receive the payments it was promised. So, having been promised the funding to do these major works on this most important road—it is not declared a national road but it probably has the significance of one, given its location—the council is being put in the position of having to find those funds itself by taking the funds out of its budget allocation for roadworks throughout the rest of the shire. Each year until we get to 2004-05 the council is going to be progressively in a worse position, because it cannot recoup that money when it was promised. Further, as a result of this decision, the council has had to put a stop to nine other smaller projects that it was going to undertake under the Roads to Recovery program.

Senator McGauran—we are going to check this out.

Senator FORSHAW—Senator McGauran, you are welcome to check this. I know that the minister’s department has been written to by the Sutherland Shire Council. The Sutherland Shire Council has approached the Liberal Member for Cook, Mr Bruce Baird, and the Liberal member for Hughes, the Hon. Danna Vale, and sought their assistance to get some action on this. And of course it has approached me. I am raising the issue in this parliament because it is very important. The lesson in this, as the Sutherland Council has learnt, is that you cannot trust this government to deliver on its promises. The Prime Minister may have thought that it was a beautiful morning when he made this announcement, but I can tell you that it is a sorry day in the Sutherland shire now, and the signs on the road that say ‘This project is funded by the Roads to Recovery program’ should be taken down because it is no longer true.
Senate adjourned at 10.42 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

Aged Care Act—Determination under section 52—ACA Ch. 3 No. 2/2002.


Financial Sector (Collection of Data) Act—Determination of reporting standards RRS 100.1, RRS 200.1, RRS 300.1, RRS 400.1, RRS 600.2, RRS 800.0, GRS 110.1, GRS 120.0, GRS 130.0, GRS 130.1, GRS 130.2, GRS 130.3, GRS 140.0, GRS 140.1, GRS 140.2, GRS 140.3, GRS 140.4, GRS 150.0, GRS 160.0, GRS 170.0, GRS 210.0, GRS 210.1, GRS 300.0, GRS 310.0, GRS 310.1, GRS 310.2, GRS 310.3, GRS 320.0, GRS 400.0, GRS 410.0, GRS 420.0, GRS 430.0, GRS 440.0, GRS 450.0 and GRS 900.0.

Life Insurance Act—Variation (No. 2) of Prudential Rules—

No. 35.

No. 47.


PROCLAMATIONS

A proclamation by His Excellency the Governor-General was tabled, notifying that he had proclaimed the following provisions of an Act to come into operation on the date specified:

Financial Sector (Collection of Data) Act 2001—Parts 2, 3 and 4—1 July 2002 (Gazette No. GN 24, 19 June 2002).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Kennedy Electorate: Program Funding
(Question No. 257 and 263)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry and the Minister for Forestry and Conservation, upon notice, on 18 April 2002:

(1) What programs and/or grants administered by the department provide assistance to people living in the federal electorate of Kennedy.

(2) What was the level of funding provided through these programs and/or grants for the 2000-01 and 2001-02 financial years.

(3) Where specific projects were funded: (a) what was the location of each project; (b) what was the nature of each project; and (c) what was the level of funding for each project.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry and I have provided the following answer to the honourable senator’s question:

The information in this table was obtained from the database of the Natural Heritage Trust Program Administrator. The project information supplied is for projects solely within the Federal Electorate of Kennedy. There may be other projects that are either Statewide or cross regional that will assist people living in the Federal Electorate of Kennedy. It is not possible to determine the amount of funding applying to individual electorates for such projects.
<table>
<thead>
<tr>
<th>(1) Programs/Grants for the Federal Electorate of Kennedy</th>
<th>(2) Level of funding provided for 2000-01 &amp; 2001-02</th>
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<th>(3) (c) What was the level of funding for each project</th>
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<tr>
<td>AAA—Farm Innovation Program</td>
<td>$220,760 for two grants covering 2000-01 to 2002-03 financial years.</td>
<td>Gordonvale, Mareeba</td>
<td>Implementing high density cane planting, controlled traffic and break cropping for more productive and sustainable cane farming.</td>
<td>New grow out facility for farmed crocodiles that will include a whole of facility water management program. Also aims to reduce labour and minimise skin fungus problems.</td>
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<tr>
<td>AAA—Rural Financial Counselling Service</td>
<td>2000-01-$105,000 2001-02-$105,000</td>
<td>Atherton, Eacham and Herberton.</td>
<td>Rural Financial Counselling Services</td>
<td></td>
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<tr>
<td>AAA FarmBis</td>
<td>FarmBis I 1998-99 to 2000-01</td>
<td>FarmBis funding is not allocated on a regional basis and allocations can not be identified down to the regional level</td>
<td>FarmBis provides assistance to attend training in business or natural resource management activities</td>
<td>N/A</td>
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<td></td>
<td>Commonwealth funding appropriated to Queensland under FarmBis I totalled $11m. Total funds provided to Queensland in 2000-01 totalled $6.725m. FarmBis II 2001-02 to 2003-04 For FarmBis II, agreements are in place with State and Northern Territory governments to provide funding on a 50/50 basis. An agreement has been entered into with Queensland for the Commonwealth to provide funding of $15m between 2001-02 and 2003-04. In 2001-02, the Commonwealth has provided funding to date of $2.562m.</td>
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AAA—Farm Help
AAA-Farm Help is demand driven, therefore funding for each financial year is dependent upon uptake of the program. Expenditure in Queensland on AAA-Farm Help during 2000-01 was $8.3 million and $3.6 million for 2001-02 to 31 March 2002.

AAA-Farm Help is available to all eligible farmers on a national basis. Information on Farm Help is not available on an electorate basis. Farm Help funds are not allocated on a regional or State basis.

Funds are approved for assistance regardless of their location.

AAA-Farm Help provides income support, professional advice and re-establishment assistance for farmers in severe financial difficulties.

Whilst levels of funding are not available by electorate, during 2000-01, 7 re-establishment grants were paid to farmers within the Kennedy electorate and there were no farmers receiving Farm Help income support at 30 June 2001. At 31 March 2002, 103 farmers were current Farm Help income support recipients and 2 re-establishment grants have been paid during 2001-02.
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<tr>
<td>Dairy Industry Adjustment Package (DIAP)</td>
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<td>Funding became available under the Commonwealth Dairy Industry Adjustment Package (DIAP) in 2000-2001. Programs within the adjustment package for which the Department has responsibility for include:</td>
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<td>Dairy Structural Adjustment Package (DSAP)</td>
<td>The $1.63 billion Dairy Structural Adjustment Program provides quarterly structural adjustment payments over eight years to dairy farmers to assist adjustment to industry deregulation. The structure of the entitlements database and the confidential nature of these payments makes it difficult to accurately provide electorate level breakdowns. However, there</td>
<td>There is no project based funding for DSAP as these payments are entitlement based.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
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<td>has been approximately $220 million in DSAP entitlements paid to eligible dairy farmers in Queensland. Of this, it is estimated that north Queensland farmers have received $30 million in entitlements. (The final element of DSAP, the Dairy Regional Assistance Program is administered by the Department of Transport and Regional Services. 11 Projects approved in Far North Queensland valued at approximately $1.5 million).</td>
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<tr>
<td>Supplementary dairy assistance measures (SDA) In June 2001 an additional $159 million was provided to dairy farmers through supplementary dairy assistance measures (SDA): $119 million in basic market milk payments, and additional market milk payments, to dairy farmers who were heavily dependent on market milk production; $20 million to people who, because of extraordinary circumstances were excluded, or their entitlements</td>
<td>There is no project based funding for SDA as these payments are entitlement based.</td>
<td>N/A</td>
<td>N/A</td>
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2002-01 & 2001-02

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<tr>
<th>(1) Programs/Grants for the Federal Electorate of Kennedy</th>
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<tr>
<td>Dairy Exit Program (DEP)</td>
<td>Dairy Exit Program provides a lump sum payment of up to $45,000 tax-free to those dairy farmers wishing to leave agriculture. This payment may be taken as an alternative to a DSAP entitlement. As at 1 March 2002, Queensland farmers have been granted a dairy exit payment at a total cost of $403,578.</td>
<td>North of Cairns</td>
<td>Feral Pig Eradication. To test and improve feral pig management options during a simulated FMD outbreak in Far North Queensland</td>
<td>$60,000</td>
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<tr>
<td>Field Trial of Feral Pig Control Strategies in a simulated Foot and Mouth Disease (FMD) Emergency</td>
<td>2000-01 - $60,000</td>
<td>Feral Pig Eradication. To test and improve feral pig management options during a simulated FMD outbreak in Far North Queensland</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Natural Heritage Trust—Fisheries Action Program</td>
<td>2000-01 - $9,800</td>
<td>Norman River Estuary</td>
<td>Norman River Fish Enhancement Project Project aims to replenish fish stocks to a sustainable level to combat depletions in natural fish stocks caused by recent increase in tourist recreational fish-</td>
<td>$9,800</td>
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<tr>
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<tr>
<td>Natural Heritage Trust—Farm Forestry Program</td>
<td>2000-01 - $15,000</td>
<td>Mount Isa</td>
<td>Mount Isa—Sustainable Forest Industry</td>
<td>2000-01 - $15,000</td>
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<td></td>
<td>2001-02 - $9,600</td>
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<td>Develop forestry plantations, research and monitor programs and economic strategies to investigate the potential of sewerage effluent plantations in arid North West Queensland (Focusing on native species). The project will investigate different species, products, technologies and markets to stimulate a sustainable, environmentally friendly industry in Northern Australia.</td>
<td>2000-01 - $15,000</td>
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<td></td>
<td>2001-02 - $9,600</td>
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<tr>
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<td></td>
<td>Capacity Building for Forest Growers</td>
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<td></td>
<td>To build the capacity of private farm forestry sector in North Queensland to deliver commercial services to farmers and to ensure training needs are met to an accredited standard. Achievement of this objective in the region will help facilitate the transition from government-funded programs towards industry and community driven projects. A phased transition is required in North Queensland due to the current fledgling and fragmented nature of the current resource. A report will be produced at the end of the</td>
<td>2001-02 - $9,600</td>
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</table>
| Natural Heritage Trust—National Landcare Program | 2000-01 - $1,719,617  
2001-02 - $1,553,991 | North West QLD | Landcare Coordination in North West Queensland  
Landcare Coordinator for Southern Gulf catchments. | 2000-01 - $68,500 |
| Upper Johnstone Catchment | Minimising Soil Loss from Upper Johnstone Grazing Lands  
To identify areas, management methods, pasture types and condition and production systems which contribute most to soil loss from the upper catchment. Use results to raise awareness in the farming community and help farmers decide on alternative land, pasture and animal management options on alternative land, pasture and animal management options where needed to achieve ecologically sustainable production systems. | North West QLD | 2000-01 - $7,600 |
| Barron River | Implementing the Barron River Integrated Catchment Management Strategy  
To effectively and efficiently implement the strategy. To foster and support significant community input. To facilitate the integration of catchment and regional strategy implementation. To plan, monitor and evaluate the progress of projects. | North West QLD | 2000-01 - $61,300 |
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<tr>
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<th>Level of funding for each project</th>
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<tr>
<td>Tully Community Implementation of Regional Strategies Component (G) Management of Sustainable Productivity and Bio Diversity (Tully Flood Plains) Project officers will support community ownership of projects - essential ingredient in implementation of Ecologically Sustainable Natural Resource Management.</td>
<td>$13,529</td>
<td>Tully</td>
<td>2000-01 - $13,529 2001-02 - $24,979</td>
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<tr>
<td>Tully Application of On-Farm Techniques for Sustaining Aquatic Habitats The aim is to develop best practice guidelines in farm techniques and alternative measures for sustaining aquatic habitat in the Tully Murray Floodplains.</td>
<td>$7,676</td>
<td>Tully</td>
<td>2000-01 - $7,676 2001-02 - $50,556</td>
<td></td>
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<tr>
<td>Lynd Riparian and Subdivisional Fencing for Spelling and Revegetation The main aim is to improve land, pasture and weed management in the upper Gulf and Burdekin catchments to reduce erosion and conserve the natural ecosystems. Better catchment management will be achieved through neighbourly and community cooperation.</td>
<td>$36,600</td>
<td>Lynd</td>
<td>2000-01 - $36,600</td>
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<tr>
<td>Dalrymple shire Strategic Planning and Implementing Improved Whole Property Management These on ground works will improve the condition of natural ecosystems and provide management options for sustainable grazing practices. Better catchment management will be achieved through: crisis action in the short term; strategy development; neighbourly cooperation and the development of a cohesive catchment management team.</td>
<td>$270,480</td>
<td>Dalrymple shire</td>
<td>2000-01 - $270,480</td>
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<tr>
<td>Dalrymple shire</td>
<td>Managing Native Pastures for Biodiversity and Production</td>
<td>To implement a system of rotational wet season spelling of pastures; to economically rehabilitate native pastures; to demonstrate and monitor mulch induced rehabilitation techniques.</td>
<td>2000-01 - $39,000</td>
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<tr>
<td>Dalrymple shire</td>
<td>Practical Grazing Management Guidelines for Dalrymple shire</td>
<td>Practical guidelines to help producers determine pasture condition; safe levels of pasture use; increased awareness and on-ground adoption of sustainable grazing management practices.</td>
<td>2000-01 - $32,000</td>
<td></td>
</tr>
<tr>
<td>Bacaldine</td>
<td>Desert Uplands Strategic Land Resource Assessment</td>
<td>To acquire land resource information for the Desert Uplands Designated Area, and can be used to address land management issues at the property level. Develop land management practices. Inform landcare groups and individual landholders of the different land types and the associated limitations and capabilities for current land uses in their area. Establish a GIS data base.</td>
<td>2000-01 - $177,750 2001-02 - $194,280</td>
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<tr>
<td>Upper Flinders River, Clarke River, Great Basalt Wall NP</td>
<td>Sustainable Rangeland Management in the Upper Catchments of Lolworth Creek, Clarke, Basalt and Flinders Rivers</td>
<td>The Headwaters Landcare Group consists of nine cattle properties covering an area of 333,000 ha of extensive grazing land. This project will address the following issues on seven of these properties: increasing density of wood plants in the savanna, declining native pasture condition on riparian and black</td>
<td>2000-01 - $23,600</td>
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<tr>
<td>Mt Fox District</td>
<td>Mt Fox Catchment and Land Management Skills</td>
<td>Mt Fox District</td>
<td>Mt Fox Catchment and Land Management Skills Development Education and Public Awareness To provide landholders in the Mt Fox district with the opportunity to further develop their catchment and land management skills. This project aims to provide landholders in the Mt Fox District with the opportunity to further develop their Catchment and Land Management skills.</td>
<td>2000-01 - $3,300</td>
</tr>
<tr>
<td>South Johnstone</td>
<td>Development of a Minimum Tillage Planting System for Sugarcane</td>
<td>South Johnstone</td>
<td>Development of a Minimum Tillage Planting System for Sugarcane To use minimum tillage planting technique to reduce soil erosion in the plant crop. The expected outcome of reduced soil erosion will have enormous rural and urban public benefits by contributing to sustainable land-use, river quality, Great Barrier Reef habitat and a healthier environment. With little modification the method should be applicable to sugarcane throughout Australia.</td>
<td>2000-01 - $9,800</td>
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<tr>
<td>Lower Herbert</td>
<td>Revegetation of Farm Drains for Sediment Control in the Lower Herbert</td>
<td>Lower Herbert</td>
<td>Revegetation of Farm Drains for Sediment Control in the Lower Herbert The planting of a range of native grasses, shrubs and trees at strategic locations along drains in order to control the movement of sediments, reduce downstream impacts and overcome landholder concerns about vegetation management in drains.</td>
<td>2000-01 - $28,900</td>
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<tr>
<td>Gulf Plains</td>
<td>2000-01 - $119,732</td>
<td>Addressing External Threats to the Ecosystems and Biodiversity of the Gulf Region</td>
<td>Recent strategic planning papers have identified two threats to the biodiversity of the Gulf Region. These threats are an increased number of tourists and new exotic weed invasions. This project will establish a “community owned” structure that mitigates threats to the biodiversity of the region. This will be achieved in two ways: 1. Provide better facilities for tourists so that their activities do not degrade sensitive ecosystems. 2. Prevent new exotic weeds establishing. Local Government Authorities will ensure the successful completion of this project by providing infrastructure, leadership and legislative power.</td>
<td>2000-01 - $119,732</td>
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<tr>
<td>Georgetown, Forsayth, Einasleigh</td>
<td>Land Use Adaptive Management—Gilbert Catchment Promote best management practices for land management in the Northern Gulf through one on one extension and an adaptive management program, in conjunction with a revolving loan fund.</td>
<td>2000-01 - $66,400 2001-02 - $55,400</td>
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<tr>
<td>Malanda</td>
<td>Co-ordination, Sustainable Farming Systems Projects and Revegetation Programs This project incorporates the services of a part-time Coordinator into a wide range of projects and activities being undertaken by two Landcare groups ('Malanda and Upper Johnstone Catchment Landcare Association' (MUJCLA) and 'North Johnstone and Lake Eacham Landcare Association' (NJLELA)) operating on the Southern Atherton Tableland. It will assist the groups to achieve their revegetation objectives in the Upper Johnstone River system including tree planting targets of 30,000 trees by September 2001 and satisfactory maintenance of areas already planted with 70,000 trees. It will also assist the implementation of a suite of five projects which are contributing to the development of sustainable farming systems for the area. An important long-term aim is to improve the ability of these groups to identify problems, plan and implement projects, and to evaluate, report and extend results.</td>
<td>2000-01 - $27,800 2001-02 - $26,800</td>
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<tr>
<td>Wet Tropics Region (Innisfail)</td>
<td>Community Access Natural Resource Management Database for the Wet Tropics Region Establishment of a community access regional database and geographic information system (GIS) layer of current &amp; completed Natural Resource Manage-</td>
<td>2000-01 - $29,000</td>
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<tr>
<td>Wet Tropics Region (Innisfail)</td>
<td>Wet Tropics NHT Regional Strategy Group Coordination</td>
<td>Further the implementation of the Wet Tropics Regional Strategy for Natural Resource Management in the current Natural Heritage Trust (NHT) system and beyond.</td>
<td>2000-01 - $79,800 2001-02 - $73,000</td>
<td></td>
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<tr>
<td>Greenvale</td>
<td>Producers Implementing Sustainable Grazing and Weed Control to Protect the Gulf Catchment</td>
<td>Improve the condition of the natural ecosystems on the Dry River and provide a weed protection buffer between the Burdekin and Gulf catchments.</td>
<td>2000-01 - $18,400</td>
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<tr>
<td>Charters Towers</td>
<td>Better Grazing Distribution in the Balfes Creek Catchment using Mine Tyres as Water Troughs</td>
<td>Installation of additional watering points in the Balfes Creek catchment to reduce patch overgrazing/degradation and even out grazing pressure, using recycled mine truck tyres as water troughs.</td>
<td>2000-01 - $53,800 2001-02 - $53,800</td>
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<tr>
<td>Wet Tropics Region (Innisfail)</td>
<td>Accelerated Community Based NRM Outcomes in the Wet Tropics Region</td>
<td>Assist the community in implementing priority components of the Wet Tropics Regional Strategy for Natural Resource Management, through a four monthly rolling schedule of individual project applications.</td>
<td>2000-01 - $100,000 2001-02 - $100,000</td>
<td></td>
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<tr>
<td>Eacham Shire</td>
<td>Assessment of Eacham Shire’s Natural Assets for Sustainable Land Management Collation of existing natural resource management and vegetation information in the Eacham Shire for incorporation into a decision support system for sustainable development, land management and biodiversity conservation.</td>
<td>2000-01 - $6,600</td>
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<tr>
<td>Towerhill and Torrens Creek Catchment</td>
<td>Producers Implementing Sustainable Grazing to improve natural Ecosystems This project aims to improve the condition of the natural ecosystems on a continuous group of twenty properties covering 576,977ha of the Towerhill and Torrens Creek catchments. This area is part of Lake Eyre catchment and will achieve the above aim by fencing watercourses, installing alternative watering points, strategic woody weed control in riparian areas and fencing to grazing capability. Implementing these sustainable grazing practices will produce substantial public benefit through long term community commitment, environmental and economic benefits.</td>
<td>2000-01 - $236,000 2001-02 - $184,500</td>
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<tr>
<td>Pentland</td>
<td>Managing the Environmentally Sensitive Areas in the Headwaters District The Headwaters Landcare Group consists of 11 North</td>
<td>2001-02 - $60,700</td>
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<td>Queensland cattle properties covering an area of 406,250 ha of open savanna grazing lands on basaltic and sandy soils. The project aims to better manage the environmentally sensitive areas by fencing to control access by livestock.</td>
<td>2001-02 - $114,200</td>
<td>Charters Towers</td>
<td>Ecologically Sustainable Management of the Birdbush Basalt Environment and Grazing Industry. The Birdbush Basalt district is one of the most viable beef producing areas in the Burdekin Rangelands. This project aims to use fencing to regulate grazing pressures on stream frontages and other favoured areas, so that vegetation in riparian areas can regenerate and water quality can improve.</td>
<td>2001-02 - $114,200</td>
</tr>
<tr>
<td>Mingela</td>
<td>Sustained Pasture Management through Development of Strategic Waterpoints in the Upper Haughton Catchment. The project proposes development of strategic water points away from the river to enable control of stock grazing along the Upper Haughton River and tributaries, and prevent erosion, run-off and subsequent sediment problems from trampled cattle pads near the river.</td>
<td>2001-02 - $22,400</td>
<td>Mingela</td>
<td>2001-02 - $22,400</td>
</tr>
<tr>
<td>Ravenswood / Mingela</td>
<td>Protection of Ravenswood District Riparian Areas, Remnant Softwood Scrubs and Heritage Sites. The project will involve a cooperative effort from 20 district landholders to use riparian fencing to control grazing pressure and limit the impact of stock on these ecosystems.</td>
<td>2001-02 - $107,480</td>
<td>Ravenswood / Mingela</td>
<td>2001-02 - $107,480</td>
</tr>
<tr>
<td>Malanda</td>
<td>Upper Johnstone Revegetation Project Stage 3 Extension</td>
<td>2001-02 - $58,600</td>
<td>Malanda</td>
<td>2001-02 - $58,600</td>
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<tr>
<td>Proven rainforest revegetation methods will be used to address serious in-stream and riparian degradation affecting water quality, ecological processes and biodiversity in the Upper Johnstone River system.</td>
<td>2001-02 - $81,800</td>
<td>Ingham</td>
<td>Implementation of the Herbert River Catchment Management Strategy Continue to implement the Herbert River Catchment Management Strategy by building partnerships with community groups to develop and manage collaborative projects that address the priority issues within the Catchment.</td>
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<td>2001-02 - $126,700</td>
<td>Atherton, Innisfail, Tully</td>
<td>Water Quality Assessment for Sustainable Agriculture This project will establish a pilot water quality monitoring system that engages landholders in assessing their impacts on water quality. It is NOT a research project and focuses strongly on facilitating on-ground changes to farm management practices.</td>
<td>2001-02 - $126,700</td>
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<td>2001-02 - $12,500</td>
<td>Macknade</td>
<td>Adopt and Restore the Macknade Wetland This is a community-based project that aims to adopt an existing degraded wetland that is invaded by para-grass and other weeds and rehabilitate it so that it will support a diversity of native plant, bird and fish life, and be self-sustaining in the long term.</td>
<td>2001-02 - $12,500</td>
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<td>2001-02 - $69,800</td>
<td>Townsville</td>
<td>Rationalisation of Dalrymple Land Resource Data The proposed project will utilise the Dalrymple dataset and generate user friendly maps of the different land types, with accompanying descriptions of the limitations and capabilities for different land uses, a risk analysis for erosion, salinity and other land deg-</td>
<td>2001-02 - $69,800</td>
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<tr>
<td>Radiation processes, and recommended management practices for sustainable land use, thereby completing a large gap in the Desert Uplands land resource database.</td>
<td>Georgetown Community Partnership</td>
<td>Georgetown</td>
<td>The project will rehabilitate degraded country in the environs of Georgetown. The Georgetown Progress Association, Etheridge Shire Council and town residents will rehabilitate these areas by replacing exotic woody weed species with native endemic tree species and stabilising the banks of the waterways with grasses.</td>
<td>2001-02 - $28,200</td>
</tr>
<tr>
<td>Natural Heritage Trust—National Rivercare Program</td>
<td>2000-01 - $822,900</td>
<td>Dalrymple Shire</td>
<td>Riparian Zone Management—Central Upper Burdekin Catchment (NRC) To improve the biodiversity of the riparian zone over 2.5M ha of the Upper Burdekin Catchment by fencing the double frontage of major watercourses in the area.</td>
<td>2000-01 - $374,200</td>
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<tr>
<td>Innisfail</td>
<td>Project Manager—Johnstone Catchment Projects Project manager to manage the implementation of the Johnstone River Catchment Strategy. To support the JRCMA Inc., integrate projects evaluate and reassess the Strategy, monitor and manage current projects.</td>
<td>2000-01 - $80,000</td>
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<tr>
<td>Barron River Catchment</td>
<td>Water Quality Action Plan for Brown River Strategy 2000-01 $33,500</td>
<td>The main aim of the project is to implement the Water Quality strategies in the Barron River Catchment Management Strategy.</td>
<td>2000-01</td>
<td>$33,500</td>
</tr>
<tr>
<td>Lagoon Creek Catchment</td>
<td>Lagoon Creek Catchment Rehabilitation and Best Management Practices 2000-01 $61,800</td>
<td>This project will entail a creek rehabilitation project combined with the adoption of best management practices for surrounding land uses in order to improve water quality, fish habitat and riverine condition in the Lagoon Creek Catchment.</td>
<td>2000-01</td>
<td>$61,800</td>
</tr>
<tr>
<td>Upper Johnstone Catchment</td>
<td>Upper Johnstone—MUJCLA support component 2000-01 $30,600</td>
<td>To provide support for the Malanda and Upper Johnstone CLA revegetation project stage 3. This will revegetate riverbank on the Upper Johnstone River.</td>
<td>2000-01</td>
<td>$30,600</td>
</tr>
<tr>
<td>Gregory Downs</td>
<td>Re-establishment of Riparian Vegetation, Gregory River 2000-01 $20,000</td>
<td>The aim of this project is to provide a demonstration to landholders of best practice techniques for re-establishing riparian vegetation on riverbanks grazed by livestocks.</td>
<td>2000-01</td>
<td>$20,000</td>
</tr>
<tr>
<td>Innisfail</td>
<td>Restoring the Riparian and Aquatic Habitats along Sweeney Creek—An Urban Water way 2000-01 - $16,100 2001-02 - $3,300</td>
<td>Restoration of the riparian and instream habitats of Sweeney Creek to encourage the return of natural aquatic flora and fauna species.</td>
<td>2000-01 - $16,100 2001-02 - $3,300</td>
<td></td>
</tr>
<tr>
<td>Mulgrave River Catchment</td>
<td>Strategic Plan for the Restoration of the Mulgrave River 2000-01 $15,000</td>
<td>Development of a strategic plan and program of river restoration works for the Mulgrave River catchment.</td>
<td>2000-01</td>
<td>$15,000</td>
</tr>
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<td>(1) Programs/Grants for the Federal Electorate of Kennedy</td>
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<tr>
<td>Ingham</td>
<td>Palm Creek Rejuvenation Stage 2 Construction of an artificial wetland in Palm Creek Ingham for urban stormwater management.</td>
<td>2000-01 $50,000</td>
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<tr>
<td>Flinders Shire</td>
<td>Flinders River Riparian Revegetation Project Flinders Shire Council seeks funding: - to repair the riparian zone of the Hughenden Reach of the Flinders River which is highly degraded through erosion - encourage native fauna back to the zone through maintenance and development of wildlife corridors - educate the community on the conservation process - to promote broad community awareness, co-operation and involvement in the project.</td>
<td>2000-01 - $75,000 2001-02 - $19,100</td>
<td></td>
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<tr>
<td>Cardwell Shire</td>
<td>Best Practice Riparian Management and Enhancement for Tully River and Tributaries Rehabilitation of priority sites within the Tully River and its tributaries using revegetation and engineering works, and conduction of a public awareness program on best practice creek bank protection for landholders.</td>
<td>2000-01 - $66,700 2001-02 - $44,443</td>
<td></td>
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<tr>
<td>Innisfail</td>
<td>Project Manager—Johnstone River Catchment Projects The Project Manager performs many roles in implementing the Johnstone River Catchment Strategy and is responsible for developing funding applications, managing projects and coordinating community activities for the Catchment Association and Landcare group.</td>
<td>2001-02 - $78,200</td>
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<tr>
<td>Innisfail</td>
<td>Accelerated Community based NRM Outcomes in the Wet Tropics—Component 2</td>
<td>This devolved grant project will assist the community in implementing priority components of the Wet Tropics Regional Strategy for Natural Resource Management.</td>
<td>2001-02 - $100,000</td>
<td></td>
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<tr>
<td>Mareeba</td>
<td>Co-ordinate the Implementation of the Barron River Integrated Catchment Management Strategy</td>
<td>This project supports the implementation of the Barron River Integrated Catchment Management (ICM) Strategy to improve the health and well being of the Barron Catchment.</td>
<td>2001-02 - $49,000</td>
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<td>South Johnstone River Stabilisation Project</td>
<td>South Johnstone</td>
<td>Revegetation of 1.150 kilometres (3 hectares) of cleared and eroding river bank with green engineering (9,000 seedlings), linking existing revegetation and Johnstone River Improvement Trust project sites, restoring a wildlife corridor and riparian buffer between World Heritage area and the Basilisk Range.</td>
<td>South Johnstone</td>
<td>2001-02 - $49,500</td>
</tr>
<tr>
<td>Daradgee</td>
<td>North Johnstone River Stabilisation and Riparian Vegetation Reinstatement</td>
<td>Serious in-stream erosion caused by over clearing is affecting the viability of natural stream functions. Problems include siltation, weed infestation, erosion, and slumping riverbanks, which are all due to the lack of natural riparian vegetation.</td>
<td>North Johnstone</td>
<td>2001-02 - $41,900</td>
</tr>
<tr>
<td>Siam Weed Eradication</td>
<td>Siam Weed Eradication was funded at Mission Beach and various properties throughout the Kennedy electorate. Black Sigatoka was funded in the Tully Region</td>
<td>Siam Weed Eradication program and Management Eradication of the disease Banana Black Sigatoka</td>
<td>Mission Beach and Tully Region</td>
<td>Siam Weed Eradication 2000-01 - $70,000 2001-02 - $70,000 Black Sigatoka 2001-02—to date $2,031,397 has been spent</td>
</tr>
<tr>
<td>Rural GST Start-up Assistance Program</td>
<td>21 seminars to develop farmer education and understanding of the GST were held in various towns throughout the electorate of Kennedy in the financial year 2000-01.</td>
<td>The Rural GST Start-Up Assistance Program, a component of the Government’s GST Start-Up Assistance initiative, was established in 1999-2000 to develop farmer education and understanding of the GST. Funding for the program was provided by the GST</td>
<td>2000-01: $153,720 2001-02: Nil</td>
<td>The Rural GST Start-Up Assistance Program funded 21 seminars in the electorate of Kennedy in the financial year 2000-01. Information on the cost of the individual seminars was</td>
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<td>These seminars followed an initial 34 seminars held in the electorate of Kennedy in the financial year 1999-2000.</td>
<td>Start-Up Assistance Office, with the program administered by AFFA. The program ran for 8 months in the lead up to the introduction of the GST in July 2000 and continued for 6 months into the financial year 2000-01. Funding for the program was provided on a State-by-State basis to State farming and training organisations, with individual expenditure in each electorate based on the average cost per seminar.</td>
<td>not collected.</td>
<td></td>
<td></td>
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<tr>
<td>Rural Partnership Program (RPP)</td>
<td>Desert Uplands; 2000-01 = $224,167 2001-02 = $138,950 Atherton Tablelands; 2000-01 = $130,344 2001-02 = nil</td>
<td>Two programs received funding. They were the Desert Uplands RPP and the Atherton Tablelands RPP. A small part of the Desert Uplands RPP is the area north of the Flinders Highway between Charters Towers and Hughenden and is contained within the Kennedy electorate. The Atherton Tablelands RPP included the Kennedy Electorate around the towns of Mareeba, Atherton and Herberton.</td>
<td>The Desert Uplands RPP aims to assist predominantly cattle producers in the region by promoting profitable production systems. The Atherton Tablelands RPP, now finalised, focused on restructuring and development in the region following the decline of the tobacco, timber and tin mining industries.</td>
<td>Total Commonwealth funding available for the Desert Uplands is $2 million. Total Commonwealth funding for the Atherton Tablelands RPP was $750,000.</td>
</tr>
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</tbody>
</table>
| Sugar Industry Assistance Program | Over $60 million has been provided overall, but a separate breakdown for the Electorate of Kennedy is not available.  
2000-01 - $36.126 M  
2001-02 - $24.146 M | The Package was comprised of income support, interest rate subsidies, replanting assistance and rural financial counselling assistance for the sugar industry. AFFA provided policy guidelines for the program and Centrelink administered expenditure. Centrelink is unable to provide a breakdown of expenditure in federal electorates. It is noted this question has also been asked of the Minister responsible for Centrelink. | N/A | N/A |
| Supermarket to Asia—New Industries Development Program | 2000-01: $23,500  
2001-02: $72,000 | Innisfail | Commercialisation of new Soil Conditioner | $95,500 |
Senator O’Brien asked the Minister for Health and Ageing, upon notice, on 18 April 2002:

1. What programs and/or grants administered by the department provide assistance to people living in the federal electorate of Kennedy.
2. What was the level of funding provided through these programs and/or grants for 2000-01 and 2001-02 financial years.
3. Where specific projects were funded: (a) what was the location of each project; (b) what was the nature of each project; and (c) what was the level of funding for each project.

Senator Patterson—The answer to the honourable senator’s question is as follows:

The Commonwealth Department of Health and Ageing administers many programmes and grants that provide assistance to people living in the federal electorate of Kennedy. Most of these programmes and grants are provided, administered and reported at a State or National level. Information on these programmes, including levels of funding, is not reported or maintained on an electorate basis and therefore is not readily available. Where electorate data could readily be reported by Departmental systems, they are shown below. Further details are available in the Department’s Annual Report and in the Portfolio Budget Statements.

Funding levels where shown are for the 2000-01 financial year. Data for the 2001-02 financial year are not yet available.

Available Electorate level funding 2000-01

The Rural Retention Program is an initiative that aims to recognise and retain long-serving general practitioners in rural and remote communities that may experience significant difficulties in retaining general practitioners. Funds totalling $184,115 were applied via the Rural Retention Program in the Kennedy electorate in the 2000-01 financial year. Other General Practice programmes that might make payments to doctors in Kennedy include Rural Other Medical Practitioners and the Rural Registrars Incentive Program. Data from these programmes are not readily obtainable at electorate level.

Available electorate-level data on Aged and Community Care expenditure in the federal electorate of Kennedy for the 2000-01 financial year are contained in the following table:

<table>
<thead>
<tr>
<th>Recurrent Expenditure 1</th>
<th>2000-01</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major Aged Care Expenditure in the Electorate of Kennedy</td>
<td>$4,406,502</td>
</tr>
<tr>
<td>Home and Community Care 2</td>
<td>$1,363,199</td>
</tr>
<tr>
<td>Community aged care packages</td>
<td>$19,162,318</td>
</tr>
</tbody>
</table>

Notes to above table:

1 Some funding is provided on a national level and cannot be broken down by State or Electorate. Expenditure attributed to the electorate in this table reflects payments made to services or grant recipients located in the electorate.

2 This amount is Commonwealth funding only. In Queensland, 64.64 % of HACC funding is provided by the Commonwealth, and the balance is provided by the State or Territory government.

3 This amount includes expenditure by the Departments of Health & Ageing and Veterans’ Affairs.

The Office of Aboriginal and Torres Strait Islander Health (OATSIH) gave funding to five organisations in the Kennedy electorate in 2000-01 for the purpose of providing health and substance misuse services, and/or social and emotional counselling services, to Aboriginal and Torres Strait Islander peoples. Details are:
OATSIH also has a capital works programme and several works in progress relate to this electorate. The following payment was made from that capital works program in 2000-01:

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Town</th>
<th>Amount incl. GST ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mamu Medical Service Ltd</td>
<td>Innisfail</td>
<td>762,096.50</td>
</tr>
<tr>
<td>Mulungu Aboriginal Corp. Medical Centre</td>
<td>Mareeba</td>
<td>572,306.90</td>
</tr>
<tr>
<td>Injilinji Corp. for Children and Youth Services</td>
<td>Mt Isa</td>
<td>1,063,752.80</td>
</tr>
<tr>
<td>KASH Aboriginal Corp.</td>
<td>Mt Isa</td>
<td>329,858.10</td>
</tr>
<tr>
<td>Karboyick Larkinjar Aboriginal Corp. for Health</td>
<td>Normanton</td>
<td>249,049.90</td>
</tr>
</tbody>
</table>

This was for the purpose of appointing a project manager for capital construction.

**Defence: Projects**

(Question No. 329)

**Senator Chris Evans** asked the Minister for Defence, upon notice, on 16 May 2002:

On 8 May 2002, the Secretary of Defence indicated that the senior leadership in the department get a monthly briefing on the top 20 capital projects and others of ‘significant concern’: can a copy of these briefings for each of the months in 2002 to date be provided.

**Senator Hill**—The answer to the honourable senator’s question is as follows:

These reports contain sensitive information and assessments relating to progress with Defence projects. They are provided as advice to me from Defence in my capacity as the Minister for Defence, and as a result, I do not intend to release these documents.

**Australian Defence Force: Pensions**

(Question No. 346)

**Senator Chris Evans** asked the Minister representing the Minister Assisting the Minister for Defence, upon notice, on 27 May 2002:

With reference to ex-service personnel pensions, where the person has passed away:

1. What rules govern who is eligible to continue to receive the pension (or part thereof); that is, spouse and/or children or other beneficiaries.
2. Is access to the pension entirely at the discretion of the ex-service person, for example, as set out in a will.
3. Is there any discretion on the part of Defence as to who has access to the pension.
4. In the case of a woman who was married to an ex-service person for 25 years and has been denied access to the pension because they separated prior to his death, what rules apply in terms of determining who has access to the pension.

**Senator Hill**—The answer to the honourable senator’s questions is as follows:

1. The following Commonwealth legislation governs eligibility for an ex-service pension:
   - Defence Force Retirement Benefits Act 1948;
   - Defence Force Retirement and Death Benefits Act 1973; and
2. No.
3. No.
4. Where a recipient member (that is a pensioner) dies, a reversionary benefit becomes payable to an eligible spouse. A spouse who is not an eligible spouse would not be entitled to a reversionary benefit. Eligibility rules require there to be a marital relationship, as defined in the rules, at the time of the member’s death. In addition, there may be relationship duration and dependency tests.
applied. There would be an additional child or orphan benefit payable if there are eligible children. Where there is no eligible spouse or child, no reversionary benefit is payable.

**Australian Defence Force: Non-Australian Applicants**

(Question No. 347)

Senator Chris Evans asked the Minister representing the Minister Assisting the Minister for Defence, upon notice, on 27 May 2002:

(1) Can a non-citizen ever join the Australian Defence Force (ADF); if so: (a) under what circumstances; and (b) do the same considerations apply in relation to each of the services; if not, can a non-citizen apply to join the ADF and subsequently apply for citizenship, pending a successful application.

(2) Is there any basis in Australian immigration law or immigration or defence policy for recognising non-Australian applicants to the ADF, successful or otherwise, as being in a special category or subject to particular considerations when applying for Australian citizenship.

(3) Do any of the services receive or accept people who have served in the defence forces of other countries; that is, lateral recruits.

(4) What are the labour agreement and employer nomination schemes (or similarly-titled schemes) that relate to special entry into Australia of prospective or actual recruits to the ADF.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) Yes. (a) If a permanent resident. (b) Yes.

(2) No.

(3) Yes.

(4) Navy - Royal Australian Navy Permanent Entry Labour Agreement.

Army - Australian Army Permanent Entry Labour Agreement.

Air Force - Royal Australian Air Force Permanent Entry Labour Agreement.