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

QUESTIONS WITHOUT NOTICE
Nuclear Energy: Lucas Heights Reactor

Senator FORSHAW (2.01 p.m.)—My question is directed to Senator Alston, the Minister representing the Minister for Science. In light of yesterday’s acknowledgment of the seriousness of the current investigation into the safety of the Lucas Heights reactor site, what credence does the minister now give to ANSTO’s application for a site licence in 1999, which categorically stated:

No seismically active geological structures have been identified and there are no major faults within 35km of Lucas Heights Science and Technology Centre.

Can the minister advise precisely what drilling or other site analysis was undertaken by ANSTO preparatory to its application for a site licence and the subsequent granting of this licence by ARPANSA? Has the minister sought to establish whether any of the other claims in the 1999 ANSTO site licence application may now need correction?

Senator ALSTON—Obviously these are important issues, but what is also equally obvious, I think, is that the opposition is going down the usual path of trying to build up community hysteria. We all remember the good old days of Gareth Evans saying one thing publicly and another privately, and that seems to continue. So no lessons seem to have been learned in terms of addressing the national interest.

Clearly, when ANSTO undertook the original assessment, their brief was to do their very best to identify any problems. The finding that they handed down at the time, one assumes, was provided in all good faith after there had been all necessary and exhaustive scientific tests conducted. That is not a perfection test. In other words, in the real world you can never be absolutely sure of anything. I have not seen the report but one assumes that they were doing their best, on the evidence available to them, to make a considered judgment. To the extent that Senator Forshaw quoted them as saying there were ‘no major faults’ identified, that may still well be the case.

Once the inspection of the actual excavations at the site commenced, ANSTO noted a possible fault that could be of significance from a seismic perspective. It is not as if they categorically ruled out any possible seismic problem in the first instance and they are categorically saying there is a seismic problem now. They did their best to take all the necessary steps to be satisfied that it was safe but now, presumably with an abundance of caution—and once they actually got onto the site inspection area—they have identified a possible fault that could be of significance. To me it is only prudent behaviour to err on the side of caution and to conduct further inquiries, and that is the process that is being gone through now. It is entirely premature and quite unhelpful to a sensible and non-emotional assessment of the matter for the Labor Party to be scaremongering instead of waiting until the report is handed down.

Senator FORSHAW—Madam President, I ask a supplementary question. I remind the minister that there were actually calls for more detailed seismic investigations well before the licence was actually granted. Given the statements by the director of ARPANSA’s regulatory branch that the discovery of the fault line was a ‘setback’, an ‘inconvenience’ and a ‘disappointment’, how does the minister reconcile such statements with the supposed independence of the regulatory authority which monitors ANSTO’s operations?

Senator ALSTON—I do not think in any shape or form ANSTO was trying to preempt the outcome of the further inquiries. All it was doing was stating the blindingly obvious.

Senator Forshaw—Madam President, on a point of order: the minister either did not listen to the question or did not understand it. The statements were made by ARPANSA—by the director of the regulatory branch of ARPANSA, Mr Don McNab. They were not made by ANSTO at all. Can you answer that?
The PRESIDENT—There is no point of order.

Senator ALSTON—I think the facts still remain. There is no attempt to pre-empt the outcome by simply saying that it is a disappointment, because that is the fact. Otherwise you would be getting on with the process right now rather than having ARPANSA conduct this further inquiry. ARPANSA is entitled to say it is unfortunate that this setback occurs but that does not in any shape or form render the process improper or invalid.

Honourable senators interjecting—

The PRESIDENT—There should not be a discussion across the chamber.

Senator ALSTON—You are telling me that ARPANSA said it, and I am proceeding on that basis. ARPANSA is entitled to say that it is a disappointment, but it is not a pre-emption of the outcome because they will take full account of international experience.

(Time expired)

Aviation: Sydney Airport Corporation Ltd Sale

Senator PAYNE (2.06 p.m.)—My question without notice is to Senator Minchin, the Minister for Finance and Administration. Will the minister inform the Senate of the economic benefits that will flow from the sale of Sydney airport, including the reduction of Commonwealth debt? Is the minister aware of any alternative policies on privatisation?

Senator MINCHIN—I thank Senator Payne for her question and acknowledge her very keen interest in Sydney airport and its impact on the Sydney community. As the Senate knows, in March last year we announced our intention to sell the Sydney Airport Corporation by way of 100 per cent trade sale. The sale process was, as you know, interrupted by the tragic events of September 11 and the collapse of Ansett and was suspended for a period but resumed in March. It was my great pleasure to announce in Sydney this morning, with Deputy Prime Minister Anderson, the successful sale of the Sydney Airport Corporation Ltd to the Southern Cross Airports Corporation. The airport will be sold to the Southern Cross consortium for $5,588,000,000. This price reflects very full and fair value for Sydney airport as a world-class international facility and is the government’s 18th successful airport sale.

The sale price of $5.6 billion represents the biggest government trade sale in Australia’s history and is also the world’s largest ever airport trade sale. It is a great outcome for the Commonwealth, for the Australian aviation sector, for consumers and for taxpayers. The net proceeds, after paying off SACL debt of $4.2 billion, will be used to pay off Commonwealth debt. We have already paid off $61 billion of Labor’s debt and we will now pay off another $4.2 billion. The public debt interest savings every year from this sale will be $250 million. That will, of course, help ease the pressure on interest rates and will enable us to spend valuable taxpayers’ funds on higher priority areas than paying interest.

Southern Cross was evaluated as the best bid of the three, according to our comprehensive sale objectives. Sydney airport will, of course, continue to be subject to the legislative and regulatory controls of the Commonwealth. The curfew will continue to apply from 11 p.m. to 6 a.m. The long-term operating plan will continue to apply. Preservation of access for regional airlines will be maintained. No regional airline will be forced away from Sydney airport as a result of this sale. Under the sale conditions, and most importantly, Southern Cross will continue to ensure fair and equitable treatment for all of SACL’s very strong, very good workforce, including the preservation of accrued entitlements.

Selling the airport has been an essential part of our overall privatisation program. There is no doubt that Australia’s airports are much more competitive now and are providing a much better service to Australian and international customers. I think this airport privatisation experience does show quite conclusively that governments do not need to own assets like airports to effectively regulate, whether it is aviation or any other sector of the economy. In that vein, we do welcome Labor’s support for the sale of Sydney airport, but I must say it makes their opposition to the further sale of Telstra even more ri-
Service standards at Australian airports are guaranteed through regulation and legislation, as are telecommunication service standards. The government’s conflict of interest as the majority Telstra shareholder and the regulator is untenable, and increasingly recognised as such. The Sydney airport privatisation has been an outstanding privatisation success and our next responsibility to Australian taxpayers is to sell the rest of Telstra.

**Health: Intergenerational Report**

Senator CROWLEY (2.10 p.m.)—My question is to Senator Patterson, the Minister for Health and Ageing. Is the minister aware of a study by two leading researchers from the Australian National University critical of the government’s so-called landmark Intergenerational Report and its excuses for savage cuts to the PBS? How can the minister and the government’s new medical specialist, Peter Costello, make bold assertions about the PBS costing being anywhere between $60 million and $160 million by 2040, when according to the ANU study there is:

> ... a very high degree of uncertainty attached to the projection of future usage of drugs through the PBS. The IGR provides a misleading degree of certainty about this.

When will the government stop misleading the Australian people about the cost of the PBS using dodgy figures from what has turned out to be a very shonky Intergenerational Report?

Senator PATTERSON—Roll on the end of the week, Madam President! My question would be, to those on the other side: when will the Labor Party stop peddling the myths that they are peddling about the PBS? When will they actually front up to the fact that they cannot engage in a policy, which they had from 1983 to 1996, of borrowing money from overseas to pay for the PBS—which is exactly what they did. I have to say to you I am thrilled that we have an Intergenerational Report. I got into politics because I was teaching in gerontology and I was very concerned about the issue of an ageing population and its parents. I never heard senators on the other side speaking about it, but over and over in the chamber I talked about the issue of an ageing population and its issues.

It took this government to actually put into the Charter of Budget Honesty the requirement that every five years a government will report, in a Treasury report, on what will happen—if you keep the levers, if you keep the policies in place—to various parts of the portfolios and what will be the expenses. People can argue around the edges about the assumptions underlying that, but we know that there are going to be ever increasing demands on our health system. In fact, some people have argued that we could consume all that we produce, all of our GDP, on health alone and still not have enough money. Somehow we have to come to a decision—as a community, as a nation—on how much of our national budget will we spend on health and how much of our personal budget will we spend on health.

The Labor Party has been running around perpetuating all sorts of myths about the PBS. But the fact is that the PBS needs to be sustainable for me to be able to ensure, as health minister, that I have the ability to be able to put onto the PBS medications which will cost thousands of dollars. We could take the easy line the Labor Party took: borrow money from the next generation. But the whole importance of the Intergenerational Report was to indicate, if we continue to go down the line Labor was going down, the problems that we would inherit and the difficulties we would pass on to the next generation. I have no intention of doing that. Those of us who grew up as baby boomers grew up in an Australia which was prosperous, which gave us all the opportunities we required. That is the sort of Australia we should be passing on to the next generation, not one bogged down with the debt that the Labor Party racked up. We have paid back $61 billion of that debt and now will not have the next generation subjected to the sort of interest rates that they would have been subjected to under Labor.

Senator CROWLEY—Madam President, I ask a supplementary question. I am not sure about relevance in answers, but that one just about touched on nothing. I would remind
the minister that it is no Labor Party myth we are talking about here but a report from two leading researchers from the Australian National University. Is the minister aware that according to the ANU study the Intergenerational Report ‘paints an unnecessarily grim economic picture’? Does this mean that even the government has lost faith in its so-called good economic management or has the government deliberately painted a picture of gloom to justify savage cuts to the PBS and other essential programs, particularly damaging to the poor and sick in this country?

Senator Patterson—Yet another myth from Senator Crowley: we are not cutting spending out of the PBS. I will repeat it: we are not cutting spending out of the PBS. We will be spending the same amount on the PBS this year as we spent last year and in the out years, more money. We will not be cutting money out of the PBS. Let me reiterate: we will not be cutting funding out of the PBS. What we are doing is trying to curb the growth of the PBS because it is not sustainable. The Labor Party went on about Celebrex all day yesterday. Are they going to take Celebrex off? What are they going to do? The Australian public would like to know what they are going to do. All they can do is oppose the measures that we put in place. We propose an increase in the copayment but also a range of other measures to actually reduce the escalating rate of growth in the PBS, which is not sustainable.

Workplace Relations: Small Business

Senator Knowles (2.16 p.m.)—My question is to the Minister representing the Minister for Small Business and Tourism, Senator Abetz. Will the minister outline for the Senate recent activities by trade unions that threaten the viability of small businesses that threaten the viability of small businesses in Australia and would he also outline whether these demands of the trade unions also threaten jobs of Australian workers in small business?

Senator Abetz—I thank Senator Knowles for her question and acknowledge her excellent career in small business prior to entering the parliament. The trade union movement and Labor seem hell-bent on destroying small business in Australia. There is no other way to describe their behaviour. In so doing they threaten the livelihood of the very people they so falsely claim to represent—namely, the Australian workers. We now face moves by the unions to extract $500 per year from non-union members, that is, the 75 per cent of workers that have made a deliberate choice not to belong to a trade union. They know that they cannot convince Australian workers to join a union, so instead of listening to the real needs of workers they just slug them with an employment tax. That way the unions can get taxation without representation.

Senator Cook—A court made that decision.

Senator George Campbell—Where do you come from—Middle Earth?

The President—Order! Senator Cook and Senator George Campbell, you are both out of order shouting across the chamber on this matter. You can debate it after question time.

Senator Abetz—We must understand, of course, that they are here to do the bidding of the trade union movement. Why be responsive to workers if you can grab their money without having to be elected by them? As the New South Wales Labor Premier described it, ‘This is nothing more than a tax on non-union members and should not go ahead.’ Where does the weak leadership of the federal opposition stand on this? Silence. At least the Labor Premier of New South Wales has had the courage to come out and say, ‘It is a wrong decision and should not go ahead.’ But where is the leadership of the federal opposition on this? Silence. At least the Labor Premier of New South Wales has had the courage to come out and say, ‘It is a wrong decision and should not go ahead.’ But where is the leadership of the federal opposition on this? Absolutely nowhere, because when it comes to the welfare of small business and Australian workers or the trade union movement these people over there will always choose in favour of the trade union movement. The choice now is pay $500 to remain free or pay $250 per year to join the union. How surprising that this stunt should come from the Victorian unions represented by Senator Kim Carr—but thank goodness his namesake, Premier Carr, has seen the light and has rejected this outrageous proposal.
We have also had in another area Labor’s unfair dismissal legislation. It was rightly called unfair, because it was unfair to small business and unfair to the people who wanted jobs. Now we have the suggestion that there be a limit on overtime. That is the proposal of the ALP and the ACTU, but you simply ask: in small business, if the workers cannot do the overtime, who is going to be doing the overtime? The small business proprietor. Ms Burrow, who is the ACTU President, may like to reflect on the fact that the growth in small business and growth in employment in small business has been in the area of women. Women have been the driving force of growth of small business. As a result, Ms Burrow is now on record as wanting these women to work the extra hours, if they are small business proprietors, and be denied the possibility of earning that extra bit of money in overtime if they are an employee to pay for the car, school fees or indeed a holiday. The unions still dominate the Australian Labor Party and if Mr Simon Crean wants reform in the Australian Labor Party to modernise it I suggest that he modernise his policy on small business.

Health: Pharmaceutical Benefits Scheme

Senator JACINTA COLLINS (2.21 p.m.)—My question is to Senator Patterson, Minister for Health and Ageing. I refer again to this pamphlet on changes to the PBS copayments and safety net, which the minister explained yesterday as communicating the government’s proposals in a correct form. Can the minister confirm that the pamphlet says nothing about proposals but informs recipients that copayments will rise and that the PBS safety net limits will also be increased? Further, why does the pamphlet assure all concession card holders that they will not have to pay more than $239 a year when those who—for good reason—need to take brand premium drugs may have to pay much more than this amount? Isn’t the minister’s pamphlet not only premature but also misleading and a total waste of taxpayers’ money?

Senator PATTERSON—I do not know where Senator Collins was yesterday—or maybe she has a short-term memory deficit—but she asked me the same question yesterday and I will give her the same answer today. The reason—

Honourable senators interjecting—

The PRESIDENT—Order! I call the Senate to order!

Senator PATTERSON—Their questions committee must be desperate that they actually ask the same question two days in a row, and I would suggest that they go and get a new questions committee and get some decent questions. The issue about the pamphlet was that I believed it was important for people to be made aware, and as I said yesterday—

Senator Jacinta Collins—Why are you misleading on the safety net?

The PRESIDENT—Order! The question has been asked and the minister has the call to answer it. It is possible to ask a supplementary question. It is possible to debate this matter after question time.

Senator PATTERSON—Senator Collins keeps shouting out why am I misleading on the safety net. I am not and it was not misleading in the brochure. The issue of brand premiums has been the same under the proposed measures, under the measures we have had since 1996 and under the Labor Party. There are also medications on the PBS which are therapeutically equivalent, and if we had believed the Labor Party we would have had people dying in the street when we brought in more therapeutically equivalent generic medications. We have to make sure, unlike Labor, that the PBS is sustainable.

As I said yesterday, I was under the misapprehension—how foolish was I—that the Labor Party, the Democrats, the Greens and the Independents would behave in a responsible way and agree with our budget, as we did when the Labor Party put up the copayments for non-concessional holders by 420 per cent and borrowed money from overseas to pay for it, sold Qantas and spent the money, sold the Commonwealth Bank and spent the money and still racked up more and more debt. We could have played merry hell with the $61 billion we have spent in paying back debt—in paying back the Labor debt and the interest on their debt. We could have had more for people, for the sick and poor in
this country, if we had not inherited the debt that Labor left us, which was totally irresponsible. For them to get up and climb the heights of hypocrisy and talk to us about the PBS and about management of the PBS is outrageous.

Senator JACINTA COLLINS—I ask a supplementary question, Madam President. Can the minister provide an assurance that there is never a need for doctors to prescribe drugs other than the least expensive alternative? If the minister cannot provide such an assurance, isn’t she admitting that the safety net thresholds will not apply to everyone and that her pamphlet and also the *Age Pension News*, for that matter, are inaccurate and misleading?

Senator PATTERSON—The policy regarding brand premiums was the same under Labor as it is under us, and there has been no change.

**General Agreement on Trade in Services**

Senator CHERRY (2.25 p.m.)—My question is to Senator Hill, the Minister representing the Minister for Trade, and relates to Australia’s negotiating position on the proposed new General Agreement on Trade in Services. The minister would be aware that all countries including Australia must lodge by 30 June their requests for access to the services markets of other countries knowing that countries will expect similar access in return. Is the minister aware that Canada’s Minister for International Trade, Pierre Pettigrew, announced last week that Canada would be publicly releasing next March all of its requests and all the offers that it makes to countries? Will the government give a commitment to release to the Australian public all of its requests and all the offers that it makes to countries? Will the government give a commitment to release to the Australian public all of its requests and engage in a public debate before formal offers are made, recognising the potential impact this negotiation could have on public health, education, water and environmental services, and on the regulation of investment and services generally?

Senator HILL—I thought if I got a question from the Democrats today it might be on a pre-emptive strike. Nevertheless, I cannot offer much advice to the Democrats on that matter, though I thought I might offer Senator Abetz as a conciliator. In relation to the question that was asked, it is true that requests under the General Agreement on Trade in Services are due at the end of this month and are to be responded to by, I think, the end of March of next year. The approach of the Australian government is not dissimilar to that of Canada. We are committed to transparency within the agreement and, for that reason, we will be releasing at least some part of Australia’s request to other countries. However, some other parts will have aspects that are commercial-in-confidence and we may not be in a position to disclose that information. But where possible it would be our wish to disclose that information in order to achieve transparency and to contribute to the community debate that Senator Cherry has spoken about.

It is the view of the government that there are great opportunities for our country in this process. We believe a more open, predictable and transparent international trading environment for services will give us new opportunities in education, tourism, financial services, telecommunications, legal services and other professional services sectors. Therefore, we would very much wish to see this process be successful. Also within the spirit of the last part of Senator Cherry’s question, I can inform the Senate that the government is, however, aware that this must not be at a cost, for example, to standards within Australia. Therefore, we have made no commitments on audiovisual services and only limited commitments on health services and various positions in relation to other services. Within that restraint, if we are able to utilise this process to achieve a more open market, that has to be to the economic benefit of Australia and therefore a flow-on benefit to all Australians.

Senator CHERRY—Madam President, I ask a supplementary question. Is the minister aware that the leaked draft request from the European Union to Australia included demands to open up public water supply to foreign investment and competition, privatise the rest of Telstra, remove many regulatory rules on professions, financial services and broadcasting, and open up large parts of health and education to foreign investment.
and competition? Can the minister assure the Senate that the Australian government will not be making similar requests of other countries and will not be agreeing to such requests when offers are made next March?

Senator HILL—On the basis of recent leaks, I think all I can say in answer to the question is that we will not be approaching it in an autocratic way.

Superannuation: Commercial Nominees of Australia Ltd

Senator SHERRY (2.30 p.m.)—My question is directed to Senator Coonan, the Assistant Treasurer. Does the Assistant Treasurer recall that, on 20 June, in defending her government’s mean-spirited and incomplete Commercial Nominees superannuation compensation package, she said:

The Wallis report recommended that compensation should be 80c, and in fact this government in a generous way has put that up to 90c.

Can the Assistant Treasurer confirm that the Superannuation Industry (Supervision) Act, contrary to the recommendation of the Wallis report, actually allows for 100 per cent compensation? Given that the Wallis recommendations were never made into law, that the SIS Act has always provided for 100 per cent compensation and that CNAL victims quite rightly expect 100 per cent compensation, how can the government claim to be generous in providing 90 per cent compensation?

Senator COONAN—Thank you, Senator Sherry, for the question. The SIS Act does allow for the minister’s discretion as to what is determined as the eligible loss and the amount of the assistance provided, should assistance be granted. In my press release—and, I think, in answer to a previous question in this place—I said that section 232 of the SIS Act very clearly says that I cannot grant assistance in excess of the amount I determine to be the eligible loss and the SIS Act does not prohibit me from granting less than the determined eligible loss. The government agreed to the financial sector inquiry recommendation that any grant be limited to 80 per cent of the eligible loss. The government, as you know, has recently agreed to change this policy to lift the limit to 90c. Despite the amount of discretion allowed to a decision maker under part 23 of the SIS Act, the government has always been open—and indeed transparent—as to the likely amount that would be paid by way of financial assistance.

The limiting of financial assistance to 90 per cent of the determined eligible loss ensures consistency both with international practice and other government assistance programs. Financial assistance schemes operating overseas generally limit the amount paid to either a percentage amount or a monetary ceiling. The United Kingdom Payments Compensation Board limits payments of assistance to 90c of the loss suffered—except where a person is within 10 years of retirement, where 100 per cent is paid. Assistance paid to claimants in the HIH assistance scheme is in general 90 per cent of the claimed loss, with the exception of certain claims. Limiting assistance to 90 per cent limits the moral hazard position of the government. The government does not explicitly guarantee superannuation savings, as Senator Sherry would know. By paying a reduced amount of financial assistance, it ensures that trustees and fund members shoulder at least some responsibility for allowing such losses to occur.

Senator Sherry has previously made statements about the ALP’s lack of support for paying only a proportion of the loss. These statements were generally in response to the announcement of our response to the financial sector inquiry report. But the provisions under the SIS Act which allow for a grant of financial assistance to be not greater than the amount of the eligible loss is an unamended part of the original SIS Act introduced by the Labor government in 1993. The explanatory memorandum to the 1993 SIS bill stated that the provision was self-explanatory, yet it seems that, many years later, I have to explain it to Senator Sherry again. I agree with the explanatory memorandum: the provision is self-explanatory; it is very clear that less than 100 per cent of financial assistance can be granted. Senator Sherry, if you had cast back your mind, you would have known the answer to this question before you even asked it.

Senator SHERRY—Madam President, I ask a supplementary question. The minister
is correct: it was a Labor provision that provided for 100 per cent compensation. Part of my supplementary question goes to why she proclaimed 90 per cent compensation, not 100 per cent compensation. On the issue of the HIH matter, which the Assistant Treasurer has touched on, can she confirm that the HIH scheme offers 100 per cent compensation in the vast majority of cases affecting individuals and non-profit organisations? Why should lost retirement savings be treated any differently from insurance claims?

Senator COONAN—I previously said that the payment of 90c is broadly consistent with the HIH scheme. I have already referred to the provisions of the SIS Act in some considerable detail, and I do not intend to repeat my answer. But I can say that it would be diverting, to say the least, if we actually ever heard from the ALP any well thought out superannuation policy on any measure at all, including the safety of superannuation. We had Senator Sherry with his blank piece of paper; and we had Ms Macklin promising a review of all their their policies, including superannuation. All we have had is a knee-jerk reaction—their being dictated to by their union masters. We have 60 per cent of some sort of superannuation policy. All we know is that the unions want to put up the superannuation guarantee to 15 per cent. They want to decouple any connection with work. And this government has a very well thought out and comprehensive policy.

(Time expired)

Environment: Water Management

Senator HARRIS (2.36 p.m.)—My question is addressed to Senator Hill, the Minister representing the Minister for the Environment. Last Thursday the Mareeba Dimbulah Water Supply Scheme met with senior staff from the Queensland Department of Natural Resources and Mines, and Treasury, to progress their ongoing dispute in relation to water supplies. The key element of their argument has been that the Water Reform Unit should deal with water that is released from Tinaroo Dam for the purpose of power generation at the Barron Gorge hydro-electric station. The Queensland government in the past has made commitments to the sugar industry in terms of additional water supplies. It should allow costs associated with the scheme to be further spread across all users. Currently, irrigators pay for approximately 96 per cent of the scheme. The consequence of this is that the $700,000 revenue that SunWater receives from water sales does not carry any of the cost burden of the scheme. Minister, is this in flagrant breach of the intended water reform?

(Time expired)

Senator HILL—Senator Harris gave me a heads-up on this question as we entered the chamber, but it has not been a great deal of help. It is still a very complicated and confusing issue. I think what is occurring is that the Queensland government is taking revenue from the hydro but not passing that benefit on to the agricultural consumers of the water. Thus, under the water reform process, it is true that the consumer is supposed to pay a real price, because subsidies encourage unsustainable use, but it is not designed to require an unfair price to be paid. If the Queensland government is getting a benefit along the road, then presumably that should be passed on to the consumer.

Nothing would surprise me in this area, I have to say, in relation to the Queensland government. It has been wholly irresponsible in relation to water management for a long period of time. Mr Beattie has never been prepared to adequately stand up and recognise the national responsibility and to play his part in it to ensure more sustainable use of Australia’s very valuable and very precious water supplies. Nevertheless, in case I have misinterpreted the question, I will seek further advice on it from Mr Truss, as the agriculture minister, Dr Kemp, as the environment minister, and also the Treasurer, who is responsible for the state payments under the COAG water agreement. If they can add anything that is useful to the answer I have given, I will be pleased to pass that on to Senator Harris.

Senator HARRIS—Madam President, I ask a supplementary question. I make no apologies for the complexities. The Mareeba Dimbulah Water Supply Scheme irrigators are currently subsidising the hydro power sector. Mareeba Dimbulah Water Supply Scheme have raised this matter with the National Competition Council previously—that
is, well prior to the payments to the states under the third tranche—with no effective action having been taken. Will the minister investigate if the actions of the Queensland government process are in conflict with the Commonwealth’s national competition policy?

Senator HILL—Yes, I will follow that up. It will not surprise me if the Queensland government is in breach of the principles, because they have been in so many other instances. I remember the dam in relation to St George was one example. Queensland mouths adherence to the COAG plan, to which it has committed itself, but in practice often does not follow the rules. I will check whether this is another instance of that and report the outcome to Senator Harris.

Superannuation: Commercial Nominees of Australia Ltd

Senator HOGG (2.37 p.m.)—My question is addressed to Senator Coonan, the Assistant Treasurer and Minister for Revenue. Can the minister confirm that, according to her own press release of 14 May 2002, only 181 applications of the 475 funds affected by the collapse of Commercial Nominees have been dealt with? How long will the minister take to complete the outstanding cases and how long will the minister take in setting up the compensation payment mechanism? When will those affected finally be able to move on with their lives, after more than a year of watching this government repeatedly drop the ball and then stonewall them?

Senator COONAN—Thank you, Senator Hogg, for the question, but it is founded on a total misconception about what is required under the act to evaluate whether there have been some losses that can be compensated in respect of the loss of funds in superannuation. On a previous occasion I said at some length that the process involves, first of all, a lengthy investigation because of the disarray found in the books of Commercial Nominees. The lengthy investigation involves a reconstruction of the books and a reconstruction of the accounts to determine exactly whether there has been either fraud or theft. The scheme does not compensate people for bad investments or even negligent investments and so it is necessary for there to be an independent investigation to establish whether or not there has been fraud or theft that enables a decision to be made under the act. Senator Hogg seems to be oblivious to the role that a regulator plays in this matter. Matters only come to me after these investigations are determined. I then have to ask APRA for their advice and then I can make the determinations.

In respect of the Enhanced Cash Management Trust, I am happy to say that my determinations in that matter are almost completed and I expect to be in a position where that matter can be finalised within a few days. With respect to any other investors affected under Commercial Nominees and the very unfortunate situation that arose there, I will not pre-empt when the investigations are going to be complete but I would expect that, once they are, there will be applications made in respect of those so that people can get their compensation, as indeed the ones from the Enhanced Cash Management Trust have. Whilst the process might seem rather lengthy, obviously you have to take these books as you find them, and a lengthy period of reconstruction was necessary in order to be able to assist the people who have been impacted very badly by this matter. It is a situation which is certainly of concern to me and to the government. Since I came into this portfolio, I have been pursuing this matter constantly so that at least in respect of the Enhanced Cash Management Trust—which was more advanced in the investigation stage than the other funds—I could actually get on and do all that. I could have waited until the whole lot were finished and done them altogether; I did not think that was appropriate.

Senator Conroy interjecting—

The PRESIDENT—Senator Conroy, your behaviour is unacceptable and you are in breach of the standing orders.

Senator COONAN—I thought it was appropriate that as soon as possible the people who were badly impacted by this matter could get their payments. That is the way I am going to proceed—as quickly as I can—with anyone else who has been affected.
Senator HOGG—Madam President, I have a supplementary question. The minister did not really address the issue of how long it will take to complete the outstanding cases. That is an issue of major importance to the people who have suffered as a result of the collapse of Commercial Nominees. Can the minister explain why, when superannuation funds themselves are prepared to pay a levy to underwrite fund losses incurred through theft and fraud, she is limiting compensation to victims of Commercial Nominees to 90 per cent of their losses—and much less if interest was included?

Senator COONAN—Thank you, Senator Hogg, for the supplementary question. I thought I had already explained in some detail, in answer to an earlier question, that the 90 per cent was reached not as some sort of arbitrary figure but as an increase on what had previously been determined, the 80 per cent. It seemed that it was a more appropriate way to exercise that discretion to pay 90 per cent but not to create such a moral hazard that there was never, under any circumstances, any risk to anyone who ever invested in a superannuation fund. It is not the case that there is, and indeed I am quite sure that those sitting opposite in this chamber would not expect there to be, an absolute guarantee of all superannuation money invested in this country. It is simply not appropriate to do that. In circumstances where there has been fraud and theft it is appropriate that a proper judgment be made based on the report that has been received. That is exactly what I have done. (Time expired)

Health: Assisted Reproductive Technology Regulation

Senator SANDY MACDONALD (2.47 p.m.)—My question is to the Minister for Health, Senator Patterson. Minister, have you seen media reports of calls by the chairman of Melbourne IVF, Dr John McBain, for women to be paid between $10,000 and $30,000 to donate their eggs for IVF procedures? Is the minister aware of any plans to facilitate a ‘trade in motherhood’ by legalising the sale of human tissue in this way?

Senator PATTERSON—Thank you very much for your question, Senator Macdonald. I am aware of recent calls in one newspaper from a particular doctor in Melbourne that payments be made to women to encourage donation of eggs for IVF programs. The regulation of assisted reproductive technology and IVF procedures is the responsibility of the states and territories. Each state and territory has its own legislation to do this. In Victoria, under the Infertility Treatment Act 1995, it is an offence to offer to give a payment, reward, benefit or advantage to a person for donating a gamete, zygote or embryo.

At the national level, the National Health and Medical Research Council, the NHMRC, concerns itself with the ethical issues surrounding assisted reproduction and IVF. In 1996, the NHMRC issued its Ethical guidelines on assisted reproductive technology. These guidelines set the standards for clinical practice in assisted reproductive technology in Australia. The guidelines contain a list of prohibited and unacceptable practices, which include the paying of donors of gametes or embryos beyond reasonable expenses. Such expenses would be minor ones such as travelling costs or parking fees. Further, the NHMRC guidelines stipulate quite clearly that informed decision making is essential, including for donors of gametes and embryos, in order for people to consent to participate in a particular activity.

In 1999, the NHMRC issued its national statement on ethical conduct in research involving humans. This statement sets out what is involved in obtaining consent. Obtaining consent should involve the provision of detailed information to potential participants and must not be subject to any coercion or to any inducement or influence that could impair the voluntary nature of the participation of the individuals concerned. The NHMRC describes inducement as involving the offer of excessive and inappropriate reward in order to obtain compliance in a particular activity. Such inducements compromise the ability of a potential donor to make a free choice. Large or excessive payments to donors would be seen as an inducement.

I am not aware of any plans to set up a so-called trade in motherhood by legalising the sale of human tissue; in fact, on 5 April this year the Council of Australian Governments, COAG, decided that commercial trading in
human sperm, eggs or embryos should not be allowed. COAG members issued a communiqué after the meeting on 5 April 2002. They stated that the offer of what they described as ‘valuable consideration’ to any person for donation of his or her gametes or embryos or the gametes or embryos of any other person is an unacceptable practice and should be prohibited in Australia. ‘Valuable consideration’ includes a discount or priority in the provision of a service, but not the disbursement of any reasonable expense incurred in connection with donation of reproductive material. This statement is entirely consistent with the NHMRC’s position. The matter of payment for donation of gametes or embryos is included in the Human Cloning and Research Involving Embryos Bill 2002 which will be introduced into federal parliament this week.

Nauru: Money Laundering

Senator McKIERNAN (2.51 p.m.)—My question is directed to the Minister for Justice and Customs, Senator Ellison. Has the minister, as alleged in the Sydney Morning Herald this morning, lobbied the OECD to have Nauru taken off the OECD’s list of money laundering countries? Is the OECD task force correct in stating that Nauru has taken no action to address the issues of licensing and supervision of the offshore sector, the main area of concern identified by the task force in June 2000? Given that money laundering is the lifeline of drug traffickers and terrorists, why is the government going soft on money laundering in Nauru?

Senator ELLISON—This government is not going soft on money laundering at all. In fact, I attended the Asia-Pacific conference on money laundering in Brisbane. I opened the conference, and detailed to that conference the measures—which were widely acknowledged—that this government was taking in relation to anti money laundering devices. AUSTRAC, our anti money laundering agency, is one of the best in the world; so good that we have people from around the world coming to see it. In relation to Nauru, Australia will continue to provide assistance to Nauru to improve its anti money laundering capacity. Australia will also use its influence as co-chair of the Asia-Pacific Group on Money Laundering to enhance regional cooperation and capacity building in the fight against money laundering.

That was one of the key issues at the conference in Brisbane: that there be increased cooperation so that more established countries like Australia can assist smaller countries like Nauru and others in the South Pacific region to enhance their anti money laundering capacity. As a founding member of the Financial Action Task Force on Money Laundering, Australia has implemented and increased scrutiny in relation to the reporting of financial transactions with Nauru while not precluding ongoing, legitimate financial dealings. We believe that you need to not only increase your scrutiny but also keep up the relationships with that country. We are helping that country to develop. We believe that simply cutting off Nauru and not assisting it is not the way to go. We believe that a country like Australia has much to offer Nauru in developing its capacity against money laundering.

The Financial Action Task Force on Money Laundering is continuing its countermeasures against Nauru, pending Nauru’s implementation of further reforms to its anti money laundering systems. Australia has been trying to help Nauru develop increased anti money laundering capacity. FA TF will continue to have its measures in place in relation to Nauru, and we will continue to have increased scrutiny in relation to financial dealings with Nauru. But we will not cut off Nauru; a country like that needs assistance from Australia, and we will continue to provide that. Recently we had a workshop in Fiji, in which South Pacific nations were included, in relation to measures that could be taken to fight money laundering. Included were not just Nauru but other small countries in the South Pacific that Australia resourced so that those other nations could develop further anti money laundering devices. We will continue to assist in whatever way we can not only Nauru but also other small nations in the South Pacific to fight money laundering.

Senator McKIERNAN—Madam President, I ask a supplementary question. I ask the minister again: has the government, as
alleged in the *Sydney Morning Herald* this morning, lobbied the OECD to have Nauru taken off the OECD’s list of money laundering countries? I further ask the minister: how much of the $100 million Australia has given to Nauru this financial year has been earmarked to assist Nauru in its effort to stamp out money laundering? Can the minister assure the Senate that none of this money will go towards propping up money laundering operations in Nauru?

**Senator ELLISON**—Senator McKiernan misunderstands the role of the meeting that was referred to in FATF. That was a meeting of officials. I did not attend that, and I did not speak to FATF about Nauru. I can say that any assistance we give to Nauru is aimed at increasing good governance in that country. Also, the measures we have taken in my portfolio are to assist Nauru to develop its anti money laundering capacity.

**Environment: Macquarie Island Elephant Seals**

**Senator BARTLETT** (2.55 p.m.)—My question is directed to the Minister representing the Minister for the Environment and Heritage. My question relates to research being conducted on the elephant seal colony on Macquarie Island.

*Government senators interjecting—*

**The PRESIDENT**—Order! I need to hear the question.

**Senator BARTLETT**—To assist the minister, I will start again. My question relates to research being conducted on the elephant seal colony on Macquarie Island. This research previously involved branding the seals and now involves tracking equipment, which causes scars and ulcerations on the seals when removed. As the minister would know, Macquarie Island is heritage listed and its colony of elephant seals is noted in the statement of significance as one of the values for which Macquarie Island is listed. Minister, can you advise whether these experiments were referred to the Australian Heritage Commission, as required under section 30 of the Australian Heritage Commission Act 1975, prior to the approval for the research being given? Is the minister aware that seal numbers on the island are decreasing and, if so, has the minister satisfied himself that the disturbance to the seals from the research is not a reason for this?

**Senator HILL**—It is good to see that there is a question from each side; it is good to see a fair go being extended to combatants from each side of the contest! I recall the issue of the elephant seals and Macquarie Island from when I was environment minister and, as I think was said in the question, I banned the branding which was being used as a means of identifying the seals. Certainly, I recall the ethical code which required that no other method be used that in any way harmed the seals. I might say in passing that the research was obviously designed to be for the benefit of the seal colonies. Such research was tracing food stocks to assess whether the food was decreasing, which would therefore have a detrimental effect upon the colony. We did not believe that, in seeking to achieve that worthwhile outcome, it was necessary to harm the seals that we were trying to benefit. I also note some recent reports that other methods of keeping track of seals were causing harm. I am sure that Senator Kemp will be able to get me an update on any investigations that have taken place into those particular aspects of the program.

**Senator Kemp**—Hello, this is a leading indicator!

**Senator HILL**—I will ask him for information on that matter and report back to the Senate.

**Senator BARTLETT**—Madam President, I ask a supplementary question. I thank the minister for his answer, but I ask if he could actually answer the question I asked. Can the minister advise or undertake to find out whether or not these experiments, and the latest way they are being conducted, were referred to the Australian Heritage Commission under section 30 of the Australian Heritage Commission Act? Can the minister also indicate whether the minister has satisfied himself that the disturbance to the seals from the research is not a cause for declining seal numbers?
Senator HILL—I thought I said in my answer that I would ask Dr Kemp whether he is aware—

Senator Hogg—You said ‘Senator Kemp’.

Senator HILL—I will correct the answer: I will ask Dr Kemp. Mind you, Senator Kemp was once the environment spokesman in opposition and was a very well-informed one, I might say. In this instance, I will ask Dr Kemp, who is the environment minister in the Howard government, whether he is aware of this recent practice and if he has assessed whether it is causing harm to the seals and, if so, what action he has taken with regard to it. I would like to finish up by wishing the Democrats well in their difficulties. One might say that Macquarie Island these days is not as cold as the Democrats party room. Madam President, I ask that further questions be placed on the Notice Paper.

Senator Conroy—Madam President, I rise on a point of order. The Senator was on his feet before the one hour was up. We did have the prayer today, which took us well beyond two o’clock.

The PRESIDENT—It certainly was my impression that it was after three o’clock when the answer had concluded, having taken that into account.

Senator Conroy—Yes, but it is an hour from when we start.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Superannuation: Commercial Nominees of Australia Ltd

Senator CONROY (Victoria) (3.01 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Revenue and Assistant Treasurer (Senator Coonan) to questions without notice asked today.

What we have seen today is a continuation of the inept and pathetic performance of a minister struggling to get across their portfolio. We have had every excuse under the sun. But, today, we had a new one—‘It wasn’t my fault. It was, in actual fact, Joe Hockey, the former minister’s fault.’ That is the pathetic level we sank to today, to try to cover for this minister’s and this government’s callous treatment of some workers who have had their money stolen. Their retirement income has been stolen by the directors, Enron-style. And what a pathetic argument we have in return: ‘Oh, we can’t afford moral hazard.’ Moral hazard does not apply if your money is stolen, it does not apply if the directors have done a flit to South America. They are in Guatemala, for God’s sake. These poor workers have had their money stolen. The whole purpose of the superannuation levy is so that workers can be compensated.

Senator Watson knows what I am talking about; I will be interested to see if Senator Watson wants to rise in this debate, because he is a supporter of those workers. To be fair to Senator Watson, nobody—not even Senator Sherry—has pursued APRA over its incompetence and its allowing CNAL to go as bad as it did. Senator Watson knows that these workers deserve 100 per cent, and I am hoping that he is prepared to get up and put his money where his mouth is in this case, and put the case for these workers. Because what happened is—the facts are not in dispute—the directors of this fund put money into related party transactions, illegally, and then took the money and ran. They took the money and ran. And this minister has the gall to come in here and talk about moral hazard, to talk about how she is doing them a favour; she is increasing the rate from 80c to 90c. Isn’t she wonderful? The legislation allows and Labor’s position is 100 per cent. These workers have been robbed. This government will only look after the Prime Minister’s brother; it will only look after workers’ entitlements if the Prime Minister’s brother is a director. ‘Well, God, let’s get him on a few more boards,’ we say, because then we might see some workers’ entitlements protected. Then we might see some workers getting 100 per cent in their dollar.

Senator Ferguson—Has Kim approved this speech?

Senator CONROY—What we are seeing today is another pitiful defence. What happened in HIH? The Prime Minister panicked—his own neck was on the line, his own retirement income was on the line. So
what did we see in the HIH case? ‘Oh, we promise to give the HIH policy holders 100 per cent.’ But not if you have been robbed by the boss, not if you have been robbed by the Prime Minister’s brother. That is what we are seeing here. We are seeing a pathetic attempt to just look after the mates—only the mates. Senator Ferguson, let us see you on your feet, because you do have some former—

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

Senator CONROY—Thank you. Through you, Madam Deputy President, let us see some moral fibre from senators opposite. Let us see some workers looked after. Let us not just do special favours for special mates, which is what we saw with National Textiles. They got their 100 per cent. Taxpayers had to fork out to bail out the Prime Minister’s brother. That was good enough.

There was big political pressure over the government’s incompetent handling of superannuation under the government’s ‘world’s best regulator’. And HIH; what did we see there? We saw the former minister dragged in to stand on the stage behind the Prime Minister like a naughty boy, because of the debacle that APRA had visited on HIH and all HIH’s policy holders. What did we see then? A promise of 100 per cent. But some poor workers have had their retirement incomes destroyed, and their future retirement incomes go missing to South America, and what happens there? This government says, ‘Ninety cents is good enough. And guess what? Ninety cents is an improvement on what you were going to get. I am a hero.’

Well, I have got to tell you, Senator Coonan, it is not good enough. These workers deserve their 100 per cent. I am looking forward to Senator Watson and Senator Ferguson making a contribution in this debate, because they know that what I am saying is correct. They know it is true. These workers deserve better.

Senator WATSON (Tasmania) (3.06 p.m.)—The compensation that has been referred to in this debate today on the motion to take note of answers is determined in accordance with the governing act, the Superannuation Industry (Supervision) Act, which was proclaimed in the early 1990s. There are a number of provisions in relation to the SI(S) Act which I will go through in a moment. But, firstly, I must outline that the facts are not entirely as outlined earlier by Senator Conroy. I think it would be unfortunate if the listeners to this debate were misled by what was actually said. It is true that the problems of Commercial Nominees of Australia Limited, CNAL, commenced in about 1997 and they have not improved a lot since then. As a result, there is a deficit of approximately $25 million in the Enhanced Cash Management Trust. As part of that total operation there was more than the cash management trust; there were dozens and dozens of self-managed funds that were administered by CNAL. Some of those funds have also lost money.

The problem with the cash management trust was essentially theft and fraud. For an amount to be paid by the government, the SI(S) Act requires that there be theft or fraud. The theft or fraud appeared to occur very early in the piece rather than in more recent times. This created a difficulty for the government because the money that people lost in more recent times was not lost as a direct result of the theft and fraud—at the time they put their money in, the money was not lost as a direct result of the theft and fraud. However, I think the work of the Senate Select Committee on Superannuation satisfied the government and all the other parties that the nature of cash management accounts is that the money goes in there for a short period of time and effectively gets rolled in and rolled out. But the position did not get any better as a consequence of that theft or fraud; in fact, it deteriorated. Had APRA taken action a lot earlier than it did, we would have seen the loss being a lot less than what eventually resulted.

The SI(S) Act does provide for compensation to be paid, and it can be paid from one of two sources. It can be paid out of consolidated revenue or a levy can be made on other funds within the superannuation industry under the jurisdiction of APRA. We have been quite critical of APRA in previous years because, ostensibly, the CNAL fund had the badge of approval from APRA, which caused a lot of people to put money into that
fund. That badge of approval was regarded as almost being tantamount to the Reserve Bank guaranteeing or standing behind the deposits of the banking system. So people from all walks of life lost money, and the consequences for some of those people were very severe.

I am very proud of the part played by our committee, of which Senator Sherry and Senator Conroy were members, but I think there is too much responsibility being put on Senator Coonan. Under the circumstances, Senator Coonan has acted very quickly since she took on this important portfolio. She called for these reports and, as a result of her action, we now have a resolution to this issue. That is a far cry from what we had three months ago, six months ago or a lot earlier. So a condemnation of the nature we have seen this afternoon is not only unfair but also unjustified and it is certainly very much misplaced. I must acknowledge the role that Senator Coonan has played in the deliberations that I have had with her in bringing this matter to a head and making sure there is justice. I have spoken to a number of people who are affected. To a person, they agreed that their life has been changed enormously as a result of Senator Coonan’s action. (Time expired)

Senator SHERRY (Tasmania) (3.11 p.m.)—There are some eight million active members of superannuation funds in Australia. By ‘active’ I mean that money is actively going into their superannuation funds. Superannuation for the vast majority of Australians is in fact compulsory. It is to assist them in providing an additional retirement income when they get to retirement. So compensation, when money is stolen from their superannuation fund through no fault of the fund members, has a very significant impact on people who are retired or coming up to retirement. There were extraordinary circumstances in the case of Commercial Nominees of Australia Ltd. We are not talking about losses in Commercial Nominees as a result of a poor investment or a lack of diversification—

Senator Watson—Yes, we are—extraordinary failures.

Senator SHERRY—Overwhelmingly, Senator Watson, we are talking about monies that were stolen as a result of theft and fraud. The interesting thing about Commercial Nominees is that this is the first case in 10 years where prima facie theft and fraud under the act have been determined. It is a very important case, and there is a very unusual set of circumstances. The Labor opposition does not suggest that the government provide an absolute guarantee in all circumstances for superannuation funds. What it does suggest is that the SI(S) Act is quite clear in the case of theft and fraud. The act allows the minister to declare full compensation. Why in the event of theft and fraud occurring—which is fortunately a very rare occurrence—should a person coming up to retirement or in retirement have to spend sleepless nights worrying about what they are going to live on if their money has been taken as a result of theft and fraud?

The other compounding fault in this case was the action of APRA. Senator Watson, Liberal senator and Chair of the Senate Select Committee on Superannuation, has pursued APRA very zealously. Senator Watson has acknowledged that, had APRA taken action earlier than it did, the losses would not have been as great. Senator Watson is a very strong critic of the role of APRA in the case of Commercial Nominees. But who set up APRA? Who set up this regulator to protect Australian workers’ superannuation? The Liberal government set it up. The Treasurer, Mr Costello, proudly boasts that APRA is the world’s greatest regulator. He is on record time and time again saying that APRA is the world’s greatest regulator. But certainly in the case of superannuation and Commercial Nominees and certainly in the case of HIH, APRA—the regulator set up by the Liberal Party—has been found wanting. It has not been doing its job, and it has been rightly criticised. So that compounded the problem those Australians who are members of Commercial Nominees had to face.

The Labor Party does not suggest that in all circumstances where there might be poor investment return there should be compensation, because that is not an issue of theft and fraud. The issue in regard to Commercial
Nominees is an issue of theft and fraud. What is important about the Commercial Nominees case is that it is the first prima facie case of theft and fraud in the last 10 years. The minister herself pointed out that it was the Labor Party that inserted special protection in respect of superannuation in the Superannuation Industry (Supervision) Act. The special protection is that, where prima facie theft and fraud is declared, there can be 100 per cent compensation—in other words, full compensation—in those circumstances. It was the Labor Party that set up that full protection in these circumstances.

We are not critical of the minister being slow; she has been the minister only since October last year. If any criticism should be handed out—again, I think Senator Watson acknowledged this—it should relate to the poor performance of her predecessor, Mr Hockey. Goodness knows what he was doing in his previous position because the time dragged on and on and on. So we are not critical of Senator Coonan in that regard. What we are critical of is that, having a KPMG report saying prima facie, ‘Yes, theft and fraud occurred,’ the minister did not award full compensation, as she can do under the act—100 per cent compensation. This is not an issue of moral hazard; we are dealing with a very narrow case, a very important case, where 100 per cent compensation—

(Time expired)

Senator CHAPMAN (South Australia) (3.16 p.m.)—We heard Senator Conroy open this debate to take note of answers to questions this afternoon and, as my colleague Senator Watson indicated, he played somewhat fast and loose with the facts regarding this issue of Commercial Nominees of Australia Ltd. He did that because his intent was not to deal with the issues but to launch a personal attack on Minister Coonan. The fact is that the major issue here is the $25 million deficit in the cash management trust and, in addition to that, as my colleague has already said, the issue of the shortages of the self-managed funds. The proposition here from the opposition is that Minister Coonan is at fault because she has failed to provide 100 per cent compensation to those people who have suffered losses as a result of the failure of this particular superannuation arrangement. The fact is that the act provides for 100 per cent compensation when 100 per cent of the losses are due to fraud and theft. The clear evidence in this case is that, while fraud and theft were involved in the losses, they did not cause 100 per cent of the losses. There were other matters that caused a portion of the losses realised on the part of these funds: there were poor investment decisions made by the trustees and the managers of the funds which contributed in significant measure to the losses incurred by the investors and the superannuation beneficiaries in these particular funds. That is why the minister has not provided 100 per cent compensation.

However, she has provided 90 per cent compensation. If you looked at the issues and did the analysis, you would see that it is probably fair to say that that is a very generous decision by the minister. If you looked at the balance between the losses caused by fraud and theft and the losses caused by poor investment and poor management decisions, you would see that the losses caused by fraud and theft probably would not reach 90 per cent of the losses. Yet, to be generous to those who have suffered these losses, the minister has indeed come up with the 90 per cent provision which she announced on Friday, 14 June. She announced then that she was going to provide financial assistance to those small superannuation funds under the previous trusteeship of Commercial Nominees of Australia Ltd. She is providing that assistance under part 23 of the Superannuation Industry (Supervision) Act, which provides for compensation to small superannuation funds that have suffered losses in the Enhanced Cash Management Trust.

It is worth noting that redemptions from that trust were frozen in November 2000 and applications for assistance for these funds were made by Oakbreeze, the replacement trustee, only on 7 February 2002. So the minister can hardly be accused of being tardy in the decision that she has made to provide compensation. The actual request for compensation was only made in February and she has acted very quickly to analyse the situation, to reach a conclusion, to make a decision and to announce that decision last
Friday week. As I said, 90 per cent probably covers more than the amount of losses that can be accurately attributed to fraud and theft. The Superannuation Industry (Supervision) Act allows for the minister—

Senator Watson—It was the catalyst.

Senator CHAPMAN—As my colleague says, it was the catalyst. The SI(S) Act allows for the minister’s discretion to determine the eligible loss and amount of assistance provided should that decision be taken. That is exactly the way in which the minister has acted. She has acted properly. She has reached a decision that the amount of loss achieved by fraud and theft is 90 per cent. As I say, if you analyse it closely, you will see that it probably was not that amount. The act specifically states that she cannot grant assistance in excess of the amount that she determines to be the eligible loss. She has made that assessment. She is providing 90 per cent, and I believe that she has acted promptly and generously in this matter. The government agreed to the financial sector inquiry recommendation that any grant be limited to 80 per cent of limited loss. That was the initial decision and she has gone beyond that now. She has persuaded the government to lift that to 90 per cent. So the minister has been active; she has supported the people who have suffered loss in this situation. She has acted with promptness and with due regard to their situation and is only to be commended.

(Time expired)

Senator LUDWIG (Queensland) (3.22 p.m.)—I rise to speak on the motion to take note of the answers given by the Minister for Revenue and Assistant Treasurer, Senator Coonan, in relation to Commercial Nominees of Australia Ltd. When we analyse Senator Chapman’s speech, we find that, in truth, he is saying that the minister is substituting her decision for what could otherwise be a decision made by a court or what might be found to be the truth. As I understand it, Senator Chapman says that 90 per cent probably covers more than can be attributed to theft and fraud. So is Senator Chapman standing in the shoes of the fishermen? Is Senator Chapman being judge and jury in determining who is liable and who is not liable—that is, only in supporting what the minister might have considered to come to that conclusion? It is baseless and unfair. What the minister has done in this instance is very unfair. The government have determined that only 90 per cent should be provided. No reasons have been given. There is no basis or justification for that decision other than a vagary about what might be—that is the point: what might be—attributed to theft and fraud.

When you examine the decision, it is a trigger. KPMG, as I understand it, came to the conclusion that there was theft and fraud. That then becomes the trigger and, once the trigger is ignited, 100 per cent should follow. It should not be a discretionary decision by the minister in this instance. If we take Senator Chapman’s analysis to its final conclusion, it would allow the minister to determine 10 per cent, 20 per cent, 30 per cent or whatever the minister considers theft and fraud might be able to be attributed to any other issue. We have to really look at the issue itself. We have small superannuation funds. There is the ability for compensation to be given. There is an industry fund to allow those moneys to be expended where there are problems, such as those that have been attributed to Commercial Nominees.

The issue did take a lot longer than Senator Chapman alleged it took. This issue has been going on, as I understand it, longer than since February this year. Senator Chapman made a huge omission: he did not tell us all of the time that it has taken for this matter to come to a conclusion. In effect, in omitting some important and vital information to this chamber, he has not been able to demonstrate his arguments successfully. He has said, in support of Senator Coonan, that she acted quickly. That remains in some doubt in my mind as the government have not been quick at all in resolving the Commercial Nominees matter. That is clear. We then find that not only are they not quick in resolving that matter but only 90 per cent of the resolution is put forward. So the people out there who are in these small funds will then say, ‘What fairness do you get out of this government?’ There is an industry levy fund. It underwrites small superannuation funds. It allows for them to be compensated for the loss they
have suffered, but we find that that is not what the government consider is a fair thing. They decide what they think is a fair thing and, in this instance, they have said that that is only 90 per cent. There is no reason for limiting the compensation—none at all.

When we look at what happened under HIH, we find that 100 per cent was provided. Why? That is a question that perhaps Senator Chapman and Senator Watson can help us with. I would surely like to hear their answer in relation to that. Perhaps they can explain why there is a difference. We can also see the regulators’ hands all over this in regard to both Commercial Nominees and HIH. Surely, it is about time that the government took the initiative and decided that they needed to improve their management, their handling and the way they were going to address APRA. (Time expired)

Question agreed to.

**General Agreement on Trade in Services**

**Senator CHERRY** (Queensland) (3.27 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Cherry today relating to the General Agreement on Trade in Services.

The General Agreement on Trade in Services, an agreement with such potential significant effects across a wide range of Australian services, has had incredibly little public debate in Australia. This can be contrasted with the position in other countries such as the United Kingdom, Canada and even the United States where there has been much more debate about what government should and should not sign up to when reviewing the General Agreement on Trade in Services. For example, there has been a lot of concern in a range of NGOs, such as Friends of the Earth and others, about the Australian government’s championing of the inclusion of trade in environmental services within the GATS and within the WTO generally.

The definition of ‘environmental services’ in the current GATS documents is fairly narrow, but the Australian government has been part of a group seeking to have that definition broadened to include drinking water. It might sound rather odd that we are debating an agreement that is supposed to be about opening up services in areas such as financial services and in areas where Australia has some very active multinationals. When you start talking about the liberalisation worldwide of drinking water, you are talking about a significant potential transfer of income from the Third World to the First World. I quote the concerns of Oxfam-Community Aid Abroad which has significantly criticised the push by the European Union to include drinking water into the GATS. It makes the point that the EU has clearly called for water for human use to be included in the liberalisation time frame. This is probably due to the fact that European companies dominate global markets in this sector. It has pointed out that in many of the places where water has been deregulated in the Third World there have been very substantial transfers of income from the poorest part of the community to other parts of the community.

There is a whole range of groups within Australia who are expressing concern about where Australia will line up on the General Agreement on Trade in Services. The Teachers Union, for example, and its international body, has expressed concern about whether education will be opened up and about whether the Australian government will be required to provide similar access to markets, subsidies and regulation for foreign competitors or foreign owned corporations seeking to compete against the Australian public education system.

This is because the definition in the GATS of what is a government service is somewhat limited. It allows a service to be declared to be capable of being subject to the GATS unless it is delivered exclusively by a government on a totally non-commercial basis. There was a report by the Canadian British Columbian government which actually looked at this government authority exclusion. It found it had been defined very narrowly. Because of the wording of the exclusion, only a small subset of services—those provided by completely non-commercial absolute monopolies—appeared to be protected by the exclusion. This means the...
Australian government will need to list virtually every single government service and every single activity of government as an exclusion from the GATS. We need to know that they will do that. We have not been told that they will; we need to know that they will.

The Doctors Reform Society is another Australian group which has come out and expressed concern not just about the impact on the public health system but about the regulation of professions. That is because when you look back at the GATS it requires that regulation of professions must be ‘not more burdensome than necessary to ensure the quality of the service’. Where does that leave the regulation of professions such as medicine and law and a range of other areas in this country? Are we supposed to actually start opening up the regulation of professions to be as least trade restrictive as possible on the basis that they are not burdensome? This opens up a whole range of areas of significant government regulation to scrutiny by the World Trade Organisation under an agreement that will make national competition policy look like a teddy bear’s picnic.

I am very pleased that the minister in the answer to my question did in fact say that the government would be releasing the information on the request. It needs to be done now. The community needs to be fully engaged on what the government intends to do on the GATS to make sure that we have all the answers on exactly what it is going to mean for Australian services, particularly the provision of public services, before we sign off.

Question agreed to.

**CHRISTMAS ISLAND: PHOSPHATE MINING**

**Return to Order**

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.32 p.m.)—by leave—I would like to read a brief interim response to the Senate return to order motion No. 90, moved by Senator Bartlett. I have advice from the relevant ministers in relation to the documents sought by the Senate. The request involves a large number of documents held by a number of Commonwealth agencies in offices in Canberra, Perth, Darwin and on Christmas Island. Many documents are archived; some date back as far as 1980 and others possibly to the beginning of Commonwealth records. Due to the complexity of the request and the large number of documents involved, it is not possible to respond to the order at this point in time. A final response to the Senate’s request will be made as soon as possible in the spring 2002 sittings of parliament.

**NOTICES**

**Presentation**

Senator Ridgeway to move on the next day of sitting:

That the Senate—

(a) notes, with sadness, the passing of one of the grand masters of Aboriginal art in Australia, Mr Clifford Possum Tjapaltjarri, on 21 June 2002, and thanks the Tjapaltjarri family for their permission to refer to him by name in recognition of his importance and standing as an artist;

(b) remembers Mr Tjapaltjarri as one of the youngest members of the ‘painting men’ of the Central and Western Desert who founded the Papunya Tula movement in the 1970s, and who made the transition from carving and sand-painting to the use of canvas to share his traditional Dreaming stories with the world;

(c) recognises that Mr Tjapaltjarri’s work is represented in most of the major galleries, museums and private collections in Australia, as well as overseas, contributing to his status as one of the pre-eminent Aboriginal artists and cultural custodians;

(d) pays tribute to Mr Tjapaltjarri’s outstanding life’s work, which brought him and his community national and international acclaim and now constitutes an invaluable part of the nation’s cultural heritage; and

(e) posthumously congratulates Mr Tjapaltjarri on his most deserving award of an Order of Australia in June 2002 in recognition of his outstanding contribution as an artist.

Senator Bartlett to move on the next day of sitting:
That there be laid on the table, no later than 4 pm on Monday, 19 August 2002, the following:

(a) any materials held by Geosciences Australia (GA) relating to research or exploration proposals in the Queensland and Townsville troughs by overseas interests after 1990;

(b) all communications and records of communications of GA with the oil exploration industry in relation to the North East (NE) Region since 1990;

(c) all well summary charts and geohistory plots in the NE Region;

(d) all satellite data held in relation to the Great Barrier Reef and adjacent areas, including depth and penetration data;

(e) any materials produced by GA relating to the SAR satellite data, including maps, reports, briefs, correspondence and studies;

(f) all invoices relating to the costs of acquired SAR satellite data in the NE Region;

(g) all invoices related to the costs of ensuring weather compliance for acquired SAR satellite data in the NE Region;

(h) all communications or records of communications with the Great Barrier Reef Marine Park Authority relating to the use or acquisition of SAR satellite data in the NE Region;

(i) all Australian Geological Survey Organisation/GA workplans, specifically with reference to the NE Australia program and area;

(j) all workplans containing reference to the acquisition of SAR satellite data in the NE region;

(k) all workplans containing reference to any agreements, cooperative arrangements or similar undertakings with the Great Barrier Reef Marine Park Authority in relation to the acquisition or use of SAR satellite data;

(l) all correspondence relating to the release of land in the Coral Sea for purposes of oil exploration or drilling post-1990;

(m) a copy of the 1990 comprehensive program for release of offshore areas for exploration in the NE Region;

(n) any documents estimating petroleum reserves of any of the areas in the NE Region; and

(o) a copy of the 1994 report (not the academic paper) on the NE study area that GA offered for sale.

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

(1) That on Wednesday, 26 June 2002:

(a) the hours of meeting shall be 9.30 am 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.

(2) That on Thursday, 27 June 2002:

(a) the hours of meeting shall be 9.30 am to adjournment;

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

(c) valedictory statements may be made from not later than 4.30 pm to not later than 8 pm;

(d) the routine of business from the conclusion of valedictory statements shall be government business only;

(e) divisions may take place after 6 pm; and

(f) the question for the adjournment of the Senate shall not be proposed till a motion for the adjournment is moved by a minister.

Senator Brown to move on the next day of sitting:

That there be laid on the table, no later than 2 pm on Thursday, 27 June 2002, the following documents:

(a) Australia’s Third National Report under the United Nations (UN) Framework Convention on Climate Change (3rd National Communications Report to the Intergovernmental Panel on Climate Change) or the draft of that report;

(b) the latest documentation showing latest projected Australian greenhouse gas emissions for 2010;

(c) the 2000 National Greenhouse Gas inventory or the draft 2000 National Greenhouse Gas inventory; and
(d) Greenhouse Gas Emissions from Land Use Change in Australia: Results from the National Carbon Accounting System for 1990 to 1999.

Postponement

Items of government business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Murray for today, relating to the reference of matters to the Community Affairs References Committee, postponed till 26 June 2002.

Government business notice of motion no. 2 standing in the name of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell) for today, relating to the consideration of legislation, postponed till 26 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 26 June 2002.

Withdrawal

Senator O’Brien withdrew business of the Senate notice of motion no. 2 standing in his name for today, relating to the reference of a matter to the Rural and Regional Affairs and Transport References Committee.

Senator Murphy withdrew general business notice of motion no. 10 standing in his name for today, relating to the establishment of a select committee on forestry and plantation matters.

COMMITTEES

Legal and Constitutional References Committee

Reference

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

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 financial impact on the Commonwealth;

(d) the nature of consultation with affected communities in relation to the Government’s excision proposals;

(e) the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002; and

(f) whether the legislation is consistent with Australia’s international obligations.

I seek leave to make a short statement.

Leave granted.

Senator SHERRY—I think in the circumstances it is appropriate for me, on behalf of the Australian Labor Party, to outline briefly the reasons for this motion, which the Senate, I believe, will agree to. When the federal Leader of the Opposition, Mr Crean, received a full briefing from the People Smuggling Task Force prior to coming to a decision on this issue, the bureaucrats involved in that briefing were unable to answer two simple and specific questions put to them by Mr Crean. The first question was: can they give an assurance that excising—that is, cutting out islands off the Australian coast—will prevent or deter boat arrivals on the mainland? They could give no such assurance. The second question was: how will this specific measure of excising islands—cutting out islands from Australia—prevent further boat departures from Indonesia? They said that it would not.

We believe these are the real facts of the government’s so-called policy, as admitted by its bureaucrats. The minister for immigration agrees that those questions were asked and he agrees that the assurances that Labor sought could not be given. The minister knows full well what his advisers told Labor, that the most effective option to stop people smugglers is to stop the boats departing. The minister therefore agrees the legislation he is seeking will not achieve the goals he claims to be pursuing. Therefore, it is very simple: Labor believes that the government is not looking for a solution, that it is just playing politics—very divisive politics. If we had agreed to the government’s regulation this week they would not have stopped playing this game of politics. By now they would be bringing forward legislation to cut out bits of Australia’s mainland. Labor has been holding firm and has stopped
the Howard Liberal government starting on its plan to rub out bits of Australia’s mainland.

The Labor Party are totally committed to strong border protection. We believe that the legislation that was to have been presented to the Senate, but that I believe will not now be considered, following the reference of these matters to the Senate Legal and Constitutional References Committee, would not have achieved this. Simply put; you do not protect your borders by surrendering them. You do not protect your borders by handing over bits of your country to the people smugglers. That is just running up the white flag and surrendering Australia’s national sovereignty. And that is appeasing people smugglers and inviting them to head for the mainland. The Prime Minister, Mr Howard, is saying he will decide which bits of Australia to hand over to people smugglers and how much will be handed over each time. Mr Howard is giving away, cutting out, more and more of Australia as time goes on. What will be next? My home state of Tasmania? King Island, that I was visiting last week? What will be next? We think that these issues are so important that they need to be dealt with in a bipartisan way and we think border security is too important to become a political plaything of the current government.

The reason this bill was proposed to be before us today was to give the government the opportunity to squeeze political advantage out of it and to prepare the way for a double dissolution election on so-called border security. What they want to have in the kit bag is the opportunity to rerun the 2001 election campaign, which, as we all know, was conducted on these themes and was built on exploiting the intersection between race and fear. This is fertile ground politically—the Liberal government has proved that. But exploiting it, and exploiting it continuously, inevitably leads to self-destruction, the loss of national confidence and a nation that turns inward and is paralysed by fear. It is also political opportunism to characterise Labor as soft on border security. Nothing could be further from the truth. When this nation truly faced a border security threat in World War II, when it truly faced the threat of invasion, it turned to Labor to lead it, and Labor delivered. It repudiated the current Prime Minister, Mr Howard’s, mentor—the creator of the party that currently holds the government benches. The government is a pretender in this area, and the bill that is to be referred off is part of that pretence.

I will go briefly to how ineffective this bill would be. The government is standing here somehow pretending that excision—cutting out bits of Australia—would stop people-smuggling. It is trying to create the image that so-called excision is somehow a stop sign. How on earth does that follow? Determined people would still come in. If a part of the nation is excised and cut out, and if they think that they would be advantaged by going that bit further to avoid the cut out pieces, then why would they simply not go to the mainland of Australia? The government has just run up a flag and said, ‘Well, that’s too hard. We will have the so-called Pacific solution, where we will spend hundreds of millions of dollars in places like Nauru’—and we touched on that in question time today.

Senator Brown—On a point of order, Madam Deputy President: I do not wish to intervene on Senator Sherry’s speech too much but, as you know, this is an unusual compliment we are paying to Senator Sherry to allow him to speak. He is tempting me to want to speak after him and I think that would be unfortunate. If he does not want to make the motion formal we have another procedure. If he does, I will be supporting it.

The DEPUTY PRESIDENT—There is no point of order, but I would draw Senator Sherry’s attention to the fact that it is by leave; it is not a normal practice. It could have been dealt with, if there was going to be a debate, later on and it comes up later on in the day.

Senator SHERRY—Thank you, Madam Deputy President. I do respect Senator Brown drawing that to my attention and I will deal with my concluding remarks in this regard a little later.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.43 p.m)—by leave—
Can I just say that we should have decided we deal with it either by having short speeches by leave—and it is, I think, an abuse of the principle of the standing orders—

Senator Sherry—It was not intended.

Senator IAN CAMPBELL—or if we are going to drop it down to business of the Senate, where it would come up automatically when formality was not granted, then it could be dealt with effectively that way. I thought Senator Sherry was going to make a few very short remarks by leave. I was going to make some short remarks in response. It is one way of having a debate; it is not the ideal way. The standing orders envisage that, if formality cannot be granted, there are two options: one is to suspend standing orders, which is time consuming and inefficient; the other is for it to drop down to, I think, item number 14, where it can be done by way of a debate. The coalition have given the opposition a chance to make some comments. I hope that, if we are now going to say it is not formal, which we will do, we do not suspend standing orders. It will then come up at item 14, and Senator Sherry will conclude any remarks at that stage.

The DEPUTY PRESIDENT—It has already been granted formality.

Senator IAN CAMPBELL—In that case, I will make my remarks as brief as possible. The government will be opposing the motion. We believe that this legislation is important. We do not share the rather strange and illogical position the opposition seems to be developing that there is one solution to the problem of illegal boat people coming to Australia—be that the mainland, or one of those many offshore islands or reefs. We believe that it takes a number of measures. We do not believe you can have a one-line policy saying that the solution is to go to Indonesia and tell the boats to stop leaving that country. It is an interesting concept. If Australia has lots of islands, then certainly the archipelago of Indonesia has many more.

The reality is that the Australian government has been working very closely across a number of fronts and, in many cases, in consultation and cooperation with the Indonesian government and many other jurisdictions to do just what the Labor Party says we should do. The fact is that we are doing it already. We are taking a range of measures. The excision of parts of Australian territory—as we did with Ashmore Reef, Christmas Island, the Cartier Islands and the Cocos Islands—has been part of a policy which to date has been more successful than previous policies. It is not a policy in itself. It is part of a policy, one particular strategy. The excision of these other islands is part of an integrated policy which is to send a clear signal to people smugglers and others who seek to come to our country illegally that: ‘We’re going to make it a bit harder you.’

We are not—as Senator Sherry and other spokesmen for the opposition parties would have you believe—somehow getting rid of bits of Australia, or giving away our coastline or our sovereignty. We are maintaining our sovereignty by saying to people who seek to come here illegally by jumping the queue of those seeking refugee status through the legitimate processes of the UN and other bodies—

Senator Mason—By paying people smugglers.

Senator IAN CAMPBELL—By paying people smugglers, as Senator Brett Mason interjects—that: ‘We’re not going to make it easy for you.’ We are saying, ‘If you land on one of these islands, you will not have any rights under Australian migration law.’ We are saying to people, ‘If you want to comply with Australian law, including our migration laws, and seek refugee status, you will have the benefit of those rights. But, if you want to pay criminals to bring you to this land, you won’t have those rights.’

We are now trying to progress the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 through the Senate. Only a week ago, the ‘opposition parties’—as the Democrats are becoming joined at the hip to the Australian Labor Party they are now being described by the gallery as the ‘opposition parties’; it is becoming a new term in Australian politics—sought to disallow, successfully as it turned out, regulations that had the effects of this
legislation. The government at that time was obviously not pleased with the outcome. But no lesser person than Senator Faulkner, the Leader of the Opposition in this place, in that debate, as reported in Hansard on 18 June said:

... put principle above politics, to do the right thing and have a debate on the substantive issues.

That was only a few days ago. Here we are, a few days later, bringing in a piece of legislation saying, ‘Let’s have a debate on the substantive issues.’ And what do Senator Faulkner and the opposition parties say? ‘Let’s not have a debate; let’s send it off to the never-never.’ That is a classic Labor tactic: if you do not want to deal with something, have a vote on something or fly your colours up the mast, send it off to a committee.

It is not as though these issues have not been canvassed publicly, by committees or ad nauseam by the parliament before. It is not a case of accountability of the Senate or of the government to the Senate, or genuine scrutiny of a bill. All of these issues have been canvassed. Mr Crean has had a briefing from the task force, as Senator Sherry said by leave in his statement. It is not part of accountability processes which we respect and have built in this place into one of the great legislative institutions of mankind. This is a political delaying tactic, because the Australian Labor Party is in an almighty mess on this and many other issues.

Senator Brown—Madam Deputy President, on a point of order: the leader might also note that he was given leave generously by the Senate, and he is tempting us to enter into a much longer debate at the moment.

The DEPUTY PRESIDENT—Thank you, Senator Brown. I draw the attention of the Manager of Government Business to your comments.

Senator IAN CAMPBELL—I will conclude my remarks, and I appreciate Senator Brown’s assistance in ensuring that the debates are focused and efficient. I welcome his sticking by that over the next three days. I think I have made the points I need to make. The government believes this legislation could be debated now and that there is no need for it to go to committee. It is a Labor Party political ploy—with the support of Senator Faulkner’s ‘coalition in opposition party’ colleagues—to frustrate the government’s program and, more importantly, its strong commitment to border protection. It once again reinforces the point that the Australian Labor Party and its opposition party colleagues are soft on border protection.

Senator BARTLETT (Queensland) (3.51 p.m.)—by leave—In advance I do note Senator Brown’s two previous comments, but I think it is necessary to put on the record not just the Democrats’ position but also a broader outline of the Senate’s position and its rationale for referring this matter to a committee. I think Senator Sherry’s contribution was more a debate on why the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 was bad rather than why it should go to a committee and Senator Campbell’s was more about why the ALP is bad rather than why the bill should go to the Legal and Constitutional References Committee. I would like to outline why it is important that it go to the committee. It is important because it is not just the bill that is going; it is a lot of related issues not the least of which is whether we might be breaching our international obligations under this legislation—which is a very real possibility—as well as other aspects.

Let me remind the Senate that this is not an issue that has had a lot of scrutiny and debate. The initial excision of the first few islands by legislation last year was done without any reference to a committee, with a truncated guillotine debate and with no opportunity to explore these issues. The regulations were brought in without any consultation whatsoever. So this is the first time the Senate has had a chance to look at the actual issue of excising parts of Australia for the purposes of the Migration Act, and I think it is long overdue.

I welcome that opportunity and I welcome this motion by the Labor Party to do that and to look at the broader questions that are involved that have not been examined by the Senate to date. I do not think that sending it to a committee to report back in the next sitting week, which is in August, is sending it to the never-never. I am sure that Senator
Mason would be horrified to hear the Legal and Constitution References Committee called the never-never. It is a very important committee that does a great job and works with people across parties in a constructive way. This will provide a great opportunity for these issues to get the scrutiny they deserve.

I should also counter some of the distortions in Senator Campbell’s statements, because it needs to be done every time these falsehoods are put forward. It is not illegal—it never has been—to seek protection from persecution, even though you might enter a country without authorisation to seek that protection. If it was illegal then the Jews would never have got out of Germany and plenty of other people would have never been able to get refuge. It is not jumping the queue. Many of the people that come here on boats from Indonesia have actually gone through the proper process, have applied to the UNHCR, have been assessed as refugees and still cannot get settlement. Even though they have been assessed as refugees they cannot get protection, so they have no option. They are not queue jumpers; they are people who are simply seeking safety and guaranteed protection from being sent back to face persecution.

As for the Democrats being an opposition party, Senator Campbell may or may not be aware but I think we have been an opposition party now for nearly 25 years—perpetual opposition. We are opposed to some of the things the government does and some of the things the Labor Party does. We will support anything from anywhere that we think is positive, oppose anything that we think is negative and constructively engage in trying to amend anything that is amendable. That is our role, it has always been our role and it is one that we perform more effectively than any other smaller party in Australia’s history. We are celebrating our 25 years of existence this year, which will demonstrate our record in that regard. It might be occasionally irritating being in permanent opposition, but that is our role and I do not see any strange reason why that should be a problem for the government. It should have noticed that after 25 years we are still hanging around and are not necessarily going away.

We support this motion. It is a positive motion. The Democrats will be contributing constructively to the committee. We are not just sending it off so that we do not have to talk about it. It will come back the next sitting week anyway, should the government choose to do that. At least if we debate it then, we will do so from a far more informed position than we have been able to do to date.

Senator MURPHY (Tasmania) (3.56 p.m.)—by leave—I think that referring these border protection measures to the Legal and Constitutional References Committee is the right thing to do. It interests me that Senator Campbell and the government do not want this to be referred to a committee and that they say that this has had plenty of public debate and plenty of discussion. I am not aware of any significant debate. I do not know what the government thinks it now knows that it did not know back when we started the process of debating this issue when the first border protection measures were put in place with the excision of Christmas Island and Cocos (Keeling) Islands.

I do not think the government has any new information that would cause it to want to move to bring the line further south. Why 23 degrees south latitude on the Western Australian side and 12 degrees on the east coast is the relevant line, who knows? I think we do need to have some discussion about it and we do need to have a proper inquiry into whether or not this measure is suitable. My personal view is that it will probably cause more problems than it will solve. As I said during the discussion previously, it does not change the environmental problems that may ultimately be caused by the straight-out introduction of the regulations that the government proposed and by the legislation it now proposes. So I do support the matter being sent to a committee, and I think it will be an interesting inquiry.

Senator BROWN (Tasmania) (3.58 p.m.)—by leave—I am particularly pleased that the parameters of this inquiry, if the motion does pass the vote we are about to have,
will include whether the thousand islands legislation is consistent with Australia’s international obligations and what the financial impact on the Commonwealth will be. This considerably widens the scope of the inquiry—and that has come at the request of the Greens—and I thank the Labor Party for including that in the parameters of the inquiry. I support the motion.

Question put:

That the motion (Senator Sherry’s) be agreed to.

The Senate divided. [4.03 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes………….. 37
Nees………….. 33
Majority……… 4

AYES

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

NOES

Abetz, E.                  Barnett, G.
Boswell, R.L.D.            Brandis, G.H.
Calvert, P.H.              Campbell, I.G.
Chapman, H.G.P.           Colbeck, R.
Coonan, H.L.              Crane, A.W.
Eggleston, A.             Ellision, C.M.
Ferguson, A.B.           Ferris, J.M.
Harris, L.                Heffernan, W.
Herron, J.J.                Kemp, C.R.
Knowles, S.C.          Lightfoot, P.R.
Macdonald, I.            Macdonald, J.A.L.
Mason, B.J.               McGauran, J.J.J. *

Minchin, N.H.              Patterson, K.C.
Payne, M.A.               Reid, M.E.
Scullion, N.G.            Tchen, T.
Tierney, J.W.             Troeth, J.M.
VANSTONE, A.E.

PAIRS

Faulkner, J.P.          Watson, J.O.W.
Forshaw, M.G.        Hill, R.M.

* denotes teller

Question agreed to.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.07 p.m.)—I move:

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.

Question agreed to.

COMMITTEES

Environment, Communications, Information Technology and the Arts References Committee

Reference

Senator ALLISON (Victoria) (4.07 p.m.)—I move:

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

Question agreed to.

Finance and Public Administration Legislation Committee

Extension of Time

Senator CAL VERT (Tasmania) (4.07 p.m.)—On behalf of Senator Mason, I move:

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


Question agreed to.

Environment, Communications, Information Technology and the Arts References Committee

Extension of Time

Senator ALLISON (Victoria) (4.08 p.m.)—I move:

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.

Question agreed to.

BUDGET: INTERGENERATIONAL REPORT

Senator SHERRY (Tasmania) (4.08 p.m.)—I move:

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.

Question agreed to.

ENVIRONMENT: CLIMATE CHANGE AND RENEWABLE ENERGY

Senator ALLISON (Victoria) (4.09 p.m.)—I move:

That the Senate—

(a) notes the recent report, Community Attitudes to Climate Change, by research firm Taylor Nelson Sofres, which found that:

(i) 85 per cent believe that global warming is mostly a result of human interference in the global climate system,

(ii) 80 per cent support government subsidies for companies to build renewable power stations,

(iii) 77 per cent believe that the Government should be planning the progressive replacement of all coal-fired power stations with renewable energy and gas power stations over the next 20 years,

(iv) 64 per cent support paying higher prices for petrol if some of the revenue is used to develop environmentally-friendly fuels and provide improved public transport, and

(v) 63 per cent support the introduction of new laws to improve energy efficiency; and

(b) calls on the Government to:

(i) introduce measures to phase-out coal-fired power stations, replacing them with renewable energy and gas generation,

(ii) reintroduce fuel excise indexation and use funds raised to promote cleaner fuels and public transport, and

(iii) mandate national energy efficiency performance standards.
Question negatived.

ENVIRONMENT: VICTORIAN MARINE PARKS

Senator ALLISON (Victoria) (4.10 p.m.)—I move:
That the Senate—
(a) notes that legislation has now been passed in the Victorian State Parliament to create a system of 13 fully-protected marine national parks and 11 fully-protected marine sanctuaries, making up 5.3 per cent of Victorian coastal waters;
(b) congratulates:
(i) the Victorian State Government for providing this important protection for Victoria's diverse and unique marine environment,
(ii) the Environment Conservation Council for its detailed studies and proposals on marine protection over many years; and
(iii) the Victorian National Parks Association for its ongoing advocacy; and
(c) urges other states to implement legislation to protect their marine environments.

Question agreed to.

ABORIGINALS AND TORRES STRAIT ISLANDERS: 2001 CENSUS

Senator ALLISON (Victoria) (4.10 p.m.)—On behalf of Senator Ridgeway, I move:
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.

Question agreed to.

NUCLEAR ENERGY: LUCAS HEIGHTS REACTOR

Senator BROWN (Tasmania) (4.11 p.m.)—I move:
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.
Question agreed to.

**DOCUMENTS**
Auditor-General’s Reports
Report No. 61 of 2001-02

The ACTING DEPUTY PRESIDENT (Senator Chapman)—In accordance with the provisions of the Auditor-General’s Act 1997, I present the following report of the Auditor-General: Report No. 61 of 2001-02—Information Support Services: Managing people for business outcomes.

**BUDGET**
Consideration by Legislation Committees
Report

Senator CAL VERT (Tasmania) (4.12 p.m.)—On behalf of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I present the report of the committee in respect of the 2002-03 budget estimates, together with the *Hansard* record of the committee’s proceedings.

Ordered that the report be printed.

**TAXATION LAWS AMENDMENT (SUPERANNUATION) BILL (No. 2) 2002**
**SUPERANNUATION GUARANTEE CHARGE AMENDMENT BILL 2002**

Report of Senate Select Committee on Superannuation

Senator CAL VERT (Tasmania) (4.13 p.m.)—On behalf of the Chair of the Select Committee on Superannuation, Senator Watson, I present the report of the committee on the Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002 and a related bill, together with the *Hansard* record of the committee’s proceedings and documents presented to the committee.

Ordered that the report be printed.

**COMMITTEES**
Membership

The ACTING DEPUTY PRESIDENT (Senator Chapman)—Madam President has received a letter from a party leader seeking a variation to the membership of a committee.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.14 p.m.)—by leave—I move:

That Senator Heffernan be appointed a participating member of the Rural and Regional Affairs and Transport Legislation Committee.

Question agreed to.

**BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES**

Message received from the House of Representatives agreeing to the amendment made by the Senate to the following bill:

Aboriginal and Torres Strait Islander Commission Amendment Bill 2002

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

Reference

Senator MACKAY (Tasmania) (4.15 p.m.)—Senator Allison and I move:

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.
After discussions with the Manager of Government Business we have agreed, to the extent we can, to truncate this debate. I understand that Senator Alston has given the opposition the courtesy of notifying us that there is an amendment to this reference. I indicate to the Senate that I will respond in my right of reply but in the interest of expediting matters I will keep my remarks short at this point. I do, however, signal to other senators who may be interested in this matter that they obviously need to respond before I close debate in right of reply.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.15 p.m.)—by leave—I move:

After paragraph (d), insert:

(e) whether proposals to structurally separate Telstra into a network company and a services company would enhance the ability of the telecommunications industry to deliver adequate services to all Australians; and

The motion seeks to refer certain matters to a committee of the parliament. Part (a) seeks to look into the capacity of the Australian telecommunications network to deliver services to all Australians, particularly in regional and rural areas. Part (b) talks about the capacity of the network to provide all Australians with reasonable, comparable and equitable access to broadband services, or the Internet, as most of us know it as. Part (c) relates to current investment patterns and future investment requirements and part (d) is about regulatory and 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.

The amendment that the government is moving is to add a new part (e) which would then allow the committee to inquire into whether proposals to structurally separate Telstra into a network company and a services company would enhance the ability of the telecommunications industry to deliver adequate services to all Australians. Then it would renumber the current part (e) as part (f). The effect of the government amendment is to allow the committee that is seeking to do an inquiry into Telstra’s service provision—obviously a matter the government has taken very seriously over the past six years—to also subject to the scrutiny of that committee a proposal which has been put forward by the opposition spokesman on telecommunications, Mr Tanner, in relation to splitting Telstra up—having one part of it basically own and run the network and another part of it run the services part. I therefore move the amendment in those terms and speak briefly to that.

This reference of a committee is quite interesting. Two years ago, the coalition appointed an inquiry into telecommunications services headed by Mr Besley. I do not think anyone would argue with the fact that Mr Besley ran a very competent inquiry, with very good people on that committee. The Labor Party came out and attacked it. When we established that inquiry, the shadow minister, Stephen Smith, said:

... you can have absolutely no confidence that this report can be regarded as an objective, impartial assessment of Telstra’s service levels.

Labor attacked that inquiry, which was set up by independent, eminent Australians who were sent out to effectively do a report card on the success of those investments in providing better telecommunications, particularly for people in regional and remote Australia, and to give the government an independent assessment of just how successful those programs had or had not been.

I had the great privilege to be in the portfolio of communications and IT at the time that Mr Besley’s committee reported. Quite clearly, Mr Besley found some significant gaps in service delivery in some parts of Australia. The government had already committed close to $1 billion to upgrading particularly regional and rural telecommunications infrastructure through a range of programs, many of them world first programs. For example, there was the untimed local call tender, where we effectively offered anyone living in the outer extended zones—something like 42,000 households—free installation of a satellite dish providing them up to a minimum of 64 kilobits per second, and faster in some places. That delivered
symmetrical high speed Internet through satellite to 80 per cent of the Australian mainland. It was a significant program. I might say—without bragging on the government’s behalf, because all Australians should be proud of the program—that I discussed the program with leading policy makers in Washington when I was there a few weeks ago. They thought it was a fantastic program, to offer people in the most remote parts of the country high speed Internet with free installation and comparable charges to what you or I, Mr Acting Deputy President, might pay in metropolitan parts of Australia. It is a phenomenal program. Telstra, who won the tender to provide that program, informed me very recently, when I had to send more information on this to people in the United States who had sought information on it, that the program has had a pick-up rate of in excess of 30 per cent. It is a massive rollout of high speed Internet into some of the most remote parts of our planet.

Although we will oppose this reference, because we think it is politically motivated, the members of the committee that make this inquiry will be astounded by the incredible increase in communications services that has occurred as a result of this government’s commitment—a commitment of very intense policy work but most importantly backed up by over $1 billion worth of investment. When Mr Besley made his report he had been attacked unmercifully by Stephen Smith and the Australian Labor Party generally for being ‘fatally politically compromised’. They said that the report ‘would not be free from political interference’ and that it was a ‘political stunt’ that ‘created a perception of a clear conflict of interest’. These were all the claims that Labor made about the Besley inquiry. Mr Besley reported, and we said, ‘Okay, we have not been comprehensive enough in our investments.’ We then announced some $167 million more of investment into further upgrading services. Those investments are being made throughout the last few months and throughout this year.

It is a matter of some hypocrisy that there is now this proposal from Labor, which criticised an independent committee a couple of years ago. The shadow minister, Mr Tanner, in the CEPU newsletter—and I guess that shows where his real audience is—dated 21 June 2002, just a few days ago, said:

... the quality and extent of telecommunications services in rural and regional Australia is still very inadequate ... and Telstra’s network is deteriorating.

You have the Labor Party—with the help of the Australian Democrats—setting up an inquiry into telecommunications services, and they have already made the decision on what the result is going to be. This is the party that say Mr Besley is biased and ‘fatally politically compromised’. Not content with criticising an eminent Australian businessperson who did a very effective job in measuring Australia’s performance two years ago, they have decided—for what could only be regarded as cheap political purposes—to set up their own inquiry, having already decided on 21 June 2002 that the services are ‘still very inadequate’ and that ‘Telstra’s network is deteriorating’. That is something that I am sure the committee will find to be false. I guess, if it serves any purpose, it will prove that their shadow minister does not know what he is talking about—but that would be nothing unusual.

The hypocrisy will be compounded. I hope the Democrats will agree that, if you are going to have an inquiry that will not be tainted as politically motivated from the start, it would be fair—when you are out there talking to everyone about the options for telecommunications in Australia—to have the option on the table from the alternative government, the opposition, of structurally separating Telstra, as a term of reference. If you were fair dinkum about the policy, if you were fair dinkum about having a policy debate about the future of telecommunications—as it is a vital service—you would do that. The government have put—and I do not think anyone would criticise us for this, even though you could criticise the outcome—enormous policy time and effort into trying to improve it. I am sure members opposite would say, ‘You could have done it better; you could have done it differently,’ and that is what debate is about. But, if you are going to have a debate, if you are going
Senator ALLISON (Victoria) (4.26 p.m.)—As joint mover of the motion, I would like to make some comments about the amendment put up by the government. First of all, I would like to correct the minister when he says that this is politically motivated; it is not. It is also not a repetition or a duplication of the Besley inquiry; it has quite different terms of reference. I think that, and have thought for some time, there is value in us looking at the network and examining its adequacy. If we are to believe the many complaints made about the system and its ongoing maintenance then it is a serious and nationally significant matter for the Senate to consider.

One of the more important aspects of this reference is the question of accessibility to broadband services. No matter what the minister suggests by way of adequacy of services, you cannot argue that the prospect of broadband and Internet online services reaching even the majority of Australians over the next short period of time is likely. We certainly do not have a plan from the government as to how that might happen. I reject the minister’s claims that this is not necessary or that there is any motivation other than a desire to see whether Australians can look forward to a telecommunications environment which is second to none in the world. I point out that Australia lags behind many other countries, especially countries like Canada, which can be compared to Australia for the purposes of assessing the take-up and the affordability of online services.

We will not be supporting this amendment. The government talks about political motivation, but that is what is in this amendment. The Democrats will not support it if for no other reason than it does not talk about proposals. The minister admits that this is about the ALP’s ‘proposal’, but as I understand it, that was a discussion paper with a range of options. If the government wants to put up a proposal then it ought to come back to the Senate and ask the Senate to examine that proposal, and I am sure we would be very willing to do that. But, in the absence of a proposal from the government, I do not think it is appropriate for us to look at anything the ALP may have said, proposed or suggested in recent times. Perhaps this warrants a separate inquiry of its own, but it certainly should not be tacked onto the inquiry which has been drafted already and put before the Senate. It would take this inquiry in a completely different direction, and that is not something that we support.

As I said, Senator Campbell, if you have a proposal you think is of use to the government then we would be willing to examine it. However, the government has many resources available to it, including perhaps an extension of the Besley inquiry if that is seen to be such an independent and worthy vehicle for having examined service levels in the
past. By all means, why not refer this to the Besley inquiry? But you need a proposal before you can have an inquiry into a proposal. I will leave my remarks at that and indicate that the Democrats will not be supporting this amendment but we support the reference.

Senator MACKAY (Tasmania) (4.30 p.m.)—In conclusion, I would like to concur with the remarks of my colleague Senator Allison and indicate that I would have expected Senator Alston to be here. I understand that Senator Ian Campbell is doing this on behalf of Senator Alston, but Senator Alston is not here and that is a shame. Let us not try to dress this up as anything other than what it is—a total political stunt on behalf of Minister Alston. As Senator Allison indicated, if the government were serious about having a Senate inquiry, government members on the committee that we belong to would have initiated an inquiry into the state of the network in Australia. They did not. It was left up to the Labor Party and the Democrats, who worked very hard in relation to the terms of reference, to get a substantial inquiry which will allow us to consult with people adequately in the metropolitan areas and the regions.

Senator Allison mentioned the Besley inquiry. That is a very interesting issue. I would say this to the government: if they regard our inquiry as so abhorrent and so politically motivated—here is Senator Alston now—where is this government’s commitment to Besley mark 2? We recently had Senator Boswell letting the cat out of the bag on the Sunday program. He indicated that he thought everything was fine in the regions now. He indicated that he thought there was equity in relation to service access. He indicated on behalf of the National Party that he thought it was okay to proceed with the sale of the remainder of Telstra. Whoops! What happened that week? Absolute furor in the National Party room—absolute furor—and we had Senator Boswell extremely embarrassed, egg all over his face, backing off from this commitment that he made because of the backbench furor in relation to it. What was the Liberal Party’s response? The Liberal Party’s response, when told by a number of National Party backbenchers that we need a further inquiry, was no commitment to a second Besley inquiry. Senator Campbell may well be right in relation to the Besley inquiry. We have our own views about what it did and did not look at, but it is better than nothing and the government has not even committed to a second Besley inquiry. All we get is some mealy-mouthed rubbish from the Deputy Prime Minister and the House of Representatives about establishing benchmarks. Talk about piggybacking on the work of other people. Rather than the minister himself saying, ‘Look, there is no need for a Senate inquiry because I am recommitting here today to the Besley inquiry, at least to shut up my National Party backbenchers,’ what do we do? We have what is clearly a political stunt on the back of the hard work that has been done by Labor Party and Democrat senators. Let us not try to dress it up as anything other than that.

Who is the government going to ask before they proceed, I think more expeditiously than not, with Telstra 3? Who is the government going to consult? I can tell the Senate because the government have told us. They are going to talk to their—guess who?—backbench. Their backbench is going to be the arbiter of whether regional Australians have access to service delivery and telecommunications that are equal to those enjoyed by people in metropolitan areas—hardly, I would have thought, a group of people that has no particular allegiance. We are dealing with members of a political party. So they will consult with their backbench, and once the backbench is happy then that is fine. That may be well and good, but we have already had Senator Boswell on the Sunday program saying as far as he is concerned equity exists so we may as well proceed with the remainder of the sale of Telstra.

I will be a lot quicker than I otherwise might have been. This is barely worth talking about and I think it is an extremely ordinary effort from the minister, Senator Alston, who was here very briefly but has run out of the chamber. I had hoped for some remarks on it, but we are not getting any. This is a total stunt. We say to the government: if you are
serious in consulting with the Australian people the least you can do is recommit to having a second Besley inquiry. We think that even that is deficient because we think that there are major areas that Besley did not look into, including the issue of hundreds of thousands of faults that exist on the network, the parlous state of the network and the fact that it has been totally underfunded. But that is fine: if this government is going to go off and talk to its backbench and that will be the final arbiter, on its own head be it. This is nothing more than a political stunt. The Democrats and the Labor Party have spent months in organising these terms of reference. We think it is going to be an excellent inquiry. We think it fills the gap that is currently there in the absence of the government doing absolutely nothing on consulting on Telstra. I commend the Democrats for working with the Labor Party and together we brought forward an excellent proposal. I personally look forward to the inquiry. I think it is going to be a lot easier getting information through this inquiry than through a tortuous estimates process with Telstra obfuscating every single step of the way, which we normally have to put up with. It is becoming increasingly politicised, might I say—a fact which has been recently highlighted by Mr Tanner—and, of course, we now have Telstra threatening to sue Mr Tanner for the temerity to indicate that Telstra might be ‘a little bit political’ in its comments in Senate estimates. I do not think you would have to be Einstein to agree with that one. This is just a stunt. What we are after, as Senator Allison has indicated, is a solid, genuine inquiry and we will consult with the Australian people in the absence of any government initiative to do that.

Question negatived.

Original question agreed to.
apologise to the committee for that, but we are right on track here at the moment. I should foreshadow that I will be looking at amendment (5) and the committee’s deliberation on that. If the committee will give me a moment, I will get amendment (1) in front of me.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.43 p.m.)—While Senator Brown is doing that, I will just bring this into focus. Yesterday, government amendments (5) and (8) were postponed, as was Democrat amendment (2). These amendments dealt with the definition of a terrorist act. As I understand it, Greens amendment (1)—which is what Senator Brown is looking at at the moment—will deal with the same issue; that is, the question of the terrorist act involving serious harm to a person. To refresh people’s memories, yesterday Senator Brown said to me, ‘This involves serious harm to a person; that does not involve harm to anyone else. Does it include a case where someone could be fasting and intent on harming themselves by fasting?’ The government is in a position to proceed with its amendments (5) and (8). I have looked at the situation and I can advise the chamber that there are a number of reasons that the legislation is framed as it is, and I can outline that to the chamber now.

The government will oppose the amendment which is about to be moved by the Greens, the effect of which would be to exclude serious harm that a person causes to themselves from the definition of ‘terrorist act’. As I say, there are a number of reasons for this. Violent suicide in a public place that is calculated to coerce the government or intimidate the public can be properly considered a terrorist act in some cases, and I referred to that yesterday in relation to a suicide bomber. Indeed, acts involving suicide have a long history as an intimidatory form of violence and terrorism. More broadly, a key point I bring to the chamber’s attention is that the concept of serious harm is commonly used in criminal offences without specifically excluding harm to oneself. In other words, in other parts of the criminal law you do find provisions which are similar to this which involve serious harm to a person, which could include self-harm. That is a standard approach in Commonwealth and state criminal offences.

I also note that, in considering the issues of intimidation and coercion in the context of the definition of ‘terrorist act’, the Senate Legal and Constitutional Legislation Committee considered that the definition should follow the United Kingdom legislation. In relation to this serious harm element, the approach in the bill follows the United Kingdom definition in not excluding serious harm caused by a person to themselves. Whether a case involving self-harm would be prosecuted would depend on whether the elements of the offence were present and on the prosecution policy of the Commonwealth, as with other offences involving concepts of harm. The government is concerned not to leave this as a loophole in the legislation, which it believes the Greens amendment would do.

There is a difference between this part and the endangering of life. I note that this limb is different to the limb relating to endangering a person’s life, which does exclude danger to oneself. There are legitimate cases where creating danger to oneself is justified; for example, in saving another person. So those are the reasons for the government maintaining its position on amendments (5) and (8). I think that really does cover the field in relation to government amendments (5) and (8), Democrat amendment (2) and Greens amendment (1). If we now deal with Greens amendment (1), we can then go back to those other amendments which I have covered.

Senator BROWN (Tasmania) (4.47 p.m.)—I move Greens amendment (1) on sheet 2561:

(1) Schedule 1, item 3, page 7 (line 28), amendment to paragraph 100.1(2)(a) as amended, after “person” add “other than the person taking the action; or”.

The Minister for Justice and Customs avoided the central point at issue here, which I outlined last night, which is protest by such measures as fasting. I asked the minister: are there circumstances in which fasting would be seen as intimidating or coercing government and therefore a terrorist act?
Senator Ellison—Not under this proposed legislation.

Senator BROWN—I ask the minister: does he agree with the Minister for Immigration and Multicultural and Indigenous Affairs that fasting by people in the Woomera detention centre, for example, has been used to coerce government?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.48 p.m.)—I think Senator Brown there is taking the Minister for Immigration and Multicultural and Indigenous Affairs out of context. The context for what the minister for immigration was saying there, as I recall it—and I would have to check carefully what the minister for immigration said—was that people were fasting to protest against an adverse decision and in an effort to try and get the government to reconsider its decision. The minister’s comments were not in the context of this legislation or in the context of where we have intimidation of the public or people as mentioned here in the bill. It was an entirely different context.

Senator BROWN (Tasmania) (4.49 p.m.)—No, it was not. This bill talks about terrorism coming from people who have, amongst other things, political aims in their actions. This particular part of the legislation includes self-harm as being a coercive or intimidatory action on a government, with a political purpose. That would snare Gandhi. It would snare the suffragettes. We cannot leave on the books the situation where people who are prepared to take their beliefs to fasting or to some other form of self-threat can be declared terrorists and face life imprisonment as a result of that. This was the proposition I put to the minister last night. I expected to have an answer today or some alternative form of dealing with it, but he has avoided it altogether. I ask other members of the committee to consider the ramifications of that. Of course the minister will say, ‘We would not interpret it that way.’ Legislation should not allow it to be interpreted that way. Future governments, if given the opportunity, somewhere down the line will interpret this legislation to use it against political opponents. I remind the committee that again last night people from all parties and the cross-bench referred to the parliament’s proclivity for banning the Communist Party—

Senator Robert Ray interjecting—

Senator BROWN—In 1951. Thank you, Senator Ray. But when this was put to a referendum the people of Australia said no, even though it was just after the Korean War. They said no because the banning of an organisation like that goes so strongly against an open society, a democratic society, a society where freedom is to the fore.

But here we have a legislative measure, a bill, which is moving to do precisely what the people of Australia 50 years ago said parliament should not do, and it is going a lot further than that. In this particular clause it is saying, ‘We are going to put the threat of peaceful protesters using time honoured methods being labelled terrorists by the government of the day.’ This should not be left open to government interpretation and, if that is where it has to be left, it should be removed. The Greens are trying to amend it to ensure we do not leave it open to future government interpretation. I invited the minister last night to come back with some form of legislation that would fix this and today he makes reference to Britain or somewhere and says, ‘We are doing what they are doing.’ That is not good enough.

I reiterate that if you go to South Korea you will find a country with a much shakier democracy than we have that has shelved legislation like this, simply because the people were so opposed to it. The challenge here is for the government to come up with legislation which nails terrorists, because the government says we have to have that legislation. I have maintained that we already have enormous powers to nail criminals, including terrorists, under existing legislation, and to watch for them and track them down. But if we must have new legislation, it has to be legislation that does not trespass on a whole broad field of community activities and protests; this particular clause does. It ought to be either knocked out or amended to get around the problem I am talking about.

Last night I foreshadowed the problem that the minister has talked about of a person who is going to kill themselves to make a
point and perhaps terrorise other people in
the process. But the point is that for that ex-
traordinary situation, you have the label of
‘terrorism’ being put across a whole range of
people, including not a few who have al-
ready protested by fasting outside this par-
liament in the 14 or so years that this parlia-
ment has been here. We should not do that. Mary Robinson, the United Nations Com-
missioner for Human Rights, has warned
against it, recognising that of course we must
take strong measures against terrorists but
not at the expense of internationally recog-
nised liberties and liberties which have been
exercised in this country for the last 100
years.

I therefore commend the Greens amend-
ment to the committee and I again ask the
government: did it look at the ramifications
for people who are protesting through fasting
or other methods to make their point? The
minister seems to indicate that the govern-
ment did not even take this into account or, if
it did, it dismissed it because it was too hard.
Being too hard does not excuse sloppy leg-
islation which can be abused further down
the line.

Senator GREIG (Western Australia)
(4.56 p.m.)—I do not think that the bow that
Senator Brown is drawing is so long and I
think there is merit in his argument. He has
made reference, in his contribution to this
amendment, to Gandhi and the suffragettes
in a historical context but, when Senator
Brown first raised the issue of fasting, the
person who most sprang to my mind was
Bobby Sands. It would have been in my
early high school days when that issue had
international prominence because of the
fasting that he was undergoing.

Senator Robert Ray—It was around
1979-80. Given the political context of the
time—the criminalisation, the banning, the
proscription, if you like, of the IRA, the im-
prisonment of Bobby Sands and the act of
fasting he undertook which resulted in an
international campaign and international rec-
ognition of the issue and arguably increased
concern and criticism of the British govern-
ment—I think you could run a reasonable
argument that that was an act of coercion or
intimidation. So, to me, that is the more re-
cent argument, less historical in comparison
to suffragettes and Gandhi. I think that kind
of political act is something that we could
well experience in the future. We cannot pre-
dict these things. So I think there is merit in
Senator Brown’s argument and in his
amendment and therefore it should be sup-
ported.

Senator FAULKNER (New South
Wales—Leader of the Opposition in the Sen-
ate) (4.59 p.m.)—This debate is continuing
from last night, and Senator Brown has pro-
posed an amendment to paragraph
100.1(2)(a) to add, after the word ‘person’,
the words ‘other than the person taking the
action’. The minister assures the committee
that this is not necessary. The minister also
assures the committee that there is a possi-
bility, if these words were included in the
legislation, that unintended loopholes may be
created.

I can say to the committee that I certainly
note that none of those very eminent legal
minds that provided submissions and gave
evidence to the Senate committee identified
this issue or drew the committee’s attention
to this issue. That does not mean that this
committee should not treat the matter seri-
ously. I would like the minister to confirm
for the committee that there is no chance, if
these words are not added—in other words,
if Senator Brown’s amendment is not agreed
to by this committee—that charges of terror-
ism or any terrorist related activity could be
brought to bear against a hunger striker, suf-
fragette or the like. If the minister can give
that clear and unequivocal commitment to
the committee, we can move on. As I have
heard the minister, I think he has been will-
ing to say that in response to Senator Brown,
but let us nail it down; let us get it clear.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.01 p.m.)—At the outset, the question of whether or not a matter is prosecuted is for the DPP. But I can say to the committee that it is the government’s intention that a person who is a hunger striker would not be caught by this legislation. That is the government’s intention. Of course, in relation to prosecutions, at the end of the day, a decision to prosecute is made by the DPP. I cannot interfere with that discretion, but I can make it very clear here and now that it is the government’s intention that this legislation is not intended for a hunger striker. As I stated earlier, the Senate Legal and Constitutional Legislation Committee wanted the government to follow the UK example and definition, and this follows the UK example and definition. As Senator Faulkner mentioned, this was not an issue during the course of the hearings, as I understand it, when the Senate Legal and Constitutional Legislation Committee looked into this matter.

Senator BROWN (Tasmania) (5.02 p.m.)—On that matter, the fact that it was not brought up in a committee hearing or that it is not in legislation in some foreign country does not alter the matter that I am raising at the moment. I am surprised that it was not brought up, but we ultimately are charged with canvassing the field and to raise issues and deal with them here. The matter is obvious. The government’s intentions, I do not think, are good enough. The minister himself says it would be up to the DPP. We are talking about a prosecutor acting in a different political climate under a different government in the future. Legislation should clearly say what it is intended to mean. If the government does not mean for this to include people who are fasting or in other ways perhaps endangering themselves without endangering others, then it should say so.

I ask the minister: what about the situation—and this is occurring at the moment in Woomera—where people who are fasting have sewn their lips? Is that terrorism? Does that not frighten people and cause affront? What would the government think if that was happening in front of this parliament or in front of a public building in Australia? Does the government mean to tell me that a prosecutor, under a hostile government in the future, is not going to say that these people are creating terror? I think this is wide open for just that to happen. And there will not be reference to what is going on in Britain or Somalia or somewhere else when it does happen. We have to deal with this legislation in the Australian context.

I oppose the definition of terrorism as it applies. It is far too wide, and that means it is wide open to abuse. But in this particular matter we can see how it can be abused and we can see how it can be used against people who have taken part in traditional, peaceful protests in the past. I think the committee should look at it very, very seriously. We have to deal with this legislation in the Australian context.

I oppose the definition of terrorism as it applies. It is far too wide, and that means it is wide open to abuse. But in this particular matter we can see how it can be abused and we can see how it can be used against people who have taken part in traditional, peaceful protests in the past. I think the committee should look at it very, very seriously. We have to deal with this legislation in the Australian context.

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

The committee divided. [5.10 p.m.]

(The Chairman—Senator S.M. West)

AYES
Allison, L.F. Bartlett, A.J.J.
Bourne, V.W. * Brown, B.J.
Cherry, J.C. Greig, B.
Harradine, B. Harris, L.
Lees, M.H. Murphy, S.M.
Murray, A.J.M. Rudd, P.
Stott Despoja, N.

NOES
Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Campbell, I.G.
Colbeck, R. Collins, J.M.A.
Conroy, S.M. Cook, P.F.S.
Cooman, H.L. Cooney, B.C.
Crossin, P.M. * Crowley, R.A.
Denman, K.J. Eggleston, A.
Ferguson, A.B. Ferris, J.M.
Forshaw, M.G. Gibbs, B.
Hogg, J.J. Hutchins, S.P.
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Kemp, C.R.
Ludwig, J.W.
Macdonald, J.A.L.
Mason, B.J.
McKierman, J.P.
O’Brien, K.W.K.
Ray, R.F.
Schacht, C.C.
Sherry, N.J.
Tierney, J.W.
Watson, J.O.W.

Knowles, S.C.
Lundy, K.A.
Mackay, S.M.
McGauran, J.J.J.
McLucas, J.E.
Patterson, K.C.
Reid, M.E.
Scullion, N.G.
Tchen, T.
Troeth, J.M.
West, S.M.

* denotes teller

Question negatived.

The CHAIRMAN—I understand the committee is now ready to return to government amendments (5) and (8) on sheet DT340 and Democrat amendment (2) to government amendment (8).

Senator GREIG (Western Australia) (5.15 p.m.)—I move Democrat amendment (2) on sheet 2555:

(2) Government amendment (8), omit paragraph (a), substitute:

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

and

I did get the opportunity to speak to this yesterday but, to remind people, we were talking about definitional issues relating to advocacy, protest, dissent or industrial action. The Democrat amendment would, I believe, prevent activists and protestors from having access to the exemption. The government has, as I said last night, omitted the word ‘lawful’ from its redrafted exception, but we Democrats are of the view that this exception may still be open to a limited interpretation. We therefore propose this amendment to clarify it so that it applies to lawful and unlawful advocacy, protest, dissent or industrial action. I gave the example yesterday of a rally or a protest where a permit had not been issued but the rally or protest nonetheless got under way; it was therefore unlawful but nonetheless benign. I do not think that, in that situation, the organisers ought to fall foul of the law in the way which is proposed.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.16 p.m.)—Senator Greig also canvassed this particular amendment last evening, and I must say that I have looked closely at the proposal. I see no advantage in inserting the words ‘lawful or unlawful’ before the words ‘advocacy, protest, dissent or industrial action’. I really can see no argument that this improves the legislation. The words, as amended, are not limited in any way, so it does not, in our view, make a lot of sense to add words like ‘lawful or unlawful’—any adjectives in fact—to the definition that would, in essence, duplicate the effect that has already been achieved. I understand and accept the spirit with which this has been put forward, but I see no positive effect. In fact, I do think there is a risk that adding words like this to such a key clause, without adding any meaning, will lead only to confusion. It is for those reasons that the opposition will not support this amendment—although I do accept the spirit with which it is put forward in the debate by Senator Greig.

Senator COONEY (Victoria) (5.18 p.m.)—This amendment is about what action will not be touched by criminality. The way it is set out is reasonable: the action is not to be a criminal act if it is ‘advocacy, protest, dissent or industrial action’ and is not intended to do certain things. The words ‘lawful or unlawful’ do not add all that much to what happens. This is a statement which makes actions which might otherwise be suggested to be criminal actions innocent actions. As I understand the legislation as it is being amended, it would be for the prosecution—and the minister might give an answer to this—to show that it was beyond a reasonable doubt that the action was not intended to do those various things. I would have thought that it would be a great protection for a person in that situation. I do not think there is any suggestion—and I think this is what the words ‘lawful and unlawful’ might be trying to get at—that it would be for the accused to show that the action was not intended to do this. It would be for the prosecution to show beyond a reasonable doubt that the accused did not intend to do those sorts of things.

This is a situation which has got to be looked at in terms of criminal law. These are amendments to the criminal law, which would be investigated largely by the Federal
Police, and that is a force which I think is quite an adornment to Australia, to Australian law enforcement and to Australian civil liberties. I was speaking today to Annie Davis, Andrew Colvin and Ian Knight, who are within the Australian Federal Police and are the sorts of people that anybody would want in a police force. I ask the minister whether my interpretation of that section is correct or not.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.22 p.m.)—I can confirm that Senator Cooney’s assessment of the onus of proof and the requirement that the prosecution prove those aspects beyond a reasonable doubt is correct. The government opposes this amendment proposed by the Democrats. The government prefers its amendments (5) and (8), which flow from the recommendations of the Senate Legal and Constitutional Legislation Committee. We believe that the amendments proposed by the government do a better job in relation to this definition.

The TEMPORARY CHAIRMAN (Senator Cook)—The question is that Democrat amendment (2) on sheet 2555, an amendment to government amendment (8), be agreed to.

Question negatived.

Senator Brown—I record my support for that amendment.

The TEMPORARY CHAIRMAN—The question now is that government amendments (5) and (8) on sheet DT340 be agreed to.

Senator BROWN (Tasmania) (5.23 p.m.)—We debated government amendments (5) and (8) at length last night, so I am not going to take much of the committee’s time except to again express my concern that there is not an exclusion clause here for people who are acting in a way which includes fasting. The committee is obviously going to agree with the government, because the government will have the support of the ALP in this. All I can say is that it is very worrying to trespass on a whole field of traditional protest which has made our society the better, which marks our society as a vigorous democracy which involves inclusion of a broad range of ideas, which is not restrictive, not militaristic, not coercive and, hopefully, where people are acting in a non-criminal fashion—non-punitive. I think when a future government comes to object to whatever point of view those people are putting forward we will now have a punitive arrangement for people involved in such things as fasting. These amendments are of course aimed at improving and do improve the government’s first run at this legislation, which was quite frankly horrendous, but they do not improve it far enough.

Senator HARRADINE (Tasmania) (5.25 p.m.)—I want to address a question to the minister in respect of subclause (2A)(b) of amendment (8), where it 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.

Last evening we were discussing this question of serious harm that is physical harm. I know that the Minister for Justice and Customs and the legal profession are familiar with the term ‘grievous bodily harm’. I think the minister did cover that situation last night. I wonder whether the minister would address himself to this question about physical harm to a person other than the person taking the action. I know we discussed this in Senator Brown’s point previously, but the government has in its own amendment subparagraph (b)(iii), which says:

(b) is not intended:
(iii) to endanger the life of a person, other than the person taking the action;

Why are those words in there? Does the minister consider that those words really cater for the situation as in the previous discus-
Secondly, in the committee last night the minister referred to the question of a person who has a bomb strapped to their body. What effect would (b)(iii) have against that particular individual if, for example, the bomb did not go off and that person was detected before it was detonated?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.29 p.m.)—Senator Harradine brings together in his questions a number of issues which have been touched on previously. I will refer to the question, firstly, of serious harm. In the Criminal Code Act 1995, serious harm is defined to mean:

... harm (including the cumulative effect of any harm):

(a) that endangers, or is likely to endanger a person's life; or

(b) that is or is likely to be significant and longstanding.

So it is of a wider definition than to endanger the life of a person. It does include that but it goes further, in fact, to include harm that is 'significant and longstanding'.

In our proposed subsection (2A) we are saying that, in the first instance, it should not be intended to cause serious harm—that is, physical harm—to a person. We are saying that is a broad definition and it catches the threat of serious harm to a person; even the person who is actually carrying out the threat. We have discussed that before in relation to Senator Brown’s proposed amendment in relation to a hunger striker. I gave the example of someone who has strapped a bomb to themselves, intent on suicide. That is quite different from (b)(iii), which says 'to endanger the life of a person, other than the person taking the action'. So (b)(iii) is dealing with the protection of people other than the person proposing the threat. It talks about endangering life, but it does not extend that to the person carrying out the action. It does that for the reason that there are legitimate cases where creating danger to oneself is justified—for example, in saving another person. That is why it has not been extended to the person taking the action. It is a question of endangering the life of someone.

Subparagraph (b)(i) actually relates to the causing of serious harm. That is where you are out to cause serious harm—not to put anybody in danger of their life but just to cause serious harm—and so that is a slightly different limb, if you like, from (b)(iii). Subparagraph (b)(i) is where you set out to cause the serious harm that I mentioned—which includes endangering life—and you intend to cause physical harm to a person including yourself, and (b)(iii) is where you intend to endanger the life of other people. So we believe that those two cover the field.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.32 p.m.)—I would like to make some comments on these government amendments. I commend to the committee the remarks I made last night in relation to these particular matters, because they are at the heart of these bills. It is absolutely crucial that this committee get this definition right. It is relevant to this bill and to the other bills that we are dealing with in this package. It is absolutely essential that we deal with the very sloppy definitions contained within the original bills when they were introduced. As I have said, these bills were riddled with unintended consequences, and the problem this committee faces is that, if we do not get these definitions right, there could be draconian consequences, serious consequences, for innocent people. That is why, as far as the opposition are concerned, we have put so much effort into ensuring that this definition is right.

It was really only a couple of weeks ago that the Attorney-General, Mr Williams, said:

We believe the community is prepared to make sacrifices of individual civil liberties in order that the community generally is protected from those threats.

To be fair to the Attorney-General, those threats are terrorist threats. But we in the Labor Party—and, I believe, the vast majority of senators and parliamentarians in this building—would not want to sacrifice such liberties and freedoms lightly. We will not sacrifice civil liberties and democratic freedoms lightly—and I say that deliberately. I think that is crystal clear from the debate that
senators have engaged in so far in this committee and crystal clear from what occurred in terms of the submissions to the Senate committee and the enormous amount of correspondence that has been received on these important bills from a very wide range of interested people in the community.

What we say to the committee from the Labor perspective—and it is a really important principle—is this: if these bills are right, if they are properly drafted and significantly amended, then with improved drafting, with tighter definitions, people’s rights will be protected. That is the task. I have been very frank from the beginning of this debate in saying that the challenge is to be vigilant in the fight against terrorism and vigilant in protecting the democratic freedoms and liberties and values that Australians hold dear. That is the task for this Senate committee.

The definition which we are dealing with here is at the core of the bills. We know we are dealing with a bill that, when introduced, had a very sloppy definition of a terrorist act and had the potential, as a result, for significant consequences. We have been concerned from day one that we faced a situation where civil protests might have been criminalised as terrorists acts under the definition that was contained when the bills were introduced. The example that we have consistently given is that domestic political protests could have fallen within the definition as soon as they became unlawful in any way. That could be for something as minor really as trespass or nuisance or the like. These sorts of issues had to be fixed. And the original definition did not distinguish terrorist violence from offences or forms of violence covered in other acts. We have been successful in convincing the government to very significantly tighten this definition. It was absolutely unacceptable, as far as the opposition is concerned, and we had to ensure that any possibility, however remote, of protests or industrial action being dealt with as terrorist offences had to go. It had to go, it had to be removed, and it has been.

I want to say something in relation to the general issue that we are talking about as we deal with this definition, and I have explained to the committee how seriously it is treated on this side of the chamber. Recently it has come to my attention that one Commonwealth body, the Defence Service Homes Insurance, recently wrote to their policyholders. I ask the Senate committee to give some consideration to this, and I would be interested in the minister’s comment. They have told their policyholders that a clause has been added to the DSH home building insurance policy. It is called ‘Terrorism exclusion endorsement’ and it has gone out to all policyholders. It says:

Notwithstanding any provision to the contrary within this insurance, or any endorsement thereto, it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from, or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

That is self-explanatory; it is the sort of terminology you would expect in such a clause. Then it goes on, and this is the key part:

For the purpose of this endorsement, an act of terrorism means an act including, but not limited to, the use of force or violence and/or the threat thereof of any person or groups of persons, whether acting alone or on behalf of or in connection with any organisations or governments, which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes—and I encourage the committee to listen to this—including the intention to influence any government or governments and/or to put the public, or any section of the public, in fear.

That is fundamentally based on the Canadian definition. Defence Service Homes Insurance have come up with such a definition in relation to an act of terrorism which is one that I think most in this committee would say is a reasonable outcome. So we have got Defence Service Homes Insurance adding a clause to their DSH home building insurance policy that is fundamentally based on the Canadian definition, but that is not the government’s preferred approach. I give DSH Insurance credit: they have come up with a cleaner, better way of doing things. It is the same task that this committee faces in relation to this legislation.
I believe the definition has been massively improved. It needed to be. I doubt that we would have been able to achieve this outcome without the extraordinary effort from witnesses and from the Senate committee. I particularly acknowledge the effort of my colleagues in the Australian Labor Party who have really put their shoulder to the wheel in relation to this matter. It is essential that we get this right. The government got it horribly wrong. It is much better if these amendments pass. It has always been a difficult task—I acknowledge this—to get this definition right. Many nations have genuinely struggled with this challenge for decades—literally for decades. Many are struggling with the challenge to get a definition of terrorism or terrorist act correct now. This is now a best effort. It needed to be massively improved and it has been. We can be very thankful there has been such an extraordinary effort in this chamber, in committees of this chamber and beyond, to ensure that this outcome has been achieved, because the unintended consequences if we had not been able to do that are just too horrible to contemplate.

The TEMPORARY CHAIRMAN (Senator Cook)—Senator Brown, do you intend to do anything about the Australian Greens amendment (4) on the sheet?

Senator FAULKNER—Mr Chairman, I am sorry, but just on a procedural point: I am happy to show it to the minister and I seek leave to table the extract from the Defence Service Homes policy.

Leave granted.

Senator BROWN (Tasmania) (5.45 p.m.)—I hear what Senator Faulkner has just had to say, but I do not agree with him. I think we have not tightened down the definitions on this legislation. I think we have left open serious shortcomings, which will allow an abusive future government to falsely ban organisations. It will leave open the prospect of an abusive future government or a DPP—as the minister indicated a little earlier in the day—acting unilaterally to have people who have been engaged in activities, which could only have been seen as part of the fabric of Australian history in the past, being indicted as terrorists. The shortcomings of the government’s and Labor’s agreed approach might be summed up to some degree by the letter which all members received two days ago from Amnesty International. I want to quote from that letter in response to what Senator Faulkner had to say. The letter from Amnesty says:

Amnesty International objects to this package of “anti-Terrorism” legislation, and calls on you to do the same. If enacted, this legislation risks infringing fundamental human rights. We congratulate the members of both the relevant inquiries for their comprehensive reports into the proposed Bills, and for their belief that the Bills in their current form are unacceptable. However, Amnesty International believes that the recommendations made by the Senate and ASIO Committees—

they are talking about the ASIO bill, which is not part of the consideration of the Senate tonight—

while an improvement on the original legislation, do not go far enough to ensure that the rights of innocent people will be protected.

Amnesty International says that its main concerns relating to the two bills have been extensively outlined in both their written submissions to the Senate and to the ASIO inquiry, as well as in the oral evidence provided at those inquiries. They say:

We outline below some of Amnesty International’s outstanding concerns following the release of the Inquiry Reports and the Attorney-General’s news release of 4 June 2002.

On the Terrorism bill—and this is the one we have in hand now—Amnesty International says:

As noted above, Amnesty International has not been able to obtain a copy of the full “Terrorism Bill” as amended.

This is just two days ago.

Accordingly, our comments are based on the amendments as announced by the Attorney-General on 4 June 2002.

Amnesty International believes that even after the inclusion of the government’s amendments—meaning the ones we are dealing with right now, which Senator Faulkner says go to the heart of the matter—

there is a complete lack of clarity in this Bill. The Bill risks violating the right to a fair trial and the right to only be prosecuted for a recognisable criminal offence under clear legislation. The
to be caught by the breadth of this legislation. Not only does the Bill risk breaching international human rights law, it is also profoundly unfair.

The definition of “terrorism” in the proposed Bill is too broad. While exemptions for “lawful advocacy, protest or dissent” are provided, there are no definitions of these concepts. This would allow for vague interpretation in application of the legislation, and an inadequate degree of certainty as to what activities will be deemed to be “terrorism” offences. The proposed inclusion of an element of “intimidation or coercion” does little to assist with clarifying this definition. Amnesty International is concerned that this element may in fact result in limiting legitimate protest.

From the news release—

they are referring to the Attorney-General’s release of 4 June 2002—

it is unclear whether the proposed amendments clarify the definition of “member”. As drafted, the Bill allows for a penalty of 25 years imprisonment for someone who is an “informal member” of an organisation, or who has merely “taken steps to become a member” of an organisation that the Attorney-General has declared to be a “terrorist organisation”. It is Amnesty International’s position that this definition of “member” is too broad.

Amnesty International goes on to comment on what, effectively, we are going to see as an outcome, if my hunch is correct:

The Bill has the effect of criminalising activities that even the Government does not believe should be prosecuted. Before the Senate Committee, the Attorney-General’s Department confirmed that there are numerous examples of activities that may be covered by the Act that are not intended to be prosecuted as “terrorism” offences. Amnesty International has concerns with relying on the Department’s assurances that police and prosecuting authorities will not proceed with prosecuting people for “terrorism” offences in circumstance where their actions are not intended to be caught by the breadth of this legislation.

And note this sentence from Amnesty International:

History contains many examples of instances where laws that were not initially intended to be used in a particular way have been used for precisely that purpose further down the track.

The Bill does not recognise requirements of natural justice. While it allows the Attorney-General to “ban” organisations, there is no requirement within the Bill that the relevant organisation have the opportunity to respond or to be heard. Further there is no requirement that the Attorney-General notify the organisation of his decision. Adequate safeguards must be inserted in the proposed legislation to protect rights when proscribing organisations as “terrorist” groups. Allowing for a complete review of the Attorney-General’s decision to proscribe an organisation is one necessary element that the Bill lacks. Amnesty International urges further steps be taken to ensure innocent people are not unjustly affected by the proscription of organisations.

The Bill as initially drafted removed the right to be presumed innocent by reversing the onus of proof. The proposed amendments remove this reversal of the onus in some areas of the Bill, but do not appear to do so for every relevant section (see, for example, proposed section 102.4). Concerns remain that the right to be presumed innocent may be violated. Reversing the onus of proof breaches Article 14(2) of the International Covenant on Civil and Political Rights (“ICCPR”) and Article 11 of the Universal Declaration of Human Rights (“UDHR”). The burden of proof must remain with the prosecution to prove the elements of the offence, and anyone charged with an offence must be allowed the right to be presumed innocent until proven guilty.

Amnesty International also has concerns with the extension of the definition of treason in the proposed legislation. We note the Attorney-General’s statement that it will be a defence to this section of the person’s conduct relates to the provision of humanitarian aid. However, there remains significant concern that the advocacy work of community groups, including Amnesty International itself, may fall within the scope of this offence. Amnesty International’s work is focused on campaigning, researching and reporting. Amnesty International is concerned that this type of work would not come under the defence of providing humanitarian aid. Accordingly many human rights advocacy groups may still be subject to a charge of treason as the defence is insufficient.

On some matters, not including the last one, Labor amendments may pick up some of the problems that Amnesty has.

Senator Faulkner—All of them I think.

Senator BROWN—It does not pick up on the last one, for example. It patently does not pick up on others—the Greens amendments do. That is the difference. There are significant amendments from the Democrats and amendments in regard to Australian citizens from One Nation. But we are on a trajectory to ending up with legislation which
risks banning organisations and which risks infringing the rights of individuals here in Australia and overseas—as we are about to see shortly—in a way which would have been impossible in the past. To that extent this legislation is dangerous in terms of human, civil and community rights in our country.

The TEMPORARY CHAIRMAN (Senator Cook)—The question before the chair is that government amendments (5) and (8) on sheet DT340 be agreed to. Senator Brown, before I put that question, can you clarify Australian Greens amendment (4) in relation to government amendment (8)?

Senator BROWN—Do you need an amendment?

The TEMPORARY CHAIRMAN—Yes. If you are going to proceed with an amendment—I am not soliciting, I am just asking the question—you will need to move it now in order for me to put it.

Senator BROWN—I would like to move that amendment. I move Australian Greens amendment (4) on sheet 2561 revised 2:

(4) Government amendment (8), omit subpara-
graph (i), substitute:

(i) to cause serious harm that is physical harm to a person other than the per-
son taking the action; or

The TEMPORARY CHAIRMAN—The question is that Australian Greens amendment (4) on sheet 2561 revised 2, which amends government amendment (8), be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question now is that government amendments (5) and (8) on sheet DT340 be agreed to.

Question agreed to.

Senator BROWN (Tasmania) (5.57 p.m.)—I withdraw Australian Greens amendments (2) and (3) on sheet 2561 revised 2.

The TEMPORARY CHAIRMAN—That takes you to Australian Greens amendments (6) and (7) on sheet 2512 revised 2:

(6) Schedule 1, item 3, page 8 (lines 8 to 13), omit subsection (3).

(7) Schedule 1, item 4, page 10 (lines 2 and 3), omit subsection 101.1(2).

These extremely important amendments delete those sections of the legislation which would allow people taking part in actions overseas to be charged with terrorism in Australia in such a way that, again, there is a huge risk of infringing people’s rights. The government’s bill in this proposed section augments the definition of a terrorist act in such a way that acts can occur anywhere in the world and still be in breach of this section—in other words, the reach of this legislation is extended overseas and could net people who are taking part in protests overseas and action can be taken against them here in Australia. For example, if you have Australians protesting in Tiananmen Square or in downtown Lhasa against the brutal imposition of military occupation of Tibet by the communist Chinese dictatorship, they could arguably be indicted as terrorists under Australian law.

We know how close the Howard government is to the Beijing regime of President Jiang Zemin. Therefore, the potential for protestors at the Olympics in 2008, for example, is enormous. They might be protesting about Tibet or the horrendous labour conditions that obtain in many places in China. They might be protesting against the broadscale infringement of human and democratic rights in China—something we hear nothing about from the White House when President Bush exclaims that America is there to remove the evils of dictatorship and totalitarianism and impose freedom and democracy around the world. Then there is not a word about China.

But I am very concerned that people more consistent and logical than President Bush, who stand up for freedom and democracy wherever it might be threatened and go to China to protest for it, can be caught up by this legislation. What about the Falun Gong? The Chinese regime says that they are terrorists. What about those Australians who recently protested in Tiananmen Square?
Twelve of them were very badly treated; they were manhandled and bundled back out of the country. Will a future government be under pressure from the Chinese regime to classify those people as terrorists when they are not? Yes, there is potential for that under this legislation.

It is not, as Senator Faulkner has said, tied down and sorted out; far from it. It is very worrying legislation indeed. What about people who, in the future, will undoubtedly be involved in protesting for a free Papua—formerly called West Papua? Indeed, what about people who want to protest for the freedom of the Kurds? This government has already proscribed the Kurdish freedom party, the PKK, although in the last three years that party has eschewed violence and turned to the pursuit of democracy. There was frontdoor proscription, but the government has also effectively been able to move, via backdoor proscription, on that organisation in a way which worries me greatly. I will be returning to that issue with the Greens amendment on backdoor proscription, which the government already has the power to levy by crippling organisations financially.

The provisions in this legislation open a whole box of questions. I ask the government why it has moved to extend its overseas reach in matters of political dissent but not in matters of business malfeasance. What about those corporations that have caused death and injury overseas through either negligence or siding with dictatorships? Would it not be consistent for the government to be legislating against them? I am one of those who are totally in favour of this country's legislation that indicts child abusers, after having been overseas abusing children, when they return to this country. If they are not caught overseas, they can be brought before the courts here. If people come back to this country after being involved in terrorism, then it is logical to say, 'Let's indict them here.'

But, again, this legislation is wide open to abuse and coercion by other governments, who might see Australians who are acting in support of freedom, democracy, religious rights or workers rights as terrorists; they might put pressure on a future Australian government to indict them here, in their home country. We cannot leave that to the Director of Public Prosecutions. I do not think we should leave it to future governments either. I think we should nail this down and make it very clear that we are talking about terrorists who have caused mass bloodshed, violence and destruction; we are not talking about Australians who have gone overseas and risked their lives to defend the civil liberties of people in other countries. But this legislation can net such people—and it should not.

These particular provisions have been put into the bill because somewhere back there, in the international surveillance authorities, it has been thought to be a good thing. But it has not been thought out, and these provisions in the legislation should be removed. Again, I hope that the opposition will look carefully at this. These clauses are wide open to abuse, and we should not leave it that way.
China describes the Dalai Lama as a criminal. It is a totally illegal activity to be distributing pictures of the Dalai Lama in Tibet. Are Australians who are arrested there going to be able to withstand the ability of the Chinese secret police to load them up—they do this time and time again—with charges which are not true? They would be framed in that situation. Without the ability to reach overseas and get evidence, how are citizens here in Australia—if they come back here and get charged—going to defend themselves in that situation?

This component of the legislation is fraught with difficulties. If you are going to have the ability to indict Australians taking part as terrorists in events overseas, be very clear about it. As I said earlier, narrow the definition for those people who are out of the reach of the direct surveillance and apprehension of Australian authorities—whom we may trust enormously compared with their counterparts in some other countries—but do not leave them vulnerable in this legislation to the secret police and agencies of other countries. I am sure the Attorney-General will get up and say, ‘The Australian courts are going to be careful about this,’ and that the DPP will and so on. The legislation should be explicit. At the outset, it should be confined to those people involved in what the public perceives as terrorism overseas which is violence, bloodshed and destruction.

**Senator HARRADINE** (Tasmania) (6.10 p.m.)—The matter that is being considered is the issue in the bill:

(3) In this Division:

(a) a reference to any person or property is a reference to any person or property wherever situated, within or outside Australia; and

(b) a reference to the public includes a reference to the public of a country other than Australia.

Clearly, examples have just been given by Senator Brown in support of his amendment which would delete, as I read it, proposed subsection (3), which is the section I have just read out. I would also be interested to know what the purpose is of this proposed subsection. If it were taken out, what would be the result? Would that affect substantially the purpose of the legislation, which I think all of us, if not 99 per cent of us, would support? How do you answer the questions that have been raised and, if this were excised, what effect would that have on the overall legislation that is currently before us?

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (6.12 p.m.)—Senator Harradine puts it in a most concise way and one which can be answered relatively easily: if you take out that proposed subsection (3), you will lose the opportunity to prosecute an Australian who engages in terrorism overseas. You will also lose the prospect of prosecuting a terrorist who committed terrorist acts overseas; and then fled to Australia. You could have an event such as September 11 where, had the people involved survived the attack and fled to Australia, you would want to prosecute them here. This legislation deals with encompassing actions which are taken overseas which involve threats to the public in another country; it is not just the Australian public. There are two very important aspects of this legislation: firstly, to prosecute Australians who commit terrorist acts overseas and, secondly, to be able to prosecute those who commit terrorist acts overseas and then flee to Australia to try to escape justice.

In relation to Senator Brown’s query as to whether someone who engages in lawful protest overseas could be dealt with under this provision, in order for Australia to extradite a person there needs to be dual criminality: it has to be an offence in that country and an offence here. That is the first point I would make in relation to the extradition of someone. If that person were to return to Australia, could they be prosecuted? They could be prosecuted here only if they had committed acts of terrorism overseas. What Senator Brown is describing do not appear to me to be acts of terrorism but acts of protest, which are within the exemptions offered by this legislation.

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (6.14 p.m.)—I agree with the minister on this issue; it is important that the committee give some consideration here to the effect of Senator Brown’s amendment. The amend-
ment is designed to remove from the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] the extraterritorial effect of the legislation—in other words, the application of these laws to Australians outside Australia. We face a situation where this parliament can enact any law to operate outside Australia provided its subject matter is otherwise within its legislative power. Generally, as I understand it, criminal laws are presumed to extend only to the territorial limits of Australia unless a contrary intention is expressed in legislation. The Crimes Act is generally expressed to operate beyond the Commonwealth and territories, and the Proceeds of Crime Act is expressed to operate outside Australia. Such provisions are sensible in relation to criminal law. So we do have examples of extraterritorial criminal offences. You never know, with the sort of debates we have here we might even get into extraterrestrial criminal offences at some stage—

Senator Harradine—Cybercrime on Friday mornings at 5 o’clock!

Senator Faulkner—Indeed, Senator Harradine, but I think it best we do not go there. Senator Brown mentioned some examples of extraterritorial criminal offences: he spoke about child sex crimes, for example, and I accept what he said in relation to that. But let us look at what some of those criminal offences are: piracy, theft, fraud and bribery against the Commonwealth, slavery, sexual servitude and deceptive recruiting, various computer offences—cybercrime, as it is called—war crime, the taking of hostages, engaging in torture or using biological weapons, various offences at sea and, of course, dealing in drugs outside Australia with or without the intent of bringing those drugs into Australia. They are some very important examples—why shouldn’t terrorism fit the same bill? Why isn’t the crime of terrorism just as important as those?

As well as the sorts of offences that I have spoken about, the Senate in committee has, under Corporations Law, tax law, family law and intellectual property law, dealt with a whole range of offences that operate extraterritorially. In the view of the opposition, terrorist offences—offences against these laws by Australians overseas—should be able to be prosecuted here. That is the fundamental principle. I commend this approach to Senator Brown and ask him to consider it, because I did hear him express concerns last night about two Australians who are currently held overseas, Hicks and Habib. Senator Brown spoke at length in relation to those two people. Of course, a preferred course of action is that those individuals be prosecuted here, if that is appropriate, and dealt with here, under Australian law, by Australians. This amendment has a lot to commend itself to the committee. Again, I accept the spirit in which it is put forward. I hear what Senator Brown says, but the arguments are very strong that this amendment should be defeated and that we should ensure that we see these laws in relation to terrorism and terrorist offences apply to Australians outside Australia. It is an important principle and this committee should not resile from it.

Senator Brown (Tasmania) (6.22 p.m.)—The debate is not about terrorism with destruction, murder and massive bloodshed—if only it were. This legislation has the potential to capture people who are involved in vigorous protest, which accompanies all open and free societies and democracies. If it were confined to what the public perceives as acts of terrorism, violence and destruction then I would not be concerned about its reach going overseas. But it is not. It covers a whole range of other activities which do not involve bloodshed and destruction against other people. We have just dealt with the definition, and it is much wider than that. The minister was not prepared to say that charges could not be brought against people who fasted to the point of endangering themselves. He was not prepared to say that being a member of an organisation would not in itself be enough to see this legislation brought into play.

I remind the committee again that, at the one opportunity people were given to ban an organisation, the Communist Party, which was then put clearly in the dock as dangerous, violent, injurious and threatening to democratic society, Australians voted against it being proscribed. This legislation allows such organisations to be proscribed and allows members of such organisations to be
proscribed with them. It is not just about terrorism; it would be a much simpler thing if it were. This expands the publicly perceived term of ‘terrorism’ to a whole range of other activities that governments might not like in the future. To expand it to that extent is dangerous, and I am opposed to it. The Greens amendments would fix that, but they are being voted down by the Labor Party combining with the government—and these amendments are going to have that fate.

Before I finish speaking on them, I want to draw to the committee’s attention the fact that I asked the minister last night to provide this committee with further information about the plights of Mr Hicks and Mr Habib, who are being held in outrageous conditions at Guantanamo Bay, Cuba, by the United States military authorities precisely to ensure that their civil rights are not granted. I pointed out to the minister last night that Americans who had been taken to Guantanamo Bay have been sent home, where they come under American law. Australians who went to Guantanamo Bay are still being held there and our government, in an appalling failure to look after the interests of these citizens, has not demanded their return to the jurisdiction of this country. Were this legislation through, it would make not one whit of difference to the Bush administration’s abrogation of the rights of these two Australians and its total discrimination against them and other foreign nationals vis-a-vis the Americans who have been arrested in Afghanistan and taken to continental United States either through Guantanamo Bay or directly. After talking about this yesterday, I saw Mr Hicks’s father on the ABC television news last night telling the world that his son had been held for 131 days in a cage at Guantanamo Bay.

Senator McGauran—Why?

Senator BROWN—Indeed, why? There have been no charges laid; there has been no conviction made. Mr Hicks’s father went on to say that Mr Hicks has now been held for 31 days in solitary confinement at Guantanamo Bay and that he is allowed 15 minutes exercise twice a week. If this were happening to American nationals in some other country, such as ours, there would be hell to pay; they would not stand for it. But our government does stand for it and in so doing is abrogating its obligation to these two Australian citizens. The minister indicated that he would get some information to give to the committee, and I am going to ask him to provide the committee with that information either before or after these amendments have been dealt with.

Senator GREIG (Western Australia) (6.28 p.m.)—I would like to ask the minister a question in the context of the ICC, the International Criminal Court. We now know the government has agreed to ratify the Rome Statute of the International Criminal Court and that we may be looking at legislation for that this week. Senator Harradine asked you, Minister, what role and right would Australia have in the investigation and prosecution of terrorism if the deleting amendment proposed by Senator Brown were in place, and you answered with words to the effect of ‘Australia would not then have jurisdiction to do that’. What does that then mean in the context of the International Criminal Court? Am I right in assuming that the ICC would still have a role and that Australia would have a de facto role through that process, or would the ratification of the ICC into Australian domestic law, or the complementary legislation that allows for that, in some way circumvent what Senator Brown is proposing, given that, as I understand it, gross acts of terrorism would fall within the jurisdiction of the ICC?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.29 p.m.)—I will take that on notice and answer it after the dinner break.

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

The TEMPORARY CHAIRMAN (Senator Watson)—The committee is considering the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2], amendments (6) and (7) on revised sheet 2 of 2512, moved by Senator Brown. The question is that the amendments be agreed to.

Senator COONEY (Victoria) (7.30 p.m.)—Senator Brown has brought up some very proper and significant issues, such as
the difficulty that arises when a matter occurs overseas. The minister has answered this, but perhaps it is worth clarifying the position—not that it needs clarifying—just to put it on the record. Acts that are committed overseas have to be acts that are criminal acts in Australia. In other words, China, some place in the Middle East or anybody else declaring a matter to be a crime does not bind the Australian jurisdiction. A crime that has been committed overseas has to be recognised as a crime in Australia.

Senator Brown says—the minister might want to answer this—there is still the difficulty of the quality of the evidence that you might get from overseas. I remember, with the war crimes legislation we had in the 1980s—that shows you how long I have been here; it is about time I moved on—there were real problems with the quality of the evidence, and that was a difficulty. Nevertheless, if you take into account that the crimes we are looking at are quite vicious, the legislation is correct in saying they ought to be crimes and have a cover overseas. For example, other issues such as bribing or attempting to bribe officials overseas bring the rigour of the law upon people in Australia. If we pass this legislation, we must ensure that the quality of the evidence is correct.

I have great faith in the Australian Federal Police, who will be dealing with this and who have overseas posts. I have great faith also in Mr Damian Bugg, the Director of Public Prosecutions. I think he is quite outstanding. We have a connection through common Tasmanian ancestry. But it is not just for that reason I note he is an outstanding prosecutor; he is the latest in a series of good prosecutors including Michael Rozenes and Mark Weinberg—I think Mr Temby was the first one. We have had good prosecutors at the federal level and we also have a good police service.

Senator Brown has raised an issue that we should take note of. It is the issue of whether people overseas might not create evidence to embarrass people, who act in a particular way overseas, and use that evidence to try to stir up an unjustified prosecution in Australia. As I say, the police investigations that are done through the Federal Police and the quality control that is placed on the evidence by the Director of Public Prosecutions would probably overcome these difficulties.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.34 p.m.)—Senator Cooney is correct in what he says about crimes committed overseas. He mentioned correctly the bribery of officials overseas—and I think that covered Senator Brown’s query about corporations being liable for criminal conduct overseas. Certainly that could capture a corporation guilty of bribing overseas officials.

The question of the International Criminal Court was also raised earlier, and I might put that on the record while I have the further information that I undertook to get. The International Criminal Court will have jurisdiction over only the most serious of crimes of concern to the international community as a whole, such as genocide, crimes against humanity and war crimes. While some of the most serious terrorist acts could possibly also constitute genocide, crimes against humanity or war crimes, the crimes contained in this bill are aimed at a different class of conduct. Many terrorist acts may not fall within the jurisdiction of the International Criminal Court or the similar criminal jurisdiction contained in Australian domestic law to be enacted by the International Criminal Court (Consequential Amendments) Bill 2002. The question of whether a crime falls within this bill or the International Criminal Court legislation, when enacted, will depend on the conduct in question, and the decision will be made by the relevant Australian prosecuting authorities.

The International Criminal Court (Consequential Amendments) Bill 2002 has extra-territorial application to ensure that Australia is always able to prosecute crimes under the ICC statute domestically, no matter where they occur. Likewise, the crimes contained in this bill require extraterritorial application to ensure that Australia will always be in a position to bring the perpetrators of these crimes to justice, regardless of where these heinous crimes are committed.

I note the interest of the Democrats and Greens in matters of international criminality, and I look forward to their cooperation to
allow for the swift passage of the legislation in relation to the International Criminal Court, which we will be bringing in, I think, on Thursday. I think that deals with Senator Greig’s question. I might just clear up another point. I was asked a question about corporations by the opposition. The advice that I gave to the Senate was correct. I have taken further advice on that, and I am happy that that is the case. Senator Cooney, if I did not cover all the points you mentioned, please alert me.

Senator BROWN (Tasmania) (7.38 p.m.)—I can assure the minister that I have already indicated to Senator Hill that the Greens are keen to expedite the passage through the Senate of the legislation on the International Criminal Court, but we want to see it first. If it is delayed, it will not be the fault of the Greens, the Labor Party, the Democrats, One Nation or anybody else. The enormous delay created by the consideration of that legislation and the divisions it opened up in the government has meant that the Senate has very little time to deal with it. We, of course, understand that it is important that it goes through before the end of the week so that Australia can take a more active role in its establishment and such things as the formation of the first bench of this International Criminal Court. We are looking forward to that with interest. I do not know why it is taking until Thursday to bring it in. I would suggest that the government bring that forward to tomorrow so that there is at least another 24 hours consideration before the legislation is dealt with by the Senate.

Before the adjournment I asked the minister if he would inform the chamber about the plight of Mr Hicks and Mr Habib. I would be very pleased if he could give us a progress report on that.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.39 p.m.)—With respect to the queries Senator Brown raised in relation to Mr Hicks and Mr Habib, I can say that, based on the observations of the Australian investigation team, we are satisfied that both men are detained in safe and humane conditions at Camp Delta. Both men appear to have been well treated by the US military authorities. All detainees receive full medical examinations on arrival and have access to medical treatment on request. They receive culturally appropriate meals and are permitted to observe religious practices. They are given fresh towels and uniforms on request. Detainees are permitted to correspond with and receive mail from family and friends through a process managed by the International Committee of the Red Cross. There is a representative from the International Committee of the Red Cross at the military base who has access to the facility to independently assess the conditions of the detainees. That representative also has access to the detainees themselves. In view of that—and this is as a result of the Australian team that visited—the government is satisfied that Mr Hicks and Mr Habib are being treated appropriately.

Senator BROWN (Tasmania) (7.40 p.m.)—I am not. The chamber had this report in shorter form from the minister last night. He said that everything looked comfortable. It reminds me very much of the visitors to Drapchi Prison in Lhasa in 1998 who saw nothing. These were ambassadors from Britain and other European countries who went home and made quite a good report, but in the meantime 11 people, including five nuns, had been murdered in the prison simply for saying that they supported freedom for Tibet. We have had nothing from the Chinese authorities to explain what happened there.

I am not saying that there has been murder at Guantanamo Bay; what I am saying is that there is cruel and unusual punishment, including psychological torture, taking place there. I do not say that lightly. These people are deprived of touch with the ordinary surroundings that human beings have. They do not have the ability to exercise, the ability to meet and talk with others or the ability to have sport and social contact, which is usual in Australian prisons. The government should be ashamed of itself for trying to imply that everything is okay. These men have had their basic civil rights totally and deliberately abrogated by the Bush administration, which has taken them to a third country expressly for that purpose, and it says so.

The government tells the chamber tonight that it is all okay and it is not worried about
these men, that it feels that their circumstances are acceptable. That is deplorable. That is the government abandoning Australian citizens. Were we to treat American citizens in this fashion, there would be hell to pay. It is obsequious—I had better be careful with my language here—and it falls far short of the mark of behaviour of a government which has pride in itself and its own country. Can you imagine the reaction in this country if these two men were being held under these circumstances in China, Somalia or Colombia? There is a total double standard here from the Howard government, simply because our Prime Minister does not have the gumption to eyeball the leader of another country, the United States, a foreign country, and say, ‘I will not put up with you treating Australian citizens in a way that you would not allow us to treat American citizens.’ I also say that the Australian people would not put up with American citizens being treated in this fashion by the Australian government.

Senator McGauran—They would if they were guilty.

Senator BROWN—That is not the first remark that the senator opposite has made on this occasion. It seems to me that he has a presumption that he can find people guilty before they are even charged and that he knows what has gone on as far as these people apprehended by the United States are concerned. I think he is basically reflecting the opinion of the Prime Minister on the matter. But it is not an Australian opinion in this case, because Australians believe that you should be charged, you should have your rights met, you should be brought before a court and, if convicted, you then should be locked up with certain standards applying. None of those things apply in this case. The matter does not rest there.

Senator COONEY (Victoria) (7.46 p.m.)—I would like to add to what Senator Brown said. I think we have got problems with the two Australian citizens being held in Cuba. I can understand the government’s position in the sense that the United States is the one superpower in the world and it is very difficult to get it to act differently from the way it does. But there is a concern when these two Australian citizens have their reputations traduced in Australia because, amongst other things, we do not like the idea of having these two Australian citizens imprisoned as they are and not think that in some way they deserve it—and that is why we do say they deserve it. I think that is what Senator McGauran was saying: ‘It would be a terrible thing to allow these people to be locked up if they weren’t in some way guilty of something, and we are not sure what except that it has something to do with the war as conducted in Afghanistan.’

I think it is bad for us as a nation to denigrate our own citizens held in a foreign jail without there being a proper hearing. It is fundamental to the idea of natural justice that people should be able to hear the case against them and present an answer and that some body without bias should hear their case. That is not happening here. I think we should acknowledge it and simply say that America is such a powerful nation which stands so forcibly and alone in the world as a superpower that there is really not much we can do about it. Nevertheless, we do have concerns with these two citizens and we will make representations insofar as we can, but in the meantime we will not tear down their character simply so that we can feel more comfortable with the situation.

I mentioned the very eminent directors of public prosecutions that have worked for the Commonwealth, starting with Mr Ian Temby. I mentioned the Victorian Mark Weinberg and Michael Rozenes, also a Victorian and, being from the Victorian bar, amongst the best in Australia. Then I mentioned Damian Bugg, a Tasmanian. As you know, Mr Temporary Chairman, there is nothing better than a Tasmanian. Whatever comes from Tasmania is up there with the best; that is why I mentioned him. I did rather ungraciously leave out the name of Brian Martin, who is now a judge on the Supreme Court of South Australia, who also filled the position of Director of Public Prosecutions with considerable distinction; so I correct that.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that Australian Greens amendments (6) and (7) be agreed to.

Question negatived.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.49 p.m.)—by leave—I move government amendments (9) and (10) on sheet DT340:

(9) Schedule 1, item 3, page 8 (lines 15 to 17), omit subsection (1), substitute:

(1) This Part applies to a terrorist act constituted by an action, or threat of action, in relation to which the Parliament has power to legislate.

(10) Schedule 1, item 3, page 8 (lines 18 to 20), omit “an action, or threat of action, gives rise to an offence under this Part to the extent that”, substitute “this Part applies to a terrorist act constituted by an action, or threat of action, if”.

These amendments amend item 3 of schedule 1 of the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] as introduced to ensure that the constitutional basis provision in section 100.2 covers the new terrorist organisation offences to be inserted by the government amendments. The amendment to the constitutional basis provision makes it clear that the proposed terrorism offences, including the terrorist organisation offences, only apply to terrorist acts in relation to which the Commonwealth parliament has power to legislate. This will ensure that terrorist organisation provisions are linked to the Commonwealth’s legislative power under the Constitution.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.51 p.m.)—I move government amendment (11) on sheet DT340:

(11) Schedule 1, item 4, page 10 (lines 4 to 21), omit section 101.2, substitute:

101.2 Providing or receiving training connected with terrorist acts

(1) A person commits an offence if:

(a) the person provides or receives training; and

(b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and

(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:

(a) the person provides or receives training; and

(b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and

(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

(3) A person commits an offence if:

(a) the person provides or receives training; and

(b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and

(c) the person mentioned in paragraph (a) is negligent with respect to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 10 years.

(4) A person commits an offence under this section even if the terrorist act does not occur.

(5) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.

(6) If, in a prosecution for an offence (the prosecuted offence) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the alternative offence) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

This amendment removes absolute liability and the reverse onus in respect of faults from the terrorism offences to which they applied. This offence will be replaced with tiered offences carrying different fault elements and graduated penalties. Amendments (13) and (14) are related in this respect, and when I address my remarks to government amendment (11) they really do apply to government
amendments (13) and (14) as well. As a consequence of the government’s proposed amendments, the prosecution will bear the onus of proving fault on the part of the defendant in relation to each element of the terrorism offence.

Amendment (11) replaces the terrorist training offence in proposed section 101.2 with tiered offences carrying different fault elements and graduated penalties. A maximum penalty of 25 years in prison will apply where the defendant knows that the training is connected to a terrorist act. Where the defendant is reckless as to the terrorist connection, a maximum penalty of 15 years imprisonment will apply. Criminal negligence with respect to the terrorist connection will attract a maximum penalty of 10 years imprisonment. The amendments also broaden the training offences so that they apply to all training connected to a terrorist act rather than being limited to training in weapons and explosives. This will ensure that training in flying an aircraft or unarmed combat, for example, would be covered by these offences. There will be a defence where the possession of the thing was not intended to assist or facilitate a terrorist act. I will address those other amendments when we come to them, but they are related.

Senator BROWN (Tasmania) (7.53 p.m.)—I move Australian Greens amendment (8) on sheet 2512 revised 2:

(8) Government amendment (11), omit subsection (2).

Under the heading ‘Providing or receiving training connected with terrorist acts’, subsection (2) reads:

(2) A person commits an offence if:
(a) the person provides or receives training; and
(b) the training is connected with preparation for, or the engagement of a person in, or assistance in a terrorist act; and—

here is the important one coming up—
(c) as to the existence of the connection described in paragraph (b)—

that is, is reckless to a person who received training and that training was connected with potential terrorism. Again, this word ‘reckless’ is wide open to abuse further down the line. A number of the amendments I have already moved, and will move, seek to remove the various offences proposed by the government that do not require a prosecution to prove that an alleged offender knowingly committed terrorist acts or one of the related offences. Specifically, what our amendments will do is remove recklessness—this word appears in other places—as the fault element that a prosecution will have to show to convict someone of these offences that have been created by the legislation. They are offences that of course have very heavy penalties. If you look at the penalty for the section in hand—that is, recklessly being involved with a person training to be a terrorist—you see that you are liable to imprisonment for 15 years. The Labor Party have recognised the problem in having offences based on negligence and they are right to do so, and we will support their amendments. But the gravity of these offences and the seriousness of the penalties involved are such that someone should be charged and convicted of the offences only if they knowingly engaged in those offences. Section 5.4(2) of the Criminal Code Act defines recklessness. It states:

(2) A person is reckless with respect to a result if:
(a) he or she is aware of a substantial risk that the result will occur; and
(b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

It is not just the Australian Greens who see a problem here. Justice Dowd, in evidence before the Senate Legal and Constitutional Legislation Committee, opposed the fault element of recklessness in relation to the financing of terrorism. Chair, you will find on page 4 of the report of the committee Justice Dowd said:

There are many causes, such as that of the Tamils, for instance. I went to a fundraising function, before I held my present office, of the Tamil community. In this little dinner, put together by the local Tamil community, they probably raised about $200 by selling meals and so on. The money was to go to help people injured in the war that is occurring in Sri Lanka, where medical supplies are not allowed through—proper food is not allowed through but particularly medical supplies. These were to help people that had been injured. That, one would think in Australia, is a
pretty innocent, reasonable sort of activity. I oppose totally any terrorist activities. I oppose Azeld, as the Tamil community here knows, any act of terrorism in the ordinary sense and have condemned it at every opportunity that I can, to their face and otherwise; but I will not, through fear of this sort of legislation, stop helping orphans, war-injured and civilians injured.

Justice Dowd said later—and you will find this on page 6, Chair:

Take, for instance, my attending a function in a school hall to raise $200 for wounded Tamil people. Was I reckless in not checking where the cheques went? I think I contributed $20 to pay for the meal. I suspect the profit on that was fairly negligible, but was I reckless in not checking the accounts of that organisation—or do I have to not go? When you have extended jurisdictions, such as in 101.4(5)—

he is talking about this legislation—then that is in fact too high an onus and you need something better than that. I should not have to prove that I was not reckless—because I possibly was. I use the personal example to illustrate the point, not to confess to some terrible crime.

Justice Dowd highlights why amendments to remove recklessness are so important. Are we able to check that every organisation we donate to is not involved in terrorist acts or training terrorists, bearing in mind the broad definition of a terrorist act that the government is proposing here with the support of the opposition? It is not just finances, of course. The argument is the same for the government’s proposed section 102.7 ‘Providing support to a terrorist organisation’, as contained in amendment (17).

The argument is also the same in relation to the possession of things—and we run into the word ‘things’ in this legislation. What if I possess a thing that is connected to a terrorist act and I am not aware of what it will be used for? Do we need to keep track of every mobile phone or every document that is brought into our houses? And in relation, finally, to the specific amendment on training that we have cited here, every education institution—TAFE or universities—a tradesperson who is taking on an apprentice or, indeed, even the military could be caught out by an offence of recklessly training someone who then commits terrorist acts. Let us not forget that Timothy McVeigh was trained by the US military and then went on to do the Oklahoma bombing. Were the US military reckless, one could ask? Did they adequately evaluate this man and his potential?

Serious offences such as those envisioned in this legislation should require someone to be knowingly involved in the offences. Recklessness can mean that people were totally innocent of that knowledge but in the opinion of the government or a prosecutor ought to have had knowledge of the offences. After the event, of course, circumstances can turn against an individual who might then find themselves spending 15 years in jail in circumstances that have totally changed. In effect, they may not have known what was going on, and they abhor terrorism, but they were caught up in those circumstances. Again, this provision is dangerous and the Greens want to remove the application of the word ‘reckless’ in it because we believe, in itself, that is reckless.

Senator COONEY (Victoria) (8.02 p.m.)—Let me just say one thing to Senator Brown concerning Justice John Dowd, just to put it in context. He spoke to the committee in Sydney, and Senator Brown is right when he said that he was concerned that somebody accused of this crime would have to prove that he or she was not reckless. Since he gave that evidence, there has been a great change in this so that now the onus has shifted. Strict or absolute liability has been done away with in respect of this legislation and now the onus is upon the Crown to prove that the person was reckless as defined in the Criminal Code. I just thought I would put that on record given the fact that Justice Dowd is very helpful to committees and does give evidence on regular occasions. I would not like it thought that he said something when the law was quite different from what it is now. Out of fairness to him I thought that ought to be on the record.

Senator BROWN (Tasmania) (8.03 p.m.)—I thank Senator Cooney for that. I do not want to misrepresent what Justice Dowd has said. I hold him in enormous respect and I am sure other members do too. However, I particularly wanted to use the illustration of the fundraising events that he had been in-
volved with to point out how essential it is that we protect people in circumstances like that from being ensnared by this legislation. Although the onus of proof may have been reversed, the problem, in my book, still remains. It is a great worry to me, and that is why the Greens are moving this amendment.

Question negatived.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.04 p.m.)—I move opposition amendment (3) on sheet 2503:

(3) Government amendment (11), omit subsection (3).

The most significant aspect of the government’s amendment to its original offences is the removal of absolute liability and reversal of the onus of proof, the key elements of some offences. I think this committee should recognise that, under pressure from the Senate committee and, I suspect, the government’s own backbench, and certainly the opposition, this change has been made. I acknowledge all those inputs to the government’s new proposal.

While the offences are better structured in some respects and have been recast to include intent and knowledge, we remain very concerned that the government is proposing to include offences where the relevant fault element is negligence. In the government’s proposed hierarchy for the offences, knowledge of a terrorist connection to activities would expose a person to a penalty of up to 25 years imprisonment. Recklessness—that is, having the foresight of a possible connection but acting irrespective of that foresight—would expose an individual to a penalty of up to 15 years imprisonment.

Logically, both knowledge and recklessness require a particular mental state—I think lawyers always describe this as mens rea—but, as such, a test as to an accused person’s knowledge or recklessness is subjective. That is appropriate in relation to these offences as we would say terrorism is, in its essence, all about intent, all about the state of mind of the perpetrator. It is this mental element that distinguishes terrorism from other criminal offences and justifies the specific criminalisation of terrorism as a higher level of offensive behaviour. It is in that context that the opposition opposes the introduction of offences based on negligence. In law, proving negligence would not require proof of any particular mental state. This is because the test for negligence is an objective one based upon an assessment of what a reasonable person may do in the circumstances, not based on what the alleged perpetrator may have intended. This is a crucial difference. We do not think a person can negligently commit a terrorist act. That is why we are opposing the government amendments that introduce such an unacceptable threshold for terrorist acts.

While I am on my feet speaking about negligence, let me indicate to the committee on a related matter—and this has been discussed on a number of occasions during this committee stage—that a news release has been issued by the Attorney-General, Mr Williams, about amendments to the ASIO bill. We have spoken at some length in this committee debate about the processes that have led to this debate being held at this time. I want to quote what the Attorney-General said in a news release in relation to the ASIO bill. He said:

The opposition has indicated that it would like time to settle a position on the bill and any amendments before the bill is debated in the House and did not want to debate the legislation in the House or the Senate this week. He goes on:

Given the tight timeframe available to respond to the parliamentary committee reports on the bill within this sitting period, the government has agreed to delay debate on the bill until early in the next sitting period.

It is, in my view, totally unacceptable that the Attorney-General, in the middle of this very important debate on this package of bills to counter terrorism, produces a news release like this when the opposition certainly have indicated we will ensure, with the support of the government, that the Senate concludes its consideration on this package of counter-terrorism bills. There are now only a couple of days left in the scheduled Senate sittings before the winter recess. We want to ensure this package is dealt with. We want to ensure an amended package is
achieved that gets the balance right between ensuring a strong response on terrorism but not sacrificing key liberties, key freedoms and key elements of our democracy. That has been our objective from the start and we are hopeful, if not confident, that we will be able to achieve that outcome. But it does not help when the Attorney-General puts out a news release like this about a related piece of legislation. I have come to the conclusion that Australia’s Attorney-General at times acts like a complete bozo because—

Senator Ellison—I raise a point of order, Mr Temporary Chairman. I ask that Senator Faulkner withdraw that comment in relation to the Attorney-General.

Senator FAULKNER—I will withdraw that. I will replace it with buffoon. ‘Buffoon’ surely is not unparliamentary.

Senator Ellison—that should be withdrawn too.

Senator FAULKNER—Why? It is not unparliamentary.

Senator Ellison—Adjudication does not say that. Do I understand you, Mr Temporary Chairman, to say that that should be withdrawn?

The TEMPORARY CHAIRMAN (Senator Watson)—Yes. You should withdraw, Senator Faulkner.

Senator FAULKNER—Which?

The TEMPORARY CHAIRMAN—Both.

Senator FAULKNER—I will withdraw. Look, Mr Temporary Chairman, this is unacceptable. The truth is—and I will be frank about it—the Labor Party welcome the government’s decision not to debate the ASIO bill until the next sittings. We have made it absolutely clear that we have serious concerns about that bill, as did the joint committee of this parliament that produced an advisory report on the bill. The Parliamentary Joint Committee on ASIO, ASIS and DSD made 15 recommendations for significant changes to the ASIO bill, and the point is the government has not yet responded to the committee’s report. I wanted to ensure that the Labor Party, when it dealt with that bill, had the benefit of the government’s response to the report. There is no government response to the report. In the absence of a government response to the report, I wanted to have the benefit of government amendments to the ASIO bill so we could have a proper consideration of the bill and the government’s proposals. I asked time and time again for those to be provided.

Eleven deadlines were broken by the Attorney-General in relation to providing those amendments to the opposition. Eleven times they could not deliver. We still do not have a government response to the report; we still do not have even a response in principle to the recommendations of the joint committee or in principle to the amendments, let alone draft amendments. That is the situation we face and it is absolutely unsatisfactory to have the Attorney-General put out a press release like this when the government was unable to provide that level of information to the opposition and to the parliament more broadly. Fair enough, it is important legislation.

I do not think anyone in this parliament would object to the government saying it wants time to get its response right—it needs time to draft amendments to the bill. There are 15 recommendations that come forward from the joint committee, for a start, and the government would want to respond properly to them. To suggest in some way that the opposition deserves criticism or censure for this is outrageous. It is outrageous for the Attorney-General to put out a press release like this in the circumstances that we face. Of course, whenever you do that you are very quickly exposed by the facts. The facts are that there are no government amendments, either drafted amendments or even amendments in principle, there is no response to the joint committee report and there is no indication as to how the government will respond to the joint committee’s report or the changes it may make to that bill. Not only is it the opposition’s view—and I do not lightly say this in the chamber but I can say on this occasion—but also I know it is the Australian Democrats’ view, and at least the view of the Green senator, that this bill should not be proceeded with in these circumstances. When we deal with this
very important legislation we have to have every opportunity to give it thorough and adequate consideration, and I can guarantee that is how the opposition will approach these matters when we are provided with an indication of the government’s approach.

I do not resile from the fact that I do not want to deal with such legislation until we have an opportunity for proper examination. But, equally, the Attorney-General should not be putting out press releases like this to try to get some spin up in the media that you can blame the opposition for this bill not being dealt with. I am not ashamed at all that the bill is not being dealt with in this sitting because when the Committee of the Whole gives proper consideration to the bill, which I am confident it will, you can guarantee one thing: it will be a lot more thorough than the dog’s breakfast of a bill that was introduced into the House of Representatives by the Attorney-General with the expectation that both chambers of the Australian parliament would give it the tick and pass it through. Fortunately, we will not do that. Fortunately, the joint committee has examined this particular bill and come up with its recommendations. The Labor Party will take a considered approach: we will make a thorough examination of not only the bill as it stands and the joint committee’s recommendations but also any draft government amendments put forward. That is what anyone in this parliament ought to expect us to do. I do not think anyone in this parliament would expect the Attorney-General to issue a news release like this at 8:20 p.m. yesterday  and try to get some spin up in the media that you can blame the opposition for this bill not being dealt with. I am not ashamed at all that the bill is not being dealt with in this sitting because when the Committee of the Whole gives proper consideration to the bill, which I am confident it will, you can guarantee one thing: it will be a lot more thorough than the dog’s breakfast of a bill that was introduced into the House of Representatives by the Attorney-General with the expectation that both chambers of the Australian parliament would give it the tick and pass it through. Fortunately, we will not do that. Fortunately, the joint committee has examined this particular bill and come up with its recommendations. The Labor Party will take a considered approach: we will make a thorough examination of not only the bill as it stands and the joint committee’s recommendations but also any draft government amendments put forward. That is what anyone in this parliament ought to expect us to do. I do not think anyone in this parliament would expect the Attorney-General to issue a news release like the one that has just been handed to me in the middle of this important debate on our responsibilities to ensure we get a balanced and appropriate set of laws in this country to counter the threat of terrorism. That is a real responsibility, an important one. It bears heavily on everyone in this chamber and I do not think the response of the Attorney-General tonight does him any credit at all. It stands exposed as a very cheap and very cynical, though perhaps not the dirtiest trick in the world, press release that has been issued today. Let us get back to the business of dealing with what is before the committee. (Time expired)
it never did. I doubt whether Mr Williams has seen this press release, frankly. I do not think he would have the gall to issue it, given the history of it.

Senator Faulkner—I accept that—he probably hasn’t.

Senator ROBERT RAY—Some eager beaver, junior woodchuck staffer probably rammed this out and thought, ‘We can get a bit of mileage out of this. We are not going to get the ASIO bill through this session; let’s blame the Labor Party.’ What really annoys me is that we have been bending over backwards trying to be cooperative in progressing these security bills. We were probably overeager to negotiate on the ASIO bill and, having given extensive cooperation, our payback is to be slandered in a press release by the Attorney-General. He has not delivered one amendment to us. He could not deliver a pizza, this bloke—he really couldn’t. Do you want to know what the real test of a good minister is? It is not whether they can handle a crisis; it is whether they can handle two or three at the one time. Mr Williams cannot, that is quite clear. He has had every opportunity from 29 May to give a proper response to this parliament on the ASIO bill. He has not been able to do so. Maybe he has an acceptable excuse. He has no excuse for putting out this press release.

Without the amendments before us now it is impossible to make a decision this week on the ASIO bill—he knows it, we know it and that is why it has been put off. But don’t come out and put out a cheap, nasty press release like this blaming others when he himself is to blame. If he is not capable of responding to those 15 recommendations, then he should not get his bill. Let’s face it: what sort of Attorney-General produces a bill that says it is okay to take a 10-year-old Muslim girl off the street, strip search her and keep her incommunicado indefinitely? Of course we want to change such a bill. Of course we want to put in the protection of legal representation—protection against self-incrimination. Of course we want protocols to say how the proscribed authority would proceed in the interviewing of people. All that complexity that is missing from his current simplistic bill had to be solved. He should spend more time at the hard grind of working out appropriate amendments and ticking off appropriate legislation before he puts it into the parliament rather than putting out cheap press releases. If he did view this press release, he should be ashamed of himself. If he did not view this press release, he should reorganise his staff to make sure that he does in future.

Senator GREIG—It is not a criticism, Senator; it is just an observation. I make the point that the comments made by Senator Faulkner are quite correct in the sense that I can state on behalf of the Democrats that there has been no delay or obfuscation on our part. In fact, I think the committee stage on these bills has been going very well, given the constraints and the subject matter. I also pay tribute to all of those committee members on both the Senate Legal and Constitutional Legislation Committee, on which I happen to serve—but I did not raise it for that reason—and the parliamentary Joint Committee on ASIO, ASIS and DSD because of the very strict time limits with which they were given to work. Given the extraordinary complexity and comprehensiveness of both the antiterrorism bills and the ASIO legislation, I think it is quite astonishing that both committees have worked so well to produce the reports they have within the time constraints given to them.

There is the suggestion within the Attorney-General’s press release, as I understand it, given that I have not seen it, that somehow the ASIO legislation ought to be dealt with now. I would argue that is quite wrong for three reasons: firstly, that was never the undertaking from the crossbenches or, as I understand it, the opposition; secondly, there is absolutely no urgency in the ASIO legislation, and in fact the community is understandably anxious whenever it perceives that
important bills, particularly relating to civil liberties and human rights, are being hastened or are perceived to be hastened; and, thirdly, this suite of antiterrorism legislation largely forms the foundation for the subsequent and following ASIO legislation.

If we were to deal with that subsequent legislation in this session, which is now more jammed than it was earlier, then we would be concertinaing, we would be squeezing, the time constraints and debate on this legislation unrealistically. I think the pace at which this committee stage has gone on these bills at the moment is effective and adequate and I would not like to see any squeezing of that time frame or hastening of that debate. On behalf of the Democrats, we are quite comfortable with the ASIO legislation being dealt with in the next sitting. For the record, we have been given no indication or undertaking that my party might somehow be at fault for that being the case is simply wrong.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.29 p.m.)—I might just address the bill and the amendment at hand. I am sure that that is what people would expect of us rather than being very sensitive about issues which have no relevance to this particular amendment. In relation to opposition amendment (3), negligence does have a place in the criminal law. Indeed, in the Criminal Code Act 1995, at 5.5 under division 5, fault elements, negligence is defined as follows:

5.5 A person is negligent with respect to a physical element of an offence if his or her conduct involves:
(a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
(b) such a high risk that the physical element exists or will exist; that the conduct merits criminal punishment for the offence.

That is a comprehensive definition of negligence in the Criminal Code Act 1995. It sits there along with intention, knowledge and recklessness, and so we very much have negligence as a part of our criminal law. Negligence is a fault element ranging through the whole ambit of criminal sanction, from motor vehicle offences to manslaughter. So there is nothing new in having negligence in relation to a criminal offence.

The opposition seeks to remove that aspect of criminal negligence from the ‘terrorist training’ offence. The government believes that this detracts from the effectiveness of that particular offence. A person’s conduct will be criminally negligent only where it departs so substantially from standards of reasonable behaviour as to warrant the imposition of criminal sanctions. Removing the negligence offence will restrict the circumstances in which persons who engage in training in connection with a terrorist act can be prosecuted. We believe that an essential part of this training offence is the tiered approach of knowledge, recklessness and negligence. Someone who joins in the training of terrorists and who does so negligently, we say, should be caught by the provisions of this legislation. It is very clear whether a person has direct knowledge and intention, and that can be proven beyond a reasonable doubt. That stands as reasonable.

The opposition has agreed that ‘recklessness’ is appropriate in these circumstances, but we believe that the test should also extend to ‘negligence’. When you look at the definition of negligence in the Criminal Code Act, it is of such a standard as not to be just a mere oversight; it is something much more. We believe that, where a person provides or receives training in relation to terrorism, the net should be widened in order to catch that activity. We believe that people will escape liability if the net is not widened; there will be a loophole. So we believe that the aspect of negligence is essential to this particular offence.

It may be that someone will say, ‘Well, look, I didn’t have direct knowledge; I wasn’t reckless in my disregard; I just didn’t bother to find out.’ You have to inquire more closely in that regard. The test as set out in 5.5 of the Criminal Code Act must be applied, and that element has to be proven beyond a reasonable doubt. It is a matter that the government has taken seriously; it is not something it has treated in a cavalier fashion. This is a very serious aspect of criminal law and this legislation provides, I would say, a
heavy onus on the prosecution as to proof, having regard to the definition I have outlined. I think that the government, in its amendments (11), (13) and (14) has a package which is entirely appropriate. I commend those amendments to the Senate.  

I feel that I must comment in relation to some other matters that were raised earlier in relation to another bill—although I will be much briefer, because I am keen to see this particular bill and associated bills dealt with by the Senate. I am advised that the press release put out by the Attorney-General today was in answer to press inquiries as to why the ASIO bill was not being dealt with this week. I hear what Senator Greig has to say in relation to the matter not being rushed through. I think that, when you look at the Attorney-General’s release in a dispassionate way, you can see that he is setting out that the opposition is considering its position and the government needs time to respond to the parliamentary committee. I remind senators that, back in March, the ASIO bill was separated from this package by virtue of being referred to a different committee. That is the reason they are not still in the same bundle. The ASIO bill really has no bearing on the questions we have had to determine here today.

In relation to the matters at hand, I commend the government amendments to the Senate. I believe that opposition amendment (3) would leave too much of a gap in relation to law enforcement of this provision. I remind senators that negligence is nothing new in the criminal law in this country. It has a comprehensive definition in the Criminal Code Act 1995, and it requires proof beyond reasonable doubt.

Senator GREIG (Western Australia) (8.36 p.m.)—I am confident that the minister has seen American news reports in recent weeks that the FBI, I think it was, has been the subject of claims that information about terrorist networks in the US had been provided to it but that lack of communication, inadequate communication or lack of response altogether had failed to get that message to the appropriate authorities or directed to the government for response. I wonder whether negligence might apply in that scenario. Perhaps we could take it out of a US context and put it into a potential Australian context. If someone in our intelligence agencies or defence forces inadequately fails to communicate knowledge of terrorist activity, or if the receiver of that information fails to act on it, does negligence come into play in that circumstance? Alternatively, is it mitigated by the fact that paragraph (a), which paragraph (c) in your item (3) relates to, only relates specifically to the provision of training?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.37 p.m.)—I think the question that Senator Greig poses deals with the possession of documents, which is related to government amendment (13). Perhaps we should deal with that when we get to that amendment—remind me and I will deal with it. I do not think it does cover that situation; I do not think the US situation would be caught by this. But I will get some further advice on that and we will deal with it when the appropriate amendment comes up.

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

The committee divided. [8.42 p.m.]

(8.42 p.m.)

Ayes……… 35
Noes……….. 30
Majority…… 5

AYES

Allison, L.F. Bishop, T.M. Brown, B.J. Campbell, G.
Cherry, J.C. Cook, P.F.S. Crossin, P.M. Denman, K.J.
Faulkner, J.P. Harradine, B. Hogg, J.J. Lees, M.H.
Lundy, K.A. McKiernan, J.P. Murphy, S.M. Ray, R.F.
Bartlett, A.J.J. Bourne, V.W. Buckland, G. * Carr, K.J.
Collins, J.M.A. Cooney, B.C. Crowley, R.A. Evans, C.V.
Greig, B. Harris, L. Hutchins, S.P. Ludwig, J.W.
Mackay, S.M. McLucas, J.E. O’Brien, K.W.K.
Ridgeway, A.D.
Schacht, C.C.  Stott Despoja, N.
West, S.M.

NOES
Abetz, E.  Barnett, G.
Boswell, R.L.D.  Brandis, G.H.
Calvert, P.H. *  Chapman, H.G.P.
Colbeck, R.  Coonan, H.L.
Crane, A.W.  Eggleston, A.
Ellison, C.M.  Ferguson, A.B.
Ferris, J.M.  Heffernan, W.
Herron, J.J.  Kemp, C.R.
Knowles, S.C.  Lightfoot, P.R.
Macdonald, I.  Macdonald, J.A.L.
Mason, B.J.  McGauran, J.J.J.
Scullion, N.G.  Tchen, T.
Tierney, J.W.  Troeth, J.M.
Vanstone, A.E.

PAIRS
Bolkus, N.  Campbell, I.G.
Conroy, S.M.  Patterson, K.C.
Forshaw, M.G.  Reid, M.E.
Gibbs, B.  Alston, R.K.R.
Sherry, N.J.  Hill, R.M.

* denotes teller

Question agreed to.

Original question, as amended, agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.46 p.m.)—by leave—I move amendments (13) and (14) on sheet DT340:

(13) Schedule 1, item 4, page 11 (lines 1 to 16), omit section 101.4, substitute:

101.4 Possessing things connected with terrorist acts

(1) A person commits an offence if:
(a) the person possesses a thing; and
(b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

(14) Schedule 1, item 4, page 11 (line 17) to page 12 (line 2), omit section 101.5, substitute:

101.5 Collecting or making documents likely to facilitate terrorist acts

(1) A person commits an offence if:
(a) the person collects or makes a document; and
(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
(c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.
(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and

(c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 10 years.

(3) A person commits an offence under subsection (1) or (2) even if the terrorist act does not occur.

(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.

(5) Subsections (1) and (2) do not apply if the collection or making of the document was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3)).

(6) If, in a prosecution for an offence (the prosecuted offence) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of an offence (the alternative offence) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

I have dealt with some aspects of the government’s amendments here, but in particular items (13) and (14), like item (11), remove absolute liability and reverse the onus in respect of fault from the terrorism offences to which they applied. These offences will be replaced with tiered offences carrying different fault elements and graduated penalties, much like the scheme that I mentioned in government amendment (11). Government amendment (13) replaces the offence of possessing a thing connected with a terrorist act—proposed section 101.4 relates here—with two offences carrying different fault elements and graduated penalties. Amendment (14) replaces the offence of ‘collecting or making a document connected with a terrorist act’ with two offences carrying different fault elements and graduated penalties and, in this regard, proposed section 101.5 is relevant.

In each case a maximum penalty of 15 years imprisonment will apply where the defendant knows that the thing or document is connected to a terrorist act. Where the defendant is reckless as to the terrorist connection a maximum penalty of 10 years imprisonment will apply. There will be a defence where the possession of a thing or the making or collection of a document was not intended to assist or facilitate a terrorist act. Again, this touches on those similar arguments which I mentioned earlier, and the graduated fault aspect and penalty aspect are in similar terms regarding knowledge and recklessness.

Senator Greig asked a question earlier in relation to documents being not provided. Correct me if I am wrong, but I think that relates to a situation where a law enforcement official fails to pass on information. Senator Greig asked whether it would constitute a terrorist offence if that person was negligent. Firstly, there are in place in Australia mechanisms for the passing of intelligence and other information, and that is subject to privacy and other safeguards. There are measures in the Suppression of the Financing of Terrorism Bill 2002 to streamline the exchange of financial intelligence in appropriate cases but, from the facts as outlined by Senator Greig, I cannot see how the failure by an official in that case to pass on information would constitute an offence under this bill. The documents should have a closer connection to terrorism, other than that which is described in the circumstance outlined by Senator Greig. I refer to section 101.5:

(1) A person commits an offence if:

(a) the person collects or makes a document; and

(b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act;

and the person knows of the connection. That is a different situation, I would suggest,
to the one that Senator Greig has outlined. The ‘reckless at fault’ must be proven—which I have already mentioned in previous debate, and it is my advice that the situation as outlined by Senator Greig would not be caught by these provisions.

Senator GREIG (Western Australia) (8.51 p.m.)—by leave—I move amendments (3), (4), (5) and (6) on sheet 2555:

(3) Government amendment (13), after paragraph (1)(c), add:
(d) the person intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

(4) Government amendment (13), omit subsection (5).

(5) Government amendment (14), after paragraph (1)(c), add:
(d) the person intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

(6) Government amendment (14), omit subsection (5).

These four Democrat amendments address onus of proof issues. As originally drafted the strict and absolute liability provisions in this legislation raised real problems. Fortunately, the government has removed the strict and absolute liability provisions, adopting one of the recommendations of the Senate Legal and Constitutional Legislation Committee report. However, we believe that there are still some outstanding issues of onus of proof. Where possible, we are seeking to avoid situations where the defendant bears an evidential burden in relation to matters that ought to be proved by the prosecution.

Government amendments (13) and (14), as presented by the minister, deal with the offences of ‘possessing things connected with terrorist acts’ and ‘collecting or making documents likely to facilitate terrorist acts’. The provisions provide that a person does not commit the offence if he or she does not intend to facilitate ‘preparation for, the engagement of a person in, or assistance in a terrorist act’. They are structured in such a way that the defendant bears an evidential burden requiring her or him to point to evidence that tends to disprove intent. This is, I must say, an unusual approach to intent. In relation to murder and other serious offences, intent is always an element of the offence, and that ensures that the prosecution bears the onus of proving intent. There is no justification for imposing an evidential burden on defendants in relation to the disproof of intent. We Democrats therefore propose these amendments, as they are intended to address just that.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.53 p.m.)—For the record, the government opposes Democrats amendments (3) to (6) as it believes that they will detract from the purpose of the provisions in the bill. The government, in relation to Democrat amendment (3), says that it would provide that the offence of possessing things connected with terrorism does not apply if the person did not intend to facilitate ‘preparation for, engagement in, or assistance in terrorism’. The government also proposes that cases where there is this lack of intent be excluded from the offence but by way of a defence. The government’s approach will ensure a defendant cannot escape conviction on a technicality but must instead have some evidence of having no intent to facilitate or engage in terrorism.

This is in the context of the recasting of the offence under government amendments so that the prosecution must, in any case, prove the defendant’s knowledge or recklessness as to the thing being connected to terrorism—that is, the defence is in addition to the main elements of the offence. The government’s approach in casting this as a defence is consistent with the United Kingdom Terrorism Act 2000. If evidence is raised by the defendant, the prosecution must then disprove the defence in addition to all elements of the offence beyond reasonable doubt. We believe the government’s approach provides a fair and balanced outcome, which is why the government will not support Democrats amendment (3). Similar arguments apply to Democrats amendments (4), (5) and (6).

The TEMPORARY CHAIRMAN (Senator Cook)—The question is that Democrats amendments (3) to (6), being
amendments to government amendments (13) and (14), be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question now is that government amendments (13) and (14) on sheet DT340 be agreed to.

Question agreed to.

Senator HARRIS (Queensland) (8.56 p.m.)—by leave—I move One Nation amendments (1), (3) and (5) on sheet 2515:

(1) Schedule 1, item 4, page 10 (lines 15 to 19),
   omit subsection (4).

(3) Schedule 1, item 4, page 11 (lines 10 to 14),
   omit subsection (4).

(5) Schedule 1, item 4, page 11 (lines 27 to 31),
   omit subsection (4).

These amendments are being introduced to take into account the government’s original proposal to have a reverse of the onus of proof. As the debate on this bill has progressed, responses from the Australian people have come into every senator’s and member’s office in this place, and the government has responded to that public pressure. I understand that senators on all sides of politics have received an absolute flood of emails, telephone calls, faxes and personal delegations in relation to this legislation. This really is a historic moment for Australia, because it proves that people power can change the course of legislation—albeit, in this case, the amendments have not gone far enough for One Nation to support the legislation.

If we look at the running sheet, we see very clearly that, as we have progressed through the amendments, any amendments that have been put forward by the Australian Greens, the Democrats or, to some degree, the opposition have failed. We still have the probability that this legislation will come out of the committee stage having been substantially amended but, I believe, will still not be acceptable to the Australian public. I am very proud that One Nation have spearheaded the campaign to get this legislation out to the people. Yes, we have been innovative.

Yesterday, we had Senator Bolkus making comments relating to the issue of emails and inferring that some of the emails may have been disparaging because they were forwarded from somebody else. Contrary to that, I believe that IT in the chamber is an amazing facility and I congratulate the government for supporting its operation here. They may sometimes regret it, even to the point of clearly stating that they do not appreciate being asked questions directly from the Australian people via email. Last night Senator Robert Ray commented:

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?

There is a clear indication for the Australian people that, whether they vote Liberal or Labor on this raft of bills, they are going to get passage of these bills. One of the emails I have just received says:

Dear Parliamentarian I followed the debate on the proposed terrorism laws with utter dismay. Such antidemocratic laws will have grave consequences for ordinary Australians. We do not need any of these draconian laws. The existing criminal laws are adequate for dealing with terrorist offences. No one should be imprisoned or detained unless they have committed a crime or a case can be shown, on reasonable grounds, that they might have. Everyone should be afforded independent legal representation. These laws fundamentally threaten Australia’s liberties and way of life. These laws will create a society of fear, paranoia, division and misery. I am appalled that any Australian politician would seriously consider introducing these laws. I wish you to know that, unless your party opposes these laws and any amendments, vigorously, totally, I will not vote for your party again. I sincerely believe that any party who supports these laws will be remembered for their ending Australia’s period of democracy and liberty. As such, I urge you to oppose also the ASIO bill outright. Please do not underestimate the level of concern that many people feel about this issue. As history can attest, once implemented, such laws and the damage they would invariably cause can take decades to rectify, if at all. Yours faithfully...

I have no doubt that similar emails have been received by all of the members here in the chamber. In speaking to these amendments, I indicate to the chamber that, as a result of the government having amended the original
bills, in every case, to take into account the issues that One Nation has raised, I formally withdraw all One Nation amendments. The sections of the bills they referred to have been altered by the government. I commend the government for having listened to One Nation and to the Australian people who have directly voiced their concerns to every member in this chamber.

The TEMPORARY CHAIRMAN (Senator Cook)—I understand you to have withdrawn One Nation amendments (1), (3) and (5) and (2), (4) and (6), Senator Harris.

Senator HARRIS (Queensland) (9.04 p.m.)—That is correct. And, for clarity, I also withdraw One Nation amendments (7) and (8) on sheet 2515. As a means of facilitating proceedings, I believe it would not have been anticipated by Senator Brown that I would withdraw all of those amendments, and I ask the chair for direction about whether it is possible to move to the Democrats amendment. We have Senator Brown here now.

The TEMPORARY CHAIRMAN—I think Senator Brown has entered the chamber because the next item is Australian Greens amendment (9) on sheet 2512. He may well have heard you withdraw those earlier amendments.

Senator BROWN (Tasmania) (9.05 p.m.)—Yes, thank you, I did hear. The Greens oppose section 101.6 in the following terms:

(9) Schedule 1, item 4, page 12 (lines 3 to 10),
section 101.6, to be opposed.

This section seeks to remove the nebulous offence of ‘any act preparing for or planning terrorist acts.’ The problem is, where do you draw the line and at what point in a chain of causation do acts drop off from falling foul of this offence that attracts a penalty of life? The criminal law should be based on specifically defined offences and not generalised and broad brush offences such as these. The other offences which are in this bill cover actual acts and many of the actions done in preparation of the core offence and, in the main, they do. We are concerned that this offence could ensnare a range of innocent people who are only indirectly connected to the alleged core offence. We are opposing the legislation where it proscribes an act in preparation for or planning for a terrorist act but does not define what that means. I ask the minister what is meant by this clause. Could he define what the acts specified are?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.07 p.m.)—As I understand it, Greens amendment (9) would remove the offence of doing an act in preparation or planning for a terrorist act. The government considers it absolutely imperative that persons who engage in planning or preparation for terrorist acts be subject to criminal penalties. The section that we are dealing with is section 101.6, and it is entitled ‘Other acts done in preparation for, or planning, terrorist acts’. Subsection (1) states:

A person commits an offence if the person does any act in preparation for, or planning, a terrorist act.

That provides a penalty of imprisonment for life. Subsection (2) states:

A person commits an offence under subsection (1) even if the terrorist act does not occur.

Section 101.6 goes on to state at subsection (3):

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

I might just say at the outset that a lot of terrorist acts require a good deal of preparation. They are not something which happen like most acts in the criminal jurisdiction, where they are on the spur of the moment or provoked or they occur as a result of a whole range of other influences, be it intoxication or other aspects. Terrorism is really a situation where you have an orchestration, an organisation of people and events—and we saw that on September 11—and sophisticated preparation.

Section 101.6 says that if you go into the planning of it, even though it does not happen, you can still be guilty. It is much like conspiracy. The offence of conspiracy involves two or more people agreeing to commit a criminal act. With conspiracy, the act does not have to occur, just the agreement to do it. So this is nothing really unusual. In fact, in the Criminal Code and other juris-
dictions you have attempted criminal acts. That involves a preparation and a carrying out of your intention but your intention is not fulfilled, it is thwarted in some way, and you can be guilty of an attempt. Section 101.6 covers those preliminary actions. It is an essential part of the package in dealing with law enforcement in relation to terrorism.

Senator BROWN (Tasmania)  (9.11 p.m.)—I thank the minister for his answer and I ask him whether the intention is required for a conviction; or does a person knowingly have to be involved in such an act for there to be a conviction?

Senator ELLISON (Western Australia—Minister for Justice and Customs)  (9.11 p.m.)—The person has to be involved in doing the act. They have to be a principal offender, if you like, doing the act. For instance, you can have an accessory after the fact—someone who comes in later. What we are saying here is that you have to be the person who does the act of preparation. The offence here is the preparation; it is not necessarily the act itself. If you are preparing to plant a bomb, that is the offence. It is not necessarily that you have to see it through and that the bomb explodes and that your goal is achieved. I think you are thinking that you should be guilty if the act is completed.

Senator BROWN (Tasmania)  (9.12 p.m.)—No, not at all. I am asking whether you have to be knowingly involved in the preparation. Do you have to know when you are asked to provide somebody with beer bottles that they are going to put petrol in them and wicks and buy some matches? If you do not know, does that exclude you from the reach of this provision?

Senator ELLISON (Western Australia—Minister for Justice and Customs)  (9.12 p.m.)—Under the principles of the Criminal Code, you have to be an offender, and that involves knowledge or recklessness.

The TEMPORARY CHAIRMAN (Senator Cook)—The question is that section 101.6 stand as printed.

Question agreed to.

Senator GREIG (Western Australia)  (9.13 p.m.)—The Democrats oppose schedule 1, item 4, division 102 in the following terms:

(7) Schedule 1, item 4, page 12 (line 11) to page 15 (line 18), Division 102, to be opposed.

This goes to the heart of proscription. From my experience and involvement in the committee process, proscription has been the most contentiously debated and discussed point of this particular suite of bills. This Democrat amendment proposes to remove division 102, which deals with proscribed organisations. As the legislation stands, the proscription power it contains is arbitrary in the extreme. The power is excessively broad and not adequately subject to review. One of the grounds on which the Attorney-General may proscribe an organisation is if it poses a danger to the security or integrity of the Commonwealth or another country, as proposed in section 102.2. Professor George Williams, Director of the Gilbert and Tobin Centre for Public Law, argued the following: While the reference, in section 102.2(d), to the security of the Commonwealth or another country is broad, the reference to the integrity of the Commonwealth or another country is almost meaningless.

The New South Wales Council for Civil Liberties made the following point:

Many respectable organisations regularly threaten the security of other countries in their legitimate activities to achieve democracy or the preservation of the rule of law. For example this provision would apply if you were to endanger an enemy country or if you were a [supporter] of Fretelin, the ANC, Falun Gong, Dalai Lama, Amnesty International, Freedom for West Papua, or even if you threatened the security of the illegal military regime in Burma.

The report of the Senate Legal and Constitutional Legislation Committee said:

Under the legislation it is an offence, punishable by 25 years imprisonment, to:

• be a member of;
• direct the activities of;
• provide or receive training to or from;
• receive funds from or make funds available to; or
• otherwise provide assistance to a proscribed organisation.

Given that a range of perfectly legitimate organisations are open to proscription under this legis-
It follows that those who continue to support those organisations through membership, donations or other means could be convicted of a very serious offence. The illegality of providing assistance to a proscribed organisation is incredibly vague and imposes potential criminal liability on an indeterminate set of people many of whom would not know they were doing anything wrong.

It is inappropriate in the extreme that the power to proscribe organisations should rest solely in the hands of one member of the Executive Government. It is an arbitrary power with very significant potential for abuse.

Furthermore, it is of great concern that the legislation does not adequately provide for review of the Attorney-General’s decision to proscribe an organisation. Wherever there is a concentration of arbitrary power it ought to be checked. There is no mechanism for reviewing the merits of a decision to proscribe an organisation.

The government and opposition each have amendments to this proscription process—developed with a view to making the proscription process less arbitrary. We Democrats have a fundamental problem with proscription and, more specifically, with the consequent criminalisation of membership of an organisation. Punishing 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 worth noting that under the government’s amendments the definition of a terrorist organisation remains very broad. It would include organisations that indirectly foster the doing of a terrorist act whether or not the terrorist act occurs. Certainly those groups that directly or indirectly participate in terrorism or even in its planning can rightly be described as terrorist organisations. Even those which directly foster terrorism, through advocacy or other means, may be considered terrorist organisations.

But indirectly fostering terrorist acts would seem to create the possibility of organisations being deemed terrorist organisations simply on the basis of a reasonably tenuous link with any terrorist act that does—or as the case may be, does not—occur. For example, a group may aggressively but not violently advocate a political position. If a person took violent action on the basis of that advocacy, could it be considered that the organisation fostered that action? They may not have done so directly, but the legislation requires only that they foster it indirectly. We can hope that prosecutors will exercise discretion responsibly or that the courts will give a restrictive meaning to the provisions; however, it would be far preferable if the provisions of the legislation were more tightly drafted to ensure that they did not extend to groups not genuinely involved in terrorism. This is somewhat of an aside because, as I say, the Democrats oppose any measure which would put people in jail simply for being associated with an organisation. Under this legislation they need only be an informal member or a person who has taken steps to become a member of the organisation. In point of fact, the government’s amendments ensure that a person can be jailed for 25 years for being associated with, but not a member of, an organisation deemed to be terrorist. We would far prefer that the government deal with the actual criminal conduct rather than relying on guilt by association and, for that reason, we advocate this amendment.

Senator HARRADINE (Tasmania) (9.20 p.m.)—I need some encouragement if I am to support this particular provision in the bill, and I refer to proposed section 102. I draw the attention of the chamber—and perhaps remind some in the chamber who are familiar with them—to the comments made by Lord Lloyd of Barwick in his review of the UK terrorism laws. He considered that the primary purpose of proscription was ‘to give legislative expression to public revulsion and reassurance that severe measures were being taken’. Thus proscription has been viewed as ‘essentially a cosmetic part’ of antiterrorist laws.

That is an interesting observation and one which is worthy of consideration. Why indeed is proscription necessary? Is it to pre-empt the commission of terrorist offences? If that were the case and with a proscription order against an organisation, what is to prevent that organisation from reconstituting itself? I am directing these remarks particularly to the Minister for Justice and Customs, Senator Ellison, through you, Mr Temporary
Chairman. For example, if you proscribe an organisation, what is there within the legislation that would prevent the organisation from reconstituting itself? Is the proscription necessary for capturing persons who would not otherwise be captured by the terrorist offences? Is that a reason for proscription? Why would that be the case? If that is the reason that the government is proposing proscription, why is it? Why is it necessary to have proscription controlled by the executive rather than the judiciary? Going further, why are there no provisions allowing an individual or an organisation to object and make submissions in relation to pending proscriptions? These are some of the things that are exercising my mind. I am wondering whether the minister might put my mind at rest on those particular matters. I am really wondering why it is necessary to have proscription in this legislation. Obviously, the government has a very valid reason or certain reasons which might appeal to the committee, but for the life of me at the moment I cannot see why there is need for proscription.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.24 p.m.)—The Australian Democrats are suggesting we do away with proposed division 102, which is entitled ‘Proscribed organisations’. Although the government is opposing this, in subsequent amendments it will amend that proposed division 102. I will get to Senator Harradine’s questions shortly. We believe that the Democrats’ amendment is unnecessary as the government will shortly remove the proscribed organisations provisions by way of government amendment (16) and will replace it with the ‘terrorist organisations’ provisions. Having regard to Senator Harradine’s question as to why there should be that provision relating to proscribed organisations, the government will shortly be moving its amendment (16) to replace that with a range of offences relating to terrorist organisations. In proposed government amendment (16) ‘terrorist organisation’ means:

(a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs); or

(b) an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (2) and (4)); or

(c) an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (3), (4), (5) and (6)).

And it goes on. I mention that by way of a brief summary of where the debate is going in relation to proposed division 102, which deals with proscribed organisations. The opposition have some amendments in relation to this division as well. What it does mean is that proscription is not as relevant in view of these proposed amendments as Senator Harradine might think. I suggest to Senator Harradine that we should wait until we get to the government and opposition amendments and then we can deal with the amendments at hand. As I say, the government is opposed to the Democrats’ amendment. Although the government believes that proposed division 102 should stand as printed, it will shortly be moving to amend it.

Senator BROWN (Tasmania) (9.27 p.m.)—The Greens agree with this amendment: we do not believe that proscription should be in this legislation. Let me say from the outset that when you proscribe an organisation you send it underground. When you send it underground, you make it more difficult to pursue its activities and the people who are members of it—that is the first issue. The second issue is that, under this legislation, even with the amendments foreseen by the government, it becomes a matter of banning organisations which are very difficult to define. The measures that the government has in mind, as amended, are very unsatisfactory. I point to the provisions that a United Nations list might be used by the Attorney-General to ban an organisation. When you look at the process involved there, it is banned by the United Nations Security Council. It is not by resolution of the council itself that an organisation is banned; it is by a reference to a process that the council has set up. I am told that that process is as loose as the potential for organisations to be nominated by a member of the United Nations Security Council and then, if there is no objection within a certain number of days, they are listed. Are we to follow through and ban organisations on a list made by a committee
in the United Nations Security Council—a process which can be very openly abused by any member of the security council, including China?

There is no appeal in this process. The organisations themselves are not given the opportunity to come forward and say: ‘We are being set up here. We are not a terrorist organisation. Have a look at us; hear our side of the story.’ If members believe that all the governments who are involved in sending delegations to the Security Council are beyond listing organisations as terrorist organisations that we would not list, then they need to look again. For example, the Chinese government believe that Falun Gong is a threat to the state and is a terrorist organisation. As I said earlier, they even go to the absurdity of listing the Dalai Lama as a criminal. We know he is not. We know that, if there is one human being on this planet who can be defined as being good and the antithesis of criminal, it is the Dalai Lama—but not for the Chinese government.

So then you only have to go one step further to look at people who might be peacefully promoting the cause of independence or freedom or civil liberties in Tibet or in other parts of China to see how readily such organisations could be listed as terrorist—totally unfairly, totally against our ideas of what is terrorist and what is not—and then it is up to the Attorney-General to follow that through. We might say that there are checks and balances involved there and no Attorney-General would do that. I will go back to what many people—and what eminent legal people—appearing before the committee that looked into this matter said: you do not leave legislation like this open to looseness and to the potential future abuse by a government and hope that does not happen. It is a fatal mistake to do that.

Terrorism, as it is understood by most of us—and certainly by most of the Australian community—is an involvement in a criminal activity. We are talking here about proscribing criminal organisations which may be involved in criminal activity. I believe the criminals should be caught. The people who are going to be involved in violence or death or injury, or in planning such deeds, need to be apprehended. But as I have said repeatedly in this committee, there is ample opportunity and we have great laws already in place for surveillance and for apprehension of people who are involved in criminal activities, or prospective criminal activities, in this country.

But this legislation allows the Attorney-General of the day to proscribe Australian organisations which he or she believes are, or are intending to be, terrorist organisations. That has awesome implications for every member of that organisation. I believe that in the circumstances of 1951 the Communist Party would have been thus labelled. I do not think it is very difficult to see us moving to that situation again when not only the Communist Party but also, with this legislation, a whole range of unions would have been listed as terrorist organisations, as would a range of community groups during the Vietnam moratorium period and the Wilderness Society during the Franklin Dam episode. During that episode a number of members of this parliament asked for the Army to be brought in, seeing it as a national emergency and seeing that organisation as planning a process of protest which would lead to violence. It never did. The planning was never there but, nevertheless, the political judgment was that this was effectively an act of terrorism.

The principle here should be that you track down the individual, you watch what they are doing, you prevent them and you apprehend them under the existing law. We are opposed to this legislation, but we are mightily opposed to this particular provision. The idea of proscription, of banning organisations, is not part of the Australian tradition. Once again I point to the fact that the one time the Australian populace were given an opportunity to state their feeling on this matter—that is, the Communist Party referendum just over half a century ago—despite the circumstances then of the Korean War and Stalin, who still had a year left in him, the Australian people said no. I do not believe that we should be saying, ‘Let the Attorney-General from here on in supplant the Australian people and decide who may or may not be listed as a terrorist.’ Nor should
we—and I am a great supporter of the United Nations—let some committee of the Security Council of the United Nations make a list so that the Attorney-General here can follow it through, with no right of appeal and none of the checks and balances that we would consider essential in this country.

I have a very long list of individuals and organisations that are opposed to proscription in this legislation. I am not going to read them all out but I am going to list some of them. Some of them are: the Executive Council of Australian Jewry, the Women’s International League for Peace and Freedom Australia, the New South Wales Council for Civil Liberties, the Federation of Community Legal Centres in Victoria, the New South Wales Bar Association, the Australian Arabic Council, the Ethnic Communities Council of Victoria, the Islamic Council of Victoria, the Young People’s Legal Rights Centre, the New South Wales Law Reform Commission, the Australian Council of Trade Unions, the New South Wales Privacy Commission, Liberty Victoria—the Victorian Council of Civil Liberties, the Fitzroy Legal Centre, the National Association of Community Legal Centres, the Redfern Legal Centre, the Women’s Rights Action Network Association, the Adults Advisory Council Tasmanian Commission for Children, the Law Institute of Victoria—Young Lawyers Section, Amnesty International Australia, the Association of Criminal Defence Lawyers, the Human Rights Council of Australia, the Supreme Islamic Council of New South Wales, Greenpeace, the Public Interest Advocacy Centre, the Australian Catholic Social Justice Council, the Australian Council for Civil Liberties, the Law Council of Australia, Quaker Peace and Justice New South Wales, the United Nations Association of Australia, the Australian Lawyers for Human Rights, the Franciscan Missionaries of Mary, and many others—

Senator Faulkner—And the Australian Labor Party.

Senator BROWN—and the Australian Labor Party, the Australian Greens and the Australian Democrats. We should be taking note of this community input. The Greens have an amendment consequential to the Democrats amendment and will make an effort to amend the proscription section. But it should be thrown out. It should be rejected. It should not be in this legislation. I support the amendment.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.39 p.m.)—I propose to give a more substantive contribution on this issue a little later because I do want to focus most of my remarks on the amendment that is currently before the chair. But I do accept, as other senators do, that this is an absolutely crucial part of the package that we are dealing with. I want to make absolutely clear from the outset, as I think I have done and all Labor speakers have done in the second reading debate on these bills, and as has been a consistent position of our party for decades, that the Labor Party is implacably opposed to an executive proscription regime.

As we look at the amendment before the chair, we actually have another threshold issue to consider. It is one thing to have a very strong commitment in relation to a proscription regime, but the committee has to make this assessment: do we believe it is appropriate for Australian law to contain offences in relation to terrorist organisations? Proscription is a threshold issue, I absolutely agree; but so is that threshold issue. The problem with the amendment that is currently before the committee is that, if it is passed, there will be no offences in relation to terrorist organisations. It means that, if you are very actively involved in directing a terrorist organisation, that is no offence. There is no penalty. The weakness of the amendment is it removes the chance of any offences in relation to terrorist organisations—for example, even something as straightforward as directing a terrorist organisation. That is something that I do not believe this Senate or this parliament should contemplate.

Having said that, I absolutely accept that we have a responsibility to deal with the proposal that the government has put forward in relation to its proposed proscription regime. It would be churlish not to acknowledge, in the position now encompassed by the government, that is has moved consid-
erably from its original position. In the view of the opposition, it has not moved anywhere near enough. We do not support, and will never support, any proposal for an executive proscription regime. That is something the government continues to argue for; it is, in the view of the opposition, absolutely unacceptable. We do not support giving the wide and arbitrary powers that are proposed in this legislation to any minister of any government. We know that those sorts of powers are open to abuse. We also know that even the current government has certainly demonstrated a capacity to abuse the existing powers that it has. But is not just about the current government; in fact, this committee has to ensure that we do not write a blank cheque for future governments in relation to any proscription regime.

In the Labor Party, we have always had concerns about this issue. We know that these sorts of proscription regimes, as proposed by the government, have traditionally been a tool of repression. And we in the Labor Party say they have traditionally been a tool of repression in the hands of conservative governments. That is the situation with proscription regimes: a tool of repression, not a tool of law enforcement.

There has been some talk already in this committee debate about the motivation for Robert Menzies’ attempt to ban the Communist Party in the 1950s. The motivation was very simple: it was to spear the Labor Party; it was to damage the Labor Party. As I said to Senator Brown earlier—it seems like weeks ago, but I suspect it was only 24 hours ago in this committee stage debate—in the early 1950s, the vast majority of Australians did not like communists, they did not like communism, but they voted Menzies’ referendum down. Why did they do that? Because they knew such a proposal was antidemocratic and inconsistent with fundamental Australian values—and they were right.

Understanding that over a long period of time the Labor Party has adopted a very strong, very consistent and very principled position, we still say it is appropriate to have offences in Australian law in relation to terrorist organisations—but we do not accept the capacity of a minister in the Australian government to proscribe organisations, to ban organisations. We just do not accept what is now the third limb of the government’s proscription regime which I acknowledged previously was the only limb—even of itself, in a very different form—of the government’s proposal in relation to these matters. I will speak at greater length about these matters in a short while.

I accept many of the weaknesses that other speakers in this committee stage debate have identified in relation to executive proscription regimes. There is no doubt that in dealing with terrorist organisations in the modern world, they change their form, they change their nature and they certainly change their names. But we ought to take the responsibility of targeting the terrorists. Those people who are involved in terrorism and terrorist activities should feel the full force of the law in this country. We have to have laws that can deal with them. We do not want inappropriate laws, like an executive proscription regime, but we need to have laws that will deal with offences in relation to terrorist organisations.

It is for that reason, while we cannot support Senator Grieg’s amendment, we certainly will take an approach in relation to this important element of the debate on this package of counterterrorism bills to ensure that the principles I have enunciated are included in the legislation. Do not forget: this legislation has already been massively amended by the government. There has been such a significant change in relation to the way the government has approached this issue; I acknowledge that. The only proposal the government had in its original bill—sloppily and incompetently drafted as it was—was in relation to a totally unacceptable executive proscription regime. As I have said, as far as the Labor Party is concerned, all executive proscription regimes are unacceptable.

The government now has a regime with three limbs—limb 1 is an organisation found by a court to be engaged in a terrorist act, limb 2 is an organisation which the United Nations Security Council has found to be an international terrorist organisation and limb 3, which remains the amended proposal of
the government, is an organisation which the Attorney-General is satisfied, on reasonable grounds, is engaged in a terrorist act. Though we want to ensure that those who commit offences in relation to terrorist organisations are dealt with, we will not and cannot contemplate a proposal from the government that includes an executive proscription regime. In our party’s view that is anti-Labor. But that is not the crucial point. The point is: it is antidemocratic. It runs the risk of seriously abrogating the rights, the liberties and the freedoms of Australians.

In other words, if the government’s proposal is accepted we run the risk of criminalising what people think and the organisation they might happen to join because they have some sense of commitment. We want to make sure that those people who are engaged in terrorist activity suffer the consequences. That is as it should be. Target the terrorists. Focus on terrorists and terrorist related activity by all means, but do not adopt a proposition that is open to manipulation by a government of any political persuasion either now or in the future. It is unacceptable to any decent person, and that element of the government’s proposal is absolutely unacceptable to the Australian Labor Party.

Senator ROBERT RAY (Victoria) (9.53 p.m.)—A few minutes ago Senator Brown said that banning political organisations in Australia was not the Australian way. Historically, of course, he is totally inaccurate. He often talks, and so does Senator Faulkner, about what happened in 1951. Let’s go back 11 years before that. Let’s go back to 1940 when all communist parties in Australia were declared illegal. That happened with the Menzies government on 27 May 1940 when it was resolved to declare all communist organisations illegal. That bungling Menzies government took another two weeks to get their regulations right to be able to enforce this, which gave the Communist Party two weeks to go underground. They all burnt their tickets, all the membership lists were burnt, the printing presses were moved out and they all went underground. They had underground organisers to take them. A lot of them did not go underground very well. A lot of them had their libraries chosen. One of the great elements of humour in Australian politics is to see what the police in fact seized. They seized the works of Shakespeare in some cases and left the entire works of Karl Marx on the bookshelves in others—another reason why you should never have special branches in this country.

The banning of that political party lasted over 30 months. What it did was drive their activities underground. Their newspapers still came out, even though they were a banned organisation, and on they went. At the end of that 30-month period, the membership of the Community Party trebled. So much for the success of banning it as an organisation. It has to be said that the major increase in that membership occurred in the latter period. When you look back on the sordid history, the tawdry history, of the Communist Party of Australia, it is almost too pathetic to contemplate. There they were in 1936 and 1937 forming the popular fronts with other like-minded organisations in the march against fascism. But as soon as Ribbentrop and Molotov came to their agreement in 1939 any conflict became a conflict between capitalists.

The fascists were no longer the enemies. They almost did not exist; they were only a capitalist bloc then for the next two years. The moment Operation Barbarossa was launched it became a workers’ cause versus the fascist forces again. Talk about backflips. I do not know how any of them could have rationalised that out. Fascism is the enemy; then fascism is no longer the enemy and suddenly it is the enemy again. I do not know how they ever salved their own conscience at the degree of military cooperation occurring between Stalin and Hitler from 1936 right through to 1941. That is a historical fact. Most of the German pilots did their training or learnt to fly in the Soviet Union. In many ways, it is surprising that the Communist Party could have trebled its membership when it was banned, but it did so. That just goes to prove that banning political organisations has very little chance of success. What it does is give them a bit of excitement sometimes. The clandestine nature of it means that they are in a better recruiting position. The other thing they were masters of
was going and setting up front organisations—the Australian-Soviet Friendship Society, a quasi-independent body full of communists trying to manipulate the labour movement as a whole.

What comes out of all this? I will conclude on this note: who did fight the communists in the 1940s in Australia? It was not Menzies. It was not the conservative parties. It was the people in the Labor Party from the Left and Right. They are the ones who had to bear the burden of fighting the communists in the unions and all like-minded organisations while their political opponents, the Liberals, merely used it as a new 1940 wedge issue. It has a bit of resonance today when you go back and look at the political debates and see how Menzies and his cohorts exploited it as a political issue, but they never got their hands dirty. They would recommend bans. That is all they would do; they would not get into the trenches and fight the communists where they had to be fought in the trade unions. When you think of the many Labor people who were pilloried by communists, who had their reputations tarnished by them, it is a great pity, and we should reassert today that the reputations of those Labor people remain untarnished.

Look at one example in the 1940s: Lloyd Ross. I am certain Senator Faulkner knows the history of Lloyd Ross far better than I do. He was a member of the Communist Party. He found it fairly hard to accept that all of a sudden in August 1939 Stalin and Hitler could sign a nonaggression pact. When he saw the troops marching down the Champs Elysees and he eventually decided to say, ‘Enough is enough, we have to support the war effort; we have to be patriotic,’ what did the Communist Party of Australia do? They expelled him from the party. They called him a middle-class intellectual who had gone over to the other camp as a class collaborator. That is what they said.

Banning these particular political parties I do not think achieves the end that you really want. It will probably be the same with terrorist organisations. They will simply go underground and be undetectable. So it is not a very sensible approach. I do not want to go over and over again the right of the Attorney-General to do this. Some of us may have confidence in him, some of us may not, but the real point is that we do not know who will follow him. We do not know if it will be Attorney-General Tony Abbott. Imagine giving him proscription powers. It is really not on.

I wanted to get up at least to say to Senator Brown that, when you say this is not the Australian way, unfortunately it is. We have tried it in the past. It has failed abysmally in the past. It did not succeed. I know that a lot of people these days dismiss the communists of the 1940s as slightly misguided people—really good deep down, and all the rest. They would have signed death warrants with both hands at the same time—every one of them. People naively went to the Soviet Union, saw the abysmal conditions there but praised communism to the skies. Meanwhile, whole groups of ethnic minorities were being shipped off to Siberia, never to be seen again. That is the sort of thing that we have to try to contemplate when we are considering the naivety of the Attorney-General here. He probably would have gone off to the Soviet Union himself and said that the gulags were a nice holiday camp—but they were not. The lesson from history is: the only time we banned or proscribed political parties, it simply did not work. If it did not work then, I doubt it will work today.

Senator BROWN (Tasmania) (10.01 p.m.)—I thank Senator Ray for those comments, because I totally agree with him. His recounting of history is correct. But his argument totally backs Senator Greig’s amendment: let us get rid of proscription. When I said that it was not the Australian way, I meant that I did not agree that what Mr Menzies was trying to do in 1940-41 was the Australian way. In fact, Australians dumped on that a decade later. That is the problem with this amendment and any variety of it. It concerns me that the Labor Party is considering entertaining a variety of it, because it is open to manipulation. Do not proscribe the organisation; track down and get the criminals, if criminals are involved—get the people who are involved. That is the way to go. Senator Ray agrees that, if you proscribe organisations, they will go under-
ground; they will take different forms. You will spend a lot of time chasing the organisations, when you should be getting the individuals, who, we are concerned, will maim, mutilate and devastate other people’s lives as an outcome of terrorism. That is what this legislation is about.

I reiterate that, as it stands, we have very strong laws to track down and apprehend such individuals. I do not believe this legislation is necessary. I believe it has a lot of dangers attached to it, and proscription is one of the kernels of the matter. I agree with the previous two speakers: we should not have proscription. It will be used politically. There will come a time when, if passed into law, this power of proscription will be abused. Even if we give the parliament a veto power—require there to be an ordinance or regulation so that either house of parliament can knock it out—are we going to write in here that, before the parliament agrees to proscribe an organisation, the rights of the people in that organisation will be upheld? Are we going to turn ourselves into a court? Are we going to cross that divide? We are elected politicians; we are not judge and jury. Where is the mechanism for the right of an organisation, which has been or is about to be proscribed, to defend itself, to have its hearing and to have its democratic rights upheld? Such a mechanism does not exist. We should not be entertaining this matter of proscription.

We heard two sterling speeches before my speech on why we should not have proscription. I ask the Labor Party to reconsider entertaining it at all. The best way for us to deal with this is to support this amendment. Sure, that will mean changes will have to be made to the rest of the legislation—if you must have the legislation. Those changes would concentrate the legislation on going for those people who are terrorists or planning terrorism, instead of going for organisations that might be labelled as terrorists and have all their members effectively put under that label by a banning mechanism with no court, no jury and no defence. We should not be allowing proscription under this legislation.

Senator COONEY (Victoria) (10.05 p.m.)—The excellent speeches by Senator Faulkner, Senator Ray and Senator Brown referred to the legislative history of the proscription positions that have been adopted in Australia. Senator Ray and Senator Faulkner also talked about what the Labor Party has done in this area. The Labor Party has a very proud history of defending Australia during the war, and then of bringing it out of the war and creating it in the fashion in which it appears to this day. Think about immigration, the Snowy Mountains River scheme, the Holden motor car—it goes on and on. The agenda set then has been pursued, to Australia’s good fortune, since that time.

The institution that turned back the use of proscription power in 1950 was the High Court. It would be interesting to see what they would have said about the proscription power as it was originally put forward in this legislation. I think we have to pay some tribute to the High Court at that time and to the courts today. The courts are under attack by the government, and it is well and proper to remember the position they play in keeping this a democratic society, whether in the area of migration legislation, industrial legislation or what have you.

If you look at, say, chief justices like Michael Black of the Federal Court, you understand what I mean. I have paid tribute before to Ted Laurie. He was a person I knew and who appeared in the Communist Party dissolution case before the High Court. When the lawyers went in there, they thought that the High Court would not take the approach that it did. They thought that the High Court would crumble, as it were, under the culture of the day, under the thinking of the day and under the pressure of the day, but that court stood up—and the courts do stand up, and it is great to see. But this parliament can also stand up. As I make these final few speeches, I confess that the approach taken by the parliament and by the Labor Party on this issue is something that I can go out on and remember with considerable pride.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that division 102 stand as printed.

Question agreed to.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.09 p.m.)—I move government amendment (16) on sheet DT340:

(16) Schedule 1, item 4, page 12 (lines 12 to 24),

omit Subdivision A, substitute:

Subdivision A—Definitions

102.1 Definitions

(1) In this Division:

member of an organisation includes:

(a) a person who is an informal member of the organisation; and

(b) a person who has taken steps to become a member of the organisation; and

(c) in the case of an organisation that is a body corporate—a director or an officer of the body corporate.

recruit includes induce, incite and encourage.

terrorist organisation means:

(a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs); or

(b) an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (2) and (4)); or

(c) an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (3), (4), (5) and (6)).

(2) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of terrorist organisation in this section, the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).

(3) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (c) of the definition of terrorist organisation in this section, the Minister must be satisfied on reasonable grounds that:

(a) the Security Council of the United Nations has made a decision relating wholly or partly to terrorism; and

(b) the organisation is identified in the decision, or using a mechanism established under the decision, as an organisation to which the decision relates; and

(c) the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).

(4) Regulations for the purposes of paragraph (b) or (c) of the definition of terrorist organisation in this section may not take effect earlier than the day after the last day on which they may be disallowed under section 48 of the Acts Interpretation Act 1901. That section has effect subject to this subsection.

(5) Regulations for the purposes of paragraph (b) or (c) of the definition of terrorist organisation in this section cease to have effect when:

(a) the decision mentioned in paragraph (3)(b) ceases to have effect; or

(b) the organisation ceases to be identified as described in paragraph (3)(b).

The regulation does not revive even if the organisation is again identified as described in paragraph (3)(b).

(7) To avoid doubt, subsection (6) does not prevent:

(a) the repeal of a regulation; or

(b) the organisation ceases to be identified as described in paragraph (3)(b).
The making of a regulation that is the same in substance as a regulation that has ceased to have effect because of that subsection.

I indicated earlier that I would deal in a more comprehensive manner with the government’s proposal in relation to division 102 of the bill. We are replacing division 102—the proscriptions that have been mentioned in debate—and we are basically defining a terrorist organisation because, if it is an offence to belong to a terrorist organisation, you have to firstly define a terrorist organisation. So the first limb, if you like, is in paragraph (a) of our amendment:

... an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs) ...

That will be decided by a court. That involves a trial process, one which would have the prosecution proving it beyond a reasonable doubt. I do not think the opposition is complaining about that one.

The second limb is that an organisation that is specified by the regulations for the purposes of this paragraph is a terrorist organisation, and that relates to listing by the Attorney-General. It is the second limb that involves the Attorney-General, not the third, as mentioned by Senator Faulkner. That is the one that much has been made of by the opposition. The opposition says it is undemocratic. Let me make it absolutely clear: there is nothing undemocratic about this limb of the government’s proposal. Firstly, in subsection (2):

... the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).

That is the first requirement. It goes on in subsection (4):

(4) Regulations for the purposes of paragraph (b) or (c) of the definition of terrorist organisation in this section may not take effect earlier than the day after the last day on which they may be disallowed under section 48 of the Acts Interpretation Act 1901.

That is saying that if the Attorney-General does act after the reasonable grounds have been established then that regulation does not take effect until the day after disallowance, thereby giving added security to the scrutiny of parliament. That is what the opposition is missing—the fact that the regulation is subject to disallowance. There is nothing undemocratic about that. In fact, important regulations are made every day in the Commonwealth’s jurisdiction, and we have seen just recently that our regulations can be disallowed by this very chamber. So what you have is the purview of the parliament with the added security of the regulation not taking effect until the day after disallowance—and that is 15 sitting days, as we know. That can encompass a lengthy period of time during which the regulation would not take effect.

Another safeguard is judicial review. Judicial review is also open in relation to the exercise of the minister’s responsibilities, because we have stated at the outset:

... the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).

You have not just parliamentary scrutiny but also judicial review. And when you do come to review the minister’s actions, those actions have to be on reasonable grounds. It spells out in subsection (2) what the minister must look at. So there are requirements made of the minister, and the minister is subject to the scrutiny of the parliament and judicial review. When the opposition very glibly says that this is giving power to the Attorney-General to ban organisations—and it implies that this could happen willy-nilly—it does not paint the whole picture. It is convenient, of course, for the opposition to do that, because it does not serve its purpose.

There are strict safeguards in relation to our second limb. Any regulation made by the minister in this case also ceases to have effect after two years so that you have a limited lifespan in relation to those regulations. These are requirements which do not normally accompany the making of regulations: the taking effect after the last day for disal-
allowance and the fact that they only last for two years, and of course you normally have judicial review and the scrutiny of parliament. The third limb in relation to a terrorist organisation states in subsection (c):

an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (3), (4), (5) and (6)).

Subsection (3) says that, before the Governor-General makes a regulation under this limb which would specify an organisation as being a terrorist organisation, the minister must be satisfied on reasonable grounds that:

(a) the Security Council of the United Nations has made a decision relating wholly or partly to terrorism; and

(b) the organisation is identified in the decision, or using a mechanism established under the decision as an organisation to which the decision relates; and

(c) the organisation is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not that terrorist act has occurred or will occur).

Again, extensive requirements are made of the minister. But of course you have in this third limb the additional involvement of the Security Council of the United Nations. I notice that the opposition does not take issue with that.

We have here a comprehensive suite of measures for dealing with terrorist organisations. We have done away with proscription and we have created offences in relation to terrorist organisations. These terrorists organisations can be determined in a number of ways. It is very important that we have a provision in this bill which deals with terrorist organisations. If you have a terrorist organisation which meets the requirements as spelt out in this bill—that is, it is involved ‘directly or indirectly in planning, preparing or assisting in or fostering the doing of a terrorist act’—the government would argue that that organisation should be listed. It should be put on notice to the public at large so that no-one would join it. If we allowed a terrorist organisation to exist per se, people would be free to join it—and perhaps unwittingly join it. It is the responsibility of the government to place the public on notice in relation to terrorist organisations. On this point I think the opposition is not in disagreement with the government. It is very important that the government do this. If the government did not, it would be irresponsible, and it would be criticised for not doing that.

We have in place three mechanisms for determining a terrorist organisation—one, by a court, established beyond a reasonable doubt; two, by the minister, after reasonable grounds have been made out in the way that I have described, subject to the scrutiny of parliament and judicial review; and, three, the involvement of the Security Council of the United Nations. We believe that these measures provide a balance. They provide security and an assurance for those people who are concerned that this great power could be abused and that there is not a check to it. The government says there is. What it does provide, importantly, is an important tool in the fight against terrorism and terrorist organisations. This is not an undemocratic provision; it is one which is loaded with safeguards and one which is directly in the interests of Australia in protecting Australia against terrorist organisations.

Senator BROWN (Tasmania) (10.19 p.m.)—Could the minister explain what is meant by the word ‘informal’ in the definition of a member of an organisation under section 102.1? That is:

(a) a person who is an informal member of an organisation …

Does it mean that they are not dressed well or that they have not signed up? I made some comments about the Security Council’s means of listing terrorist organisations: would the minister comment on that and give the committee his understanding of how the Security Council of the United Nations comes to regulate that an organisation is a terrorist organisation?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.20 p.m.)—With respect to the provision in 102.1: member of an organisation includes:

(a) a person who is an informal member of the organisation …

That relates to organisations which do not necessarily have records, membership books
or receipts. Obviously, terrorist organisations will not be advertising their membership lists or conducting themselves as community organisations operate. If you join a community organisation, you get a receipt for your membership and they keep records. In fact, under the various incorporation of associations acts some of them have to. We are providing here for a situation where you have an organisation which very well has members, and it certainly has members who are active. They know who they are. Because of the clandestine operation of those organisations they do not have lists and they do not have formal applications. I can tell you that in relation to some criminal gangs that is very much the case. They carry out their initiatives in a very formal sense but there is no formal membership. I will not go into that for operational reasons, but I can tell the Senate that that is very much the case in some criminal gangs operating in Australia. This is a very important provision, because most terrorist organisations would not have formal membership as we know it.

In relation to the question about the Security Council of the United Nations, I believe that stems from resolution 1373, which deals with this. I will take some advice on that. I think Senator Brown is asking about the process of how the Security Council comes to determine that an organisation is a terrorist organisation. That, as I understand it, is on the basis that the UN will only list such an organisation if there is widespread international support. There is also an objection process in relation to the UN Security Council, and it is subject to the regulations I mentioned previously. In subsection (3), which I read to the Senate earlier, not only does the decision have to be made by the Security Council of the United Nations but also that organisation still has to be:

... directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).

As well as that, that regulation is disallowable and will stand for only two years because of the sunset provisions I have mentioned. Even when the UN Security Council has made a determination, there are still those other safeguards which apply to the regulation.

Senator BROWN (Tasmania) (10.24 p.m.)—I ask the minister, through you, Mr Temporary Chairman: what is the process more specifically for the listing of a terrorist organisation by the Security Council? Who does it, what is the process for objection and how is that carried through? Why is this list not then submitted for ratification by the general council of the United Nations, which is the community of nations as a whole, rather than by the very small number of major nations which make up the Security Council? Subsection 3(c) in this government amendment reads:

... the Minister must be satisfied on reasonable grounds that ... the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act ...

What is the process for the minister making that assessment? What safeguards are built into that in terms of a review of the minister’s decision or the ability for an organisation that is to be proscribed to state its defence?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.25 p.m.)—I stress that nothing can get through the Security Council of the United Nations unless it has widespread support because of the objections that I mentioned; you can have a veto. If the African bloc, the Asian bloc or the European bloc want to have an organisation listed, they still have to have that widespread support to get it through the UN Security Council. Remember that you have five standing members of the UN Security Council but that you also have other countries who rotate their membership in relation to that. In order for an organisation to be listed as a terrorist organisation by the UN Security Council, you would have to have widespread support, because by virtue of the veto system you would invariably have someone objecting and vetoing it.

Senator BROWN (Tasmania) (10.26 p.m.)—I asked the minister what the objection process was. He mentioned it, and I would like it described to the committee if he would not mind.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.26 p.m.)—I cannot tell you what the actual working procedures of the UN Security Council are, but I will take that on notice.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.26 p.m.)—by leave—I move opposition amendments (4) and (5) on sheet 2503:

(4) Government amendment (16), omit paragraph (1) (b) of the definition of terrorist organisation.

(5) Government amendment (16), omit subsection 102.1 (2).

I flag that I will need to speak further to these amendments when the committee meets tomorrow to deal with this legislation. In response to strong objections to the government’s proposed proscription regime from not only the opposition but also the Senate committee and the wider community, we have before the chamber now a proposal which puts forward a regime with three alternative limbs. It is worth reminding ourselves of the government’s proposal: limb 1 is an organisation found by a court to be engaged in a terrorist act, limb 2 is an organisation which is the subject of a decision by the United Nations Security Council that it is an international terrorist organisation, and limb 3 is an organisation which the Attorney-General is satisfied on reasonable grounds is engaged in a terrorist act. Of those, limbs 2 and 3 require that the Attorney-General make a regulation and do not take effect until the disallowance period has expired. The government has said that such a decision would also be open to judicial review. I indicated earlier in this committee stage debate the very serious concerns the opposition has that the government’s approach still includes an executive discretion to proscribe organisations.

Progress reported.

ADJOURNMENT

The DEPUTY PRESIDENT—Order! It being 10.30 p.m., I propose the question:

That the Senate do now adjourn.

Education: Schools Funding

Senator TIERNEY (New South Wales) (10.30 p.m.)—I rise tonight to stress the growing need for better financial support for our schools in New South Wales. This continues to be a hot topic with a lot of confusion in the public mind about what is actually state government responsibility and what is federal government responsibility in this area. I wish to underline the fact that our state schools are primarily the responsibility of the state government. The state government is responsible for 88 per cent of the funding—

Senator Crossin—Tell us about the amount of money you have reduced in state education in the last seven years.

Senator TIERNEY—I am pleased to hear Senator Crossin interjecting and I want to remind Senator Crossin of the fact that she and her colleagues keep spreading these lies about who is responsible for the funding. Let me tell you, Senator, that the responsibility for the funding is 88 per cent state government with the federal government providing 12 per cent top-up funding. After six years of the Carr government we can see very clearly that its priorities are not with education or the state school system. When the Carr government came into power, 25 per cent of its budget was in education. That has dropped down to a miserable 22 per cent.

Senator Crossin—Tell us about the percentage of GDP you give to state education.

Senator TIERNEY—that shows where its priorities are, Senator, and we in contrast have increased our funding by consistently more than five per cent a year while your state Labor government in New South Wales has been increasing it by about two per cent a year. No wonder the state system in New South Wales is in such trouble, given the neglect by the state Labor government. I am very pleased, Senator, that you have given me the opportunity to point that out. Keep interjecting and I will point out a few more things. Bob Carr seems more interested in building concrete monuments to his reign than ensuring the education of our children in this state. This year the Carr government budget has its primary focus on spending money to chase votes. This is very clear, given that there is an election coming up in one year. All the priorities were on chasing
votes. Very sadly the priority did not seem to
be on the state education system.

Senator Crossin interjecting—

Senator TIERNEY—Senator Crossin, I
will be providing you with some figures in a
minute that actually prove—

The ACTING DEPUTY PRESIDENT
(Senator Forshaw)—Order! Senator Tier-
ney, just one moment. Senator Crossin, cease
interjecting, it is disorderly. Senator Tierney,
address your remarks through the chair.
Would the various senators who are carrying
on some rather loud conversations on my
right and my left please desist.

Senator TIERNEY—What the Carr gov-
ernment has done over the last six years has
increase its funding at around two per cent a
year. This has barely kept pace with inflation
and has made no impact on the problems of
the schools. This is why there are such diffi-
culties in our state schools. I remind the
senator that 88 per cent of funding is pro-
vided by the state government. If it is putting
it up by only two per cent a year, that is why
there is a problem. Yet the Teachers Federa-
tion and other groups keep running around
spreading these stories that it is because of
the federal government. But the federal gov-
ernment has only 12 per cent of the respon-
sibility; the state government has 88 per cent.

The neglect of our schools by the Carr
government is amazing given the damning
revelations by the Vinson report in New
South Wales. Senator Crossin is probably
totally unaware of this, so I will enlighten
her tonight as to what was in that report.

Senator Crossin—I am absolutely aware
of it.

The ACTING DEPUTY PRESI-
DENT—Order! Senator Crossin, cease in-
terjecting. It is disorderly. And, Senator Tier-
ney, address your remarks through the chair.

Senator TIERNEY—Through you, Mr
Acting Deputy President, I wish to educate
Senator Crossin on these matters, seeing as it
is an education debate. The Vinson report—
and Professor Vinson is very highly regarded
in New South Wales and has been for many
years—was highly critical of the Carr gov-
ernment’s stewardship of the New South
Wales public school system, particularly the
fact that—and this is the devastating point—
compared with all the other states the Carr
government is at the bottom of the table on
virtually any measure. It is the combination
over many years of neglect in spending that
has put the New South Wales schools at the
bottom of the class, let us say, as compared
with the other states. If the New South Wales
government had matched on a pro rata basis
the spending of the federal government it
would have put in another $202 million. Of
course, it has not done that. It is really drag-
ging the chain when it comes to matching the
money put into the public school system by
the federal government.

If the Carr government had been fair
dinkum about a commitment to education,
we would have seen much higher levels of
spending in recent budgets and therefore the
solution to many of the problems in this
state. Despite the government’s claim that it
is spending another $494 million in its
budget, when you look at the figures prop-
perly—and the Hon. Patricia Forsythe, the
shadow minister for education and training,
has certainly done this—you will discover
that, for schools and TAFEs combined, the
increase is a paltry $46 across this massive
system, nowhere near keeping pace with in-
flation. Despite the government’s widely
proclaimed school improvement package and
despite calls from the public education
community for more support, funding was
slashed by $100 million from what was
promised in the previous budget.

This year the Carr government’s appalling
record on public education was exposed. The
Vinson inquiry into public education was not
sponsored by the Carr government. This was
not an inquiry into public education by the
government; this was an inquiry by the
Teachers Federation and the New South
Wales Parents and Citizens Associations—
the P&Cs. They were so concerned at what
was happening in our schools in New South
Wales they set up their own inquiry, chaired
by the very distinguished Professor Tony
Vinson of the University of New South
Wales. This involved consulting staff, stu-
dents, parents and carers in the course of the
inquiry and visiting 136 schools and exam-
ining 760 written submissions received from
parents, teachers, students and interested members of the public. I underline the fact that this inquiry into New South Wales public schools was established by outside organisations, not the government.

Two topics of current interest which came into the spotlight in this inquiry were teacher professionalism, curriculum and pedagogy, and the foundations for effective learning, including the question of appropriate class sizes. This inquiry has exposed the shortcomings of the Carr government’s stewardship of public education in New South Wales. One of the most devastating conclusions in the Vinson report was the proven low morale of teachers in the New South Wales public school system. Despite this damning finding, the New South Wales budget that has just been brought down ignored this problem completely. The shadow minister for education and training, the Hon. Patricia Forsythe, said:

Michael Egan was right when he called it a Labor Budget, it is one that has let workers down. The low morale of teachers highlighted in the Vinson Report will not be improved by this budget. As a result of teachers having low morale, students, schools and therefore the entire education system is in this situation. In the Vinson report, teachers also outlined concerns that were the cause of the low morale. The Carr government really must take urgent steps to put this right. Tony Vinson said:

Teachers want to establish a clear focus on learning as the core task of the public education system.

It came out very clearly in the Vinson inquiry that we currently have a school system which forces teachers to be ‘jacks of all trades’. Teachers are being pulled away from their primary role in order to be able to complete additional tasks apart from teaching. These tasks include working as road safety officers, psychologists, social workers, medical practitioners, technicians and administrators. They are doing all these things. From the hundreds of submissions to the inquiry, it was shown that this was taking up to 40 per cent of the teacher’s time. Rather than concentrating on the children and effective learning, they were spending a lot of their time actually dealing with welfare problems—and they are doing this as an act of goodwill.

Maree O’Halloran, President of the New South Wales Teachers Federation, said that teachers were ‘running around schools with spanners’ acting as technical workers. In relation to these tasks, the Vinson report referred to these teachers as ‘self-taught amateurs’. The most severe cases involved schools in country New South Wales which at times saw teachers paying for classroom materials out of their own pockets because of the shortage of funds and resources. The Carr government must provide funding to improve this situation and stop making empty promises.

Kumantjay Tjapaltjarri
Big Bill Neidjie

Senator CROSSIN (Northern Territory) (10.40 p.m.)—Tonight I rise to pay my respects on the passing of two distinguished Indigenous Territorians who, in their own very different ways, made their mark on the landscape of this country. I use the word ‘landscape’ for an important reason: because it was their land and their connection to it that shaped the course of each of their lives and also shaped our nation and its identity—a nation that now recognises the long history of occupation of the land and the valuable knowledge of traditional owners in managing the land; a nation which increasingly recognises and celebrates the rich cultural heritage of the Indigenous peoples of this country, which is increasingly associated with Australia’s identity abroad.

Firstly, I would like to take this opportunity to mourn the passing of one of Australia’s most renowned Indigenous artists, Kumantjay Tjapaltjarri, who passed away in an Alice Springs nursing home last week. I refer to this person by the name Kumantjay Tjapaltjarri out of respect for his people’s culture and tradition. The ATSIC Commissioner for the Central Zone in Central Australia was quoted today in the Sydney Morning Herald as saying:

It’s only common courtesy to the family that people not be named.

She went on to say:

People are going through the grieving process.
That is the tradition in Central Australia. We need to respect the words of ATSIC Commissioner Alison Anderson, a tremendous and great person in that part of this country for her contribution to Indigenous Australia. Of course, the family has given permission for him to be called Kumantjay Tjapaltjarri. In Central Australia ‘Kumantjay’ is used to refer to a dead person who cannot be named. But I am sure that those who may be listening and those in the Senate will well know whom I am referring to.

This man was born at Napperby Station around 1932. Kumantjay received very little in the way of a Western education and spent his early life working as a stockman and station hand on cattle properties around the McDonnell Ranges. His artistic career began when he started carving artefacts from wood in the 1950s, gaining a reputation as one of the finest carvers in the region. He was later employed at Papunya to teach woodcarving to the children. Eventually he moved on to painting, being one of the last men to join Geoffrey Bardon’s group of painting men at the beginning of the 1970s. He was a founding member of Papunya Tula Arts and went on to become the Chairman of Papunya Tula Artists during the late 1970s and early 1980s. As one of this first group of painters in Papunya, he is regarded not only as one of the leading figures in the Papunya Tula art movement—which predominantly of course is renowned for its dot paintings—but also as a forefather of the contemporary Aboriginal art movement.

It is no exaggeration to say that Kumantjay helped to put Western Desert art as we know it today on the map. His images of the Western Desert have been widely exhibited overseas, including major exhibitions in Europe and the United States. His work is represented in major collections in Australia and overseas, including the National Gallery of Australia, the Art Gallery of New South Wales and the Queensland, Western Australian and South Australian art galleries, as well as the Holmes a Court Gallery in Perth and the Pacific Asia Museum and the Kelton Foundation collections in Los Angeles. Regarded as one of the most famous of the Western Desert Aboriginal artists, his works are highly sought after.

Kumantjay dedicated his life to ensuring Aboriginal art and culture stayed strong and alive. The significant contribution he made to Australia’s cultural life was recognised recently when he was awarded the Order of Australia. Sadly, he lapsed into a coma the very day he was due to receive his Order of Australia medal in Alice Springs and never regained consciousness. I take this opportunity to express my sincere sympathy to his family and his community on their loss. But they can be reassured in knowing that his spirit lives on in his outstanding work, which not only brought his people, his community and himself international acclaim but will forever play a role in our nation’s cultural heritage.

Secondly, I would like to reflect on the life of Big Bill Neidjie, a member of the Gagadju language group and a highly respected and well-known Bunitj clansman who passed away on 24 May this year. I mention him by name this evening because, contrary to Aboriginal custom, Bill actually expressed the wish that he be referred to by name after his death. He was known as Big Bill not just for his stature but for the influential role he played as a Gagadju elder. Big Bill packed a lot into his 80-plus years, and he devoted a great deal of his time and energy to fighting for land rights, to opposing mining in Kakadu and, above all, to protecting his traditional land.

Big Bill had a long and interesting life which started and ended near the banks of the East Alligator River, land now jointly managed by the traditional owners and staff of Kakadu National Park. Of course, when Big Bill was born, just after the First World War, that country was a vastly different place to the national park it is now, visited by up to 250,000 people every year. At the time of Big Bill’s birth, the land was solely managed by the Indigenous owners, following traditional practices passed down through the generations. The importance of knowing the country, learning to read it and respecting it was at the core of Big Bill Neidjie’s life and he was passionate about passing on to others his knowledge and understanding of the
country he loved. Through the knowledge passed on to him as a boy by his grandfather and his uncles, he learned how to live off the land and how to manage it.

During his life he worked in a range of jobs in different parts of the Northern Territory, returning from time to time to his own country. He returned permanently in the 1970s, from which time he played an important and very public role in securing the future of the land for the Bunitj people. It is now a matter of history that, back in 1979, Big Bill was one of the principal claimants appearing before the Aboriginal Land Commissioner, Justice Toohey, in the Alligator Rivers stage 2 hearing, as a result of which the Bunitj people eventually won title over their land. Big Bill’s significant contribution to advancing land rights is unassailable. Galarrawuy Yunupingu recently described Bill, together with Vincent Lingiari, Eddie Mabo and his own father Mungurrrawuy Yunupingu, as one of the giants of the land rights movement—and he was right.

Big Bill later came to be known as Kakadu Man, principally because of the crucial part he played in the establishment of Kakadu National Park, one of the few parks across the globe with a World Heritage listing for both its cultural and natural heritage values. He went on to play a key role in negotiating a joint management arrangement for Kakadu National Park between the traditional owners and the Commonwealth government. The joint management arrangement for Kakadu which he brokered, functioning under a lease-back to the Commonwealth, is still operating today. Bill also worked as a park ranger and cultural adviser in Kakadu.

In Kakadu Man, a book of his reflections published in 1986, Big Bill conveyed a profound understanding that, while European and Indigenous traditions each had their place, the sudden imposition of European culture had wreaked seriously damaging effects on Indigenous people which were still being felt in the Alligator Rivers region. He was gravely concerned about the loss of Indigenous knowledge and its consequences for the management of the country. His life’s work was to ensure the future of the land he loved, to teach others to understand it and to pass on his knowledge and understanding of the land to future generations. His words convey a tremendous conviction about the importance of the land, of not wasting resources, of reading the signs of seasonal change in the wind and the stars. It was recently said that he is as large in death as he was in life, a reference to the enormous legacy he leaves not only for his own people but for all Australians willing to learn from this wise old man about respecting the land.

On behalf of my Indigenous constituents in the Northern Territory, I pay respects to the families and the communities of both Kumantjay Tjapaltjarri and Big Bill Neidjie.

**Environment: Murray-Darling River System**

Senator LEES (South Australia) (10.50 p.m.)—I want to use my time tonight to look at the pressing issue of water reform in the Murray-Darling Basin. It is a matter of great urgency that we leave more water in the Murray-Darling Basin; that we leave water in the rivers, particularly at times of good flow. The Murray River’s Ramsar listed Chowilla flood plain and the Coorong wetlands are dying a slow death. They desperately need a decent drink. Many other areas, many other wetlands along the river, particularly parts of Banrock Station and the Gurra Lakes, are under extreme pressure. There has not been a medium flow of water across the Chowilla flood plain since 1992. Red gums can make do for two or three years without a decent drink and they can live in fairly saline water, but they certainly cannot go for 10 years. The dying red gums and black box of the flood plain indicate that we need to act now to get water into these parched areas. I spent a day recently walking through the ghostly remains of many of these red gums, in what was known as the Garden of Eden but could hardly be described that way these days. Some of those trees, many of them 200 or 300 years old, are just dropping their final leaves.

We do need an urgent public debate on how and when we can get the fresh, unsalted water into these areas. Hopefully, that will then prompt action. I agree with Minister Anderson, the Deputy Prime Minister, that natural resource management is the most
important environmental issue confronting our nation and the most important economic issue facing rural and regional Australia. I note with interest that the federal Treasury has begun to campaign for environmentally sound policies. Ken Henry, the Secretary to the Treasury, in a recent speech at the ANU, has even personally reminisced about the environmental destruction of our old-growth forests. So we have farmers who know what needs to be done; we have scientists who know what needs to be done; we have Treasury that knows what needs to be done in the Murray-Darling Basin. Basically, we should not be paying off any more public sector debt. We see the recent example of some $4.2 billion net proceeds from the sale of Sydney airport going in that direction. I noted with interest an article in the Financial Review today—I think it was on page 8—saying that we in fact do not have enough debt; Australia needs to be further in debt. We must find the resources, the money and the political will urgently so we can invest in the environment by leaving more water flowing through this important river system and out to sea.

Treasury, in a recent issue of its Economic Roundup, has acknowledged the need for public good conservation, but still the action does not match the words. Treasury is busy working within the strategic framework of COAG water reforms, which aim to achieve increased efficiency and sustainability. But efficiency, particularly with state governments hovering on the sidelines, keen to open up more irrigated agriculture, does not mean increased environment flows in the river. It does not mean sustainability. Putting on drippers and changing over to microjets may reduce one particular farmer’s water consumption and may indeed help a particular orchard or vineyard but, if the water saved is simply transferred somewhere else to be spent on new irrigated areas, little—if anything—is left for the river.

Our history is one of water being almost given away, with little consideration for the destructive impact of European style agriculture on the environment. All this has to stop. We know it has to stop. Increasing efficiency has the potential to leave considerable volumes of water in the river, but the chance has to be grabbed now while programs like the Mallee pipeline and the Darling anabranch pipeline are being planned and built. It will be very expensive down the track to buy back the water that is saved by these new schemes if it is now onsold and used elsewhere for more irrigation. There will be no environmentally sensible outcomes for the landscape, for the red gum forests or for the wetlands, if water that is saved by increased efficiency is simply onsold, particularly by state and federal governments searching for an extra dollar.

By doing nothing to address the environmental costs of a water-starved Chowilla flood plain, we are building up enormous environmental debt, particularly as far as the salinity load is concerned. The public should not be left to carry this debt from government inaction from generation to generation. This is where our real debt problem is and we now need to do some serious work on it. Putting water allocations aside in an environment bank, not increasing economic efficiency, will give the badly run-down Chowilla flood plain the drink it needs. Changing our public policy to give priority to environment flows and to save Chowilla is essential, and it really is not that hard if we act quickly. The much-heralded cap on water diverted from the Murray and Darling rivers is only an interim step, since it is about management of the river and not management of the entire ecology. The Murray-Darling Basin Ministerial Council is making slow progress to increase the environment flows, but that too seems to stall far too often.

Jack Seekamp, an expert on River Murray flows and areas along the river, particularly in the Riverland region of South Australia, has detailed local knowledge to show us how to restore the flood plains. Jack is an ex-teacher, grower and researcher and a water activist for many years, who won the 2001 River Murray catchment environment award. He has built up an enormous research base and volumes of information on salinity levels, on particular areas of the forest—even down to specific trees—and on the rivers, creeks and lakes of the Chowilla flood plain. Jack’s estimate is that the flood plain needs
around 85,000 megalitres of water a day flowing past in that section of the Murray for about a week, once every three years. We can achieve this by boosting good flows—a flow coming down either the Darling or the Murray—and by releasing stored discharge from Lake Victoria and Menindee Lakes. He argues strongly that the policy of increasing flood peaks should be to hold back until the peak arrives and then boost this to increase downstream flow.

At the same time that Chowilla is given a drink, the other areas further down, such as parts of Banrock Station, will at last get what they also need. When walking through Banrock, an area that has had enormous improvements made to it now that the wetland system is dried regularly, out of reach of the regular flows I saw considerable numbers of black box and grey box that are dead and dying because they too need a reasonable flow for the water to get up into those parts of the flood plain. Lake Meeriti is also an area that is being managed with drying and wetting cycles, with tremendous regeneration of red gums and great bird life flocking back to it. We can see what can be done, but there is so much more to be done. Up and down the river you find large numbers of small organisations working hard on revegetation and working hard on specific wetlands, but without water left in the river, much of their work will not reach its full potential.

One of the arguments against increasing these flood peaks and putting water aside for the environment is that it leaves farmers in the lurch. But if you are actually boosting a flood at a time when there is plenty of water around, it does not change very much for those farmers and it will not be a threat to ongoing regular farming practices in most parts of the river. But farmers need certainty; planning needs to be done now to show where this water is coming from. It does require changing the culture of the water authorities that have been dead keen on maintaining the locks at specific levels and not allowing for fluctuations. The locks should be moved about two metres up and down to make sure their banks start to regenerate and to get greater stability. It also requires local communities—particularly shack owners—to get used to living with a medium level of flooding. But all of that is easily manageable and, having talked to many of the communities in the Riverland, I think they are actually keen to see some action being taken and some changes being made.

We also need to change the land use on Chowilla itself. This is a property now that is state owned but there is unfortunately still a lease over it. It also has on it—and we saw these—wild pigs and goats. Letting them continue to roam means that what does regenerate is obviously going to be eaten out fairly quickly. So there are still a lot of land management issues to be dealt with across the flood plain. The South Australian state government needs to provide some incentives so that this area can actually be effectively managed for ecotourism. Good environment management, I argue strongly, is good economic management. Good environment management is a matter of extreme urgency. We have to actually be ready for the next reasonable flow of water down the Darling or the Murray. It is not happening at the moment—there are only about 3,000 megalitres a day going over the border. We need to be ready for when that is boosted to 40,000 or 50,000 megalitres and then to top it up with a reasonable flood that flows out over the banks and out onto the Chowilla flood plain. (Time expired)

Roads: Funding

Senator TCHEN (Victoria) (11.00 p.m.)—On 27 November 2000, Prime Minister John Howard and the Deputy Prime Minister and Minister for Transport and Regional Services, John Anderson, announced a historic $1.6 billion boost to the nation’s road network with a major emphasis on investment in the repair and maintenance of vital local roads. $1.2 billion of the $1.6 billion would be distributed over four years directly to local councils under the Roads to Recovery program for local road construction and repair. The Roads to Recovery program is the single largest funding injection into local roads by a federal government. Its $1.2 billion over four years is over and above the Commonwealth’s annual contribution through the Financial Assistance Grants Scheme. About two-thirds of the program
will be spent in rural and regional Australia in recognition of the fact that this is where the need is greatest. In summary, the government’s commitment is to spend a total of $1.2 billion on the Roads to Recovery program by 2004-05, starting with $406 million in 2000-01.

At the time of the announcement of the Roads to Recovery program, the Prime Minister said:

This major investment in our roads is possible because our budget position is better than anticipated. The Government believes this is the best investment of these funds for the long-term benefit of the nation.

In this year’s budget it has been necessary to rephase some of the funds allocated to infrastructure, including the Roads to Recovery program, in order to meet important budgetary priorities over the next two years. The Roads to Recovery program will be reduced from $300 million to $200 million in 2002-03 with the same $100 million reinstated in 2004-05. Funding in 2003-04 will remain unchanged at $300 million. Every local council in Australia will receive every dollar of the funding they have been promised under this program by 2004-05.

Yesterday during the adjournment debate, Senator Forshaw complained loud and long—and ultimately futilely—that this rephasing of the program has caused severe hardship to councils. Unfortunately for Senator Forshaw, he happened to be wrong—wrong on his facts, wrong on his story, and wrong on his conclusion. He was wrong because this government stands by its commitments to Australia and Australians. For six years it has delivered what it said it would, and it will continue to deliver for Australia and Australians. No l-a-w law tax cuts for this government!

Let me put the record straight on the Roads to Recovery program. The total funding for the program at its end in 2004-05 is unchanged at $1.2 billion. What is rephased for one year will be restored in full in another year within the term of the program. Yesterday Senator Forshaw kindly read into the Hansard statements made by the Prime Minister when the program was announced, but he rather cunningly left out the very important point the Prime Minister made that I noted earlier: that this program is made possible by the better than expected budgetary position and that the purpose of the program is for the long-term benefit of the nation. These criteria remain constant.

To minimise the effect, if any, of this rephasing, councils that will receive less than $600,000 over the four-year life of the program will not have their allocation deferred. As a result, 93 councils will receive the amount originally anticipated. This is in addition to 71 councils that have been paid their allocation in full already. Also, any councils with a life of program allocation of $600,000 to $900,000 will receive $150,000 this financial year—their funding is practically unaffected. Where problems arise as a result of rephasing the program due to commitments already made by councils, the government has put in place hardship considerations to be administered by the Department of Transport and Regional Services where each case will be considered on its merits.

I will now turn to the specific case that Senator Forshaw trumpeted last night as an example of a council having—in his over-dramatic words—the ‘rug pulled out from under them’. Senator Forshaw cited the case of Sutherland Shire in Sydney and the upgrading of Captain Cook Drive in that shire in particular. Senator Forshaw proclaimed himself incensed that, because of the rephasing of the Roads to Recovery funding, the council will be between $250,000 and $300,000 out of pocket this financial year. He further claimed that the council’s problem is going to snowball because it budgeted over the next four years to receive the funding it has been promised.

Firstly, let me repeat to Senator Forshaw that the funding the council will receive over the life of the program is not affected by the rephasing this year. That should take care of any concern about any snowballing of the council’s problem. But maybe not. It depends on what sort of financial manager the council is, doesn’t it? This is actually a real concern because the Sutherland Shire Council actually does not give impartial observers much confidence as to its financial management ability if it cannot handle the rephasing
of its Roads to Recovery funding. The Sutherland Shire Council is no pauper. It has an annual budget of $170 million. One would have thought any halfway competent financial manager would be able to deal with a funding variation of $250,000 to $300,000 in any one year. Apparently not Senator Forshaw’s council. Perhaps, like Senator Forshaw, it cannot read a simple funding statement either. I remind Senator Forshaw that a variation of $250,000 in a budget of $170 million is 0.15 per cent. It is nothing like a $10 billion black hole.

But there is more about Sutherland Shire Council’s financial management skills. I put a question to the Department of Transport and Regional Services: what funding has Sutherland shire received under this program? It turned out that Sutherland Shire Council failed to make an application for Roads to Recovery funding until six months after the program started. In other words, it is $400,000 in arrears of its entitlement. I am no economist, but it seems to me that $400,000 is a somewhat larger sum than the $300,000 that Senator Forshaw was so concerned about. Maybe he is no better a financial manager than the council is. But maybe I am too hard on the council. After all, it has been able to fund a campaign to remove the Lucas Heights research station to the tune of $250,000 net payout, not counting staff and administrative costs.

Let me put the record straight for Senator Forshaw’s benefit. The Roads to Recovery program is an initiative of the Howard government in recognition of the backlog of local roads needs throughout Australia. The program will provide $1.2 billion over four years to councils to use on local roads for such essential activities as rescaling and regravelling, and upgrading bridges in desperate need of attention. Without the foresight of this government, local councils would still be crying out for roads funding, as the ALP would not have introduced such a nation benefiting program. Indeed, when this program was announced the Labor Party called it a boondoggle and a pork barrel. Yet here is a senior Labor senator claiming that councils are losing out. In reality, councils are winners and Australians are winners under the initiative of the Howard government.

**Senate adjourned at 11.09 p.m.**

**DOCUMENTS**

**Tabling**

The following government documents were tabled:

- Treaties—
  - *Bilateral*—Text, together with national interest analysis—
    List of multilateral treaty action under negotiation or consideration by the Australian Government, or expected to be within the next twelve months, June 2002.

**Tabling**

The following documents were tabled by the Clerk:

- Disability Services Act—
  - Disability Services (Disability Employment and Rehabilitation Program) Standards 2002.
  - Disability Services (Rehabilitation Programs) Guidelines 2002.


Hearing Services Administration Act—Hearing Services Rules of Conduct Amendment Rules 2002 (No. 1).

**Tabling**
The following document was tabled pursuant to the order of the Senate of 25 March 1999:

Australian Competition and Consumer Commission—Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance for the period 1 July to 31 December 2001.