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Wednesday, 26 June 2002

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

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.31 a.m.)—by leave—I move government business notice of motion No. 1, as amended by omitting (2)(f) and substituting a new paragraph (2)(f), which has been circulated to all parties and Independents this morning:

(1) That on Wednesday, 26 June 2002:
   (a) the hours of meeting shall be 9.30 a.m. to 6.30 p.m. and 7.30 p.m. to 11.10 p.m.;
   (b) the question for the adjournment of the Senate shall be proposed at 10.30 p.m.; and
   (c) the routine of business from 7.30 p.m. shall be government business only.

(2) That on Thursday, 27 June 2002:
   (a) the hours of meeting shall be 9.30 a.m. 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 p.m. to not later than 8 p.m.;
   (d) the routine of business from the conclusion of valedictory statements shall be government business only;
   (e) divisions may take place after 6 p.m.; and
   (f) the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills listed below, or a motion for the adjournment is moved by a minister, whichever is the earlier:

   Security Legislation Amendment (Terrorism) Bill 2002 [No. 2]

   Suppression of the Financing of Terrorism Bill 2002
   Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002
   Border Security Legislation Amendment Bill 2002
   Telecommunications Interception Legislation Amendment Bill 2002
   Social Security and Veterans’ Entitlements Legislation Amendment (Disposal of Assets—Integrity of Means Testing) Bill 2002
   Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002
   Superannuation Guarantee Charge Amendment Bill 2002
   New Business Tax System (Consolidation) Bill (No. 1) 2002
   Taxation Laws Amendment Bill (No. 4) 2002
   Diesel Fuel Rebate Scheme Amendment Bill 2002
   Workplace Relations Amendment (Fair Dismissal) Bill 2002
   Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002
   Migration Legislation Amendment (Procedural Fairness) Bill 2002 (subject to exemption from provisions of paragraphs (5) to (7) of standing order 111)
   Appropriation (Parliamentary Departments) Bill (No. 1) 2002-2003
   Appropriation Bill (No. 1) 2002-2003
   Appropriation Bill (No. 2) 2002-2003
   International Criminal Court Bill 2002
   International Criminal Court (Consequential Amendments) Bill 2002
   Export Market Development Grants Amendment Bill 2002
   Australian Protective Service Amendment Bill 2002
   New Business Tax System (Imputation) Bill 2002
   New Business Tax System (Overfranking Tax) Bill 2002
   New Business Tax System (Franking Deficit Tax) Bill 2002
Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.33 a.m.)—The opposition will be supporting the question before the chair. I do, however, seek from the Manager of Government Business in the Senate, when he responds to this debate, a commitment in relation to the way the chamber will deal with valedictory speeches for retiring senators. Madam President, you would recall that last week the opposition gave up general business time because of our concerns about the pressure of the program and the fact that we were well aware that many senators would want to contribute to a valedictory debate tomorrow for retiring senators. That general business time last week was appropriately spent on government business and I think was effectively utilised then.

Eight senators are retiring from the Senate and tomorrow will be their last sitting day as senators. The opposition have given a commitment to government and other senators in the chamber that, again, we would forgo general business time in this regard for valedictory speeches tomorrow. I ask the Manager of Government Business to give a commitment that, in relation to that valedictory debate—which the motion before the chair contemplates coming forward no later than 4.30 p.m. tomorrow and concluding by 8 p.m.—arrangements will be made in the chamber to allow each of our retiring senators to use the time between 6 p.m. and 8 p.m. tomorrow evening to make a 15-minute valedictory speech and prior to that, from as early as possible after question time to when we are able to get on to valedictory speeches, allow those senators who wish to speak about their retiring colleagues an opportunity to do so in a valedictory speech with a 10-minute time limit.

I think this will give some certainty to all those who want to participate in the debate. It will give certainty to retiring senators and seems, I think most senators would agree—I hope all senators would agree—a very sensible way of dealing with the significant number of valedictory speeches for retiring senators that we have on this occasion. So my only request, as we deal with this important matter, is to ask the Manager of Government Business to give a commitment that the way I have outlined this matter being dealt with tomorrow is also agreed to by the government so we can give that level of certainty to all senators in the chamber who wish to participate in valedictory speeches but particularly, in this instance, to our eight colleagues who are retiring.

Senator BROWN (Tasmania) (9.36 a.m.)—I oppose this motion. It is an outcome of very sloppy management of government business by this government. For example, I point to the period after the valedictories to the late Prime Minister John Gorton, Monday week ago, when the House of Representatives sat but the Senate did not. We had some hours of opportunity there to deal with matters which are listed now and we did not. We also see on this list a number of pieces of legislation, such as the Workplace Relations Amendment (Fair Dismissal) Bill 2002 and the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002, which could hardly be said to be urgent. Madam President, you will certainly know that the first of those has been a matter for discussion in the Senate on a number of occasions over the last several years.

The list includes the International Criminal Court Bill 2002. That is very important legislation which the Greens are keen to see go through. I asked the government yesterday to ensure that that legislation is available for us to consider today. It would be totally inappropriate for that to arrive in the Senate to be discussed and decided upon by the Senate tomorrow. Why do we not have the bill? There was a long period of delay while the government made up its mind on the matter. But the parliament making up its mind on the matter is more important still. It is going to be by the good grace of the Senate that that legislation gets through, if it does. We are all aware that it is important that Australia ratify the International Criminal Court treaty so that there is Australian input into the formulation of the first bench of that court with the potential for Australian
judges to be on that bench. If we do not ratify it in time that will not happen. Again, the delay is of the government’s making.

The penalty for the delay is the Senate’s to wear. I do not believe a number of these pieces of legislation have been dealt with properly or can be considered properly by the Senate with reference to the community. We are not just a rubber stamp. We are a house of review, and part of that review requires that we have the opportunity to consult the community about the legislation we are dealing with. If we are going to deal with bills which have not been adequately looked at by members, let alone the community, in the next 36 or 48 hours, it is well nigh impossible to get to the community in that time.

What is the problem here? The problem is the government. If on each occasion at the end of a session like this, we just say, ‘Oh, well, the government is being dilatory. It is being disorganised. It has been unable to get its act in order. The Senate will pick up the tab for that,’ then we become part of the problem as well. The government has to do much better than this. I do not agree with the process of concentrating on important pieces of legislation like this when everybody is tired and the great impulse is to get home without giving these pieces of legislation the consideration they deserve.

Looking at the list, without having counted them beforehand, there are over 19 bills when you separate them all out. So we have had 19 sitting days in the year to date in which to consider legislation and now we are being asked to put through 19 or more bills. Some of these bills are in packages, I acknowledge, but we have 19 or more bills to pass in one or two days before the recess.

As I have said before when speaking to these sorts of motions, the government is treating the Senate and the parliament with contempt. If we continue to agree to these sorts of procedures, I guess that is no more than we deserve. If you are treated with contempt and you accept it, the chances are you will keep getting treated with contempt. This is completely unacceptable as any sort of genuine process of considering legislation.

It needs to be emphasised that considering legislation is not just a process that we all have to go through because that is what the Constitution tells us we have to do. Legislation actually affects people’s lives, sometimes in enormous ways. I do not even know the content of some of these bills, but some of those I know of, such as the Migration Legislation Amendment (Procedural Fairness) Bill 2002—which seeks to remove procedural fairness, I might add—could have enormous impact on people’s lives. Yet, we are being forced to push them all through in what every reasonable person would have to acknowledge is a completely unsatisfactory way. It is an atrocious process that, once again, I assume, we are now going to engage in. Given that the majority of the Senate keep agreeing to this atrocious process, no doubt the government will think that it is appropriate and okay to continue to utilise such processes. The government are undermining the whole purpose of the parliament and they are putting the parliamentary and political processes into disrepute. I do not really need to remind senators here that they are already in a fairly high stage of disrepute and that these sorts of things will only increase that.

Senator HARRIS (Queensland) (9.45 a.m.)—I indicate that One Nation also will be opposing the motion, not in the sense that the government does not have the right to vary the business of the government but in the
strict sense not only of our opposition to the package of bills referred to as the terrorism bills but also of what we now have with the Senate being asked to consider the International Criminal Court Bill 2002 and the International Criminal Court (Consequential Amendments) Bill 2002. The government had circulated a draft in confidence prior to last night, but that draft in confidence was only 147 pages. When we actually looked at the legislation that was released onto the system at nine o’clock last night, we saw that that bill is now 247 pages. That is a huge addition even to the draft in confidence bill. There has been no time to consult with the people of Queensland, yet the government expects us to pass this motion and to bring on these two bills to which there is clearly considerable opposition from the public.

The total number of bills that we are being asked to consider in the remainder of today and tomorrow is 26. That is 26 bills in two sitting days. I do not believe anyone in this chamber would even be able to sit down and physically read the bills, let alone debate them in a meaningful way in two days.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.47 a.m.)—I would like to respond to a number of points. Firstly, I will respond to the substantive points raised by the Leader of the Opposition in the Senate. The government concurs with the idea put forward by the Leader of the Opposition in relation to the handling of the valedictory debate on Thursday afternoon. I have asked the Government Whip, Senator Paul Calvert, to confer with the Opposition Whip to put together a speakers list so that we can achieve that end.

Just to reiterate the point and have it on the record, that will be to ensure that the eight retiring senators—and I am sure it must be some sort of record to have literally over 10 per cent of the Senate moving out at one time; I do not recall that occurring before—

Senator Faulkner—The last time was pre 1949.

Senator IAN CAMPBELL—That was slightly before I was aware of things in the Senate. Anyway, there are eight senators going, and that will divide the time between six o’clock and eight o’clock very neatly into 15-minute slices for the retiring senators. Then I would ask our whips to get together and arrange a speakers list for the period tomorrow commencing no later than 4.30, but potentially as early as straight after question time, depending on the dynamics of question time, and going up until six o’clock, for all other senators to make their contribution to the valedictory debate. That will ensure that we have a worthwhile and inclusive debate between question time and eight o’clock tomorrow night to deliver valedictories for the eight retiring senators.

The other point I would like to make, in response to matters raised by the Manager of Opposition Business in the Senate, Senator Joseph Ludwig, is that there are on the list circulated and in my amendment a number of so-called non-controversial bills, or ‘Thursday lunchtime bills’, which we have sought agreement to debate. Bills where there is no agreement will be put off until after winter, to the spring sittings, as I think they are officially called. Any bills which we cannot get agreement to debate as non-controversial bills will be put off to the spring sittings.

I would also like to reiterate that the Senate will be sitting tonight—and I appreciate the cooperation of all senators in sitting tonight to keep going through this heavy program—and that there will be divisions and quorums. It will be necessary for whips, and any senators who are attending the charity function sponsored by the press gallery that is taking place in the building, to make special arrangements to make sure their beepers can be heard. It is very important that people support the important charities sponsored by the press gallery mid-winter ball. It is also important that any votes that take place in the Senate have a full roll-up.

I also make a couple of responses in relation to comments made by Senator Brown and Senator Bartlett. Firstly, there is no doubt that the record will show that the Senate will not sit as many days this year as it has in some other years. But there are a number of factors. If you look back through the record, you see that the Senate—and the House of Representatives, for that matter—
sit significantly fewer days in any election year. In recent history, the Senate sat for only 59 days in 1990, 53 days in 1993, 57 days in 1998 and 52 days last year. This year has had that slightly compounded in that we had the Commonwealth Heads of Government Meeting hosted in Australia, which is a very rare occurrence. Honourable senators would know that that very important international event would have occurred last year, and we had actually rescheduled last year’s sittings to accommodate the Commonwealth Heads of Government Meeting in Brisbane. We had rearranged the sitting schedule, as we normally do, not only because of CHOGM but also because Her Majesty was in Australia. Generally the parliament would not sit at that time unless Her Majesty was actually addressing the parliament. That was an unusual event. Basically there has been a confluence of two significant things occurring that have truncated the days available for the Senate to sit.

Some people have said that the Senate should have come back earlier. I did an analysis of the commencement dates for Senate sittings after elections and generally the Senate does resume slightly later than normal after an election. There are often good reasons for that: you are actually swearing in a new government and you are bringing new ministers in. If you look at the dates of the commencement of Senate sittings in post-election periods, the date that we came back this year was in the median. They are often later than normal for lots of good reasons. Anecdotally, talking to senators on the cross benches—I did not speak to everyone; I bumped into people in airports over the Christmas summer recess and I spoke to people from the Australian Labor Party and my own colleagues—I did not have anyone call me up or speak to me and say that the government was being dilatory by not calling the parliament back earlier. I think everyone, if they are frank, would say that, after a very heavy year and a very busy election, having the Senate come back one week earlier did not seem to be the desire of anyone. I am not putting words into other people’s mouths. Perhaps Senator Bartlett or Senator Brown were very keen to come back a week earlier. The point I am making is that there are some extraordinary circumstances as to why the Senate has sat fewer days.

It has got into the popular media that the Senate has not been sitting for very long but we do ourselves a disservice, whether we are government senators or non-government senators, to take away the estimates days. We say, ‘The Senate is not sitting,’ and we let this get into the ether and become part of the received wisdom. The reality is that the Senate has already sat for at least 14 days doing estimates this year. As all of us know who are involved in the process—whether you are a minister or a member of the committee, a government or a non-government senator, or whether you are part of the staff of the Senate—the estimates process is probably the most intense period of scrutiny of the government in the Senate’s procedures. I do not think we do ourselves as an institution a service to say, ‘We’ve only sat X number of days.’ The reality is we have already done 14 days of Senate estimates. I do not think anyone involved in that process would think it is anything other than very hard work over very long days. It involves most of the Australian Public Service, almost all of the Senate and of course the clerks and other support staff in the Senate for this quite intensive work. It is, from anyone’s point of view, some of the most constructive work that a house of review can do to hold the executive government to account. I think it is entirely appropriate to put those days in because traditionally, prior to the establishment of the Senate estimates processes, the days that were allocated to Senate estimates would have been Committee of the Whole days where you would have spent extensive time in the Senate as a whole examining the estimates contained in the annual budget. I still remember those days when I first arrived here in 1990 where you would have spent extensive time in the Senate as a whole examining the estimates contained in the annual budget. I still remember those days when I first arrived here in 1990 where you would have spent an entire box full of advisers. You would be basically asking through the minister the same sort of questions you ask in estimates, hour after hour after hour. It was a very inefficient process. The estimates process, although it takes a long time, is a good process.

I conclude that point by saying that when you add in the estimates days, which I think it is appropriate to do, the Senate will have
sat for 73 days in 2002, which is certainly within the field. We will obviously be sitting a lot more in the second half of this year than we have in the first half, for obvious reasons. The first half of the year is very hard to schedule. You have Easter that moves around, you have the commencement and you have a range of problems, and when CHOGM is interspersed it is very hard to design a sitting program. And no-one came to me with any other suggestions.

In relation to the valedictory day for the late Sir John Gorton, we made a decision that we would stick by the protocol which has been laid down for, as I understand it, all of the previous condolences for prime ministers. Some people suggested that we should do the condolences and then return to their business in the evening. I, for one, insisted that we would abide by the protocol. I think that Australia should ensure that our prime ministers from all parties are paid the respect they are due, and the very least the Senate can do is stick by the protocol. I do not think anyone should argue about that. I commend my amendment and the motion to the Senate.

Senator Harris—Mr Acting Deputy President, I rise on a point of order as to procedure. The motion that we have before the chamber at the moment lists the Migration Legislation Amendment (Procedural Fairness) Bill 2002 as being subject to the exemption from the bills cut-off order, that is, standing order 111, which clearly says under (5)(b) that if a bill:

... is received from the House of Representatives and was introduced in that House in the same period of sittings ... it can be entered only by a motion for leave. 

My point of order is that the International Criminal Court Bill 2002 and the International Criminal Court (Consequential Amendments) Bill 2002 should also be subject to that same bills cut-off order.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—There is no point of order. It would be a matter for the Senate to decide if it came before the Senate.

Senator Ludwig (Queensland)—by leave—It only needs to be said, and I will go through this briefly, that parliament did sit a week later, that estimates was scheduled during the House of Representatives which then meant the House of Representatives had a number of extra sitting weeks—I think three in all—when the Senate did not sit. This meant that, in terms of the legislative program, the Senate was out of sync. In that sense, more legislation was able to be passed through the House of Representatives as they had more time, which then brought about a logjam towards the end of the Senate sitting session. There was of course CHOGM, which did cause a delay in the program, but there was the opportunity to come back after Easter for an additional week. The government did not take that up, and it needs to be highlighted that the program is in the hands of the government. The government does determine the program and the weeks of sittings. The Senate has not sat for sufficient time in this sitting period in relation to other sitting periods. It is necessary for the government to take the responsibility and at least make it clear that the program is their responsibility. In terms of it getting its program through, the opposition does extend the courtesies of attempting to at least meet the available time frames, as put by the government. However, it is a matter that I think Senator Campbell should take on board: that in speaking to the motion that was before us today he should not stretch the friendship.

Senator HARRIS (Queensland) (10.01 a.m.)—Mr Acting Deputy President, I ask you to revisit your ruling on my point of order, because the motion that we are debating at the moment clearly says that the Senate shall not rise until it has finally considered the bills listed below. My understanding of section 111 is that, either at the point when the bill is introduced or now, it would be correct for that bill to be exempt subject to standing order 111, and I ask you to revisit your decision.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—My decision stands, Senator Harris. The Senate is the proper place to consider that and it is not a point of order. The Senate will decide. The question is that the motion as amended by Senator Ian Campbell be agreed to.
Question agreed to.

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

SUPPRESSION OF THE FINANCING OF TERRORISM BILL 2002

CRIMINAL CODE AMENDMENT (SUPPRESSION OF TERRORIST BOMBINGS) BILL 2002

BORDER SECURITY LEGISLATION AMENDMENT BILL 2002

TELECOMMUNICATIONS INTERCEPTION LEGISLATION AMENDMENT BILL 2002

In Committee

Consideration resumed from 25 June.

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

The CHAIRMAN—The committee is considering the Security Legislation Amendment (Terrorism) Bill 2002, government amendment (16) on sheet DT340 and opposition amendments (4) and (5) on sheet 2403 to amend government amendment (16). The question is that the opposition amendments be agreed to.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.04 a.m.)—The amendments currently before the chair are two amendments that I have moved on behalf of the opposition. We are dealing with one of the most crucial elements of this important package of legislation because we are dealing with the issue of proscription. This, probably more than any other provision in these bills, has caused a very significant amount of community debate. I was indicating last night that the government now proposes a regime with a definition of ‘terrorist organisation’ that has three alternative limbs. Let me briefly just mention again what those limbs are: 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. It is true that, in relation to the second and third limb of the government’s proposed regime, those limbs require the Attorney-General to make a regulation and those regulations do not take effect until the disallowance period has expired.

The opposition has consistently expressed its grave concerns that the government’s approach still includes an executive direction to proscribe organisations. The capacity for parliament to disallow any regulation nominating a suspected terrorist organisation does very little to ameliorate the concerns that were identified by the Senate committee and that were identified more broadly in the community. While the government maintains that regulations would only be made on the basis of sufficient publicly available information, Professor George Williams has put a very cogent case, and I would like to quote his words:

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

Professor Williams went on to say:

Parliament is neither a fair nor a sensible place to review volumes of sensitive national security information. It does, of course, include people from an attorney-general’s own party, who will likely support the decision on party grounds. The idea of a political and partisan debate on whether to ban an organisation and to criminalise its members is deeply disturbing. Review by parliament and not by a court may actually prevent an immediate response to an emergency situation.

It is worth reflecting on that contribution to the public debate by Professor Williams. We go further: we say it is also unlikely that the courts would accept a merits review of a proscription decision where parliament had not exercised its right to disallow the relevant regulation.

The opposition is of the view that the third limb of the government’s regime—that is, the one where the Attorney-General is satisfied on reasonable grounds that an organisation is engaged in a terrorist act—of defining a terrorist organisation is essentially the same as the government’s previous proposal for an executive proscription regime. Mind you, the previous proposal only contained the suggestion of an executive proscription regime.
That proposal remains unacceptable to the opposition and we are moving for it to be deleted. We do not support giving such wide powers, such arbitrary powers, to any minister of any government. We say, as we have said consistently, that such powers are open to abuse.

While we do have a very strong in-principle objection to executive proscription, we have said that we are prepared to accept listing of an organisation declared to be a terrorist organisation by the United Nations Security Council. I want to point out to the committee that there is a fundamental need in the war against terrorism to have international cooperation. We say that in the same way that this parliament and the Australian people should expect Australia to cooperate with the United Nations committee processes in relation to human rights issues, whether it is refugee or environmental issues or the whole raft of other important questions, Australia should cooperate as best as we can with the international community and the United Nations effort to target and destroy terrorist organisations. This is an international struggle, and if the international community through the United Nations Security Council declares an organisation to be a terrorist organisation we do accept that such an organisation should be banned.

I know that some would like to pick and choose which United Nations processes they like and which United Nations processes suit them, but the fact is that when it comes to matters of international importance—and I have mentioned some: the treatment of refugees, global warming is a very good example or the fight against international terrorist organisations—the authority and strength of the United Nations is undermined when you pick and choose. We should not accept a situation where we pick and choose between declarations of the United Nations because at the end of the day either we consider ourselves part of the international community or we do not. The opposition is unashamed about cooperating with the United Nations in the international fight against terrorism.

We say that the hard-headed and effective approach for Australia to take is to cooperate with the United Nations to tackle organisations that the United Nations itself has identified as international terrorist organisations. We also say that it is proper, in Australian law, to define terrorist offences and let the police, the intelligence services and the courts do their job. We believe that this will assist the whole international community to act swiftly against terrorist organisations listed by the United Nations Security Council—the best and most well-known example of which, of course, is Al-Qaeda and its associated entities.

Having said that, the challenge remains for this parliament to get the balance right. At the end of this week—which is the end of this sitting period of the Senate—comparisons will be drawn between the amended bills that pass this parliament and the original bills that the government tried to rush through the parliament in March. I believe that the difference between the bills we pass in their very significantly amended form and the bills that were originally introduced by the government is really the difference between Australia remaining a civil society and it crossing the threshold to become a police state. That is a very dangerous threshold to cross. This Senate Committee of the Whole should not contemplate doing so.

I am not sure whether there is a realisation, in the broader community, of the enormity of the challenge that this parliament tackles in getting the balance right in our domestic law response to terrorism. All parliamentarians have received many letters, emails and communications on this issue. I am not sure that, in the broader community, there is an understanding of the scale of the changes being made to this package of legislation, but I am now certain that there is a growing awareness of the dangers of the original bills.

Senator BROWN (Tasmania) (10.19 a.m.)—I want to pick up on a couple of things that Senator Faulkner has just said because, in effect, I do not think that they are correct. It has been said that, according to the wishes of the United Nations Security Council, proscription is at the heart of this matter. All parliamentarians have received many letters, emails and communications on this issue. I am not sure that, in the broader community, there is an understanding of the scale of the changes being made to this package of legislation, but I am now certain that there is a growing awareness of the dangers of the original bills.
pression of their finances. These are very different things. If proscription of organisations is involved in that resolution, let us see it; it has not happened. Yet here we are dealing with proscribing organisations in Australia.

Secondly, this request for the suppression of the financing of organisations has not come from the United Nations General Assembly; it has not dealt with it. This request has come from the Security Council. There are 15 members of the Security Council, five of whom are permanent. Those permanent members are China, the United States, France, the United Kingdom and Russia. The permanent members have a veto on any substantive resolution being considered by the council, but here the government is arguing that Australia should not have a veto on the same matter. So China can say, ‘We veto financial suppression of this organisation as requested by another member of the Security Council,’ but the government is saying that Australia should not have that power. If the five big powers plus four of the other 10 members at any given time—nine of the 15—vote for a suppression of financing, the government says that Australia should rubber-stamp it.

The Greens view is that this parliament should consider that matter. If we were to allow the amendments the government requires, we would hand across to the Attorney-General—that is, the executive of the day—the ability to consider whether it would follow the wish of the Security Council to suppress the finances of an organisation. This legislation is not saying that the executive in Australia must endorse what the UN Security Council says; it is leaving that decision to the executive in Australia. We submit that the parliament must have that power; it does not have to be—and should not be—directed by the UN Security Council, where countries like China and Russia have a veto and we do not. I go back to what I was saying at the outset: the Greens oppose proscription of organisations in Australia.

There are very strong powers in this country to track down criminals and people plotting criminal activity including terrorism and to apprehend them and to incarcerate them. But at the heart of this legislation is a move to proscribe organisations in Australia, to ban them. It again needs to be brought to the table that when given the opportunity to do just that through a referendum the Australian people said no. This was on the one great occasion where there was an opportunity for people to ban an organisation in Australia, the Communist Party. Then it was seen as traitorous, as violent, as supporting Stalin—with everything that went along with that—and as supporting the wrong side in the Korean War, in which Australian personnel were fighting and in which many lost their lives. The Australian people did not say no because they supported the Communist Party—they did not, in the main. They said no because they supported the freedoms and the transparent and open democracy that we have here in this country. They overrode the politicians, both the Menzies government and the Labor Party of the day, who had voted for that proscription, that banning of the Communist Party. The Australian people said no. I must accord due praise to the late Dr Evatt, who by the time it came to the referendum led the argument against the proscribing of the Communist Party. In this legislation we have the politicians overruling the ability of the people to make such a determination. There is no other historical guide for us but that the Australian people do not accept proscription of organisations because it runs counter to a free and open democracy.

Let us remember the other argument that when you ban organisations you send them underground; you do not eliminate them. Anybody who studies history knows that. What is more, you send underground the more clever and, if they are keen on violence, the more dangerous elements of an organisation and make them more difficult to track. This legislation should be aimed at individuals who are planning or who carry out terrorism—murder, destruction, bloodshed. Banning organisations of itself will not do that. In fact, it may make it much harder to track down such individuals.

Let us not be misled by the idea that the United Nations is an arbiter here. In this matter the United Nations is sidelined effec-
tively by the Security Council, which is a club of five powerful countries with the ability to veto the listing of any organisation for financial suppression. Should Australia not have that power? If this were a resolution and a matter that went through the General Assembly of the United Nations, we Greens might think a bit differently about it. There are at least the makings there of a global democratic input in terms of ‘one nation, one vote’, but the Security Council is not democratic and it is not global. If the five countries on that council have a right to veto, so should this country. And the proper place for a veto is in this parliament. It is not with the executive.

We support Labor’s amendments here because they make a component of this legislation less bad, but we should not be having proscription at all. It is not with the Australian sentiment and it should never be left in the hands of the executive. That just compounds a wrong move being made, I suggest, by this parliament if it were to agree to it at the behest of this government. This government brought in draconian legislation. We are trying to fix it in bits and pieces, and I submit we cannot successfully do that. The legislation should be thrown out. At the heart of our concerns about this legislation is the ability of the Attorney-General, that is the executive—and remember the Attorney-General can delegate this power to any other minister; that is here in the bill—to proscribe organisations in this country. That is very dangerous and counter to the concept of a functioning democracy. We should be removing at least that component of this dangerous legislation.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.29 a.m.)—It is an important principle in this debate to consider whether we can pick and choose what elements of our international obligations we accept and what elements we do not accept. When we look at this issue in relation to the United Nations Security Council, let us go back to UN Security Council resolution 1373. It states:

2. Decides also that all States shall:

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts …

That is part of United Nations Security Council resolution 1373. That is the international community placing obligations on all its member states, of which Australia is one. In the view of the Labor Party, we take such obligations seriously. We always have taken our international obligations seriously—in fact, the Labor Party played a role in the founding of the United Nations—because we have always seen that the community of nations is the best hope for peace in the world. Labor has also always accepted that this entails not merely passive support but active participation in combating threats to international peace and security. In this case we have a responsibility both to protect Australian citizens and to ensure that Australia is not used in any way for illegal attacks on other countries. They are our obligations.

We have obligations, of course, to those who live in this country and we have obligations to the international community in relation to the international threats that terrorism brings. The United Nations was formed at a time when the world had just been through the Second World War, a cataclysm greater than the crisis we now face. Think of the principle on which the United Nations is based: that member states resolve their differences peacefully and come to one another’s aid if attacked. International terrorism is a relatively new threat to the international community, and the United Nations Security Council has called on its member states to act to eliminate that threat. The Labor Party has always taken a view that we should do what we can as a nation to support UN peacekeeping forces. Australia has a proud record in relation to our support for UN peacekeeping operations. As far as the Labor Party are concerned, we are not ashamed to say that we support proper participation in combating this new and real threat that we as
a nation face and the international community faces.

It is illogical to suggest that the UN Security Council can decide on collective military action against an aggressor but cannot determine whether an organisation is or is not a terrorist organisation. This legislation, if it is amended, will allow the government to act swiftly against organisations identified by the United Nations as terrorist organisations but to act only in relation to those organisations, with no executive proscription regime. In relation to those organisations identified by the United Nations Security Council, it will allow the safeguard of parliamentary approval in each instance. If this legislation is amended, we will give the Australian government all the powers it requires to fulfil our obligations under United Nations resolutions on combating terrorism. That does not mean that the provisions of the original bill in any sense are acceptable to the Labor Party.

The Attorney-General, in introducing the original bills, described them as containing ‘extraordinary new powers’. Those are the Attorney-General’s words, and those words are certainly right. Has the government demonstrated that there is a level of threat that justifies such extraordinary new powers? Could a level of threat ever justify an executive proscription regime? You have to look at the role conservative governments have played in relation to proscription regimes: conservative governments have a track record of using proscription powers for political purposes.

One of the issues in relation to proscription powers is that they will never be a flexible response to terrorist organisations. Terrorist organisations, as we all know, are very difficult to pin down and identify. Terrorist organisations in the modern world do change their form and do change their names. One of the great weaknesses of any executive proscription regime is that you will never have an up-to-date list. It would not be possible to achieve that; no-one could. That is one of the many reasons that a bipartisan parliamentary committee rejected such a regime. We in the Labor Party say, and have said consistently: keep the focus on the terrorists and on the acts of terrorism; come up with a proposal that targets the terrorists. We have always said that the best way to define ‘terrorist’ and ‘terrorist organisation’ is just with the usual dictionary definitions—what everyone understands to be the case. Those who engage in such abominable activity are the people who should be targeted in our laws in this country. That is why the Labor Party is so strongly proposing these amendments to this bill.

In saying that we want to keep the focus on the terrorists and on the terrorist organisations, we also say that that is achievable and that you can define a terrorist organisation. Instead of accepting the government’s executive proscription regime, this parliament is now setting about the task of itself defining ‘terrorist organisation’ so that involvement in the work or activities of a terrorist organisation becomes a question of fact. If you do that, you take the politics out; if you do that, involvement in terrorist activity is determined by the courts. That is a far superior way to deal with the real problem of terrorism and the real issues of security that we face with the threat of international terrorism.

I think it is fair to say that, of all the issues that are contained within this package of bills, the issue of a proscription regime has caused more concern than any other. I believe that what the Labor Party proposes in its alternative to an executive proscription regime—and to all the weaknesses that such a regime contains—has great strength in putting together legal mechanisms that target the terrorists, that target those who intend to hurt and kill for political leverage. That is what this should be about. As I said last night, let us not have any truck with legislation that tries to criminalise what people think; let us go after the real terrorists, the perpetrators of terrorist activity. That is why I so strongly commend Labor’s approach to this chamber.

Senator COONEY (Victoria) (10.43 a.m.)—I will be short, because I know we want to be out of here fairly smartly. I must say that I have great admiration for the people from Senate transport who get us here of a morning and who send us home of a night.
Michael Kenning and Ian Miller, whom you would know, Mr Temporary Chairman Lightfoot. They are always pleasant when they send the cars to get us.

What I want to say about this proscription issue is this: basic to our being, if you like, as citizens is the right to free association. That comes out in a lot of ways. Organisations, in a sense, are not the problem; it is the people in the organisation. I think Senator Faulkner pointed this out quite lucidly and so did Senator Brown. It is the people that we have got to get at. The other problem with proscribing anything is this: once you proscribe one organisation it becomes a precedent for proscribing the next organisation. There is that great statement about the Nazis:

First they came for the Jews and I did not speak out because I was not a Jew.
Then they came for the communists and I did not speak out because I was not a communist.
Then they came for the Trade Unionists and I did not speak out because I was not a trade unionist.
Then they came for the Catholics and I did not speak out because I was not a Catholic.
Then they came for me and by then there was no one left to speak out for me.

The problem is that, once you proscribe any organisation, the community gets used to it. I have before me the Telecommunications Interception Act 1979. When I first arrived in this parliament that was quite a thin act. It allowed ASIO to tap phones. That ability was then extended to the Australian Federal Police, an organisation for which, as I have said over the last few days, I have a lot of admiration, particularly in respect of drugs. The act has expanded ever since.

What happens with legislation is that it creeps. You cannot look at legislation simply in terms of what is happening now; you have to look at what might happen later on. Once you proscribe one organisation, people say, ‘That’s how things are done; that’s how our community is conducted; that’s how the affairs of a society go forward.’ What was put in as an exception originally becomes a precedent for more and more power to be given to the executive, and that is a real problem. I wanted to take the opportunity to put on record my agreement with everybody else—the proscription regime is a regime that should be rejected. Senator Faulkner has stated that on behalf of the Australian Labor Party.

**Senator BROWN (Tasmania) (10.48 a.m.)**—The matter at the heart of this is the proscription of organisations, the like of which we have not seen in Australia before. I have pointed repeatedly to the rejection of the proscription of the Communist Party back in 1951 as an indication of how Australians thought on that occasion after a very informed debate. We see this potential for proscription of organisations as a real matter for concern. The United Nations Security Council have not requested it; they have requested financial crippling of organisations. This potential starts to change the nature of our democracy to a defensive democracy moving towards a proscription of not only organisations but also a whole brace of democratic freedoms which are important to our country.

We see it as such an important matter that we believe the people should have a say in it—if it is going to go ahead. If we are going to fundamentally change the right of organisations to exist in our society and allow the government of the day to not only proscribe organisations but also nominate the agent for indicating which organisations should be proscribed to be the Security Council—not the General Assembly—then, effectively, organisations which none of the five permanent members of the Security Council have vetoed can be vetoed at the behest of some future Security Council directive to the Australian government or parliament.

We are involved in an extremely fraught process here. I reiterate that terrorism has to be tackled and criminals have to be tackled and brought to book at worst and prevented at best, and we have very strong legislation to do that in our country. But proscribing of organisations is not going to help that; it is actually going to help defeat the purpose of tracking down terrorists because they will go underground.

I ask the government: with our democracy right into the future at stake and having had the people of Australia reject proscription of organisations on the one occasion on
which they have been able to, will the government put this matter to a referendum? Does it have the assuredness to go back to the people of Australia 51 years after they rejected proscription of the Communist Party and say, ‘Give us the authority to ban any organisation that we believe is a terrorist organisation’? In the lead-up to such a referendum, we will again get an informed debate. Will the government put its trust in the people of Australia to endorse what is happening here?

If you put this to a referendum the Greens will support you. Let us have a democratic judgment on this matter. The functioning of this country as a democracy in an age where terrorism has reared its ugly head is at stake. Will you put your trust in the people? Do you have trust in your own argument? Do you really believe—are you confident—that the people of Australia will support you in taking the power to yourself without reference to the parliament, as you would have it, to ban organisations? Do you really believe that they are going to risk allowing the executive of this government or any future government to ban organisations under the tenets of this law, which is wide open to banning organisations which have a political difference with the government? That is the question: will the government consider a referendum on this matter?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.53 a.m.)—I will deal with the last point first. The government does not think a referendum is appropriate in this matter. The government has been elected to look after the interests of Australia, and this is clearly a matter which is in the interests of Australia. There is a security threat, which everyone knows has arisen as a result of events last year, and we are required to act quickly. A referendum is not the way to deal with this matter, and the package of legislation that we have here is an appropriate response to meet the threats which have been posed to Australia.

I will touch on another point that Senator Brown raised earlier. He mentioned what is in fact the third limb of the government’s proposal—that is, you could have a listing of an organisation which is triggered by a decision of the Security Council of the United Nations. He complained that Australia would not have a veto in that situation and that really the Security Council was a smaller section of the United Nations and did not provide for that wider process. What Senator Brown misses is that, in the government’s proposal, even though the Security Council might make a decision in relation to an organisation, subsection 3(c) still requires the minister to be satisfied that the organisation is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act. It is listed quite squarely there. Those criteria have to be met as well. If that is not enough, at the end of the day you have a disallowance by the parliament.

So you do have a veto, in effect, which can be exercised by Australia via the parliamentary process. What Senator Brown is saying is that in this process there is no chance for Australia to say no. Well, there is, and it is contained in the third limb in subparagraph (c) of our proposal under the new definition of ‘terrorist organisation’.

In relation to the opposition, a point was made—and I think I understood it correctly—that, if there was not a disallowance of a regulation, a court would not be inclined to judicially review the actions of the minister. It is certainly the government’s view that judicial review remains open regardless of whether any action has been taken by the parliament. In fact, we say that in our proposal you have two tiers of protection. You have the protection of the parliament and the protection of a judicial review if that is sought, and it can be sought. So we say that, whilst these are extraordinary powers, there are strong protections in this proposal.

Senator Brown also talked yesterday—and it is relevant to this debate in relation to the opposition’s proposals—about the process of the Security Council. I undertook to get back to him with further information. I am advised that the process for listing persons and entities in relation to the United Nations Security Council asset freezing list under the relevant Security Council resolution is as follows. Any country can nominate a person or entity for listing. Any other country can object. Disagreements are then resolved by negotia-
tions between countries. As I said yesterday, in practice this means that, without broad international consensus, a particular listing will not go forward. The list of entities and/or persons that has been produced by the Security Council to date were identified by the Security Council committee established pursuant to resolution 1267 of 1999 concerning Afghanistan. It was based on information provided by member states as falling under one of the categories in paragraph 4(b) of resolution 1267 and paragraph 8(c) of resolution 133 of 2000. This list will continue to be revised by the committee with information from member states as necessary. The Afghanistan sanctions committee requested that, pursuant to paragraph 9 of resolution 1267, all member states provide such information to the committee. The very nature of the United Nations Security Council means detailed procedural rules have not been laid down. These are matters for international dialogue and negotiation.

I would not wish emphasis on the United Nations Security Council procedure to divert attention away from the thoroughness of the government’s proposed approach. The government does not propose to simply rely on a United Nations listing, and the government’s proposed amendments simply do not allow for unquestioned reliance on a Security Council list either in law or as a matter of practice. The identification of a Security Council listing is merely the first step in a thorough process. Notwithstanding that an organisation is on a Security Council list, a listing could be made under a regulation as part of the government’s proposed approach only if there was independent evidence that the organisation was engaged in preparing, planning, assisting in or fostering the doing of a terrorist act—and I have covered that previously. That is, under the government’s proposed approach, the Attorney-General would have to be satisfied on hard evidence of this terrorist connection before the Attorney-General could propose a listing. Listing by the Commonwealth under the terrorist organisations provisions is currently discretionary, because outside the asset freeze context we are not obliged to list. That is because the current obligation under Security Council resolution 1373 applies only to asset freezing.

Action outside the asset freezing context is a matter of international cooperation. A listing under the government’s proposed approach—that is, listing by regulation—will therefore have to be based on hard evidence and independent judgment by the Attorney-General. The regulation will be subject to full parliamentary scrutiny and will be disallowable in each house of parliament. Furthermore, it will not take effect until the disallowance period—that is, 15 days after tabling in each house—has concluded. Any aggrieved party could make representations direct to the Attorney-General or through a member of parliament. Parliamentary processes, including consideration by the Senate Standing Committee on Regulations and Ordinances, would apply. As I said earlier, judicial review would still be available. Relevant grounds of review include that there was no evidence to justify the making of the regulation or that there was a failure to consider a relevant matter in making the regulation. Perhaps most importantly, a court could invalidate a regulation that was not made in accordance with the requirement for prior evidence laid down in the bill. Finally, a regulation will automatically cease to have effect after two years.

This thorough process means that the merits of a particular listing will be thoroughly scrutinised by the executive and legislature and be fully open to challenge by courts in appropriate circumstances. Let me emphasise again that hard evidence of organisations’ terrorist related activities will have to be in the hands of Australian authorities and there is no power simply to rely on a United Nations Security Council listing. All in all, what the government proposes involves the absolute highest levels of rigour, transparency and scrutiny. I note that this rigour, transparency and scrutiny also apply to subparagraph (b) of the government’s proposed definition of ‘terrorist organisation’ relating to listing based on evidence before the Attorney-General—and this is what the opposition seeks to take away.

What is not being said is that, although extraordinary powers are being dealt with
here, there are extraordinary safeguards, safeguards by virtue of disallowance in the parliament, with regulations not taking effect until after the period for disallowance has expired—not a normal procedure taken—and, furthermore, the regulations will expire after two years. Finally, there is the prospect of judicial review. So the government has put in place, after very careful consideration, the appropriate powers needed to deal with terrorist organisations but the appropriate balance in assuring that that power is not abused. That assurance involves the exercise of the power of parliament and review by the courts.

I reject what Senator Brown has said in that this is simply a procedure which relies, in one limb, on the United Nations. I reject the notion that the opposition amendments are needed. We say that there are appropriate checks and balances here and that the opposition amendments (4) and (5) are not needed. They are not needed to assure the Australian public that the power will not be abused because we have in place adequate safeguards. I think the opposition needs to look carefully at those safeguards. However, in order to secure passage of this important legislation, the government will not oppose these amendments, albeit with some reluctance.

Senator ROBERT RAY (Victoria) (11.04 a.m.)—Senator Ellison has cogently argued that what the government now proposes is reasonable. This raises questions as to why these things were not originally put forward, why the bill arrived in its current form and why the government had not put these safeguards and improvements in the initial bill. I want to raise two matters here. Firstly, and I know that this has been canvassed a bit, the third leg which allows for parliamentary disallowance of a proscription is something that I have never supported. I find it very difficult to support that; I find it more difficult to support that than oppose the Attorney-General having the power to proscribe. My reasoning is: how can you have a full and frank debate on a proscription when much of the material on which you have based the proscription will have come from security agencies? I do not think there is any question that a government has to rely very strongly on advice from the whole range of security agencies before it can proscribe an organisation. How it can then lead that evidence in this chamber I do not know. There are two ways of doing it. One is to go off and brief the opposition and the minor parties—which leaves them totally inhibited as to what they can say in this chamber—or in our excitement we use some of that material and then we have breached faith. So to have a disallowance of a proscription is a very difficult thing to do when most of the information that a government properly relies on to proscribe an organisation as a terrorist organisation may well come from secure information that would not normally be put in the public domain. It makes that debate extremely contorted and extremely difficult. I ask the minister to respond to that.

The second thing I would like to ask the minister—and I do not think it has been raised at length here—is whether the government is satisfied that the proscription regime, modified as it proposes, is in fact constitutional. Did the government get advice as to whether that element of its security legislation is constitutional? Given the previous decisions of 51 years ago and other matters coming out of the High Court since, I would have thought that there was some doubt that there is sufficient coverage in the Constitution for proscription and that there are other countervailing interpretations of the Constitution, coming out of the Theophanous and other cases, that may make this unconstitutional. I do not allege or assert that this is unconstitutional; I say that doubts have been raised. I am not asking for the government to convince me as to whether it is constitutional or not; I am asking whether the government sought advice. Of course, if it had sought advice, clearly I would follow that up by asking whether that advice could be made available to the chamber.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.07 a.m.)—Why does that last comment not surprise me? The answer is yes and yes; the government did seek advice on the proscription proposal and the advice was that it was constitutional. That brings me to the third
part of Senator Ray’s request, which was: can he see a copy of the advice, which we have dealt with many times before. I will take that on notice and take it up with the Attorney. Generally, of course, the government does not reveal advice given to it, although there have been occasions when that has been done. We have gone through this many times in the Senate. I will take that on notice and see what the Attorney-General says about it.

In relation to the debate on disallowance, Senator Ray was indicating that that was an unsatisfactory safeguard because it would go to matters of security and particular organisations and there would be evidence, perhaps operational aspects, which would be touched on in the debate. Certainly my view is that we have had occasions where we have debated sensitive matters. In fact, it is not rare that we have debated sensitive matters; it is not common, though. There are measures that can be employed to deal with security matters. Just the other day, we had a three-hour briefing given to the opposition—Senator Faulkner was there—in relation to matters of intelligence received about boats coming to Australia. The Leader of the Opposition gets briefed on matters which pertain to security.

I really do not see that the disallowance provision is one which would be unsatisfactory in these circumstances. I believe that we do have the means to deal with it and to deal with sensitive information, as we have done on other occasions. We do it with parliamentary committees quite frequently. Some committees in particular deal with it quite often. So I think that is still an essential safeguard. I take a different view from Senator Ray in that I think it can be debated. Of course, there are other aspects too: there is a judicial review and the regulation expires after two years. And there are normal parliamentary processes in relation to how the power is exercised. Questions can be asked in the Senate Standing Committee on Regulations and Ordinances, through the estimates process and through this very chamber as to how the exercise of power is carried out. We get that often. I really do not see that the parliamentary scrutiny, with all its attendant possibilities, is an unsatisfactory check in this case. I will take the other aspect about the advice on notice and, hopefully, get back to the Senate shortly.

Senator ROBERT RAY (Victoria) (11.11 a.m.)—I think the minister misses the whole point about the debate on the disallowance. No-one has argued that a government cannot brief an opposition on sensitive matters. Of course it does; in fact, it is a statutory requirement within the ASIO Act. On other occasions and in other areas, be it in defence, foreign affairs or migration, quite often a government will brief an opposition. But that then limits the rights of an opposition. Every now and then, on certain topics, we refuse to be briefed because we do not want to be particularly silenced on a matter. It puts an opposition—and this extends to minor parties—in an extremely difficult position as to how it then goes on and debates the matter. We, for instance, could have been briefed on the proscription of an organisation, could have found that briefing not to be compelling and moved to disallow, but found it very difficult to bring to bear arguments because we did not want to breach the conditions of confidence that were properly put on us from the briefing we had received. It puts us, as an opposition, in an extremely difficult position.

I also think it puts the government in a difficult position. It may look inept, it may look second-rate, because it cannot put all the evidence against an organisation on the table here to convince the Senate as a whole. People then think the government has used flippant or inadequate reasons for proscribing an organisation when, in actual fact, it may have been operating under extremely detailed intelligence material which it can never put before the Senate because it might reveal a source, methodology or whatever else. So it is extremely difficult to have a disallowance debate, no matter what the briefing. In fact the briefings—private briefings, security briefings—will make that even more difficult.

On the other point of whether the government can make the legal advice available, Senator Ellison says that on some occasions it has and on some occasions it has not. Why don’t we define those right now? When the
legal briefing is totally in accord with the government’s thinking, there is usually an enthusiasm to make it public. When there is some doubt or opposition within that legal briefing, it is not made available. We understand that. Governments behave exactly the same in this context whether they are coalition governments or Labor governments, so let us not get on our high horse about this. But I do put this point to the minister for consideration: the one area where I think it is incumbent upon a government to make advice available is on constitutionality. When the government receives advice on constitutionality, I believe it has an obligation to make that advice available to the parliament before it votes on such bills where there is some doubt involved. Without going to that legal advice directly, my understanding is that the difference between 2002 and 1951 is the enormous advances in administrative law and appeals et cetera, that this has in fact changed very dramatically the way the High Court may look at these things. I do not know if the minister can comment on that aspect.

**Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.14 a.m.)—** I will just touch on this point. I do not think the briefing does make it more difficult for an opposition to then move a motion for disallowance, because just recently we had a briefing and the opposition took a different view from the government.

**Senator Robert Ray—** Not on security matters.

**Senator ELLISON—** We say that illegal entrants are a matter of border protection, which I think does have a security content. Border security always has a—

**Senator Robert Ray—** How do you know we did not have any difficulty? Because we did!

**Senator ELLISON—** Can I also say this. Many times the government do rely on information which we cannot divulge, and it is difficult. But that does not mean to say that we do not do it. The fact is that in my portfolio—and I know I deal with it perhaps more than other ministers—you have operational information which you cannot divulge, and for a certain reason you take a course of action. People query you and they criticise you, and you cannot come out and give the detail. That of course is difficult but it is part of the job. Similarly, I think that with the opposition in a disallowance situation, you could say that we have had a briefing and we will not comment on it and we will just move to disallow—and it is as simple as that. It happens quite often in a range of areas where details cannot be released for privacy concerns and for all sorts of other reasons. I think that it just does impose the difficulty that is suggested.

In regard to the question of the change between 1951 and 2002, of course Australia is a very different country today. There is a very different situation in relation to administrative law and freedom of information which was not even dreamed of in 1951. We have different ways of dealing with things. Senator Ray does say that governments of all persuasions have a reluctance in divulging legal advice. In some cases they do and in some cases they do not.

**Senator Robert Ray—** Do not verbal me unless there has been a decision.

**Senator ELLISON—** I have undertaken to take it up with the Attorney-General, and I will do that.

**Senator BROWN (Tasmania) (11.16 a.m.)—** I would like to point out that the government has listed, through the back door, proscription of the PKK, the Kurdish freedom fighters organisation. It completely disbanded three years ago and it has been replaced by a non-violent organisation committed to democratic reform in Turkey. I wish them luck because they are up against a pretty cruel regime there, democratic or otherwise. But it shows the absurdity of leaving in the hands of the executive the ability to proscribe organisations when one of the first things it does is proscribe an organisation that no longer exists and, moreover, has been replaced by one which is committed to democratic reform. The minister said earlier that countries can nominate organisations for proscription to the United Nations Security Council. I just wonder whether that meant any country can nominate and have a say in the determination
through the Security Council or whether he was referring to members of the Security Council.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.18 a.m.)—Other countries outside the UN Security Council can nominate a person or an organisation, but the objection relates to the members of the Security Council.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.18 a.m.)—Very briefly, could the minister comment on this. Minister, did I understand you to say that the government is no longer proceeding with its executive proscription regime and that the government will be supporting Labor amendments to remove the capacity for the Attorney-General to propose the proscription of organisations in Australia?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.19 a.m.)—The position is that the government is still moving its amendment (16), which has the scheme I have mentioned, which is outlined—

Senator Faulkner—that is the three limbs.

Senator ELLISON—Yes, the three limbs under the definition of ‘terrorist organisation’. The government will still proceed with that. Of course it would prefer that, and it is moving that. However, when opposition amendments (4) and (5) are considered, the government will not oppose them.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.20 a.m.)—Let us just be clear on that. The question now is that government amendment (16), as amended, be agreed to.

Question agreed to.

Senator BROWN (Tasmania) (11.21 a.m.)—by leave—I will move amendments (10) and (11) together. I have put the argument for these measures. We do not believe the Security Council should be the arbiter of what gets proscribed in this country. I move:

(10) Government amendment (16), omit paragraph (1) (c) of the definition of terrorist organisation.

(11) Government amendment (16), omit subsection (3).

Question negatived.

The TEMPORARY CHAIRMAN—The question now is that government amendment (16), as amended, be agreed to.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.22 a.m.)—I move:

(17) Schedule 1, item 4, page 13 (line 1) to page 14 (line 12), omit Subdivision B, substitute:

Subdivision B—Offences

102.2 Directing the activities of a terrorist organisation

(1) A person commits an offence if:

(a) the person intentionally directs the activities of an organisation; and

(b) the organisation is a terrorist organisation; and

(c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:

(a) the person intentionally directs the activities of an organisation; and

(b) the organisation is a terrorist organisation; and

(c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

(3) A person commits an offence if:
(a) the person intentionally directs the activities of an organisation; and
(b) the organisation is a terrorist organisation; and
(c) the person is negligent with respect to the organisation being a terrorist organisation.

Penalty: Imprisonment for 10 years.

102.3 Membership of a terrorist organisation

(1) A person commits an offence if:
(a) the person intentionally is a member of an organisation; and
(b) the organisation is a terrorist organisation because of paragraph (a) of the definition of terrorist organisation in this Division (whether or not the organisation is a terrorist organisation because of another paragraph of that definition also); and
(c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) Subsection (1) does not apply if the person proves that he or she took all reasonable steps to cease to be a member of the organisation as soon as practicable after the person knew that the organisation was a terrorist organisation.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

102.4 Recruiting for a terrorist organisation

(1) A person commits an offence if:
(a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and
(b) the organisation is a terrorist organisation; and
(c) the first-mentioned person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

(2) A person commits an offence if:
(a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and
(b) the organisation is a terrorist organisation; and
(c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

(3) A person commits an offence if:
(a) the first-mentioned person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

102.5 Training a terrorist organisation or receiving training from a terrorist organisation

(1) A person commits an offence if:
(a) the person intentionally provides training to, or intentionally receives training from, an organisation; and
(b) the organisation is a terrorist organisation; and
(c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:
(a) the person intentionally provides training to, or intentionally receives training from, an organisation; and
(b) the organisation is a terrorist organisation; and
(c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

(3) A person commits an offence if:
(a) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 10 years.

102.6 Getting funds to or from a terrorist organisation

(1) A person commits an offence if:
(a) the person intentionally receives funds from, or makes funds avail-
able to, an organisation (whether directly or indirectly); and
(b) the organisation is a terrorist organisation; and
(c) the person knows the organisation is a terrorist organisation.
Penalty:Imprisonment for 25 years.

(2) A person commits an offence if:
(a) the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and
(b) the organisation is a terrorist organisation; and
(c) the person is reckless as to whether the organisation is a terrorist organisation.
Penalty:Imprisonment for 15 years.

(3) A person commits an offence if:
(a) the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and
(b) the organisation is a terrorist organisation; and
(c) the person is negligent with respect to the organisation being a terrorist organisation.
Penalty:Imprisonment for 10 years.

(4) Subsections (1), (2) and (3) do not apply to the person’s receipt of funds from the organisation if the person proves that he or she received the funds solely for the purpose of the provision of:
(a) legal representation for a person in proceedings relating to this Division; or
(b) assistance to the organisation for it to comply with a law of the Commonwealth or a State or Territory.

Note: A defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4).

102.7 Providing support to a terrorist organisation

(1) A person commits an offence if:
(a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of terrorist organisation in this Division; and
(b) the organisation is a terrorist organisation; and
(c) the person knows the organisation is a terrorist organisation.
Penalty:Imprisonment for 25 years.

(2) A person commits an offence if:
(a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of terrorist organisation in this Division; and
(b) the organisation is a terrorist organisation; and
(c) the person is reckless as to whether the organisation is a terrorist organisation.
Penalty:Imprisonment for 15 years.

(3) A person commits an offence if:
(a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of terrorist organisation in this Division; and
(b) the organisation is a terrorist organisation; and
(c) the person is negligent with respect to the organisation being a terrorist organisation.
Penalty:Imprisonment for 10 years.

This amendment inserts new terrorist organisations offences covering directing, membership, recruitment, training, funding and the provision of support or resources. With the exception of the membership offence, the offences carry different fault elements and graduated penalties. A maximum penalty of 25 years imprisonment will apply where the defendant knows that the organisation is a terrorist organisation. If the defendant is reckless as to whether the organisation is a terrorist organisation, a maximum penalty of 15 years imprisonment will apply. Where the defendant is negligent with respect to the fact that the organisation is a terrorist organisation, the offence will attract a maximum pen-
alty of 10 years imprisonment. The membership offence will apply only where the defendant knows that the organisation to which he or she belongs is a terrorist organisation. It is appropriate for an offence which applies to membership alone to require the prosecution to prove a high degree of fault. It will be a defence to the membership offence if the person proves that he or she took all reasonable steps to cease to be a member of the organisation as soon as practicable after the person first knew that the organisation was a terrorist organisation. It will be a defence to the offence of receiving funds from a terrorist organisation if the person proves that he or she received the funds.

This is an extension of what we have been debating in relation to terrorist organisations. The graduated penalties and the tiers of fault are aspects which the government has proposed in other provisions of this bill and they follow much the same format. These are important provisions in relation to the fight against terrorism and the bill covers those aspects which we believe are very important. As I said, the new offences cover directing, membership, recruitment, training, funding and the provision of support or resources.

Senator Brown (Tasmania) (11.25 a.m.)—by leave—I move:

(12) Government amendment (17), omit subsection 102.2(2).
(13) Government amendment (17), omit subsection 102.4(2).
(16) Government amendment (17), omit subsection 102.5 (2).
(17) Government amendment (17), omit subsection 102.6 (2).
(19) Government amendment (17), omit subsection 102.7(2).

Again, we come to this terrible word ‘reckless’. Last night I put the argument against this word being allowed. It gives wide-ranging ability to the authorities to impugn people with terrorism who are innocent of being part of terrorist activities. The word ‘reckless’ can be used very widely indeed. It is not conscribed or tied down by the government. It will be wide open to interpretation and will inevitably catch people who have been in an organisation, making donations to an organisation or going to fundraisers for an organisation, and the authorities will say, ‘You should have known that that organisation was involved in what we call terrorism.’ People who sign lists or petitions could be indicted under this reckless provision. It is a reckless provision itself and should be removed, unless the government cares to do the hard spade work in defining exactly the circumstances in which a person would be reckless. The government does not want to do that. This is a catch-all phrase. It is going to catch people who, after the event, find out that they have inadvertently been to a fundraiser, a course, a film night or a training seminar on the political aspirations of a group or part of a group which turns out to be involved in a violent dimension. We are asking the committee to support the amendment to remove this particularly dangerous component of the bill.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (11.27 a.m.)—by leave—I move:

(6) Government amendment (17), omit subsection 102.2 (3).
(8) Government amendment (17), omit subsection 102.4 (3).
(9) Government amendment (17), omit subsection 102.5 (3).
(10) Government amendment (17), omit subsection 102.6 (3).
(11) Government amendment (17), omit subsection 102.7 (3).

As Senator Brown said, this is a debate which, in effect, we had last evening in relation to other offences. The debate is nevertheless a very important one. The opposition has accepted that the situation we now face with the government amendments is that the defences are better structured in certain respects and, very importantly, have been reworked so that elements of intent and knowledge are included. We remain very concerned that the government, in these offences, is still proposing to include the fault element of negligence. I pointed out last night the impact of the government’s proposed hierarchy for offences. Knowledge of a terrorist connection to activities would lead to a penalty of up to 25 years imprisonment. Recklessness, which has just been canvassed by Senator Brown, is having the foresight of
a possible connection but acting irrespective of that foresight. That would expose someone to a penalty of up to 15 years imprisonment. Senator Brown expressed concerns about this being undefined. As I understand it, recklessness is defined in the Criminal Code. The minister needs to make that clear to the committee.

As I indicated last night, the situation with knowledge and recklessness is very different to the situation in relation to negligence because both knowledge and recklessness do require a mental state. The test of a person’s knowledge or recklessness is, of course, subjective, and we say—as we have said consistently with the approach that we have taken more broadly in relation to this legislation—when you are dealing with offences like terrorism, it is all about the intention or the state of mind of the person who would commit such an offence. That is the significant difference between knowledge and recklessness on the one hand and negligence on the other. That is why the opposition is consistent with the approach that it has taken throughout the debate on these bills in saying that the negligence tier should be removed. We oppose the introduction of terrorist offences that are based on negligence because, in law, proving negligence would not require proof of any particular mental state.

The test for negligence is an objective test so it would be based on an assessment of what a reasonable person may do in the circumstances. It is not based on what the person may have intended. We have said it consistently but I repeat it, for the benefit of the committee, because I think the argument is very strong indeed, and I commend the argument to the Senate. A person cannot negligently commit a terrorist act, in the view of the opposition. We believe, with the tier of negligence remaining, that the government introduces an unacceptable threshold for terrorist acts. You have got to think about this. Surely, intention is crucial here. It is not possible to negligently commit a terrorist act, and this committee should not support the government’s amended proposal. We should remove the fault element of negligence. In taking this approach, we are consistent with our arguments, last night, in relation to other offences.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.34 a.m.)—Senator Brown accused the government of not spelling out what the term ‘reckless’ entailed. I would remind Senator Brown that, in the explanatory memorandum to these amendments, at page 11, there is an outline of what is needed to prove that a defendant was reckless. It states:

To prove that the defendant was reckless as to whether the organisation was a terrorist organisation, the prosecution would have to demonstrate that the defendant was aware of a substantial risk that the organisation was a terrorist organisation and that, having regard to the circumstances known to the defendant, it was unjustifiable to take that risk.

That sets out very squarely what is involved here and, indeed, in the Criminal Code there is a definition of ‘reckless’. But in the explanatory memorandum to these amendments, the government has spelt out what ‘reckless’ entails. It also goes on, in the same explanatory memorandum, to say:

A defendant would be negligent with respect to the fact that the organisation was a terrorist organisation if his or her conduct involved: (1) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and (2) such a high risk that the organisation was a terrorist organisation that the conduct merits criminal punishment for the offence. Negligence is a standard fault element recognised in the Criminal Code and is a fault element in numerous offences in Australian criminal law, including manslaughter.

That is provided for in the explanatory memorandum for these amendments. The government could not be clearer in spelling out what is entailed in relation to recklessness and negligence. But, just so that it is absolutely clear, I will refer to the definition of recklessness in the Criminal Code, which I referred to yesterday with respect to negligence. I also touched on recklessness but I do not think I gave the definition to the Senate. Section 5.4 of the Criminal Code states:

5.4 Recklessness

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

(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.

(3) The question whether taking a risk is unjustifiable is one of fact.

(4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element.

At all stages the onus is with the prosecution; it has to prove recklessness beyond a reasonable doubt; it has to prove negligence beyond a reasonable doubt.

In relation to the Greens amendments, we believe that if it can be made out in the way that I have outlined that someone was reckless in their knowledge of a terrorist organisation, that they trained with that organisation, funded it or directed the activities of that organisation they should not escape liability. Such is the degree of culpability in that case that, with the high standard of proof and definition of fault, if the prosecution is able to make out a case with those strict requirements the government believes that the person concerned should not escape liability for their actions. Senator Brown said the term ‘reckless’ can be used very widely indeed. The government disagrees; it believes it is a strict definition and, when accompanied by the fact that it has to be proved beyond a reasonable doubt, it applies in an even narrower sense.

Needless to say, the government will be opposing Greens amendments (12), (13), (16), (17) and (19). In relation to opposition amendments (6), (8), (9), (10) and (11), the opposition does not object to recklessness but does object to the fault element of negligence. I have already touched on that in previous debate, but I remind the chamber that 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 offences involving negligence will restrict the circumstances in which persons who fund, direct, train with or provide support to terrorist organisations can be prosecuted.

Again, we say that the term ‘negligence’, having regard to the fact that it has to be proved beyond a reasonable doubt and that it has to fall within the strict definition of the Criminal Code and as outlined in the explanatory memorandum which I have referred to, does deserve sanction and that a person who is guilty of that behaviour—guilt having been proved beyond a reasonable doubt—should not escape liability for their actions.

Senator COONEY (Victoria) (11.40 a.m.)—Can I comment on the last remarks of the minister. At the moment the government, together with a lot of other people, are making very trenchant criticisms of the legal profession. Mr Antony Sachs is in the chamber and he would know what I am talking about—a man who has recently had Oscar born to him.

Senator Faulkner—A fine adviser.

Senator COONEY—Yes, a fine adviser. The government is saying, ‘Look, just because there is a claim of negligence, you should not have people rushing off to sue.’ As I understand it, the government has said that just because you might suffer an injury due to negligence should not entitle you necessarily to go ahead and sue. Being negligent is something we sometimes are as human beings. None of us are perfect, none of us are the perfect being, and we are going to be negligent and careless. That is how people are. Do we punish someone because they have been careless or because they have been negligent? What we mean by negligent is that you have done something that a reasonable person would not have done or that you have failed to do what a reasonable person would have done. Just because you have done that does not mean that you should be punished. Otherwise, how are we going to go around in life? We are all careless at times. We go into periods of carelessness. That
should not be punished. I think that is borne out by the government’s own approach to the insurance crisis and to civil action.

On the other hand, if the carelessness is such that, for example, a person fires a gun towards a beach where there is a great number of people and says, ‘I did not intend to do that and I did not even intend to hit them,’ that is something done in a gross manner. If somebody drove a car at 100 kilometres per hour down Bourke Street through the mall—I am talking about Melbourne—

Senator Faulkner—As you would.

Senator COONEY—As I would, and no doubt there are other cities in Australia where you could imagine that happening. Having imagined it, one would see just how gross it is that a person with little ability as a driver drives at a high speed down a heavily built-up street. People would then say, ‘That is so gross, that is so beyond what is fair, that it ought to be punished.’ But that goes a long way beyond the concept of negligence. Minister, the problem with this is the three tiers. You said that you can be punished for manslaughter if you are negligent, and that is true, but that is gross negligence, that is reckless negligence, that you are talking about. You do not get punished for manslaughter if you are negligent, and that is true, but that is gross negligence, that is reckless negligence, that you are talking about. You do not get punished for manslaughter for simply being negligent—perhaps for driving at 70 kilometres per hour when you should be driving at 60 kilometres per hour. That is a negligent act, as is brushing past somebody and knocking them over in your haste to get to somewhere to catch a train or to get somewhere to meet somebody.

Senator Faulkner—Or for a division.

Senator COONEY—Or if you are trying to get to a division.

Senator Faulkner—It is all right if you knock someone over the other way.

Senator COONEY—that is all right, but it is getting to the point now where I am finding it so hard to get to divisions that I will have to give the game away, Senator Faulkner.

Senator Faulkner—I reckon that you have at least another day in you, Senator Cooney.

Senator COONEY—I have another day in me, yes. In any event, I do not want to go into this for too long, because I know that we are trying to save time. Nevertheless, I think it is very important to make the point that there are people who say, ‘Look, I don’t really intend to hit somebody when I fire this gun, but I’m going to fire it and I understand that there are people there.’ A reasonable person would say that that is not just the ordinary sort of negligence; that is so gross that there ought to be some punishment for it. I am trying to think of an analogy that might strike home with Senator Brown. I suppose he would say that some of the ways the forests in his state and elsewhere have been treated goes a bit beyond ordinary negligence and starts to get to the gross stage.

Senator Brown—It is not even reckless.

Senator COONEY—Yes, it is not even reckless. So, Minister, given the government’s attitude and approach to insurance claims—actions by people suing doctors and what have you—I think the government itself draws a big distinction between ‘negligence’ and ‘gross negligence of a reckless kind’.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.46 a.m.)—I will not have many more opportunities to enjoy a good debate with Senator Cooney in this chamber. As always, he has put his argument very well and done so over many years on the Senate Legal and Constitutional Committee, which has done a lot of very good work—excellent work, I might say—largely due to Senator Cooney’s fine work on that committee. But I would say to Senator Cooney that, in this case, we are dealing with negligence that could be termed gross negligence; it goes beyond the civil standard of simple carelessness. When you look at the definition in the Criminal Code Act 1995, it says that a person is negligent if his or her conduct involves:

... such a great falling short of the standard of care that a reasonable person would exercise in the circumstances.

So it is not just simple carelessness; it is not like driving a car without due care and attention. We would argue that the negligence here could be termed gross negligence. It is
certainly not the same standard applied in civil law; what is more, the prosecution has to prove this negligence beyond a reasonable doubt. The government says that this negligence could form the basis of a conviction for manslaughter. We have seen how recklessness can found a conviction for murder; similarly, negligence of this standard can found a conviction for manslaughter. We want to make it very clear that the negligence the government is talking about here is not of the civil standard but of the much higher standard set out in the Criminal Code.

Senator BROWN (Tasmania) (11.48 a.m.)—I think the opposition’s arguments against ‘negligence’ are cogent, very logical and apply equally to the term ‘recklessness’. I have to remind the Committee of the Whole that we are not dealing here with a void in the law that deals with violent, nasty criminals. We have a second-to-none bank of law in this nation to deal with criminal activities. The whole of this legislation is redundant when you consider that bank of law—developed not just over 100 years but over hundreds of years. So this legislation is an overlay. Anyone who thinks that we need this legislation in order to catch terrorists is wrong. We have very strong laws to catch murderers, rapists and people who rampage and cause destruction.

But there is political motivation involved here, and I reiterate that it is dangerous—very dangerous indeed. I repeat the evidence of one eminent jurist before the committee looking into this matter. He had the experience of going to a fundraising dinner for the Tamils. That dinner was being held to raise funds to help children and youths who were maimed and disfigured in the civil war in Sri Lanka. Was it negligent or reckless to pay $20 to attend such a fundraiser if it is found later that, instead of going to the target for which the fundraising event was set up, the money was diverted into the military activities of that organisation? At what level does negligence or recklessness come in?

This is not an easy dividing line, as the government would have it—and it is dangerous. We have long-considered laws to deal with all these matters. We do not need the overlay of this legislation. It is political legislation which, in the face of those long-considered laws, is redundant. The problem here is that it has not been long considered. It is hasty and knee-jerk, and it has very big consequences. That is why we are opposed to it, and that is why we are promoting these amendments.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that Australian Greens amendments (12), (13), (16), (17) and (19) to government amendment (17) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that opposition amendments (6), (8), (9), (10) and (11) to government amendment (17) be agreed to.

Question agreed to.

Senator BROWN (Tasmania) (11.52 a.m.)—by leave—I move Greens amendments (15) and (18) on sheet 2512:


(18) Government amendment (17). Omit Section 102.7.

I point out to the committee that these amendments seek to remove two terrorist organisation offences proposed—that is, getting funds to or from a terrorist organisation and providing support to a terrorist organisation. On the face of it, the government’s amendments might seem to be a good move but I have already referred to them when discussing our opposition to the banning process, which is supported in some measure by the ALP and the government, notwithstanding the withdrawal this morning of the government’s earlier intention.

The refusal by the opposition to support our amendments to remove ‘recklessness’ as a fault element, as we have just seen, makes these fundraising offences dangerous to many communities in Australia. I have just given an example of how that can be. The Greens amendments now seek to minimise the damage that could come from those government amendments. I ask committee members to consider whether people in Australia who support Kurdish independence—I spoke earlier about how that has
gone from being violent to a pursuit of democracy through democratic processes—or Tamil independence will be charged with an offence of providing funding to the relevant organisations, the PKK or the LTTE.

Some time in the future, will the OPM, the freedom for Papua organisation, or those fighting for freedom from the military occupation of Tibet by the Beijing regime be labelled and listed as terrorists and funding and supporting those organisations be outlawed? How long is it going to be before we see China list the people it labels as terrorists—who are nothing more than peaceful defenders of freedom and democracy? If China had its way it would list the Falun Gong. As I said last night, China offensively and obscenely labels the Dalai Lama as a criminal. Are we going to see a Security Council resolution coming through proscribing organisations which he may have some association with? The government claims that it needs to enact this legislation because of its obligations under the Security Council resolution 1373, but those obligations are covered by the Suppression of the Financing of Terrorism Bill 2002, which we are going to deal with later, so they do not need to be dealt with here.

I am very concerned that through the myriad of fundraising processes that go on in our democracy and people’s intentions to raise funds for the greater good, under this legislation they may be caught up and labelled as terrorists simply because the fundraising is claimed to have gone elsewhere. Hence, that is reason for moving these amendments.

Question negatived.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.55 a.m.)—I move opposition amendment (7) on sheet 2503:

(7) Government amendment (17), omit subsec- tion 102.3(1), substitute:

(1) A person commits an offence if:

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

(b) the organisation is a terrorist organisation because of paragraph (c) of the definition of terrorist organisation in this Division (whether or not the organisation is a terrorist organisation because of another paragraph of that definition also); and

(c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 10 years.

As the committee is aware, the Labor Party has objected to the government’s creation of an offence of membership of a terrorist organisation, notwithstanding—and I acknowledge this—the attempts by the government to provide additional, albeit limited, safeguards to what was contained in the original legislation. The real issue, and the cause of great concern from the opposition’s perspective, is that we do not want to go down the path of criminalising passive affiliation. The opposition does not support the harsh penalties proposed by this legislation being applied to a passive act of membership—that is, compare a passive act of membership to an act intended to further a terrorist act. It comes back to the same principle that the opposition has put forward throughout this debate: target the terrorists and focus on terrorist activities but do not criminalise passive membership, either formal or informal, of an organisation. One of the problems here is that the government does not define membership. It even proposes to include the vague concept of informal membership. I can only say that that heightens the opposition’s concerns about this offence of membership.

There are two principles at play in relation to criminalising membership of a terrorist organisation. In our view, the first principle is that mere membership of an organisation without any active participation should not be criminalised. To do so is to criminalise a person’s thoughts as opposed to a person’s actions. The other principle is that Australia should play its role as a good international citizen in assisting other members of the international community to fight terrorism and international terrorist organisations. We have an in-principle objection to criminalising membership per se.

There is one case in which we certainly are willing to make an exception; one case and only one case. It goes back to this situation of membership of organisations declared to be terrorist organisations by the Security
Council of the United Nations. As I have explained previously to this committee, we have taken the view that if the international community, speaking through the United Nations Security Council, declares an organisation to be a terrorist organisation, we will accept membership of that organisation as being a criminal offence. In all other cases, we believe that the appropriate threshold for an offence of membership is the demonstrated willingness to assist a terrorist organisation in the commission of a terrorist act. We have argued that these words should be included as an offence, maintaining the important distinction between active involvement in the commission of a terrorist act and passive membership of an organisation. Again, we must get this right.

That principle would apply to organisations—that is, the demonstrated willingness to assist a terrorist organisation in the commission of a terrorist act. ‘Active involvement in terrorist activities’ would apply to organisations found to be terrorist organisations either by Australian courts or by the United Nations Security Council. This, again, is a very different approach to the one the government proposes, but there are serious concerns about an offence of membership of a terrorist organisation. This committee needs to take account of those concerns. If we are serious about targeting the terrorists and focusing on terrorist activities, then we can fix the original draft of this bill. We can have a situation where those who are actively involved in terrorist activities do have their behaviour criminalised but where those who are passive members of organisations, without the intent or knowledge to be involved in terrorist activities, are not unwittingly caught up in this legislation.

It comes back to those fundamental principles that I have been speaking of throughout the debate. Again, it restores the focus to catching and dealing with the real terrorists, the people who know and intend to be involved in or give assistance to a terrorist organisation for the commission of a terrorist act. That is what it should be about. We need to deal with those people and deal with them appropriately, but we do not want to see the unintended consequences of people who do not have that knowledge or that intention being caught up due to their formal or informal membership of organisations. It is a fundamental principle, and we need to protect appropriate civil liberties and freedoms in relation to this issue. It reinforces all the weakness of an executive proscription regime—one which I now acknowledge the government has backed away from. This is another important amendment and an important principle, and I would urge this committee to strongly support the opposition’s approach.

Senator BROWN (Tasmania) (12.05 p.m.)—I will support the opposition’s approach now that the Greens amendment has been knocked down. I want to wrap up our argument by quoting another eminent jurist, Mr Julian Burnside QC from Liberty Victoria, on the proscribing of organisations. In his submission to the Senate Legal and Constitutional Legislation Committee he stated:

Although this is not part of the written submission, because of the shortness of time, can I make the observation that, leaving aside constitutional problems, proscribing organisations is a very different thing from proscribing acts. Generally speaking, acts are the object of criminal laws; organisations are not. Proscribing an organisation is tantamount to proscribing modes of thought—because what makes an organisation, generally speaking, is a community of ideas or beliefs. To proscribe an organisation where there is no act done by individual members of that organisation is, with respect, nothing more than an assault on freedom of thought. If, on the other hand, members of organisations do engage in acts which contravene the criminal law then the law is able to deal with them.

There is a subsidiary difficulty with the provisions relating to proscribing organisations, and that is the very wide definition of ‘membership’—which is what we are dealing with at the moment—which includes people who are informal members or who are trying to become members; and those people can not only cause the organisation to become a proscribed organisation but can also be caught up inadvertently in the conduct of other people who are, properly speaking, members of the organisation. The measure that allows anyone—a judge, the Attorney-General or anyone at
all—to proscribe an organisation is profoundly dangerous and, we would say, profoundly undemocratic. It amounts to nothing more than restraining freedom of thought.

That is why we oppose the government’s proscription of organisations, and that is why we oppose this measure which imposes enormous penalties on people for being members or de facto members or for seeking membership of organisations. People can be caught up quite inadvertently, as Mr Burnside points out, and there are pretty gargantuan penalties to boot. It is quite dangerous, and it is unnecessary. We have the criminal law to deal with people who commit terrorist acts. The opposition amendment should be supported, but the measure as a whole should be thrown out.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.08 p.m.)—There are a number of things that I should say about this. In relation to membership, the bill has a definition of ‘member’ and that is set out at division 102. It states:

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.

That quite clearly spells out what a member is. There was some query raised by the opposition that we had not defined ‘membership’, but I think that definition is a very good starting point. In order to prove membership, the prosecution would have to prove beyond a reasonable doubt that the person had knowledge that the organisation was a terrorist organisation and intended to be a member. You cannot get it more squarely spelt out than that. We would say to the opposition and others: look carefully at the definition of ‘member’. We are not talking about passive membership; we are not including something which occurs independently of a person’s will. We are saying that, if it can be proved beyond a reasonable doubt that you intended to belong to a terrorist organisation and that you knew it was a terrorist organisation, you should not escape liability. We think that dispels squarely the concerns expressed by the opposition.

Senator Faulkner—Informed membership is in there, is it?

Senator ELLISON—It can only be informed membership. I say to Senator Faulkner: have a look at the definition I have just referred to, because it says ‘a person who has taken steps to become a member’. That is not someone who is sitting back doing nothing. Remember also what I have just said: the person has to have an intention to become a member and the person has to know that it is a terrorist organisation. Those elements have to be proven beyond a reasonable doubt. There is nothing passive about that.

The curious thing about the opposition’s proposed amendment is that it comes in subparagraph (b)—that is, a person commits an offence by being a member only of a terrorist organisation as set out in subparagraph (c). Subparagraph (c) is the third limb of the definition of ‘terrorist organisation’, which deals with the involvement of the Security Council of the United Nations. The opposition has missed subparagraph (a), which deals with a finding by a court. There are three limbs, and the second limb—the executive listing—has been eliminated. Subparagraph (a) is where a court finds beyond a reasonable doubt that an organisation is a terrorist organisation. We would think that the requirement that an Australian court come to that conclusion would be an even better way to determine a terrorist organisation than some process which is triggered by a decision of the Security Council of the United Nations.

That suggests that our courts are not equipped to do their job and makes somewhat of a mockery of our judicial system. There is absolutely no reason not to include the other limb which still remains. That has not been explained by the opposition, and I think it is a fundamental flaw in their proposed amendment. The government opposes this amendment not only for the reasons I have mentioned but also because it opens up
a loophole in relation to membership of a terrorist organisation. The amendment provides that a person commits an offence if they join a terrorist organisation which has been listed by the United Nations Security Council, so the opposition agrees with the government to that extent. But the government cannot go further and say, ‘We don’t agree that it’s an offence if an Australian court has found an organisation to be a terrorist organisation, notwithstanding that that finding is beyond a reasonable doubt.’ It is obvious that there is a feeling that you should have an offence for membership of a terrorist organisation, and the government agrees that we should—very much so.

We want to say that once a terrorist organisation has been established as such, after strict requirements have been met—and there are strict requirements proposed—any membership of that organisation should also be outlawed. You have to remember that, as Senator Cooney would say, you cannot strike without meaning to harm—I think that is one of his old favourites—that is, you cannot have your cake and eat it too. You cannot knowingly join a terrorist organisation and then say that in some way you are a passive player in the whole situation. Terrorist organisations can only exist because of membership, so the membership of the organisation also has to be the subject of liability. For those reasons, the government is opposed to this opposition amendment. I indicate that the government will be seeking to divide on the matter.

Senator COONEY (Victoria) (12.14 p.m.)
Listening to the analysis of the minister, which was very cogent, probably brought out what the difficulty is on this side of the chamber. As the minister said, ‘You would not be a member of this organisation, if you knew what it was, unless you wanted to do something.’ What the minister is really saying is, ‘Look, being a member of this organisation is evidence that you have done a bad act or you intend to do a bad act.’ So the membership is evidence of intent. But, as written in this legislation, the membership alone is what is punishable. The membership is not being used as evidence to prove that a person who is a member is doing a bad act. It is not used in that way at all. It simply says, ‘You are a member, therefore you should be punished.’ But that leaves out the step, ‘You are a member, therefore your intention must be to do something bad, therefore you have an intention to do a bad action.’ That is not the process of thinking. The process of thinking is: you are a member, therefore you will be punished. That is a dangerous situation to be in.

What goes to the heart of it, I think, is that everybody agrees with Senators Greig, Brown and Faulkner: we want to punish criminality. We want to punish people who do the wrong thing, those who act in such a reckless way that they are doing the wrong thing. We, as reasonable people, want to feel comfortable that such people are being punished for doing something that is wrong. However, this legislation says, ‘Look, you’re a member, therefore you should be punished.’ We say why should that be the process? Why shouldn’t we be able to join any organisation we want to? The joining itself should not be punished. Doing things once you have joined might be a different thing. Take the political parties in this chamber. We all know that some people join in a peripheral way and that others direct things and others finance them. All those acts have different qualities. We say that the person who just joins an organisation should not be treated in the same way as a person who organises some criminal act and so forth. I think there is a difference; there is a problem.

I will have drink of water. It has been brought to me by the people who look after us. I might take this opportunity to thank them for the way they look after us in this chamber: Frank Alles, Lorna Lane, Kathy Eliopoulos, Ron Kropp and John McPherson—I do not think he is here today, but I will mention him. So they are my thoughts, Minister, on the issue of membership.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.18 p.m.)—I have enjoyed Senator Cooney’s 40th valedictory speech and look forward to the 191st he makes tomorrow, as this committee stage debate wends its way forward. The minister has read the definition of ‘member’ contained within the bill into
the Hansard. Let me remind the committee of the first line of this definition:

*member* of an organisation includes:

(a) a person who is an informal member of the organisation ... 
I have two questions for the minister: is ‘informal member’ defined anywhere? Secondly, if ‘member of an organisation’ includes (a), (b) and (c), would I be correct in assuming it may well include others who are not listed—that there are a whole range of others who would not be excluded? If I am wrong, I would appreciate that advice from the minister.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.20 p.m.)—Firstly, I cannot miss this opportunity to tell Senator Cooney about the defence available to someone who joins an organisation and then learns subsequently that it has been listed as terrorist organisation. As I said earlier, it will be a defence to the membership offence, if the person proves that he or she took all reasonable steps to cease being a member of the organisation, as soon as practicable, after the person first knew that the organisation was a terrorist organisation. That is fairly straightforward.

With respect to Senator Faulkner’s question, yesterday Senator Brown asked me the same question. I made it very clear then that an ‘informal member’ was based on the fact that a lot of organisations that we are looking at would not have membership lists, badges or registers. Really it is aimed at the fact that an organisation does not have a formal listing, receipts, badges or things of that sort which we commonly come across with community organisations.

The crucial part here is that the member must have taken steps to become a member, and that falls within the definition. Even if you are a member of an organisation which does not have records or things of that sort, then it must be shown still that you took steps to become a member of that organisation. That is a very high requirement of a prosecution, because it has to be established beyond a reasonable doubt. As I have already said, intention and knowledge have to be proven beyond a reasonable doubt. So it is very much focused on membership—that is, on the person concerned, what steps they took, what their intention was and what knowledge they had. All those have to be met by the prosecution beyond a reasonable doubt. So, under our criminal jurisdiction, you could not have a tighter approach to regulating such a situation. If I have missed anything else, perhaps Senator Faulkner will remind me.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.22 p.m.)—I heard what the minister said in response to Senator Brown, and I heard what he said in response to me when we were dealing with the question of informal membership. I was making a point under division 102.1, ‘Definitions’, which says:

In this division:

*member* of an organisation includes—

and then it includes those categorised in (a), (b) and (c). I am aware of that. Who else does it include? That is what I was asking the minister to comment on. The concern of the opposition is that membership, as defined in the act, is a very low threshold of involvement in an organisation. That is especially the case because the government includes as members so-called informal members. It is a very vague term. I hear what the minister tells us about informal members, and I know that a member of an organisation includes a person who is an informal member, but there are still a very significant number of questions that require answers from the government.

What the opposition says in this circumstance is that we believe that that important threshold of membership should apply only to international terrorist organisations that have been listed by the United Nations Security Council. That is how the opposition is approaching this question. Otherwise, we have said, the test should be of demonstrated willingness to assist. Again, this has the advantage of targeting the terrorists. Clarifying who we are focusing on will assist the prosecution of any who are engaged in terrorist activity. That really should be our objective here. So there are weaknesses in relation to what the government proposes. Those concerns have not been answered by the gov-
ernment, although they have been identified by the opposition and other senators and, of course, more broadly by those who have made submissions and given testimony to the Senate Legal and Constitutional Legislation Committee. They are important issues, Minister. I believe that the solution the opposition proposes will have a very positive effect in dealing with this current problem of the government proposing that membership be defined in this bill with such a low threshold of involvement. I commend the approach the opposition is taking in relation to this matter. It is tighter, more focused and better targeted and, as a result, it will be more effective.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (12.27 p.m.)—The court decides the issue of membership here. It is a question of fact and there is no other aspect to it than that. As in all things in relation to criminal jurisdiction, those questions of fact are determined in a court of law. The government believes that the definition is tight and the requirements are high for the prosecution. The opposition says that it is an offence to belong to a terrorist organisation which the UN Security Council has listed but not an offence to belong to a terrorist organisation which is found to be such by an Australian court. Why doesn’t the opposition think that it should be a criminal offence to belong to a terrorist organisation which has been found to be so beyond a reasonable doubt by an Australian court?

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (12.28 p.m.)—Minister, as you know—but if you do not know, you should check with your advisers—we believe the test is demonstrated willingness to assist. So, if there is demonstrated willingness to assist a terrorist organisation to commit a terrorist act, that has the advantage of going to those who have knowledge and intention of doing what we are all agreed ought to be serious criminal offences in Australian law. That is how it should be dealt with; not with some totally unacceptable politically motivated executive proscription regime and then propose, in relation to those organisations, that membership become an offence. It is just possible that the government and the opposition have a very different view in relation to the fundamental principles here. I would hope not, because I would hope the government would agree with the Labor Party that what we have to do here is target terrorists and terrorist activities. We say that, if a demonstrated willingness to assist a terrorist organisation in the commission of a terrorist act is an offence, then rightly such individuals should feel the full force of the law.

I hope, Minister, that you will accept that. I also hope that you will accept the proposition that, if the United Nations Security Council comes to a decision to list an organisation as an international terrorist organisation, in that circumstance—but only in that circumstance—membership of such an organisation should be an offence. I would commend the opposition’s approach to you; I think it has very great merit. We have said consistently that, as the United Nations lists terrorist organisations for the purpose of freezing assets and preventing arms-smuggling, as it currently targets people who are engaged in that sort of activity and as such listing is an action of the international community that has the backing of the United Nations Security Council, we believe Australia would be silly not to join in such international action against that sort of terrorist activity. That was not considered important, or certainly did not appear, in the original bill introduced by the Attorney-General.

As you know, we have said in relation to proscription that we strongly oppose that power being given to a domestic government of any political persuasion. I think that is fair. We do so because we realise that the power of proscription could be easily abused. We do not think you are going to get the United Nations Security Council listing, for example—if you want to use an example that might be close to the minds of some in the Australian community and something that happened a few years ago in this country—the Maritime Union of Australia, which might have happened during the Patrick waterfront dispute. What we have said is that, while we have an in-principle objection to criminalising membership of any organis-
tion, for all the reasons that have been outlined, we are prepared to make an exception in the case of membership of organisations declared to be terrorist organisations by the United Nations Security Council. Do not think for one minute that anyone else who is engaged in terrorist activity will not be caught up because of this offence of demonstrated willingness to assist. That is really, conceptually, what most people understand membership to be; not informal membership. It is not what you think but what you do.

With the amendments to this legislation, I believe you will have a very strong regime, but you will have a strong regime that targets the terrorists; and that is our aim. We have also said—and we have been consistent in this not just over the past few weeks or months but literally for decades—that we want to act in concert with and with the support of the international community in the fight against terrorism. So if the international community, acting and speaking through the United Nations Security Council, declares an organisation to be a terrorist organisation then we do accept membership of that organisation being a criminal offence.

I commend this approach to you, Minister. It is a tough approach. It is a very tough approach on the terrorists, but it does not have the unintended consequences of catching within the definition of criminal activity those who have no intention or knowledge of what membership of an organisation might mean. That is one of the very many weaknesses and probably one of the unintended consequences of the government legislation when it was introduced. I have been very generous in this, Minister. I have accepted that the poor drafting, the sloppy definitions and the lack of oversight, both ministerial and executive, as well as the shoddy performance of those who supported the government in the drafting of this legislation, are not deliberate. I have said that I certainly hope and am willing to accept that all the extraordinary consequences of the original bill were unintended consequences; that all the weaknesses in the drafting are not deliberate. But that does not give a huge amount of comfort to this committee.

We have to fix the problems that have been created by this extraordinarily sloppy piece of legislation coming before the parliament. It has taken a lot of time in a Senate committee and it is taking a lot of time in the Committee of the Whole now, but it is the intention and commitment of the opposition to get this right. We are going to be tough on the terrorists, but we are not going to see people who are not involved in terrorist activity being unwittingly and unfairly caught up in the sloppy drafting of the provisions of the bill which your government introduced.

We will not resile from that important principle and we will not resile from the important work of trying to fix up the pathetic efforts that the government made when it first introduced this bill, riddled with these sloppy definitions and unintended consequences.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.37 p.m.)—The pejorative terms used by Senator Faulkner reveal the fact that he is very much on the back foot on this because he knows very well there is a huge deficiency in the opposition amendment: ‘We will say it is a criminal offence to be a member of a terrorist organisation determined by the United Nations but not so if it is a terrorist organisation determined by an Australian court.’ But it is quite possible that in the future we could have terrorist organisations which operate in Australia only, and it might be difficult to get it through the United Nations Security Council. There might be other organisations on which agreement just cannot be reached by the Security Council of the United Nations, and action might have to be taken in Australia.

We have proposed that an Australian court could find beyond a reasonable doubt that an organisation is a terrorist organisation. The Labor opposition are saying, ‘We will follow the international guide but we will not have any regard to the domestic situation in Australia or to what might be thrown up in the course of the unusual times that we live in.’ We are saying: if it is a criminal offence to belong to a terrorist organisation as defined by the United Nations Security Council, why should it not also be a criminal offence to belong to a terrorist organisation as deter-
mined by an Australian court, with the requirement that such a finding be beyond a reasonable doubt? All Australians, I am sure, would say, ‘We would much rather place faith in our Australian judicial system than some listing determined by the United Nations Security Council.’ We say: ‘Have both.’ You may well have a domestic situation where a terrorist organisation is formed in Australia but is not listed by the United Nations Security Council, for a number of reasons, and you might want to have an Australian court determine that. That is why we have subdivision A: to give this legislation that added strength for dealing with a matter not just internationally but also domestically. We have to be aware that not all terrorism resides overseas. Unfortunately, the day will come—I hope it does not—when we will have a terrorist organisation which is Australian in make-up and which is operating in Australia alone. Believe me, terrorism does not have to be international. It does not have to be determined by the United Nations. It can be determined quite properly by an Australian court using the requirements of our criminal jurisdiction that it be found beyond a reasonable doubt.

This absence in the opposition amendment leaves a huge hole in this legislation in the fight against terrorist organisations. The opposition has conceded that there is a case for making it a criminal offence to be a member of a terrorist organisation. The question that Senator Faulkner raised in relation to my question to him about the willingness to assist really goes to opposition amendment (12)—he is really debating opposition amendment (12). We are here debating opposition amendment (7), which talks about membership per se, not going that step further and willingly assisting. We are talking about being a member of a terrorist organisation. Labor has agreed that that should be a criminal offence if that terrorist organisation has been found to be so by the United Nations, but it will not go one step further and say, ‘Yes, we also agree that it should be a criminal offence if that organisation has been found beyond reasonable doubt to be a terrorist organisation by an Australian court.’ That is where the gap is. As I said, it may well be that in the future we are faced with terrorist organisations which are Australian alone in make-up; we will have to deal with them domestically or rely on an alternative avenue of enforcement.

The proscription that Senator Faulkner talks about has gone. The executive aspect has gone with subdivision B being deleted. We are now dealing with an Australian court determining a terrorist organisation or the United Nations option. They are the only two left in the proposal. The opposition is ignoring the Australian option of a court being able to determine the status of an organisation—whether it is a terrorist organisation or not. You have to remember that it is quite a substantial requirement that we make of the court in order to do that. The court has to be satisfied that the organisation is:

… 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) …

The court also has to be satisfied that it is beyond a reasonable doubt. The question of ‘willingness to assist’ arises at a later time and we will be talking about the opposition amendment then. This is not a question of what people think but of people taking that action to join a terrorist organisation, of becoming a member. The opposition and the government agree that becoming a member of a terrorist organisation determined by the United Nations should be a criminal offence. Where we disagree is—

**Senator Faulkner**—You propose no role for the courts at all. You propose the Attorney-General. It is so hypocritical.

**Senator ELLISON**—We have it in subdivision A, and Senator Faulkner does not like this because—

**Senator Faulkner**—That is not your idea; that is the opposition’s idea.

**Senator ELLISON**—subdivision A is put up by the government—

**Senator Faulkner**—You propose the Attorney-General, not the courts. You know that.

**Senator ELLISON**—and that what we have is an Australian court determining whether or not an organisation is a terrorist organisation.
Senator Faulkner—That is not in your bill.

Senator ELLISON—That is in subdivision A, and I suggest Senator Faulkner take some advice on that over the luncheon adjournment.

Senator Faulkner—I have no intention of taking any advice.

Senator ELLISON—He ought to. You always know when you are winning because of the way that Senator Faulkner reacts. In this case, he ought to get some sound legal advice—

Senator Faulkner—You have won nothing. You have run up the white flag on everything.

Senator ELLISON—He knows full well the huge deficiency in the opposition drafting in relation to this provision—

Senator Faulkner—You just keep running up the white flag.

Senator ELLISON—where they are leaving a huge loophole for terrorists to operate in Australia.

Senator Faulkner—Rubbish. Don’t be such a hypocrite.

Progress reported.

MATTERS OF PUBLIC INTEREST

The DEPUTY PRESIDENT—Order! It being 12.45 p.m., I call on matters of public interest.

Health: General Practice

Senator GIBBS (Queensland) (12.45 p.m.)—In recent years the government has established a range of measures to increase the number of GPs and nurses in rural and regional Australia. The full effect of these measures is yet to be seen. We do not know whether they will work to solve the crisis in doctor numbers in the bush in the medium or long term. We simply do not yet have enough data.

Senator Patterson—It has gone up 10 per cent. It is the first time it has turned around.

Senator GIBBS—But the government can be congratulated, Minister, at least for trying—even if some of the measures are of dubious impact. Indeed, some of the government’s other policies actively work against encouraging a diverse and vibrant rural Australia—not that it will be my focus today, but the government certainly could do a lot towards helping in this area by slowing the removal of essential services like banks and pharmacies in the regions. But that is another speech entirely.

What the government did ignore, however, was the burgeoning problem of GPs abandoning the outer urban areas of our bigger cities. There is growing evidence of a substantial problem in the urban areas of major capital cities and surrounding areas. I know that in the budget extra doctors are to be allocated to outer suburbs, but is the program designed to attract GPs to the outer urban areas of our regional cities like Ipswich, Caboolture and Redcliffe? The problem of the shortage of GPs in these areas is becoming a serious problem. A paper written by Access Economics earlier this year for the Australian Medical Association has identified a number of problems in this area. Australia overall has a shortage of GPs in relation to the number of services that Australians seek to obtain. The shortages are not limited to rural and remote areas but affect many outer urban areas as well. Unless there is a change in current policies, the shortages will get worse.

Health care is costing more. The Australian Institute of Health and Welfare figures show that in 1989-90 spending on health was $35 billion. In 1999-2000 the figures show $52.5 billion. Average annual real growth in health expenditure was four per cent over the 1990s. Costs also rose faster than inflation in the 1990s due in large part to a high uptake of technology, high utilisation, and an increasingly ageing population. There has also been a fall-off in the rate of bulk-billing. In 1996, 80.5 per cent of medical services in Australia were bulk-billed. That figure has declined sharply and now only 75 per cent of services are being bulk-billed. There are a number of issues that drive demand for GPs. Average visits to GPs differ depending on where Australians live. Health Insurance Commission figures show that people in smaller rural areas visit their GP on average only 4.5 times a year. On the other hand, people in outer metropolitan areas visit their
GP on average nearly six times a year. Given the linkages between lower socioeconomic status and poor health, this discrepancy is best explained not by overservicing but by general poor levels of health.

There are also age, population and distribution factors that affect the provision of health services between and within states. The Access Economics report states that until now governments have assumed that, with the right carrots and sticks, city doctors who were steadfast in remaining in coastal and more affluent suburbs of Sydney, Melbourne and Brisbane would move into the country. This may be the case but it ignores the needs of our outer suburbs. There are a number of options for measuring the supply of doctors Australia wide. One thing that is agreed upon is that the outer urban areas of our major cities and surrounding districts are suffering. There are a number of reasons for this. Despite GP shortages in poorer areas, bulk-billing is still very popular in outer urban areas.

Surveys have found that many GPs feel compelled to bulk-bill. Many patients cannot afford anything else. Many also have complex health problems that require detailed consultations. Many doctors also report that trivial visits to GPs are increasing. Abuses of bulk-billing and a general unwillingness of doctors to charge genuinely poor patients are the main factors leading the GP exodus to wealthier areas. Like much of the rest of the population, GPs like inner suburbs. The influx of population in general has made practices more attractive in inner urban areas. Overall, there are a number of factors affecting the supply of doctors in outer urban areas. They are many and varied, but they are there.

To focus these details at a more local level I would like to speak about what is happening in Ipswich. As I am sure many of you know, Ipswich is a regional city adjacent to Brisbane. We have seen right across Australia a tendency, especially in the last 20 years or so, for the cities to grow and merge. Ipswich retains a distinct economic, cultural and sporting identity, but in some aspects the city has become part of a larger Brisbane, especially in terms of the provision of important services such as GPs. The figures in Ipswich itself are quite persuasive. Excluding special purpose practices, there are 47 practices in the Ipswich West Moreton region; seven of those are rural practices in the areas surrounding Ipswich—Boonah, Esk and Laidley shires. A work force survey conducted by the Ipswich West Moreton Division of General Practice showed that, as of 1 April, the region had 77 full-time GPs, 10 of whom are rural doctors, and 43 part-time GPs working a full-time equivalent of 15.5, with five of them rural doctors.

Across the Ipswich West Moreton division, the GP population ratio is one doctor for every 1,803 people. In Ipswich the ratio is one to 1,687 people and in the rural shires it is one to 2,459. Of the 74 GPs responding to questions on age, eight per cent were 34 or less, 34 per cent were 35 to 44, 39 per cent were 45 to 54, nine per cent were 55 to 59 and nine per cent were 60 or over. Regarding their plans for the next five years, 75 per cent said they would be doing the same thing, 14.7 per cent said they would retire or be retired, 5.9 per cent said they would be doing only locum work and 4.4 per cent said they would leave general practice for another career. In Ipswich city itself, 36 per cent of doctors said they were taking new patients, 30 per cent were refusing to take new patients and 33 per cent were taking patients if they were relatives of an existing patient. All of the rural practices are taking new patients but with some restrictions. The Ipswich West Moreton Division of General Practice has details showing that, based on Medicare billing numbers, 105.4 full-time equivalent doctors are doing the workload equivalent of 137.5 average full-time doctors.

The situation is also grim in terms of commitment to, recent experiences of and plans for recruitment. Twenty-five had no recent experiences or plans to recruit, 10 are currently trying to recruit, two anticipate doing so but are expecting difficulties, one practice has given up because of the difficulties and one was successful in recent recruitment. So, as you can see, the situation is particularly difficult. Of the doctors surveyed, 25 per cent indicated that in five years time they were likely to be doing something
other than general practice. Age is also a factor: more than half of the doctors surveyed are over 45 years old. This is worrying when you consider the fact that many of them may leave their practices in five or 10 years because of factors such as age, early retirement or any of the other pressures facing doctors. Ipswich GPs also report difficulty attracting locums to the area to work. Locums find working in practices that do not bulk bill, therefore offering higher payments, as being more attractive. This inability to attract locums to the area is increasing the pressure on local doctors, forcing them to work extra-long hours.

Obviously the situation cannot continue the way it is. The government has taken some measures to address the situation, but more work is needed. We need to fix the endemic problems that plague the system. We need to make sure that the outer urban areas of our bigger cities are not ignored while inner cities bloom and the government directs resources to the rural and regional areas. Our outer urban areas already house some of the most disadvantaged people in our society. We need to make sure they do not suffer further because of a lack of doctors.

**Rural and Regional Australia: Regional Solutions Program**

Senator BOSWELL (Queensland—
Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (12.57 p.m.)—The coalition government believes—the Prime Minister has said it on many occasions and so has the Deputy Prime Minister—that the economy moves at different speeds throughout Australia. We are all Australians, whether we live in Kirribilli or Longreach, and we all want to enjoy the benefits of the Australian economy. So the government has put in some programs to try and make the balance more equal. Over the past six years we have done much to try to rebuild country Australia, but there are rapid changes going on that disadvantage rural and regional Australia. There are changes by advances in technology, and I will explain that. I was saying to one of my staff a few minutes ago that I have been a member of the RACQ ever since I have had a car. I do not think I have had need to call the RACQ in the last five years because cars now are almost breakdown proof. That has an effect in rural and regional Australia where, if you go into the Holden dealership, they may have had 10 or 12 mechanics but now they have four or five, so a loss of jobs has occurred just in that area. Salinity is another problem, and there are other environmental issues like trees and water. All sorts of problems occur out there, and we have to account for that.

We have tried to address these issues through the Regional Solutions Program, but much remains to be done. Working in partnership with the people of rural and regional Australia, we have tried to address these challenges and create opportunities that support local ideas and actions and work to provide communities with tools to realise the future that they choose. The Regional Solutions Program is having a great impact on the lives of people in regional and remote Australia.

The program was established following the Regional Australia Summit in October 1999. Delegates at the summit wanted a program that was flexible and did not provide a ‘one size fits all’ model. They wanted a program that would provide them with the opportunity to partner with the federal government, not be a handout program where the government dictated how, when and where the money would be spent. We had that summit, we listened to the people who attended the summit and they have come up with many ideas.

Since the Regional Solutions Program was launched in October 2000, we have had 1,500 applications submitted. That is an indication that the program is filling a need in regional, rural and remote Australia for a flexible program aimed at helping communities help themselves. Up until a week ago, about $42 million had been committed to 446 projects. Additional to this funding is the amount that these projects have leveraged from other sources. We do not just hand out the money; the communities have to help themselves through either cash or in-kind contributions from local businesses or vol-
volunteers, from local government and from state or territory governments. In total, projects have leveraged approximately $78.33 million. For every dollar the federal government has provided through the Regional Solutions Program, another $1.84 is provided from elsewhere. This is an excellent investment ratio.

This is a great result for the communities involved and shows that the partnership approach is a very effective way of getting things onto the ground. It is also great for Australia as a whole: unless the areas of Australia outside the capital cities are able to grow and prosper, the whole of Australia will suffer. As I said earlier, Australia needs strong and prosperous regions. I do not think anyone wants to see Australia look like a doughnut, with everything on the outside and nothing in regional Australia.

Let me give some indication of projects that have been funded through the Regional Solutions Program. We have reconstructed the Childers backpackers hostel that was burned down two years ago. Funding of $412,000 has been approved for the Isis shire, but they have put in a considerable amount of money themselves to rebuild the hostel as a memorial tourist and information centre. The site is in the middle of the main street of Childers and the burned out shell has been a constant reminder of that terrible event to residents and tourists travelling through. Regional Solutions Program funding will be used to provide a much needed tourist information centre for Childers and a memorial to the 12 young people who died there. Funding for this very worthy project has also been provided by the Queensland government, the British government and the local government. This project will help the people of Childers to look towards a more positive future and will bring tourists to the district.

The second project I want to mention is one that I think has a lot going for it. It is the Back o’Bourke exhibition centre, funded for $550,000. This centre will act something like the Longreach Stockman’s Hall of Fame. It will showcase Australia’s history, literature, folklore and Indigenous culture. It will be built on a 14-hectare site next to the Darling River and will incorporate the latest in display technology. As part of this project, a comprehensive web site is being developed which will be a virtual university of the outback, providing access by Australians and people from overseas to all the information contained in the exhibition centre. The web site is already up and running. While it is not yet fully developed, it already contains a great deal of information.

The Back o’Bourke Outback Exhibition Centre is expected to attract up to 80,000 visitors per year to the region. This will equate to about $20 million in increased spending in the region. That is going to be a great boost to western and north-western New South Wales. People will not just go to see that particular centre; they will stay at the motel for an extra night and going out there will put a huge amount of money into regional Australia. That is particularly the case for retired people. In some centres, like Longreach, tourism is now pouring into the town and earning more money than primary industry.

The final project I want to talk about shows that even relatively small amounts of money can make a difference to a community. We have $40,400, which is a relatively small amount, to provide the Tiwi Land Council in the Northern Territory with funds to upgrade their water supply facilities. Residents of the out-stations on Melville Island had no access to a good quality, reliable water supply, especially during the dry season. Sometimes their only water was sourced from creeks. The council had already invested a considerable amount of its limited resources to undertake a water study and drill bores to tap a good water supply. Regional Solutions Program funding and a similar amount of funding provided by ATSIC was used to complete the project by allowing the council to purchase and install four solar pumps at bore heads, to lay piping to tanks and to provide tanks at the out-stations. This was a very practical use of Regional Solutions Program money. It provided a good, clean water supply, and that is essential to small, isolated communities such as Melville Island. This project has significantly im-
proved the health and lifestyles of Melville Island residents.

That is just a small picture of what the Regional Solutions Program is doing for remote areas, but there are many hundreds of projects being undertaken, and they are all providing some source of income to these smaller towns—projects such as Kronosaurus Korner, in Richmond, where people can come and stay for an extra night. They are all increasing the viability of these smaller rural towns.

The government’s initiative for regional, rural and remote Australia has helped non-metropolitan communities to regain some of the people they have lost because of technology changes, different farming methods and because of the advancement of farmers in being able to buy the property next door. These changes have meant there are fewer people out there, but these programs have tried to step in and fill that gap.

The government recognises that the economy moves at different paces, and that we owe a debt to those people out there. The government recognises that we are all Australians and we are trying to balance the economies of Sydney and Melbourne with the economies of regional and rural Australia.

Davis, Mr Peter

Senator BUCKLAND (South Australia) (1.09 p.m.)—I rise today to add my voice of condemnation to the voices of other politicians, church groups and refugee groups who have condemned the Port Lincoln mayor, Peter Davis, for saying that asylum seekers should be placed in one detention centre, at El Alamein in South Australia, and that those who misbehave should be shot.

Despite calls for his resignation, Councillor Davis stood by his comments in the press, and at the time he denied that he was a racist. I think we could debate that long and hard and come to one conclusion—that his comments were those of a racist. To put people in El Alamein and tell them, ‘Settle down, boys, you might be buried,’ can never be seen to be Australian, can never be seen to be decent and can never be seen to be something that anyone with a care for human beings would say.

Peter Davis said, ‘We’ll only have to shoot a few to get the message across.’ What an appalling thing for one person to say about another human being or group of human beings.

Senator O’Brien—That was the Nazis’ approach in the last world war.

Senator BUCKLAND—Indeed, it was the Nazi approach, and it frightens me that this sort of approach is now becoming more widespread. I will always stand up for the right of a person to express their views, but when those views are views that are not Australian, that are not decent and that are bordering on racist attitudes, or are indeed racist attitudes, then I will not support them and I will condemn such things.

Of course, we know that Davis’s comments have received covert support from the League of Rights. He said many interesting things. He said, ‘The do-gooders’—and I must say I will have to be put in that group of do-gooders—‘they are idealists, and the enemy of the ideal is the realist, and I am dealing with reality.’ That is what he told ABC Radio. How wrong he was to say such a thing. He is not dealing with reality. He has not got a sufficient grasp of the difficulties that we face with those people who are displaced and seeking asylum in this country and others.

We know, too, that Peter Davis supports Graeme Campbell, who has been quoted as having the intellectual ability to set up a rea-
reasonably coherent ideological basis for the anti-immigration, anti-multicultural views that he shares with Hanson, based on an ugly and narrow vision of Australian nationalism. I think Senator Boswell and I would share views on the dangers of the Hansonism factor. I always felt that Senator Boswell acted decently and properly to rid Australia of that scourge at the last election and, if for no other reason, I will always hold Senator Boswell in high esteem for that act.

When Graeme Campbell’s Australia First party was de-registered, leading to his switch to One Nation, that was in large part an attempt to fulfil Butler’s vision of a ‘grassroots movement’ around Campbell. Eric Butler is the founder of the League of Rights, Australia’s most important racist fringe group for many years. Butler gave $6,000 to help start the party and another $4,300 came from Peter Davis, who is also a League of Rights supporter. Graeme Campbell, former ALP MP for Kalgoorlie— and I am particularly proud of that act—in 1995 for his extreme views, not only shared Pauline Hanson’s general hostility to immigrants, Asians and Aboriginal Australians, but is basically an advocate of the old White Australia policy. He wrote in 1998:

Contrary to multicultural propaganda, ethnic and racial diversity retards economic growth, especially the kind originating from the public sector. It also tends to destabilise countries politically with significant economic consequences ... Australia must remain a predominantly white society as was the national will to Federation 1901.

Of course, we have moved on from then. Peter Davis recently said:

I do not support our absorption of people of many different colours, creeds, races or religions. It is a recipe for disaster.

Peter Davis is the mayor of Port Lincoln, a multicultural community. That multicultural community has contributed to its and South Australia’s economy through the exploding aquaculture industry. It is a community almost entirely made up of immigrants. Peter Davis has said that he believes that the region’s major growth opportunities are aquaculture, retirement living, and mining, yet he undermines the industries that are creating major growth in the region.

The real difficulty faced by those of us who live on the Eyre Peninsula is that we get tarred with this attitude that immigrants of a different race, colour or creed from ourselves are bad. It adds fuel to the fire that all those seeking asylum are people who have a criminal background, when they do not. They are innocent people looking for opportunities to exile themselves from the ills that are facing their own countries—famine, war, and persecution for ethnic or religious reasons.

Port Lincoln as a city cannot afford a person like Peter Davis making the comments that he does. It is probably one of the most beautiful cities in South Australia to visit, but it does not have the tourist pull because of its distance and isolation from a major centre such as Adelaide. So it does not need comments such as those of Peter Davis to give people another reason not to go there. His statement will certainly have an impact on those who would otherwise have made Port Lincoln one of their destinations for a holiday, as many older folk do now in retirement, travelling around Australia. They will bypass that part of the Eyre Peninsula. So Peter Davis has done no favours to anyone and he has sickened many.

In 1996 Peter Davis created controversy by describing the children of mixed race parents as mongrels. Joe Puglisi, who has over many years made a great contribution to the fishing and aquaculture industry in Port Lincoln, said, when this happened:

Today’s top Japanese newspaper, on the second page, had ‘Port Lincoln mayor calls agents “mongrels and bastards”’ ...

What is that attitude doing for the main industry in Port Lincoln, when we have people like this out there promoting racism and hatred, and the murder of innocent people? Joe Puglisi went on to say about the comments made by Davis:

I don’t like this, but I call on you at this moment, on behalf of a lot of people of Port Lincoln, to resign immediately.

He did call on him to resign; I can recall the incident very well. But Peter Davis did not resign. The only decent way for Peter Davis to end the controversy that now again surrounds Port Lincoln through him would be to
resign immediately—to call it a day and take his foolish, racist ideas to the little island where he lives and leave the rest of Australia to continue to show an attitude of decency and goodwill to people of all races, creeds and colours.

Whistleblowers: Heiner Case

Senator HARRIS (Queensland) (1.22 p.m.)—I rise to complete my speech on a matter of public interest concerning the Heiner affair which was partly delivered in this chamber on 14 May 2002 but was, unfortunately, curtailed because of time constraints. The Heiner affair remains unfinished business for Queensland, for the administration of justice and for the Senate. This chamber has to decide whether to support the establishment of a select committee to investigate the serious allegation of Mr Robert Greenwood QC that this chamber was deliberately misled in its handling of the Heiner affair by the Queensland government and the then named Criminal Justice Commission.

The allegation is a litmus test as to whether we as senators are concerned about the privileges of this chamber and its right to receive full and accurate information in matters under investigation going to issues of the administration of justice and the right to a fair trial, parliamentary probity, the impartiality of law enforcement bodies, proper record keeping, the lawful disbursement of public moneys and the care of children held in the care of the state. By any standard these are grave and serious matters. They have been strengthened in their substance and urgency since Mr Greenwood QC signed off on his submission on 9 May 2001—sadly, he died in October 2001—and by the landmark McCabe case and also by the recent revelations in the media and on the Internet that the shredding of the Heiner inquiry documents aided in covering up the crime of criminal paedophilia against a 14-year-old Indigenous female inmate at the John Oxley Youth Detention Centre during a supervised bush outing when she was pack-raped by four male inmates.

Evidence of the depth of abuse of children at the centre was deliberately withheld from the Senate by the Queensland government when the Heiner affair came before this chamber. In a climate where the Australian community and the world at large are shocked and outraged daily over how the churches have covered up abuse of children under their pastoral care, the Heiner affair has the capacity to bring ridicule on us if we apply different standards to ourselves, especially when the government sets benchmarks.

The ALP was outraged over the alleged conduct of the Governor-General, Dr Hollingworth, the then Archbishop of Brisbane, concerning his handling of children’s abuse allegations, and called for his resignation and for the matters to be properly investigated. What happens in the Heiner affair? Nothing. You sweep it under the carpet and pretend it has all been investigated when you know it has not. Put simply, you are looking after mates in the party before you are looking after children in care. Instead of justice being served, double standards are at work to protect mates.

In respect of the pack-rape incident, no one has ever been held to account. Concerns by certain staff that the pack-rape was covered up came before the Heiner inquiry in late 1989. Those records were shredded on the order of the Goss ALP government on 23 March 1990 so that the gathered evidence could not be used in legal action or against the careers of the staff at the centre. We also know that other child abuse has occurred. That came before the Heiner inquiry. The shredding of that evidence prevented the public, law enforcement bodies and our courts from finding out what was really going on behind those walls at the time. All the witnesses and their evidence enjoyed qualified privilege.

It is interesting to note that, when I attempted to table the Greenwood submission in this chamber, leave was refused by the ALP. It just so happens that Queensland ALP senator Mr Joe Ludwig has a former youth worker who was at the centre at the time of these abuses now working on his staff. Senator Ludwig is the son of Mr Bill Ludwig, the AWU person in Queensland—and that is the union to which most of the youth workers at the centre belonged and the union to which the then Queensland Premier
Wayne Goss was beholden for its leadership of the ALP. Like I said, it is called looking after your mates.

While disappointing, it is no real surprise that the ALP wants these matters hidden from public scrutiny, and obstructs every decent effort to have this matter properly investigated. It is no surprise that the ALP is quite prepared to have the privilege of this chamber abused just so the true odium and responsibility of this massive scandal is not brought home to roost on those who should be held to account for the wrongdoing and cover-up. It affects its mates. The Heiner affair makes a mockery of the ALP’s so-called commitment to openness in government and its alleged concern about the welfare of children held—

Senator Crowley—Mr Acting Deputy President, I raise a point of order. I cannot be sure that I have heard exactly what Senator Harris has said. I have a concern that what he said might have gone close to impugning bad faith to either a colleague or to people outside this place. Is it possible to have this contribution examined closely to see that, if there were a case of abuse, it would be brought to the Senate’s attention and be addressed at a later time?

The ACTING DEPUTY PRESIDENT (Senator Hogg)—On the point of order, there is a concern in the chair that Senator Harris is sailing very close to the wind on this issue. We will undertake to have a review made of the Hansard of Senator Harris’s speech and if there have been any transgressions we will address the issue then. For the moment I ask Senator Harris to proceed but to exercise some caution in some of the terms he is using.

Senator Boswell—On the point of order, I am no friend of One Nation, as many people know, but I listened carefully to what Senator Harris said and I do not think he made any allegations against any Labor Party person. He stated a fact, and facts are—

Senator Forshaw—There was an imputation.

Senator Boswell—I am not sure there was any imputation.

The ACTING DEPUTY PRESIDENT—I can assist you, Senator Boswell. On the point of order, I said nothing other than that the Hansard would be reviewed and that we would have Senator Harris continue with his remarks. That is the state of play at this stage. I thank you for your interest in the matter but we will do a review of the Hansard.

Senator HARRIS—The Heiner affair makes a mockery of the ALP’s so-called commitment to openness in government and its alleged concern about the welfare of children held in detention centres. Having said that, the fact that the Howard government has not been prepared, up to this date, to support One Nation and others to get to the truth lends it no credit either. This is a litmus test for both major Australian political parties, without forgetting the appalling incompetence of other Queensland members to get on top of this matter for years and Premier Beattie’s continuing acts in regard to the matter. Let me give credit to other senators in the chamber who want the Heiner affair properly resolved, especially the Australian Democrats.

Let me deal with the key challenges facing this chamber. The initial 1995 report, entitled The public interest revisited, described the shredding of these public records as an ‘exercise in poor judgment’. Mr Greenwood QC suggested that such a political description was simply untenable for the Senate to stand by if we, as law-makers, purport to respect the rule of law when such an act may breach the criminal law. Mr Greenwood QC, one of Australia’s leading criminal law barristers at the time, was not alone in having that view. High Court Justice Mr Ian Callinan, when representing whistleblower Mr Kevin Lindeberg on 7 August 1995, put a special submission before the Senate arguing that—based on the weight of the admissions put to the Senate by the CJC concerning the state of knowledge of the Goss cabinet at the time it took the decision to shred—it was open to conclude that a criminal act had occurred going to the destruction of evidence and a conspiracy to pervert the course of justice.
Mr Lindeberg now holds the relevant 1990 cabinet submissions. This chamber has not examined them; perhaps it is too afraid to do so because it puts the system on trial. The submissions clearly show that all members of the Goss cabinet knew that the Heiner inquiry documents were required for court but that a writ had not been served to commence court proceedings, which they knew would trigger the discovery rules of court of the Supreme Court of Queensland. With that state of knowledge, which was also shared by the Queensland Office of Crown Law, they deliberately shredded the documents to prevent their use in those anticipated proceedings. By any measure, that is unconscionable conduct on the part of the stronger force, namely the Crown, in that anticipated litigation contract. It involved false and misleading conduct by the Crown to obstruct all relevant parties’ rights—that is, the rights of Mr Peter Coyne, certain unions and, for that matter, the abused children who had a right to sue for breach of duty of care—to a fair trial.

This is what McCabe is all about. At the time, McCabe was described by a Melbourne journalist as ‘litigation Armageddon for the tobacco industry’. Legally qualified senators—like Senators Coonan, Alston, Brandis and Mason—should know the significance of these matters to the rule of law. Everyone knows, or should know, that in a society governed by the rule of law the protection of known evidence is a paramount value so that justice can be served. The Crown should be the last one destroying evidence, because it is supposed to be the model litigant. McCabe has swept the legal world in its ramifications for the tobacco companies but, in respect of its ramifications for the administration of justice in Queensland because of the Heiner affair, this whole area concerning the protection of evidence and respect for the rules of court represents ‘litigation Armageddon for the Crown in Queensland’. Unless this chamber has the decency and courage to face up to its responsibilities and set up a Senate select committee into the Lindeberg grievance, it will bring contempt to this chamber as well.

The Howard government and the ALP have now agreed to ratify Australia’s commitment to the International Criminal Court. I am against that ratification. In agreeing to it, the Australian government has assured the public that our system of justice is so good and fair that the concern over any Australian citizen being tried in such a court is remote, if not impossible.

Why should we believe that when the Senate has this major submission from the former head of the Commonwealth war crimes unit, Mr Robert F. Greenwood QC, setting out how we were misled on matters of grave criminality? The submission goes to covering up the crime of criminal paedophilia and a state government abusing its powers by deliberately destroying public records to cover up child abuse and to interfere with our constitutional right to a fair trial. The irony is that to ignore Mr Greenwood QC is to show to the world that we cannot cope with state tyranny wrapped up in the Heiner affair and that the International Criminal Court is necessary. And, equally, if we cannot clean up this type of serious state corruption in our own backyard, what right do we have to judge other nations who engage in state-authorised crime? Nothing undermines public confidence in the administration of justice more than the public seeing double standards being applied to the advantage of powerful government over its citizens. The public cannot cop unfairness and bullyboy tactics. The public want the law applied equally.

If this chamber decides to do nothing about the Lindeberg grievance, it will not diminish the gravity of the matters embodied in the Heiner affair one jot, but rather strengthen them. The Heiner affair principles are universal, eternal and fundamental to all properly functioning democracies. This Senate shall ignore them at its peril—certainly Mr Lindeberg and One Nation will not.

Middle East: Israeli-Palestinian Conflict

Senator FORSHAW (New South Wales)

Firstly, I congratulate my colleague Senator Buckland on his excellent speech earlier in this debate on matters of public interest. It is important that members of parliament stand up and oppose publicly
the sorts of outrageous claims that were made by the Mayor of Port Lincoln.

We have all heard the famous saying that the first casualty of war is truth. It is attributed to US Senator Hiram Johnson in a statement made in 1918, but it apparently has other authors as well. It is certainly true that the first casualty of war is truth in the ongoing crisis in the Middle East. This is not a declared war in the conventional sense, but it is still a war. Certainly, the terrorist organisations Hamas, Islamic Jihad, Hezbollah and Al-Aqsa Martyrs all believe and claim that they are fighting a war; they are fighting a jihad. It is a war against the state of Israel. It has one objective, and it is the same objective that has existed in this area amongst many groups and countries for over 50 years. That objective is simply the destruction of the Jewish state and its people.

It is somewhat unfashionable today to reflect on the history of the state of Israel or the history of Palestine. Time has moved on and history has become forgotten, irrelevant or, worse still, distorted—in the interests of promoting a cause. Israel has survived to become a strong, democratic country with a strong defence capability. It has survived direct wars with its neighbours on three occasions: 1948, 1967 and 1973. It survived the missile attacks by Iraq in 1991 during the Gulf War—a war in which Israel was never involved. Israel was requested to not retaliate, and did not, against those unprovoked attacks in order to ensure that the coalition of US led forces liberating Kuwait would not be undermined. Interestingly, at that time President Arafat, the leader of the Palestinian Authority, expressed his strong support for Saddam Hussein and his attacks upon Israel.

Israel’s very survival in the face of such formidable threats and almost overwhelming odds has led to a situation where today it is seen by many and characterised by many as the oppressors of another race of people—the Palestinians. Nothing could be further from the truth. The truth has indeed become the casualty of this unending tragic saga. The truth about the history of the Middle East conflicts, both past and present, has become the victim in a campaign to demonise Israel—a campaign that is widespread throughout many of the nations in the Middle East and nearby; a campaign that is certainly growing in Western countries. Time does not permit me today to traverse the detailed history of the Middle East and these conflicts, but it is worth remembering a few salient facts, if only to dispel some of the myths and falsehoods that are constantly perpetrated.

As I said earlier, Israel has had to fight for its very existence on three occasions: in 1948, 1967 and 1973. Most people know that Israel was created by a resolution of the United Nations in 1948—it came into existence legitimately by the rules of international law—yet that decision was never accepted by the surrounding Arab nations. They never accepted that there should be two separate independent states, one called Israel and the other one called Palestine. The fledgling state of Israel was invaded by its much larger Arab neighbours. It survived on its own without any foreign power or UN force coming to its aid at that time. Interestingly, no-one thought to ask the Palestinians what they thought about this war and the rejection by the Arab nations of an independent Palestinian state—something they had never had in centuries of foreign domination. None of the countries which set out to destroy Israel at its birth had any intention at that time—or for many years—of creating an independent state of Palestine.

The wars with Israel in 1967 and 1973 were not fought as liberation struggles in support of the rights of the Palestinians; they were fought with the single objective of destroying the Jewish state. If Israel had been defeated in those wars—and it came very close to defeat in 1948 and in 1973—there would be no state of Israel today. Nor would there be any state of Palestine. Gaza, the West Bank, the Golan and Israel would all be part of, or wholly encompassed by, the neighbouring countries of Egypt, Jordan and Syria. Equally, there would be no PLO and no President Yasser Arafat to claim leadership of a Palestinian state separate from its neighbours. The PLO became a viable organisation only after 1973 when Jordan finally gave up its claims to the West Bank.
and abandoned its dream of a Hashemite empire stretching to the Mediterranean Sea.

There has only ever been one country that has annexed Palestinian territory. It was not Israel; it was Jordan. Jordan annexed the West Bank in 1950 after capturing it in the 1948 war, and it continued to control that region, including Jerusalem, until its defeat in the 1973 war. Throughout this period Jews were prevented from worshipping at their most holy place, the western wall of the Temple Mount. They had no rights in occupied Jerusalem at that time. After 1973, when President Arafat and his PLO became a threat to Jordan, King Hussein went to war again. But this time it was a war against the Palestinian militants who were driven out of Jordan by the Jordanian military and went into exile in Lebanon. King Hussein recognised the threat to his own country from an organised, well-financed terrorist organisation. Yet today, as Israel has to confront this very same threat of organised terrorism, it is vilified, it is condemned, for endeavouring to protect its own citizens. There are many examples of how the truth is distorted to demonise Israel. There are too many to mention here, but let me mention some. Some of these allegations and propaganda are simply obscene.

A common refrain from Arafat is that he opposes terrorism and suicide bombing but has been unable to do anything about it because Israel has destroyed his security apparatus. The truth is that his organisations have been supporting the activities of terrorist groups for years. This happened all through the period when the Palestinian Authority had responsibility for certain security arrangements in areas under their control. It was President Arafat who released hundreds of militants and encouraged the intifada following the collapse of the Camp David talks in late 2000. There is clear evidence that his own organisation, Fatah, has been funding the Al-Aqsa Martyrs brigades and has been involved in the purchase of arms from Iran.

The respected German weekly news magazine *Die Zeit* recently published details of investigations which revealed that European Union and United Nations aid funds have been diverted to purchase arms and explosives for bomb making and to promote anti-Semitism in educational textbooks and other activities. Since the Oslo agreement of 1993, massive amounts of aid have flowed into the Palestinian Authority from Europe. The European contribution alone has been around €4 billion. Other countries and the UN have also poured in massive amounts of aid funds. The question is: why has there not been any significant improvement in the health and education systems in areas controlled by the Palestinian Authority? Arafat blames the Israelis and the occupation, but the truth is—as, indeed, has been recognised by good and honest people within Palestine and within the authority—that the authority is riddled with corruption. They have endeavoured to do something about it but their efforts have been frustrated.

Let me turn to another falsehood. During the Israeli occupation of Ramallah a few months ago, President Arafat claimed he could not stop the terrorists because he was confined to his headquarters. But the reason for the occupation was that President Arafat had failed to do anything in the first place to stop the terrorist attacks, to stop the suicide bombings, and particularly to arrest those responsible for the assassination of an Israeli cabinet minister, Minister Ze’evi, which was carried out by members of President Arafat’s own organisations. One of the more notable distortions of the truth in more recent times was the allegation that a massacre occurred in Jenin when the Israeli military moved into that city to root out the terrorists and destroy their apparatus.

Throughout the world, including Australia, claims were made in the media about atrocities and massacres in Jenin. We were told that thousands of innocent civilians had been massacred in all sorts of gruesome ways. Israeli forces were accused of war crimes. Allegations were made of mass graves and bodies being carted away in freezer trucks. They were not true. It was another outrageous attack on the state of Israel. Leading international human rights groups, such as Human Rights Watch, and aid workers in Jenin have publicly acknowledged that such claims are false. There is no doubt that much destruction took place in
parts of Jenin and innocent lives were lost. This was a military operation against terrorist organisations which use innocent civilians and their houses and refugee camps as covers for their activities. Recently, I read a speech made in this country where it was claimed that the Israeli army destroyed Bethlehem. That claim is also an outrageous lie. Let us not forget that it was the terrorists and the militants who occupied the Church of the Nativity. They invaded the sanctity of that church, not the Israeli army.

The Middle East crisis has led to an upsurge in anti-Semitism throughout many parts of the world. State controlled media in militant and even in some moderate Arab or Islamic nations constantly vilify Jews, accusing them of all sorts of atrocities. Hatred of Jews is constantly being whipped up by fanatical religious zealots. One of the most bizarre claims that is widely propagated is that the Jews were responsible for the 11 September attack on New York. There is never any logic to such outrageous allegations. I constantly receive email messages from some pro-Palestinian groups and supporters telling me that the USA is really controlled by wealthy New York Jews. What is particularly disturbing, however, is accusations that the Israelis are equivalent to Nazis, engaging in genocide against a defenceless Palestinian people, or that they are equivalent to the apartheid regime of South Africa, wanting to turn Palestine into a collection of Bantustans.

It appears that the victims of the greatest propaganda lies and genocide in human history are being demonised with the language of their own suffering—the Holocaust. There is some purpose for governments in the Middle East particularly to allow and indeed encourage such anti-Semitism, such hatred. Firstly, it is traditional. More importantly, it is a means of diverting attention from the real problems that people in these countries face. Many of them live in deprived economic and social conditions under autocratic, despotic regimes, with few, if any, human rights. Dissent is not tolerated. It is easy for regimes to blame the common despised enemy—Israel and the Jews—rather than do something about solving the problems in their own country. In contrast, Israel is a functioning democracy. It has its faults, as many of its own citizens and politicians continue to point out. A good Jewish friend of mine recently said that democracies never go to war against each other. That is true. That is what was at the heart of President Bush’s statement yesterday.

Peace can be achieved in the Middle East, but it requires fundamental reform of the Palestinian Authority. It also requires the moderate Arab states to take real steps to force the Palestinians to end the suicide attacks and return to the negotiating table. It cannot be left simply to the USA to broker a settlement. Israel has always wanted peace with its neighbours. It achieved that with Egypt and Jordan when their leaders took the brave step to end war and embrace peace. They can and will achieve it with all the other countries, including Palestine. The challenge rests with all those countries to embrace that cause.

Science: Stem Cell Research

Senator CROWLEY (South Australia) (1.51 p.m.)—I rise to make a few comments about very important legislation that will come into this place in a later session. As I am about to retire, I will not be able to contribute to it, but I have spent a lot of time thinking about it. It is the stem cell legislation. Stem cell research differs from the IVF program, at least in the minds of many, because the IVF program clearly had an intention of a successful pregnancy as its final outcome. That is the stem cell legislation. Stem cell research differs from the IVF program, at least in the minds of many, because the IVF program clearly had an intention of a successful pregnancy as its final outcome. That is not the case with stem cell research. In fact, many people argue, appropriately, that the outcome would be to look for ways in which we could produce medical cures. That is a very noble goal, but the step between stem cell research and medical cures is a bigger leap and more remote than the IVF program and pregnancy.

I think it is critical that the providers of the eggs and sperm, the gametes—the parents of those embryos—should be the ones to make the decision about what happens to those embryos. The presumption should certainly not be that if they are in the laboratory they belong therefore to the scientists. They do not belong to parents; they do not belong to scientists; they are not owned. Like
children, they are under parental responsibility. I am strongly of the view that the donors of the gametes should be the decision makers.

I do not believe some kind of informed consent, whatever it was, at the time when originally the research to go ahead with forming the embryos was done, is sufficient. If the stem cell research legislation succeeds, I believe it is critical that every one of those parents, if I can call them parents, of the embryos must be contacted again and asked what they want as the outcome for their embryos. It should not be presumed that, if they said yes three months ago, three years ago or 10 years ago, that informed consent still stands. The question was never asked about stem cell research. I believe it is critically important that it is asked now and that the parents, the providers of the gametes, have the option to say, ‘Yes, you may,’ or ‘No, I do not want that done to the embryos that are our responsibility.’ That is an absolutely critical point. The big argument is about what should be done, not who is responsible. It is absolutely critical that we have a look at who is responsible. I am pleased to place on the record my very strong belief that the parents of the egg and sperm have the responsibility for them and, should the stem cell research legislation be successful, ought to be asked again what they want for their embryos.

It is absolutely critical that we have a proper watchdog or people who can police and supervise the legislation in the laboratories and who know what to look for. Any number of times we have been told that scientists would not do that. Ho, ho, scientists do do that. This is not a ‘kick scientists day’. As I have said in this place often, I very much support the great medical research and other scientific research done by scientists, but there are always the mavericks, the people who push to the limits.

We have been told in the past with regard to the IVF program that animal and human gametes would never be put together. It is a fact that they were. If you do not have people who know what to look for, know how to look for it and know how to adequately examine what is going on in a laboratory then it may continue to happen. I believe it is also very important to make sure that the watchdog or policing authority has sufficient powers. Not only must they know what is going on but they must have sufficient powers to adequately pursue the examination and the consequences of what they find in any laboratory.

I believe scientists would be enormously assisted by knowing that this parliament sets very clear limits on what can be done, over what time and to what extent. I think scientists are asking for clear guidelines and that most would prefer that this parliament did not say no. The parliament has yet to make up its mind on this. It is important to understand that scientists will be satisfied and will appreciate clear guidelines on what they may do. It is also important that parliament makes it clear that it will watch scientists very closely to see that they do what the legislation may subsequently permit them to do. If it does not permit them to do anything, we might also need to keep a close eye on that. If the legislation proceeds, I believe it will be critical to have a very significant sunset clause that states that the minute it is clear and beyond dispute that stem cell research on embryonic stem cells is of no benefit compared to research on adult stem cells or umbilical stem cells or any other kind of cells then the permission under this legislation is pulled, should permission ever be given.

Many people have concerns in this area that are different from those related to the IVF program. I think there is community support of scientific research of this sort if it produces cures for some of the major diseases confronting people at the moment. That is the sentiment in the community. I will be interested to know whether this parliament, in debating this legislation, will reflect community sentiment. It is interesting to note in relation to the euthanasia debate that about 80 per cent of the community supported euthanasia of a sort, but about 80 per cent of the parliament did not do so and the legislation was negated. If the parliament ever wants to reflect on how it reflects the views of the community, I point out that it certainly did not in that debate. It may reflect the views of the community in this debate. It
is an important question and I will watch very closely.

I am strongly of the view that we should never allow the making of embryos merely for research. The decision about the embryos ought to be made by the donors of the gametes, the parents of those embryos, not the scientists or a laboratory that has them. There should be no presumption that, because somebody signed an informed consent three months, three years or 10 years ago, that gives an automatic guarantee that if the law is successful the scientists can proceed. It is absolutely critical that parents are asked and that parents are respected if they say, ‘No. Even though the law allows it, you may not use my embryos.’ I think that would be an entirely proper, morally responsible and ethical thing to do. If the legislation is successful, you need to have very vigorous policing powers—that is, people who know what to look for, with the authority to go into the laboratories and check them. I think we need a significant sunset clause. The minute it is clear that there is no benefit to science from using embryonic stem cells, then the legislation and approval, if the legislation passes, should not be allowed to continue. It is a terribly important bill. I will be interested to see the outcome. I will watch closely. I only regret that I will not be able to make a contribution at that time.

QUESTIONS WITHOUT NOTICE

Defence: Contracts

Senator LUNDY (2.00 p.m.)—My question is to the Minister for Defence, Senator Hill. Can the minister confirm that the government signed up to a $25 million contract in 1997 to introduce new personnel software, known as PMKeyS, in Defence with a delivery date of 2000? Is the minister aware that the government will now spend more that $70 million on the PMKeyS contract, which will deliver only some of the elements originally contracted more than three years late? What will be the full cost of this project when completed, including all indirect and associated costs? Aren’t taxpayers again having to foot the bill for the government’s gross mismanagement of a Defence contract?

Senator HILL—That is a very good question. I will take some advice and get a well-informed response for the honourable senator and get it back to her as quickly as possible.

Senator LUNDY—Madam President, I ask a supplementary question. The government is very keen to blame industry for these bungled Defence projects. We know this by virtue of some of the responses previously. Has any action been taken by the government to penalise the company responsible for PMKeyS? Did the contract have penalty clauses for any failure to deliver on time? Why did alarm bells not ring three or four years ago when the project was failing to meet deadlines and why did the government not act then to protect taxpayers’ dollars?

Senator HILL—That is the problem with writing out the supplementaries in advance, isn’t it? I did not think I actually blamed industry in my answer a moment or two ago. I was honest and frank and acknowledged that I knew very little about this particular contract. You could have asked me about a hundred other contracts and I would have given a more authoritative answer. Let us get the full facts and we will make a determination on that basis, if there is blame to be attached to any party whether it is to Defence or to industry. From that we will determine the best way forward.

Workplace Relations: Women

Senator PAYNE (2.02 p.m.)—My question is to the Minister for Family and Community Services, Senator Vanstone. Will the minister inform the Senate of how recent demands by the trade union movement threaten to lower the living standards of Australian women?

Senator VANSTONE—I thank Senator Payne for her question. All senators will be aware that the union movement currently plans to grab $500 a year from non-union workers. This measure will particularly adversely impact more on women than on men. Almost 80 per cent of women choose not to join a union. Women on average, as we all know, for historical reasons earn less than men do and are therefore less able to pay. Of employed women, 47.5 per cent work part
time. That means they get part-time wages. Are they going to be slugged this outrageous levy—a $500 flat fee for services they did not want? More women hold multiple jobs. Will they be slugged twice—once for each workplace that they work in, once for each different union?

Women, of course we know, do not traditionally work in the high-income areas. Take nurses, for example: 95 per cent of nurses are women. That is no surprise. Does anybody imagine that nurses around Australia are highly paid? Gee, I do not see anybody putting up their hand, yet members opposite will be happy for them to be slugged a $500 flat fee for services they did not want. Seventy per cent of people in the health sector choose not to join a union. Shifting to another industry, 77 per cent of checkout operators and cashiers are women. It does not matter whether they are selling new Doc Martens, for the interest of the Democrats in this matter, or Tiffany diamond rings, if they are behind the counter they are not well paid and they cannot afford the Doc Martens or the Tiffany rings and they get only $500 a week. Is it fair that they would be slugged $500—more than their net weekly wages—for services they did not want? No is the answer. Eighty-two per cent of primary school teachers are women. Over half of them do not want to join a union, yet they could be forced to pay $500 for services they did not want.

What happens when the Australian Labor Party is faced with a choice of protecting low-income women or their union mates? There is not even a contest. Silence from the women opposite. Protect your union mates or you will lose your endorsement. You are going to go doggo on this one. Let the women fend for themselves, look after your union mates. It is just a disgrace. I wonder where senators opposite actually get off. They are complaining about health care card holders having to pay $1 more on a prescription for access to the best, newest and most expensive medicines in the world, but they do not mind ripping $500 off for a load of lousy advice you never wanted because it goes to the union mates.

Coming to Senator Crowley and her comments during the election, there was a complaint about the GST on tampons—$5 a year. That was a national issue—$5 a year. Five hundred a year into a union and you people do not give a damn. You are a disgrace. I wonder whether there will be any leadership shown by the Democrats on this issue and what Senator Stott-Despoja will have to say. Actually, I do not see either of the leaders here—neither of them is here at the moment. But the bottom line is that, for the average woman on low-income wages, $500 is a hell of a lot of money. No-one over there gives a damn because they want to look after their union mates.

**Defence Signals Directorate**

**Senator CHRIS EVANS** (2.07 p.m.)—For those senators who can recover their hearing after that, my question is directed to the Minister for Defence. Does the minister recall referring journalists to the Inspector-General of Intelligence and Security in response to questions asked of him about the access and use by the government of communications illegally reported by DSD in relation to the *Tampa*? Don’t the comments by the inspector-general reported today show that he did not thoroughly investigate those aspects of the issue? Can the minister advise which minister or ministerial staff had access to the information reported by DSD in breach of the guidelines and when those persons received that information? Will the minister now task the inspector-general to investigate who in government had access to that information?

**Senator HILL**—What Senator Evans is overlooking of course is that Mr Blick conducted a full and independent inquiry into the allegations and found that they were not well based. I remind Senator Evans in particular that Mr Blick found there was no evidence that any minister or minister’s office directed or requested DSD to conduct any collection activity. He also found DSD did not target or report communications of the Maritime Union of Australia or the International Transport Federation, DSD did not provide raw intelligence product to the government or to anyone outside DSD other than Mr Blick’s office and, therefore, the government could not have used transcripts to formulate a political response to the crisis. In
other words, this matter was exhaustively examined by the independent umpire who found that all the political claims that were alleged by the Labor Party were to be completely unfounded.

Senator CHRIS EVANS—I ask a supplementary question, Madam President. I ask the minister to respond to the question which went to the fact that the inspector-general did not investigate whether that information was passed on to ministers or ministerial staff. He did find breaches in regard to the privacy of Australian citizens. He did find that DSD acted in breach of the instructions given to them, but the inspector-general, Mr Blick, made it clear that he made no attempt to investigate how the government used that information and to whom it was passed. Again I ask: will the minister task the inspector-general to investigate who in government had access to this information which was gathered illegally and contrary to the DSD’s governing rules?

Senator HILL—I do not know how many times one has to repeat the same thing, Madam President. If it was found that the DSD did not provide raw intelligence product to the government, then logically it follows that the government could not have used that material for any purpose.

Workplace Relations: Rural and Regional Australia

Senator CRANE (2.10 p.m.)—My question is to the Minister for Forestry and Conservation, Senator Ian Macdonald. Will the minister detail how the Howard government industrial relations policies provide for a fairer workplace in rural and regional areas? Minister, I am not going to ask for any surprises today because I do not expect any. However, is the minister aware of any alternative policy approaches that may impact on rural and regional communities?

Senator IAN MACDONALD—I particularly appreciate that question from Senator Crane—perhaps his last question in this Senate—and it is good coming from him because he has shown and demonstrated such a commitment to fair industrial relations over the time he has been here and also a very strong commitment to rural and regional Australia. Senator Crane will know that rural and regional people enjoy their freedom; it is in fact a cornerstone of country life. Freedom of association is also a cornerstone of the Liberal Party that we all represent. The Howard government wants workers to have the right to choose. It is seen as an employee’s right in modern society and the evidence is that workers want that right too. Union membership has been declining over the years in country Australia, as workers understand that union services are simply becoming irrelevant. That freer employment regime has resulted in one million new jobs since the Howard government came to office, and that compares with Labor’s term of office when one million workers were unemployed.

More people are working now but fewer of them are in unions. The union fat cats and their puppets over the road have a solution for that and it is all about holding out their hands for $500 from every worker who wants a job. The Federal Court’s union tax means that every employee in Australia will be charged $500 by the unions for a service they never requested and very often do not want. Country people like value for money, but there is no value in paying $500 to a union group to get some work. It is more insidious in the country than it is in the cities because in country areas union members get fewer services than they would get in the city; although they get relatively few there. This is an absolute racket; it is like someone stealing your watch to tell you the time.

What the unions are doing to country workers reminds me of an old gangster movie I saw when the thugs come to the shopkeeper’s door asking for protection money. Similarly, what we have here is Australian unions making you an offer you simply cannot refuse—$500 just to go to work. It is wrong to call it a union tax because we all know that the unions are bagmen for the Labor Party, and that is why many country Australians do not want to join a union. They do not want to contribute to the Australian Labor Party. It should be known as a Labor Party tax rather than a union tax.

I have to congratulate the Labor Party for something. Who would have ever thought an
opposition group could introduce a tax from opposition? The Labor Party have certainly done it here through the unions. They have introduced this $500 tax for the unions and it will simply be passed on to the Labor Party. That sort of money will even outbid Centenary House in contributions to the Labor Party.

Members opposite will have the opportunity to give that $500 back to country families when the legislation is debated in this chamber. The money does not belong to the unions; it belongs to the workers and their families. It is not something that the unions are entitled to and they should give it back and get their goons in the union movement to go out and earn their money rather than putting this tax on workers. (Time expired)

Health Services: Regional Australia

Senator GIBBS (2.15 p.m.)—My question is directed to Senator Patterson, the Minister for Health and Ageing.

Senator Cook interjecting—

The PRESIDENT—Senator Cook, withdraw that comment, please.

Senator Cook—I withdraw it.

Senator GIBBS—Is the minister aware of the problems caused by serious GP shortages in south-east Queensland? Given the chronic shortage of GPs in cities surrounding Brisbane, will the ‘More doctors for outer metropolitan areas’ measure announced in the May budget provide extra doctors for these cities? Are Ipswich, Caboolture and Redcliffe included in the definition of ‘outer urban’? If not, why not? If they are, is the minister confident that the number of new doctors provided Australia wide under the measure is enough to cover GP shortages in the regions surrounding all of our capital cities?

Senator PATTERSON—Senator Gibbs asks me: is it enough? Let me say: it is more than Labor ever did. She can ask whether it is enough all she likes, but in the last election, we promised that we would spend $80 million on encouraging doctors to go into outer metropolitan areas. This was never done under Labor. Slightly further out, in the rural areas, we have an enormous number of programs—I think it is 14—to encourage doctors into such areas. Senator Gibbs will understand that, if you do not have doctors in the near rural areas, that puts pressure on the outer metropolitan areas; and, of course, if they are not in the outer metropolitan areas, it puts pressure on areas like Petrie. Senator Gibbs mentions specific areas, such as Ipswich—I did listen to her speech during the lunchtime break—and East Ipswich comes within the area for the rolling out of ‘More doctors for outer metropolitan areas’ this year. Of course, there are some areas which will be looked at in connection with the area of need for the following year.

Unlike Labor—who neglected the issue of doctors in outer metropolitan areas, who ne-
neglected the issue of doctors in rural areas, who neglected some of the measures that can be taken—we have done something about them. Last year we saw a four per cent increase in doctors in rural areas—the first time it has turned around ever; the first time we have seen an increase in the number of doctors. Instead of eight per cent of doctors from rural areas in training, we now have 25 per cent of doctors from rural areas in training. We hope that all these measures will increase the number of doctors in rural areas and increase the number of doctors in outer metropolitan areas.

Senator GIBBS—Madam President, I ask a supplementary question. I am pleased to hear that the measure includes East Ipswich, but that is only a small fraction of Ipswich. Is the minister aware that Medicare billing figures in Ipswich show that 105.4 full-time equivalent doctors are doing the work of 137.5 average full-time equivalent doctors? Is the minister aware of figures from a survey conducted by the Ipswich and West Moreton Division of General Practice showing that a quarter of the region’s GPs plan to be doing something other than general practice in five years and that more than half of the doctors are over 45 years old? Minister, what is this government doing to help sick people in Ipswich?

Senator PATTERSON—What we are doing is helping sick people around Australia. We have a formula that deals with ensuring we get a fair spread of doctors throughout outer metropolitan and regional areas. Senator Gibbs may not know that we have also rolled out the first stage of a program—and I was talking to somebody involved in that yesterday—in south-eastern Queensland for after-hours service. When doctors are asked what the most difficult issue for them is, the response—particularly from female doctors in outer metropolitan and rural areas—is that they are called out at night. We now have a program for an after-hours service which enables doctors, particularly those who prefer to work in the evening—

Senator Gibbs—Because they want to work part-time; women doctors want to work part-time!

Senator PATTERSON—Madam President, Senator Gibbs has asked me a question. Maybe she could listen to what I have to say rather than shouting at me. We have this after-hours service to try and relieve pressure on doctors; it will ensure not only that people have access to services after hours but also that doctors are not put under undue pressure—as, when we do research, that is one of the major factors which affects doctors.

(Time expired)

Aviation: Sydney Airport Corporation Ltd Sale

Senator GREIG (2.21 p.m.)—My question is directed to Senator Ian Macdonald, the Minister representing the Minister for Transport and Regional Services. It relates to the sale of Sydney Airport, which we learnt of yesterday. With the sale of Sydney Airport to the Southern Cross consortium for some $5.6 billion, the new owners have stated that they are keen to see the use of new technologies to increase the volume and frequency of flights in and out of Sydney Airport by using larger and quieter aircraft. I ask the minister: how can the new airport owners insist that the airline companies supply larger and quieter planes? Can the government or the minister assure the Senate that, if that cannot be done, there will not be any negative alteration to curfew hours to the detriment of Sydney residents?

Senator IAN MACDONALD—Madam President, as Senator Abetz says, the only noise these days is coming out of the Democrats. Noise limits are of course something for the government to attend to and they are something that Mr Anderson has been very conscious of for some time. A lot of government action has been taken in that regard. I understand Mr Anderson yesterday indicated that there would be no change to curfews and no change to the regulatory arrangements that have heretofore applied. What the new owners might do with the airport, within the bounds of government regulation and policy, is a matter for the new commercial owners. They may be able, I suspect, to take certain actions that would encourage a certain type of activity by the airlines, but that would be a matter for the new owners and the airlines to work out in a commercial way, within, as I
say, the bounds of whatever regulations are applicable from a government level. Senator, I will refer that to Mr Anderson to see if there is anything he would like to add on the issue you raise.

The sale of Sydney airport is obviously a very important part of government policy. The government—I might say the obvious—are delighted at the amount being offered. It is money that the government will be able to use on behalf of the Australian taxpayer to pay off some of the debt that the Labor Party racked up during the years they were in government. Had the Labor Party been selling the airport, they would have been using the money on the current year’s budget, just to make the current year’s budget meet its goals. In our case, it will be returned to a capital debt run up by the Labor Party and it will mean that Australian taxpayers and residents will get the benefit of the saving in interest, which we estimate will be very substantial. About $250 million a year is what the Australian taxpayers will save on the interest that was heretofore being paid by the Australian government—that is, the Australian taxpayers—to lenders to pay off the debt that the Labor Party had racked up over those years.

It is a good operation. We anticipate that the operators will operate the airport very efficiently and will implement improvements. Sydney airport is not too bad at the moment, but I am sure the new owners will be aiming at world-class standards at the airport. This is all part of the new, modern Australia that the government are attempting to encourage. I repeat: it has great benefits for the Australian taxpayers in that we are able to lessen the interest burden once we put the sale price into paying off the debt that the Labor Party had racked up during the years they were in charge.

Senator GREIG—Madam President, I thank the minister for his answer but I ask a supplementary question. Of the $5.6 billion being raised, Minister, you have said that some of that would be used to retire debt, but I ask: has the government given any serious consideration to using some or most of that money on transport issues—transport infrastructure—whether that be upgrading rail or assisting the states with public transport facilities?

Senator IAN MACDONALD—Senator Greig, I appreciate the interest you have in matters of public transport. We will be using about $4.2 billion of that money to pay off government debt; the other part will go to repaying some debt that the Sydney Airport Corporation had itself. So $4.2 billion will go. It will mean that we have an extra $250-odd million annually from interest savings to use on things like the issues you raise. The sorts of transport you talk about are principally matters for the state governments. I agree with you that the state governments do not put enough money into those, and they should do more, but the Commonwealth government understand as well that they have to play a part. We are always looking at ways that we can do that, within the bounds of budgetary responsibility. The fact that we have another $250-odd million a year to play with, so to speak, as a result of paying off this capital debt, will mean that we will be able to continue looking at better ways of doing that. (Time expired)

Defence: Contracts

Senator COONEY (2.27 p.m.)—Madam President, thank you for calling on me for this question. I would like to express—Opposition senators interjecting—Senator COONEY—If you would not mind, please! I would like to express my respect and admiration for you in the way you have filled the office while I have been here. May I say you have graced the office, Madam President.

I ask a question of Senator Hill, the Minister for Defence. And this is done in the context of what Senator Macdonald was saying before about the unions, when he was saying that the unions were causing a lot of the loss in the country and talking about that decision made by the Federal Court—which should be given respect, Senator Macdonald. But I put to you, Senator Hill, that you have caused some problems with work in Bendigo. This relates to the contract for armoured personnel carriers for the Australian Army, the contract with ADI to supply Bushmaster vehicles. Do you recall telling a
deputation at Bendigo on 21 March this year that if the contract negotiations between ADI and the department were not resolved in two months, you would recommend that the contract be terminated or legal proceedings be initiated against the ADI? What has happened about that, Minister? Why haven’t you done something? That is what we really want to know.

Opposition senators interjecting—

Senator COONEY—Be quiet! What about the workers at Bendigo?

Opposition senators—Hear, hear!

Senator HILL—I thank Senator Cooney for his question—a Dorothy Dixier—and say that, yes, it is true, I have fixed the problem. It has been a very difficult problem, and I would like to thank all of those in Bendigo for their cooperation—

Senator Jacinta Collins—Does that include the union?

Senator HILL—including the union. The union came to see me and they seemed to be very decent people, concerned for the welfare of the workers. They behaved in a civil way, which shows what benefits can flow from that. I hope it is not going to spoil a good day for me to learn that there is compulsory unionism in that plant! It has been a difficult issue, but we believe we have found a way forward so a contract can be completed that will enable this unique vehicle to be made in Australia, to provide for the Australian Army the capability they have been seeking for some years and to provide jobs for the workers in Bendigo so they can help to contribute to the wealth of this country and the economic success of the Howard government. It is a good story all round, Senator Cooney.

Senator Chris Evans—Give us the detail.

Senator HILL—I will give you the details later. I would like to take this opportunity, Madam President, to say how much the senators on this side will miss Senator Cooney, one of the really decent senators within the ALP. There have not been many over the years, I have to say in all frankness. I know he has done his best for many years on his side of the chamber to lift the standard of the contributions of his colleagues—sadly, with little success. Senator Cooney, through the Scrutiny of Bills Committee, the Senate Legal and Constitutional Committee and in so many other ways, has basically fought for the underdog. He has fought for the underdog again today and has got his reward. On behalf of the coalition, Senator Cooney, I would like to acknowledge with appreciation your contribution to this Senate and to public life.

Government senators—Hear, hear!

Senator COONEY—Madam President, I have a supplementary question which, when I read it, having got that answer, is really not in point because the minister has already answered it. I am glad—

Senator Schacht—Ask them how many they are going to produce.

Senator COONEY—I could do that, of course. I am glad they are going to go ahead with this, and I am glad of the minister’s generous tributes to the various people who have had something to do with this. The president of the Manufacturing Workers Union in Victoria, John Speight, was no doubt a great help in this case. Mr Speight would be more than glad that this has happened, so thank you.

Senator HILL—All I can say in reply is that in all these years Senator Cooney failed to learn how to ask a supplementary question!

Aviation: Qantas

Senator BROWN (2.33 p.m.)—My question is to Senator Macdonald, the Minister representing the Minister for Transport and Regional Services. It is about our cardboard box airline, Qantas, currently enjoying a wing lift of 10 per cent in its profits to a forecast $605 million profit this year. I ask the minister: is that because beer prices or prices in general have gone up in steerage by 25 per cent since the collapse of Ansett, is it because cardboard boxes have replaced hot meals in Qantas flights at dinner time, or is it because the loyal workers of Qantas have been asked to pull in their belts while the profits bloat out? Will the minister or the government make representations to Qantas to return to its former excellent service and to do the right thing by its employees?
Senator IAN MACDONALD—I do not drink on the plane, so I do not know about the cost of beer on planes. I do often travel in steerage, Senator Brown, but I have not noticed just what the prices are. I know that one of the things that will be worrying the workers is this grab for $500 by the unions and by the Labor Party. That will be of very considerable significance to them. I would urge your support to make sure that that $500 grab for the Labor Party is not allowed to take effect. Senator, I cannot quite understand the purpose of your question. You know that Qantas is a private company now.

Senator Abetz—The Labor Party sold it.

Senator IAN MACDONALD—The Labor Party sold it, that is quite right; they privatised it—but they put the proceeds straight into the current account and did not pay off any debt with it. It is a private company. Qantas do a magnificent job. They are a uniquely Australian airline. They had their genesis up in north-west Queensland as the Queensland and Northern Territory Aerial Service. They do a good job. It is important to bear in mind what happened to Ansett. Ansett used to give a very good service, but obviously Ansett gave a service that they were not paying for. They were paying, so the reports go, their management and staff far more than Qantas, and far more than other airlines around the world, paid their staff. You see what has happened to Ansett: because of bad management, perhaps because of the way they treated their staff, because of their management and because of some of their services, they are no longer with us and regrettably we have only one airline. You asked whether the government would be making representations to Qantas. I do not think we would be doing that on the matters you raised. As you know better than I, Senator Brown, you are at liberty to do that. If you have an approach then I am sure Qantas management would be interested in what you or anyone else have to say—particularly in your case, as a very regular user of the airline.

Taxation: Mass Marketed Schemes

Senator LUDWIG (2.37 p.m.)—My question is to Senator Coonan, the Assistant Treasurer and Minister for Revenue. Can the minister clearly confirm for the Senate: did she or did she not undertake to request an extension from the Commissioner of Taxation on the deadline for the ATO’s settlement offer on mass marketed tax schemes when she met with the so-called investors in those schemes at the Royal Perth Yacht Club on 25 May? When the minister spoke to the commissioner later that day, did she or did she not request such an extension from him?

Senator COONAN—Thank you, Senator Ludwig, for the question. As I said the other day, unlike the senators opposite, it is not unusual for senators on this side of the chamber to actually be working on behalf of their constituents and bringing to the attention of relevant authorities the concerns of constituents and taxpayers—and to be even taking the trouble of doing that on a Saturday.

Senator George Campbell—Was it on a Saturday?

Senator COONAN—Yes, Senator Campbell, on a Saturday.

Opposition senators interjecting—

The PRESIDENT—Order! There are too many senators on my left making too much noise.

Senator George Campbell—There wouldn’t be too much work—

The PRESIDENT—Order! Senator George Campbell.

Senator COONAN—Unlike those in the Labor Party, I—and certainly everyone else on this side of the chamber—do not stick to office hours. We actually try to get the job done. It may seem novel to the ALP that, as well as talking to people, we on the government side of the chamber are willing to listen, to act and to bring the concerns of people to the attention of those who can assist. One of my fundamental commitments to the electorate is a willingness to listen and consult. People do not need a valid union ticket to get through my door. Unlike those in the ALP, we in the coalition do not simply wander off to the relevant union to be told what to think and how to do our job. The issue of mass marketed tax schemes, as I have said on several occasions in this chamber, is a major one for the community that got in-
volved with them. While there are no doubt some promoters who did the wrong thing in terms of the mass marketed schemes, there were some people who were very naive and who were in many ways brought into the tax schemes by—

Senator Ludwig—Madam President, on a point of order: the question was very specific in that it asked when did the minister speak to the commissioner and did she or did she not request an extension of time from the commissioner. We have heard from the minister; perhaps she has failed to listen to the question. The point is that she is not answering the question. She has not turned her answer to when at all.

The PRESIDENT—There is no point of order.

Senator COONAN—Thank you for the question again and for a spurious point of order, Senator Ludwig. I know that those on the other side of the chamber consider people who got involved in the mass marketed schemes to be tax minimisers. They are not all in that category. There are some who have legitimate concerns that need to be ventilated, and I was willing to listen to them. I think that reflects credit on this side of the chamber, because we are willing to take our ministerial responsibilities seriously and to actually listen to the people on the ground instead of worrying only about what the big end of town says. You lot over there are always talking about the big end of town, and here I am on a Saturday, in what might be my own time, helping—

Senator Cook—Why didn’t you go to Kalgoorlie?

Senator Robert Ray—I think we should give you a bonus!

The PRESIDENT—Order! The level of interjection is too high.

Senator COONAN—I was saying that there is a certain incongruity between the accusations that are often made by those on the other side of the chamber that those on this side of the chamber are only ever concerned with the big end of town and this concrete example of a minister being concerned about people who got involved in a situation that often they did not understand and who needed some assistance to understand their obligations. I am happy to say that the take-up rate of the settlement offer in this matter is now over 80 per cent, with over 46,000 investors who were caught up in the mass marketed tax schemes having now settled. In answer to Senator Ludwig, it is on the public record that I rang the commissioner on a Saturday. He had at that stage already decided to extend the offer. (Time expired)

Honourable senators interjecting—

The PRESIDENT—Order! The conversation going on across the chamber is disorderly.

Senator LUDWIG—Madam President, I ask a supplementary question. I thank the minister for the answer. If, as the minister has claimed, the commissioner made his decision to extend the deadline before the 25 May telephone call—as the minister has only now finally told us—but only announced it on 27 May, after the telephone call, could the minister inform us precisely when the commissioner made his decision and how that decision was documented?

Senator COONAN—Thank you for the supplementary question, Senator Ludwig. I must say that I think I am pretty much across the issues of mass marketed tax schemes, but I do not think I am quite into the mind of the commissioner on this matter. The commissioner is an independent statutory officer, as you well know, and when he made up his mind to extend the offer, I do not know. You had an opportunity to ask him that in Senate estimates. If you did not ask him then, that is your problem. The commissioner can no doubt tell you when he made up his mind to extend the offer, I do not know. You had an opportunity to ask him that in Senate estimates. If you did not ask him then, that is your problem. The commissioner can no doubt tell you when he made up his mind to extend the offer, I do not know. I think it may have been—and I do not know but I am prepared to speculate—when he was successful on the second occasion in the Federal Court when the Vincent case was brought down in his favour. (Time expired)

Howard Government: Sports Policy

Senator BRANDIS (2.44 p.m.)—My question without notice is directed to the
Senator Rod Kemp.

**Opposition senators interjecting**

The PRESIDENT—Order! Senators on my left will take note of the standing orders. I am warning you about your behaviour.

Senator BRANDIS—Will the minister advise the Senate of the key estimates of the government’s sporting policies in relation to the AIS? What is the federal government’s support for the Commonwealth Games? Is the minister aware of any alternative policies?

Senator KEMP—Thank you, Senator Brandis, for the question.

**Opposition senators interjecting**

The PRESIDENT—Order! The level of abuse of the standing orders is unacceptable by any standard.

Senator KEMP—Senator Brandis is well known for his love of sport.

Senator Conroy—Name the score!

The PRESIDENT—Order! Senator Evans and Senator Conroy, shouting in that fashion is totally unacceptable, and I warn you about your behaviour.

Senator KEMP—Senator Brandis, in contrast to Senator Lundy, the shadow minister for sport, does ask questions on sport, and we are delighted with that. I have been waiting six months for a question from the shadow minister for sport, Senator Lundy, and have not yet received one in question time. Senator Lundy and I know exactly the reason why she is not asking questions on sport, Madam President. Let me draw to your attention two particular issues which I think are causing considerable problems for the Labor Party. The first was the issue that was announced in the budget and widely welcomed in the Australian community, which was the $65 million expansion program announced for the Australian Institute of Sport. This is a very important program, and I wish that we had the strong support of Senator Lundy for this project. Our policy is to expand the AIS; the Labor policy is to put a four-lane highway through the front yard of the AIS. What I would hope is that Senator Lundy might act in a constructive manner and, hopefully, this matter can be resolved to the satisfaction of all parties.

The other issue I would like to bring to the attention of the Senate is the astonishing behaviour of the Victorian Labor Party and the redevelopment of the MCG. As you will be aware the federal government offered $90 million to assist in the redevelopment of the MCG. This offer was rejected by the Bracks Labor government. Instead, the Bracks Labor government has got to find the money itself. We are astonished that this offer from the Commonwealth was rejected. It was rejected because of union power.

Senator Robert Ray—You changed the goalposts.

Senator KEMP—No, it was not, Senator Ray. It was not changing the goalpost—

The PRESIDENT—Order! I have spoken several times today about the level of noise and shouting on my left, and it is continuing. I would remind you of the steps that can be taken in relation to that sort of behaviour.

Senator KEMP—The point I am making is that, in order to placate the unions in Victoria, the Bracks government decided to reject the Commonwealth offer of $90 million. As a result, the Victorian taxpayer is now going to find that money to fund the very important redevelopment of the MCG. What is going on in Victoria that a government could act in this quite disgraceful manner? It is very hard to fathom, to be frank. I mean, in Victoria, the Labor Party has Labor Unity led by Senator Conroy, the Socialist Left, the Ferguson Left, the Ferguson Right, the Pledge, the Network, the Griffith Left and the Sercombe Right. There has been a huge fight in the state of Victoria. I do not claim to be an expert on what is happening there, but what clearly has occurred—

Government senator—It is a great sport.

Senator KEMP—It is a great sport for viewers. What has happened is that Senator Kim Carr, the intellectual lightweight of the Left, has emerged as a clear victor. *(Time expired)*

Senator BRANDIS—Madam President, I ask a supplementary question. Will the minister advise the Senate what further effects
Labor Party factionalism is having on the sporting public of Victoria?

The PRESIDENT—That supplementary question is out of order. Senator Crowley is attempting to ask a question. Senator Carr, take your seat.

Taxation: Policy

Senator CROWLEY (2.51 p.m.)—My question is directed to Senator Coonan, Minister for Revenue and Assistant Treasurer. Is the minister aware, as a constituent of mine now is, that in providing information as requested by the ATO on a transitional reasonable benefit limit application the constituent must either mail the information to the tax office in Moonee Ponds, Victoria or fax the information to the tax office in Albury-Wodonga or phone a tax officer in Brisbane, Queensland? Why cannot residents in Adelaide just go to the Adelaide ATO, instead of being directed to three different tax offices in three different states of the Commonwealth, depending on the method of submitting the details the constituent chooses?

Senator COONAN—I thank Senator Crowley for the question. I do not know whether it is one of Senator Crowley’s last questions, but it certainly is one which goes to the very detailed administration of the tax office. It is the case that there are some concerns about some of the aspects of that administration in relation to the number of returns that have to be made to the tax office, particularly in relation to reasonable benefit limits. I do not know to what constituent Senator Crowley refers. Obviously, I say to anyone on the other side of the house that if they have a specific matter relating to a constituent and they need some assistance they should by all means come and see me, because it is not appropriate to deal here with individual cases.

Dealing with the generic issue, the funding in the budget for the ATO is there to address some of the issues, to focus on the obligations that constituents and taxpayers have to make returns. Whilst that is there to assist people to make their returns and to understand their obligations, obviously there has to be compliance with the requirements that have been set out in the various regulations and in the law, as Senator Crowley would understand. The ATO has a range of support services for individuals and for business, including the availability of written advice and telephone support, and at the same time as funding increases, particularly for those accountants and for those in small business—

Senator Schacht—Madam President, I raise a point of order. Is it disorderly for the Liberal Party to be conducting a ballot during question time by passing around a ballot box?

The PRESIDENT—Senators ought not to be walking around the chamber during sittings other than as absolutely necessary.

Senator Abetz—Madam President, following on from Senator Schacht’s point of order, does that apply to Senator Robert Ray and Senator Chris Evans as well?

The PRESIDENT—I was going to draw attention to that when you interrupted. I was saying that senators ought not to be roaming around during question time other than as absolutely necessary.

Senator COONAN—I was in the course of referring to the extra assistance to individual taxpayers, to small business and to tax advisers from the extra funding to the ATO. It should be in a position to provide some assistance to Senator Crowley’s constituent in relation to the number of returns. But, in relation to these generic problems, obviously this is the sort of systemic issue that the Inspector-General of Taxation no doubt will be able to take up with the commissioner in some detail. And I am not going to ring the commissioner on Saturday night to ask him this one.

Senator CROWLEY—Madam President, I ask a supplementary question. If the tax office and the minister cannot really understand why my constituent is directed to three different states for submitting these details, how can taxpayers be expected to understand the rationale for this ludicrous situation? Who would be liable for any misplacement of information if it is lost in transit from pillar to post before finally getting to the actual action officer in whichever of these state of-
fices they happen to be working? Would the
tax office penalise my constituent for any
such loss of information in transit? Is the
only economic benefit of this arrangement
the possible payment—

The PRESIDENT—Order! Senator
Schacht, you are out of order to be wander-
ing across the chamber like that and not ac-
knowledging the chair. Consider yourself
reprimanded for being rude and in breach of
the standing orders.

Honourable senators interjecting—

Senator CROWLEY—Madam President,
I hope that Senator Coonan is following this,
because it is very difficult to do so.

The PRESIDENT—It is extremely diffi-
cult for her to be following it because of the
rudeness of other senators in this chamber.

Senator CROWLEY—I have asked how
taxpayers can understand; I have asked about
liability for misplacement of any informa-
tion. Finally, I ask: is the only economic
benefit of this arrangement

Honourable senators interjecting—

The PRESIDENT—Order! There has
been sufficient interruption on both sides.
Can the senator quickly finish her question?

Senator CROWLEY—Is the only eco-
nomic benefit of this arrangement the possi-
ble payment for such information as a script
for the next Life of Brian?

Senator COONAN—Madam President, I
mean absolutely no disrespect to the chair or
to Senator Crowley with regard to this very
lengthy supplementary question. I do not
know that I have all of it, but I suggest that it
sounds like a very specific problem that re-
lates to a specific taxpayer. I would suggest
that the appropriate way forward would be
for the taxpayer to see the Ombudsman.

Christmas Island: Space Centre

Senator BARTLETT (2.58 p.m.)—My
question is to the Minister representing the
Minister for Science, Senator Alston, and it
relates to the planned space base at Christ-
mas Island. As the minister would be aware,
preliminary site works have already begun.
Also pending is a detailed agreement with
Russia relating to technology transfer. Can
the minister make the commitment that his
government will not sign any agreement with
Russia that does not ensure full access to
Russian technology for national security and
safety, quarantine, emergency response and
insurance liability reasons, and also that
Australian scientists will have access to Rus-
sian technology sufficient to allow us to de-
velop an independent Australian space in-
dustry?

Senator ALSTON—I cannot off the top
of my head give Senator Bartlett any indica-
tion of whether that is a wholly or a partly
unreasonable proposition. Suffice it to say
that establishing facilities for space launches
is one thing; it does not necessarily mean
that you need to have access to the whole raft
of Russian technology. As far as I recall, the
Russian contribution is only one component
of this whole space station. So I would be
very surprised if there was a logical argu-
ment in favour of what you are seeking, but I
will certainly refer the question to the min-
ister.

Senator BARTLETT—Madam Presi-
dent, I ask a supplementary question. Minis-
ter, one of the reasons that the government
has supported and promoted the space base
so heavily is that Australia was going to get
access to Russian technology and be able to
develop our own space industry. Recognising
that the lack of a technology access and
transfer agreement with Russia could
threaten the viability and even the existence
of the proposed space base, can the minister
also make a commitment that his govern-
ment will not give any further approvals for
construction insurance exemptions et cetera
at the Christmas Island space base until the
agreement has been signed and reviewed by
the Senate?

Senator ALSTON—All I can say is that I
will make inquiries and ascertain what stage
any discussions and negotiations might have
reached and whether what Senator Bartlett is
putting forward is regarded as in any way
reasonable.

Senator Hill—Madam President, I ask
that further questions be placed on the Notice
Paper.
QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS
Environment: Macquarie Island Elephant Seals

Senator HILL (South Australia—Minister for Defence) (3.01 p.m.)—On 25 June, Senator Bartlett asked me, as the Minister representing the Minister for Environment and Heritage, a question about elephant seals on Macquarie Island. I have some further information from Dr Kemp on this question. I seek leave to incorporate the answer in Hansard.

Leave granted.

The answer read as follows—

SENATOR BARTLETT—25 June 2002
ENVIRONMENT: MACQUARIE ISLAND ELEPHANT SEALS

SENATOR BARTLETT—Can the minister advise or undertake to find out whether or not these experiments (on Southern elephant seals on Macquarie Island), and the latest way they are being conducted, were referred to the Australian Heritage Commission under section 30 of the Australian Heritage Commission Act prior to the approval for the research being given? Can the minister also indicate whether the minister is satisfied himself that the disturbance to seals from the research is not a cause for declining seal numbers?

SENATOR HILL—Macquarie Island Nature Reserve is listed on the Register of the National Estate. The provisions of section 30 of the Australian Heritage Commission Act relate to Commonwealth Ministers and Commonwealth agencies. The current research on Southern elephant seals on Macquarie Island is being conducted by scientists from the University of Tasmania. Macquarie Island is part of the State of Tasmania and the permitting authority for research in the Reserve is the Tasmanian Parks and Wildlife Service. I understand that appropriate research approvals were sought and obtained from the Tasmanian Government. There was no requirement to refer the research to the Australian Heritage Commission.

The Southern elephant seal population on Macquarie Island has been declining since the 1950s. The current population of approximately 70,000 seals continues to fall at the rate of between 1-2% each year. This is one of the reasons for it being the subject of research.

Recent research by a group of mainly Dutch scientists, and published in the journals Polar Biology and the Journal of Comparative Physiology, has concluded that research on Macquarie Island’s elephant seals appears not to negatively impact upon the seals’ survival.

ANSWERS TO QUESTIONS ON NOTICE

Question Nos. 303, 304, 305, 306 and 307

Senator SHERRY (Tasmania) (3.02 p.m.)—Under standing order 74, I wish to ask the Minister for Revenue and Assistant Treasurer, Senator Coonan, for an explanation as to why she has not answered questions Nos 303, 304, 305, 306 and 307.

Senator Patterson—Did you tell her beforehand?

Senator SHERRY—Yes, my office has rung her.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (3.03 p.m.)—I have not been alerted to this matter but obviously I will follow it up. I had understood that it was due tomorrow. In any event, I will follow it up.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Defence Signals Directorate Defence: Contracts

Senator CHRIS EVANS (Western Australia) (3.03 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Defence (Senator Hill) to questions without notice asked today.

I want to concentrate on the answer of the Minister for Defence to the question I asked him regarding the involvement of DSD and the reports today, which I think are quite significant, that the Inspector-General of Intelligence and Security, Mr Blick, had in fact not investigated those aspects of this issue which relate to whether or not the government used the information that we now know to have been gained improperly by DSD in relation to communications to the Tampa from legal firms in Australia seeking to represent the people on board the Tampa.

The minister in his answer again sought to choose his language very carefully and referred again to transcripts, raw intelligence and other such phrases which avoid the key
issue as to what briefings ministers received based on this information that was gathered improperly—this intelligence information that we now know was gathered improperly, that did relate, it seems coincidentally, to the *Tampa* and to the communications of lawyers looking to act on behalf of those refugees. I do not want to go to the question of the sequence of coincidences that you have to believe happened to come to the conclusion that this was purely a matter of chance rather than a matter of political interference or pressure, but I do want to go to the question which has been opened up again today: why have we had no proper investigation of what use that intelligence was put to?

There was an allegation made some months ago in the press that former minister Peter Reith had misused that information to help formulate the government’s political response in dealing with the *Tampa*. At the time we had no proof that this information had been gained illegally and that Australian citizens had been spied upon in breach of the privacy protections they were supposed to enjoy. We now know that DSD gathered that information inappropriately, that that information was passed up the line and that a number of officers were involved in the processing of that information. When this became apparent, the minister was asked directly whether the government used the information. Minister Hill responded by saying, ‘I don’t know the answer to that. You had better ask Mr Blick that.’ What we now know is that Mr Blick, the Inspector-General of Intelligence and Security, in fact made very little endeavour to ascertain what use the information was put to, who received it and where it went to. In fact, he was quoted as saying he had:

... not chased every rabbit down every hole.

He went on to say:

Nobody is denying someone in government could have got wind of something.

What is clear is that Mr Blick did not interview the ministers, did not interview the ministerial staff and did not get to the bottom of the key issue of what was done with that information that was gathered on Australian citizens illegally. What we have got from the minister again today is a reference to transcripts and a reference to raw intelligence. No-one is suggesting that raw intelligence or transcripts were necessarily provided, but it defies belief to say that the reports that emanated from DSD and went through the various channels did not go to former Minister Reith, Prime Minister Howard or the other relevant ministers and their agencies. The key issue in this is: what use was made of that information? What happened to the information that was gathered illegally by DSD spying on Australian citizens?

The key question for me, and I think for many Australian citizens, is: given that breach of privacy and the failure of the act to protect Australian citizens’ rights, which the minister has conceded by acknowledging that this information was gathered inappropriately, was it used for political ends? Was it used as part of the government’s political processes? The fact is that we do not know. No inquiry has been made into that aspect. The inquiry of the Inspector-General of Intelligence and Security did not go to those questions. Today the minister refused to answer the questions: to whom was the information provided; which ministers and other advisers were given it; who in government received briefings and information that was gathered illegally by DSD; and what use was made of that information? That is a very important question that still remains unanswered. The minister cannot hide behind a cute choice of words. The question he has to answer is: who received that information that we now know was gathered illegally? *(Time expired)*

**Senator FERGUSON** (South Australia) *(3.08 p.m.)*—The only thing that really surprises me about Senator Evans’s motion to take note of Senator Hill’s answer is that he did not say that the result of these people inadvertently having gathered this information is that it cost the Labor Party the election. That is the only thing that I have not heard. On every other occasion that they have raised issues related to the *Tampa*, asylum seekers or unidentified entry vessels coming into Australia they have said or implied that it actually cost them the election. And that is why the Australian people did not vote them in.
Senator Chris Evans—Never me; I have never advanced that proposition.

Senator FERGUSON—I am surprised, Senator Evans, because you are unique. Senator Evans is unique. If he says that it did not cost them the election, then he is about the only person on the Labor Party’s side of politics who has not tried to find some reason why they lost the election that is not associated with illegal entry vessels, alleged spying or asylum seekers coming into Australia. If that is the case, Senator Evans is to be commended because he is the only person in recent times who has not tried to connect all of these things to explain why the Labor Party did so poorly at the last election.

An inquiry into DSD’s activities during the Tampa episode has been completed by the Inspector-General of Intelligence and Security, Mr Bill Blick, and a report has been presented for public consumption. Once he had conducted that inquiry, of course, it did not satisfy the Labor Party. The Labor Party wanted to take this issue even further to try to build something out of nothing so that they have some political issue that they can run with—which in fact they know has no legs. The minister released the unclassified summary of that report on 2 May. IGIS briefed the Deputy Leader of the Opposition—so it is not as though the Labor Party has not been kept in the loop—on the full report on 3 May 2002.

Well do I remember these issues being brought up because the hearings that we have conducted on the certain maritime incident seem to be going on and on while Labor tries to find some reason for why they lost the election—unsuccessfully, I might add. The many fairy stories that have been told in recent times are being inquired into ad nauseam by the Senate Select Committee on a Certain Maritime Incident. Every piece of information that this government has received and every inquiry that we have conducted has been outlined to the Labor Party and the opposition, particularly the members of that committee, in full detail. Nothing has been hidden from the committee as they inquired into what has been uniquely termed ‘a certain maritime incident’.

The inspector-general’s report on the inquiry confirmed that without exception DSD acted in accordance with the proper authority as established through the normal processes for determining foreign intelligence collection requirements. What more does Senator Evans expect? No evidence has been collected during this inquiry to suggest or even imply that any minister or any minister’s office directed or requested DSD to conduct any collection activity. Nothing was found. As I have said, the fact is that the government and the minister in particular have reported fully to that committee and to the public that there were a number of interceptions that were unauthorised. However, there has been no political pressure from this side. The only political pressure that we have seen is from the Labor Party, who are trying to make something out of nothing. They have tried to make something out of nothing ever since this issue was first raised. Furthermore, the inspector-general’s report stated that DSD provided no material to the government that was not also circulated to members of the intelligence community and to the relevant Public Service departments that had a need to know.

Senator Evans can get up here all he likes to try to make something out of nothing. But this government is free and open with the information that is received. This Minister for Defence has provided every piece of information that has been requested from him either to that committee or to the opposition. If the Labor Party think they can continue along these lines and have any credibility, they have another think coming. (Time expired)

Senator LUNDY (Australian Capital Territory) (3.13 p.m.)—I rise to support my colleague’s motion to take note of the answers provided by Senator Hill. I would like to focus on the question that I asked Senator Hill. In doing so, I acknowledge the minister’s offer to find out more about the PMKeyS contract, but I would like to point out to my Senate colleagues that it is very curious he said that because when this issue was canvassed in some detail with Rear Admiral Shalders in the Senate estimates the minister was in fact there. So to come into
this chamber and respond to a question by saying ‘I don’t know’ is just not good enough. It forces me to speculate as to whether or not this government cares enough to concern itself with, effectively, the mismanagement of some $70 million worth of taxpayers’ money.

I think it is worth while running through the problem here. PMKeyS is a software package for personnel management. It is provided by PeopleSoft. The contract was put place in September 1997 and implementation was to be by June 2000. It involves organisational structures, personnel administration and leave, career management, workforce planning, recruitment and payroll for the defence department. The problems are twofold. The PMKeyS project is way over time. In estimates, Rear Admiral Shalders stated:

When the project started back in September 1997 it had been our hope that we could complete it by June 2000.

As I indicated, the last quarter of 2003—that is next year—is now the expected completion date. The other major problem of course is that of cost—and what a blowout! Again, according to the rear admiral, the original cost estimate was $25 million, but it has been confirmed that it is going to end up costing the taxpayer in the order of $70 million. Is this a licence to print money by this contractor? Or is it, as I suspect, another case of gross mismanagement by the coalition government in the implementation of IT outsourcing contracts?

This government must be accountable. They have some pretty bad form when it comes to IT outsourcing. This is just another example, following the intricate details provided courtesy of the Australian National Audit Office in its performance audit of three other significant contracts under the IT outsourcing initiative. In fact it was so bad that this government actually had to create their own independent review just so that they could dump their own policy on IT outsourcing. Even they knew it was beyond a joke. It was costing taxpayers millions of dollars in contracts that were not doing their job. The government admitted it. It failed, and here we are again talking about the same issue.

Defence thought they were pretty clever early on. For those of you who have followed this issue for many years, in the original cabinet submission proposing IT outsourcing initiative, Defence were excused. They got out of it. They thought they were getting away with not getting dragooned into what they knew—and most other departments knew, I might add—was a stupid policy. It was a policy destined to fail. It was a policy that ultimately did fail. However, Defence got caught through their efficiency expenditure review. Seemingly, there was a mandate there that they must outsource their IT for personnel and human resources. They ended up getting stung anyway, didn’t they? I wonder what went down the tube to pay for this particular contract. I wonder what efficiencies have been lost in Defence to pay for this debacle.

If it were not for the detailed forensics conducted by my colleague Senator Evans in estimates, we would never have known about this. Do you think there is a line item in the portfolio budget statements which under ‘Estimates’ says, ‘$25 million for this contract’ and under ‘Actuals’ says, ‘$70 million for this contract’? No way. These figures are hidden in six outcomes across the Defence budget. The only way to find out about this is to do a detailed forensic examination and force the government to admit it, because they hide problems like this all the time. They are not accountable. They are bad administrators of public money and, in this case, it is the defence department that has lost out.

Senator SANDY MACDONALD (New South Wales) (3.18 p.m.)—I rise to take note of the question concerning the Blick report and the Tamorpa that Senator Evans took note of. I note that he has found it so important that he has now left the chamber. I will relate a little of the history of this investigation. The Senate will recall that in February 2002 a number of articles were published in the press alleging that DSD had intercepted communications between the MV Tampa and the International Transport Federation of Australia and the Maritime Union of Austra-
lia. The articles claimed that transcripts of the phone conversations were used to form the government’s political response to this crisis.

The government did two things: firstly, it made the point that it is the usual practice of successive governments not to comment on security and intelligence matters and, secondly, the above allegations were immediately put to the Inspector-General of Intelligence and Security to look into DSD’s conduct during that very difficult incident. On 2 May the government released Inspector-General Blick’s report. It is very frank, very descriptive and very useful in terms of this particular inquiry. It is also useful to the Australian community in the sense that they can have confidence in the role the inspector-general plays, and in the quality and character of our present inspector-general.

Mr Blick found that there was no evidence that any minister or minister’s office directed or requested DSD to conduct any collection activity. He found that DSD did not target or report communications of the Maritime Union of Australia or the International Transport Federation. He also found that DSD did not provide any raw intelligence product to the government or to anyone else outside DSD other than to Mr Blick’s office, as the Inspector-General of Intelligence and Security. Therefore, the government could not have used transcripts to formulate a political response to the crisis—however tempting that might have been had I been in a responsible position in the government.

DSD collects foreign signals intelligence including, in certain limited circumstances, intelligence about the foreign communications of Australians. It does that quite incidentally and has very strict rules that apply to it when it does. Its collection activities in relation to the communications are strictly regulated under the Intelligence Services Act 2001. During the period covered by Mr Blick’s report, DSD was required to comply with similar regulations as set out in the rules of Sigint and Australian persons. As I said, these are particularly strict rules that this and every government applies to the way that DSD—and in fact other security organisations—carries out its role. These rules, by their nature, remain classified. I do not think anybody in the Senate on either side would have a problem with that. The new process is very transparent. Mr Blick examined four instances where DSD incidentally collected intelligence related to the communications of Australians during the Tampa incident in breach of the directorate’s rules.

He found that no Australians were named in the reports and their identities were not provided to anyone outside DSD. While three of the reports contain no information that could be put to practical use, a knowledgeable reader could have deduced the identity of the fourth Australian and may have acquired advance notice of legal proceedings against the government. The government agrees with Mr Blick that this is not a trivial matter. However, the government is pleased that DSD immediately put in place special internal instructions to ensure that this would not happen again. I understand the secretary of the Department for Defence will also write to apologise to the three Australians whose foreign communications were reported. Mr Blick has recommended some procedural changes to ensure that communications of Australians are not inadvertently reported in the future. Mr Blick’s inquiry uncovered, for the first time, legal uncertainties relating to an element of DSD’s collection strategy in certain unusual circumstances. So not all that has come out of this is bad. DSD acted properly. (Time expired)

Senator HOGG (Queensland)  (3.23 p.m.)—I rise to speak on this motion to take note of answers. Whilst there was some hope in the answer that the minister supplied to Senator Cooney today, it has been a source of grave concern for the employees at ADI over a period of time. In the Bushmaster project we are looking at a contract that was signed back in June 1999 and, of course, that was when the particular site was fully owned by ADI. At that time there was a hope that there would be 350 vehicles produced as a result of the contract. The problems with the contract were not foreseen at that time, obviously, because there was a delivery date of 2000. That delivery date has never been met. And, in spite of constant pushing by the very good member for Bendigo, Mr Gibbons,
there has been no resolution of this particular contract or the insecurity that goes with that for the workers at the ADI site in Bendigo.

There was another factor thrown into the whole equation in November 1999 with the sale of ADI to Transfield Thomson-CSF. That in itself raised concerns for the people in Bendigo about the future of their employment. But here we are, two years down the track from the proposed delivery date, and there are still no vehicles to be sighted. The minister has said that this will be fixed up. Whilst that is a good undertaking from the minister, we are still to see it translated into real vehicles; we are still to see it translated into something that goes out the front door. As one journalist said, it was quicker for Ned Kelly to get his suit of armour than for Defence to get the Bushmaster out of ADI.

If one looks at the problems that were associated with this particular project, one sees, from the analysis done by the Australian Strategic Policy Institute in their brief on the 2002-03 budget, that the main causes of the project’s problems were:

… insufficient time being allowed to get a prototype vehicle into production, and signing a production contract when the final specification Army required had yet to be finalised.

So we have one of the great mismanagements of a project within the Defence portfolio in recent times, where people’s livelihoods, their expectations of job security and a future have been pushed from pillar to post because of the poor way in which this contract was first conceived. The fact is that the Army, in putting the contract together, poorly put together the whole concept of what these vehicles were to do and the specifications of what they required out of the project. I am sure the minister will announce something in the not too distant future. But we have already been told that the project, which was originally a $200 million project, has now blown out to $270 million. And where first of all there were to be 350 vehicles delivered, that has now been reduced to 299. That, of course, will impact on the employment opportunities. Whilst it will provide a number of jobs at the ADI site in Bendigo, it will not provide the total employment that was first promised in the wake of the sale of ADI to Transfield Thomson-CSF. As I said, the member for Bendigo, Mr Steve Gibbons, has worked tirelessly, as have the senators in Senate estimates, to put pressure on this government to ensure that it delivered on this project because of its importance to the locals of the city of Bendigo. (Time expired)

Question agreed to.

Christmas Island: Space Centre

Senator BARTLETT (Queensland) (3.28 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Alston) in response to a question without notice asked by Senator Bartlett today relating to a proposed space centre at Christmas Island.

Senator Alston did not seem to have terribly much of an idea about what is happening in relation to the space base and the associated issues of the potential benefits for the Australian space industry if a proper agreement is gained. He is, of course, only the Minister for Science’s representative in the Senate, so I could possibly excuse him for that, but a serious matter was raised in the question and the minister did agree to provide a more detailed response later if necessary. I would suggest that it is quite necessary. There have already been issues raised in this chamber about the potential environmental problems with the space base and some of the specific regulations governing construction of the space base that have been gazetted and allowed to stand by the Senate. This is particularly important given the economic and industry justification that has been given by the government as to why they believe this space base is so important.

One of the key arguments put forward by the government is that developing this space base and entering into an agreement with Russia would enable us to eventually develop our own strong space industry. Certainly, I am—and the Democrats as a whole are—quite supportive of developing a strong Australian space industry. A lot of valuable scientific and environmental gains could occur from a well developed space industry in Australia. But we certainly do not want to see enormous amounts of money being spent and potential significant environmental de-
struction occurring for reasons that then will not appear.

The government specifically says that this will enable us to access Russian technology and that therefore is a core part of enabling us to develop our own independent space industry in the long term. That is one of the key reasons why the government says this space base should go ahead. It is certainly looking at trying to fast-track this project and avoid putting in place some legislative protections usually implemented with these sorts of developments, particularly in the environmental area. The minister has not been able to make a commitment that we will not sign an agreement with Russia until we—including Australian scientists—get full access to that technology.

Lack of technology access and transfer with Russia would threaten the viability of the entire space base and the opportunity for the development of an independent space industry. The government has given no guarantee that it will not allow an agreement to be reached that prevents Australia accessing that technology. Despite that guarantee not being received, preliminary site works have already begun on the space base. There are genuine environmental risks with this development, as we and others have highlighted in this chamber and in estimates committee hearings. The government is pushing ahead with the development as fast as it can, despite those risks and despite the fact that there is no guarantee of access to the Russian technology—the so-called justification for building the space centre. And that is far from being guaranteed. Until we receive that sort of guarantee, then there certainly should not be any ongoing construction of the space base for that reason alone, let alone the environmental concerns that the Democrats and others have raised. I hope the minister, in his subsequent response tomorrow, addresses and acknowledges those concerns because they are serious concerns.

Having concerns about the impact of this space base is not the same as being anti the space industry. I strongly support developing an Australian space industry, but we need to do that in a way which is environmentally sustainable and will also work with the agreements that the Australian government enters into with other nations. International cooperation in this area is important, but we need to make sure that such cooperation acts in Australia’s interests and that we are not being subservient to the interests of other nations or of industries from other countries.

Question agreed to.

NOTICES
Presentation
Senator Ian Campbell to move on the next day of sitting:
That on Monday, 19 August 2002, the hours of meeting shall be 2 pm to 6.30 pm and 7.30 pm to adjournment.

Senator Allison to move on the next day of sitting:
That the Senate—
(a) notes the report tabled in the Senate on 6 May 2002 from the Australian Competition and Consumer Commission (ACCC) on the performance of its functions under the Trade Practices Act 1974 (the Act) with regard to tobacco and related matters, as required by the order of the Senate of 24 September 2001;
(b) notes that the Senate may require the ACCC to provide it with information in accordance with section 29 of the Act;
(c) requires the ACCC to report, as soon as possible, on the following issues:
(i) whether Australian tobacco companies have engaged in misleading or deceptive conduct in their use of the terms ‘mild’ and ‘light’, and
(ii) whether there has been any misleading, deceptive or unconscionable conduct in breach of the Act by British American Tobacco and/or Clayton Utz with regard to document destruction for the purpose of withholding information relevant to possible litigation;
(d) requests the ACCC to engage in consultation with interested parties and stakeholders over the perceived inadequacies in its response to the order of the Senate of 24 September 2001 and requires the ACCC to report on those consultations as soon as possible;
(e) notes that once the Senate has had the opportunity to consider the ACCC’s
further reports on the use of the terms ‘mild’ and ‘light’, whether there has been misleading, deceptive or unconscionable conduct in relation to document destruction, and the ACCC’s consultations, it will consider whether a further report should be sought from the ACCC in response to the order of the Senate of 24 September 2001;

(f) calls on the Commonwealth Government to pursue the possibility of a Commonwealth/state public liability action against tobacco companies to recover healthcare costs to the Commonwealth and the states caused by the use of tobacco; and

(g) calls on the Commonwealth to address the issue of who should have access to the more than $200 million collected in respect of tobacco tax and licence fees by tobacco wholesalers but not passed on to Government (see *Roxburg v. Rothmans*) by introducing legislation to retrospectively recover that amount for the Commonwealth and/or to establish a fund on behalf of Australian consumers and taxpayers, and in either case for the moneys to be used for the purpose of anti-smoking and other public health issues.

**Senator Sherry** to move on the next day of sitting:

That there be laid on the table, on the next day of sitting, the advice by the Australian Prudential Regulation Authority to the Assistant Treasurer under section 230A of the *Superannuation Industry (Supervision) Act 1993*, in relation to applications for financial assistance for superannuation funds where Commercial Nominees of Australia was trustee.

**Senator Sherry** to move on the next day of sitting:

That the following matters be referred to the Select Committee on Superannuation for inquiry and report by 26 September 2002:

(a) the extent to which Commonwealth government departments are using, or have used, contracting-out arrangements and, as a result, have avoided the payment of the Superannuation Guarantee; and

(b) the involvement of the Department of Finance and Administration, the Australian Taxation Office or any other organisation in the establishment of contracting-out arrangements which resulted in the non-payment of the Superannuation Guarantee in the Australian Quarantine Inspection Service and/or any other Commonwealth government department.

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

That the Senate calls upon the Government to rule out Australia’s involvement in any pre-emptive military action, or first strike, against Iraq or any other country without evidence that an attack by that country is imminent.

**Senator Payne** to move on the next day of sitting:

That the time for the presentation of the report of the Legal and Constitutional Legislation Committee on statutory powers and functions of the Australian Law Reform Commission be extended to 22 August 2002.

**Senator Ridgeway** to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) the week beginning 24 June 2002 is Drug Action Week, aimed at generating community awareness about drug and alcohol abuse and the solutions being used to tackle these issues,

(ii) each day of Drug Action Week highlights a different theme and the theme on 27 June 2002 is Indigenous issues,

(iii) the misuse of alcohol and other drugs has long been linked to the deep levels of emotional and physical harm suffered by Indigenous communities since the colonisation of Australia,

(iv) alcohol and tobacco consumption rates continue to remain high in the Indigenous population, against declining rates in the general population, and the increasing use of heroin in urban, regional and rural Indigenous communities is also of particular concern,

(v) substance misuse is probably the biggest challenge facing Indigenous communities today, as it affects almost everybody either directly or indirectly and is now the cause as well as the symptom of much grief
and loss experienced by Indigenous communities, and
(vi) the demand for the services of existing Indigenous-controlled drug and alcohol rehabilitation centres far exceeds the current level of supply;
(b) acknowledges the essential role of Indigenous community-controlled health services in providing long-term, culturally-appropriate solutions for substance abuse; and
(c) calls on the Government to:
(i) fund the national substance misuse strategy, developed by the National Aboriginal Community Controlled Health Organisation, which is designed to build the necessary capacity within the Indigenous health sector so communities can address their health and well-being needs in a holistic and culturally-appropriate manner, and
(ii) improve coordination between Commonwealth, state, territory and local governments on these issues and ensure this facilitates greater Indigenous control over the development and implementation of all health programs.

Senator Bartlett to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) members of the Queensland community of Federal have been vigorously campaigning for the relocation of a mobile phone base station earmarked for placement in close proximity to their local school and residences,
(ii) 23 parents of Federal School have signed and presented a petition to the Member for Fairfax (Mr Somlyay) stating that if construction of the base station goes ahead at this site, 45 students will be removed from the school of 100,
(iii) individual Government members have, to date, not adequately addressed concerns put to them by residents of Federal, and
(iv) under the Government’s regional mobile phone program no community consultation was undertaken prior to successful tendering of this contract to Vodafone; and
(b) calls on the Government:
(i) to acknowledge the continued lack of a consultative and statutory framework for communities to voice their concerns regarding the placement of mobile phone towers, and
(ii) to adequately address the concerns put to it via the ministers responsible for the portfolio areas of education and communications.

Senator Crossin to move on the next day of sitting:
That the Senate—
(a) notes the recommendations of the February 1995 report of the House of Representatives Standing Committee on Community Affairs to amend the Medicare rebate schedule to include the provision of mammary prostheses;
(b) recognises:
(i) the ongoing cost (financial, physical and emotional) of wearing required prostheses and shell/breast forms, and acknowledges the strain on muscles and posture following the loss of a breast or a significant part of the breast, and
(ii) the ongoing cost of prostheses and acknowledges that there is no Commonwealth Government scheme to reduce the financial burden faced by women following breast surgery for those in need of prosthetics;
(c) notes the Canberra Times article, ‘Dead Women’s Breast Prostheses Resold’, appearing on 3 June 2002, detailing the reuse of mammary prostheses amongst breast cancer patients facing financial hardship; and
(d) calls on the Government to provide mammary prostheses through the Medicare rebate schedule.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (3.35 p.m.)—I give notice that, on the next day of sitting, I shall move:
That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the Migration Legislation Amendment (Procedural Fairness) Bill 2002, allowing it to be considered during this period of sittings.
I also table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated.

Leave granted.

The statement read as follows:

STATEMENT OF REASONS FOR INTRODUCTION AND PASSAGE IN THE 2002 WINTER SITTINGS
MIGRATION LEGISLATION AMENDMENT (PROCEDURAL FAIRNESS) BILL 2002

Purpose of the Bill
This Bill is designed to amend the Migration Act 1958 to:

- restore the primacy of the codified natural justice framework set out in the Migration Act.

Reasons for Urgency
In the absence of measures to restore the primacy of codified natural justice procedures for portfolio decision makers, significant and costly changes may be required to portfolio visa decision making and processing operations.

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

NUCLEAR ENERGY: LUCAS HEIGHTS REACTOR

Return to Order

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (3.36 p.m.)—by leave—I have a few brief remarks to make in relation to a return to order successfully agreed to by the Senate on the motion of Senator Brown yesterday. I make these remarks on behalf of the Minister for Science, in response to the Senate order to table the study commissioned by the Australian Nuclear Science and Technology Organisation of the preliminary evaluation of the construction site for the replacement research reactor at Lucas Heights. The Institute of Geological and Nuclear Sciences is still conducting its study of the geology of the replacement research reactor site. The government is therefore unable to meet the Senate’s request at this time. The institute is expected to complete its study of the geological mapping of the excavation site in the next few weeks. The government will consider tabling the report once it is completed and the government has taken advice on the matter.

Senator BROWN (Tasmania) (3.37 p.m.)—by leave—What we have here is a failure by the government to give a report, even a progress report, on a matter of great importance ahead of a six-week parliamentary break—it is not good enough. A report was given to ANSTO about the finding of a fault line at the site now being worked for the establishment of the Argentinian-designed nuclear power station at Lucas Heights to replace the current reactor. That report should be available to the Senate now. That is what the minister should have delivered to the Senate. If there were good faith on this matter, the minister would furthermore have the interim information that has gone to ANSTO and then on to ARPNASA, the regulatory body overlooking the building of that reactor.

It has not escaped my attention and it certainly did not escape the attention of the reporter Stephanie Peatling who, in the Sydney Morning Herald on Saturday last, reported on comments by the director of the regulatory branch at ARPNASA, Don McNab. This is the organisation charged with the job of looking at nuclear safety. Mr McNab said the discovery was:

... an inconvenience and a disappointment. We don’t know the full extent of it yet but it is a setback and more work needs to be done.

That is laden with a bias that must concern anybody who wants to ensure that if a nuclear reactor is to be built in Australia then it must be absolutely safe. This one is being built on the southern edge of the biggest city in Australia. I have looked through the reports of earthquakes in recent times in Australia—and my windows certainly rattled in Hobart a couple of Saturdays ago when a quake measuring 4.4 on the Richter scale shook central Tasmania with the effects felt through to Hobart and Launceston—and on 14 February this year there was a similar quake just south-west of this reactor site measuring 3.8 on the Richter scale. It is reported that this earthquake occurred about 14 kilometres west of Wollongong and about 80 kilometres south-west of Sydney. The earth-
quake was felt in Wollongong and the southern suburbs of Sydney, Campbelltown and Mittagong. The seismologists are asking for people who felt the impact of that tremor to report.

Without further information I can say that as a general rule—and this applies in Tasmania—if you can get a quake that measures four on the Richter scale you can get one that measures seven and when you do that you have moved into major damage. You have moved way beyond the death and destruction that is so fresh in our memories from Newcastle. It is a very serious matter. This parliament is charged with the duty of overseeing, in the interests of all Australians, the siting and building of this reactor. The Australian Greens are totally opposed to it and we have been all the way through.

But this afternoon, on the second last day of sitting before the recess, the warning signs are very much up when the minister made the glib statement: ‘We haven’t got this report completed yet. We will see you sometime later.’ That is simply not good enough—there are all the elements here of a cover-up. The minister did not even present the report which went from the New Zealand company that found the fault line to ANSTO, the builders of the reactor or to ARPANSA, the people who are overseeing this important and contentious matter. That is totally unacceptable.

This government should have reported fully to the Senate this afternoon. I will be looking at what measures we can take to increase the government’s ardour in the face of a failure like this. The government might think this is an unimportant matter but the Greens do not. We are responding to the feelings of residents in the area who certainly do not and who are mightily alarmed by the prospect of a nuclear reactor, let alone one built on a fault line. I repeat that this is an unacceptable failure of duty by the minister to report to this chamber following an order from the Senate two days ago. It has the makings of a cover-up and is not acceptable to the Greens.

Senator Calvert—Madam President, on a point of order: I understand Senator Brown’s concern about this matter but I thought he sought leave to make a short statement. I would hate to see it when he seeks leave to make a long one.

The DEPUTY PRESIDENT—He did get leave to make a short statement so I presume he is winding up.

Senator BROWN—Senator Calvert is tempting me greatly—

Senator Knowles—You just do not get leave in the future.

Senator BROWN—Senator Knowles is indicating that in the next couple of days one of the devices that may be used will be to not give leave. I take the idea aboard Senator Knowles—

Senator Knowles—You asked for a short statement, not a waffle.

Senator BROWN—If that is what the government is indicating is part of its armamentarium for the next two days, remember that two can tango. Let me go back to my concluding statement: this is a very serious matter which affects hundreds of thousands of people in the region near to the reactor. There is the appearance of obfuscation and cover-up in this matter. This parliament should be informed this afternoon on the latest information and not be getting a duck-shove which says, ‘It is going to take a few weeks more and then we will decide what to do.’ That is totally unacceptable.

COMMITTEES

Selection of Bills Committees

Report

Senator CALVERT (Tasmania) (3.44 p.m.)—I present the fifth report for 2002 of the Standing Committee for the Selection of Bills.

Ordered that the report be adopted.

Senator CALVERT—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 5 OF 2002

1. The committee met on Tuesday, 25 June 2002.

2. The committee resolved to recommend—

That—
(a) the provisions of the Research Agencies Legislation Amendment Bill 2002 be referred immediately to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 29 August 2002 (see appendix 1 for statement of reasons for referral);
(b) the order of the Senate of 20 March 2002 adopting the 2nd report of 2002 of the Selection of Bills Committee be varied to provide that the Space Activities Amendment Bill 2002 be referred immediately to the Economics Legislation Committee for inquiry and report by 20 August 2002 (see appendix 2 for statement of reasons for referral); and
(c) the following bills not be referred to committees:
  • Copyright Amendment (Parallel Importation) Bill 2002
  • Health Insurance Commission Amendment Bill 2002
  • Parliamentary Commission of Inquiry (Forest Practices) Bill 2002
  • Torres Strait Fisheries Amendment Bill 2002.

The committee recommends accordingly.

3. The committee deferred consideration of the following bills to the next meeting:
   Bill deferred from meeting of 19 March 2002
   • Aviation Legislation Amendment Bill 2002
   Bills deferred from meeting of 14 May 2002
   • Great Barrier Reef Marine Park (Boundary Extension) Amendment Bill 2002
   • Health Legislation Amendment (Private Health Industry Measures) Bill 2002
   Bills deferred from meeting of 18 June 2002
   • Australian Broadcasting Corporation (Scrutiny of Board Appointments) Amendment Bill 2002
   • Taxation Laws Amendment (Structured Settlements) Bill 2002
   Bills deferred from meeting of 25 June 2002
   • Customs Legislation Amendment Bill (No. 1) 2002
   • Import Processing Charges (Amendment and Repeal) Bill 2002
   • Family Law Amendment (Joint Residency) Bill 2002
   • Transport Safety Investigation (Consequential Amendments) Bill 2002

(Paul Calvert)
Chair
26 June 2002

Appendix 1
Proposal to refer a bill to a committee
Name of bill(s):
Research Agencies Legislation Amendment Bill 2002

Reasons for referral/principal issues for consideration
• Financial reporting requirements possibly too weak and inappropriate
• Issues connected with financial management associated with commercialisation
• Adequacy or otherwise of financial safeguards
• Appropriateness of certain commercial ventures undertaken by these agencies

Possible submissions or evidence from:
ANSTO, AIMS, DEST, CSIRO, CPSU, APESMA, Treasury, DOFA, AMWU

Committee to which bill is referred:
Employment, Workplace Relations, Small Business and Education Legislation Committee

Possible hearing date:
15 August 2002
Possible reporting date(s):
29 August 2002

(Signed)
Sue Mackay
Whip/Selection of Bills Committee member

Appendix 2
Proposal to refer a bill to a committee
Name of bill:
Space Activities Amendment Bill 2002

Reasons for referral/principal issues for consideration:
• To consider the basis for the $750m cap on liability insurance for the APSC;
• To consider the rationale for the Federal Government’s commitment to insure for amounts above $750m up to $3b;
• To consider the adequacy of $3.75 billion dollars total liability insurance coverage;
• To assess the methodology used in arriving at total liability insurance coverage;
• To assess whether a Regulatory Impact Statement needs preparation considering the extent of the Government’s financial commitment.

Possible submissions or evidence, from:
• The Productivity Commission (Office of Regulation Review)
• Insurance Council
• Australian Petroleum Production and Exploration Association

Committee to which bill is to be referred:
Economics Legislation Committee

Possible hearing date(s):
Possible reporting date:
First sitting week in August 2002
(signed)
Vicki Bourne

Whip/Selection of Bills Committee member

PROCEEDS OF CRIME BILL 2002
Referral to Committee

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.45 p.m.)—by leave—I table proposed government amendments to the Proceeds of Crime Bill 2002 and a related bill. I seek leave to move a motion to refer the proposed government amendments to a committee, and authorise a committee to meet during the sitting of the Senate.

Senator Brown—I just want the Manager of Government Business in the Senate to know that I grant leave.

Leave granted.

Senator IAN CAMPBELL—I thank all of my colleagues for granting that leave because, in fact, it takes all of them to do so. It is special in all of your cases. I move:

That the proposed government amendments to the Proceeds of Crime Bill 2002 and a related bill be referred to the Legal and Constitutional Legislation Committee for inquiry and report on 1 July 2002.

Question agreed to.

COMMITTEES
Legal and Constitutional Legislation Committee

Meeting

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.45 p.m.)—I move:

That the committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 27 June 2002, from 9 am to 11 am, to take evidence for the purpose of the committee’s inquiry.

Question agreed to.

NOTICES
Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion No. 2 proposing the reference of a matter to the Community Affairs References Committee, postponed until 27 June.

General business notice of motion No. 53 relating to the introduction of the Sexuality Anti-Vilification Bill 2002, postponed until 20 August.

General business notice of motion No. 98 relating to parliamentary debate of any proposed military involvement by Australia, postponed until 27 June.

Withdrawal

Senator BARTLETT (Queensland) (3.46 p.m.)—On behalf of Senator Stott Despoja, I wish to withdraw business of the Senate notice of motion No. 1 standing in her name for today.

ENVIRONMENT: CLIMATE CHANGE NEGOTIATIONS

Senator BROWN (Tasmania) (3.47 p.m.)—I move:

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.

Question agreed to.

TJAPALTJARRI, MR CLIFFORD POSSUM

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (3.47 p.m.)—I move:

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.

Question agreed to.

GEOSCIENCE AUSTRALIA

Senator BARTLETT (Queensland) (3.48 p.m.)—I move:

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.

Question agreed to.

COMMITTEES

Senators’ Interests Committee

Report

Senator DENMAN (Tasmania) (3.48
p.m.)—I present report 2/2002 of the Committee
of Senators’ Interests, entitled Proposed changes to
resolutions relating to declarations of senators’ interests
and gifts to the Senate and the parliament. I also present
a register of senators’ interests, incorporating statements
of interests and notifications of alterations of interests of senators
lodged between 7 December 2001 and 24 June 2002.

Ordered that the report be printed.

Senator DENMAN—I move:

That the Senate take note of report 2/2002 of the
Committee of Senators’ Interests.

The purpose of this report is to recommend
to the Senate changes to resolutions relating to
the declaration of senators’ interests and
gifts to the Senate and the parliament. Senators
will note that the resolutions relating to
senators’ interests have been in operation,
virtually without change, since 1994, and the resolution relating to gifts since 1997.

Having re-examined the terms of the
resolutions, the committee makes the follow-
ing recommendations. The first recommendation is that all senators make a full
declaration of interests at least once in each parliament. The committee suggests that the
appropriate time is after the swearing in of senators for the states in July, and the resolution
has been redrafted accordingly. The second recommendation is that the value of gifts and assets required to be declared under the
terms of resolution 5 be raised as indicated in the report. The existing amounts have not
been increased since the passage of the original resolutions in 1994. The third rec-

ommendation is that resolution 5 be omitted altogether. This resolution requires a decla-
ration of relevant interests by a senator when first speaking or voting on a matter before the
Senate. The committee considers that, given the public nature of a senator’s statement of registrable interests, this is sufficient
to comply with the requirements at present set down in resolution 5.

In respect of the resolution relating to declaration of gifts to the Senate and the parliament, the committee recommends the
same increase in the amounts specified as for declarations of interests, and for the same reasons. It also proposes amendments to the
resolution to enable retiring senators to retain declared gifts under certain conditions, based on
guidelines for retention of ministerial gifts.

The committee has also made changes to
the explanatory notes and procedural rules relating to the resolutions. The most impor-
tant of these reflect the committee’s decision to exclude frequent flyer points and membership of airline lounges from declaration re-
quirements. Further amendments will be made to these documents, as required, if the Senate agrees to changes to the resolutions.

The purpose of tabling this report at this
time is to enable all senators, including the
newly elected, to consider the proposals be-
fore the Senate resumes sitting in August. A
draft booklet, which consolidates and the
committee hopes, simplifies the present
documentation of senators’ interests and
declarations of gifts is at appendix A to this
report. The committee would welcome any
suggestions for amendments either to the
resolutions themselves or to the explanatory
notes, forms and rules, which any senator
may have before the Senate considers the
resolutions. I seek leave to give a notice of
motion for Wednesday, 21 August 2002, the
terms of which I have handed to the Clerk.

Leave granted.

Senator DENMAN—I give notice that,
on 21 August 2002, I shall move:

That the following amendments to the
resolutions relating to senators’ interests and
declaration of gifts to the Senate and the Parliament be agreed to.
Resolution 1—Registration of senators’ interests
Paragraph (1), omit—
“Within 14 sitting days after the adoption of this resolution by the Senate and 28 days of making and subscribing an oath or affirmation of allegiance as a senator”, substitute—
“Within:
(a) 28 days after the first meeting of the Senate after 1 July first occurring after a general election; and
(b) 28 days after the first meeting of the Senate after a simultaneous dissolution of the Senate and the House of Representatives; and
(c) 28 days after making and subscribing an oath or affirmation of allegiance as a senator for a Territory or appointed or chosen to fill a vacancy in the Senate”.

Resolution 3—Registrable interests
Paragraph (i), omit “$5,000”, substitute “$10,000”.
Paragraphs (k), (l) and (m), omit “$500” wherever occurring, substitute “$1,000”; omit “$200” wherever occurring, substitute “$500”.

Resolution 4—Register and Registrar of Senators’ Interests
Paragraph (3), omit “the commencement of each Parliament”, substitute “receipt of statement of registrable interests in accordance with resolution 1(1)”. [Consequential on amendment to paragraph 1(1)]

Resolution 5—Declaration of interest in debate and other proceedings
To be omitted.

Resolution relating to declaration of gifts to the Senate and the Parliament
Paragraph (1)(a), omit “practical”, substitute “practicable”.
Sub-paragraph (ba), omit “$500”, substitute “$1,000”; omit “$200” substitute “$500”.
Sub-paragraph (d), line 2, omit “is to”, substitute “may”.
After sub-paragraph (h), insert—
“(i) When a senator who is using or displaying a gift ceases to be a senator, the senator may retain the gift:
(i) if its value does not exceed the stated valuation limits of $1,000 for a gift received from an official government source, or $500 from a private person or non-government body; or
(ii) if the senator elects to pay the difference between the stated valuation limit and the value of the gift, as obtained from an accredited valuer selected from the list issued by the Committee for Taxation Incentives for the Arts. The Department of the Senate will be responsible for any costs incurred in obtaining the valuation.
(j) If the senator does not retain the gift in accordance with paragraph (i), the senator must return the gift to the registrar, who shall:
(i) dispose of it in accordance with instructions from the Committee of Senators’ Interests, as set out in paragraph 1(d) of this resolution; or
(ii) arrange its donation to a nominated non-profit organisation or charity, at the discretion of the senator who has returned the gift and the Committee of Senators’ Interests.
(k) Any senator subject to paragraph (j) must formally acknowledge relinquishment of the senator’s claim to ownership of any surrendered gifts.”.

Senator BROWN (Tasmania) (3.53 p.m.)—This report of the Committee of Senators’ Interests does require comment, because it is changing the requirement for senators to report to the Senate and therefore to the public on pecuniary interest. I note that the report recommends that we delete the requirement that in debate we reveal pecuniary interest where it is involved in a matter. I am the senator who has on a number of occasions—fairly rare, but they have been there and they were important—called the Senate’s attention to the requirement under our standing orders that, where we have a pecuniary interest, we reveal it. This has happened on occasions such as in legislation dealing with the logging of forests where senators who have shares in woodchip companies are ostensibly required to reveal them and in mining matters where people have shares in mining companies—where people could have a pecuniary gain or loss out of a matter before the Senate. It is good practice that that be made public at the time. It is
good practice for the senators that we keep making ourselves aware that if there is an interest we divulge that, because it can make a difference to how we vote.

I believe that if we do not we lose trust from the public. It is not the reverse. We are inviting the public to become even more cynical about politics and the integrity of the place. It is simple good practice, and we should be following it. At local government level in many parts of Australia and certainly in Tasmania, if you have a pecuniary interest you must not just declare it but also absent yourself from the debate and the vote taking place. That is not called for here, but it is extremely good practice that, where we have a pecuniary interest in the matters before the Senate, we put that interest on record.

I note that the value of gifts for which we are required to make a declaration is going to increase. I hope that is consistent with inflation and not beyond that. Again, we are privileged to be in parliament. We do get gifts from time to time. It is very difficult to say no when you are travelling overseas and people want to make a gift. In fact, it is quite rude on occasions not to accept and it does sometimes present us with difficulties. But the matter should be recorded. This process is very important. I think we should be tightening it up, not loosening it. If anybody has any worry about it, then all the more reason for having it. It does not take up much time, it does not take up much deliberation, but it is important that it be there for the integrity of politics. I will certainly be looking very carefully at the report and will be ready for moves to change the standing orders when they come through—I think they are a bit lax, if anything.

Finally, on the matter of frequent flyer points: the government’s requirement, as I understand it, is that frequent flyer points not be used for personal use, that the government claims them as government property, effectively, and that they should be used for parliamentary travel. In that case, they are not an advantage to an individual. However, when it comes to the use of airline lounges—the captain’s lounge, the supreme lounge or whatever it might be—which are frequented by politicians, millionaires and people who fly frequently, it does provide benefits for those of us who are working on the move. But it is a big largesse from the airline companies. I had to think about this when I asked my question today about the fallen standards of Qantas, because I find the people in the Qantas lounges absolutely affable, helpful, charming and wonderful hosts. The very facility presents something of a cushion against MPs who use those facilities being outspoken if Qantas or another airline presenting those facilities falls short of the mark. If we are getting value above the prescribed level in the rules from the use of those lounges, we should declare it. I do not think most of the public even know that those lounges exist. Maybe an alternative there is that, if it is going to be removed by wish of the majority, it be stated on the declaration forms that we fill in, as part of the declaration form itself, that these advantages that politicians get in flying about the country are nevertheless advantages coming from private corporations which influence the way we think.

Senator ROBERT RAY (Victoria) (3.59 p.m.)—I wish to address a few issues, especially those raised by Senator Brown. Senator Brown says that, if you do not declare your pecuniary interest here, no-one knows about it. He is missing the point, as he has always missed the point on this. Our point is that if your pecuniary interest is recorded on your declaration form, which is published annually, then that signals to everyone whether you have a pecuniary interest or not. If you have suddenly acquired one and it is not on that form, you will have to get up and declare it at the first available opportunity, because we do not want conflict of interest with regard to pecuniary interest.

It becomes farcical, because it is only raised in certain circumstances. Where do you draw the line on pecuniary interest? If there is a greenhouse bill, am I supposed to declare a pecuniary interest because I consume oxygen? I would probably suck in a lot more than Senator Brown does, especially since giving up smoking. This is not a conspiracy to weaken accountability; it is just commonsense. If the information is in the form you do not have to declare it in here
and you do not have to respond to someone who is after a bit of opportunistic publicity. Far be it from me to say that you have ever done that in the past, Senator Brown. Nevertheless, it is not done on every vote; it is only done and raised in specific circumstances. As long as the form is properly filled out, though, and here we have common ground: it must be extensive.

On the second matter of gifts and hospitality, it is time that was adjusted for inflation. The levels were very carefully thought about. By the way, the levels were not 1994 levels. That is when we finally browbeat the coalition into accepting this. They are actually levels which had been set four years before. So if someone wants to put this in terms of constant dollars, do not go back to 1994; go back to 1990 to get the true effect—rather than say, ‘You have gone up a bit.’ I assume also that the committee has put it a bit higher to take into account a midpoint adjustment to inflation. That is a very sensible thing. Senator Brown says, ‘What about airport lounges?’ Let me declare that I had a bowl of peanuts and a strong latte last Sunday night in the airport lounge. He is also right to say that, in terms of Qantas, that is the one area where their service and approach to everything have not declined at all. It would be very hard to find any other area.

Senator Brown today complained about the catering on Qantas. I have one question to Neil Perry, who is the cuisine consultant: where do you buy the seven-day-old focaccias? Everywhere I go in Melbourne they are either fresh or a day old. I cannot find seven-day-old focaccias. I hope Neil Perry will let me know that one day. The third matter mentioned by Senator Denman is important: going from six-year to three-year declarations. Usually you only do it once a term, but doing it every three years will be a trigger for all of us to make sure we have not overlooked something. It also means that the amount of adjustments and extras we have to put in will be less. That is another common-sense approach by this committee and I congratulate the committee for that.

Finally, Senator Brown mentioned frequent flyer points. I notice that the Carr government in New South Wales have just cut a deal with Qantas to cut out frequent flyer points in lieu of cheaper air fares. That is something Labor governments have tried to do. I assume that Senator Minchin probably tried to do it when he was minister. I was looking at this as far back as 1988, and we never got anywhere with the airlines. One of the reasons why we did not get anywhere with the airlines was that if you succeeded with one airline the other airline would take customers away. We do not have that anymore. I think some airlines have got sick of frequent flyer points, so probably this will be solved for us by the end of this year. The government will be able to cut a deal with the airlines for cheaper air fares with no frequent flyer points applying et cetera. I know the government encourages us to use frequent flyer points to come to and from Canberra, but if you can find a spare seat let me know. The department themselves gave evidence at an estimates committee saying they could not use any of their frequent flyer points because they could not find any seats. If the mean, miserable department of finance cannot find a spare seat in a plane, what hope have we got?

Senator LUDWIG (Queensland) (4.04 p.m.)—I rise to take note of the report and seek leave to continue my remarks later.

Leave granted; debate adjourned.

BUDGET
Consideration by Legislation Committees
Additional Information

Senator CALVERT (Tasmania) (4.04 p.m.)—On behalf of the Chair of the Foreign Affairs, Defence and Trade Legislation Committee, Senator Sandy Macdonald, I present additional information received by the committee relating to hearings on the additional estimates for 2001-02.

COMMITTEES
Regulations and Ordinances Committee
Report

Senator CALVERT (Tasmania) (4.04 p.m.)—On behalf of the Chair of the Standing Committee on Regulations and Ordinances, Senator Tchen, I present a volume of ministerial correspondence relating to the
Privileges Committee
Reports

Senator ROBERT RAY (Victoria) (4.05
p.m.)—I present reports of the Committee of
Privileges as follows: 102nd report—Coun-
sel to the Senate; 103rd report—Possible
improper influence and penalty on a senator;
104th report—Possible false or misleading
evidence before the Parliamentary Joint
Committee on Native Title and the Aborigi-
nal and Torres Strait Islander Land Fund;
and 105th report—Execution of search war-
rants in senators’ offices—Senator Harris. I
also present a volume of documents accom-
panying the 103rd report.

Ordered that the reports be printed.

Senator ROBERT RAY—I move:

1. That the Senate take note of the 102nd report.
2. That the Senate endorse the findings at para-
graphs 1.60 to 1.62 of the 103rd report.
3. That the Senate endorse the finding at para-
graph 65 of the 104th report.
4. That the Senate endorse the finding at para-
graph 22 of the 105th report.

As the titles of the reports I have just tabled
indicate, they cover a wide range of issues
which have come before the committee be-
tween August 2001 and May this year. The
102nd report derived from the committee’s
concern about matters of privilege arising
within the court system, and the possible
need for the Senate to be represented in such
proceedings. The committee canvassed the
idea of having counsel on a retainer to repre-
sent the Senate as the need arose. Having
considered advice from the Clerk of the Sen-
ate, however, the committee has come to the
conclusion that such a proposal, while desir-
able, is not efficacious, given the costs po-
tentially involved.

The 103rd report caused the committee
the most substantial difficulty of all the mat-
ters before it. This involved the deselection
of a former Senate colleague because he did
not vote in accordance with directions given
to him by the Northern Territory Country
Liberal Party in relation to the vote on the
Interactive Gambling Bill 2001. This matter
involved the conflicting principles between
parliamentary privilege, and attendant possi-
ble contempt, and practices of political par-
ties. I shall address a few remarks on that at
the conclusion of this statement, and I also
expect that my colleagues Senator Knowles,
the deputy chair of the committee, and pos-
sibly Senator McGauran will make some
comments. On balance the committee has
determined that a contempt of the Senate
should not be found, given the peculiar cir-
stances of the case. The reasons for the
committee’s conclusions are set out in para-
graphs 153 to 159 of the report.

The 104th report results from a reference
by the Joint Native Title and the Aboriginal
and Torres Strait Islander Land Fund Com-
mittee as to whether false or misleading evi-
dence was intentionally given to the com-
mittee. The Committee of Privileges has
found that, whilst misleading evidence was
given to the native title committee, it is un-
likely that it was given with deliberate intent.
The committee has therefore found that no
contempt has been committed.

Finally, the committee revisited a matter
which was the subject of its 75th report as a
result of the seizure by the Queensland Po-
lice Service of material from the office of
Senator Harris. Following the receipt of let-
ters from both Senator Harris and the Queen-
sland Police Service, the committee has been
able to establish that no contempt of the Sen-
ate was involved. It has further suggested in
the report that Senator Harris and his legal
advisers proceed to claim privilege in respect
of identified material still held by the Queen-
sland Police Service solicitor. The committee
considers that the Senate might wish to be-
come further involved only if the Queen-
sland Police Service were to dispute any
such claim and there were no resolution be-
tween the Queensland Police Service and
Senator Harris. Thus ends the official part of
my report.

Let me make a couple of other comments.
I think the production of 102 to 105 reports
means that the current secretary of the Privi-
leges Committee has reached her tonne. She
has been involved with over 100 Privileges
Committee reports, and that is something I
doubt any other parliament in the world could claim for one of its clerical staff. I congratulate her for that and, on behalf of the committee, thank her for all her efforts.

Getting back to the matter of Senator Tambling: this was a difficult issue. In many cases, when you read the report, you will find that parts of it point to an open and shut case. There is virtually no disputing that Senator Tambling was threatened and that his preselection was threatened over the Interactive Gambling Bill. There is not much doubt that he was punished—indeed, a special meeting stripped him of his endorsement. This conflicts, in my view, with another principle that I hold pretty dear: this parliament should try to avoid interfering in the internal affairs of political parties. If it did, where would it stop? For instance, some people might say that the dreaded National Compliance Committee of the Australian Democrats—which brings to my mind all the terror of the Committee of Public Safety in 1792 France—might well find itself before the Senate Privileges Committee for trying to discipline Senator Lees for expressing views that she may say she expressed as a parliamentarian. We do not want to interfere with those internal affairs. It could also mean that Senator Ray might find his preselection in some doubt. God forbid! But maybe that is what could happen. What do I do? I go off and act contrary to the interests of my political party, get threatened, get punished and then run to the Senate and ask for restitution. That is just not possible.

When we consider what ultimately happened in this case, Senator Tambling properly took the matter to the courts. However, the matter was not proceeded with and Senator Tambling had his legal expenses paid by the Northern Territory Country Liberal Party. He then allowed the political processes to run and got beaten in the political processes. In other words, he took his chances. My submission is that, if you join a political party, you join it warts and all. You join a political party and you take the risk at any time of winning or losing endorsement. You cannot appeal to this chamber, no matter how crass—and believe you me the behaviour of the Northern Territory Country Liberal Party was terribly crass—and no matter how lacking in natural justice the party may have been. I do not want to encourage this chamber to directly interfere in the internal political processes of political parties.

But we had better take this to heart: unless political parties develop proper and reasonable rules and procedures of appeal and natural justice, they will find their internal affairs being determined by the courts. For a long while, the courts resisted interference in the internal affairs of political parties. That is no longer so. They have shown a great willingness in the last five years to intervene. I say to political parties: you must get your rules right to prevent disputes going to the courts or being appealed to the Senate. But this is a partisan body; I can say generally that the Privileges Committee is not. Members of it do not want to be involved in the internal affairs of our colleagues, even if they are in different political parties. We do not want to do that, and I do not think we can do that.

Having said that, I have to say that I feel a great deal of sympathy towards former Senator Tambling for the way he was treated. I do not say that in a partisan way. He was not treated fairly; he was not accorded natural justice. He was set up and done over. But I do not think that can be resolved here. As we often say in politics: follow the principle that you hunt and kill your own. It is up to the Northern Territory Country Liberal Party to reform itself. It has been through a couple of beatings recently. It can no longer ride roughshod over everyone in the Territory. It will come back if it reforms itself. If it puts a bit of decency back into its procedures, it will inevitably come back—as any party does—but, if it does not reform, it will go down. Whilst I feel sorry for Senator Tambling, he made the life choice. He chose that political party to join, so he has to put up with the consequences of that. It is a bit like Groucho Marx saying he would never join a club that was willing to accept him as a member. Senator Tambling made that mistake in his life choice.

Once again, the warning is out there to political parties. They should not act in the crass way that this political party has. You could do it with all due hypocrisy, couldn’t
you? You could have de-preselected Senator Tambling, not mentioned the interactive bill and never have proven that he was de-preselected for that reason. I do not know whether we should give credit to the Northern Territory Country Liberal Party, but they in fact boasted about it. They did not make it a secret; they are a pretty macho mob—'Yes, we are going to punish you, Senator Tambling, we are going to strip you of your pre-selection, knock off another couple of stubbies and get into it.' In the end, this chamber should not be interfering in political parties because were you to look over the precipice I would hate to see where this would end. We have to draw the line and not necessarily pursue this case to its logical end.

Senator KNOWLES (Western Australia) (4.15 p.m.)—I only wish to make a few comments on the report of the Standing Committee of Privileges because I think Senator Ray has really summed it all up. This was a remarkable event, and I have to say that when this occurred to former Senator Tambling I looked at the issue as a casual observer thinking this was game, set and match—the Country Liberal Party up there has simply overstepped the mark. The things that Senator Ray has said are very true. Having come to the committee with probably a preconceived position, because I thought the whole issue was unfair, I remained to be convinced about the actual issue of contempt only on the basis that Senator Tambling had ceased proceedings in the court.

This one was very different to normal preselections and the contesting of normal preselections. In this particular case Senator Tambling had been given preselection and under that circumstance would not have had to face preselection for another three years. As Senator Ray said, the CLP just could not help themselves: they had to flex their muscles and they had to be the bully boys. They had to go in and say, ‘We are now going to make you stand for preselection again, we are going to re-run the race and we are going to disendorse you.’ That is the whole question. Nothing was done subtly, nothing was done in a way that would say, ‘We will just review your preselection the next time around.’ They had already given him preselection and they knew the next time around was going to be three years down the track. So in that ham-fisted way they did conduct themselves, I think, in a most shameful manner. I think the alleged behaviour of some of the people who sat in judgment of Senator Tambling, and in fact brought about the judgment of Senator Tambling, was disgraceful. Some of those people, I believe, should have known better. They have been in positions of responsibility over many years. I think they should have known better and they should have read the tea-leaves. They knew that what they were doing was a probable and possible contempt of the parliament. I think that we need to be able to look at this thing in its crystal form and say that this party really did overstep the mark in relation to Senator Tambling and his behaviour. He is allowed under the rules of the membership of the party to vote in a way that he sees fit and to not be disciplined as a consequence. The CLP threw the rule book out the door and said, ‘Right, we are going to get you.’

I think this is a very sad chapter. I think Senator Tambling has been dealt with appallingly. I think it is a very inappropriate way for the CLP to have behaved and I certainly hope that, even though no contempt has been found on this occasion, they do not think they have got off scot-free because it is far from the truth. This has been given great scrutiny, and I hope that they do not repeat it in future. I seek leave to continue my remarks at a future time.

Leave granted.

Debate (on motion by Senator Ludwig) adjourned.

Scrutiny of Bills Committee

Report


Ordered that the reports be printed.

Senator COONEY—I move:

That the Senate take note of the reports.
I do not normally speak to these reports, but I do on this occasion because I want to make some statements about this committee and also, depending on the time available, about the people on it. I see that Senator Crane has come into the chamber and I am very pleased he has because he has been a most distinguished member of this committee and an outstanding member of the executive. He and I were the executive of the committee; we are about to be replaced. This committee is directed at looking at issues of rights and at the things that ought to be done in a community where the rule of law applies and where every citizen is dealt with in a decent way or can expect to be dealt with in a decent way. We have courts of law, and we have tribunals that look at legislation and the way people are being treated and who come to conclusions as to whether things have been done according to the law. That is very important—the courts are absolutely essential to our way of living.

But parliament itself can do a lot; courts are not there on their own. Parliament can do much to see that we live in the sort of community in which we all want to live, and the sort of community we all want is one in which everybody gets justice according to the law but also a fair go. I will tell a story which I have told before in this chamber. It is about my mother, Constance Eva Cooney, and how she conducted things in the Mallee during the thirties when the Depression was on the land. There was lots of dust and there were lots of people without a job. Those people—mainly men—used to walk around. They were called tramps, because they tramped, or swaggies, because they carried their swag.

Senator Crane—You must be old, Barney, if you remember that.

Senator COONEY—I do remember it, Senator Crane. They would come to the door, knock on it and ask for something to eat and drink. They were the sorts of people, I suppose, that Henry Lawson described—Mitchell and those sorts of people. My mother would always give them work, if she could, chopping the wood—that gave them dignity—and, no matter who they were, she would always give them succour because they were human beings. In many cases they were returned soldiers from the First World War, and many of the younger ones were going to be soldiers in the Second World War. That was always a lesson to me—that, no matter who you were, you were entitled to be treated in a particular way.

That seems to be a long way from a Senate committee. But it is not, because in this chamber we deal with matters of law, and what are matters of law? Matters of law are the expression of what we reckon is fair. So, as a Senate, we look at things; as a parliament, we look at things. We say that there should be a change. We say that it should be different because people are being treated in a different way. Depending on our party and our philosophy, we might have different answers to these problems. But we all want to see that justice is done to everybody in our society so that those who would seem to be at the periphery, those who are on the edge, become the brothers and sisters of those at the centre.

To see that that is done, we pass legislation. The legislation that we pass can be unfair—unintentionally in most cases. This Scrutiny of Bills Committee is a committee of parliamentarians, of senators, who are directed by the Senate to see whether the legislation that has been brought forward and put through this chamber is fair in the way that a court might say is fair or not fair, depending on rules of due process and the bills of rights. Parliamentarians can do a lot about this—and they do. This committee is dedicated to that and to telling the Senate, 'In our view this is a little unfair. You might think it is very unfair and want to do something about it.' The committee has been going now since 1981, and I think it has done an excellent job. The fact that it has is due to a lot of people who do their best in terms of the directions given to them by the Senate. The committee can do that only if it has the proper support and advice.

Over the years, this committee has had quite brilliant legal advisers. The first was Professor Dennis Pearce. I think everybody would know that he is the person who got the concept of administrative law going. What is administrative law?
simply a process whereby an act of parliament, a piece of legislation, is made to do its job. In other words, the administrators administering the piece of legislation should administer it according to what it means on the books. Unfortunately, that does not always happen—in fact, it does not happen quite often. That is usually because it is difficult to always follow the law as it was meant by parliament. I do not have time to go into that but I think that is right. Administrative law sees that people carry out what the law says. Professor Pearce was followed by Mr Jim Davis, as he then was, and then by Emeritus Professor Douglas Whalan, whom Senator Crowley would know well. Mr Jim Davis then came back as Professor Jim Davis, and he has been the longest serving adviser this committee has had and has done outstanding work.

I am going to mention the secretaries of this committee, because I think they need to be mentioned. There is some difficulty in that because I do not have all that much time. However, I will quickly go through them, since the committee has worked outstandingly well because of its outstanding secretaries. I will just mention them and, since I will be presenting another report tomorrow, I will finish these thoughts off then. To start off with there was Ms Anne Lynch, who is now a most distinguished Deputy Clerk; Mr John Uhr; Mr Derek Abbott, who is just back from China; Mr Robert Walsh, who was acting secretary; Mr Giles Short; Mr Andrew Snedden, who is still with us; Mr Stephen Argument, who for a long while served with distinction while I was there; Mr Ben Calcraft, who has gone to Adelaide; Mr Stephen Argument again; Mr Peter Crawford; Mr James Warmenhoven, who in the dying days of my time went to the Regulations and Ordinances Committee, so they now have an outstanding and brilliant secretary; and David Creed, who is the present secretary. I will be presenting another report tomorrow and would like to develop this further. This is a committee on which I have been extraordinarily proud to serve. I think it is a great expression of what we are as parliamentarians.

Question agreed to.

**Community Affairs References Committee Report**

Senator CROWLEY (South Australia) (4.30 p.m.)—I present the report of the Senate Community Affairs References Committee entitled *The patient profession: time for action*, together with the Hansard record of the committee’s proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CROWLEY—I seek leave to move a motion in relation to the report.

Leave granted.

Senator CROWLEY—I move:

That the Senate take note of the report.

This report will be the last report I table as a senator—in fact, it is probably the last report I will table. It is timely, therefore, to take a few minutes to say something about the invaluable work of our Senate committees. I very much agree with Senator Cooney about the Senate Standing Committee for the Scrutiny of Bills; I thoroughly enjoyed my work on that committee with him and all that I learnt from it. I also want to talk about the Community Affairs References Committee, which I have chaired for a number of years now. The Senate committees often undertake inquiries that nobody else is able or willing to perform. They also provide an opportunity for the public to have their say and to be listened to. They collect and assemble a significant body of evidence from the submissions and hearings, and that body of evidence is available through the Senate for people over time.

The other thing is that the Senate committee reports carry a weight that other reports often do not. If this is a Senate report about the status of nursing, then it has a different clout than, for example, many of the other reviews that are currently under way and/or have just recently concluded. Finally, I have to say—and it is something that I have been very concerned about—to the people involved that they own the report and that, if they are serious about what it says, they will not let it collect dust on the shelves. It is their report; it has been tabled in parliament on behalf of the public. The public can take it up and use the data, the information and the
recommendations to keep lobbying government to deliver on the recommendations in the report.

I want to particularly thank the committee secretariat: Elton Humphery, Christine McDonald, Peter Short, Leonie Peake and Ingrid Zappe. I thank them very sincerely. I have worked with them now for a number of years and it has been an extremely pleasant, constructive and supportive time. I think we need to acknowledge as well that, though they do not exactly run on the smell of oily rag, the research facilities of our secretariats are restrained.

Senator Cooney—In fact, most restrained, Senator.

Senator CROWLEY—Indeed one could say almost modest, but they do produce, in the face of this limitation, extraordinarily good reports. So I think we should acknowledge the Senate committees and the tremendous work of their staff. I certainly want to acknowledge the staff of this committee.

The interesting thing to compare this with is the University of New South Wales research study looking at analysis of a selection of the submissions to our nursing inquiry. They commented that the information contained in the submissions is a valuable resource, synthesising the views of Australian nurses and of the various nursing bodies, and that it is a pointer to the underlying key issues that need to be tackled to create a viable, vibrant and effective profession. It is interesting to get such a good tick of approval from a group of researchers from the University of New South Wales. They are probably larger in their range and better funded perhaps than the secretariat, yet the work they are praising is the work of the secretariat, with its restraints, as I said.

This inquiry received over 1,000 submissions from all areas of nursing: nurse management and unions, hospitals, educational institutions. There were 650 submissions from individual nurses expressing in their own words why they love nursing and why they are so frustrated at the moment with the challenges that we face. Nursing is a great profession. It is some 150 years old and at the moment it is at crisis point. There has been any number of reviews over the last four or five years and those reviews have highlighted what needs to be done. Some steps have been taken but the process and the progress are very slow and we do have to admit, on the evidence to our committee, that while we cannot put an agreed figure on the number of the shortage of nurses there certainly is a recognition that there is a crisis confronting the nursing profession: there are just not enough nurses in our hospitals and in our community to do the work that is being demanded of them.

In aged care, for example, the nursing shortage means that there are now more and more unqualified people coming into the aged care area to look after our elderly relatives, and that is threatening the quality of care that people in the community properly demand. There is a crisis, there is a shortage and, at the same time, the nursing profession—which provides the largest number of people working in health area—really has almost no say or no contribution to the policies affecting their own lives or to the general health policy. They want a voice; that is one of the strong messages from our inquiry.

Our committee has made some 85 recommendations covering all tiers of government and range of organisations and people involved in the nursing area. I note that the minority report makes some comment that really, if this is a Commonwealth inquiry, it should be looking at Commonwealth recommendations and should not stray beyond its purview. I think that is a not unreasonable comment, but in this inquiry I think it is not pertinent because the committee heard evidence calling for us to make some recommendations across the whole field of endeavour. In particular, we can in the Commonwealth area look at the need for a national nursing work force planning strategy. There is not one. We are not clear about the figures comparing those from one state to another. We know there is a crisis, but it is not clear exactly what those numbers are.

Secondly, people said, ‘We need someone to speak for the nursing profession at the Commonwealth level,’ and we recommend the establishment of a Commonwealth Chief Nurse. Thirdly, despite the fact that we can...
retrain nurses and try to get back into nursing all those nurses who are now qualified to practise but are no longer practising, those steps will not reduce the shortage. We need more nurses through our universities. By the way, the committee strongly supports the continuation of nurse education in our universities, with the appropriate attached research to go with it. We need, though, on all the evidence, to fund additional undergraduate places which are specifically earmarked for nurses. There is no way that the other steps, of retraining and re-recruitment, will deal with the shortage over the longer term. We need more undergraduate places to be designated for nurses. That means, of course, recommendations to the Commonwealth department of education. Appropriately, that is a Commonwealth recommendation. One of the problems we have with nursing is that there are so many tiers of government and so many departments. One way to illustrate this is to comment that the Commonwealth education department trains nurses who are then employed by state governments in the big public hospitals, and the state governments employ enrolled nurses, through TAFE, to work in Commonwealth funded aged care. It is one small example of the challenge—I do not think ‘fiasco’ is quite the word—and the complexity and the confusion of the great nursing profession.

I have said before that nurses have been reviewed so often over the last few years that they have become very frustrated at the slowness of action to address the many concerns they have. That, I think, is leading to increased militancy amongst the nurses yet again. They have very rarely gone on strike. I can remember one strike a few years ago that really shocked people when finally the nurses collectively recognised how poorly paid they were compared to any other similar profession.

There are numbers of recommendations here about education and about public hospital and community health areas of nursing. In particular, there are recommendations about aged care, about addressing the challenge of sufficiently qualified nurses, and also looking again at the amount of paperwork that puts such demands on the RNs—the registered nurses—or the enrolled nurses in aged care. We also have recommendations about looking closely at how nursing can become more family friendly and how it can become safer. In particular, we took some very good evidence about needle-stick injuries. Nurses, more than most, are at risk. There are numbers of needle-stick injuries that become health problems for nurses and cause a run on insurance policies—that is, the occupational health demands under that service provider.

In summary, I think it is time for the nursing profession to be recognised as an equal player in Australia’s health care system. It is time for the voices of nurses to be heard. The patient profession is running out of patience. It is now time for action.

Senator KNOWLES (Western Australia) (4.40 p.m.)—I rise to also make a contribution on the tabling of the Senate Community Affairs References Committee report entitled The patient profession: time for action. In so doing, I wish to make a few observations. The reason the government senators submitted a minority report is that, even prior to the reference of this issue to the committee, the government senators expressed a concern that yet again it was going to be delving into an area that is primarily a state responsibility. In addition to that, the government was soon to announce the National Review of Nursing Education, which is a federal responsibility. So our recommendation to the committee at that stage was not only to do any reference other than one that would duplicate the many other reports that had been conducted but also that they wait until the National Review of Nursing Education had been completed. But, no, there was another agenda, and off we went on this frolic of inquiring into nursing.

One can see from the majority of the recommendations made by the opposition parties that they basically do not revolve around the area of Commonwealth responsibility. It is for that reason that the government senators decided that we would have to put in a minority report on a subject that I had hoped would have been a unanimous report. But, as we have often seen in the past, there has not been the will to make that a unanimous re-
port by focusing on those particular issues, even though the suggestion was put to the opposition parties that if they were prepared to cluster the recommendations in areas of responsibility—by that I mean areas of Commonwealth responsibility, state and territory responsibility and other organisational responsibility—we would be prepared to look at the possibility of a unanimous report. Clearly there was not the will to do that. I find that sad, because I think this issue is one that is far too important to try and play politics with.

The other thing that is of concern to us is that there has been little recognition in the report, or the recommendations, of the work that has already been done to try to recruit, retain and train nurses in accordance with the high level of competency that Australian nurses have been renowned for over many years. The National Review of Nursing Education, as I say, is under way; it is due to be completed by the end of this year. I think that will be a very useful report to look forward to, from the point of view that there has been wide consultation with all the stakeholders: the states and territories, all the nursing organisations, and many individuals.

As I said before, many other inquiries have been done. To some extent, this one simply replicated those other inquiries. But our issue in the minority report was purely and simply to focus on education, aged care and helping to get nurses out to remote and regional areas where the shortage is most acute. The prime example of what the government has done is, as I quote in this report, to put in place the Australian Remote and Rural Scholarship program that offers incentives to nurses wishing to pursue or build on a career in rural and remote nursing. The first Commonwealth undergraduate Remote and Rural Nursing Scholarship has been implemented. Out of a total of 1,014 applications, only 110 of those scholarships were available. Based on that, the minister then agreed to a one-off expansion of 30 places in 2002, at an additional cost of $900,000 over three years. Once again, none of that has been recognised.

But, additionally, the Australian Remote and Rural Nursing Scholarship program has four different scholarship programs contained in it—postgraduate, conference, undergraduate, re-entry and upskilling. I think it is particularly important that people do realise that things are being undertaken. If one were to look at the report of the opposition parties, one would be left thinking that nothing has been put in place, that no new initiatives have been taken, and that is simply not true.

There are a number of other initiatives that are funded by the Commonwealth to support a range of health practitioners, including nurses: the midwifery upskilling program, the first-line emergency care courses for remote practitioners and the bush crisis line—all new initiatives, but not considered by the opposition parties. Funding has also been provided to nursing professional organisations to undertake secretarial functions, and that includes the Council of Remote Area Nurses of Australia and, of course, the Association of Australian Rural Nurses.

One of the areas of great concern of course has been the variation in remuneration and conditions for nurses in the aged care sector compared with those in the acute care sector. Once again, I do not think any of us would wish to diminish that concern and the reality that there are people choosing not to go into the aged care sector because of that variation. It is very easy to sheet home the responsibility to the government in that regard but it does need to be understood that the budget this year, for example, provided additional funding of $21.2 million over four years so things like personal-care staff in smaller, less viable aged care homes could do a range of accredited courses related to geriatric care.

Last year the government announced that $200 million would be provided over four years, commencing in 2002-03, for increases in residential care subsidies. Part of the cooperative process to examine long-term financing options for the aged care industry was the review which will take into account the improved care outcomes that are now required under accreditation, and the underlying cost pressures including movements in nurses’ wages and other wages, and industry
reviews. It is important we note that the recent budget provided an extra $26.3 million, which will be used to fund up to 250 scholarships valued at $10,000 a year. In the higher education area, for example, universities are basically autonomous but the fact is the Commonwealth always looks at the way in which the profile discussions have proceeded. The situation is not different at this stage either because there is a need for a constant evaluation to be done on the requirements of any profession, and nursing is but one of those. I know that the government and the universities are very mindful of that.

Another significant measure taken by the government earlier this year was the Postgraduate Education Loans Scheme. The Department of Education, Science and Training introduced it. The scheme provides an interest-free loan facility similar to the HECS for eligible students enrolled in fee-paying postgraduate non-research courses. Also, there are other courses and facilities being made available to other areas of the health profession in the health training package. That is a workforce of 150,000 people, ranging across ambulance services, dental support, general health services and complementary and alternative health care. Those people are being given a further opportunity to update their skills.

All in all, I think much still needs to be done particularly by the states. The states cannot go on decreasing funding or letting their funding remain stagnant just because the Commonwealth increases its share of funding, which happened in the last health care agreement. The real funding increase in that case was 28 per cent, and it was disappointing to note that some of the states did reduce theirs after that increase.

Finally, I thank the secretariat yet again for the outstanding work that they do. There is no doubt that Elton Humphery and his team are second to none in my opinion. I just hope that in future, as has now become common practice, the opposition parties allow the secretariat to work for the government senators and that they do not bog them down. The last inquiry was I think in early April or late March and here we are not submitting the report until now. I just hope that there is a far more equitable use of resources among the opposition and the government senators in future reports. I think it is very important. These people are very much extended. There is no point in my going to them, for example, and saying, ‘You have to do it,’ if I know that they cannot.

(Time expired)

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—Under the orders of the Senate, the time for debate on reports has expired. I am advised that, as well as Senator Lees, Senator West would like to comment on this report. I am also advised that, because we are not having general business tomorrow, there will not be any opportunity for senators to speak on it. I do not need to be advised to know that, certainly in Senator West’s case, it is her last opportunity to speak on this report as she will not be here when we come back in August. Given her extensive interest in nursing issues, were people of a mind and were the Senate of a mind, they may wish to give leave for the senators to speak.

Senator LEES (South Australia (4.51 p.m.)—by leave—Thank you, Mr Acting Deputy President—and I will be brief—because I would like to acknowledge the contributions of the Senate Community Affairs References Committee. The committee have made an extraordinary effort in this case, not only in working through all the submissions we had but in working through an enormous amount of research and other material that has pulled together one of the best one-stop shops for what is going wrong with the ability of Australian health services to attract nurses. I would like to congratulate Senator Crowley on her dedication to this issue and acknowledge her determination to get this completed and to make sure that we had a broad cross-section of witnesses appear before us. We had an enormous number of submissions; indeed, it was very heartening to see how many individuals took time to put in a submission. I would also like to acknowledge the contribution of Senator West, who, as Acting Deputy President Senator Bartlett has just noted, has a major interest and an enormous amount of experience in this area. Her contribution was very impor-
tant for us, particularly as we worked through the final drafts of the finished document, The patient profession: time for action.

Obviously we would not have launched down this path without the issue being one of great urgency. I am very disappointed to see the government’s reaction to this. I was well aware at the time we passed the motion through the Senate that some members of the government felt that this was not an area we should get involved in. But who is going to take the lead? Someone somewhere in this country has to take the lead in sorting out a complex set of difficulties, of barriers, to us getting enough nurses out there on the ground in our hospitals, nursing homes, community health services, doctors’ surgeries et cetera. I hardly think the Tasmanian government is going to put its hand up. I know the South Australian government has done some of its own work, but it is not going to be interested in coordinating anything on a national level. So one of the things that the majority of the committee felt quite strongly about was that the Commonwealth needed to take the lead. No, it is not going to take over; it is not going to start ordering the states around. It simply needs to assist with coordination and with processes to actually get things happening on the ground.

As we went through, step by step, the many issues that contribute to the loss of nurses—and I am going to be as brief as possible here; I am only going to mention a few—some of the key problems we found included the loss in that first year out of training, the first year out of university, where so many pressures are put on people because of the shortages that are already there. You have this horrible double whammy: our hospitals are short of nurses, and when the new nurse turns up they cannot get the supervision and support they need and they literally throw in the towel. They say: ‘There has got to be something that is more rewarding, something where I can actually feel I am really making a contribution. I know, at the end of the day, I have done everything I was supposed to do, but I end up without even a lunchbreak or time for a cup of coffee.’ It is something, as you will see through the 85-odd recommendations, that comes up time and time again in terms of our education system and university responsibilities as well as hospital and state responsibilities.

Re-entry was an issue, but this is not going to solve everything. We need to support those nurses who want to come back into the system. There is a range of recommendations relating to that. Training in our universities: obviously it is essential for registered nurses to be there but we simply do not have enough. I will not get too political here, as we try not to do this in committee reports. Some of the measures that the government has are quite good, but suggesting, for example, that nursing scholarships are going to solve this problem when the universities are not getting any more places defies logic, Senator Crowley. As we have said, it is extra places we need in our universities. We should not be expecting the nursing course to go around and try and get a couple of places off arts and one off education, a couple off engineering, to try to patch together perhaps 20 or 30 places. We need hundreds and hundreds of extra nursing places because the students are now there. This brings me to the last issue I will mention, which relates to the status of nursing. Most state governments or, rather, the education departments in the various governments have got some good measures in place where school students are targeted and there are extra work experience opportunities. We really are seeing some improvements of the actual pathway into the registered nursing courses through the enrolled nursing courses, with support and, in some cases, state based scholarships to then go on and do the university course.

I would like to particularly thank the nurses who came before us and helped to contribute to those hundreds of submissions. I thank them for their time and for their dedication. They were able to tell us what it feels like to work under the pressures that are there in our public and our private hospitals—pressures that lead them to, at the end of their shift, often feel that they simply have not done a good job because they have not had the time to do what they consider to be an excellent job. The patients may think that they are fabulous and have done everything
possible, but the nurses themselves come away feeling, ‘No, I should have seen Mrs Smith once more,’ or, ‘There was a cup of tea I couldn’t arrange,’ or, ‘I couldn’t get back and do whatever it was that was still waiting at that end of what is often a very long shift.’

They also told us what it is like working under the mounting reams of paper in our nursing homes and the specific pressures there. They were able to take us through some of the difficulties in the ongoing training and education systems. Some of them made excellent comments on the university courses and on the re-entry problems. They actually helped us to deal with the real issue of why it is nursing is a profession that is not either attracting enough people or being able to keep people. As it was noted, it is not just an Australian problem, it is an international problem. We were able to talk to specialist nurses—for example, in psych and mental health areas—and we talked to midwives. I think some of the material in this report is better than anything you will find anywhere from the specialist nursing perspective. For those who are particularly interested in this, I recommend reading through the submissions in this area.

I will close by congratulating all of those who took part, the committee and particularly Senator Crowley and also Senator West. I think this is a document that, while it may be put on a few shelves—hopefully, on thousands of shelves—it will not stay there. It can be taken off by the Commonwealth government, by state governments, by the nurses themselves and used as evidence, as documentary proof, of what needs to be done. It is a tool that hopefully we will see, page by page, crossed off as those particular recommendations come into play. I am sure Senator Crowley, from her leisurely retirement, or whatever her next job is, will be sitting there with this report on her shelf and as she hears another statement from a government, another measure, she will be crossing off another one of the recommendations of her report and noting that, at last, it has been achieved. Let us hope that she gets most of them crossed off within three or four years or our hospitals and our whole health system will simply not be operating.

Senator WEST (New South Wales) (5.00 p.m.)—by leave—It is with pleasure that I rise to speak in support of the report of the Community Affairs References Committee. I state publicly that I am a registered nurse and a registered midwife, I have a mothercraft certificate and a Diploma of Community Health, and I am a member of both colleges of nursing. I think that gives me some right to have thoughts about nursing and health care. I thank the committee members and the committee secretariat for the hard work they have done. The nurses, nursing organisations and health organisations that contributed to the hearings made a valuable contribution.

This is one of the many—and I hope this is the final—reports that have been done into the shortage of nurses in the health care industry over the last five to 10 years. It is time for action. The action has to be at the Commonwealth level. It does not matter that the Commonwealth does not have responsibility for this area. When it comes to funding for health care agreements, health care arrangements and hospital arrangements, where does the money come from? The money comes out the coffers in Canberra. Therefore, anything we recommend in this report that the states should do will have an impact on the bucket of money that the Commonwealth will give the states. The Commonwealth has an input and involvement all the way through the health care industry.

This report also highlights the issues facing the health care industry from a nursing perspective. If you look more carefully you will see issues that can be translated to the other health professionals. It also mentions the issue of the changing nature of health care, such as the increased use of technology and the greater number of patients with a higher level of acuity. To illustrate, when I was doing my training in the late 1960s, the removal of a gall bladder, a cholecystectomy, meant the patient spent seven to 10 days in hospital. Senator Heffernan might not be interested in this but other people are. For the first two or three days they were quite sick. They needed a lot of care and attention from the nurse. After that, as they became ambu-
latory and their condition improved they required maybe 20 per cent of the initial care provided by the nurses. Now, with keyhole surgery, a cholecystectomy patient is in hospital for 48 hours. The whole time they require a fairly solid degree of observation, monitoring and nursing care.

It means that that hospital bed which 30 or 40 years ago had one patient in it for 10 days now has five or six patients in it over that period, all with a higher level of acuity. If you have a 20- or 30-bed ward and the patients occupy the beds for only 48 to 60 hours, the pressure on the nursing staff is far greater than 30 or 40 years ago—I do not like saying 40 years ago, but it is getting close to it—when the beds changed over once every week or 10 days. The pressure on the health profession and the hospital system is far greater now. That pressure builds up and staff need a break.

Nowhere in the health administration is there adequate recognition of the stress and pressure on health professionals, particularly nurses as they are the ones at the coalface. Nursing is the only one of the health professions where people who have finished their university degree do not do a year internship or a year under supervision of more senior people. Nurses are expected to do their three-year degree and then be booted out into a ward and cope with anything and everything with minimal supervision. I think that is setting people up to fail.

Many other health professionals, and many other professionals, have an extra year when people are given support while they go out and learn the finer details of the profession and apply their training in practice. This is about giving people confidence in what they are doing. It is fine to say that they know it all, they have learnt it all, they have done it under supervision, but when you put new graduate nurses who have minimal ward experience on a ward and in charge of 20 people—they could be in charge of experienced enrolled nurses or agency nurses who might well have more experience but decide to go agency nursing because it is less pressured—you are setting them up to fail. They have high expectations of what they can deliver and they are proud of their profession, but when you do not give them that support they pretty quickly become disillusioned. I feel very sorry for people who are placed in that situation.

I know from experience that it does take a year or two to gain confidence in what you are doing—to be able to ring doctors at all sorts of strange hours of the day or night because a patient has an abnormal reading of some sort and feel confident to argue it out as you get a sleepy, snarly response at the other end of the line and someone saying, ‘Why have you woken me, Sister?’ It takes time to build the confidence. I think it is vitally important that we recognise that the 12 months after graduation is an essential element of nursing training and absolutely critical.

We have heard a lot of evidence, and I have heard anecdotal evidence, from people about the number of nurses leaving in their first or second year post graduation and the number allegedly leaving universities. I would suggest from my conversations with a number of academics at Charles Sturt University at Bathurst that the drop-out rate for students studying nursing is no greater than the drop-out rate for students in any other course. We also hear that nurses did not leave in the past. I do not think anybody has done any comparison between the drop-out rate of nurses under the old apprenticeship system and the current system. In my day, by the time you had done four years you certainly knew whether you were going to stay around. There were a significant number who dropped out in that four-year period. I do not think that has ever been researched. I do not think it has been quantified. I do not think people who run around saying, ‘We have lots of nurses leaving now; it is higher than it used to be,’ are speaking from evidence. I think they are saying what they see happening. They are not comparing apples with apples, and it is vitally important that they do.

Nursing education must stay in universities. That is the way that we will put this profession on an academic footing and provide nurses with the academic information and knowledge that are needed for them to maintain a high level of competence, a high
level of care and a high level of ability and skills. Skills come from practice, but they also come from having a great deal of knowledge to back them up. The way to get them is through university education. Otherwise we run the risk of just being passed back and pushed down to being the handmaids as before.

It is highly interesting to look at the submissions and where they have come from within the nursing profession. Many people out there have PhDs and higher qualifications. There are now many nurses who have professorships and those sorts of positions. That is very important. This is a profession that needs a lot of people doing a lot of hard work, but it also needs people at that level to be leading the thinking on what is happening. For me, it was very good to learn that in the last intake from Charles Sturt they had people with TER scores ranging from 72 to 99. That is excellent. It indicates that there are people who are very intelligent, very bright, but who see a need to have a commitment to nursing no matter what their TER score is. They will be assets to the profession in the long term and great value in the patient care that it is so essential to deliver.

I seek leave to continue my remarks later.

The ACTING DEPUTY PRESIDENT (Senator Watson)—Thank you, Senator West. We wish you well in your future.

Leave granted; debate adjourned.

DEPARTMENT OF THE SENATE Register of Senior Executive Officers’ Interests

The ACTING DEPUTY PRESIDENT (Senator Watson)—I present the Register of Senate Senior Executive Officers’ Interests for the period 7 December 2001 to 24 June 2002.

DOCUMENTS

Auditor-General’s Reports

Report No. 62 of 2001-02

The ACTING DEPUTY PRESIDENT (Senator Watson)—In accordance with the provisions of the Auditor-General’s Act 1997, I present the following report of the Auditor-General: Report No. 62 of 2001-02—Information Support Services—Benchmarking the Finance function follow-on report: Benchmarking Study.

Response to President’s Report

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.09 p.m.)—I present the government’s response to the President’s report of 15 February 2002 on outstanding government responses to parliamentary committee reports, and I seek leave to incorporate the document in Hansard.

Leave granted.

The document read as follows—

GOVERNMENT RESPONSES TO PARLIAMENTARY COMMITTEE REPORTS

RESPONSE TO THE SCHEDULE TABLED BY THE PRESIDENT OF THE SENATE ON 15 FEBRUARY 2002

Circulated by the Leader of the Government in the Senate

Senator the Hon Robert Hill

26 June 2002

COMMUNITY AFFAIRS REFERENCES

Lost innocents: Righting the record—Report on child migration

The response was presented out of session on 13 May 2002 and tabled on 14 May 2002.

CORPORATIONS AND SECURITIES (Joint Statutory)

Report on fees on electronic and telephone banking

The response was tabled on 20 June 2002.

Report on aspects of the regulation of proprietary companies

The response is currently being prepared. It is expected to be completed soon.

Report on the Financial Services Reform Bill 2001

A response is not required as the Committee’s report was taken into consideration when amendments were made to the Financial Services Reform Bill.

ECONOMICS REFERENCES

Report on the operation of the Australian Taxation Office

The response is being finalised. It is expected to be tabled in the near future.
Report on the provisions of the Fair Prices and Better Access for All (Petroleum) Bill 1999 and the practice of multi-site franchising by oil companies

The response is being finalised and is expected to be tabled shortly.

Inquiry into mass marketed tax effective schemes and investor protection—Interim report

The response is being finalised. It is expected to be tabled as soon as possible.

Inquiry into mass marketed tax effective schemes and investor protection—Second report: A recommended resolution and settlement

The response is being finalised. It is expected to be tabled as soon as possible.

Inquiry into mass marketed tax effective schemes and investor protection—Final report

The response is being finalised. It is expected to be tabled as soon as possible.

Inquiry into the framework for the market supervision of Australia’s stock exchanges

The report is being considered and a response will be provided as soon as possible.

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES

Universities in crisis: Report into the capacity of public universities to meet Australia’s higher education needs.

The response is expected to be tabled shortly.

ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS REFERENCES

Report on the powers of the Commonwealth in environment protection and ecologically-sustainable development in Australia

The response to the report is subject to ongoing consultation. The response will be tabled in due course.

Inquiry into Gulf St Vincent

The government is finalising its response to the report for tabling in the 2002 Spring sittings.

Inquiry into electromagnetic radiation

The report is being considered and a response will be provided as soon as possible.


The government will address the comments by the Committee in the Parliamentary debate on the re-introduced bills. It does not intend to respond further to the report.

Above board? Methods of appointment to the ABC Board

The response is being finalised and is expected to be tabled shortly.

FINANCE AND PUBLIC ADMINISTRATION REFERENCES

Re-booting the IT agenda in the Australian Public Service—Final report on the government’s information technology initiative

It is expected that a response will be tabled early in the 2002/03 financial year.

Commonwealth contracts: A new framework for accountability—Final report on the inquiry into the mechanism for providing accountability to the Senate in relation to government contracts

The response was presented out of session on 5 June 2002 and tabled on 18 June 2002.

FOREIGN AFFAIRS, DEFENCE AND TRADE (Joint)

From phantom to force: Towards a more efficient and effective army and A Model for a new Army: Community comments on the ‘From phantom to force’ Parliamentary report into the Army

The response is being prepared to take into account not only the two reports, but also changing strategic circumstances and additional White Paper considerations. The response should be tabled in the next sitting.

Conviction with compassion: A Report on freedom of religion and belief

The response will be finalised shortly.

Rough Justice: an investigation into allegations of brutality in the Army’s parachute Battalion

The response was tabled on 20 March 2002.

A report on visits to immigration detention centres

The response is being finalised and is expected to be tabled in the near future.

Australia’s role in United Nations reform

The response is under consideration.
<table>
<thead>
<tr>
<th>Topic</th>
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<tr>
<td><strong>Australia’s relations with the Middle East</strong></td>
<td>The response will be tabled shortly.</td>
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<td><strong>The link between aid and human rights</strong></td>
<td>The response was tabled on 20 June 2002.</td>
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<td><strong>FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES</strong></td>
<td><strong>Artillery Barracks, Fremantle—Inquiry into the disposal of defence property—Interim report</strong></td>
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<td>The response was tabled on 20 June 2002.</td>
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<td>The response was tabled on 20 June 2002.</td>
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<td><strong>Japan: Politics and society</strong></td>
<td>The response is under consideration.</td>
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<td><strong>Recruitment and retention of ADF personnel</strong></td>
<td>The response is close to finalisation and further drafting is being undertaken to ensure that it takes into account the work being conducted on the recommendations of the 2001 Review of ADF Remuneration.</td>
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<td><strong>INFORMATION TECHNOLOGIES (Select)</strong></td>
<td><strong>In the public interest: Monitoring Australia’s media</strong></td>
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<td>The government is considering the report in the context of other reports raising similar issues and expects to respond in due course.</td>
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<td><strong>Cookie monsters? Privacy in the information society</strong></td>
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<td>The response was tabled in the Parliament on 16 May 2002.</td>
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<td><strong>INQUIRY INTO THE CONTRACT FOR A NEW REACTOR AT LUCAS HEIGHTS (Select)</strong></td>
<td><strong>A New research reactor?</strong></td>
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<td>The response was presented out of session on 27 March 2002 and tabled on 14 May 2002.</td>
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<tr>
<td><strong>LEGAL AND CONSTITUTIONAL REFERENCES</strong></td>
<td><strong>Inquiry into the provision of the Copyright Amendment (Parallel Importation) Bill 2001</strong></td>
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<td>The response will be provided through debate on the reintroduced Copyright (Parallel Importation) Bill 2002.</td>
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<td><strong>Inquiry into the provisions of the Measures to Combat Serious and Organised Crime Bill 2001</strong></td>
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<td>The response to the report took the form of government amendments to the Bill during debate of the Bill. Both Houses of Parliament subsequently passed the Bill in amended form and it received Royal Assent on 1 October 2001.</td>
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<td><strong>LEGAL AND CONSTITUTIONAL REFERENCES</strong></td>
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<td><strong>Inquiry into the Commonwealth’s actions in Relation to Ryker (Faulkner) v The Commonwealth and Flint</strong></td>
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<td>The government expects to table its response shortly.</td>
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<td><strong>Inquiry into sexuality discrimination</strong></td>
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<td>The response to the report is still under consideration.</td>
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<td><strong>Inquiry into the Australian legal aid system (3rd report)</strong></td>
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<td>The response was tabled on 16 May 2002.</td>
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<td><strong>Inquiry into the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999</strong></td>
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<td>The government expects to table its response shortly.</td>
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<td><strong>Humanity diminished: The Crime of genocide—Inquiry into the Anti-Genocide Bill 1999</strong></td>
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<td>The response is under consideration with a view to its tabling in the near future.</td>
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<td><strong>Order in the law: Management arrangements and adequacy of funding of the Australian Federal Police and the National Crime Authority</strong></td>
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<td>The government is currently finalising its response to the recommendations and expects to table its response shortly.</td>
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<tr>
<td><strong>MIGRATION (Joint)</strong></td>
<td><strong>Not the Hilton—Immigration detention centres: Inspections report</strong></td>
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<td>The response is under consideration and will be tabled as soon as possible.</td>
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<td><strong>Review of Migration Regulation 4.31B</strong></td>
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<td>The response to the report is under consideration and is expected to be tabled in due course.</td>
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New faces new places: Review of state-specific migration mechanisms
The response was tabled on 20 June 2002.

NATIONAL CAPITAL AND EXTERNAL TERRITORIES (Joint Statutory)
In the pink or in the red? Health services on Norfolk Island
The response is expected to be completed in the 2002 Spring sittings.

Risky business: Inquiry into the tender process followed in the sale of the Christmas Island Casino and Resort
The response is expected to be tabled shortly.

NATIONAL CRIME AUTHORITY (Joint Statutory)
The law enforcement implications of new technology
The response is expected to be tabled in the 2002 Spring sittings.

NATIVE TITLE AND ABORIGINAL AND TORRES STRAIT ISLANDER FUND (Joint Statutory)
Second interim report for the s.206 inquiry: Indigenous land use agreements
(19th Report)
The response is expected to be tabled in the 2002 Spring sittings.

PUBLIC ACCOUNTS AND AUDIT (Joint Statutory)
It is expected that a response will be tabled early in the 2002/03 financial year.

Contract management in the Australian Public Service (Report No. 379)
The response was presented out of session on 22 April 2002 and tabled on 14 May 2002.

Review of Coastwatch (Report No. 384)
The response is being finalised and will be tabled shortly.

Review of the Auditor-General Act 1997 (Report No. 386)
The response will be tabled shortly.

RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION
An Appropriate level of protection? The Importation of salmon products: A Case study of the administration of Australian Quarantine and the impact of international trade arrangements
The response is being revised in the light of proposed revisions to the IRA process, and issues crossing over from the apple inquiry response. The response will be tabled as soon as possible.

Administration of the Civil Aviation Safety Authority: Matters related to ARCAS Airways
The response was tabled on 16 May 2002.

Aviation Legislation Amendment Bill (No. 1) 2001
As the Bill has lapsed and is no longer on the Notice Paper, the government does not propose to respond to the report.

The proposed importation of fresh apple fruit from New Zealand—Interim report
A final draft is with relevant agencies for comment and input. The response will be tabled as soon as possible.

Report on the provisions of the Regional Forest Agreements Bill 2001
The issues raised in the report were addressed during consideration of the Regional Forest Agreements Bill 2002 which received Royal Assent on 5 April 2002. No further response is required.

RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES
Report on the development of the Brisbane Airport Corporation’s master plan for the future construction of a western parallel runway
The response was tabled on 16 May 2002.

Air Safety and Cabin Air Quality in the BAC146 Aircraft
The response is expected to be tabled shortly.

Airspace 2000 and related issues
The response is to being amended to reflect the government’s recent decision on airspace reform. The response is expected to be tabled during the 2002 Spring sittings.

The incidence of Ovine Johne’s Disease in the Australian sheep flock—Second report
The report is under active consideration by the government. It is anticipated that the response will be tabled shortly after the conclusion of discussions with industry.
SCRUTINY OF BILLS (Senate Standing)
Preparation of the response has required extensive consultation within government portfolios. The government response is expected to be tabled in the 2002 Spring sittings.

SUPERANNUATION AND FINANCIAL SERVICES (Senate Select)
The Opportunities and constraints for Australia to become a centre for the provision of global financial services
The response is being considered and it is expected that a response will be tabled shortly.
A ‘reasonable and secure’ retirement?: The benefit design of Commonwealth public sector and defence force unfunded superannuation funds and schemes
It is expected that a response will be tabled early in the 2002/03 financial year.

Enforcement of the superannuation guarantee charge
The response was tabled on 20 June 2002.

Report on the provisions of the Parliamentary (Choice of Superannuation) Bill 2001
The government will consider and respond to the Committee’s recommendations in due course.

Prudential supervision and consumer protection for superannuation, banking and financial services: First report
The report is being considered and it is expected that a response will be tabled shortly.

Prudential supervision and consumer protection for superannuation, banking and financial services: Second report—some case studies
The report is being considered and it is expected that a response will be tabled shortly.

Prudential supervision and consumer protection for superannuation, banking and financial services: Third report—Auditing of superannuation funds
It is expected that a response is likely to be tabled during the 2002 Spring sittings.

TREATIES (Joint, Standing)
UN Convention on the Rights of the Child (17th Report)
The draft response is being updated to take into account developments since the election, including changes to portfolio responsibili-

Privileges and immunities of the International Tribunal on the Law of the Sea and the treaties tabled on 27 February and 6 March 2001 (39th Report)
The response will be finalised shortly.
Extradition—a review of Australia’s law and policy (40th Report)
The response is under consideration and will be tabled in due course.
Who’s afraid of the WTO? Australia and the World Trade Organisation (42nd Report)
The response will be finalised shortly.
Thirteen treaties tabled in August 2001 (43rd Report)
The response is under consideration.

COMMITTEES
Rural and Regional Affairs and Transport Legislation Committee
Report
Senator CRANE (Western Australia) (5.10 p.m.)—I present the report of the Rural and Regional Affairs and Transport Legislation Committee on quota management control on Australian beef exports to the United States, together with the Hansard record of the committee’s proceedings and submissions received by the committee.

Ordered that the report be printed.

Senator CRANE—I seek leave to move a motion in relation to the report.
Leave granted.

Senator CRANE—I move:
That the Senate take note of the report.

A number of members of the committee would like to speak to this report, so I will not speak for long. But this is the last time that I will put down a report in this place and speak to it, so I would like to thank all the people I have worked with on the committee over the past 12 years. This committee has earned a reputation in this place for, firstly, the quality of its work and, secondly, our ability to work through issues on which we had different positions at the start. Very seldom has there been conflict across the floor when the legislation was dealt with. I refer to the inquiries into the beef industry, the wheat industry, the wool industry, the dairy industry
and a whole range of things that we dealt with which were very difficult for us in terms of the position we started with and the number of players involved from right across Australia. I even make reference to the final sale of Sydney airport. That was a report that we did some years ago. And there was the Northern Prawn Fishery, another very difficult one where there were a thousand different views but we were able to bring the industry and the players to a consensus position.

I also want to acknowledge the cooperation we have had over the years from the department. We have worked with a hell of a lot of very dedicated, very good officers. We have not always agreed with them, but we have always had a very frank, informative and proper working relationship, and that contributed an enormous amount to the things that I mentioned before. We have with us Senator Calvert, who was one of the founding members of the committee. I welcome him as the Government Whip; it is great to see him.

**Senator Calvert**—Do you remember the quarantine service inquiry?

**Senator CRANE**—That is right, we did a fair few of those. There were a number of them. I remember the rail report. I remember being out in South Australia up at the top of the peninsula.

**Senator Calvert**—There were the abattoirs.

**Senator CRANE**—Yes, that is dead right. This report was no less difficult or more challenging than any issue that we have had to deal with. There were competing, conflicting commercial interests involved here. They included whether or not somebody would be able to stay in the industry in terms of their abattoir operation or their processing operation and whether, in going right across Australia, we could get things as fair as possible in terms of making sure that producers across this country were able to maximise their price.

I want to particularly thank the committee for last week. Unfortunately, I could not be here for some of the meetings last week as I was not in good health as I am now. Senator Heffernan stepped in for me, and I welcome him here and thank him for his contribution in the last days—and also Senator Buckland, who acted as chair through a difficult, long day. Through modern technology, I was able to involve myself in it all except for a very short period.

We had before us a range of policy issues, not greatly different in a lot of ways from the European Union quota issue we dealt with—tonnages were very different and the quality of the meat we were dealing with was very different, but they are both crucial markets to the Australian meat industry whether you be a producer, as I am—and I declare that interest—or right at the end of the process—export, delivery, marketing in the US or whatever. RMAC put down one proposal. The minister, after looking at it and having discussions, brought down another proposal. We have introduced into this an extension of what is fundamentally the minister’s proposal in that we have recommended—and this is the key point—a doubling or thereabouts of what was known as the hardship provision of 14,000 tonnes. We are recommending that and it is out for discussion with industry across the board. We are not calling it a hardship provision but a discretionary provision so that those processors that are most disadvantaged will be able to pick up a lot. We also have to acknowledge that a number of the larger operators who concentrated more on the US market than other markets—and I do not criticise them for that; that is the economic reality—have shown goodwill in allowing us to get to these recommendations. I very strongly recommend—as strongly as I have ever recommended in this place—to the minister and the department that this is a very sound way to go. It does not move a long way from where the minister was but it is very significant in what it will do and the impact it will have.

There are three other recommendations which I will briefly touch on. Recommendation 2 says:

The Committee notes the difficulties that reallocation of beef quota will pose for the industry in the current quota year and recommends that the Australian Government actively pursue with the United States Government the allocation of US discretionary tonnage of beef to Australia.
Not many people would know, but the US holds a discretion in the order of 70,000 tonnes. With the collapse in Korea and Japan and the problems in Argentina, we are urging our ministers, our Prime Minister and anybody who may have the opportunity to talk to influential people in the US, to suggest that this year in particular but also the next year or two would be a very good time to show some goodwill back to our industry in Australia and to use the friendship that exists between the two countries to utilise some of that discretionary tonnage. It would not take very much out of that to resolve the particular problem we have with the oversupply in the country due to the aspects I mentioned. Recommendation 3 says:

The Committee notes that the United States has been reported as having increased its share of the Japanese beef market recently and the Committee recommends that, in light of this development, and evidence to the Committee during this Inquiry of strengthening demand in Japan, that the Government support intensified Australian beef marketing initiatives in Japan.

The evidence that we took and listened to was not all doom and gloom from Japan. Some of the operators were pessimistic about Japan but others were quite strong in their belief that there was and would be a gradual improvement in the Japanese market. Certainly, I have had private discussions with a number of operators whom I know personally—we did not take evidence from them—about the Japanese situation and they are quite confident that we will see a gradual improvement there. So there is some light at the end of the tunnel. Recommendation 4 says:

The Committee recommends that the Australian Meat and Live-stock Industry (Beef Export to the United States) Order 2002, when prepared, complies with the recommendations made by the committee in this report.

We believe that it is essential that that be done. If it is not done, then I have great fear that there will not be put in place for the remainder of this season a workable system to deal with the situation we have, and there will be a lot more pain than would otherwise be felt.

Finally, I must make comment with regard to RMAC, which was established by a memorandum of understanding in 1996-97 to be the key body of the meat industry in this country. Unfortunately, that has not happened. There is now a divide. I think it is absolutely crucial that the minister forms a roundtable with the various parties and has some real down-to-earth discussions about how the meat industry is going to move forward.

**Senator O'BRIEN** (Tasmania) (5.20 p.m.)—Firstly, I endorse Senator Crane’s comments about the tremendous work of the committee secretariat in the preparation of this report—as with many others—in a very short time. They got together the documentation for the basis of the committee’s report and coordinated the evidence and the witnesses, using technological means to keep Senator Crane involved in the committee, as well as one could in the circumstances. I want to congratulate Senator Crane, who lays down his last committee report today, for the work he has done. He has been committed to his role as the chair of the committee, and committed to an outcome that he thought was the best outcome, and that has contributed greatly to the fact that this committee is one legislation committee in the parliament that presents a great many unanimous, all-party reports and perhaps sets an example for the future for the Senate. I congratulate him for it. I will get the opportunity tomorrow to make some comments about Senator Crane’s other roles and the future.

In relation to the report of the Rural and Regional Affairs and Transport Legislation Committee on quota management control on Australian beef exports to the United States, I remind the Senate that the administration of the United States beef quota has been the responsibility of the federal minister for agriculture since the industry was restructured in 1997. Before that, it was the responsibility of the Australian Meat and Livestock Corporation. Therefore, this inquiry has been very much about how Mr Truss has managed this matter because, in the end, the allocation of the quota into the United States, a market worth $2 billion to Australia, has been a matter for him and him alone.

After a number of representations from various sectors of the beef industry, I re-
ferred this matter to the Senate Rural and Regional Affairs and Transport Legislation Committee to enable all the facts to be put on the table and to allow senators to make an informed judgment about the manner in which Mr Truss has handled the issue and the merits of his proposals for the management of the quota. The committee has done its job in a timely but comprehensive manner and, as I was referring to earlier, has formed a unanimous view as to the best way forward. The evidence presented confirms that the performance of Mr Truss has been a combination of indecision, poor judgment and periods of inaction followed by ill-considered reaction to industry pressure. It is damning of the minister in the extreme that a Senate committee has been forced to step in—with the aid of Senator Heffernan in this case—and lever a compromise deal which, in our view, is the least worst option half-way through a quota year. When I say ‘our view’, I mean the view of the six senators, not based on political allegiance but based on the evidence heard and the best compromise we could salvage from what is a fiasco of the first order.

The debate over how best to allocate quota has become increasingly acrimonious, not only between the industry and the minister but within the red meat sector itself. This is a consequence of the failure of Mr Truss to give the industry a clear direction as to how the matter should be progressed and his failure to act to establish a clear framework for the timely management of the quota. Despite writing to the industry in December last year suggesting that he may or may not act and, if he did, he would look to a scheme built around a US shipper of record, Mr Truss clung to the view that the quota may not fill until the end of the quota year. He hoped that he would be relieved of the burden of having to do his job. That was always a false hope. As I said in this place last week, never before have I witnessed such intensity of feeling against a minister as that directed at Mr Truss by nearly all witnesses who gave evidence to this inquiry. A number of processors laid out for the committee the extent of job losses that they were concerned would flow if Mr Truss pushed on with his model for management of the quota—an aspect of this debate which Mr Truss and his department had not even bothered to take into account.

The committee’s first recommendation is that the minister’s scheme be varied to include a substantial parcel of quota that should be allocated over the remainder of the year to minimise disruption in the industry. The committee also recommends that the minister’s model be renegotiated, through an industry roundtable, for 2003 and beyond. Those negotiations must commence immediately. Last Tuesday, I called on industry organisations to consider how they might re-structure consultative arrangements. I note that the minister made a similar call late last week. While the forum that the committee recommends be established will obviously have new quota arrangements as its principal task, it could also provide the first step to building a new set of industry consultative arrangements.

The unanimous recommendations from this committee, if accepted by the minister, will enable the industry to get through to the end of this quota year with minimum job losses. This whole process has been nothing short of a disaster for large sections of the red meat industry. I acknowledge that the plan that all members of the committee have endorsed today is far from satisfactory to a lot of people, but it is the best of a bad lot, to put it frankly. That is caused by the failure of the minister to act in a timely manner, which has left the committee with little choice in relation to its recommendations.

A number of processors will still be disadvantaged under what, effectively, is the deal which Senator Heffernan has been able to broker with a number of industry participants, despite the spoiling role played by the minister. I understand that as late as last night, Mr Truss was still seeking to undermine what I describe as the ‘Heffernan plan’. Certainly, this plan will avoid the significant regional job losses that were guaranteed to flow if the Truss plan were implemented. These unanimous recommendations are designed to facilitate the development of a strategy to move on from this Truss-induced chaos. There is a need to reach agreement quickly on how we manage the US quota for
the coming year. I am optimistic that there is still sufficient goodwill in the industry to progress this matter to a satisfactory end. On behalf of the opposition, I am happy to do what I can to assist that process, but there is a further more fundamental issue that must be addressed—that is, the development of a strategy to rebuild the focus of all beef sectors on our total export effort. As I said last week, that process has all but been destroyed by Mr Truss. I have now written to all industry organisations and to a number of individual companies proposing that a group be established that is representative of all industry interests. It is time for all existing industry structures which were put in place in 1997 to be subjected to a review.

While the thrust of this report is about moving this multibillion dollar industry forward, I am concerned that the minister, Mr Truss, will be unable to meet this challenge. It is clear that the Prime Minister has for some time been of the view that Mr Truss has failed to manage this process. There can be no other explanation for the appointment of Senator Heffernan as the government’s negotiator with the industry. Given the poisonous relationship that now exists between Mr Truss and most industry players, Mr Howard must consider how best to progress a long-term solution to the current dilemma. I cannot see how Mr Truss can make any constructive contribution to that process. Perhaps Mr Howard should keep Senator Heffernan on the case for a bit longer.

Were Minister Truss to decline to accept the unanimous recommendations of this committee and seek to promulgate his proposals—which, as I described earlier, have seen some of the most scathing comments made about a minister for agriculture that I have seen in my time in this place—that would no doubt prompt significant challenges through the legal system, further chaos in the management of the quota and problems with the minister’s relationship with the industry. I believe it would be inappropriate for him to do so. If he proposes to do so in a timetable which means that the Senate cannot deal with this matter until August, that will be a matter of condemnation to be heaped upon the minister.

Senator CHERRY (Queensland) (5.30 p.m.)—I would like to acknowledge the extraordinary contribution that Senator Crane has made as chair of the Senate Standing Committee on Rural and Regional Affairs and Transport. I thank him for his contribution and his assistance to me, as a new member of the committee, over the last 11 months. On behalf of the Democrats and on behalf of my predecessor, Senator John Woodley, I extend to Senator Crane our thanks for the very multipartisan way in which he has run this committee. It has produced a series of unanimous reports on very contentious issues. Today, we have another unanimous report on a very important issue: the allocation of the US beef quota. I am happy to endorse the recommendations of the committee, which dealt with what has been an incredibly difficult issue, in an area where there are extraordinarily entrenched interests and extraordinarily entrenched difficulties, in trying to find the best way and the best criteria to deal with that issue.

I would also like to acknowledge Senator O’Brien’s contribution in initiating this very important inquiry. It has been important to let all sides have their say, to look at the decision making process, to look at the weaknesses of the industry structures that have emerged and the delays that have resulted in this decision being left until seven months into a shipping year. It was entirely appropriate for the Senate to have an inquiry into this issue.

I acknowledge that it has been a very difficult issue for the minister. I know from my discussions with him that he has been trying to ensure that a fair and reasonable proposal has been developed for both the specialists on the one side and the global processors on the other. And it is not easy. I certainly know that, having met most of the people in this debate. The difficulty which we have is not so much that the minister has come up with a model, rather that the model is being imposed so late into the shipping year. That is why I am quite happy to sign off on the recommendation that what is needed is a much larger hardship quota within the US beef quota to ensure that those people who are disadvantaged by the late implementation of
the quota management system can survive until the end of the year. That is a very important consideration.

The problem, from my point of view, is not the model or the formula; it is the lateness. That has been a result of almost a comedy of errors going right back to last December. I would probably share out the blame for this across a whole range of people. The problem started because of the different philosophies that exist between RMAC and the industry bodies favouring global diversification on the one side and the department and the minister, who have been quite happy to encourage specialist markets, on the other. It exists because industry bodies signed off on a proposal—the majority of their members were in favour of it, particularly with respect to meat processing—while the majority of people, who have 70 per cent of the market in the US, had not signed off on that proposal. In my view, the industry bodies do not come out covered in glory. RMAC does not come out covered in glory; AFFA does not come out covered in glory. The whole thing has been a shemozzle from end to end. A very important recommendation, which the Senate will have to debate on another day, is the recommendation to have a Senate inquiry into the advisory processes within the meat industry, to make sure that we are not faced with a debacle like this ever again.

I encourage the minister to take on board the committee’s recommendations, particularly the very important one that his regulations will have to be changed to significantly increase the hardship component. I do not particularly care whether it is 30,000 tonnes or some slightly different figure—that is something which I will be happy to negotiate with the minister at the appropriate time. What is essential is that the hardship quota will need to be increased very substantially above 14,000 tonnes if we are going to be able to implement this quota allocation model into a market, seven months into a shipping year, without losing processors across Australia. I also encourage the minister to take on board the committee’s other important recommendations about trying to make sure that Australia uses whatever means it can to talk to the US about getting access to more quota. The fundamental issue here was not so much the allocation of quota but the lack of available quota and the fact that there is a quota. That comes back to the whole difficult issue of Australia’s trade relationship with the US, which we need to look at.

The other important recommendation is to put some marketing effort into Japan. That market is now starting to recover, yet we are losing market share to American exporters because of the failure of the government to match the Americans’ marketing efforts into Japan. It would really do a great deal to take the pressure off this quota management issue if we ensured the retention of our traditional markets in Japan, which we are currently losing.

With those comments, I encourage the minister to continue discussions, with goodwill, with the Democrats and with others in the Senate—particularly Senator Heffernan—on the issue of raising the hardship quota to a level that can sustain the industry much more broadly and what the appropriate criteria for allocating it would be. The Democrats will be continuing their discussions with the minister on those matters. We would certainly leave open the issue of whether these regulations would stand if they were unamended. I would have difficulties, but it is something we would leave open for another stage. At this stage, what the industry needs is certainty. That means that the minister needs to become flexible in dealing with the hardship element. That would mean taking on board the recommendations of what I think is an excellent committee report, produced under exceptional time restraints. I give credit to the secretariat for that.

Senator MURPHY (Tasmania) (5.36 p.m.)—I would like to make a few comments on the report of the Rural and Regional and Transport Legislation Committee on the quota management control on Australian beef exports to the United States. Essentially I reiterate what Senator Cherry has said because his description of the problem was very adequate. His description of the problem was very apt because it is a shemozzle and one that probably could have been avoided through better management across
the board. I think that the government and the minister have done what they could.

I have not gone through the committee report because I have only just been given it. On the recommendations, the hardship quota needs to be seriously addressed. Over and above that, we seriously have to address the issue of having quota restrictions at all with the US. When we are talking about having a free trade agreement, if we cannot get to the point where we can sort out some of these matters, it does not bode too well for an agreement that will be of any consequence or use to the agricultural industry in this country. I support the committee’s recommendations. I think that under the circumstances they did a reasonably good job. The outcome is not the best, but it is probably the best of what was a rather difficult set of circumstances for everybody. There would have been potential job losses no matter what happened. Of course there will be some wind-back at some of the meat producers, but I think that will be the consequence of something that was poorly managed by all concerned. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

NOTICES

Presentation

Senator Crane to move on the next day of sitting:

That the following matters be referred to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 31 October 2002:

(a) performance and appropriateness of the existing government advisory structures in the Australian meat industry; and

(b) the most effective arrangements for the allocation of export quotas for Australian meat, both to the United States and Europe.

COMMITTEES

Treaties Committee

Report

Senator LUDWIG (Queensland) (5.38 p.m.)—On behalf of the Joint Standing Committee on Treaties, I present a report concerning the 46th report entitled Treaties tabled in March 2002, which was tabled in the Senate on 24 June 2002. I seek leave to move a motion in relation to the report.

Leave granted.

Senator LUDWIG—I move:

That the Senate take note of the report.

On Monday, 24 June I presented a report to the Senate which contained the results of an inquiry conducted by the Joint Standing Committee on Treaties into a protocol to the double taxation agreement with the United States of America tabled in the parliament on 12 March 2002. As a result of the committee’s scrutiny of this treaty, the committee declined to support binding treaty action on the protocol pending the receipt of further information from Treasury and the Australian Taxation Office concerning its benefit to Australia.

The purpose of the double taxation agreements, commonly known as DTAs, is to avoid double taxation and prevent fiscal evasion with respect to taxes on income, but their wider function is to facilitate investment, trade, movement of technology and movement of persons between countries. The reduction or elimination of double taxation caused by overlapping tax jurisdictions is a key aim for Australia in the development of a network of bilateral income tax treaties. By separating the parties’ taxing powers and, in certain circumstances, by giving credit for the payment of tax in the other countries these arrangements seek to prevent the double taxation of income received by a resident in one country from their activities conducted in the other.

Australia has a network of double taxation agreements that include countries like Romania, South Africa, Vietnam and Malaysia. This type of agreement is also widely used to develop and strengthen bilateral relationships between countries particularly in commercial areas. DTAs provide certainty to Australian enterprises trading in these countries and offer protection regarding the level of taxation on investments abroad which may, for instance, be valued by business when deciding on the location of a regional headquarters.

Since its inception the Joint Standing Committee on Treaties has reviewed a num-
ber of these treaties and has several times expressed concern about the quality of the national interest analysis and, in particular, the lack of information on the costs and benefits of these agreements. Committee report No. 28 scrutinised two double taxation agreements, one with Argentina and another with the Slovak Republic. We covered in some detail the difficulties the ATO had in quantifying the economic benefits of these agreements. The committee noted in that report on the ATO’s evidence at that time ‘that a search of the literature on the development of modelling processes which could more accurately measure the success of DTAs, had not been rewarding’. We also accepted evidence that an OECD working party had concluded that very little empirical work had been done on the impact of DTAs on the investment flows between countries because of the difficulty of obtaining adequate data. In that report, we concluded that, while the difficulties highlighted by the ATO in developing accurate methods of forecasting the costs and benefits of DTAs were real, they should be encouraged to explore all avenues to develop methods which could more effectively measure the impact of these agreements.

In our review of the protocol to the United States double taxation agreement, on the one hand the committee was once again faced with the problem of accepting that major Australian companies have for many years raised concerns about the lack of competitiveness of Australia’s tax treaty with the United States of America. These companies had suggested that the reduction in withholding tax rates made by the protocol, particularly on non-portfolio dividends, would be welcome. On the other hand, the committee was faced with agreeing to support binding treaty action on an agreement which would lead to a fairly clear loss of revenue of some $190 million to Australia. This support would have to be made without any qualitative evidence of the benefits to justify that decision. The committee therefore withheld its support for the agreement until the ATO and Treasury were able to provide additional evidence justifying such action to the committee. We also recommended:

The Australian Taxation Office, in consultation with the Australian Treasury and other interested parties, take immediate action to develop an effective methodology to quantify the economic benefits of double taxation agreements and that the ATO report back to the Committee on the methodology developed before the Committee is required to recommend action on further double taxation agreements.

Since tabling the committee’s report on this agreement earlier this week, the committee has received additional evidence from Treasury confirming the benefits of the agreement to Australia and has resolved to recommend that binding treaty action should now be taken on this treaty. To this end, the Chair of the Joint Standing Committee on Treaties has made a statement to the House of Representatives today indicating the committee’s changed position concerning this treaty. I seek leave to table a copy of that statement by Ms Julie Bishop for the information of the Senate.

Leave granted.
Question agreed to.

BUSINESS
Consideration of Legislation

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.44 p.m.)—by leave—I move:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the International Criminal Court Bill 2002 and the International Criminal Court (Consequential Amendments) Bill 2002 allowing them to be considered during this period of sittings.

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

Leave granted.

The statement read as follows—
Statement of reasons for introduction and passage in the 2002 Winter sittings.

Purpose of the Bills

The bills will:
• ratify the Statute of the International Criminal Court;
• introduce procedures for Australia to provide international assistance and co-operation to the Court;
• introduce procedures for the enforcement in Australia of the decisions of the Court, including sentences of imprisonment, fines and forfeiture measures; and
• enact genocide, crimes against humanity and war crimes as crimes in Australian law.

Reasons for Urgency
The International Criminal Court Statute will enter into force on 1 July 2002. Following entry into force, the Assembly of States Parties is formed. The Assembly will make critically important decisions about the Court, including the adoption of its budget and election of its judges and Prosecutor. Australia is not yet a party to the Statute, and if we are to participate in the first meeting of the Assembly, we would need to ratify the Statute by 1 July 2002. Ratification cannot proceed until these Bills have been passed.

(Circulated by authority of the Attorney-General)

Question agreed to.

INTERNATIONAL CRIMINAL COURT BILL 2002
INTERNATIONAL CRIMINAL COURT (CONSEQUENTIAL AMENDMENTS) BILL 2002
First Reading

Bills received from the House of Representatives.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.44 p.m.)—I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.44 p.m.)—I move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incorporated in Hansard.
allegations of victors’ justice. After years of preparatory negotiations, 162 nations gathered in Rome in 1998 to finalise and adopt a statute for a permanent International Criminal Court—a court that could bring to justice the perpetrators of the most serious international crimes when national jurisdictions were either unwilling or unable to do so.

A statute was adopted at the Rome diplomatic conference by a vote of 120 in favour, seven against, with 21 abstentions. Australia signed the statute on 9 December 1998 and is one of 139 states which signed during the period up to 31 December 2000 when the statute was open for signature. The ratification of the International Criminal Court statute has come quickly, underscoring the wide-spread support for the statute in the international community. The statute required 60 ratifications before it would enter into force. Ten states ratified the statute at a special ceremony on 11 April this year, bringing the total number of ratifications to 66. Another three states have ratified since, making a total of 69 to date, and the statute will enter into force on 1 July 2002.

Australia is delighted that the overwhelming majority of the international community have given their assent to the court. In keeping with the processes adopted by this government in 1996, the ICC statute has been the subject of detailed scrutiny by the Joint Standing Committee on Treaties. The committee also considered exposure drafts of these two bills. I would like to thank the committee and its secretariat for their excellent work in examining Australia’s proposed ratification and exposure drafts of these bills.

After an inquiry lasting over 18 months and considering over 250 submissions, the committee tabled its report in this parliament on 14 May 2002.

The committee recommended that the government ratify the statute and introduce the legislation as soon as practicable. These recommendations endorsing ratification of the statute were subject to a number of further recommendations. The committee recommended that the government strengthen its statement of the principle of complementarity in the legislation, which has been done. The committee recommended that the government review certain definitions of crimes, particularly the definition of rape, which has been done. The committee recommended that the government make a declaration when it ratifies the statute, which will be done. The committee recommended that the government closely monitor the operations of the International Criminal Court and report on these operations annually to parliament. These reports will allow the government and the parliament to ensure that the operation of the International Criminal Court and the way in which its jurisprudence develops remain in Australia’s national interests.

The government has embraced this recommendation in clause 189 of the International Criminal Court Bill. In addition to the committee’s recommendations and reporting process, Australia’s proposed ratification has been the subject of rigorous debate in the government’s joint party meeting, where over 70 members and senators spoke on the issue as well personal consultations by the Prime Minister with relevant stakeholders.

This process of consultation has resulted in improvements being made to the domestic implementing legislation, including those detailed above. Australia has a direct national interest in the establishment of a permanent International Criminal Court based on the role the court will play in enhancing international peace and security, including in our immediate region. The court’s establishment has been one of the government’s prime human rights objectives. The commission of serious international crimes poses a threat not only to individual countries but to the international community as a whole, and the court will deter individuals from committing these crimes. The International Criminal Court will have jurisdiction over only the most serious crimes of concern to the international community; namely, genocide, crimes against humanity and war crimes.

It is important to recognise that the court will have jurisdiction over crimes committed after it enters into force, on 1 July 2002, and likewise the crimes created under Australian law will apply only to conduct after the International Criminal Court (Consequential Amendments) Bill commences.

The court will also have jurisdiction over the crime of aggression when an acceptable definition of the crime can be agreed. If the statute is amended to include the crime of aggression, a state party may decline to accept it, in which case the court may not exercise jurisdiction over it in respect of nationals of that state or in respect of crimes committed in that state’s territory. The government has decided that, if a definition of the crime of aggression is adopted that is unacceptable to Australia, we would decline to accept it, as is allowed under the statute. The court will not replace national courts but be complementary to them. This means that it cannot act except when national jurisdictions are unwilling or unable genuinely to investigate and prosecute.
A fundamental element of the International Criminal Court statute is its recognition that it is the primary duty of every state to exercise its national criminal jurisdiction over these crimes.

The principle that the International Criminal Court does not replace, or stand above, national courts is reflected in clause 3 of the International Criminal Court Bill, which reiterates that the International Criminal Court Act ‘does not affect the primacy of Australia’s right to exercise its jurisdiction with respect to crimes within the jurisdiction of the ICC.

This clause reflects a recommendation made by the Joint Standing Committee on Treaties. The International Criminal Court (Consequential Amendments) Bill makes every crime under the International Criminal Court statute also a crime under Australian law. This means that Australia will always have the option of prosecuting persons under Australian law rather than surrendering them to the International Criminal Court. In these circumstances, it is most unlikely that it would ever act in a case which could be dealt with by Australia. The International Criminal Court (Consequential Amendments) Bill also sets out the principle of complementarity in similar terms in clause 268.1, as recommended by the Joint Standing Committee on Treaties.

The principle of complementarity also means that the ICC is not part of any domestic judicial system. It only operates when the domestic systems fail. The ICC will have no authority over any Australian court and in particular will not become part of the Australian court system and will have no power to override decisions of the High Court or any other Australian court. As mentioned, the government has included in the bills a number of measures designed to afford further protection of Australia’s national interests. The government has decided that Australia’s ratification will be accompanied by a declaration which will indicate how Australia will practically give effect to the statute while fully adhering to our obligations.

The declaration, as recommended by the Joint Standing Committee on Treaties, will reaffirm the primacy of Australian law and the Australian legal system.

To make this clear, the matters in the declaration have been incorporated in the legislation implementing our obligations under the International Criminal Court statute. The International Criminal Court Bill requires that the arrest of a person at the request of the ICC may not be authorised, nor may a person be surrendered to the ICC unless the Attorney-General has, in his or her absolute discretion, signed a certificate that it is appropriate to do so.

Decisions of the Attorney-General to issue or refuse to issue these certificates are final and may not be challenged in any court other than the High Court. In addition, the Attorney-General must consent before any person can be prosecuted for an offence under the crimes that will be inserted into division 268 of the Criminal Code by the International Criminal Court (Consequential Amendments) Bill. Again, decisions of the Attorney-General to give consent or to refuse to do so are final and may not be challenged in any court other than the High Court.

Australia retains comprehensive jurisdictional coverage over members of the Defence Force for crimes within the jurisdiction of the International Criminal Court wherever committed. The Defence Force Discipline Act 1982 enables the investigation and prosecution of Defence Force members for offences under the act committed anywhere in the world. These offences include all those under the criminal law applying in the Jervis Bay territory. In addition, if the amendments to the Criminal Code contained in the International Criminal Court (Consequential Amendments) Bill 2002 are enacted, Australia will have primary jurisdictional coverage over all the crimes within the jurisdiction of the ICC, wherever committed.

This would enable Australia to take full advantage of the principle of complementarity in the ICC statute, under which Australia retains primacy of jurisdiction in cases in which we are willing and able to investigate and prosecute. The Defence Force is satisfied that, under this regime, the interests of its members are adequately protected. This was affirmed recently by both Admiral Barrie and Lieutenant General Cosgrove in their discussions with the Prime Minister.

There are numerous additional safeguards built into the several stages of an investigation and prosecution. The ICC prosecutor is subject to onerous duties designed to ensure that the provisions in the statute are observed. The role of the prosecutor is subject to the scrutiny of the court at all relevant stages. States must be informed when investigations are commenced, and they have the right to challenge the court’s jurisdiction. The safeguards, and the rights to challenge, ensure that politically motivated prosecutions could not take place.

Action before the court may be commenced in any of three ways. These are: referral by a state party, referral by the United Nations Security Council acting under chapter 7 of the United Nations Charter, or by the initiative of the prosecutor. In the last mentioned case, the prosecutor’s
capacity is subject to the authorisation of the pre-
trial chamber of the court.
In the case of state party referrals or cases initi-
ants by the prosecutor, the court may only act if
either the state on whose territory the conduct
occurred or the state of nationality of the accused
is a state party; or, if not a state party, either of
these states has accepted the jurisdiction of the
court. The court’s statute sets out its principles of
criminal law and the trial process that it will fol-
low. It is not an exhaustive code and would be
supplemented by rules of procedure and evidence
and, once the court becomes operational, by the
court’s own decisions.

The principles are drawn from the major legal
systems around the world. The trial process and
the protections for defendants are very similar to
the common law procedures that we have in Aus-
tralia.

The court will provide due process and fair trials
for those brought before it. The standards em-
body in major human rights instruments are
incorporated in the statute. In particular, persons
before the court are entitled to be presumed inno-
cent until proven guilty; they have the right to
silence; the onus is on the prosecution to prove
guilt; and the court must be convinced of guilt
beyond a reasonable doubt. The court can impose
imprisonment for up to life for serious cases.

It may not impose the death penalty. It may order
fines and forfeitures of the proceeds of crime and
is also empowered to order a convicted person to
make reparation to victims. The International
Criminal Court Bill 2002 sets out the procedures
to allow Australia to cooperate with the Interna-
tional Criminal Court in its investigations and
prosecutions.

These procedures are based on the tried and tested
procedures that have allowed Australia to cooper-
ate with the International Criminal Tribunal for
the former Yugoslavia and strike a careful balance
between fulfilling Australia’s international obli-
gations and protecting Australia’s national inter-
est and Australian citizens.

Part 2 sets out the general principles for dealing
with requests for cooperation from the Interna-
tional Criminal Court. Obviously, these provi-
sions must be read in conjunction with the Attor-
ney-General’s absolute discretion as to whether to
issue a certificate enabling the, arrest and surren-
der of a person at the request of the ICC.

Part 3 deals specifically with the procedures if the
ICC asks Australia to arrest and surrender a per-
son for trial. Part 4 sets out the procedures for
providing other forms of assistance to the ICC in
great detail. Such assistance could include taking
evidence in Australia, serving documents, facilit-
tating the attendance of witnesses to give evi-
dence or examining places. Division 14 of part 4,
along with part 11, allows the procedures for the
tracing, freezing and forfeiture of proceeds of
crime that are provided for in the Proceeds of
Crime Bill 2002 to be used against the proceeds
of genocide, crimes against humanity or war
crimes, in response to a request from the ICC.

Part 5 allows the prosecutor to conduct investiga-
tions in Australia and the court to sit in Australia.
Part 6 allows the powers of the search and arrest
in executing a request for cooperation from the
ICC.

These powers are the same as the powers that the
Australian Federal Police have under domestic
law. Parts 7 and 8 limit the disclosure of informa-
tion by Australia to the ICC where that informa-
tion raises national security issues or has been
provided to Australia in confidence by a third
party.

If a request from the ICC cannot be carried out
without prejudicing Australia’s national security
interests, then the Attorney-General can refuse to
authorise that request. Part 9 establishes proce-
dures for transporting a person to or from the ICC
through Australia. Any such transportation is still
subject to the requirement in section 42 of the
Migration Act 1958 for the person to have a valid
visa. Parts 10, 11 and 12 allow Australia to coop-
erate in enforcing sentences imposed by the ICC.
Part 10 allows Australia to enforce relevant fines
or reparation orders made by the court. Part 11
allows Australia to enforce a forfeiture of order in
a similar way to which foreign orders are en-
forced under the Proceeds of Crime Act 1987.

Part 12 establishes procedures that will allow
prisoners from the ICC to serve their sentences in
Australia, if Australia chooses to accept those
prisoners. Part 13 allows Australia to request that
the ICC assist Australia in the domestic investi-
gation or prosecution of an indictable offence,
which would include a crime of genocide, crimes
against humanity or war crimes. Part 14 contains
a number of miscellaneous matters, including the
obligation for the government to table an annual
report on the operation of the International
Criminal Court Act, the operation of the court and
the impact of the court on Australia’s legal sys-
tem. Once tabled, the parliament can refer the
report to its committees for further examination if
required. This report, to be prepared by the rele-
vant departments, including the Department of
Foreign Affairs and Trade, the Department of
Defence and the Attorney-General’s Department,
will allow the government and the parliament to
monitor the activities and jurisprudence of the
ICC to ensure that they do not develop contrary to Australia’s national interest.

In conclusion, the International Criminal Court represents the international community’s determination to put an end to impunity for the perpetrators of the world’s most serious crimes. Australia has a hard-won reputation as a champion of human rights and should throw its weight behind a court that will bring to justice the perpetrators of the most heinous international crimes. This legislation will pave the way for Australia to join in that endeavour.

INTERNATIONAL CRIMINAL COURT (CONSEQUENTIAL AMENDMENTS) BILL 2002

The main purpose of the International Criminal Court (Consequential Amendments) Bill 2002 is to create, as offences against the criminal law of Australia, each of the offences over which the International Criminal Court has jurisdiction—genocide, crimes against humanity and war crimes.

Many of these crimes are already crimes in Australia. For instance, Australia has specifically recognised grave breaches of the Geneva Conventions and Additional Protocol I as crimes in the Geneva Conventions Act 1957. Australia can also already prosecute members of our Defence Force for crimes committed in the course of their duty anywhere in the world.

However it is important that Australia enact laws specifically covering all of the crimes in the International Criminal Court Statute so that we can take full advantage of the principle and protection of complementarity. By enacting these crimes, Australia can be sure that we will be able to investigate and prosecute under Australian law persons accused of crimes within the jurisdiction of the International Criminal Court. These offences apply regardless of whether the conduct occurred in Australia or not, and regardless of whether the person is an Australian citizen or not. In this way, Australia can never become a safe haven for the perpetrators of the most serious international crimes.

While these crimes cover the same acts as the International Criminal Court Statute, they are part of Australia’s criminal law and they have been defined according to the same principles, and with the same precision, as other Commonwealth criminal laws.

These Bills are expected to have little direct impact on Commonwealth expenditure or revenue. There will be some resource implications for Commonwealth agencies, such as the Australian Federal Police, Commonwealth Director of Public Prosecutions and Attorney-General’s Department in providing cooperation and assistance to the Court. However these costs will depend on how much assistance the Court requires of Australia in its investigations and prosecutions. In the unlikely event that the Court ever conducts hearings in Australia, there would be further costs involved.

The Court is funded by the States that are party to the Statute. All States that have ratified the Statute, including Australia once it becomes a party, will make annual assessed contributions to the Court’s running costs in accordance with the scale adopted by the United Nations for its regular budget. It is estimated that, initially, Australia’s annual contribution to the Court will be approximately $2.0M, with that amount likely to reduce in time as more states become parties.

The Government believes that the establishment of the International Criminal Court is an important development to ensure that those who commit the most egregious crimes against humanity are brought to justice. It is clearly in Australia’s national interest to be part of this important international effort to deter and punish those who commit atrocities.

Debate (on motion by Senator Crossin) adjourned.

COMMITTEES

Joint Standing Committee on Electoral Matters

Membership

Message received from the House of Representatives notifying the Senate of the appointment of Ms Hall to the Joint Standing Committee on Electoral Matters in place of Mr Melham.

NEW BUSINESS TAX SYSTEM (CONSOLIDATION) BILL (No. 1) 2002

TAXATION LAWS AMENDMENT BILL (No. 4) 2002

DIESEL FUEL REBATE SCHEME AMENDMENT BILL 2002

Report of Economics Legislation Committee

Senator CALVERT (Tasmania) (5.45 p.m.)—Pursuant to order and on behalf of the chair of the Economics Legislation Committee, Senator Brandis, I present three reports of the committee on the following
inquiries: New Business Tax System (Consolidation) Bill (No. 1) 2002, provisions of the Taxation Laws Amendment Bill (No. 4) 2002 and the Diesel Fuel Rebate Scheme Amendment Bill 2002, together with the Hansard record of the committee’s proceedings and documents presented to the committee.

Ordered that the reports be printed.

BUDGET
Consideration by Legislation Committees

Report

Senator CALVERT (Tasmania) (5.46 p.m.)—On behalf of the chair of the Foreign Affairs, Defence and Trade Legislation Committee, Senator Sandy Macdonald, 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.

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

In Committee

Consideration resumed.

The CHAIRMAN—The committee is considering the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and opposition amendment (7) on sheet 2503, to government amendment (17) on sheet DT340. The question is that opposition amendment (7) be agreed to.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.47 p.m.)—When the committee was dealing with this amendment before question time, we had, in my view, a very hypocritical contribution from the minister. I think it is important to briefly indicate to the committee that we should get a few things straight. The government’s original proposal for dealing with terrorist organisations required no proof that an organisation was a terrorist organisation other than the say-so of the Attorney-General or some other government minister he cared to nominate. It was up to just one person to say so: a minister in the government. Of course, like all politicians—and I do not direct this at the current government; I say this of all politicians—he has a domestic political agenda. That was the proposal contained within the government’s bill introduced some weeks ago. We were concerned that the government proposal was that the Attorney-General could delegate this power to any other minister. My colleagues, particularly Senator Ray, have talked about having such a power in the hands of ministers like former minister Peter Reith, for example—

Senator Robert Ray—He is the master of mendacity.

Senator FAULKNER—the master of mendacity—or in the hands of current minister Mr Tony Abbott.


Senator FAULKNER—Master of nothing, but—

The CHAIRMAN—No-one will reflect upon members of either this or the other place, thank you.

Senator FAULKNER—No. Both assessments are very objective, in my view. The committee must recognise how slipshod the legislation was. A minister could be given evidence that did not need to be tested or challenged, ban an organisation and then prosecute its members. It was that simple; it was that open to abuse—and that is the proposition that Senator Ellison and his colleagues were supporting. That was the government’s original proposal. That is the proposal that the government expected us to tick through and accept with literally no scrutiny at all. That was the proposal rammed through the House of Representatives the day after being introduced.

Before question time, Senator Ellison was getting worked up about proof of whether an
organisation is a terrorist organisation and whether someone is a member. How quickly a minister can change his spots. How an extraordinary change has occurred in the few weeks since this bill was originally introduced. Given the nature of the government’s original bill, under which a court would have had no role at all in determining whether an organisation was a terrorist organisation, how hypocritical it is for the minister to be so righteously defending the role the court will play now that amendments have been forced on the government. Amendments have been forced on the government. They did not want to amend it; they have been forced to do it because of the scrutiny we have applied to these bills. How hypocritical it is for the minister now to so stoutly defend the role of the courts. The truth is that giving the courts the principal role in determining the nature of an organisation was a proposal that came from the opposition. I proposed it to the Attorney-General, Mr Williams, and it is very hard to stomach the sort of hypocrisy we heard this morning.

Senator Ellison—It is a government amendment.

Senator Faulkner—Senator Ellison really should reflect on what he and his government originally intended. Arbitrary banning of organisations was the government’s model, and the government wanted that model up really badly. A consequence of that model would have been the prosecution of those members of organisations listed by the Attorney-General. We said, and we still say, that such a system is open to abuse for domestic political purposes. That is its weakness: pure and simple, it is open to political abuse.

We know how disposed governments, particularly conservative governments, have been to use executive powers to ban organisations. That is one of the reasons that Labor has been so steadfast in its opposition to the government’s executive proscription proposal. I acknowledge that Labor has been successful in ensuring that we do not have an executive proscription regime. I acknowledge that the government has put up the white flag on that issue. I do not want to be churlish about that. We welcome the fact that the government has changed its position. But do not come in here pretending that that was what you wanted to do. You were forced to change your position by the weight of numbers and the weight of community opinion. That brings us back to the amended bill—

Senator Ellison—if it is such a good idea, why are you not supporting it? It was never your idea; it is a government amendment.

Senator Faulkner—that was not in the bill, and you know it. Senator Ellison. You had one proposal and that proposal was an executive proscription regime. You were forced to change that bill because of the Senate committee’s report, because of the weight of community opinion and because the opposition, minor party and Independent senators would not have allowed such a draconian measure to pass this chamber. Everybody knows that. Do not deny it, because we do not want to hear another hypocritical speech from you on this issue. Everyone knows what the situation is. Everyone knows how the Attorney-General has had to back down over a series of weeks, but if you want a history lesson on it you will get it.

Senator Ellison—you’re just weak.

The CHAIRMAN—Order!

Senator Faulkner—the opposition does have a number of concerns about the definition of membership as set out in the existing proposed division 102 of the bill. It states:

- member of an organisation includes:
  - a person who is an informal member of the organisation; and
  - a person who has taken steps to become a member of the organisation; and
  - in the case of an organisation that is a body corporate—a director or an officer of the body corporate.

The definition of ‘member’ has been left in this vague form by the government. I think quite deliberately, as they wanted maximum flexibility when prosecuting membership offences. That is what it was all about. It is worth noting that I have been told by legal experts, and I certainly do not claim to be one—

Senator Ellison—it’s good that you got some advice!
Senator FAULKNER—I am not a lawyer; I do not pretend to be a lawyer. It is a pity you did not get some advice when you were drafting the bill. That would have been a lot more helpful to everyone concerned because maybe we would not have had to have this sort of committee stage debate had some decent advice be given to the government. Perhaps you just let politics get in the way. Perhaps you let the attempt to wedge the opposition get in the way. The advice I received is that it is a fundamental rule of statutory construction that when doubt exists as to exactly what words or terms mean in legislation the benefit of that doubt is always given to the accused. So the definition that the government is hanging on to may well cause more problems than it solves.

The Labor Party has proposed a much better and much tighter form of words to capture those individuals who might assist terrorist organisations. Our wording would mean that someone who ‘demonstrates a willingness to assist a terrorist organisation in the commission of a terrorist act would commit an offence’. That offence would apply to all people assisting terrorist organisations, whether they be assisting those listed by the United Nations Security Council or assisting those found to be terrorist organisations by a court in Australia. The reason Labor has left the less precise membership offence in place is so that it will automatically be an offence for anyone to be a member of a terrorist organisation listed by the United Nations Security Council.

Members of international groups like Al-Qaeda, or their associated entities, have been painstakingly exposed by police and security organisations right across the international community, and listed by the United Nations. These organisations that have been formally and publicly identified by the international community as terrorist organisations. Surely no-one would argue about that. There is no ambiguity and there is no uncertainty about the status of those organisations. Their membership, in whatever context, should be accepted as an offence in Australia, as it is accepted by other countries. They should be pursued and they should be prosecuted.

Let us not forget that we are at war with Al-Qaeda, but for all other groups, groups that are not listed by the UN Security Council, we think the offence of demonstrating a willingness to assist a terrorist organisation in the commission of a terrorist act is appropriate. That offence will pick up only active members. It will also pick up the sleepers—that is, those who are waiting for some signal to commit terrorist acts. That is a real issue in relation to the activities of modern terrorist organisations. That is not an area properly dealt with under the government’s proposed offence regime—before it is appropriately amended by the Labor Party. We say Labor’s approach will cover all of our bases. You will get the members of Al-Qaeda and its associated entities, and there is a focused membership offence that will make prosecutions more likely to be successful. This, again, targets the terrorists. This is a responsible and tough approach in relation to the terrorists, but also ensures that we protect important liberties and freedoms in this country. Again, it is a demonstration that Labor has got the balance right—something this government was incapable of achieving.

Senator ROBERT RAY (Victoria) (6.02 p.m.)—Earlier today I raised with the minister the constitutionality of the proscription regime in whatever form it emerges out of the Senate. The minister at the table indicated that he would take the matter up with the Attorney-General and give us a response. My question is first of all whether that process is under way yet and whether there is a response. There is also a supplementary question: in order for us to get an idea surrounding this matter could the minister indicate whether the advice was provided by—I may not have the terms right because they do change their names—the Australian Government Solicitor’s office or provided by the Solicitor-General? Or, indeed, whether the government commissioned outside advice on this particular matter and whether it sought only one advice or was able to get more than one advice on this particular matter to reassure itself. I would ask for an indication on those matters from the minister.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.04
p.m.—I think it was the Government Solicitor’s office but as to who it was I will take that further. The matter has been taken up with the Attorney-General. The Attorney-General is not prepared to table the legal advice, in accordance with standard practice, but would draw to the attention of the Senate two key features of the provisions that underpin the validity of the area mentioned by Senator Ray. Firstly, there is an express constitutional nexus provision that ties the offences to the Commonwealth’s legislative powers. The operative effect of a terrorist organisation’s definition is in the use of this term in the offences. Secondly, the express requirement for the Attorney-General to have had evidence of a terrorist connection means that in all cases there will be evidence capable of being tested in a court. This makes it clear that no Communist Party type issue arises. There is simply no issue of deeming an organisation to have a particular character, because evidence has to be involved in each case. It also should be noted that the constitutional basis is the same as that relied upon for listing under the United Nations listing provision, which the opposition supports. The government therefore is of a view that the provisions have a firm constitutional basis.

The second point made by the Attorney is an important one: that this is not a Communist Party type issue. It is not a deeming issue, because the proposed legislation requires evidence to be taken into account, and that evidence can then be the subject of a review. And, of course, what the government is saying is that to have the same listing power with a United Nations starting point is much the same mechanism as if you had the Attorney-General as the starting point. The listing power, we believe, relies on the same base. The Attorney has provided that information to me, but I will confirm the question of which office provided the advice.

Senator ROBERT RAY (Victoria) (6.07 p.m.)—I thank the minister for at least explaining to the committee why he believes there is a constitutional basis; I think that advances us just a little. But the way ministers approach the tabling of legal advice is so disingenuous. We have been dealing as equ- suitably as we can with Senator Scullion and with his difficulties that he drew to the attention of the Senate. The advice from Mr Burmester, which is favourable to him, was of course forwarded to us posthaste. I am not going to revisit the issue of the misuse and abuse of the electoral roll, which was potentially the biggest at least mass criminal act to be committed in this country, that we prevented. The government was very happy then to put the Solicitor-General’s advice down to justify a 180-degree change in course. I could go back and cite many other examples.

I do not assert that governments are honour bound to produce legal advice given to them and table it in this chamber. I do say—and it should be very helpful to this committee, to government as a whole and to this chamber—that where it is advice as to constitutionality governments should always table it. It is all very well to quote to us a couple of sections. Why should we now be suspicious that some part of this legal advice creates some doubts that we would need to explore? When you will not table advice on a constitutional issue, it always does. You give us a couple of reasons—and I do not doubt your reasons and I thank you for putting them before the committee—but I wonder if there is not some caution in that legal advice that this committee would need to know about. I suppose you could say we could go off and commission our own legal advice, but we do not have the resources to do that. I will finish on this point: I think a major distinction can be made, in terms of tabling legal advice, between advice that pertains to constitutionality and advice that pertains to the other elements of government.

By the way, it was the coalition that demanded back in 1995, I think it was, that every piece of legal advice that was given to the then government pertaining to Dr Carmen Lawrence’s legal case—a case that was yet to proceed—be tabled. That is, they got the entire case so some other solicitors could see it. That is how far they went. We would never go that far. The government assert that this is constitutional, and they have put down a couple of grounds which seem to me, on the face of it, quite reason-
able. But why won’t they table the advice? They do table advice probably 10 or 15 times a year; always when it backs up their position.

Senator Faulkner—When it suits them.

Senator ROBERT RAY—They do it when it suits them and when it backs up their position. Therefore, there is precedent. The only time I suspect they do not table advice in these matters is when there is some qualification or areas of doubt that could be explored. I do not think that is good enough. When the government gets advice on the constitutionality of legislation that we are expected to assess and pass, we should see that legal advice.

The CHAIRMAN—The question is that opposition amendment (7) on sheet 2503 to government amendment (17) on sheet DT340, as amended, be agreed to.

The committee divided. [6.14 p.m.]

(The Chairman—Senator S.M. West)

Ayes…………… 39

Noes…………… 32

Majority……… 7

AYES

Alison, 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. Conroy, S.M.
Cook, F.F.S. Cooney, B.C.
Crossin, P.M. Crowley, R.A.
Denman, K.J. Evans, C.V.
Faulkner, J.P. Forshaw, M.G.
Gibbs, B. Greig, B.
Harris, L. Hogg, J.J.
Hutchins, S.P. Lees, M.H.
Ludwig, J.W. Mackay, S.M.
McKernan, J.P. McLucas, J.E.
Murphy, S.M. Murray, A.J.M.
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. * 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. Hill, R.M.
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. Treloth, J.M.
Vanstone, A.E. Watson, J.O.W.

PAIRS

Lundy, K.A. Alston, R.K.R.

* denotes teller

Question agreed to.

Senator GREIG (Western Australia) (8.19 p.m.)—by leave—I move Democrat amendments (8) and (9) on sheet 2555:

(8) Government amendment (17), after paragraph (1)(c), insert:

(d) did not take all reasonable steps to cease to be a member of the organisation as soon as practicable after the person knew that the organisation was a terrorist organisation.

(9) Government amendment (17), omit subsection (2).

These amendments go to the heart of ‘onus of proof’, a key issue which came to the fore during the debates, discussions and inquiries held by the Legal and Constitutional Legislation Committee. The other key issues were the proscription powers, which we have debated at length—I am sure there will be more discussion on that—and also the notion of how we define terrorism. The amendments which I am moving here address a further onus of proof issue, this time relating to the offence of membership of a terrorist organisation. I have already indicated that the Democrats do not believe that membership, in and of itself, ought to be criminalised. We believe rather that people should be punished for their actions, not for whether they belong to organisations and associate with them—a point that Senator Cooney made earlier.

I was struck by the parallel debate which is happening in my home state in the West Australian parliament—I am not sure where that debate is at, having been out of the state for a couple of weeks. There is a move in
that state to try and proscribe—that would not be the word that Premier Gallop would use—bikie gangs or motorcycle gangs as being criminal and to have membership of those gangs deemed to be criminal. It has been interesting to see the public debate around how you would use those definitions. The strong argument which is being put, interestingly from both the left and the right in my home state, is that it ought to be the behaviour and the actions of people involved in particular organisations that should be subject to criminal sanction, not the organisation itself.

The government amendment sets out, as a defence for members, taking all reasonable steps to cease to be a member of the organisation as soon as practicable after the person knows that the organisation is a terrorist organisation. However, the defendant bears the legal, as opposed to the evidential, burden in relation to showing that they took steps to cease being a member and stop being involved. This is the highest standard of proof that can be imposed on a criminal defendant. I think the definition of ‘member’ including ‘informal member’ or ‘person who has taken steps to become a member’ is particularly onerous. The person may not even be a member, but the law will require them to prove to the civil standard of proof that they quit the organisation.

It is very difficult to see how a defendant would be in a position to do this, in many cases. He or she might simply resign by telling someone verbally, particularly in the case of informal members. How can a defendant be expected to be in a position to prove that in all cases and in all circumstances? At the most, I think the defendant should bear an evidential burden in this matter. These Democrats amendments restructure the offences so that the onus is on the state to show that the person did not cease their membership. In practice, this will often require the prosecution to show that the person continued to play a role in the organisation after they found out that it was a terrorist organisation. So, if the state has no evidence to show that the person continued to be involved with the organisation once they discovered it was a terrorist organisation, there is no basis for sending them to jail. These two amendments give effect to that principle, and I commend them to the committee.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.23 p.m.)—For the record, the government opposes these amendments and believes that the proposal that ceasing to be a member be provided as a defence is the way to go. You do not incorporate it as an element of the offence, which has to be proven beyond a reasonable doubt by the prosecution. This accords with other legislation and provisions where you make something a defence where the relevant information is easily available to the defendant but not available to the prosecution, and in this particular instance the prosecution would not have the personal knowledge that the defendant would have. We believe that, where a person is a member of an organisation knowing that it is a terrorist organisation, it is reasonable to expect that they bring forth information or evidence of how and when they ceased to be a member, if they want to raise that defence. We believe that incorporating the ceasing to be a member aspect in the offence itself as an element—which these amendments would do—would create an untenable position for the prosecution, or certainly a very difficult one. So, in accordance with the practice in other areas of the criminal jurisdiction, we believe that it should remain as a defence—that is, the cessation of membership of the member concerned should be raised as a defence by that person.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (6.25 p.m.)—I know that Senator Greig is aware of the position that the opposition has taken on a previous, similar amendment, so I will not delay the committee by repeating those arguments. But I commend those arguments again, though I know that on this particular issue they do not find favour with Senator Greig—although I appreciate that is the position I have indicated before. I have heard the arguments and I understand why Senator Greig proposes this amendment, but I think the arguments mounted by the opposition and some of the arguments mounted in
this case by the government in opposition to the amendments are overwhelming.

Senator BROWN (Tasmania) (6.26 p.m.)—I support the amendment.

Question negatived.

Senator BROWN (Tasmania) (6.26 p.m.)—I move Greens amendment (14) on sheet 2512:

(14) Government amendment (17). Omit Section 102.3.

I have put the argument for this amendment. I recommend it to the committee.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (6.26 p.m.)—I appreciate Senator Brown moving his amendment in the way he does. I have put an alternative view and I think I have put it strongly to this committee. Again, I would commend those arguments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.27 p.m.)—The government has outlined its position extensively on this situation. We oppose the Greens amendment.

Question negatived.

The CHAIRMAN—The question now is that government amendment (17) on sheet DT340, as amended, be agreed to.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.27 p.m.)—by leave—I move government amendments (15), (18) and (19) on sheet DT340:

(15) Schedule 1, item 4, page 12 (line 11), omit the heading to Division 102, substitute:

Division 102—Terrorist organisations

(18) Schedule 1, item 4, page 14 (line 13) to page 15 (line 18), omit Subdivision C, substitute:

Subdivision C—General provisions relating to offences

102.9 Extended geographical jurisdiction for offences

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

102.10 Alternative verdicts

(1) This section applies if, in a prosecution for an offence (the prosecuted offence) against a subsection of a section of this Division, 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 that section.

(2) 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.

(19) Schedule 1, item 5, page 15 (lines 19 to 26), omit the item, substitute:

5 Application

For the purpose of making regulations specifying an organisation for the purposes of paragraph (c) of the definition of terrorist organisation in section 102.1 of the Criminal Code, it does not matter whether the relevant decision of the Security Council of the United Nations was made before or after the commencement of this item.

Government amendments (15), (18) and (19) are consequential on the replacement of the proscribed organisations provisions in division 102 with a range of offences relating to terrorist organisations. It is really consequential on what we have just done. Amendment (15) would replace the existing heading to proposed division 102 entitled ‘Proscribed organisations’ with a new heading ‘Terrorist organisations’. Amendment (18) gives the offences broad geographical jurisdiction and provides for alternative verdicts in line with the other terrorism offences. Government amendment (19) removes the transitional provision relating to proscribed organisations and substitutes a new transitional provision relating to terrorist organisations. The transitional provision makes it clear that regulations could be made specifying an organisation for the purpose of paragraph (c) of the definition of ‘terrorist organisation’ regardless of whether the Security Council decision relating to the organisation was made before or after the commencement of the terrorist organisations provisions.

What we have here are really consequential amendments to the proscribed organis-
tions which we had with the old division 102, which is now being replaced with a new division that deals with terrorist organisations. The government believes these are essential for the efficacy of the working of the new division 102.

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

The **TEMPORARY CHAIRMAN** (Senator Hogg)—The committee is considering government amendments (15), (18) and (19) on sheet DT340. The question is that the amendments be agreed to.

Question agreed to.

The **TEMPORARY CHAIRMAN**—We now move to government amendment (12) on sheet DT340. The question is that section 101.3 stand as printed.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.32 p.m.)—The government opposes section 101.3 in the following terms:

(12) Schedule 1, item 4, page 10 (lines 22 to 31), section 101.3 to be opposed.

This amendment is consequential on the replacement of the proscribed organisation provisions in section 102 with a range of offences relating to terrorist organisations. Government amendment (12) removes the offence of directing a terrorist organisation in proposed section 101.3, as the new terrorist organisations offences in section 102 would cover directing the activities of a terrorist organisation. Therefore, in view of that amendment, the government will be opposing the call that section 101.3 stand as printed.

Question negatived.

The **TEMPORARY CHAIRMAN**—That means we are negativing the section.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (7.34 p.m.)—I move opposition amendment (12):

(12) Schedule 1, item 4, page 15, (after line 18), at the end of division 102, add:

102.8 Demonstrating willingness to assist a terrorist organisation

A person commits an offence if the person demonstrates a willingness to assist a terrorist organisation in the commission of a terrorist act.

Penalty: Imprisonment for 15 years.

I think the minister made the point some time earlier in the debate that there has been a considerable amount of canvassing of this particular amendment already. I think that was probably a fair point to make, and no doubt my colleagues in the chamber would say that there is no need for a long speech from me in relation to this particular amendment. There will be a lot of relief around the chamber when I say that I agree with them. But I want to very quickly put the case to the committee because I do believe this is an important amendment.

This amendment has the effect of criminalising active assistance by people in a terrorist organisation in the commission of a terrorist act. We say that that is an appropriate threshold for a membership style offence for all other groups who are not listed as international terrorist organisations by the United Nations Security Council. I have indicated that we have a strong objection to criminalising membership per se; I think everyone in this chamber is aware of that. I have indicated that the only exception to that is membership of organisations declared to be terrorist organisations by the United Nations Security Council. We have taken the view that if the international community, speaking through the United Nations Security Council, declares an organisation to be a terrorist organisation, we do accept membership of that organisation being a criminal offence. In all other cases, the opposition believes that the appropriate threshold for an offence of membership is demonstrated willingness to assist a terrorist organisation in the commission of a terrorist act.

We have argued that these words should be included as an offence, maintaining a distinction between active involvement and passive membership, and I have indicated that this would apply to organisations found to be terrorist organisations by either Australian courts or the United Nations Security Council. I am aware that not only I but also other senators in the chamber have effectively spoken at length about these provisions. I apologise to the committee for outlining the
case again—as briefly as I could—but, even though the issues have been canvassed, given the significance of the amendment I just wanted to place those few comments on the record.

Senator BROWN (Tasmania) (7.37 p.m.)—The Greens oppose this amendment. In fact, I find it quite extraordinary that the opposition is putting forward an amendment which would allow a person to be indicted through demonstrating ‘a willingness to assist a terrorist organisation in the commission of a terrorist act’. Presumably, if one were in a conversation at a coffee shop and said, ‘I am willing to do such a thing,’ you would have demonstrated it. There is a wide range of things that could be seen as exhibiting a willingness to assist a terrorist organisation in the commission of a terrorist act, nevertheless, without either assisting or committing a terrorist act. This amendment in fact throws the net far wider and is open to an interpretation which is quite extraordinary when you think about it.

I have been given a premise review of the new film Minority Report by Steven Spielberg, starring Tom Cruise.

Senator Faulkner—I would like to read it if you would like to table it.

Senator BROWN—I have my $11 saved up. Here is the premise:

In the Washington DC of 2054, murders can be prevented before they are committed, by the use of three Pre-cogs. These are psychics who bear witness to the violent crimes before they are committed. Once the identity of the victim and perpetrator are known, it is then up to Detective John Anderton and his team of Pre-crime law enforcement officers to stop the killing before it can begin. But, just as the future of Pre-crime is about to be decided, Anderton is shocked to discover that he has become the next murderer the Pre-cogs see. So now on the run from his former partners, the Chief Officer of Pre-crime must try and uncover if his sealed minority report contains a different prediction about his future destiny or if he is slated to kill a stranger inside of 36 hours. The film highlights the dangers of attempting to pinpoint people for crimes they might commit in the future and the dangers of a pre-emptive police state. That is what this legislation is about: if you demonstrate a willingness to do something, you are in.

I remember, quite a few years ago, two what I thought were dastardly people with machine guns robbing a jewellery shop in downtown Melbourne and getting away with a huge amount of money. There was a survey in one of the quality Melbourne broadsheets the next day which found that half the people admired these gangsters for the success of their robbery. I have no doubt that amongst that half of the survey were a good number of people who would be willing, if asked, to take part in such an event if they could get away with it.

Are we really going to get into the realm of getting evidence together on whether somebody was willing to do something or other and indicting them with an offence? This is not to be taken lightly, because the penalty here is 15 years. Senator Faulkner says the person would need to have demonstrated active involvement—that is, taking part—in a terrorist organisation in the commission of a terrorist act. But it does not say ‘active involvement’ here; it says ‘willingness’. They are very different things. Willingness very much includes the alternative of passive involvement. It can involve expressing an opinion, no more, no less. It depends on how seriously people take that opinion. I think all of us, if we think back, can remember a time when we were willing to do something or other that we later regretted and, in fact, did not get caught in that escapade, whatever it might have been. The motivation for this amendment may have been good, but the amendment itself is appalling. We already have very strong measures in this legislation for nailing people who want to assist in the commission of a terrorist act. This one takes it far too far, and we will be opposing it.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (7.43 p.m.)—I hear what Senator Brown says. I can make no comment about Steven Spielberg’s film; I am not a film buff.

Senator Ferris—Still saving for your $11?

Senator FAULKNER—No. I thought it was a very cunning trick from Senator Brown to give the film that publicity in the Senate. He thought he might actually get a
ticket sent to him in the post, but I am on to him. If that happens I have no doubt that all senators, maybe Senator Ferris too, would be recipients. While I honestly cannot say whether the analogy Senator Brown draws is a good one or not, nevertheless the issue of willingness to facilitate a terrorist act is an important one. I say this to the committee: think no further than what happened on September 11 and how the operatives that organised that atrocity worked. There were operatives in the United States of America who may well have been in place for some time effectively waiting for some indication from a person directing terrorist activities to begin to engage in that sort of activity.

One of the problems with the way terrorist organisations operate now is that operatives, activists, terrorists, can be in place literally not for days or weeks or months but maybe for years before they are given the word or the signal to engage in a terrorist act. I do think it is appropriate in that circumstance that this legislation has the capacity to deal with that sort of offence. As we look at this particular provision, I think we need to consider the recent experience of September 11. I do not know what the view of the government is in relation to this—Senator Ellison can tell us—but, as I understand it, the indications are that the government is likely to support this amendment. I would be interested in hearing it, given the contribution that Senator Brown made.

We find ourselves in opposition, Senator Brown—we are not in government—and we do not have access to the level of briefing and material that the government does. With the recent experience of September 11, and given the way terrorist organisations are operating, or appear to have operated, can Senator Ellison say whether it is the view of the government that the legislation we in this chamber deal with has to accommodate those terrorists who may be primed to involve themselves, facilitate or participate in a terrorist act once they are effectively triggered to do so.

This is not Steven Spielberg fiction; this appears to be a real issue given the recent experience of September 11. I would be very interested to hear the minister at the table comment on this and address the substantive issue of whether these are real concerns that are appropriate for this parliament to deal with. So perhaps Senator Ellison, as the minister at the table, might care to comment on those issues. It certainly seems to me, with my limited understanding—and of course most of us in the non-government parties are in this situation—of the way terrorist organisations now operate, that this is an important issue for us to deal with, and if we do not deal with it we may well have a significant loophole in the legislation that finally passes the parliament.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.48 p.m.)—The opposition’s amendment would create a new offence of demonstrated willingness to assist a terrorist organisation in the commission of a terrorist act. The amendment states:

A person commits an offence if the person demonstrates a willingness to assist a terrorist organisation in the commission of a terrorist act.

Penalty: Imprisonment for 15 years.

The government amendments will make it an offence for a person to provide support to a terrorist organisation that would help the organisation engage in a terrorist act. The government believes that this amendment—its aim and the area it covers—is really dealt with in government amendments. But the government will not oppose the opposition’s amendment here. I understand the motive that the opposition has in moving this amendment but the government believes that this amendment— its aim and the area it covers—is really dealt with in government amendments. But the government will not oppose the opposition’s amendment here. I understand the motive that the opposition has in moving this amendment but the government would say that we think, in the provisions that we have, it is already an offence for a person to provide support for a terrorist organisation that would help that organisation to engage in a terrorist act.

We believe the terminology does not capture any behaviour which is not already captured in the government’s proposed legislation, that it really does not add anything, as such. We will not oppose it, however, because we want to see the legislation passed, and passed swiftly. On that basis, we will not be opposing the opposition amendment.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (7.50 p.m.)—I hear what the minister
says. Is the minister able to advise the committee that in his view the legislation deals adequately with the issue of ‘sleepers’? You understand what that term means—it is a bit of Australian vernacular but I cannot think of a better word to use. If the minister can give that commitment and assurance that that is more than adequately covered without the need for this opposition amendment, I will certainly be happy to consider his advice.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.51 p.m.)—I refer to 102.7 which is headed ‘Providing support to a terrorist organisation’. That lists the support that a person can give to a terrorist organisation and be found liable. It is outlined in some detail. It talks about intentional support. It says that it is an offence if a person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of a terrorist organisation in that division, and the organisation is a terrorist organisation, and the person knows that the organisation is a terrorist organisation.

The government believes that would cover the field in relation to someone who wanted to stand back from the act of terrorism but give the support to the organisation. I think that covers the term ‘sleeper’ that Senator Faulkner refers to. You can get a situation where there are terrorist organisations that have people giving support but not necessarily carrying out the act, and that is what Senator Faulkner is getting at with the ‘sleeper’—a person who is not engaged in the actual act itself, for instance, but provides resources, the wherewithal, to the organisation to carry out those terrorist acts.

Senator Faulkner—That is right, but what I am seeking from you is an assurance that there is no loophole. If you can give me that assurance there is no need to progress the amendment.

Senator ELLISON—What I want to put on the record is why the government is saying this. I can say that the government gives the Senate a clear commitment that there is no loophole in the government’s legislation which would let someone like a ‘sleeper’, as termed by Senator Faulkner, off the hook.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (7.53 p.m.)—I think senators understand why the opposition have proposed this amendment. But I think also senators have heard the assurance that the minister at the table gives. On the basis of that assurance, I am satisfied that it is not necessary to proceed with this amendment and, as a result, I seek leave to withdraw it.

Leave granted.

Senator BROWN (Tasmania) (7.54 p.m.)—I just want to say that that was a good outcome. I was happy to give leave to Senator Faulkner there and have that noted.

Senator GREIG (Western Australia) (7.55 p.m.)—by leave—I move Democrat amendments (1) to (4) and (5) on sheet 2537:

(1) Schedule 1, page 4 (before line 6), before item 1, insert:

1A After section 3
Insert:

3A The Parliamentary Charter of Rights and Freedoms

(1) Schedule 2 has effect as a law of the Commonwealth.
(2) Schedule 2 may be cited as the Parliamentary Charter of Rights and Freedoms.

(2) Schedule 1, page 4 (before line 6), before item 1, insert:

1B Subsection 3(1)
Omit “The Schedule”, substitute “Schedule 1”.

(3) Schedule 1, page 4 (before line 6), before item 1, insert:

1C Subsection 3(2)
Omit “The Schedule”, substitute “Schedule 1”.

(4) Schedule 1, page 4 (before line 6), before item 1, insert:

1D After Section 5
Omit “The Schedule” in the heading to the Criminal Code, substitute ‘Schedule 1’.

(5) Schedule 1, page 15 (after line 26), after item 5, insert:

5 After the Schedule
Insert:
Schedule 2—Parliamentary Charter of Rights and Freedoms

CHAPTER 1—OBJECTS, INTERPRETATION AND APPLICATION

1 Objects

The objects of this Schedule are:

(a) to promote universal respect for, and observance of, human rights and fundamental freedoms for all persons without discrimination; and

(b) to that end, to affirm Australia’s commitment to the International Covenant on Civil and Political Rights by enacting a Parliamentary Charter of Rights and Freedoms; and

(c) to ensure that any person whose rights or freedoms as set out in the Parliamentary Charter of Rights and Freedoms are infringed by or under any law in relation to which that Charter operates has an effective remedy; and

(d) to promote, enhance and secure, as paramount objectives, the freedom and dignity of the human person, equality of opportunity for all persons and full and free participation by all Australians in public affairs and public debate.

2 Interpretation

(1) In this Schedule, unless the contrary intention appears:

act means an act done:

(a) by or on behalf of the Commonwealth or of a State or a Territory; or

(b) by or on behalf of an authority of the Commonwealth or of a State or a Territory;

being an act done:

(c) in relation to an Australian citizen—within or outside Australia; or

(d) in any other case—within Australia.

Authority means:

(a) in relation to the Commonwealth:

(i) a body (whether incorporated or unincorporated) established for a purpose of the Commonwealth by or under a Commonwealth law; or

(ii) an incorporated company over which the Commonwealth is in a position to exercise control; or

(iii) a person holding or performing the duties of an office or appointment established or made under a Commonwealth law or by the Governor-General or a Minister of State of the Commonwealth; or

(iv) a local government body in the State; or

(v) a body, or a person holding or performing the duties of an office or appointment that is declared by the regulations to be an authority of the Commonwealth for the purposes of this Schedule; and

(b) in relation to a State:

(i) a body (whether incorporated or unincorporated) established for a purpose of the State by or under a law of the State; or

(ii) an incorporated company over which the State is in a position to exercise control; or

(iii) a person holding or performing the duties of an office or appointment established or made under a law, or by the Governor or a Minister, of the State; or

(iv) a body, or a person holding or performing the duties of an office or appointment that is declared by the regulations to be an authority of the State for the purposes of this Schedule; and

(c) in relation to a Territory:

(i) a body (whether incorporated or unincorporated) established for a purpose of the Territory by or under a Territory law; or

(ii) an incorporated company over which the Territory is in a position to exercise control; or

(iii) a person holding or performing the duties of an office or appointment established or made under a law, or by an administrator or a Minister, of the Territory; or
(iv) a body, or a person holding or performing the duties of an office or appointment that is declared by the regulations to be an authority of the Territory for the purposes of this Schedule.

Charter or Charter of Rights and Freedoms means the Parliamentary Charter of Rights and Freedoms set out in this Schedule.


law means a law of the Commonwealth, a law of a State or a law of a Territory.

practice means a practice engaged in:
(a) by or on behalf of the Commonwealth or of a State or a Territory; or
(b) by or on behalf of an authority of the Commonwealth or of a State or a Territory;
being a practice engaged:
(c) in relation to an Australian citizen—within or outside Australia; or
(d) in any other case—within Australia.

proposed law means:
(a) a proposed law introduced into the Parliament of the Commonwealth or of a State or a Territory; or
(b) a proposed law prepared on behalf of:
(i) the Government of the Commonwealth or of a State or a Territory; or
(ii) a Minister of State of the Commonwealth or of a State or a Territory; or
(iii) a body established by law that has the function of recommending proposed laws of the Commonwealth or of a State or a Territory.

responsible Minister means the Commonwealth, State or Territory Minister responsible for the administration of the matter to which the law, proposed law, act or practice relates.

(2) A reference in this Schedule to a law or a proposed law includes a reference to any instrument or proposed instrument (including a rule, regulation, by-law, award, determination, order or direction) made, granted or issued under a power conferred by such a law or proposed law.

(3) In this Schedule:
(a) a reference to, or to the doing of, an act includes a reference to a refusal or failure to do an act; and
(b) a reference, in relation to the doing of an act or the engaging in of a practice, to the person who did the act or engaged in the practice shall, in the case of an act done or practice engaged in by an unincorporated body of persons, be read as a reference to that body.

3 Interpretation of Charter
For the purposes of the interpretation of the Parliamentary Charter of Rights and Freedoms, each Article of the Charter shall be taken to be a section of this Schedule.

4 Application of Charter
(1) Subject to subsection (2), any provision of a law, whether passed or made before, on or after the commencing day of this Schedule, that is inconsistent with a provision of this Schedule does not, to the extent of the inconsistency, have any force or effect.

(2) Subsection (1) does not apply in relation to a provision of a Commonwealth, State or Territory law if an Act expressly declares that the provision shall operate notwithstanding this Schedule.

(3) A declaration made under subsection (2) ceases to have effect two years after it comes into force or on such earlier date as may be specified in the declaration.

(4) The Parliament of the Commonwealth or of a State or a Territory may re-enact
a declaration made under subsection (2).

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

(6) The rights and freedoms set out in this Schedule are in addition to, and not in derogation of, any other rights and freedoms of the individual under the laws of the Commonwealth or of a State or a Territory and this Schedule is not intended to exclude or limit the operation of any of those laws in so far as they can operate concurrently with the provisions of this Schedule.

(7) Nothing in this Schedule may be interpreted as implying any right to engage in any activity or perform any act that is restrictive of any of the rights and freedoms recognised in this Schedule or limits any of those rights and freedoms to a greater extent than is provided in this Schedule.

5 Interpretation of legislation

Notwithstanding anything in any other law relating to the construction or interpretation of legislation, in the interpretation of a provision of a Commonwealth or of a State or a Territory law a construction of the provision that would result in the law not being in conflict with the Parliamentary Charter of Rights and Freedoms, or that would further the objects of this Schedule, shall be preferred to any other construction.

6 No rights of action or criminal liability under Charter

(1) Nothing in the Parliamentary Charter of Rights and Freedoms confers on a person any right of action in respect of the doing of an act that infringes a right or freedom set out in the Charter.

(2) Nothing in this Schedule renders any person liable to any criminal proceedings in respect of the doing of an act that infringes a right or freedom set out in the Charter.

7 Powers of courts in criminal proceedings

(1) Where, in proceedings against a person for a criminal offence, the court is satisfied that the evidence tendered to the court was obtained in a manner that infringed a right or freedom set out in the Charter, the court shall refuse to admit that evidence in the proceedings unless it is satisfied that:

(a) admission of the evidence would substantially benefit the public interest in the administration of criminal justice; and

(b) that benefit would outweigh any prejudice to the rights and freedoms of any person, including the defendant, that has occurred or is likely to occur as a result of the infringement or the admission of the evidence.

(2) Where, in proceedings against a person for a criminal offence, the court is satisfied that a right or freedom of that person set out in the Charter has been infringed, the court may, subject to subsection (1), make such order as it considers appropriate and just in all the circumstances to ensure that the administration of justice is not brought into disrepute by reason of that infringement.

(3) In this section, proceedings means proceedings under a law of the Commonwealth or of a State or a Territory.

CHAPTER 2—FUNCTIONS OF HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION IN RELATION TO THE PARLIAMENTARY CHARTER OF RIGHTS AND FREEDOMS

8 Functions of Human Rights and Equal Opportunity Commission

(1) In addition to the functions of the Human Rights and Equal Opportunity Commission under the Human Rights and Equal Opportunity Commission Act 1986, the Commission has the following functions:

(a) to inquire into any act or practice that may infringe a right or freedom set out in the Charter, and:

(i) where the Commission considers it appropriate to do so—to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and

(ii) where the Commission is of the opinion that the act or practice infringes a right or freedom set out in the Charter, and the Commission has not considered it appropriate to endeavour to effect a
settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect such a settlement—to report to the Minister in relation to the inquiry; and

(b) to promote an understanding and acceptance in Australia of the rights and freedoms set out in the Charter and of the objects of this Schedule, and to promote the protection of those rights and freedoms in Australia; and

(c) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting the rights and freedoms set out in the Charter and the objects of this Schedule; and

(d) to examine laws and, when requested by the Minister, proposed laws for the purpose of ascertaining whether the laws or proposed laws are, or would be, in conflict with the Charter, and to report to the Minister the results of any such examination; and

(e) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to the rights and freedoms set out in the Charter; and

(f) where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings relating to a matter arising under this Schedule; and

(g) to do anything incidental or conducive to the performance of any of the preceding functions.

9 Performance of functions of Commission in relation to Charter

(1) Subject to subsection (2), the powers and duties of the Commission in relation to the Parliamentary Charter of Rights and Freedoms are the same as those set out in Part 2, Division 3 of the Human Rights and Equal Opportunity Commission Act 1986.

(2) Before commencing to inquire, under this Schedule, into an act or practice, the Commission shall inform the person who appears to the Commission to be the responsible Minister in relation to the act or practice that the Commission proposes to inquire into the act or practice.

10 Reporting to Parliament

(1) The Minister shall cause a copy of every report furnished to the Minister by the Commission under paragraph 8(a), (d) or (e) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

(2) Where the Commission furnishes to the Minister under paragraph 8(a), (d) or (e) a report that relates to:

(a) a State or Territory law, or a proposed State or Territory law; or

(b) an act done or practice engaged in:

(i) by or on behalf of a State or Territory; or

(ii) by or on behalf of an authority of a State or a Territory;

the Minister shall immediately furnish a copy of the report to the Attorney-General of that State or Territory.

(3) The Minister:

(a) shall not cause a copy of a report of the kind referred to in subsection (2) to be laid before either House of the Parliament until:

(i) the expiration of 30 days after a copy of the report was furnished to the Attorney-General of the State or Territory concerned under subsection (2); or

(ii) the Minister receives from the Attorney-General of the State or Territory concerned a statement relating to the law, act or practice to which the report related;

whichever happens first; and

(b) shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days after the occurrence of the earlier of the events referred to in subparagraphs (a)(i) and (ii); and
(c) if the event referred to in subparagraph (a)(ii) is the first to occur, or if, before the report is laid before either House of the Parliament pursuant to paragraph (b), the Minister receives from the Attorney-General concerned a statement of the kind referred to in subparagraph (a)(ii)—shall cause a copy of the statement to be attached to each copy of the report that is laid before a House of the Parliament pursuant to paragraph (b).

CHAPTER 3—MISCELLANEOUS

11 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Schedule, prescribing matters:

(a) required or permitted by this Schedule to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

CHAPTER 4—PARLIAMENTARY CHARTER OF RIGHTS AND FREEDOMS

DIVISION 1—GENERAL

Article 1

Entitlement to rights and freedoms without discrimination

(1) Every person is entitled to equality before the law and to the human rights and fundamental freedoms set out in this Charter without discrimination and, in particular, without discrimination based on age, race, colour, sex, sexuality, transgender identity, language, religion, political or other opinion, national or social origin, property, birth, mental or physical disability or other status.

(2) Men and women have the equal right to the enjoyment of the human rights and fundamental freedoms set out in this Charter.

Article 2

Effect of Charter on existing rights and freedoms

A right or freedom existing under, or recognised by, any other law shall not be taken to have been diminished or derogated from by reason only that the right or freedom is not set out in this Charter.

Article 3

Permissible limitations

(1) The rights and freedoms set out in this Charter are subject only to such reasonable limitations prescribed by law as can be demonstrably justified in a free and democratic society.

(2) A right or freedom set out in this Charter shall not be limited by any law to any greater extent than is permitted by the Covenant.

DIVISION 2—NON-DISCRIMINATION

Article 4

Equal protection of the law

(1) Every person has the right without any discrimination to the equal protection of the law.

(2) Nothing in this Charter affects the operation of any earlier or later law by reason only of the fact that the law discrimimates in favour of a class of persons for the purpose of redressing any disabilities particularly suffered by that class or arising from discrimination against that class.

Article 5

Rights of minority groups

Persons who belong to an ethnic, religious or linguistic minority have the right, in community with other members of their own group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

DIVISION 3—FUNDAMENTAL POLITICAL RIGHTS

Article 6

Right of participation in public life

Every Australian citizen has the right and shall have the opportunity:

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives; and

(b) to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors; and

(c) to have access on general terms of equality to public employment.
Article 7
Freedom of expression
Every person has the right to freedom of expression, including the freedom of the press and other media of communication, and the freedom to seek, receive and impart ideas or information of any kind in any form, without interference and regardless of frontiers.

Article 8
Freedom of thought and conscience
Every person has the right to freedom of thought and conscience, including the right to hold opinions without interference.

Article 9
Freedom of religion or belief
(1) Every person has the right to have or adopt a religion or belief of that person’s choice without coercion of any kind, and to manifest that religion or belief in worship, observance, practice and teaching, whether individually or in community with others and whether in public or in private.

(2) Every person has the right not to adopt a religion or belief and, subject to Article 14(d), no person shall be compelled to participate in worship or religious ceremony.

Article 10
Right of peaceful assembly
Every person has the right of peaceful assembly.

Article 11
Freedom of association
Every person has the right to freedom of association with others, including the right to form and join trade unions for the protection of that person’s interests.

DIVISION 4—PRIVACY AND FAMILY RIGHTS
Article 12
Right to protection from arbitrary interference
Every person has the fundamental right to the protection from arbitrary or unlawful interference with their dignity, their privacy, the integrity of their person, their reputation and the security of their residence and any other premises.

This fundamental right exists throughout Australia in all jurisdictions. For the purposes of giving effect to this right, a search, entry or seizure is unlawful unless:

(a) made pursuant to a warrant issued by a judicial officer upon reasonable grounds, supported by oath or affirmation, particularly describing the purpose of the search, who or what is to be searched and what is to be seized; or

(b) made pursuant to a law authorising search, entry or seizure, where search, entry or seizure so authorised is:

(i) necessary to protect life or public safety; or

(ii) justified by some compelling need for immediate action; or

(c) full and free consent is given to the search or entry, provided that the consent is ongoing and a warning was given as to the consequences of the giving of consent; or

(d) made pursuant to a grant of power of search or entry to determine whether a person has complied with legislation which imposes a commercial levy in relation to a serious matter, in circumstances where the legislation provides for this in specific terms and there is no other reasonably practicable means of assessing compliance; or

(e) made pursuant to a grant of power of entry and search to determine whether a person has complied with legislation under which that person has accepted a commercial benefit, subject to being monitored by entry and search.

Article 13
Right to marry and to found a family
Recognising the importance of the family in its many forms:

(a) every person of marriageable age has the right to marry and to found a family; and

(b) no marriage shall be entered into without the free and full consent of the intending spouses.
Article 14
Rights of the child
Recognising that every child has the right to such measures of protection as are required by the child’s age:
(a) every child is entitled to the fundamental rights and freedoms set out in this Charter to the greatest extent compatible with the age of the individual child; and
(b) every child shall be registered immediately after birth and shall have a name; and
(c) every child has the right to acquire a nationality; and
(d) the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions is to be respected.

DIVISION 5—FREEDOM OF MOVEMENT

Article 15
Rights of persons in Australia
(1) Every person lawfully in Australia has the right to freedom of movement and choice of residence.
(2) A person who is lawfully in Australia but is not an Australian citizen shall not be required to leave Australia except on such grounds and in accordance with such procedures as are established by law.

Article 16
Right to enter Australia
Every Australian citizen has the right to enter Australia.

Article 17
Right to leave Australia
Every person has the right to leave Australia.

DIVISION 6—LIFE, LIBERTY AND CRIMINAL PROCESS

Article 18
Right to life
Every human being has the inherent right to life and no person shall be arbitrarily deprived of life.

Article 19
Liberty and security of person
(1) Every person has the right to liberty and security of person.
(2) No law shall authorise the arbitrary arrest, detention or imprisonment of any person.
(3) No person shall be deprived of liberty except on such grounds, and in accordance with such procedures, as are established by law.
(4) No person shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 20
Slavery and forced labour
No person shall be held in slavery or servitude or be required to perform forced or compulsory labour.

Article 21
Right to be informed of reasons for arrest or detention and of charges
Any person who is arrested or detained shall be informed at the time of the arrest or detention of the reasons for it, and shall be informed promptly and in detail of any charges in a language which that person understands.

Article 22
Right to remain silent and to have access to lawyer
Any person detained in custody has the right to remain silent and the right to have access to a lawyer before and during questioning.

Article 23
Hearings, release and trial
(1) Any person arrested or detained on a criminal charge shall be brought promptly before a judge, magistrate or justice of the peace.
(2) No person awaiting trial shall be unreasonably deprived of the right to release on giving a guarantee to appear for trial.
(3) Any person arrested or detained on a criminal charge has the right to be tried within a reasonable time.

Article 24
Right to test lawfulness of detention
Any person deprived of liberty has the right to take proceedings before a court
for the determination of the lawfulness of the detention and to be released if the court finds that the detention is not lawful.

**Article 25**

**Presumption of innocence**

Any person charged with a criminal offence shall be presumed innocent until proved guilty according to law.

**Article 26**

**Right to fair hearing**

In the determination of any criminal charge, or of any rights or obligations in a suit at law, every person has the right to a fair and public hearing by a competent, independent and impartial tribunal.

**Article 27**

**Rights of the accused relating to trial**

Every person who is charged with a criminal offence has the right:

(a) to be informed of the right to obtain legal assistance; and
(b) to communicate with a lawyer; and
(c) to receive legal assistance without cost if the interests of justice so require and the person lacks sufficient means to pay for the assistance; and
(d) to have adequate time and facilities to prepare a defence; and
(e) to be present at any trial relating to the offence and to present a defence; and
(f) to examine the witnesses against the person; and
(g) to obtain the attendance of, and to examine, witnesses for the person; and
(h) to have the free assistance of an interpreter if the person cannot understand or speak the language used in court; and
(i) not to be compelled to testify or confess guilt; and
(j) in the case of a child, to be dealt with in a manner which takes account of the child’s age.

**Article 28**

**No retrospective criminal offences or penalties**

(1) No person shall be convicted of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it occurred.

(2) No person convicted of any criminal offence shall be liable to a heavier penalty than was applicable at the time the offence was committed.

**Article 29**

**Right of review of conviction and sentence**

Every person convicted of a criminal offence has the right to have the conviction or sentence reviewed by a higher tribunal according to law.

**Article 30**

**No trial or punishment for same offence**

No person finally convicted or acquitted of a criminal offence shall be tried or punished again for the same offence or for substantially the same offence arising out of the same facts.

**Article 31**

**Rights when deprived of liberty**

(1) Every person deprived of liberty has the right to be treated with humanity and with respect for the inherent dignity of the human person.

(2) So far as is practicable:

(a) accused persons shall be segregated from convicted persons, and shall be treated in a manner appropriate to their status as unconvicted persons; and
(b) accused children shall be segregated from accused adults; and
(c) convicted children shall be segregated from convicted adults, and shall be treated in a manner appropriate to their age and legal status.

**Article 32**

**No torture or inhuman treatment and no experimentation without consent**

(1) No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

(2) No person shall be subjected to medical or scientific experimentation without that person’s free consent.

The effect of these amendments would be, if nothing else, to trigger a debate around the notion of a bill of rights or a charter of rights and freedoms. One of the key arguments or key points of reference that emerged during
community debate and discussion and anxiety around the notion of antiterrorist laws, and the powers of ASIO attached to that, was the more fundamental question of what about the freedoms, rights and civil liberties of Australian citizens and how these bills affect those, and isn’t it alarming that, as a nation, we do not have a bill of rights or a charter of rights?

I had the privilege of speaking in Sydney to the Gilbert and Tobin public law facility only last Friday with the Attorney and shadow attorney on this very topic of a bill of rights, so I can probably anticipate that the government will not be supporting this amendment because the Attorney made it very clear that the government did not support a bill of rights or a charter of rights. The shadow attorney, Mr Robert McClelland, pointed out that a bill of rights was Labor Party policy but they were still discussing and debating how they might form that. I note that the Attorney actually took a few moments in his speech to be very critical of me for proposing that we even discuss, through an amendment, a bill or charter of rights within this legislation; he argued that that was an inappropriate forum. I think there is no better opportunity to discuss the fundamental question of a bill of rights than within this legislation, given the community anxiety around it.

My party takes the view that if you believe strongly enough in a particular policy position, you should try and translate that into a private member’s bill and table it. We have done that in our private member’s bill, the Australian Democrats’ Parliamentary Charter of Rights and Freedoms Bill 2001. It went through a long community consultation process and has been on the notice paper for almost a year. Quite simply, it is beyond our comprehension how anyone could reasonably oppose the concept of enshrined rights and responsibilities. It is worth noting that Australia is now the only common law country with no bill or charter of rights. Our proposed bill, represented here tonight through amendment, would do several things. It would establish a charter of rights or freedoms, facilitated by the Human Rights Commission and made accountable through reporting to parliament. Secondly, it would ensure entitlements to rights and freedoms without discrimination, with permissible limitations. Such areas of identity and status could include such things as equal protection before the law, the rights of minority groups, the right of participation in public life, freedom of expression, freedom of thought and conscience, freedom of religion or belief, the right to peaceful assembly, freedom of association, protection from arbitrary interference, the rights of the child, the rights of people in Australia and so on. The benefit of a charter of rights, as opposed to a bill of rights, is that parliament can determine those parameters.

A charter of rights is therefore an evolving process, an organic process, not set in concrete as much as a bill of rights. Although ultimately the Democrats would like to see Australia have a bill of rights, we acknowledge that would require a constitutional referendum. Given that, historically, all constitutional referendums have failed without bipartisan major party support, I think it is reasonable to conclude that that would not be successful. So this is the better starting point to introduce into Australian legislature the notion of a charter of rights. Overarching the entitlements that I have spoken of would be Article 1 of the charter which would ensure the entitlement to rights and freedoms without discrimination, ensuring that every person is entitled to equality before the law and to human rights and the fundamental freedoms set out in the charter without discrimination. That could be based on age, race, colour, sex, sexuality, transgender identity, language, religion, political or other opinion, national or social origin, property, birth, mental or physical disability or other status.

This article would ensure also that men and women would have an equal right to the enjoyment of the human rights and freedoms set out in the charter. Article 2 of the charter ensures:

A right or freedom existing under, or recognised by, any other law shall not be taken to have been diminished or derogated from by reason only that the right or freedom is not set out in this Charter.
place by the states, for example, things could not go backwards. Article 3 provides for permissible limitations:

(1) The rights and freedoms set out in this Charter are subject only to such reasonable limitations prescribed by law as can be demonstrably justified in a free and democratic society.

(2) A right or freedom set out in this Charter shall not be limited by any law to any greater extent than is permitted by the Covenant.

That is the International Covenant on Civil and Political Rights. Opposition to having a bill or a charter of rights in Australia is, in my experience, underpinned by the belief that democratic processes, current legislation, conventions, constitutional guarantees and the use of international law as a source of common law development provide for the adequate protection of fundamental human rights. The Constitution, for example, protects the rights to trial by jury for federal crimes and freedom of religion. The courts frequently uphold the basic rights of security and liberty of the person, the freedoms of assembly, association, speech and due process. We have federal legislation, such as the Sex Discrimination Act 1984 and the Racial Discrimination Act 1975, protecting certain rights. However, there is no one statute which lists the rights and freedoms of Australians and there is no guarantee that the rights we enjoy will be protected.

Of particular concern is the claim that Australia’s Constitution embeds certain rights. In reality, section 41, which outlines the right to vote, for example, is arguably not currently in operation and section 80, which details the rights to trial by jury, only addresses federal crimes. The right to religious freedom, similarly, only guarantees federal protection. The Constitution was never intended to protect rights and freedoms, and the belief by some that a bill or charter of rights is unnecessary as they are implied in the Constitution is misguided. In fact, it was a conscious decision by the majority of delegates who drafted Australia’s Constitution to omit a bill of rights. Its proposed inclusion had been debated at the constitutional conventions. It was, however, omitted as its provisions were contradictory to the discriminatory practices that were already in action against Indigenous Australians and immigrants from Asia. A bill of rights would not have been in line with the intended first acts of parliament, which were the beginnings of the White Australia policy.

I think Australian parliaments have often neglected the protection of human rights, particularly when laws that violated these rights were perceived as being popular with voters. This has resulted in an ongoing history of ill-treatment of minority groups in Australia and exposes the inadequacies of the current system of human rights protections. Failures of the parliamentary system and of common law to protect fundamental human rights in Australia include the ill-treatment of Aboriginal peoples, juveniles affected by mandatory sentencing laws, gay and lesbian citizens, same sex couples and asylum seekers.

The failure of parliament to protect the human rights of all Australians has resulted at times in the intervention of the High Court, which has played an integral role in upholding rights and liberties in Australia. It has interpreted the Constitution in a manner that attempts to uphold traditional rights and liberties and has attempted to protect human rights via common law decisions. It should not, however, be the sole responsibility of the judiciary to recognise the importance of upholding human rights in Australia. The federal parliament has a greater role to play. It must also be acknowledged that the emphasis on using common law to protect rights fails to recognise that the High Court does not have a mandate to overturn legislation that violates international human rights agreements to which Australia is a party. The role of the High Court and Senate committees in determining whether a law violates provisions within a bill of rights will, however, be instrumental.

History teaches us that majorities do not always make just laws, particularly with regard to minority groups. It is therefore paramount that Australia has an all-encompassing statute that can be used to critique proposed laws and to stop the passage of unjust laws. Australia is now the only common law country that does not have a statement of its rights and freedoms. There is
clearly not enough protection for basic rights within the current system. Canada instilled its bill of rights in 1982, New Zealand in 1990 and the UK just a few years ago in 1998. These countries have recognised the inherent failures of democracy and the common law system to protect and promote human rights.

It is time for Australia to follow suit by legislation of a statutory bill of rights. This will enable parliament to refine and develop the statute, thereby creating a working balance between parliament and the role of the judiciary. This would not be a radical change, as parliament continually sets standards for government and the courts ensure compliance with these standards. In the long term, constitutional change might occur, but only once experience has been gained. A bill of rights would also help us address Australia’s failure to uphold its international human rights obligations, which require that legislation be passed to recognise provisions within the treaties that are signed. Australia’s failure to implement human rights into domestic law has resulted in some international condemnation. The UN Human Rights Committee concluded that human rights violations are occurring in Australia in several areas, including the mandatory sentencing of juveniles, Indigenous self-determination, native title and heritage protection, the stolen generations, the deportation of people risking summary execution and the mandatory detention of unauthorised arrivals.

There also needs to be an effective remedy for human rights violations in Australia, as there are limits on the Human Rights and Equal Opportunity Commission’s current complaints powers, and bodies in charge of protecting human rights have been subject to funding cuts. If this were to occur, Australia could more effectively monitor and remedy human rights violations and begin to rebuild our somewhat tarnished international reputation. This would also empower groups and individuals who have suffered or who are aggrieved, as they would have an effective avenue to challenge these violations and seek redress.

I think that educating Australians about their rights is also an important function of a bill or charter of rights, as people would then be better able to critically evaluate the actions of government. It is also critical as most Australians enjoy their rights and freedoms to the extent that they exist and there is a lot of complacency and much is taken for granted. I think the majority in our community must understand that often the weak and vulnerable do not always have the opportunity to enjoy their basic rights and freedoms and to participate fully in society, and the Australian national ethos of a fair go for all must be legislated.

The present system in Australia affords no guarantee that governments will protect and promote human rights. Australian parliaments have no consistent protection of basic human rights. The Commonwealth should also be an example to other nations by legislating the human rights provisions within the international human rights conventions that it has ratified. At present, the rights of all people in Australian society are not inalienable and it is the duty of parliament to redress that.

In summary, as I said from the outset, one of the more peripheral but nonetheless very important and critical elements of this debate in terms of citizens’ concerns about the rights and responsibilities of parliament in setting laws, laws which clearly infringe human rights or civil liberties—or may do—is the deep concern that there is no assurance and no protection with either a bill of rights or a charter of rights to ensure a limitation of potential government excess and redress to government excess where that may occur.

Interestingly, at a talk I contributed to last Friday that was attended by approximately 200 to 250 people, it was demonstrated to me—through that slice of the Sydney community—that there is a great passion for this, a strong feeling about this, as something we need to do. I accept that these amendments are unlikely to succeed tonight, but I do believe that we need to trigger the debate and I do believe that the major parties need to articulate clearly and unambiguously where they stand on this issue and why. I commend the amendments.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Sen-
The proposal that we have before us from Senator Greig is to insert into the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] a so-called parliamentary charter of rights and freedoms. I am surprised that Senator Greig is progressing these amendments in this way because it seems unusual to say the least. I am not going to suggest to Senator Greig that it is necessarily an arrogant way to deal with the issue, but it is certainly unusual to try and achieve this outcome by inserting such a parliamentary charter into this bill.

In the view of the opposition, it is a bad attempt to restrict or balance the powers outlined in the legislation. It is also the opposition’s view that attempting to advance a bill of rights in this way is actually counterproductive because people will see the Democrats’ bill of rights as a limitation on law enforcement rather than protecting rights or promoting a greater culture of civil rights. As such, I am very doubtful it will achieve any good purpose. It seems to me to be extraordinarily undemocratic to impose a bill of rights in this way. It is very much a top-down approach and I note the Democrats have not always signed up to such an approach.

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rights—and, indeed, in the Greens policies, responsibilities—is very important for our nation. The question that really arises here is, ‘How should it be promulgated?’ The answer I have is, ‘Why hasn’t it been, after 100 years in which both the Labor Party and the conservatives of various shades have been in office?’

Senator Faulkner—That is a fair enough point, but don’t you think there ought to be some community consultation on this?

Senator BROWN—I think there would be community consultation on this if it were to pass here tonight.

Senator Faulkner—That is a very good response. They would hear about it, anyway.

Senator BROWN—Notice would probably be taken. I have all my fingers crossed for it to be passed, but I think Senator Greig flagged at the outset that he was using this device to have the important matter of a bill of rights for Australia brought to the fore. Why not do so in a situation where the Democrats, like the Greens, have been concerned about the truncating of long-held rights in Australia by the very piece of legislation we are dealing with? So, in a way, this is a balancer. The extraordinary thing I have just heard, however, is this government saying that one of the reasons they will turn this down is because it requires public debate. Here is a government that is great at bringing pieces of legislation in here late at night and expecting them to get through that same night—in fact, trying to put them through the House of Representatives and then through here in the space of 24 hours. Remember the bill in the run-up to the last election?

Senator Faulkner—What about this one?

Senator BROWN—Look at this bill; look at the whole stack of other bills that this government has tried to ram through this parliament. Thank goodness for the Senate. Even with occasional lapses by the opposition, the government has not been able to get away with it here. Now is an appropriate time to flag such an important move as this. The Greens totally support a bill of rights for Australia, but it should also go to the people of Australia through a referendum—I would rather see it go that way than through a legislative mechanism. But it is fair enough to raise this in the middle of debate about a bill which is a collage, a collection, of measures cutting the rights of organisations and individuals in Australia in the name of the hunt for terrorism, which is already very adequately dealt with under our criminal sanctions and legislation against criminality.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.21 p.m.)—by leave—I move government amendments (1) and (20) on sheet DT340:

8A. Schedule 1, item 19

(a) the start of the day after the day on which this Act receives the Royal Assent; and
(b) the start of the day after the day on which the Border Security Legislation Amendment Act 2002 receives the Royal Assent; and
(c) the start of the day after the day on which the Criminal Code Amendment (Suppression of Terrorism Bombings) Act 2002 receives the Royal Assent; and
(d) the start of the day after the day on which the Suppression of the Financing of Terrorism Act 2002 receives the Royal Assent

(20) Schedule 1, page 17 (after line 18), at the end of the Schedule, add:

Intelligence Services Act 2001

19 After paragraph 29(1)(b)

Insert:

(ba) to review, as soon as possible after the third anniversary of the day on which the Security Legislation Amendment (Terrorism) Act 2002 receives the Royal Assent, the operation, effectiveness and implications of amendments made by that Act and the following Acts:

(i) the Border Security Legislation Amendment Act 2002;
(ii) the Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002;

the Suppression of the Financing of Terrorism Act 2002; and
I first turn to government amendment (20). This provides for a review of the provisions of the Security Legislation Amendment (Terrorism) Bill 2002, the Suppression of the Financing of Terrorism Bill 2002, the Border Security Legislation Amendment Bill 2002 and the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002. Under this proposal, the operation, effectiveness and implications of the amendments made by the counterterrorism bills would be reviewed by the Parliamentary Joint Committee on ASIO, ASIS and DSD three years after the Security Legislation Amendment (Terrorism) Bill receives royal assent.

Government amendment (1) provides that the review provision commences once all the acts to be reviewed have received royal assent. The committee is required to report its comments and recommendations arising from the review to each house of the parliament and to the responsible minister. The committee has the power to hear and consider a full range of evidence that will be relevant to a review of this important legislation, including security information. The parliamentary joint committee has the appropriate resources and established procedures and is fully equipped to conduct such a review. The government believes that this is an appropriate way for this legislation to be reviewed.

As I have said, we have in place the mechanism: a parliamentary joint committee has the resources, the wherewithal, to deal with a review of this sort and there are other committees of a similar nature which have access to security information so that they could conduct a comprehensive review. That would then give assurance to those who wanted a review that the review would be not only an appropriate one but an effective one. That would occur, as I said, three years after the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and related bills receive royal assent. The opposition, I understand, has an amendment in relation to a further review and I think the Democrats have another amendment. But perhaps the opposition amendment is best addressed when we come to it.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.24 p.m.)—by leave—I move opposition amendment (1) on sheet 2503:

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

4 Public and independent review of operation of Security Acts relating to terrorism


(2) The review must be undertaken as soon as practicable after the third anniversary of the commencement of the amendments.

(3) The review is to be undertaken by a committee consisting of:

(a) up to two persons appointed by the Attorney-General, one of whom must be a retired judicial officer who shall be the Chair of the Committee; and

(b) the Inspector-General of Intelligence and Security; and

(c) the Privacy Commissioner; and

(d) the Human Rights Commissioner; and

(e) the Commonwealth Ombudsman; and

(f) two persons (who must hold a legal practicing certificate in an Australian jurisdiction) appointed by the Attorney-General on the nomination of the Law Council of Australia.

(4) The Attorney-General may reject a nomination made under sub-section (3)(f). If the Attorney-General rejects a nomination, the Law Council of Australia may nominate another person.

(5) The committee must provide for public submissions and public hearings as part of the review.

(6) The committee must, within six months of commencing the review, give the Attorney-General and the Parliamen-
tary Joint Committee on ASIO, ASIS and DSD a written report of the review which includes an assessment of matters in subsection (1), and alternative approaches or mechanisms as appropriate.

(7) The Attorney-General must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Attorney-General.

(8) Before the copy of the report is tabled in Parliament, the Attorney-General may remove information from the copy of the report if the Attorney-General is satisfied on advice from the Director-General of Security or the Commissioner of the Australian Federal Police that its inclusion may:

(a) endanger a person’s safety; or
(b) prejudice an investigation or prosecution; or
(c) compromise the operational activities or methodologies of the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service, the Defence Signals Directorate or the Australian Federal Police.

(9) The Parliamentary Joint Committee on ASIO, ASIS and DSD must take account of the report of the review given to the Committee, when the Committee conducts its review under paragraph 29(1)(ba) of the Intelligence Services Act 2001.

I thank the committee and Senator Mackay for granting leave. This is an important amendment. Senators would be aware that the Suppression of the Financing of Terrorism Bill 2002 as it was originally presented contained provisions for a review, by predominantly departmental representatives, of the amendments made by that one bill. I acknowledge that the initiative in relation to the financing of terrorism bill did have some merit, but I also want to be very clear and say to this committee that it is simply not good enough. The opposition is of the view that we need a significantly wider review. We need to broaden the review to include the operation of all the bills in this package.

The amendment that is being proposed by the Labor Party will ensure both public consultation and high-level representation on the review committee. The Labor amendment will ensure that the review is of all five bills in the package we are currently debating. It will ensure it is conducted by a genuinely independent committee of up to two persons appointed by the Attorney-General—one of whom must be a retired judicial officer, who shall be chair of the committee—the Inspector-General of Intelligence and Security, the Privacy Commissioner, the Human Rights Commissioner, the Commonwealth Ombudsman and two persons appointed by the Attorney-General on the nomination of the Law Council of Australia. The review that is proposed by the Labor Party of the five bills we are debating will have public submissions and hearings. It will be chaired by a retired judge. It will report to the Attorney-General and the Parliamentary Joint Committee on ASIO, ASIS and DSD. It will commence after three years and report within a further six months.

This is a proposal for a thorough, independent, detailed review of all the legislation that the Senate is dealing with. In other words, the review that the Labor Party proposes will be a fair dinkum review. It will give the parliament and the community a timely audit of the impact and operation of these bills. This is absolutely necessary, and I commend the opposition’s approach to the committee.

Senator BROWN (Tasmania) (8.28 p.m.)—The Greens support this amendment. As I said much earlier in the debate, we withdrew our similar amendment because the Labor Party’s was better—in particular, the setting up of the review system with a retired judge chairing it. It is a better review option than that which we had earlier put forward and we support the amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.29 p.m.)—The government opposes this amendment and it does so for a number of reasons. Firstly, I have outlined the proposal by the government for a review by a parliamentary joint committee, and the government believes that that is a more than appropriate way of reviewing this legislation. Indeed, in other cases, equally important leg-
islation has been reviewed in a similar manner.

The government believes that with the opposition proposal you would have this committee of experts carrying out its review and reporting to the PJC, and the PJC then going over the same ground again, so you would have a duplication of work and a duplication of review. The situation also arises that such a committee of experts would not have the access to security information that the parliamentary joint committee would have. It is akin to the dilemma that Senator Ray mentioned earlier when he talked about the opposition disallowing regulations while perhaps not having full access to all the security information that would go to the consideration of disallowance of regulations for terrorist organisations. Similarly, we believe that an expert committee formed in this way would not have the wherewithal and the facility to access the information of the parliamentary joint committee. In any event, there would be duplication, because it would be attempting to look at much the same ground as the parliamentary joint committee.

We do not see what this opposition amendment brings to the transparency and accountability of the legislation. A parliamentary joint committee is made up of members from all parties and covers the field of political thought. We have seen very good work done by our parliamentary joint committees, and I have no reason to doubt that a parliamentary joint committee reviewing this legislation would do as well in carrying out its responsibilities. It would give the Australian people the assurance that the legislation had been reviewed properly.

Senator GREIG (Western Australia) (8.32 p.m.)—I move Democrat amendment (1) on sheet 2555:

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

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

This quite simply is a sunset clause. I am conscious of the significant amendment just passed in relation to review, but I still think it is worthy that we give consideration to ensuring there is a sunset clause for cessation, which we advocate ought to take place five years after royal assent. That is, once in operation this bill—by then an act—would completely cease to be after five years and could then be subject to reintroduction, presumably following the very review that has just been accepted by the committee. I am aware that a similar sunset clause was moved, I think by Senator Brown, at the beginning of this debate and it was defeated, but I think it is worthy now, at the very end of the debate and discussion on at least the first bill, that we review that situation.

Senator BROWN (Tasmania) (8.34 p.m.)—I support the amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.34 p.m.)—We have dealt with the issue of a sunset clause previously; I will not detain the committee other than to say that the government is opposed to this, and I rely on the arguments previously outlined by the government in relation to its comments about the sunset clause proposed in Greens amendment (1).

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.34 p.m.)—As we have had a rather extensive debate on this previously, I will say that I rely on the very persuasive arguments put by the opposition previously, and we will still be opposing this amendment for a sunset clause. I note, though, that we have agreed to a review which is extensive and independent in its nature, and which is representative in terms of those who are going to conduct the review; it will have significant involvement from the community. As I have said before, that is a preferred way of examining the effectiveness of this legislation, and I commend my earlier remarks to the Senate.
Question negatived.
Bill, as amended, agreed to.

SUPPRESSION OF THE FINANCING OF TERRORISM BILL 2002

Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.36 p.m.)—The Suppression of the Financing of Terrorism Bill 2002 is designed to prevent the movement of funds for the purposes of terrorist activity and to enhance the provision and exchange of financial transaction reports information. It will create an offence directed at those who provide or collect funds to facilitate terrorist activities. It will require cash dealers to report transactions that are suspected to be related to terrorist activities. It will enable AUSTRAC, the AFP and ASIO to disclose financial transaction reports information directly to foreign countries and foreign law enforcement and intelligence agencies. Finally, it introduces higher penalty offences for providing assets to, or dealing in assets of, persons and entities engaged in terrorist activities. That was a brief outline of the bill, which deals with the more financial aspects of the war against terrorism.

More particularly, the government has a number of amendments to move. I move government amendment (4):
(4) Schedule 1, item 1, page 4 (line 7), omit "integrity and".

That amendment omits the words 'integrity and' from the proposed heading to chapter 5 of the Criminal Code, which is entitled 'The integrity and security of the Commonwealth', so that it would simply read 'The security of the Commonwealth'. This amendment responds to concerns raised during the committee's consideration of the bill in relation to the ambiguity of the term 'integrity'.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.38 p.m.)—This amendment is consistent with one we passed to the bill we dealt with previously. It has the support of the opposition.

Senator BROWN (Tasmania) (8.38 p.m.)—The Greens support the amendment.

Senator GREIG (Western Australia) (8.38 p.m.)—The Democrats support the amendment.

Question agreed to.

Senator MURRAY (Western Australia) (8.38 p.m.)—I apologise, I got here as soon as I could. I wish to address some general questions at the commencement of the committee stage of this bill. I do not think I will detain the committee for long. I will commence by remarking favourably on the conduct of the debate to date, on the amendments that have been put and on the very hard work that has been put in by all concerned on all sides. I start with a congratulation to Senator Faulkner and his team of opponents to the worst aspects of the bill, to the Liberal members who fought gallantly in the back rooms to ameliorate the bill, to Senator Brown and especially to my colleague Senator Greig and his very small team of hard workers.

I wanted to wait until the first bill had been passed, because that bill—if it is accepted by the House of Representatives—will become law. The framework in which this next bill is to be considered is therefore an appropriate one for me to make these remarks within. I have for some time been concerned that the definitions of and the attitudes to terrorism seem to focus on what I would describe as non-state actors. If you are going to go down this route then criminals who offend against humanity, who deny democratic processes and who harm populations in the ways that have been discussed at length can be both from and not from the state.

As anyone with a knowledge of history will know—and I think Senator Ray is one with a very strong interest in history, and I acknowledge those people at the table with a historical interest—the greatest crimes against humanity have been committed by the state. Yesterday Senator Ray entertained us with a somewhat gloomy tale of Soviet communist Russia, and I reminded him that the authorities now believe that that state put to death 60 million of its own and other citizens. Right now, in this world we live in, there are states whose acts of terror against their own peoples are far worse than any of
the acts done by Al-Qaeda or the Taliban in terms of the numbers of people killed, raped, burnt, maimed or terrorised. If any government in any democratic country were to start taking the high ground then they had better apply these principles without fear or favour against those who terrorise populations.

I will sketch this background briefly, because it is a necessary background for the putting of my questions. We can all think of past and present regimes which would, I think, fall into the realm of state terrorists. In my youth, I opposed the Nationalist government of South Africa. I think there were political parties and perhaps governments in Australia who long supported that colonial and racist regime. I suspect that, if the original bill had been allowed to progress as it was presented—and thank goodness the Senate has had the wisdom to ameliorate that—under those terms of way back then, the government of the day would probably have prescribed me. Friends of mine were banned, detained without trial—does any of this sound familiar?—murdered, beaten up. I probably have, strangely enough, given the attention paid to student issues, one of the most dramatic student politician histories of this place. I do not often talk about these things, but I recall meeting people opposed to that apartheid regime who were being pursued by the security forces that were—in that peculiarly heavy-handed and humorous way—run under the acronym of BOSS, the Bureau of State Security.

I remember meeting them in the back rooms in the townships and on cold and wintry hillsides. It was a dangerous occupation. However, I was a foreigner in the land I was in, so in the end I was treated relatively well. They simply deported me. They followed me and my poor mother around endlessly, opened our mail, tapped our phones and watched our movements. Does any of this sound familiar with the bills we are dealing with? And what was I standing for? Was I blowing up people or attacking installations? No, I was advocating democracy, I was advocating black majority rule under a nonracial constitution that covered all the population; but at that time and at that place I was a minority. I was vilified and I was pursued, and I had some interesting experiences as a result of having those attitudes. No, I am not heroic about it—there were many like me. The point I make is that times change and that if you are going to address issues like these you have to make sure that the principles, the method and the manner by which you apply them are in fact consistent and constant and that you apply them fearlessly.

To return to my theme, I suggest to the government of Australia, in which there are many good people, and to future governments of Australia, which will include many good people, that you have to be as vigorous about state terrorists—state actors, if you like—as about nonstate actors, because people who shove people down wells, burst open their homes and deliberately engage in ethnic rape or who use the weapons of racism, terror and intimidation deserve the same treatment you intend to give to nonstate actors. I am not suggesting that Australia should become a vigilante nation and should rush off to other nations and haul people out of their beds and bring them over here to be tried—although I must say in the case of people like the Chilean that was probably an attractive prospect. But I am suggesting that, if somebody of that sort sets foot in this land, they do not warm themselves in Australian beds and drink cups of tea with the Queen at Commonwealth functions. That is what I am suggesting. I think, if you want to name a few regimes, past Indonesian regimes, present Burmese regimes and certainly present Zimbabwean regimes qualify for what I am saying to you.

I think it is appropriate to now say that, if under this Security Legislation Amendment (Terrorism) Bill a terrorist act includes ‘intentionally intimidating the public or section of the public by an action or threat of action that is done or made with the intention of advancing a political, religious or ideological cause that causes serious physical harm to a person or damage to property’, surely it applies to someone who has killed tens of thousands of N’dbele, as an example, or to someone who has terrorised an entire population under a sham election process.
A terrorist organisation is an organisation that is ‘directly or indirectly engaged in preparing, planning or assisting in or fostering the doing of a terrorist act whether or not a terrorist act occurs’. I recognise the importance the legislation that has just moved through the Senate attaches to the issues of United Nations Security Council listings. I think the government has to consider state actors taking action that causes death or serious physical harm to a person in the advancement of a political objective with the intent of intimidating a section of the public. For example, the white nationalist apartheid regime attacking blacks I think would qualify under that—and they were racist—and I think the racist Mugabe regime equally qualifies under that. I think that arming militia groups or allowing them to carry out their activities against a civilian population, as is alleged with regard to Indonesia and East Timor, qualifies under that legislation. I think the public advocacy, as carried out by Mr Mugabe in his sham election, of mass terror qualifies under this legislation.

So I hope, Minister, to put you on the spot by asking you whether, with respect to states that act in a way which the international community regard as abhorrent and have condemned, through either the Commonwealth or the United Nations or some other international body—so it is not a lynch mob or the opinion of one country—the government will accept that state actors, representatives of political parties and organisations that run other countries and their officials can, have and do commit terrorist acts which are far greater in extent and impact than those dreadful and much-to-be-condemned events that we saw in New York last year.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.51 p.m.)—There are two questions here: the question of terrorism and the question of crimes against humanity—genocide—and a variety of other acts. It is not uncommon in the course of human behaviour to have different categories of criminal behaviour. In fact, what we are talking about is at the extreme end of criminal behaviour of a human being. What we are talking about in these bills is what the government is doing to bring in measures to provide law enforcement with the response it needs for the security of this country.

Senator Murray raises a different issue, really, but certainly of equal, if not more, seriousness—that is, what other states do in the matter of crimes against their own citizens, crimes of genocide and other very serious acts which affront any decent human being. We are bringing forward a bill on the International Criminal Court which deals with things such as genocide, crimes against humanity and other serious acts. We believe these are best dealt with in the bill and by ratifying that statute, as we have indicated, action can be taken in that forum. With respect to terrorism, which is a threat to this country, we believe that this package of bills provides the legislative response.

In the course of one week in this chamber, we will have dealt with all those different categories of human behaviour—ranging from terrorism to crimes against humanity, genocide and war crimes—but we will have done it via two different pieces of legislation, if you like. We do not believe we should be dealing, in this particular package, with those aspects that Senator Murray has mentioned. Senator Murray has asked the government to pass an opinion as to which is worse—terrorism or these other crimes against humanity that he has mentioned. I think they can broadly be described as such—crimes against humanity.

The government believes this legislation deals with such serious human behaviour that to draw comparisons between such extreme behaviour is not possible. The behaviour is so indescribably evil and wrong that comparisons do not get you anywhere. We believe this country has to respond in a civilised and appropriate fashion. We will deal with all of those aspects of human behaviour that Senator Murray has mentioned this very week in this chamber through this package of legislation and through the bill dealing with the International Criminal Court when it comes before us.

Senator MURRAY (Western Australia) (8.55 p.m.)—I thank the minister for his answer. I appreciate that he and his government have condemned some of the activities and
some of the states that I have run through. I use the Zimbabwean example because it is current and everyone knows my background there. I have a personal interest and I acknowledge that. However, I have assumed that under this legislation it is open to the government to determine that Mr bin Laden is a terrorist, that his organisation is a terrorist organisation and that if Mr bin Laden set foot in Australia you would arrest him and deal with him under the legislation. I would be shocked if you did not. If I assume that for a foreigner who committed a criminal act in another country, surely I can assume the same for Mr Mugabe and his regime—foreigners who have committed crimes in their own country.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.56 p.m.)—We are getting down to the legalities now of the definition of terrorism. I put away too quickly my bill dealing with that very definition from the last debate we had. We dealt with this very question as to what constitutes terrorism, and it was something which exercised very much the minds of the Senate Legal and Constitutional Legislation Committee. I suppose Senator Murray is inviting me to say whether a person such as Mr Mugabe is a terrorist or whether the actions of Mr Mugabe and his colleagues are capable of being determined as terrorist acts, rather than looking at them in the jurisdiction of an International Criminal Court, where complaints could be made that they have committed genocide.

Senator MURRAY (Western Australia) (8.58 p.m.)—Thank you, Minister, for your answer. I am conscious of both the title and the intent of the security legislation that is before us. Perhaps I should draw the thread together as to why I am looking at this in this particular bill. This bill is the Suppression of the Financing of Terrorism Bill 2002. It seems to me that one of the issues that attaches most to what I would describe as state actors is the finance issue. As we know, leaders of regimes which we abhor have always funnelled their money elsewhere.

I am not proposing that the Senate operate as a kangaroo court and here and now prescribe or determine who is or who is not a terrorist under this legislation. What I am suggesting is that throughout the debate Mr bin Laden and the Al-Qaeda organisation have been, quite rightly, used as typical examples of nonstate actors. I choose to use Mr Mugabe and the ZANU-PF political party as state actors because their crimes, like those of many other regimes, have been well documented. So really at the heart of my question is not whether this government is going to determine here and now or even in the near future that Mr Mugabe and ZANU-PF are state actors under the broad terrorism package but whether the government will contemplate the issue that state actors and nonstate actors both fall under the ambit of the legislation and contemplate their ability to address issues such as finance. I think I have clearly made my point; I do not think anyone is in any doubt as to my intent here.

Minister, I will conclude with a question which draws together the threads under this finance issue: would it be an offence for a person to fund a state actor that was a terrorist organisation, to train their troops, militia or other officials or, indeed, to simply park their money here until they used it elsewhere? I do know that the government has partly addressed this issue in another forum.
under the broad heading of smart sanctions. This is an issue which I think is germane. It is not just Zimbabwe. What if it were some country in Central America, Asia or Europe? What are we going to do about those sorts of clowns, criminals, racists, deviants and monsters—I suppose that is the best way to describe them—who populate the world stage in countries which are not democratic and do not observe the rule of law? Once you walk down this path of deciding on terrorism and how it should be dealt with, I simply say to you that you have to be consistent. So perhaps you could answer that question, Minister. Just to repeat the question: would it be an offence for a person to fund a state actor or to keep moneys in this country that may be regarded as funding a state actor which was regarded as a terrorist organisation to train their troops, militia or other officials?

**Senator Ellison (Western Australia—Minister for Justice and Customs) (9.02 p.m.)—**If the person were assisting a terrorist organisation as defined by the amendments which we passed in the previous bill, then that person would be guilty of an offence. In relation to the funding or freezing of funds, there is a different regime which is applicable to that. Schedule 3, clause 15 of the Suppression of the Financing of Terrorism Bill 2002 states:

(1) The Minister must list a person or entity under this section if the Minister is satisfied of the prescribed matters.

The bill then goes on to deal with what are prescribed matters. It says:

(5) A matter must not be prescribed under subsection (2) or (4) unless the prescription of the matter would give effect to a decision that:

(a) the Security Council has made under Chapter VII of the Charter of the United Nations; and

(b) Article 25 of the Charter requires Australia to carry out; and

(c) relates to terrorism and dealings with assets.

Then it goes on to talk about how that must be listed by notice in the *Gazette* and the asset or class of asset is also to be listed in the *Gazette*. So there are two aspects here to Senator Murray’s question. In answer to the first aspect, if a person is involved in terrorist activity or is supporting a terrorist organisation—and it matters not whether that has some official recognition overseas or has official standing—then you have the offences which we have outlined of assisting a terrorist organisation and they could be liable. Secondly, you have the other provisions which deal with supporting terrorism, or being involved in terrorism for that matter, and the person could be liable. Thirdly, you have being a member of that terrorist organisation, if that was the case. So there is a range of human involvement which could be liable to criminal sanction in the scenario that Senator Murray has depicted.

The issue of finances is dealt with by this bill, and I have referred to the provision which deals with the listing which must take place. That flows from prescribed matters which deal with the United Nations Security Council. The Security Council has already listed entities where funds can be frozen. I do not think that is the end of it, but I think that for some of the entities that Senator Murray is looking at—I use that expression rather broadly—there could well have to be a listing from the United Nations Security Council in order to meet the prescribed matters as outlined in this bill. If there is anything further to that, I will get back to the chamber, but I think that covers the question.

**Senator Murray (Western Australia) (9.06 p.m.)—**I thank the minister. I would like to conclude by thanking the participants in a long debate for allowing me to intrude with this particular line of questioning; I appreciate the opportunity.

**Senator Ellison (Western Australia—Minister for Justice and Customs) (9.07 p.m.)—**by leave—I move government amendments (5) and (8) on sheet DT313:

(5) Schedule 1, item 2, page 5 (lines 6 to 12), omit the definition of *terrorist act*, substitute:

*terrorist act* means an action or threat of action where:

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

(b) the action is done or the threat is made with the intention of advanc-
ing a political, religious or ideologi-
cal cause; and
(c) the action is done or the threat is
made with the intention of:
(i) coercing, or influencing by in-
timidation, the government of the
Commonwealth or a State, Ter-
ritory or foreign country, or of
part of a State, Territory or for-
eign country; or
(ii) intimidating the public or a sec-
tion of the public.
(8) Schedule 1, item 2, page 5 (after line 28),
after subsection (2), insert:
(2A) Action falls within this subsection if it:
(a) is advocacy, protest, dissent or in-
dustrial 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.
These amendments relate to the definition of
‘terrorist act’ and are identical to the
amendments that were moved by the gov-
ernment in relation to the terrorist definition
in the Security Legislation Amendment (Ter-
rorism) Bill 2002. We went over that pretty
comprehensively and I do not seek to detain
the committee any further by going over that
again. I simply move these amendments and
rely on the arguments put previously by the
government.
Senator BROWN (Tasmania) (9.08 p.m.)—We have opposed the government’s
approach to this right throughout this pro-
cess. The Greens are totally opposed to this
bill. We are aghast at it. It effectively gives
the government the option of backdoor pro-
scription of organisations by crushing them
financially—removing their ability to raise
funds, hold funds and bank, to engage in any
financial activity, to transfer funds or to do a
whole range of other things which many or-
ganisations engage in—without reference to
the parliament. Effectively, we have here the
executive capability to proscribe organisa-
tions and individuals in Australia that the
executive thinks might be engaged in terror-
ist activities under the very wide-ranging
definition of terrorism—which includes, in
the sections that we are dealing with at the
moment, ‘creating a serious risk to the health
or safety of the public.’ As I said earlier, that
could apply to nurses who are on strike, at a
picket, and beds have to be closed. It could
apply to conservationists who are up trees
and where the logging industry repeatedly
says, ‘This is dastardly; it is creating a threat
to life and limb in the forests.’

The government will be able to proscribe
such organisations, domestic or otherwise
and whether listed by the United Nations
Security Council or otherwise. Those organi-
sations will have no comeback; there is no
redress on that, effectively. It is going to be
very difficult, anyway, for organisations to
be able to defend themselves in that situa-
tion. What is particularly unacceptable in a
democracy is that the executive has the
power to do that. It is very offensive that
under proposed sections 15 and 18 of this
piece of legislation the executive will be able
to do that.

I would expect that the Labor Party would
not have a bar of that. Is the Labor Party, the
opposition, going to hand across to the ex-
cutive, without reference to this parliament,
the ability to proscribe organisations? The
Greens have amendments here to prevent
that from happening. If you are going to go
to the extraordinary length of proscribing—
that is, banning—an individual or a group in
Australia then the parliament should be the
watchdog on that. It should be by regulation.
Both houses of parliament should have the
option to investigate it and, if necessary, to
refer to authority or to the public on the
matter before the shutter goes down. But that
does not happen under this legislation. The
executive, a minister, without reference to
the parliament, can ban people or organisa-
tions by freezing their assets, by putting
them out of business, by removing their
livelihood.

We ought not to be going down that path.
There has been no demonstrable need for
that to happen in this country without refer-
ce to the elected parliament. We are not in
favour of proscribing organisations. We be-
lieve it drives them underground and simply makes them harder to track down. It makes the task of ensuring that they are watched and do not get to create terrorist acts more difficult. But that is the path that the government has taken. If the government wants to be able to proscribe organisations effectively by removing any financial wherewithal, let it not be left to the executive to do that. If you are going to name individuals and put them on a list which effectively totally demobilises them as members of society, removes their financial wherewithal and proscribes their ability to effectively exist in our society, do not leave it to the whim of the minister. But that is what this legislation does. It is draconian, unnecessary and dangerous.

The problem is that the government has already—through a regulation that went through unspotted by us, unfortunately, last October—gained the power to do this without reference to this legislation anyway. Without a parliamentary debate, the government can proscribe organisations and individuals. Indeed it has done so, based on a United Nations list which comes not from the General Assembly but from the Security Council of the United Nations. There is a long list of organisations that have already been proscribed in Australia without public debate or reference to the parliament. I would have thought that many entities on this list—such as Al-Qaeda, which is at the top and, as far as we know, has not been functioning or financially capable in Australia—would have been proscribed very quickly by the parliament. Yet, this already long list of organisations is going to be added to. It is not restricted to the United Nations; the government and the minister are going to be able to add to that list without parliament being consulted.

We should not be allowing that to happen. This is where the opposition becomes the watchdog on democracy, where the opposition becomes the watchdog on civil and political rights. The opposition must become the watchdog on the excesses of the executive, and you do not become that watchdog by allowing legislation through like this. What we ought to be doing here tonight is overturning that regulation that got through, which has already allowed the government to proscribe organisations and individuals without reference to the parliament. Then we should be ensuring that in this legislation that right of proscription is not further enhanced, and in fact is abolished. This is the job of the Labor Party. Who is going to be listed next by the government? Will it be a union or a unionist? Will it be an environmental organisation or an environmentalist? We can all list a whole range of people, from the Shearers Strike right through to now, who could have and would have been proscribed by a government with these powers if it did not have an extraordinarily strong grip on itself, on the passage of events and on the nature of a free and open democracy.

But that is not what this legislation does. It crosses a boundary into territory we have never seen before in this country. I will be interested to see what the Labor Party is going to do in ensuring that the extraordinarily big loophole—the tunnel—through which long-held rights in this country can flow at the whim of an executive government is closed. The Greens amendments would ensure that, and we will be seeking support for those amendments.

Question agreed to.

Senator ELLISON (Western Australia— Minister for Justice and Customs) (9.17 p.m.)—I move:

(6) Schedule 1, item 2, page 5 (line 14), after “serious harm”, insert “that is physical harm”.

This amendment relates to the definition of ‘terrorist act’ and, again, is identical to an amendment moved earlier by the government in relation to the Security Legislation Amendment (Terrorism) Bill 2002. It modifies the definition of ‘terrorist act’ in proposed section 100.1 so that actions involving serious harm to a person are only covered by the definition where they involve serious physical harm. I have covered all the arguments and I will not go through them again.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.18 p.m.)—We have had the debate around this in the previous bill. The opposi-
tion indicated at that stage it would be supporting a similar amendment there, and it will again in relation to this bill to tighten the definition of ‘terrorist act’.

The TEMPORARY CHAIRMAN (Senator Knowles)—Senator Faulkner, does that indicate that you will not be proceeding with your next amendment?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.19 p.m.)—No, it does not indicate that. In fact, why don’t I take this opportunity, Madam Chair, to move opposition amendment 2554 and, if you would require of me leave to do so while the other question is before the chair, I would be happy to seek leave.

Leave granted.

Senator FAULKNER—I thank the Senate. I move Opposition amendment (1) on sheet 2554:

(1) Schedule 1, item 2, page 5 (lines 14 and 15), omit paragraphs (2) (a) and (b), substitute:

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

This reflects the amendment that found favour when we dealt with the previous legislation. If any member of the committee would like me to address the amendment again, I am happy to. Otherwise, I will commend the amendment to the Senate.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.19 p.m.)—As before, the government will be supporting opposition amendment (1).

Senator GREIG (Western Australia) (9.20 p.m.)—I may be on the wrong track but I would like to ask the minister, if you were to have serious harm that was not physical harm so we are talking about psychological harm—might that be covered under the definition of torture and be addressed through international conventions on the prevention of torture?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.20 p.m.)—I think such behaviour would be caught by other offences and provisions. But could I say that I think in any event torture—even if psychological—would really be in the realm of physical harm. I know that we excluded the mental aspect earlier but I think we are dealing more with mental shock or something of that sort. Certainly torture is covered in other areas of the law. I do not believe that, in relation to the amendment to the definition here, that we are providing a loophole in relation to those people who would be torturing other people, albeit psychologically.

Senator GREIG (Western Australia) (9.21 p.m.)—So is it the case then, Minister, that the definition here of physical harm is really to quarantine that from, perhaps, economic harm, as we discussed earlier in this debate?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.21 p.m.)—It certainly takes it away from economic harm but it also takes it away from what you could describe as nervous shock. It would just make the definition too broad if you left the ‘physical’ out of it. Physical harm is actually defined in the Criminal Code as follows:

Physical harm includes unconsciousness, pain, disfigurement, infection with a disease and any physical contact with a person that the person might reasonably object to in the circumstances whether or not the person was aware of it at the time.

I would submit torture, albeit psychological, could involve unconsciousness, it could involve pain, it could involve physical contact which a person might not be aware of—the applying of light, the applying of heat, the applying of cold. The application of any of those mediums to a person could possibly come within the definition.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that government amendment (6) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that opposition amendment (1) be agreed to.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.23 p.m.)—I think such behaviour would be caught by other offences and provisions. But
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— I move government amendment (7) on sheet DT313:

(7) Schedule 1, item 2, page 5 (after line 15), after paragraph (2)(b), insert:

(ba) causes a person’s death; or

This amendment again relates to the definition of ‘terrorist act’ and is identical to an amendment I moved earlier in relation to the previous bill. It clarifies that a terrorist act includes an act which causes a person’s death. It is really quite straightforward and we have gone over the argument previously.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.24 p.m.)—The amendment is supported by the opposition.

Question agreed to.

Senator BROWN (Tasmania) (9.24 p.m.)—by leave—I move Greens amendments (2) and (3) on sheet 2513:

(2) Schedule 1, item 2, page 5 (lines 18 to 28), omit paragraphs (d) and (e).

(3) Schedule 1, item 2, page 5 (lines 29 to 34), omit subsection (3).

These amendments refer to the sections of the legislation which effectively mean that you can be labelled a terrorist if you are creating a risk to public health or safety or to an electronic system. We have had this debate at length. It is wide open to abuse by the executive. The executive must not, should not, should never have the ability to proscribe, through the removal of all financial rights, an organisation in Australia on the basis of these particular sections of the bill. To do so is to open up the threat of a whole range of community organisations, unions included, being proscribed by a heavy-handed government in the future. Certainly the Communist Party would have been proscribed under this provision back in the 1950s even though at a referendum, following a big debate in which both political parties in here supported the banning of the Communist Party, the people of Australia—with a vigorous campaign by then shadow attorney Dr Evatt—overturned the thought of banning the Communist Party.

There will be no qualms after this legislation—if it were to get through—passes; the ministry can do it without even referring to the parliament. You will not have to have a debate in here between the opposition and the government. People go on a list, organisations go on a list; the government says they are a serious threat to public health and safety or they have seriously interfered with or disrupted an electronic system and, bang, they have got the grounds for proscribing an organisation. We oppose the legislation but we want to tighten up that ability. The Greens amendments remove those flimsy, wide open, manipulable components of this legislation so that the government would have to fall back on serious harm to a person, damage to property, endangering persons’ lives—the things which the public recognise as being terrorism—if it is going to list and, through this backdoor mechanism, proscribe individuals or organisations as terrorists.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.28 p.m.)—by leave—I move government amendments (9) and (10):

(9) Schedule 1, item 2, page 6 (lines 2 to 4), 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 2, page 6 (lines 5 to 7), 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 refer to the constitutional basis provision of 100.2. This is again the same as the argument I outlined in relation to a similar provision in the previous bill. Amendments (9) and (10) amend the constitutional basis provision to ensure that it covers the new terrorist organisation offences to be inserted by the government amendments to the Security Legislation Amendment (Terrorism) Bill 2002. The arguments really are the same, and I rely on those arguments.

Question agreed to.

Senator GREIG (Western Australia) (9.29 p.m.)—I move Democrat amendment (1) on sheet 2556:
This relates to recklessness, which we discussed in definitional terms a little earlier, only this time in the context of the Suppression of the Financing of Terrorism Bill 2002. The amendment deals with the financing of terrorism and gives effect to one of the many recommendations of the Legal and Constitutional Legislation Committee. Section 103.1 creates an offence of providing or collecting funds where the person who provides or collects them is reckless as to whether the funds will be used to facilitate or engage in a terrorist act. The penalty is imprisonment for life. The Law Council of Australia observed that:

The offence created by section 103.1 contains no requirement that the prosecution proved that a person charged had actual knowledge of circumstances indicating connection with a terrorist act or intended to provide funds to be used to facilitate or engage in a terrorist act.

The Law Council also considered that, at the very least, the offence for financing terrorism should include a requirement of specific intent. It is noteworthy that the explanatory memorandum for the Suppression of the Financing of Terrorism Bill 2002 provides that section 103.1 implements article 2 of the International Convention for the Suppression of the Financing of Terrorism and paragraph 1(b) of United Nations Security Council resolution 1373. It draws on the language used in those international instruments. Article 2, paragraph 1 of the convention, however, contains a requirement of specific intention. It states:

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part...

The UN Security Council resolution 1373, paragraph 1(b), says:

Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories—and this is the key point—with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

Accordingly, both international instruments contain, unlike proposed section 103.1, a clear requirement of specific intent. The Senate committee recommended that the bill be amended so that the financing of terrorism include an element of intent. The government’s amendment in response falls well short of this.

The government has circulated amendments to insert a note in the section to clarify that the person must intentionally provide or collect the funds—that is, people who give people money by accident are not within the scope of the section. The real issue here is whether the person provided funds with the intention or the knowledge that the funds would be used to facilitate or engage in a terrorist act. However, the government intends to retain the current standard of recklessness, despite the criticism from eminent bodies such as the Law Council and the deliberations of the Senate’s Legal and Constitutional Legislation Committee. This Democrat amendment implements this committee recommendation by ensuring that we do include in the financing of terrorism offence a requirement that the person knew or intended that the funds would be used to facilitate or engage in a terrorist act.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.33 p.m.)—For the record, the government opposes this amendment. This amendment would replace the fault element of recklessness in the financing of terrorism offence with the fault elements of intention and knowledge. The application of recklessness to the circumstances that the funds are used to facilitate or engage in a terrorist act is in accordance with the general principles of the Criminal Code. The government believes this is essential and that the amendment as opposed by the Democrats would diminish the effect of this legislation. Therefore, the government opposes the amendment.

Question negatived.

Senator BROWN (Tasmania) (9.34 p.m.)—I move Greens amendment (4):
This amendment would be to eliminate the problem that Senator Greig has been talking about—that is, the inclusion of recklessness leaving the legislation wide open to exploitation in the hands of an executive. It should be removed from the legislation.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.35 p.m.)—The government opposes Greens amendment (4). This amendment would remove the limb of terrorist financing that relates to the use of the funds to engage or facilitate in a terrorist act. Without this limb a person would commit an offence merely by providing or collecting funds regardless of whether those funds are used to facilitate or engage in a terrorist act. We believe the Greens amendment could result in the offence applying to completely innocent activity. For this very reason that the government opposes this amendment.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.36 p.m.)—I move government amendment (11):

(11) Schedule 1, item 3, page 7 (after line 19), at the end of subsection (1), add:

Note: Intention is the fault element for the conduct described in paragraph (1)(a). See subsection 5.6(1).

This amendment will include an explanatory note at the end of the financing of terrorism offence to indicate to readers of the legislation that the fault element of intention applies to the conduct of providing or collecting funds. The fault element of intention applies by virtue of section 5.6 of the Criminal Code which provides that, where a law creating an offence does not specify a fault element for a physical element of the offence, intention applies to physical elements consisting of conduct. This responds to recommendation 6 of the Senate Legal and Constitutional Legislation Committee report.

Question agreed to.

Senator BROWN (Tasmania) (9.37 p.m.)—I move Greens amendment (5):

(5) Schedule 1, item 3, page 7 (lines 22 and 23), omit subsection (3).

This would allow prosecution of people or proscription of organisations under this legislation for activities occurring overseas. The one incidental possibility out of this is that somewhere down the line a government with the gumption to respond to what Senator Murray was talking about earlier on could itself proscribe some of the thugs, the villains and the killers who are themselves in offices of power overseas so that if they came to Australia they could get arrested. I am talking about heads of state and others—Senator Murray named some of them—who ought to be arraigned as mega-terrorists when they come here.

I have terrible memories of the Ceausescu couple from Romania coming here and being entertained by, amongst others, Lang Hancock and co. They ought to have been locked up instead—it would have saved a lot of lives if they had. But I do not think that is the intention here because it would be enormously embarrassing to governments of either persuasion to have to scrutinise the activities of some of the heads of state, for example, who have shaken hands with John Howard over the last five years and to determine whether or not they fell into the category of terrorists under the definition most Australians would give to it.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.39 p.m.)—For the record, the government opposes this amendment. It would limit the geographical reach of the terrorist financing offence. In view of the depth of international concern about the financing of terrorism, it is appropriate that this offence apply regardless of geographic boundaries. I think this is similar to an earlier amendment Senator Brown moved in the previous bill and in opposing it then the government raised similar arguments, and I rely on those arguments.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.39 p.m.)—I think I have made one too many speeches on extended geographical jurisdiction, and I am sure that every other member of the committee agrees with me, so
I refer senators to my very cogent previous remarks.

Senator BROWN (Tasmania) (9.40 p.m.)—It is really not going to help us to feel confident that any government, likely soon, is going to list as terrorists some of the heads of state who happen to come to this country who have been involved in terrorising people inside, in some cases outside, their own countries. I would add immediately to the list if I were in government—and I can reassure those of you who look shaky about this that it is not going to happen immediately—some of the armaments manufacturers around the world.

Senator Faulkner—I just hope we are in government before you.

Senator BROWN—We would have to discuss the odds on that. I would add to the list those people who make landmines that blow up kids. An Italian company is involved in that. What would happen when their executives land here? The Chinese also produce landmines. When President Jiang Zemin arrives here with his record of flutter bombs and landmines distributed all around the world killing and maiming people, is he going to be arraigned under this legislation? Is that the intention of this government? Of course it is not, but it should be a matter for some thought.

Senator GREIG (Western Australia) (9.41 p.m.)—I look forward to next week’s Newspoll to see how much closer the Democrats are to being in government. Senator Brown mentioned Mr and Mrs Ceausescu, and I remember that issue quite specifically. It would have been perhaps 1986 or 1987, maybe 1988, when I was a student and an elected member of the student guild of Murdoch University and we learnt that the Ceausescus were coming to Western Australia. They had expressed a keen interest in visiting a campus. It was mooted that they were going to tour Murdoch. I am pleased to say that I was one of those who discreetly ensured that that never happened—unless it did happen and I was unaware of it.

The question of extended geographical jurisdiction is an interesting one. I note, for example, that there is some similarity between this and the approach that both parties have taken on the child sexual abuse laws which were introduced in relation to child prostitutes in South-East Asia and so on. Better still is the question of what opportunities we have, if any, to detain and investigate those people who may set foot on our shores. I have covered that at great length in previous debates I have engaged in on antiterrorism legislation and which we witnessed in part in terms of the issues surrounding Mr Kalejs, Mr Ozols and others.

It is interesting that Britain in fact detained Pinochet when he was in that country two if not three years ago—although ultimately he did return to Chile where he was then, it would seem, immune from further investigation. If we are serious about addressing the question of both terrorism and crimes against humanity, and I would argue that they are often interchangeable terms, then we must be empowered to seize people when they are on our shores.

Minister, I wonder if the argument you have just presented in opposition to this amendment is not perhaps contradicted by the next step of the government, which is the ratification of the Rome Statute and participation in the International Criminal Court that, as I understand it, would to some degree give us those powers anyway. Perhaps you could enlighten us on that.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.44 p.m.)—We do not see any contradiction at all. What we are talking about here is terrorism. Of course domestic legislation in Australia has an extraterritorial application; we have seen that with child sex tourism and we have seen it with bribery of foreign officials. If we are to fight terrorism comprehensively, there should be this geographical reach. It does not contradict in any way the government’s stand in relation to the International Criminal Court. There was some concern that it would work the other way: that the International Criminal Court would impinge upon the sovereignty of this country. We believe there is no breach of the sovereignty of Australia in the way that this is being proposed. Moreover, this legislation is all about the sovereignty of Australia. It is all about
protecting Australia from terrorism as well as helping the international community fight terrorism.

Senator BROWN (Tasmania) (9.45 p.m.)—I ask the minister whether the government would consider listing executives of companies that manufacture landmines—which are banned in this country and under international covenant—as terrorists, so that they can be arrested if they come to this country.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.46 p.m.)—There are two aspects here. I think Senator Brown is asking me what we would do with the individuals themselves. They would have to come within the provisions of this legislation if we were to take action against them upon their arrival in Australia. Obviously, the law has to be applied. Senator Brown has just criticised the government for being too arbitrary in its approach to this. I could not say, just willy-nilly, that a member of a corporation would be charged. I would have to have the facts before me in relation to whether the landmines were used in the course of terrorism—

Senator Brown—Are they ever used any other way?

Senator ELLISON—That very question that Senator Brown poses goes to the root of his own problem. The fact is that you cannot say, just on a hypothetical proposition, whether something would attract criminal sanction or not. A case would have to be made out that the person was involved with a terrorist organisation or in terrorist acts and that their activity was caught by this legislation. I do not think that it is possible to answer the hypotheticals that Senator Brown puts, other than to say that the law would have to be applied to the facts.

Senator BROWN (Tasmania) (9.47 p.m.)—I will not carry this through, because the minister is going to get himself into a terrible bind. But let me just say that people who produce landmines know that those landmines are going to be used in terrorist activity. They are producing a thing which is going to be used in terrorism. The government should think about that.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.49 p.m.)—by leave—I move government amendments (14), (15) and (17) on sheet DT313:

(14) Schedule 2, item 14, page 10 (after line 25), after subparagraph (ii), insert:

(iii) ensuring that the information will be used only for the purpose for which it is communicated to the foreign country; and

(15) Schedule 2, item 14, page 11 (lines 10 and 11), omit subparagraph (ii), substitute:

(ii) controlling the use that will be made of it; and

(iii) ensuring that the information will be used only for the purpose for which it is communicated to the foreign country; and

(17) Schedule 2, item 18, page 12 (lines 33 and 34), omit subparagraph (ii), substitute:

(ii) controlling the use that will be made of it; and

(iii) ensuring that the information will be used only for the purpose for which it is communicated to the foreign country; and

These amendments will enhance the privacy safeguards relating to the disclosure of financial transaction reports information to foreign countries and foreign law enforcement and intelligence agencies. The amendments ensure that the Director of AUSTRAC, the Australian Federal Police Commissioner and the Director-General of Security will only be able to disclose financial transaction reports information to a foreign country or law enforcement or intelligence agency if they are satisfied that the foreign country or agency has made appropriate undertakings for controlling the use of the information and ensuring that it is used only for the purpose for which it is communicated. I note that concerns have been raised about the operation of the new reporting requirements relating to terrorist transactions. I can confirm that these new obligations will not affect the current obligations on cash dealers to report transactions that they suspect are related to existing Commonwealth offences, including terrorism related of-
fences. This is an important aspect of this bill. It provides the privacy safeguards that I think most Australians would want to see.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.51 p.m.)—by leave—I move government amendments (13) and (16) on sheet DT313:

(13) Schedule 2, page 10 (after line 3), after item 9, insert:

9A Subsection 27(1B)
Repeal the subsection, substitute:

(1B) Despite paragraph (1)(b), the Director may only authorise under that paragraph one of the following law enforcement agencies if the agency undertakes that it will comply with the information privacy principles set out in section 14 of the Privacy Act 1988 in respect of FTR information obtained under the authorisation:

(a) the Crime and Misconduct Commission of Queensland;
(b) the Anti-Corruption Commission of Western Australia;
(c) the Royal Commission (appointed by the Governor of Western Australia on 12 December 2001) into whether since 1 January 1985 there has been corrupt conduct or criminal conduct by any Western Australian police officer.

9B Saving of authorisations and undertakings
For the purposes of subsection 27(1B) of the Financial Transaction Reports Act 1988 as amended by this Schedule, neither of the following is affected by the amendments of that Act by this Schedule:

(a) an authorisation conferred on the Anti-Corruption Commission of Western Australia by the Director;
(b) an undertaking by that Commission to the Director.

(16) Schedule 2, page 11 (after line 36), after item 14, insert:

14A Paragraph 27(16)(d)
Repeal the paragraph.

14B Paragraph 27(16)(h)
Repeal the paragraph, substitute:

(h) the Crime and Misconduct Commission of Queensland; and

14C At the end of subsection 27(16)
Add:

; and (j) the Royal Commission (appointed by the Governor of Western Australia on 12 December 2001) into whether since 1 January 1985 there has been corrupt conduct or criminal conduct by any Western Australian police officer.

14D Paragraphs 27(17)(k) to (m)
Repeal the paragraphs.

14E Paragraphs 27(17)(t) and (u) (the paragraphs (t) and (u) inserted by item 7 of Schedule 6 to the Measures to Combat Serious and Organised Crime Act 2001)
Repeal the paragraphs.

14F Before paragraph 27(17)(v)
Insert:

(ua) a Commissioner of the Crime and Misconduct Commission of Queensland; and

(ub) an Assistant Commissioner, Senior Officer or member of the staff of that Commission; and

14G At the end of subsection 27(17)
Add:

; and (x) the person constituting the Royal Commission (appointed by the Governor of Western Australia on 12 December 2001) into whether since 1 January 1985 there has been corrupt conduct or criminal conduct by any Western Australian police officer; and

(y) a member of the staff of that Royal Commission.

These items will enable the Queensland Crime and Misconduct Commission and the Western Australian Royal Commission into Whether there has been any Corrupt or Criminal Conduct by Western Australian Police Officers to have access to financial transaction reports information. The inclusion of the Queensland Crime and Misconduct Commission reflects the fact that that body has replaced the Queensland Criminal Justice Commission and the Queensland Crime Commission, both of which had access to FTR information. Enabling the West-
ern Australian royal commission to access FTR information for the purposes of investigating police corruption is consistent with the existing policy of the act, which provided for such access by the royal commission into the New South Wales police service. These amendments will require both the Crime and Misconduct Commission and the royal commission to undertake to comply with the information privacy principles in the Privacy Act 1988 with respect to FTR information. I believe that these amendments are quite straightforward.

Senator GREIG (Western Australia) (9.52 p.m.)—I am intrigued as to how these particular issues—misconduct in Queensland, anticorruption in Western Australia and so on—and the commissions to which you refer have found themselves part of a bill relating to the prevention of the financing of terrorism. Could the minister explain the connection?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.53 p.m.)—It is a good question and one which I would raise myself. This bill provides a vehicle for addressing an issue which has arisen and requires a very quick response, and the Crime and Misconduct Commission of Queensland and the Anti-Corruption Commission of Western Australia required this. I am sure the Democrats would agree that this is an appropriate thing to provide. It is just that we had to do it quickly, and this bill provided a vehicle for that.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.54 p.m.)—The government opposes schedule 2, part 2 in the following terms:

18) Schedule 2, Part 2, page 14 (line 2) to page 15 (line 30), to be opposed.

We are seeking to amend schedule 2 to the bill as introduced by removing part 2 of the schedule which provides for a review of the amendments to the FTR Act. The removal of part 2 is consequent upon the insertion into the Security Legislation Amendment (Terrorism) Bill 2002 of a general review mechanism covering the provisions of that bill, the Suppression of the Financing of Terrorism Bill 2002, the Border Security Legislation Amendment Bill 2002 and the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002.

Government amendment (12), which I will touch on now, would omit the heading to part 1 of schedule 2 as a consequence of the amendment removing the review provisions in part 2. By way of background, I can advise the chamber that the operation, effectiveness and implications of the amendments made by the counter-terrorism bills would be reviewed by the Joint Parliamentary Committee on ASIO, ASIS and DSD three years after the Security Legislation Amendment (Terrorism) Bill receives royal assent. We have covered that in previous debate, and the opposition of course has amended that by adding another tier of review. The debate on that was lengthy and involved, and we do not need to revisit that.

The TEMPORARY CHAIRMAN (Senator Bartlett)—The question is that schedule 2, part 2 stand as printed.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.56 p.m.)—I move government amendment (12) on sheet DT313:

Schedule 2, heading to Part 1, page 8 (lines 4 and 5), omit the heading.

I have already addressed that amendment in previous comments.

Question agreed to.

Senator GREIG (Western Australia) (9.57 p.m.)—I move Democrats amendment (2) on sheet 2556:

2) Schedule 3, item 1, page 17 (after line 10), after subsection (3) insert:

3(a) Where the Minister lists an asset in accordance with this section, the Minister must notify in writing a person or entity owning the asset of:

(i) the intention to list the asset; and

(ii) their rights and obligations consequent on the listing.

This amendment, relating to the notification of listings, aims to give effect to recommendation (7)(b) of the Senate Legal and Constitutional Legislation Committee in-
quiry into these bills. The recommendation was:
(b) once action has been taken to freeze an asset, the owner of assets must be advised in writing as soon as possible and their rights and obligations explained.

This legislation does not include that. The government has amendments which will allow it to make regulations—and we hope that it intends to regulate to pick up all of the relevant parts of that committee recommendation. However, we believe that this particular matter can be better addressed by legislation. It does not necessarily require regulation. Of course, the government can regulate to set out the manner in which it intends to comply with the proposed legislative requirement.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.58 p.m.)—For the record, the government opposes Democrat amendment (2). As stated by Senator Greig, this amendment would require the Minister for Foreign Affairs to notify the owner of an asset of the minister’s intention to list the asset and of the owner’s rights and obligations. In the normal course of events, that would be entirely appropriate, but we are not dealing with a normal course of events; we are dealing with the assets of a terrorist group, assets which are being used or could be used in acts of terrorism. The amendment would have the effect of giving advance notice of that listing to a terrorist organisation, thereby alerting that organisation and giving it the opportunity to take evasive action. We do not believe that that is appropriate in the circumstances. In other circumstances, of course a notice would be given to someone who owns property. But this is a very serious situation where you have the involvement of a terrorist organisation, and we do not believe that the normal niceties can apply.

Question negatived.

Senator BROWN (Tasmania) (9.59 p.m.)—I move Australian Greens amendment (6) on sheet 2513 revised:

(6) Schedule 3, item 1, page 17 (after line 21), after subsection 15(7), insert:
(8) A listing under subsections (1) and (3) must be tabled in each House of the Parliament within 15 sitting days of the listing.

(9) A listing under subsections (1) and (3) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

In schedule 3, item 1 on page 17 in the Suppression of the Financing of Terrorism Bill 2002, section 15 lists persons, entities and assets which the minister can list and proscribe. What we are doing with these amendments is giving the parliament the power to oversee what the minister does. After section 15(7), we would add subsections (8) and (9). This would enable parliament to look at and accept or reject a regulation which listed an organisation or an individual to be proscribed, in the same way that it has the power to reject hundreds of other matters that are dealt with through regulation. But this one is much more important than most of those hundreds of others.

This is where parliament should be very closely watching the executive to ensure that it does not become excessive in its zeal to hunt down political opponents, community groups it disagrees with or individuals who it believes are going over the traces—but who are not terrorists under the ordinary test of the community’s understanding of a terrorist as a person who creates bloodshed, destruction and terror through the committing of such crimes. This needs to be kept in mind. This government through this legislation is opening the way for a future minister to be able to proscribe, through the freezing of their assets, organisations or individuals who it believes create a threat to public health and safety or who it believes are threatening communications. We should not be allowing that. The Labor Party, the Democrats and the Greens should not be allowing that. If we are going to allow it then for god’s sake let us ensure that parliament vets this list.

I commend this amendment as strongly as I can to the opposition and indeed to the government, because it is an enormously important safeguard against the ability of government to bring down organisations and individuals that it disagrees with and who it says are interfering with public health or safety, for example. It is essential that par-
liament have an overview on that. It would be extraordinary for parliament to countermand the listing by the government of a terrorist organisation or a terrorist individual. Remember, these are not necessarily people who have committed an act of terrorism. It includes people who simply are members of an organisation. Are we really going to allow an executive outside parliament the power to do that? We are, if we do not accept and endorse these amendments. It is very, very important that the government, the opposition and the crossbenches do not allow a minister to not only freeze the assets of organisations and individuals in our democracy but freeze them into oblivion through that mechanism, without parliamentary overview. It is extremely important that we do not allow that to happen. At this juncture, because we are dealing with listings, I would also ask the government how it has come up with the current list that it has. Where did it get it from? Is it just a Security Council listing or is there more to it?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.05 p.m.)—It is important that the government puts its position on the record in relation to this, because it is an important aspect of the legislation. The government does oppose the amendment proposed by the Greens. Amendment (6) would enable the asset freeze listings to be disallowed by parliament. That is it put shortly. The government does oppose the amendment proposed by the Greens. Amendment (6) would enable the asset freeze listings to be disallowed by parliament. That is it put shortly. The government believes that this proposal is seriously flawed in a number of respects.

I will, firstly, touch on the aspect of international obligations. The disallowance of asset freeze listings could place Australia in breach of our international obligations under UN Security Council resolution 1373 to freeze terrorist assets. Under this resolution Australia is obliged to freeze, without delay, funds and other financial assets or economic resources of persons who commit or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts and of associated entities. If parliament disallows a listing made in accordance with Security Council resolution 1373, and terrorist assets are unfrozen, we will be in breach of this obligation. The relevant treaty obligation is found in article 25 of the Charter of the United Nations which provides that Security Council decisions are binding on members of the United Nations. Consequently, Australia is obliged to comply with Security Council resolution 1373. This is notwithstanding any conflict with domestic law resulting from the operation of a disallowable instrument.

This is far more than a legal or technical consideration. International cooperation in freezing terrorist assets has been a vital area of international cooperation to combat terrorism. For Australia to hedge on its commitment in this area would leave a gap in these international efforts that terrorists could exploit. Curbing the financial flows on which sophisticated terrorist activities rely is absolutely vital, and we should do nothing that would undermine this. The government’s position on this issue is entirely consistent with the arguments it has put forward in other contexts. The content of Australian law is first and foremost a matter for the Australian parliament. How we implement our treaty obligations is a matter for the Australian parliament, and how we do that is a decision to be made taking into account our international treaty obligations and how they may be best met with regard to our national interest. Where those obligations are enshrined in domestic legislation, they are part of Australian law.

In this case, the government consider that compliance with our obligations relating to freezing of assets pursuant to Security Council resolution 1373 is a crucial contribution to the international efforts to combat terrorism. In our view, it is in Australia’s interest to ensure that we have a strong domestic regime for meeting our obligations to freeze such assets and to ensure that we will not be placed in a situation where those obligations might be breached. Inserting a provision for disallowance will not, in itself, place us in breach of our international obligations. Rather, the act of disallowance would place us in breach if the listing had been properly made in line with our obligations. More importantly, that act of disallowance would prevent us from doing our part to support the efforts of the United Nations Security Coun-
cil to combat terrorism and, in this case, terrorist financing.

To support our involvement with the United Nations on the one hand and to support this amendment on the other would be the height of contradiction. On the one hand, it would be saying that we should do all we can to be a good UN citizen and to help the UN fight terrorism; on the other hand, it would be saying that we should cast our domestic legislation in terms which might prevent Australia doing just that in circumstances where the Security Council has specifically requested that member states freeze assets. The government’s position is unequivocal: we will do what is necessary to play our part in the international effort to stamp out terrorism. We think that should be done in a way which fully gives effect to our international obligations.

The concerns I have highlighted are heightened by the inherent features of the disallowance process. It is not practical to place each named individual or entity on a separate list; there would be hundreds of lists being separately tabled. Yet if there were cumulative lists, disallowance relating to one individual or entity would disallow the entire list. Furthermore, terrorists would be tipped off and could take advantage of even the slightest gap between disallowance and re-making to move their assets offshore. Assets can be moved very easily, and any slight gap in the freezing scheme could be ruthlessly exploited by terrorists. Let me emphasise that asset freezing is subject to a whole series of safeguards in this bill, to which the government amendments will further add. It is ironic that the main reason these asset freezing provisions were included in the bill was to provide a more rigorous and accountable framework in primary legislation for something that was already permitted under regulation.

The safeguards included in the bill, as introduced, include the following. Proposed section 15 provides that regulations may be made specifying matters of which the minister must be satisfied before listing a person, entity or asset. This will allow greater transparency in the listing process. Under that provision, the listing takes effect by being set out in the Gazette so that it is on the public record and open to scrutiny and questioning. Proposed sections 16 and 17 enable a listed person or entity to make an application to the Minister for Foreign Affairs to have a listing revoked. In the case of such an application, or on the minister’s own motion, the minister may revoke the listing if satisfied that it is no longer necessary to give effect to a decision of the United Nations Security Council relating to terrorist assets. For example, if a person were listed and it then emerged that an error had been made and that the person had no connection to terrorism, the person could apply to the minister and there would be clear grounds for revocation.

Furthermore, under proposed section 19, a listing is automatically revoked by force of law when Australia ceases to be required to implement the relevant United Nations Security Council decision, for example, because it is no longer in force. The listing of persons and entities is also subject to judicial review, for example, on the grounds that there was a failure to consider a relevant matter in making a listing decision—and we have already covered this in other areas in previous debates. There is a provision for the minister to authorise a dealing in a frozen asset on application under proposed section 22. Proposed section 25 is a key safety net provision underpinning all of the other provisions in the bill. This confers a right to compensation on the owner of an asset if the asset is wrongly frozen. The Commonwealth is directly liable under the provision, whereas a third party—such as a bank—that acts in good faith is indemnified by the Commonwealth, with the Commonwealth having full responsibility to compensate the owner of the asset.

The government proposes to further build on these safeguards by government amendments. The government amendments will introduce a regulation making power in proposed section 22A relating to procedures for freezing assets. Government officials have been liaising closely with the financial sector on the procedures to be followed in relation to asset freezing, and the government has undertaken to ensure there will be further close consultation in developing the regula-
tions. The government has also undertaken to consult the opposition in formulating these regulations. The bill, coupled with the government amendments, offers an extremely strong framework for procedural fairness and review. The government’s framework is far better geared to resolving issues concerning individual cases and to reviewing the evidence in those cases than is the mechanism of disallowance.

The government has proposed that the listing of terrorist organisations be disallowable. I will outline the very marked differences between the two categories of listing. I can understand why people might raise that issue. We are under a direct international obligation to freeze terrorist assets under Security Council resolution 1373. There is currently no direct corresponding obligation relating to the listing of terrorist organisations for the purpose of criminal offences. The listing power in the terrorist organisations provisions is directed in part at situations of international cooperation where there is much less likely to be a binding obligation of the kind that exists in relation to asset freezing. Whereas the government has accepted disallowance in the terrorist organisations context, it cannot do so for asset freeze listing because disallowance could well place Australia in direct breach of international obligations.

There is a further important difference between the terrorist organisations listing and asset freeze listing. With terrorist organisations, the provisions set the framework for an ultimate criminal prosecution. There is time to gather the evidence and therefore pursue the other limb of the government’s terrorist organisations definition if there is no listing in place—for example, because of disallowance. That is, there is the possibility that proof that an organisation is a terrorist organisation can be presented in court if a relevant listing has been disallowed. Asset freezing works on far more immediate time frames. The operative time is immediate. If a terrorist has assets in Australia then any hiatus can be exploited in just minutes or hours and the chance to prevent the use of funds in terrorism is lost.

Gathering evidence against the terrorist after the event will simply be of no use if the money has been whisked away. I think this is an important point that the Senate must remember. So the scope for the disallowance is far more problematic than in the terrorist organisations context because of the very sharp timing considerations which are involved. The government’s approach offers a rigorous, transparent and procedurally fair process for making and reviewing asset freeze listings. Suppression of the Financing of Terrorism Bill 2002 lays down review procedures far more suited to dealing with the facts of particular cases than parliamentary disallowance could provide. The government is working closely with the financial sector to ensure all procedures are as fair and effective as possible and has undertaken to make regulations in consultation with the industry and opposition. Unlike in the terrorist organisations context, disallowance could place Australia in immediate and direct breach of our international obligations. The government therefore opposes this amendment for those reasons.

Senator BROWN (Tasmania) (10.17 p.m.)—The reasons do not stand up; they simply do not hold water. Here we have a government which has almost routinely—certainly in extremely notable cases, not least with the abhorrent treatment that it dishes out to asylum seekers coming to our shores and in detaining them on our shores—breaches UN and international treaty commitment after commitment. It is now going through the routine of saying that we must adhere to the wishes of the United Nations Security Council in a way that no other country would be prepared to. We have to respond so quickly to the listing of terrorist organisations that there is no time for the parliament to look at it. It says that if we do not do that we might be in breach of a UN Security Council resolution. That is nonsense. It would take very little skill—if the minister would have it, but he will not—to make the freezing of assets instantaneous but then require regulation and review by the parliament.

This government does not want the parliament involved. This government is not
interested in the ultimate democratic backup of the process of freezing the assets of individuals and organisations in this country of ours, which is reference to the parliament. What a false concoction this is. The executive is taking unto itself extraordinary powers—in this field unprecedented powers—and saying that the parliament should not be involved or the United Nations would not like it. Certainly, the Security Council resolution says that states shall freeze without delay funds and other financial assets.

We should bring that under parliamentary review. The minister argues that the parliament would not be able to review it because that would flout the direction of the United Nations if it did. This government is saying that an edict from the United Nations Security Council is supreme over this parliament. There is new ground, particularly from this government, if I have ever heard it. This government, which tramples on the basic UN civil rights, civil liberties, refugee rights, rights of asylum seekers which have been in place for decades, is now suddenly saying, ‘We are going to jump ahead of the United Nations Security Council resolution and implement it in such a way that even the Australian parliament is not referred to.’

What nonsense. Are we really going to allow an executive in future—using the loose provisions of this legislation, widely open to interpretation—to ensnare community protest organisations, unions, outspoken activists, people who have dotted history over the last two centuries in this country, very often for the betterment of the country and have their actions proscribed by executive action with no reference to parliament. That is what will happen, if we allow the government to get away with it and if the opposition, which stands for not allowing proscription of individuals and entities by the executive, turns down these Greens amendments. The minister says that it might alert a terrorist if it had to refer it to parliament. I have already shown the course of action which is available to the minister—that is, freeze the assets if it is such a serious situation, but have it brought to the parliament for review.

When you get an executive that believes that secrecy of its activities is more important than the overview of the parliament, you are moving away from democratic to dictatorial government, and a parliament is charged very highly with ensuring that it keeps the reins on the executive. This is a very critical moment in this debate. Are we really going to allow individuals to have their assets frozen without reference to them, without their knowledge, and organisations the same by an executive operating in secrecy with no reference to the parliament? I submit, we should not. It is a dangerous course of action, and I would have expected an opposition which says that it is opposed to proscription to be standing with the Greens and the Democrats in this matter to ensure the parliament does have an ultimate say.

The executive is not elected to run this country; the parliament is. It concerns the Greens more and more that the executive is taking away powers from the parliament and making decisions outside the parliament. The worst thing a parliament can do is to give away its own powers to that executive function. This legislation accelerates that course. We must be wise enough not to allow that to happen. The Labor Party should be wise enough not to allow that to happen. In the one opportunity that the people of Australia were given—in the referendum of 1951—they voted against that being allowed to happen. But now we have a situation in which the government, if it is supported by the opposition, is going to be allowed to almost routinely sift through the activities of community groups and individuals in this country and secretly list them and freeze their assets—credit cards, bank accounts, the lot—without reference to parliament. Are we really going to allow that to happen?

With the spectre of September 11 and terrorism hanging over the heads of all of us, legislation such as this can get through. Some of the country’s most eminent jurists have warned against that being allowed to happen. Mary Robinson, the United Nations High Commissioner for Human Rights, has warned against that being allowed to happen, and that is what I see happening here tonight. We have the power to vet and stop terrorism second to no other country in the world. We do not need to allow the executive to do it
unchecked without having the same effect. I appeal to the opposition to support these Greens amendments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.26 p.m.)—I want to reiterate that, if parliament disallows a listing and terrorist assets are unfrozen, we will be in breach of our international obligation. Article 27 of the Vienna Convention on the Law of Treaties 1969, to which Australia is a party, states that a party cannot justify failure to perform a treaty obligation on the basis of a domestic legal impediment. The relevant treaty obligation here is found in article 25 of the Charter of the United Nations, which provides that Security Council decisions are binding on members of the United Nations. That puts it fairly squarely, and Senator Brown is the first to say that we should have regard to our international obligations. That spells out very clearly that there is an international obligation here and, furthermore, that the United Nations has given a list of assets that should be frozen, and we are acting on that.

I have gone through at length the consequences of disallowance here and how it is so different from the disallowance that is provided for under ‘terrorist organisations’. I will just touch on the regulations under part 4 of the Charter of the United Nations Act 1945 that stipulate the steps that should be undertaken by those who have obligations under part 4 before a decision is taken as to whether or not to freeze funds and other financial assets or economic resources of persons associated with terrorist acts. It is anticipated that the regulations will cover steps to ensure correct identification of assets and owners of assets.

Procedures in this regard will include types of searches and inquiries that affected organisations should carry out in relation to existing holdings and proposed new business. The regulations are also likely to stipulate that affected organisations should make early contact with the Australian Federal Police if they have concerns about some particular existing holding or proposed new business. In this regard, it is anticipated that the procedures will specify the nature of the information that should be passed to the Australian Federal Police, when it should be passed and that the Australian Federal Police response will, where possible, provide further information but will not be determinative of whether the organisation should in fact freeze the assets concerned.

The regulations are also likely to specify when information should be forwarded by affected organisations to AUSTRAC and the level of protection that will be available to affected organisations in relation to a suspect transaction report given to the Director of AUSTRAC, even if the report was provided under a mistaken belief that such a report was required under the Financial Transaction Reports Act 1988.

It is also likely that the regulations will specify the notice that organisations should give to owners of assets of freezing, including identification of detail of the assets concerned, when the notice should be given, information that the notice should include as to the rights and obligations of the organisation giving the notice and of the persons receiving the notice, and the steps that owners of the assets may take to claim compensation if appropriate. It is expected that the regulations will also cover the protection that will be available to affected organisations in relation to action taken in good faith and without negligence.

Progress reported.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Watson)—Order! It being 10.30 p.m., I propose the question:

That the Senate do now adjourn.

Health and Ageing: Nursing Homes

Senator BUCKLAND (South Australia) (10.30 p.m.)—I rise tonight to raise some concerns regarding the disturbing news that has come to light in South Australia earlier this week that five nursing homes are facing potential closure because nursing home residents are not being properly fed and properly cared for due to staffing shortages. It is an indication to me that the government is doing no more than tinkering at the edges, and never actually addressing the real needs of nursing homes in an overall way. It was the government’s own accreditation agency that
found that in some of the nursing homes residents were left restrained for long periods of time and were experiencing discomfort and loneliness because their basic needs, such as being fed on time and taken to the toilet regularly, were not being met. These five nursing homes facing closure, accommodating 232 residents, were among 22 homes inspected by the agency last year.

The chief executive of Aged and Community Services, Trevor Goldstone, says that the latest round of accreditation will reflect the inevitability that standards will fall further, given the lack of staff. The conditions I have described—people not being fed, not being taken to the toilet and being restrained for long periods—should not come as a shock to Minister Andrews. The government has received repeated warnings that it is necessary to have a national strategy to address staffing shortages and related issues. It has failed. It is an indictment of this government that it has failed. Aged care groups estimate staff and nursing shortages of at least 800 in 300 South Australian aged care centres.

If the government is unable to start making fundamental changes, we are on the road to disaster, and those who can least afford to pay or help themselves will suffer the most. It is a case of once again the most vulnerable being treated the worst by this government. I guess some of us might be cynical and say we are becoming used to that, but why should we have to become cynical to bring it to the attention of the government? The aged care sector is ill equipped to double in size in the next 30 years to meet the demands of South Australia’s ageing population. The percentage of the population in South Australia aged more than 65 will increase from 14.6 per cent in 2001 to 26.9 per cent in 2031. This means that the state’s 13,000 nursing home places will need to double to 26,000.

Industry professionals attribute the shortage to salaries which are about 10 per cent less than in other sectors, the large amount of paperwork, the ageing nursing population and the unglamorous image of aged care. The bedpan image of aged care needs a massive makeover to compete with the more glamorous medical careers, otherwise ageing Australians will suffer at the hands of unqualified staff. This is the warning from a recent report. A two-year study by the University of South Australia and the Aged Care and Housing Group has found that aged care nursing is suffering from an identity crisis. Most nurses perceive the aged care sector as a dead end requiring little skill. On my visits to many aged care units, I find that it is not a dead-end task requiring little skill but in fact a fulfilling task for those who are treated right in that sector. Some of the nursing staff and carers do have aspirations to advance and go ahead and are fully committed to the ageing in our community. But until this government acts to address the issues of staffing and the needs of staff, there is no future and no way we can attract young people into this critical need area.

There is a common discernment that you do aged care nursing if you cannot find a job elsewhere, and so it is considered an end-of-the-line nursing job. That is sad when you consider those folk in the nursing homes cannot fend for themselves, and would like someone to talk to or someone to hold their hand for a little while. But, because the nurses and the caring staff are now so stretched, this can no longer happen and a visit from anyone is a visit that is cherished.

University of South Australia academic Julian Cheek claims that the impression that it is a dead-end job is backed by the wage disparity, with aged care staff being paid considerably less than the public sector nurses. Professor Cheek said the report made nine recommendations, with the top priorities being to boost wages, improve working conditions and market the image of aged care nursing to graduates as a rewarding career path. Meg Klecko, one of the study’s original researchers, said:

If someone doesn’t pick up the study’s recommendations quickly, I think we’ll find we won’t have a workforce, and ultimately care will be given by people without proper nursing training.

The study, which backs anecdotal evidence of widespread aged care staff shortages, at a time when Australia’s population is ageing, the birth rate is declining and the nursing workforce is close to retirement with far fewer placement graduates, was handed to
the Minister for Ageing, Kevin Andrews, recently. It is imperative that the government addresses these issues and makes them a priority. We must take action to make older Australians continue to live quality lives irrespective of illness and disabilities, rather than respond to Mr Andrews’s spokeswoman, who said:

A culture has developed that staff feel the need to document almost everything a resident does on their care plan because that's how homes are funded.

The large amount of paperwork aged care nurses face is not what they are trained to do; they are there to nurse the elderly and care for us as we get older.

**Indigenous Australian Engineering Summer School**

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (10.40 p.m.)—Tonight I would like to draw the Senate’s attention to a leading program that has been developed by a philanthropic organisation called Engineering Aid, which is helping to encourage Indigenous students to take up engineering careers. I think this is pertinent given the release of the census figures last week, particularly in relation to the completion rates for secondary school right across the country. It is about 30 per cent for the non-Indigenous population, and I think that figure itself should send alarm bells ringing. Furthermore, and more importantly, for Indigenous students the completion rate amounts only to 10 per cent.

I think in that respect we have to pay more attention to encouraging young people to stay at school, and to providing the incentives and opportunities to encourage people to improve those completion rates and then improve opportunities in terms of life chances, particularly in the technical or professional fields. One of those that is opened up by Engineering Aid is a key program in relation to the Indigenous Australian Engineering Summer School which is creating a pathway for young Indigenous school students to experience working in the engineering field, opening up their potential to go on to study engineering at university.

Engineering is of itself not a career path that many Indigenous Australians have taken in the past. In fact, when the summer school started back in 1998 there were virtually no Indigenous engineers in the country. In 1997, the Faculty of Engineering at the University of New South Wales, the oldest such faculty in Australia, advised that, to the best of their knowledge, only one Indigenous engineer had graduated in their then 85-year history despite more than 11½ thousand people having graduated in engineering during that time.

Before I say too much more about the summer school, I would like to make special mention of one individual, Mr Geoff Dobell, who established Engineering Aid with the aim of providing engineers and related services to assist disadvantaged communities both in Australia and abroad. Over the past decade or more, Mr Dobell has provided engineers to work with Aboriginal communities, with refugees and with others in various other countries, including Eritrea, Eastern Europe, Nepal, Vietnam, Africa, Papua New Guinea and East Timor following independence.

The engineers in the summer school undertake assignments, having worked in cooperation with various aid organisations, including the Fred Hollows Foundation, the UN High Commission for Refugees, Caritas and many others. An important part of the work has been about being able to transfer skills, including management skills, to those who may not have had the opportunity to acquire them throughout their life. This has been especially important in Indigenous communities here in Australia.

The Indigenous Australian Engineering Summer School grew out of one community project that brought Engineering Aid and the Redfern Aborigiral Corporation together to work on a range of construction projects in the lead-up to the Sydney 2000 Olympic Games. The local Indigenous people who worked on the projects with a young civil engineer gained new skills, confidence and self-respect. But it also prompted Geoff Dobell at Engineering Aid to question where the Indigenous engineers are to be able to help with this sort of work into the future. It was
after coming to terms with that realisation that, because there were virtually no Indigenous engineers to speak of, the summer school itself was born.

Perhaps I can quickly give some detail about the summer school. It is designed for young Indigenous people who are entering years 10 to 12, it is held each January in cooperation with one of the leading universities in New South Wales and its principal aim is to encourage such students to consider tertiary studies in engineering. The forthcoming summer school is being conducted in cooperation with the Faculty of Engineering at the University of New South Wales under its Aboriginal education program. It is important that the students who go to these summer schools gain firsthand experience of engineering and are given the ability to work in laboratories, use computers, visit various engineering projects and, most important of all, meet with role models. I think the role modelling aspect, from both an indigenous and non-indigenous perspective, particularly looking at the variety of professions there are, is a very powerful way of encouraging young people to continue with their studies and perhaps make the most of any offers that come to them through these types of arrangements.

A key point is that the summer school has been inspired by the vision of one man, coming from the work he has done abroad. Also of great importance is the common-sense approach the summer school takes to our young people taking on roles within communities and the range of different organisations and sponsors who have recognised the worth of this type of arrangement being put in place. I want to mention some of them, because I think they need to be acknowledged: Rio Tinto Aboriginal Foundation; ATSIC; Coal and Allied Industries; New South Wales Department of Public Works and Services, Department of Education, Science and Training, Department of Transport and Roads and Traffic Authority; the Baxter Charitable Foundation; and, of course, the Rotary Club of North Sydney. More than $70,000 is contributed each year by these and other sponsors to fund the summer school and Engineering Aid scholarships.

Another key initiative of Engineering Aid is the scholarship program. It offers to selected year 11 and year 12 students who attend those summer schools the opportunity and ability to go on and study engineering. In the case of year 11 and year 12 students, the aim is to assist them to complete their secondary education and to provide a tangible level of financial support for the duration of their course. Participants are not obliged to go on and study engineering, but I think it is the first step in providing the opportunity to think about tertiary studies for the future. The scholarship program itself is having a measurable degree of success in encouraging young people to consider a range of careers. At the recent presentation, scholarships were presented to seven engineering undergraduates. One of them was a young woman from one of the communities in New South Wales who had previously attended the summer school.

But to put this in the broader context of efforts to nurture and grow the number of Indigenous professionals, we need to be mindful of the fact there are five Indigenous engineers. Looking at that in terms of the proportion of Indigenous people in the population, rather than five there should be at least 3,500. There is clearly a significant gap in trying to provide an opportunity for skills, expertise and professions to be filled in order to enable Indigenous Australians to deal with many of the problems that exist in their communities. It is significant that a total of 18 scholarships were granted this year, including 11 for year 11 and year 12 students. The total amount granted in scholarships was nearly $30,000, which is up $17,000 from 2001.

Finally, I want to say that projects such as this summer school, in my view, are actively working to correct the disadvantage being experienced by many people in Indigenous communities, as they are able to open up educational and capacity-building opportunities that have not previously existed within these places. Young Indigenous students are being encouraged not only to finish their schooling but also to see the engineering
profession as a serious career option for the future. Geoff Dobell’s goal of arranging for an Indigenous engineer to undertake an assignment, either overseas or here in Australia, working in disadvantaged communities is, I think, little more than a year from realisation; it is a goal that I think deserves encouragement and support. I will finish by congratulating Engineering Aid for its vision and enterprise in establishing the Indigenous Australian Engineering Summer School and the associated scholarship program.

National Register of Births, Deaths and Marriages

Senator CROWLEY (South Australia) (10.50 p.m.)—Tonight I will speak about a private member’s bill that I had wanted to bring into this place but time has defeated me. Still, I thought I would take this opportunity tonight to at least put it on the public record, and perhaps others will take it up. I would certainly like to think that in the future, with proper deliberation and consideration, this private member’s bill might be something that a government would want to adopt. This bill is to establish a national register of births, deaths and marriages. Let me just back up and say that, if you want to chastise people gently, you can tell them they are being distracted by doing things like housekeeping—’That’s just a housekeeping issue.’ Then there is another level of housekeeping, which is called ‘Good housekeeping’. You can get the seal of good housekeeping. That is a much better class of housekeeping. But sometimes it is important to look at the virtues of housekeeping: things are tidy, things are in order, things are in place. I think a national register of births, deaths and marriages—even though what I now say might belittle it, and I certainly do not want to do that—is, at one level, a matter of good housekeeping about the law.

We have births, deaths and marriages registers in each state and territory, and they do not exchange all their information; they exchange some but not all. Interestingly, if you had sat at estimates, as I have done, through the days when we had a Department of Social Security, now Centrelink, you would have heard—I can actually recall this—Senator Patterson, in opposition, pursuing the Labor government about social security benefits being paid incorrectly to dead people. Perhaps every senator in this place would know that there have been times when payments have still been made to a person after they have died. It is certainly true that that has occurred in the Department of Veterans’ Affairs. If for nothing else, a national register of births, deaths and marriages seemed to me to be a good way in which to assist governments as much as possible not to send cheques to people who have ceased living. Apart from the embarrassment, it is also very painful for the family. There is grief enough and other things to manage without then having to negotiate with the department the return of payments that were not asked for and that were wrongfully sent to you. It is just a painful, hurtful thing to do.

They seem to me not heroic reasons. But then if I was Lord Brougham, circa 1850, I might be designing that ‘Good Housekeeping Acts Interpretation Act’; and if I was in that model, then I would be very pleased to be a housekeeper of law. I heard Senator Cooney today talking about the Scrutiny of Bills Committee, and in some ways it is also a matter of good law—not the content of it but the way the law is designed—to see that it protects people’s civil liberties. Perhaps ‘housekeeping’ is not quite the word, but I think it is a matter of great importance to have clarity in the law and to have consistency as well as having the protection of people’s rights.

Before I pursued this, I sought some information and I have a wonderful paper from the Parliamentary Library as well as a draft bill. The question is: what are the current arrangements for the exchange of births, deaths and marriages data from the state and territory registers to the Commonwealth, especially Centrelink and the Department of Immigration and Multicultural and Indigenous Affairs. It seems that there is a fair amount of exchange of information between Commonwealth agencies such as Centrelink and the Passports Office, but they are provided monthly facts of death information. That would seem to be one way in which, for a month, people can be listed as being alive when they in fact are dead. I know of many
examples of wrongful payments and it would seem that even for that, if nothing else, there would be some justification for looking at this. It appears that birth and marriage information is not exchanged. However, it seems that some state registrars do directly provide birth information to the Passports Office. Further, the Commonwealth and other jurisdictions have been discussing the exchange of birth information. So perhaps I am just inadvertently very timely. If others are already talking about it, perhaps there is a need out there for appreciation of a more coherent and more timely exchange of this kind of information.

One of the arguments for proceeding with this would be that it would create a central databank of births, deaths and marriages information which could be easily accessed by the Commonwealth, Commonwealth agencies and other jurisdictions, and on conditions of course subject to appropriate privacy protection. It is interesting that it does seem that the states and territories have been discussing model births, deaths and marriages legislation. Discussion of a national births, deaths and marriages register—a Commonwealth, states and territories cooperative scheme—might give added impetus to such discussions. Any incompatibilities which may exist between database systems might also be addressed by a large-scale look at the issue. It clearly could help to reduce, or even prevent, social security and other fraud. And I think it could be argued that a private member’s bill of this sort, in fact this sort of legislation, could foster debate on the issues of better, more formalised and more transparent sharing of information arrangements between the Commonwealth and other jurisdictions. Because of the short time I have tonight I will not go into it in detail but this wonderful paper from the library does list a number of examples where we have interesting exchanges of information and data between the Commonwealth and the states. There is certainly no difficulty in finding a head of power at the Commonwealth level for such legislation to fit under—no trouble at all.

I want to make a couple of other points. There is an increasing amount of data matching already in existence apart from births, deaths and marriages. One of the more recent enhancements of the use of data matching has risen with the introduction of the goods and services tax and the associated three-monthly business activity statements. The BAS information is now stored electronically, and revealing data not previously available in this form, featuring company names, principals and income details of persons involved in commercial activities, are now available much more readily electronically. Centrelink for the first time is now able to data match this information against data held for pension, benefit and other welfare assistance payments. We know there is a lot of data exchange, and interestingly that is at levels that have caused a lot of heated debate in this place about privacy protection and so on. But births, deaths and marriages has not been exchanged, and maybe that kind of information would be less problematical for people. It would seem to me it might be less problematical than, for example, matters of income or taxation.

There is no way I can do justice to this debate in the short time I have tonight, but I want to put it on the record and I want to seek leave to table a copy of the first draft—it is a working, beginning document—outlining the legislation. It has been produced for me by Cleaver Elliott, Clerk Assistant, and I want to put on record my appreciation for his efforts as well as for the library research people who have done such a useful paper for me. I am very much assisted by them. I have mentioned it, I have floated the idea and I hope in the future that somebody else will pick it up and run with it. I would be very pleased to talk to people about it and provide further information that I have as well as this draft legislation.

I also want to say in the last minute available—and again this is not to do justice to it—how much I appreciate the assistance of the Clerk Assistant and all the clerks and people in the Senate committees for their assistance to me over nearly 20 years in this place. I remember Senator Zakharov saying that it was always exhausting in the Senate, everybody was so unfailingly nice and polite, that it was sometimes nice to get home and
just relax. I do not quite know what you
would relax into but, knowing Senator Zak-
harov, only into something alternatively
graceful. But it is true that the clerks have
been unfailingly kind in assisting me and I
have had the most wonderful discussions
with all the clerks about a whole range of
matters. I will try to pick up on those tomor-
row evening. But tonight, in floating the no-
tion of a private member’s bill for births,
deaths and marriages—which, in my case, is
not going to proceed any further—I hope I
might at least have aired an issue that I be-
lieve would greatly assist information ex-
change between the Commonwealth and the
states. I seek leave to table the draft legisla-
tion.

Leave granted.

Privileges Committee Report

Senator McGauran (Victoria) (11.00
p.m.)—This evening, I would like to address
a Privileges Committee report that was
handed down in the parliament this after-
noon. As a member of the Privileges Com-
mittee, I wish to speak on the matter that was
spoken about by the chair, Senator Ray, and
the deputy chair, Senator Knowles. I take
this adjournment speech to address some
remarks with regard to the 103rd committee
report, Possible improper influence and pen-
alty on a senator. The matter relates to a
former colleague of mine Senator Tambling.
The issue relates to former Senator Tambling
being stripped of his preselection by his
party, the Country Liberal Party, after he
failed to vote against the Interactive Gam-
bling Bill 2001, after it was claimed and
proved that he was directed and strongly ad-
vised by his party to vote against that bill.

Senator Tambling raised the matter of
privilege with the President through the
proper processes on 7 August 2001, and it
was duly referred to the Committee of Privi-
leges. The committee had to decide three
matters:

(a) whether any person or body purported to di-
rect Senator Tambling as to how he should exer-
cise a vote in the Senate;

(b) whether a penalty was imposed on Senator
Tambling in consequence of his vote in the Sen-
ate; and

(c) whether contempts of the Senate were com-
mitted in that regard.

To reach our determination, the committee
were required to follow:

(a) the principle that the Senate’s power to ad-
judge and deal with contempts should be used
only where it is necessary to provide reasonable
protection for the Senate and its committees and
for Senators against improper acts tending sub-
stantially to obstruct them in the performance of
their functions, and should not be used in respect
of matters which appear to be of a trivial nature or
unworthy of the attention of the Senate ...

I can say that this was no trivial matter. The
set of circumstances presented an unusual
case—in fact, the Clerk advised us that there
was no comparable precedent and, where we
could make comparisons, they never in-
volved a political party. So this, in fact, was a first, where conflicting principles met: the first is that a political party has a right to strip a senator or a member of parliament of their preselection if they believe, within their context, they are not performing; the second is that a senator is elected by the people to represent the people and to act within this parliament according to their own personal judgments. We had those two conflicting principles.

The conclusion to the first question of whether any person or body purported to direct Senator Tambling as to how he should exercise his vote was a clear yes. The report gives proper evidence of it, but I need only refer to the press release from the president of the Country Liberal Party, Suzanne Cavanagh, as just one item of evidence. She said:

On Tuesday 12 June 2001 CLP Management Committee unequivocally advised the senator to vote against this proposed Federal legislation.

She also wrote to Senator Tambling on about the same date and said to him:
The advice was unequivocal and irrespective of any amendments to the Bill you are required to cross the floor.

So the answer to the first question was open and shut—a clear yes. The answer to the second question of whether a penalty was imposed on Senator Tambling in consequence of his vote was another clear yes. Again, I can refer to the president of the CLP, Suzanne Cavanagh’s, press release which said:

If the Senator does not heed that advice then he can be certain that the party that pre-selected him will review that decision.

This was in a public statement, a press release, so she was certainly hanging out the dirty linen for all to know their clear intentions. In regard to the first and second question, the committee had no doubt in finding yes on both counts. In regard to the third and more important question—the essence of our inquiry: whether a contempt of the Senate was committed—that was a little more difficult. In answering the crucial question, we needed to look at all the surrounding circumstances, in particular the proceedings in the Supreme Court of the Northern Territory, an action which was brought by Senator Tambling against the CLP for abuse of process and natural justice. It was important to our deliberations—and I quote from the report in regard to this court hearing:

The committee has therefore followed the court in staying its hand in respect of an internal party matter. Thus, while it is open to the committee to find a contempt, under the circumstances it would not be appropriate to do so. In other words, the committee notes that an alternative remedy under the Privileges Resolution 3(b) was both available to and used by the parties, that ultimately a political resolution was reached after both the court action and the action before the Committee of Privileges.

On balance, the committee found that there had not been a contempt because of the court action and the political resolution before we came to make a judgment, but it was a very fine line. It is also worthy to note that in the report the committee sent a clear signal to the CLP when it said:

The committee was astonished at the crass way in which the collective CLP administration attempted to impose its view on its Senate representatives. It accepts, however, that while the actions were inept and the dealings with Senate Tambling were badly handled, the CLP was acting, as it saw it, in accordance with its rights ...

In conclusion, on a fine judgment contempt was not found but the actions of the CLP were certainly ill judged, ham-fisted—as has been said—and certainly reckless. This was very much the modus operandi of the CLP at the time. There is no doubt that this was an example of the seeds that they sowed for their own destruction. They seemed to be a group that got completely out of touch and thought that they could act recklessly within the administration and within the electorate—and we know exactly what happened at the election that followed.

Senate adjourned at 11.10 p.m.

DOCUMENTS
Tabling

The following government documents were tabled:

Advance to the Finance Minister—Statement and supporting applications for funds for May 2002.
Human Rights and Equal Opportunity Commission—Reports—
No. 16—Inquiry into a complaint by Mr Hocine Kaci of acts or practices inconsistent with or contrary to human rights arising from immigration detention.

No. 18—Inquiry into a complaint by Mr Duk Anh Ha of acts or practices inconsistent with or contrary to human rights arising from immigration detention.

Pharmaceutical Benefits Pricing Authority—Supplementary report for 2000-01 on the operations of the Authority in relation to the Pharmaceutical Industry Investment Program.

Tabling

The following documents were tabled by the Clerk:


Civil Aviation Act—Civil Aviation Regulations—

Civil Aviation Orders—Civil Aviation Amendment Order (No. 7) 2002.

Exemption No. CASA EX 09/2002.

Instruments Nos CASA 335/02, CASA 339/02-CASA 341/02 and CASA 345/02.

Copyright Act—Declarations under section 10A, dated 4 and 6 June 2002.


National Health Act—Determination No. PB 9 of 2002.


Sydney Airport Curfew Act—Dispensation granted under section 20—Dispensation No. 4/02 [3 dispensations].

