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SITTING DAYS—2002

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>12, 13, 14</td>
</tr>
<tr>
<td>March</td>
<td>11, 12, 13, 14, 19, 20, 21</td>
</tr>
<tr>
<td>May</td>
<td>14, 15, 16</td>
</tr>
<tr>
<td>June</td>
<td>17, 18, 19, 20, 24, 25, 26, 27</td>
</tr>
<tr>
<td>August</td>
<td>19, 20, 21, 22, 26, 27, 28, 29</td>
</tr>
<tr>
<td>September</td>
<td>16, 17, 18, 19, 23, 24, 25, 26</td>
</tr>
<tr>
<td>October</td>
<td>14, 15, 16, 17, 21, 22, 23, 24</td>
</tr>
<tr>
<td>November</td>
<td>11, 12, 13, 14, 18, 19, 20, 21</td>
</tr>
<tr>
<td>December</td>
<td>2, 3, 4, 5, 9, 10, 11, 12</td>
</tr>
</tbody>
</table>

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- **MELBOURNE**: 1026 AM
- **ADELAIDE**: 972 AM
- **PERTH**: 585 AM
- **HOBART**: 729 AM
- **DARWIN**: 102.5 FM
SENATE CONTENTS

THURSDAY, 27 JUNE

Privilege.............................................................................................................. 2779
Personal Explanations....................................................................................... 2779
Petitions—
  Science: Stem Cell Research ......................................................................... 2781
Notices—
  Presentation ................................................................................................... 2781
Business—
  Rearrangement............................................................................................... 2782
  Rearrangement............................................................................................... 2782
Notices—
  Postponement ................................................................................................ 2782
Australian Competition and Consumer Commission: Tobacco Companies ..... 2783
Health: Prostheses............................................................................................... 2783
Iraq: Military Involvement.................................................................................. 2784
Committees—
  Rural and Regional Affairs and Transport References Committee—
    Reference ...................................................................................................... 2784
  Rural and Regional Affairs and Transport Legislation Committee—
    Reference ...................................................................................................... 2785
Business—
  Rearrangement............................................................................................... 2785
Committees—
  Legal and Constitutional Legislation Committee—Extension of Time........ 2785
Budget—
  Consideration by Legislation Committees—Additional Information.......... 2785
Committees—
  Rural and Regional Affairs and Transport Legislation Committee—
    Reports....................................................................................................... 2785
Committees—
  Scrutiny of Bills Committee—Report ............................................................ 2785
Committees—
  Public Accounts and Audit Committee—Report ......................................... 2786
  Employment, Workplace Relations and Education Legislation Committee—
    Report ....................................................................................................... 2788
Business—
  Withdrawal .................................................................................................... 2788
  Withdrawal .................................................................................................... 2788
Business—
  Consideration of Legislation ......................................................................... 2789
Migration Legislation Amendment (Procedural Fairness) Bill 2002—
  First Reading .................................................................................................. 2790
  Second Reading ............................................................................................... 2790
Security Legislation Amendment (Terrorism) Bill 2002 [No. 2]..................... 2791
Suppression of the Financing of Terrorism Bill 2002....................................... 2791
Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002..... 2791
Border Security Legislation Amendment Bill 2002 ......................................... 2791
Telecommunications Interception Legislation Amendment Bill 2002—
  In Committee.................................................................................................. 2791
<table>
<thead>
<tr>
<th>SENATE CONTENTS—continued</th>
</tr>
</thead>
<tbody>
<tr>
<td>Third Reading..................</td>
</tr>
<tr>
<td>Distinguished Visitors........</td>
</tr>
<tr>
<td>Business—</td>
</tr>
<tr>
<td>Consideration of Legislation</td>
</tr>
<tr>
<td>Australian Protective Service Amendment Bill 2002—</td>
</tr>
<tr>
<td>Second Reading................</td>
</tr>
<tr>
<td>Third Reading..................</td>
</tr>
<tr>
<td>International Tax Agreements Amendment Bill (No. 1) 2002—</td>
</tr>
<tr>
<td>Second Reading................</td>
</tr>
<tr>
<td>Third Reading..................</td>
</tr>
<tr>
<td>Taxation Laws Amendment Bill (No. 2) 2002—</td>
</tr>
<tr>
<td>Second Reading................</td>
</tr>
<tr>
<td>Third Reading..................</td>
</tr>
<tr>
<td>International Criminal Court Bill 2002.................................</td>
</tr>
<tr>
<td>International Criminal Court (Consequential Amendments) Bill 2002—</td>
</tr>
<tr>
<td>Second Reading................</td>
</tr>
<tr>
<td>In Committee..................................</td>
</tr>
<tr>
<td>Third Reading..................</td>
</tr>
<tr>
<td>Therapeutic Goods and Other Legislation Amendment Bill 2002—</td>
</tr>
<tr>
<td>Second Reading................</td>
</tr>
<tr>
<td>Third Reading..................</td>
</tr>
<tr>
<td>Health Insurance Commission Amendment Bill 2002—</td>
</tr>
<tr>
<td>Second Reading................</td>
</tr>
<tr>
<td>Third Reading..................</td>
</tr>
<tr>
<td>Statute Law Revision Bill 2002—</td>
</tr>
<tr>
<td>Second Reading................</td>
</tr>
<tr>
<td>Third Reading..................</td>
</tr>
<tr>
<td>Bankruptcy (Estate Charges) Amendment Bill 2002—</td>
</tr>
<tr>
<td>Second Reading................</td>
</tr>
<tr>
<td>Third Reading..................</td>
</tr>
<tr>
<td>Disability Discrimination Amendment Bill 2002—</td>
</tr>
<tr>
<td>Second Reading................</td>
</tr>
<tr>
<td>Third Reading..................</td>
</tr>
<tr>
<td>Questions Without Notice—</td>
</tr>
<tr>
<td>Taxation: Mass Marketed Schemes.............</td>
</tr>
<tr>
<td>Economy: Growth..................</td>
</tr>
<tr>
<td>Taxation: Bankruptcy Investigations........</td>
</tr>
<tr>
<td>Social Welfare: Disability Support Pension............</td>
</tr>
<tr>
<td>Taxation: Bankruptcy Laws.............</td>
</tr>
<tr>
<td>Employment: Job Network.............</td>
</tr>
<tr>
<td>Superannuation: Policy.............</td>
</tr>
<tr>
<td>Research and Development: Centre of Excellence in Biotechnology......</td>
</tr>
<tr>
<td>Taxation: Inspector-General........</td>
</tr>
<tr>
<td>Insurance: Legislation.............</td>
</tr>
<tr>
<td>Taxation: Barter Transactions........</td>
</tr>
<tr>
<td>Scrutiny of Bills Committee........</td>
</tr>
<tr>
<td>Taxation: Mass Marketed Schemes........</td>
</tr>
<tr>
<td>Telstra: Sale.......................</td>
</tr>
<tr>
<td>Questions Without Notice: Additional Answers—</td>
</tr>
<tr>
<td>Topic</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Defence: Contracts</td>
</tr>
<tr>
<td>Answers to Questions on Notice—</td>
</tr>
<tr>
<td>Question Nos 303, 304, 305, 306 and 307</td>
</tr>
<tr>
<td>Question No. 333</td>
</tr>
<tr>
<td>Questions Without Notice: Take Note of Answers—</td>
</tr>
<tr>
<td>Answers to Questions</td>
</tr>
<tr>
<td>Research and Development: Centre of Excellence in Biotechnology</td>
</tr>
<tr>
<td>Documents—</td>
</tr>
<tr>
<td>Department of the Senate: Travelling Allowances</td>
</tr>
<tr>
<td>Committees—</td>
</tr>
<tr>
<td>Reports: Government Responses</td>
</tr>
<tr>
<td>Documents—</td>
</tr>
<tr>
<td>Auditor-General’s Reports—Report No. 63 of 2001-02</td>
</tr>
<tr>
<td>Delegation Reports—</td>
</tr>
<tr>
<td>Parliamentary Delegation to Finland and Germany</td>
</tr>
<tr>
<td>Documents—</td>
</tr>
<tr>
<td>Tabling</td>
</tr>
<tr>
<td>Delegation Reports—</td>
</tr>
<tr>
<td>Parliamentary Delegation to the 22nd AIPO General Assembly, Thailand</td>
</tr>
<tr>
<td>Bilateral Visit to Singapore</td>
</tr>
<tr>
<td>Notices—</td>
</tr>
<tr>
<td>Withdrawal</td>
</tr>
<tr>
<td>Valedictory</td>
</tr>
<tr>
<td>Committees—</td>
</tr>
<tr>
<td>Membership</td>
</tr>
<tr>
<td>Social Security and Veterans’ Entitlements Legislation Amendment</td>
</tr>
<tr>
<td>(Disposal of Assets—Integrity of Means Testing) Bill 2002—</td>
</tr>
<tr>
<td>Second Reading</td>
</tr>
<tr>
<td>In Committee</td>
</tr>
<tr>
<td>Third Reading</td>
</tr>
<tr>
<td>Business—</td>
</tr>
<tr>
<td>Rearrangement</td>
</tr>
<tr>
<td>Workplace Relations Amendment (Fair Dismissal) Bill 2002—</td>
</tr>
<tr>
<td>Second Reading</td>
</tr>
<tr>
<td>In Committee</td>
</tr>
<tr>
<td>Third Reading</td>
</tr>
<tr>
<td>Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002</td>
</tr>
<tr>
<td>Superannuation Guarantee Charge Amendment Bill 2002—</td>
</tr>
<tr>
<td>Second Reading</td>
</tr>
<tr>
<td>In Committee</td>
</tr>
<tr>
<td>Superannuation Guarantee Charge Amendment Bill 2002—</td>
</tr>
<tr>
<td>In Committee</td>
</tr>
<tr>
<td>Third Reading</td>
</tr>
<tr>
<td>New Business Tax System (Consolidation) Bill (No. 1) 2002</td>
</tr>
<tr>
<td>Second Reading</td>
</tr>
<tr>
<td>In Committee</td>
</tr>
<tr>
<td>Third Reading</td>
</tr>
<tr>
<td>New Business Tax System (Imputation) Bill 2002</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>New Business Tax System (Over-Franking Tax) Bill 2002</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
New Business Tax System (Franking Deficit Tax) Bill 2002—
Second Reading ............................................................... 2979
Third Reading .................................................................... 2980
Taxation Laws Amendment Bill (No. 4) 2002—
Second Reading ............................................................... 2980
In Committee .................................................................... 2982
Third Reading .................................................................... 2984
Diesel Fuel Rebate Scheme Amendment Bill 2002—
Second Reading ............................................................... 2984
In Committee .................................................................... 2993
Third Reading .................................................................... 2995
Workplace Relations Amendment (Fair Dismissal) Bill 2002—
Consideration of House of Representatives Message ....... 2996
Export Market Development Grants Amendment Bill 2002—
Second Reading ............................................................... 2997
Third Reading .................................................................... 3000
Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002—
Second Reading ............................................................... 3001
Migration Legislation Amendment (Procedural Fairness) Bill 2002—
Second Reading ............................................................... 3001
In Committee .................................................................... 3006
Adoption of Report ............................................................ 3009
Third Reading .................................................................... 3009
Appropriation (Parliamentary Departments) Bill (No. 1) 2002-2003................. 3010
Appropriation Bill (No. 1) 2002–2003 ........................................ 3010
Appropriation Bill (No. 2) 2002-2003—
Second Reading ............................................................... 3010
In Committee .................................................................... 3025
Third Reading .................................................................... 3027
Members of Parliament (Life Gold Pass) Bill 2002—
Consideration of Message ................................................ 3027
Superannuation: Policy—
Return to Order ................................................................ 3027
Budget: Intergenerational Report—
Return to Order ................................................................ 3027
Bills Returned from the House of Representatives ..................... 3028
Adjournment—
Zimbabwe ........................................................................ 3028
Bourne, Senator Vicki ........................................................... 3029
Parliamentary Staff .............................................................. 3031
Parliamentary Staff .............................................................. 3031
Documents—
Tabling ............................................................................ 3032
Questions on Notice—
ComLand: Former Australian Defence Industries Site—(Question No. 172) .... 3033
Immigration: Programs—(Question No. 234) ........................ 3033
SENATE CONTENTS—continued

Kennedy Electorate: Program Funding—(Question No. 251) .......................... 3035
Defence: Weapon Systems—(Question No. 280) .................................................. 3035
Defence: White Paper—(Question No. 285) ............................................................. 3036
Defence: Capability Plan—(Question No. 286) ...................................................... 3037
Christmas Island: Phosphate Mining—(Question No. 309) .............................. 3037
Environment: Christmas Island—(Question No. 311) ........................................ 3038
Heritage: Departmental Properties—(Question No. 312) .................................. 3039
Defence: Staff Surveys—(Question No. 318) ......................................................... 3039
Australian Defence Force: Recruitment—(Question No. 319) ......................... 3040
Defence: Asset Sales—(Question No. 321) ............................................................. 3043
Defence: Project Sea 1431—(Question No. 323) ................................................. 3044
Defence: Initiatives White Paper—(Question No. 327) ...................................... 3045
Environment Australia: Spectacled Flying Foxes—(Question No. 331) ......... 3046
Defence: Lancelin Defence Training Area—(Question No. 341) ....................... 3046
Defence: Statement of Principles for Enhanced Cooperation in Matters of Defence Equipment and Industry—(Question No. 348) .......... 3048
South East Asia Treaty Organisation—(Question No. 349) .............................. 3048
The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 9.30 a.m. and read prayers.

PRIVILEGE

The PRESIDENT (9.30 a.m.)—The Environment, Communications, Information Technology and the Arts Legislation Committee, by letter dated 26 June 2002, under the signature of its chair, Senator Eggleston, has raised a matter of privilege under standing order 81, namely, the unauthorised disclosure of the committee’s report before its presentation to the Senate. The committee indicates that the press item referred to by the committee shows that there was an unauthorised disclosure of the report.

In accordance with the Senate’s resolution of 20 June 1996, the committee has investigated the unauthorised disclosure to the extent that it is able to do so. The committee has also, in accordance with that resolution, come to a conclusion that the unauthorised disclosure caused substantial interference with its work.

The committee having conformed with the resolution of the Senate, the matter meets the criteria which I am required to consider before giving precedence to a motion to refer the matter to the Privileges Committee. I therefore give precedence to such a motion. I table the letter from the committee and attachment.

As the Senate is to rise tomorrow for a period of more than one week, in accordance with standing order 81(7) the reference to the Privileges Committee may proceed immediately.

Senator EGGLESTON (Western Australia) (9.32 a.m.)—I move:

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

Having regard to the matter raised by the Environment, Communications, Information Technology and the Arts Legislation Committee in its letter of 26 June 2002 to the President, whether there was an unauthorised disclosure of a report of that committee, and whether any contempt was committed in that regard.

Question agreed to.

PERSONAL EXPLANATIONS

Senator CRANE (Western Australia) (9.32 a.m.)—I seek leave under standing order 190 to make a personal statement.

Leave granted.

Senator CRANE—The statement will take me approximately eight minutes. It is regarding the alleged stolen documents from my electorate office in Perth. On 3 August 1998, I learned from the then Liberal Party state president, now a senator-elect for Western Australia, Mr Johnston, that he had proof that I had made improper claims for travel. He said certain documents had been handed to him by Senator Lightfoot, who assumed guilt and demanded my resignation. I have since learned that the Australian Federal Police commenced their investigations in that month—an example of an incredible coincidence. On 18 December 1998, the Federal Police executed search warrants at three separate premises. I subsequently learned that there was in place a protocol—an order from the parliament to a subordinate body, the Australian Federal Police—that required that all matters relating to allowances to federal members were to be subject to an audit conducted by the Department of Administrative Services. This requirement was not carried out by the police, and attempts by me to raise this matter have been blocked. I should be interested to know why all these things were done and what explanations, if any, can be given as to why they were done.

The search warrants were executed, but not according to their terms. In fact, after Federal Court proceedings and an investigation conducted into privileged documents by Mr Skehill, only some six per cent of the documents were relevant to the terms of the warrant. It seems that someone would have had to disregard the terms of the warrant entirely. If so, it is of interest. I am still waiting for the return of many of the documents and a copy of the tape recording that I was then promised within seven days.

Following advice from my lawyers, I commissioned a thorough audit of my travel claims over the period covered by the warrant and beyond. It revealed that, despite the
allegations, all was in order. I instructed my lawyers to take action against the seizures under the warrants, but as soon as it was patent that no irregularity existed, and that the police inquiries would drag on for years, I instructed my lawyers to vary the proceedings, seeking declaratory relief relating to the propriety of my travel claims. I took the opportunity to exhibit, and so place on the public record, all the relevant documents relating to my travel claims so that the authorities and interested parties could read them for themselves. In January 2002, I discovered that the AFP had never availed themselves of this information. My lawyers had to supply them with copies at that time.

Mr Justice French described my application as ‘understandable’, but he declined to grant the relief sought because of the risk that civil courts might be faced with adjudicating speculative matters. The curious can find out the substance of his very interesting remarks from the law reports. His Honour also dealt with the matter of privilege, a matter of some concern to honourable senators, and indeed the Senate, members of which will recall that, so far as my own case is concerned, it was efficiently and effectively dealt with by Mr Skehill. Indeed, all but a few of the documents out of the thousands seized were returned to me as privileged—in the order of 50 per cent—or outside the terms of the warrant—44 per cent. As I said, non-privileged documents were six per cent of the total.

In early December 2001, the whole scene changed. Three copied documents, which had been given to the press to further damage me, were passed to me. They were the subject of a press release by me at that time. These three documents purported to be the missing documents. Recent investigations have revealed that they are in the possession of Mr Johnston. It is sufficient to say that, as proof of a criminal offence, the documents are somewhat wanting. They relate to journeys I had never taken, for which I had certainly not claimed Commonwealth moneys. This was confirmed by letter dated 2 January 2002 from Mr Ignatius of the Department of Finance and Administration. One of the copies purported to bear my signature but the creator of the document had obscured my signature in the course of creating the document. Despite being no expert on question-able documents, it is obvious that the signature is a tracing. In fact, half of my signature is blanked out. I made a complaint to the police and sent the documents to them. It would have been interesting had Mr Johnston produced the documents he has for the purpose of comparison, which is the reason I sought them, but he has remained silent in response to all requests.

Meanwhile, similar unjust allegations to those I have lived with for over four years were made against a minister in another place, the Hon. Wilson Tuckey. The Senate Legal and Constitutional Committee was told in estimates that the inquiries with respect to him were run with my inquiry and that I might expect to hear when Mr Tuckey heard his result. He has since been exonerated. I continue in an equivocal condition, without advantage to anyone except now Senator-elect Johnston. I am not the only one to be concerned about this. At the estimates committee on 19 February 2002, my distinguished colleague Senator Cooney asked the Commissioner of the Australian Federal Police why my case was taking so long and received this reply:

First and foremost, the allegations against Senator Crane were the original investigations that we undertook. In the course of the investigation into Senator Crane an allegation was raised in respect of Minister Tuckey. The DPP found that the essential matter in terms of the probative value of the issues under consideration during both investigations was essentially the same. In relation to Senator Crane, an operational brief was provided to the DPP. I am not sure whether we have had a formal reply back from the DPP in writing in relation to Senator Crane, but it is my understanding that the verbal advice is that there will be no offence to be prosecuted, because essentially the evidence in both matters is materially the same.

I now have a signed statement, which I have passed to the Australian Federal Police, which indicates the source and where the documents came from. It is clear now that Senator-elect David Johnston has acted in self-interest. One would have expected, as has been the tradition in the Liberal Party,
that if a member or senator had a problem the President would have acted in such a way as to assist that senator to deal with the matter fairly and with dignity and pride.

I now know that Senator-elect Johnston had a meeting with some current senior members and former senior members of the party, and he did pass on—to some of them—copies. One can only conclude that, because of his continued refusal to allow me to sight if not have copies of these documents so that I could check their validity, his intent was to damage me. Senator-elect Johnston, who is a lawyer, would have known that their validity was questionable, as two of the invoices were not signed and one had a half copied ‘bogdied’ signature. As I have previously stated, when these alleged documents were presented to the Department of Finance and Administration, it was shown that there had never been a claim presented, nor had there been any payment made against these alleged flights. The only decent course now left open to Senator-elect Johnston is for him to step aside and resign. I thank the Senate.

PETITIONS

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

Science: Stem Cell Research

To the Honourable the President and Members of the Senate in Parliament assembled:
The Petition of the undersigned shows that the Commonwealth of Australia and the various States are considering legislation which would allow the use of excess embryos in stem cell research.

Your Petitioners request that the Senate should:
- Regard the human embryo as a human life deserving of human dignity;
- Acknowledge the important and proven contribution to medical science of adult stem cell research; and
- Prohibit any research which results in the destruction of human embryos.

And your Petitioners, as in duty bound, shall ever pray.

by Senator Barnett (from 348 citizens)

Petition received.

NOTICES

Presentation

Senator Murray to move on Thursday, 27 August 2002:
That the following matters be referred to the Economics References Committee for inquiry and report by 29 May 2003, and that, in its recommendations the committee take into account a preference to maintain overall budget neutrality within the alcohol taxation sector:

1. The efficiency, equity and complexity of the existing structure (and relevant history) of Commonwealth, state and territory alcohol taxation (excluding goods and services tax) and related rebates, subsidies and grants being applied to each category of alcohol product, including:
   - beer (low-, mid- and full-strength beer, in packaged and draught form);
   - ready to drink alcohol products (below 10% alcohol by volume (abv)) currently taxed as ‘other excisable beverages’ under the Excise Tariff Act 1921);
   - wine, wine products and cider (currently subject to the wine equalisation tax (WET));
   - spirits (including brandy) and ‘other excisable beverages exceeding 10% abv’; and
   - any other alcohol products.

2. Identification of the amount of Commonwealth taxation revenue collected in the 2001-02 financial year (and forecast to be collected over the next 10 years) on each category of alcohol product, including:
   - the quantity of customs duty, excise duty and WET collected;
   - the amounts of rebates, subsidies and grants paid; and
   - the amounts of drawback of customs and excise duty paid on re-exports and exports.

3. The effectiveness of the existing alcohol administration arrangements relating to taxation collection, including whether or not the collection should be administered by a single administration agency.

4. For the purpose of implementing alcohol taxation policy, the extent to which there is substitution between the various
categories of alcoholic beverages, including (but not restricted to) issues such as whether substitution between alcoholic beverages is the same for each category of alcoholic beverage.

(5) The impact of the existing alcohol taxation arrangements for:
(a) the economy, employment, the environment and industry;
(b) beverage pricing and cost structures;
(c) the patterns of consumption, including the abuse, of the various categories of alcohol product;
(d) the health and welfare of regional, rural and remote communities (including the funding of alcohol rehabilitation and education); and
(e) the flexibility and sustainability of government revenue.

(6) An examination of selected international alcohol taxation regimes (and recent overseas tax reviews) in order to identify the best options for alcohol taxation policy, legislation and administration in Australia.

Senator Bartlett to move on the next day of sitting:
That there be laid on the table, no later than 4 pm on Wednesday, 21 August 2002, the following documents:
(a) the Livestock Officer’s report on the voyage of the *Maysora*, a Jordanian flagged vessel, travelling from Australia on 28 February 2001 carrying live cattle; and
(b) the Master’s reports from the same voyage.

BUSINESS
Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.41 a.m.)—I move:
That the following government business orders of the day be considered from 12.45 pm till not later than 2 pm today:
No. 12 International Criminal Court Bill 2002 and a related bill.
No. 13 Australian Protective Service Amendment Bill 2002.
No. 14 International Tax Agreements Amendment Bill (No. 1) 2002.
No. 15 Taxation Laws Amendment Bill (No. 2) 2002.
No. 16 Therapeutic Goods and Other Legislation Amendment Bill 2002.
No. 17 Health Insurance Commission Amendment Bill 2002.
No. 19 Bankruptcy Legislation Amendment Bill 2002 and a related bill.
No. 20 Disability Discrimination Amendment Bill 2002.

Senator BROWN (Tasmania) (9.42 a.m.)—I am motivated to agree with this motion but on the understanding that some difficulties I have with the *Australian Protective Service Amendment Bill 2002* are agreed to by the government. Otherwise, the bill should be taken off the list.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.42 a.m.)—As always and as I said yesterday, if there is any disagreement we will pull the bill. We would obviously seek to reach agreement up until 12.45 p.m. and, if there is no agreement, the bill will be pulled.

Question agreed to.

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.42 a.m.)—I move:
That the Bankruptcy Legislation Amendment Bill 2002 and the Bankruptcy (Estate Charges) Amendment Bill 2002 be listed on the Notice Paper as separate orders of the day.

Question agreed to.

NOTICES
Postponement

Items of business were postponed as follows:
Business of the Senate notice of motion no. 1 standing in the name of Senator Sherry for today, relating to the disallowance of the Workplace Relations Amendment Regulations 2002 (No. 2), postponed till 19 August 2002.

Business of the Senate notice of motion no. 2 standing in the name of Senator Murray for today, relating to the reference of matters to the Community Affairs References Committee, postponed till 21 August 2002.
General business notice of motion no. 56 standing in the name of Senator Conroy for today, proposing an order for the production of documents by the Minister representing the Treasurer (Senator Minchin), postponed till 20 August 2002.

General business notice of motion no. 109 standing in the name of Senator Sherry for today, relating to the reference of matters to the Select Committee on Superannuation, postponed till 19 August 2002.

General business notice of motion no. 110 standing in the name of the Leader of the Australian Democrats (Senator Stott Despoja) for today, relating to Australia’s involvement in any pre-emptive military action, postponed till 20 August 2002.

Senator BARTLETT (Queensland) (9.43 a.m.)—by leave—I move:

That general business notice of motion no. 113 standing in his name for today, relating to mobile phone towers, be postponed till the next day of sitting.

Question agreed to.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION: TOBACCO COMPANIES

Senator ALLISON (Victoria) (9.43 a.m.)—I move:

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 Roxborough 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.

Question agreed to.

HEALTH: PROSTHESES

Senator CROSSIN (Northern Territory) (9.44 a.m.)—I move:

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.

Question agreed to.

IRAQ: MILITARY INVOLVEMENT

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (9.44 a.m.)—as amended, by leave—I move the motion as amended:

That the Senate—

(a) notes comments by the Minister for Defence (Senator Hill) in relation to a possible first strike against Iraq; and

(b) calls upon the Government, in the event of a decision to commit Australian troops overseas to a military action under Chapter 7 of the United Nations Charter or other war-like operation, to:

(i) immediately brief opposition parliamentary parties,

(ii) refer the issue to the Joint Standing Committee on Foreign Affairs, Defence and Trade for consideration and report to the Parliament, and

(iii) put the issue before the Parliament for debate, at the first opportunity, and no later than 50 days from the decision to commit troops to military action overseas.

Question, as amended, agreed to.

COMMITTEES

Rural and Regional Affairs and Transport References Committee

Reference

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.46 a.m.)—At the request of Senator Ian Macdonald, I move:

That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 12 December 2002, taking into account the findings of the Private Forests Consultative Committee’s review of the ‘Plantations for Australia: The 2020 Vision’ which is due to report to the Primary Industries Ministerial Council in November 2002:

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

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

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

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

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

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

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

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

Question agreed to.
Rural and Regional Affairs and Transport Legislation Committee

Reference

Senator CALVERT  (Tasmania)  (9.46 a.m.)—On behalf of Senator Crane, I move:

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.

Question agreed to.

BUSINESS

Rearrangement

Senator IAN CAMPBELL  (Western Australia—Manager of Government Business in the Senate)  (9.46 a.m.)—I move:

That on Monday, 19 August 2002, the hours of meeting shall be 2 pm to 6.30 pm and 7.30 pm to adjournment.

Question agreed to.

COMMITTEES

Legal and Constitutional Legislation Committee

Extension of Time

Senator CALVERT  (Tasmania)  (9.47 a.m.)—On behalf of Senator Payne, I move:

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.

Question agreed to.

BUDGET

Consideration by Legislation Committees

Additional Information

Senator CALVERT  (Tasmania)  (9.47 a.m.)—On behalf of the Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee, Senator Eggleston, I present additional information received by the committee relating to hearings on the additional estimates for 2001-2002.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Reports

Senator CALVERT  (Tasmania)  (9.48 a.m.)—On behalf of Senator Crane, I present three interim reports of the Rural and Regional Affairs and Transport Legislation Committee on the following matters: the administration of the Civil Aviation Safety Authority; the import risk assessment on New Zealand apples; and the administration of AusSAR in relation to the search for the Margaret J. As the committee wishes to present final reports on these inquiries, I seek leave to move a motion for extensions of time for the committee to present these reports.

Leave granted.

Senator CALVERT—I move:

That the time for the presentation of the following reports of the Rural and Regional Affairs and Transport Legislation Committee be extended to the last sitting day in 2002:

(a) the administration of the Civil Aviation Safety Authority;

(b) the import risk assessment on New Zealand apples; and

(c) the administration of AusSAR in relation to the search for the Margaret J.

Question agreed to.

Senator CALVERT—I seek leave to move a motion in relation to the reports presented today.

Leave granted.

Senator CALVERT—I move:

That the Senate take note of the reports.

Question agreed to.

Senator CALVERT—I seek leave to continue my remarks at a later date.

Leave granted; debate adjourned.

Scrutiny of Bills Committee

Report

Senator ROBERT RAY  (Victoria)  (9.49 a.m.)—On behalf of Senator Cooney—and I must say you are doing a wonderful job and good luck for the future; I do not do a very good impersonation of Senator Cooney—I present documents received by the commit-
tee in relation to the committee’s report entitled Application of absolute and strict liability offences in Commonwealth legislation, which was tabled in the Senate yesterday. I also present the report of the Standing Committee for the Scrutiny of Bills on the work of the committee during the 39th Parliament.

Ordered that the report be printed.

Senator ROBERT RAY—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Public Accounts and Audit Committee Report

Senator CALVERT (Tasmania) (9.50 a.m.)—On behalf of Senator Watson, on behalf of the Joint Committee of Public Accounts and Audit, I present the 389th report of the committee on the review of Auditor-General’s reports 2000-2001: fourth quarter. I move:

That the Senate take note of the report.

I seek leave to incorporate Senator Watson’s tabling statement in Hansard.

Leave granted.

The statement read as follows—

Madam President, on behalf of the Chairman of the Joint Committee of Public Accounts and Audit, I present the Committee’s Report No. 389—Australian Defence Force Reserves, Assessment of New Claims for the Age Pension by Centrelink, Family and Community Services’ Oversight of Centrelink’s Assessment of New Claims for the Age Pension and Performance Information for Commonwealth Financial Assistance under the Natural Heritage Trust. This is our Review of Auditor-General’s Reports for the fourth quarter of 2000–2001.

Madam President, the Committee held a public hearing on Tuesday, 30 April 2001 to discuss these ANAO Reports with the relevant Commonwealth agencies. I will briefly discuss issues in each of the selected reports in turn.

In its examination of Audit Report No. 33, the Committee examined resources and costs of the Defence Reserve; Army Reserve roles and tasks; and the attraction and retention of personnel to the Army Reserve.

The Committee agrees with the ANAO that Defence should annually establish and publish the full costs of each Reserve Service and the capabilities provided, in order to provide full transparency of the costs of maintaining Reserve forces. The Committee has recommended that Defence give urgent attention to developing its financial and management systems to enable it to provide full costing of the Reserve forces.

The Committee notes that the process of defining the roles and tasks for Reserve units is progressing and strongly encourages the early completion of the single entitlement document reviews. Until the role and resource needs of the Reserve have been clarified, there is no certainty that current recruitment, training and provisioning is appropriate for the future structure of the Reserve forces.

The audit report made the point that the broad structure of the Army Reserve has remained largely unchanged over several decades. The changed strategic role for the Reserves towards contemporary military operations, as outlined in the Defence 2000 White Paper, raises the question of the appropriateness of current Army Reserve structures to meet changing roles and tasks.

The Committee considers that there are compelling reasons to rationalise the Army Reserve force structure to ensure that it is based on strategic guidance and on the outcomes of the Army’s study of its Reserve roles and tasks.

There should be a strong link between the military capability required and the force structure that is developed.

In the Army Reserve, discharges have exceeded enlistments almost every year since 1988-89. In the past few years, the gap between separations and recruitment has increased. Defence is making efforts to develop new initiatives such as the transfer of former full time personnel to the inactive Reserve. The Committee strongly encourages the ADF to continue its work on identification and provision of incentives which could lead to an increase in the numbers of personnel available for active Reserve service.

The Committee also considers that it would be useful for some formal research to be done to identify reasons for separation from the Reserve forces.

In the second and third reports selected, Audit Report No. 34 and Audit Report No. 35, the Committee examined the efficiency of the procedures developed for Assessment of New Claims for the Age Pension by Centrelink from different perspectives.
The two audits were undertaken by ANAO in parallel. In Audit Report No. 34, ANAO looked at Centrelink’s preventive quality controls to ensure accuracy and correct decisions at the new claims stage. In Audit Report No. 35, ANAO examined those aspects of the FaCS-Centrelink business arrangements designed to assist the Department of Family and Community Services in its oversight of the assessment of new claims for the Age Pension by Centrelink. For 1999–2000, the agreed performance standard between the two agencies was 95% ‘correctly assessed’ while for 2000–2001, the standard was 95% ‘completely accurate’.

The audit focus was on compliance management, accountability and performance. In this, ANAO used as the basis for its audits, Centrelink’s own working definition of accuracy: ‘payment at the right rate, from the right date, to the right person with the right product’. ANAO also examined the accuracy of Centrelink’s own reporting on compliance, as provided by Centrelink to FaCS.

The Committee selected these two audit reports for review because it was concerned at the discrepancies between the error rates found by the audit and Centrelink’s own reporting on its accuracy in its Annual Reports. Centrelink had reported an accuracy rate of 98% for 1999–2000. ANAO stated that its audit findings showed that in 1999-2000, approximately 52.1% of new Age Pension assessments contained at least one actionable error while some 95.6% contained at least one administrative error. On the basis of the audit, ANAO indicated that the accuracy standard of 95% for 2000–2001 was unattainable.

While the Committee accepts that some Age Pension claims are complex, the Committee is nevertheless disturbed by ANAO’s findings. Inaccuracies result in incorrect payments which translates into hardship for Age Pension clients. Committee members commented at the public hearing on the stress experienced by their constituents when faced with over or underpayments. The Committee acknowledges that faced with the audit findings, Centrelink has made improvements such as appointing an extra 130 complex assessment officers, who are specially trained, and checking all claims processed by inexperienced staff. This resulted in reported accuracy rates of the mid-80% in early 2002, still below the 95% agreed standard. Assessment of new claims has been further assisted by the rules simplification ordered by the Minister for Family and Community Services in 2002.

The Committee looks forward to the independent validation strategy being developed by the Department of Family and Community Services to assess Centrelink’s performance. Improvements in the department’s monitoring and evaluation of Centrelink should mean greater accuracy in new claim assessments thereby resulting in accurate payments from the start.

I now turn to the final ANAO report the Committee reviewed in this quarter—Audit Report No. 43. This report concluded that the performance information used to support the administration of Commonwealth financial assistance under the Natural Heritage Trust (NHT) had strong design features, but significant management and reporting challenges. A key issue was the absence of a finalised core set of performance indicators.

The report also noted that the absence of baseline data on environmental condition in much of Australia had been a major constraint on measuring and reporting on changes and trends. The Natural Heritage Ministerial Board has agreed to the continuation of the national land and water resources audit until June 2007 and the Committee notes its potential to provide better access to quality data for NHT mark 2 (NHT2). The Committee considers that improved needs assessment will enable better judgements to be made about project priorities for NHT2.

The ANAO noted in its report of June 2001 that there had been little progress in relation to finalising the design of an overall performance information framework, and consequently, a limited capacity to measure results in concrete terms.

The Committee considers that there is still little ability to assess the impact the NHT has had overall and the progress made towards program goals such as the conservation, repair and sustainable use of Australia’s natural environment. The Committee notes that since the NHT Mid-Term Review, agencies are reported to have given greater attention to the strategic focus of the NHT, and it is aware that a set of intermediate indicators has been agreed for the evaluation of NHT1. The Committee has taken evidence that closer attention has been paid to issues of baseline setting, monitoring and evaluation, and reporting in the planning and development for the implementation of NHT2 and the National Action Plan for Salinity and Water Quality.

While it appears to the Committee that improvements may finally be under way which could impact positively on future NHT achievements, the inability to adequately measure performance and report on achievements to date was not unforeseen.

The Committee can only reiterate its opinion of 1998, namely, that there must be concern when large amounts of public funds are committed and
programs implemented before problems are adequately identified and performance information systems are in place.

The Chairman has asked me, Madam President, to thank on behalf of the Committee, the witnesses who contributed their time and expertise to the Committee’s review process.

He is also indebted to my colleagues on the Committee who have dedicated their time and effort to reviewing these Auditor-General’s reports. As well, he would like to thank the members of the secretariat who were involved in the inquiries.

Madam President, I commend the Report to the Senate.

Question agreed to.

Employment, Workplace Relations and Education Legislation Committee

Report

Senator CALVERT (Tasmania) (9.52 a.m.)—On behalf of the Chair of the Employment, Workplace Relations and Education Legislation Committee, Senator Tierney, 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 and documents presented to the committee.

Ordered that the report be printed.

BUSINESS
Withdrawal

Senator O’BRIEN (Tasmania) (9.52 a.m.)—by leave—I move:

That business of the Senate order of the day No. 5, relating to the proposed reference of matters to the Rural and Regional Affairs and Transport References Committee, be withdrawn from the Notice Paper.

Question agreed to.

Withdrawal

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.53 a.m.)—by leave—On behalf of Senator Murphy, I move:

That business of the Senate order of the day No.6, relating to the proposed reference of matters to the Rural and Regional Affairs and Transport References Committee, be withdrawn from the Notice Paper.

Senator MURPHY (Tasmania) (9.53 a.m.)—by leave—As senators know, I had proposed a reference to a select committee because I have a view that specific reference ought be made, in any reference to a committee to deal with this matter, to whether or not we are employing world’s best practice from both a utilisation point of view and a sustainable management point of view in the clearing of native forests to replace them with monoculture plantations. Unfortunately, there has been a lack of preparedness on the part of either the opposition or the government to seriously consider this issue. It will prove, in the fullness of time, to be a great failure of this particular parliament. In due course, it will come to be known that we have not employed world’s best practice, that we have not harvested the native forests of this country in a sustainable way, that we have created a situation where the water resources of this country are going to suffer even further as a result of those activities and that we are allowing a plantation industry to develop in a way that is not sustainable from a long-term forest industry management point of view or from a taxation point of view. That is why I have always viewed this particular type of inquiry as so very important.

I say to senators: get out there and have a look with your eyes open. Do not go and do the sanitised trip around the bush with the respective state forestry authorities; get out and have a real look and maybe, just maybe, some parliament—and maybe this Senate—in the future will come to grips with what is a very serious issue for this country. We are failing dismally to address this very serious issue. I know the government has proposed a reference and I know people will say, ‘You can cover all of this under our terms of reference.’ I will go as a participating member only and watch with interest when this inquiry actually commences. But, more importantly, I will watch with interest to see whether this committee allows for proper debate and proper inspection to occur, because I doubt that it will. This is something we should have started a long time ago and which should now be almost complete. From an industry point of view, it is important to the plantation industry for their longer term planning that this happen and that it happen in a short period of time—no question about
that. For the long-term future of the native forests of the country, it is critically important and, unfortunately, this parliament and this Senate failed to really address the issues.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.57 a.m.)—I move government business notice of motion No. 2:

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.

Senator BROWN (Tasmania) (9.58 a.m.)—I oppose this motion. My difficulty with this procedure is that we have not had adequate time to deal with the Migration Legislation Amendment (Procedural Fairness) Bill 2002. My cursory view of this legislation is that it limits natural justice in terms of people making an approach to the courts. The legislation has not been before a committee. It has not been directed to a committee.

Senator Bartlett—Yes, it has.

Senator BROWN—I am told it has been; however, I have not heard an argument for urgency from the government. We know we have got a crammed timetable for today; inserting this legislation into the timetable without an opportunity for full debate is not something I support. I suggest to the government that the proper course of action is to have this piece of legislation brought before the Senate after the winter recess.

Senator BARTLETT (Queensland) (9.59 a.m.)—I want to speak briefly on this motion. As people may be aware, standing order 111 is put in place so that bills that are introduced in one session are not automatically debated in that same session unless there is a compelling case for urgency. It is basically a protection against the government rushing things through. I would have to say that I disagree to some extent with what Senator Brown said. I do think the Migration Legislation Amendment (Procedural Fairness) Bill 2002 has had enough time for consideration. There was a reasonably comprehensive committee inquiry into it, and on that side of things I think it is fair enough although perhaps slightly tangential to the general purpose of the cut-off. I note the Labor members of that committee, in their findings in the report, felt that this legislation should lie on the table for a period of time until a particularly crucial full Federal Court decision comes down. I think there is a lot of wisdom in that view, and I notice that the same arguments were put in the House of Representatives by the shadow minister, Ms Julia Gillard, when debating this bill.

Whilst it is not the usual practice to use a cut-off order to wait until a court case comes down, I think it is a wise course of action and, in that sense, preventing this motion from going through would achieve that outcome. If this does go through, which I assume it will, we can revisit that question when we debate the bill later on. In that context, where there is a major court hearing happening that could significantly affect the issue that is addressed by this legislation, and also because we do have some 20 bills to deal with in one day, I think that removing this bill and making it 19 bills would be in the Senate’s interest and the parliament’s interest. So, for those reasons—which are not the normal reasons for which I would oppose exempting something from the cut-off, because I do think that there has been enough time for scrutiny—the Democrats will oppose this motion.

Senator LUDWIG (Queensland) (10.02 a.m.)—The opposition will be supporting the exemption from the cut-off, and I think the reasons need to be made plain. This is a technical bill but it is not a complex bill. What it does—and perhaps this may help Senator Brown, because his explanation of the effect of it surprises me slightly—is to create a belt-and-braces effect. There was a case called Miah, and I do not want to get into the technicalities of the case, which overturned the longstanding view that the Migration Act codified procedural fairness. That was first introduced by former minister for immigration Gerry Hand in 1992. This might assist Senator Brown in coming to the conclusion that this is a matter that is urgent...
from the government’s perspective, and that is why we are supporting it.

The codification was understood to exist since 1992. It was then that the Miah case was overturned, by a narrow majority, and so there was no longer a view that there was a code; and obviously since the decision there has been time for other interpretations to be put on it. There is now a degree of uncertainty which needs to be put beyond reasonable doubt, and that can be done by this bill.

In addition, there was a quite significant and lengthy committee inquiry. I was the acting chair during part of that inquiry, so I can say that it did receive sufficient and quite lengthy scrutiny. There were both majority and minority reports, which allow people to examine the issues in detail. The reason—and I think Senator Ian Campbell will probably go to it—that the government have sought to bring it forward and allow it to be proceeded with is that there is a need to ensure that there is certainty in relation to the law in this area.

Question agreed to.

MIGRATION LEGISLATION AMENDMENT (PROCEDURAL FAIRNESS) BILL 2002

First Reading

Bill received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.05 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.06 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This bill amends the Migration Act 1958 to provide a clear legislative statement that the “codes of procedure” in the Act are an exhaustive statement of the requirements of the natural justice hearing rule.

The bill also makes clear that the amendments do not in any way limit the scope or operation of the privative clause, which is contained in Part 8 of the Act.

The Migration Reform Act 1992 introduced codes of procedure for dealing fairly, efficiently and quickly with the processing of visa applications. It also introduced other detailed codes of procedure for the cancellation of visas and the revocation of the cancellation of visas.

In 1998, the codes of procedure for the Migration Review Tribunal and the Refugee Review Tribunal were enhanced.

The purpose of each of these codes is to enable decision-makers to deal with visa applications and cancellations fairly, efficiently and quickly. It was also intended that they would replace the uncertain common law requirements of the natural justice ‘hearing rule’ which had previously applied to decision-makers.

However, last year in the Miah case, the High Court found that the code of procedure relating to visa applications had not clearly and explicitly excluded common law natural justice requirements.

This means that even where a decision-maker has followed the code in every single respect, there could still be a breach of the common law requirements of the natural justice hearing rule.

A further consequence of the High Court’s decision is that there is legal uncertainty about the procedures which decision-makers are required to follow to make a lawful decision.

The majority of the Court emphasised that Parliament’s intention to exclude natural justice must be made unmistakably clear.

It concluded that this intention was not made apparent in relation to the code of procedure for dealing with visa applications.

Therefore the purpose of this bill is to make it expressly clear that particular codes in the Migration Act do exhaustively state the requirements of the natural justice or procedural fairness ‘hearing rule’.

This will have the effect that common law requirements relating to the natural justice or procedural fairness ‘hearing rule’ are excluded.

The key amendments will affect the codes of procedure contained in the Act, relating to:

- visa applications;
- visa cancellations under sections 109 and 116;
• revocations of visa cancellations without notice under section 128; and
• the conduct of reviews by the merits review tribunals.

The Migration Legislation Amendment (Judicial Review) Act 2001 set out a new judicial review scheme to address concerns about the growing cost and incidence of migration litigation and the associated delays in removal of non-citizens with no right to remain in Australia.

The key mechanism in the judicial review scheme is the privative clause provision at section 474. This greatly expands the legal validity of acts done and decisions made by decision-makers.

The amendments to the codes of procedure do not affect in any way the operation of the judicial review scheme.

In conclusion these amendments are necessary to restore the Parliament’s original intention that the Migration Act should contain codes of procedure that allow fair, efficient and legally certain decision-making processes that replace the common law requirement of the natural justice hearing rule.

I commend the bill to the Chamber.

Debate (on motion by Senator Mackay) adjourned.

Ordered that further consideration of this bill be made an order of the day for a later hour.

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 26 June.
SUPPRESSION OF THE FINANCING OF TERRORISM BILL 2002

The TEMPORARY CHAIRMAN (Senator Cook)—The committee is considering the Suppression of the Financing of Terrorism Bill 2002 and Australian Greens amendment No. 6 on sheet 2513 revised moved by Senator Brown. The question is that the amendment moved by Senator Brown be agreed to.

Senator ELLISON (Western Australia)—Minister for Justice and Customs) (10.07 a.m.)—I just need to finish something I was saying last night about the regulations that we propose as they relate to the Greens amendment. I was talking last night about how the regulations would also cover the protection that will be available to affected organisations in relation to action taken in good faith and without negligence. The regulations are also likely to cover the required minimum levels of circulation to their staff that affected organisations should undertake of the procedures themselves and of action taken under the regulations in relation to particular persons and accounts. It is not possible to be more specific about these regulations because detailed consultation will need to take place with the finance industry and other relevant stakeholders at the time of drafting these regulations. I think that is quite reasonable in the circumstances. Although responsibility for the regulations will be that of the Minister for Foreign Affairs, officers of the Attorney-General’s Department, AUSTRAC, AFP and Treasury, will also be consulted during the drafting process so that there will be an across-the-board approach, if you like, in relation to government and the drafting of these regulations.

The steps that I have outlined are consistent with guidelines that currently appear on the Foreign Affairs web site in relation to procedures that should be followed by those who currently have obligations under the existing Charter of the United Nations (Anti-Terrorism Measures) Regulations which will be replaced by proposed part 4 of the charter of the United Nations Act 1945. What I outlined last night and this morning is a comprehensive summary of why the government cannot agree to the Greens proposal that would enable asset freeze listings to be disallowed by parliament, and a clarification of the reason we have proposed disallowance in relation to the listing of terrorist organisations but we do not do so here.
Senator BROWN (Tasmania) (10.10 a.m.)—Minister, does the listing that has been made by the government of organisations to have their assets frozen and of individuals to have their assets frozen include only organisations and individuals known by the Security Council or are there other organisations and/or individuals on that list?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.10 a.m.)—The government’s existing listings under regulations drawn listings are taken from the United Nations Security Council resolutions and on information provided from other sources including other countries. I understand that the listing, albeit deriving from those other sources, is a listing which has its genesis in the United Nations Security Council resolutions.

Senator BROWN (Tasmania) (10.11 a.m.)—Could the minister tell the Senate which organisations, other than those nominated by the Security Council, have been put on this list and which individuals? What does this mean for those organisations and/or individuals? Does it include a prohibition on them fundraising?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.11 a.m.)—We will have to take that on notice, because there is some detail to that, and endeavour to get back to the committee as soon as we can. And on fundraising as well.

Senator BROWN (Tasmania) (10.12 a.m.)—There we have it. We already have a government that has moved beyond listings coming from the Security Council to prohibit organisations and/or individuals in Australia by back door proscription. Effectively, when you remove the ability to fundraise and the ability to have any sort of financial structure, when you foreclose on people having credit cards, on having bank accounts, on being able to raise and disperse funds, you knock that organisation or that individual out of functioning in society. It is effective proscription. But the need for it can be seen from the government’s point of view, I am sure, in view of the well-known terrorist organisations which have been listed by the Security Council. I will not reiterate our concern with that except to say it is not endorsed by the General Assembly of the United Nations, and in the Security Council the big five powers have the ability of veto. What we are saying is that when they send the list to us, we do not.

The problem here is that the parliament ought to have an overview of this listing which knocks people out of action in the community. The minister has argued that we need to do it swiftly and we sometimes need to catch hold of money in accounts before the presumed terrorist organisations or individuals have the opportunity to move it on. What I am saying to the committee and what is being expressed in these amendments from the Greens is, so be it, but bring it to the parliament and let the parliament have a view of what is going on here. Otherwise we leave the executive, which is not elected as an executive by the people of Australia, to decide for itself which organisations and which individuals in this country are going to be knocked out of functioning—effectively having their rights removed by back door banning—by this back door method of proscription.

The argument is that the government is going to act responsibly. That argument is fatally flawed and we have had senior jurists appear before the relevant Senate committee and express opinions in public which say, ‘You should not open the door, even in a healthy democracy such as ours, to an abuse by a future executive without parliamentary overview.’ It is an extremely necessary and healthy thing, if we must be proscribing organisations in our country in this robust democracy, that the buck stop not with the executive but with the parliament. What worries me doubly here is that the Labor Party, the opposition, is going along with this, saying, ‘Let’s remove the parliament from this process, we will leave it to the executive.’ This is the Labor Party that says it is concerned about proscription, of banning of organisations and that it has historically been against the banning of organisations. Now we have the test here it is saying, ‘We will allow this backyard banning of organisations which the government in these circumstances is putting before the Senate.’
This goes far beyond Al-Qaeda and Osama bin Laden and co. This goes to a raft of organisations which have already been proscribed and individuals and opens the door to more. The government does not have to explain itself. It does not have to fit any particular set of rules and regulations except the wide-open definitions of terrorist, terrorism or terrorist organisations which is in this legislation and the bill we dealt with last night. It is enough for the government to be able to show that there is a threat to health and safety involved in what somebody is doing. As I have pointed out before, into that net can fall active unions, environmental groups that are protesting, people who are protesting outside Woomera or the World Trade Centre or in the streets of any of our cities or towns. Indeed, Indigenous people who want to protest against uranium mining could find themselves caught up by this legislation. People on the wharves who want to protest against health and safety regulations could find themselves caught up in this legislation as endangering health and safety. It is very dangerous legislation and Labor is going along with it.

I make an appeal to Labor to think again about this. Do you really want the executive of this government, and much worse some other potential government which is much more high-handed and proscriptive and much less concerned about traditional rights in our country, being able to proscribe organisations under the wide-open definitions that are in this piece of legislation? I think most members of the Labor Party would be horrified if they knew the potential of this legislation. I think many supporters of the National Party and the Liberal Party would be horrified if they knew the potential of this legislation. I think many supporters of the National Party and the Liberal Party would be horrified if they knew the potential for a minister to proscribe organisations under the wide-open definitions here. Were this bolted down to what the community sees as terrorism, people who are involved in the planning or carrying out of bloody acts against people and property, there would be a better argument, but it is not. If you are an organisation or individual allegedly involved in threatening communications such as email systems or if you are in the bush, up in trees which are wired together, as is common in protests, or if you are at a protest anywhere with deep-pit latrines, you could be in trouble. I can tell you from protests I have been to that the first thing that happens is the health authorities arrive from the local council to try to put you out of business. If you are going to be a serious threat to health and safety in their view you can go on this government list. The government can say, ‘We would not abuse this.’ Does the opposition really accept that? Is the opposition assured that this is fine—with this government let alone some other governments that you can think about? The Mayor of Dublin said, ‘The price of peace is eternal vigilance.’ It is the same for democracy and I think the Labor Party has taken its eye off the game here. It has gone to sleep on this one, and that is very worrying because once this legislation goes through we cannot get it back, at least not in the term of this government. You cannot get it back through the House of Representatives whatever we might try in the Senate.

I appeal to the Labor Party to think again about this. Do not give the executive the power to proscribe through the back door without allowing us the ability to oversight that. Allow the parliament to keep a watch on this. If you must do this, that is, allow the proscription to be instantaneous and secret and unknown to the individuals and organisations affected by it, because that is what this bill allows—we oppose that and you support it—have the matter brought before the parliament and have us empowered to keep a watch on the excess of this or some future executive. That is very, very important to the health of this functioning democracy.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.21 a.m.)—Minister, I think that Senator Brown draws attention to the fact that currently before the committee we have legislation that provides for asset freezing of organisations nominated by the Security Council of the United Nations and we also face a situation where there is a separate list of organisations to which asset freezing applies that is in part drawn from United Nations lists and is in part drawn from other sources. I imagine that some of those other sources include the US State Department and the Department of Foreign Affairs and Trade here and its agencies. The minister may be
able to inform the committee in relation to the head of power for the production of the existing list. I am sure Senator Brown would acknowledge that it is certainly not the bill we are dealing with at the moment. I imagine it is existing legislation relating to the implementation of United Nations sanctions, but the minister can confirm that. The point that is made by senators is, in part: what will be the status of the existing list once the current legislation is passed, and will the source of such a list be limited to the Security Council of the United Nations only? That is not the entirety of Senator Brown's argument—I think you would acknowledge, Senator Brown, that you had other points to make—but it is a substantive—

Senator Brown—That is not the case.

Senator FAULKNER—I am saying that it is not the entirety of your argument but it is a substantive issue that you raise before the committee. Perhaps the minister can assist the committee in what will be the status of those other organisations—in other words, organisations that appear on current lists for asset freezing that are not nominated by the United Nations Security Council. That is one part of the issue that is currently being debated and something on which I do think the minister ought to be able to provide some clarity. I would ask if the minister could perhaps assist the committee in that regard—understanding, Senator Brown, that there is a range of other issues that you raise as well.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.25 a.m.)—This is quite opportune because I was going to expand on a point I made yesterday in answer to a question from Senator Murray in relation to the listing of assets of entities from overseas that might be engaged in terrorism. Yesterday I mentioned to Senator Murray that the United Nations Security Council listing was the source of this and that the way to do it was to work through the United Nations Security Council and have someone listed. I do not think that it was really quite clear enough that clause 1(c) of resolution 1373 states that the Security Council:

1. **Decides** that all States shall:

   - 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; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

Resolution 1373 provides member states with a direction to follow that part of the resolution to freeze, without delay, funds and other financial assets et cetera of those entities as mentioned in that subclause. Of course, it has to be made out that the requirements are met.

So what you have there is a situation where you can not only rely on the United Nations listing, which has already been determined and which, of course, is the difference between this and the listing of terrorist organisations. The UN Security Council has said, 'There is a list.' If we make that disallowable, we are breaching our international obligations. But the Security Council has also said that you have the ability to go further, and should go further, by virtue of clause 1(c) of resolution 1373. That is a requirement made by the United Nations which, having agreed to this, we are required to follow. That is the head of power, if you like, or the legitimate direction that we get to act in this way. It is a question of meeting an international obligation. This international obligation is one that coincides with our domestic interests in countering the financing of terrorism, and we want to do that by freezing that financial support. This is the second aspect of freezing those assets, but it still has its genesis in the United Nations resolution, albeit not a specific listing—that has been dealt with already and can be added to, of course. This gives member states a direction that they should not just leave it there but should also take other action.

Senator BROWN (Tasmania) (10.29 a.m.)—I want to mention two things. Firstly, I am looking forward to receiving that list from the government of organisations which have not been nominated by the Security Council but which have been proscribed.
Secondly, of the countries with which Australia has had an exchange of information about potential bannings, does that include, for example, China, Pakistan, India, Thailand and Malaysia? Where is the limit on our getting information and exchanging information with countries overseas? Is there any limit? Is there a line drawn there? While that list is coming, I want to point out to the opposition that, while ever the regulations—which were passed last October and which we did not pick up on—exist which allow for the proscription of organisations, those regulations provide for the government to be able to proscribe organisations outside the listing by the United Nations Security Council.

The amendments coming down the line from the Greens would effectively repeal that regulation. It is very important that that regulation be repealed if the opposition is going to be able to stick by its view that proscription will not be allowed outside of the Security Council listing. I ask the opposition to have a look at that. I can see the opposition saying that it will not allow for listing outside of the Security Council listing, but that is a subsidiary matter to allowing the Security Council—where China, the UK, France, the United States and Russia all have a veto power—to have a veto on the listing of organisations or individuals for proscription. Through this means the Labor Party is agreeing with the government that we in this country should not have a veto power, that we should not have a review and that we simply become a rubber stamp of the big powers on the Security Council without reference even to the United Nations General Assembly.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.31 a.m.)—I just want to complete the answer to Senator Faulkner’s query because he also asked what the status of these current listings will be once the amendments are made. The regulations have been put in force in relation to the listings. What we are doing in this bill is transferring it from the regulations and putting it into the bill, which in effect is transposing it from one aspect of legislation to another. We think it is important that it be included.

Senator Faulkner—But that will only be the United Nations Security Council.

Senator ELLISON—The UN Security Council, that is right.

Senator Faulkner—The issue that Senator Brown raises—and I think followed through part of what he said—is the issue of those that are on current DFAT lists that are not nominated by the UN Security Council. That is not the whole issue, but it is part of it.

Senator ELLISON—I just wanted to deal with that question of what is on regulation and how it will find itself in this bill. The second aspect, which I spoke about earlier, which is dealt with by resolution 1373 clause 1(c), is that other aspect where we have the ability to make listings other than the list that has already been made by the United Nations Security Council. I have covered that point. I just wanted to cover the aspect of regulations being put into legislation. Senator Brown, we are getting that list as fast as we can.

In relation to the fight against terrorism, we do deal with other states; we do it with law enforcement and the exchange of intelligence. Pakistan and Afghanistan attended the conference in Indonesia on people-smuggling and the fight against transnational crime. There is often useful exchange of intelligence with other countries. In no way is there anything untoward in that. It can advance, in many cases, the fight against transnational crime and terrorism.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.34 a.m.)—Can I make this general comment in relation to what the objective of the Suppression of the Financing of Terrorism Bill 2002 actually is. The objective is in fact to give force in domestic law to the United Nations International Convention for the Suppression of the Financing of Terrorism. The opposition has been critical of the government for its tardiness in signing and ratifying that convention. But, in accordance with the broad principle that I have outlined previously in these committee stage debates, the Labor Party takes the view that it is essential that Australia act in good faith in accordance with its international obligations and, in this sense, within the spirit of the
If the current bill passes, there will be a particular regime in relation to asset freezing of those organisations listed by the Security Council of the United Nations. The point at issue here is that there are other organisations already listed by the government for the purposes of asset freezing, some of which are nominated already by the Security Council of the United Nations and some of which are not. It seems to me that that is a statement of fact; no-one has denied that. The point needs to be made that that occurs under a separate head of power and that legislation has not been, and will not be, dealt with as we examine this package of terrorism bills.

That does not mean that the substantive issue of what occurs in relation to those organisations that are listed on the broader list or those organisations that are not nominated by the UN Security Council is not an important question. I do suggest, through you, Mr Temporary Chairman Calvert, to Senator Brown, with all due respect: your amendments do not achieve the outcome of removing those other organisations—those separate from the ones nominated by the United Nations Security Council—from any capacity for the government to use another head of power to propose an alternative asset-freezing regime. The difficulty with what we are debating here is that those matters effectively are not before this committee. The opposition want to see the United Nations International Convention for the Suppression of the Financing of Terrorism receive the force of domestic law. We do want to achieve that outcome. We do want to see the Australian government and other member states of the United Nations act against those organisations that have been nominated by the United Nations Security Council for asset freezing. We do want to see that achieved. There needs to be an international response to the threat of terrorism and an international response to the financing of terrorist organisations. This is, in my view, part of Australia playing its proper role as a good international citizen. I am not going to resile from that for one minute. It is essential that we in Australia play our part in that struggle.

There nevertheless remains a separate issue about the existing lists. I believe that whatever arguments might be brought to bear about the validity or otherwise of any organisation that might be placed on those lists—and I cannot say to the committee that I have made an extraordinarily thorough examination of those lists, because I have not—I am not aware of any domestic organisation that is on those lists. But the minister can correct me if I am wrong in that regard. As I understand it, they seem to be all international organisations. None of those organisations could be defined as domestic. Putting other arguments aside—and I think we need to nail this down so the committee can move on—I respectfully suggest that the head of power that enables the government to list other organisations for the purposes of asset freezing is something that we are not debating here. What we are debating is those organisations that are nominated by the United Nations Security Council. As far as the Labor Party are concerned, we do not and will not resile from ensuring that those organisations do have their assets frozen and that we act in support of the international community to deal with the serious problem of the financing of terrorist organisations. We strongly support placing in domestic law our commitment to the United Nations convention and a domestic legislative framework in Australia in accord with the United Nations Convention for the Suppression of the Financing of Terrorism. They are the principles with which the Labor Party approach this particular debate; they are clear.

Whether those other issues which were raised by Senator Brown can be debated at another time, I do not know. But at the end of the day, the head of power is different. The government did not need this legislation to make those lists. In fact, those lists exist now and the legislation we are debating is not through the parliament. That is the nitty-gritty, that is the bottom line, and that is what I think we need to focus on as we look at what this committee might believe is the benefit of the legislation that we are currently debating. As far as the Labor Party are
concerned—I want to nail our colours to the mast absolutely—this is important; this is essential. This is about Australia playing its part with the international community to ensure that we make our best possible efforts and endeavours to ensure that we deal with the financing of terrorist organisations. I am not ashamed of that and I will not resile one inch from that important objective.

**Senator BROWN** (Tasmania)  (10.43 a.m.)—There we have it: the Labor Party does accept that the executive should be able to effectively proscribe organisations and individuals in Australia without reference to the parliament. Moreover, we are about to get a list from the government of organisations not named by the Security Council but which, through the antiterrorist measures of the charter of United Nations regulations of last October, will allow the government to continue to proscribe, through the freezing of assets, organisations and individuals in Australia not necessarily named by the Security Council. And Labor knows what it is doing in this. The next-but-one Greens amendment would remove those regulations which the government is working under. But let me say that those regulations effectively defeat the purpose of this bill, which is to have the Security Council listed terrorist organisations effectively frozen out of business by freezing their assets.

Through this complicated process—and going back to the Security Council resolution—other organisations not named can be proscribed. What is the point of this bill? What is the point of the Labor Party saying, ‘We’re confining it to Security Council listed organisations,’ when we already know the government is listing, proscribing, banning and freezing the assets of other organisations and individuals in Australia outside of this legislation? The Greens amendment says, ‘We’ll put a stop to that, we’ll confine the banning process to what is in this legislation,’ but the Labor Party say, ‘We’re not going to support that.’ That undermines the whole purpose of confining this bill to freezing the assets of those organisations listed by the Security Council. It gives the power to the government, the executive, to go on and freeze the assets of other individuals and organisations—and Labor know that and are going to support it.

It pulls the rug out from under what we have heard in the debate in the last few days that Labor are inherently against proscription; that Labor see it as dangerous in our democracy to allow governments to proscribe organisations without reference to the parliament. That is the principle the Greens are standing for—that is what our amendments do—but the Labor Party say, ‘That is a different head of power; that has to be dealt with somewhere else.’ We will be moving to amend, or to repeal, the regulation that gives the government that power, and we will be doing that very shortly. This whole process is one of the opposition joining the government to allow the executive to effectively ban organisations in this country whether or not they are on the Security Council list.

I ask the minister: is it possible that a future government, through reference to the Security Council or otherwise and working with, for example, the security organisations in Indonesia, may proscribe the OPM, the freedom fighting organisation—it does have a military arm—in Papua? Will a government look to freeze the funds of anybody linked with the Aceh freedom movement? What about Tibet? Is it possible that a government, acting outside the parliament and with no parliamentary review, will be able to proscribe organisations in Australia which are raising funds for the Tibet freedom advocates—as far as I know there are no fighters in terms of an armed struggle—in Tibet, which is occupied by the People’s Liberation Army under the control of Beijing, because Beijing says that the Tibet freedom advocates are criminals or terrorists? Remember, they say the Dalai Lama is a criminal.

Are we going to allow a process whereby a government, in the interests of trade or of good relationships with countries bigger, more powerful or perhaps more threatening than our own, could proscribe organisations such as those, at least as far as their ability to raise funds and exist as financial entities is concerned? I again go back to Justice Dowd’s illustrative case of attending a fundraiser for the Tamils for the medical care and rehabilitation of the young people damaged
in the civil war in Sri Lanka. Will the fund-raising organisation be proscribed because the money is potentially going to armaments? The Tamil organisation, which has been in armed rebellion in Sri Lanka, is already proscribed in this country.

We cannot allow it without parliamentary oversight; that is the issue here. We cannot allow it without this parliament being able to say, in the wake of a proscription by the government, ‘We want to look at that; we want to analyse it.’ We must at least have an appeal court. Remember that proscription occurs at the United Nations level through to the government level here without any rights given to those who are proscribed. There is no effective appeal process against it. There ought to be one, and parliament ought to be the place for it. Even when an organisation has been proscribed and had its assets frozen, we should be able to review that. Governments make mistakes; ministers make mistakes; the executive makes mistakes. It is up to parliament to review the executive when it makes a mistake, and parliament can only do that if you give parliament that power. Labor is joining the government in removing from the parliament that power of veto over the executive.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.51 a.m.)—Mr Temporary Chairman, I hope you do not mind if I come back to the amendment before the chair instead of debating the amendments that Senator Brown is going to move in short order. We always need to be flexible in these committee debates.

Senator Robert Ray—It saves time.

Senator FAULKNER—I accept that absolutely, Senator Ray—but I do not know if any of us should be talking about saving time at the moment. I want to come to the substantive question before the chair. It is a very serious issue, and I acknowledge that the government has treated it seriously. I have read very carefully and listened very carefully to what Senator Ellison has said. I appreciate the fact that he provided the opposition with a response to Senator Brown’s amendments and that he was generous enough to say to the opposition that the government was comfortable if it discussed with or provided a copy of that response to Senator Brown in the chamber discussions about these amendments.

We have listened closely to what Senator Brown has said, and we certainly have listened carefully to the government’s response. In particular, I note that the government now believes that departing in any way from our obligations under a Security Council resolution would place Australia in breach of article 27 of the Vienna Convention on the Law of Treaties, to which Australia is a party. Indeed, as I understand it, the government’s position, as explained by the minister, is that under article 27 of the Vienna convention, Australia cannot justify failure to perform a treaty obligation on the basis of domestic legal impediment. The minister at the table noted that Australia was bound and obliged to comply with UN Security Council resolutions, notwithstanding any conflict with domestic law resulting from the operation of a disallowable instrument. Rightly, the government states these principles in support of our role in the international fight against terrorism. The principles are solid and should, in my view, form the foundation for Australia being a responsible international citizen.

Nevertheless, I think I can best characterise the government’s counter arguments as an unprincipled resort to a principle the government does not believe in. As I hear and read what the government has said in response to Senator Brown’s amendments, we have a government that has consistently and persistently argued to the High Court that it should interpret UN conventions in a way which does not give rise to domestic legal obligations. The government, of course, for the most part—I am sure senators would be aware—derides United Nations conventions. The same government tells us we should not contemplate requiring it to freeze assets only by regulation because, heaven forbid, this would place it in breach of a UN convention. I have sought advice on this issue because I have to give a considered response to it; it is a serious issue that is raised in the Green amendments. I am reliably advised that this is the same government which has repeatedly instructed the Solicitor-General to argue the
contrary case, the same government which was trying to persuade the High Court as recently as 16 May this year in the Yorta Yorta case that our domestic laws did not need to be consistent with international law standards. So I do hope the minister at the table, Senator Ellison, and his ministerial colleagues, the Attorney-General’s Department and the Australian Government Solicitor have been paying close attention to this change of heart. I do not want to see a situation where the government says one thing in the parliament and says another thing in the courts. I think if the government really believes in those principles, as Senator Ellison has stated them, then it should stick to them and stick to them at all times.

I have considered the arguments that have been put forward by Senator Brown and I have considered the arguments that have been put forward by Senator Ellison on behalf of the government. And I would like to outline to the committee the conclusions which the opposition has drawn as a result. It would be defensible for the parliament to decide to implement by regulation the asset freezing obligations flowing from our acceptance of the UN convention on the suppression of terrorist financing. But it is also true that if parliament were to disallow a regulation freezing the assets of an organisation listed by the United Nations under this convention, this would place Australia in breach of its obligations under the convention. And we say that that is undesirable.

We also recognise that a regulation regime would create an operational difficulty. Clearly, if Australia were to adopt such a regime, any entity with assets in Australia would immediately take action to move the assets as soon as the United Nations listed it, knowing that the Australian government would be bringing forward a regulation to freeze these assets. So we have decided, because of that situation, not to support Senator Brown’s amendments. We do not accept that our approach on this issue is inconsistent with our insistence on a regulation regime for listing UN declared terrorist organisations. The current United Nations list comprises organisations and individuals in respect of which UN member states have a number of obligations: freezing assets, preventing entry into or transit through their territory and preventing the supply of arms or related materiel.

We have proposed—and the Senate has accepted—that the Attorney-General should have the capacity, if there is a particular need to do so in the Australian context, to declare an organisation which is on the current or, for that matter, any future UN list to be a terrorist organisation for the purposes of this legislation. The Attorney-General will need to make the case for any such listing; the Attorney-General will need to persuade the parliament.

In the case of the UN Convention on the Suppression of Terrorist Financing, there is a very specific obligation that flows from our ratification of it—that is, to freeze the assets of any organisation listed pursuant to the convention. That is our obligation as a member state of the United Nations, and that is an obligation that we believe Australia should take seriously. We accepted that obligation when ratifying the convention, and we accept it in passing this legislation that gives domestic effect to our obligations under the United Nations convention. It is for those reasons that the opposition will not support this amendment from Senator Brown; and it is in those circumstances—and I commend the case that has been mounted in relation to this—that we do not consider it necessary to require a disallowable regulation to give effect to those obligations.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.02 a.m.)—I have here the lists which have been the subject of regulations in relation to the freeze listings, and I seek to table those lists. I hasten to add, however, that we are trying to get the other list, which will indicate those which are not on the list of the United Nations Security Council. What we have here is the total list—some of these are on the United Nations Security Council listing and some are not. We will get, as soon as we can, an indication of those which are not but, in the meanwhile, I seek to table these lists.

Can I say, in relation to Senator Faulkner’s remarks, that the government does not believe that it is being inconsistent in its ac-
tion; it believes that it is entirely consistent with the arguments it has put forward in other contexts. It has always said that domestic law should be the first point we turn to in relation to our commitments and responsibilities, but we do say that the content of Australian law is, foremost, a matter for the Australian parliament, and how we implement our treaty obligations is a matter for the Australian parliament. In this case, the government considers that compliance with our obligations relating to freezing of assets pursuant to Security Council resolution 1373 is a crucial contribution to international efforts to combat terrorism, and we think it is essential that we put that into domestic law. We believe that we are being entirely consistent, but we acknowledge the opposition’s position on this.

Senator BROWN (Tasmania) (11.04 a.m.)—So do I, and I am horrified. The government is about to produce a list of organisations which have not been nominated by the Security Council, which are proscribed in Australia, already—presumably, no entirely domestic organisations, but that is coming next. I ask the opposition, ‘What are you going to do about that?’ The opposition says, ‘We will vet organisations listed by the Security Council—that is what we are going to do here. But we are going to have no power to deal with ones not listed by the Security Council.’ It is compounding the situation. The very organisations I think we need to be most worried about—that is, those not listed by the Security Council, but proscribed by the executive here—should be vetted by parliament. Labor’s outcome will be the reverse. The ones listed by the Security Council, we vet; the ones not listed by the Security Council, but which the government proscribes, we do not vet. What an extraordinary situation.

Now we have Labor adopting the government’s argument of last night, which is that, in some way or other, parliamentary overview in this country would be flouting Security Council Resolution 1373, which says to proscribe these organisations as fast as you can. That is hogwash. What is expected is that parliaments—the elected democratic systems—will deal with these matters as expeditiously as possible. As I said last night, let the government proscribe an organisation at the behest of the Security Council and, if it must, with Labor support, without listing from the Security Council, immediately freeze their funds, but make that reviewable by the parliament. Because, mark you me, this is going to cause trouble down the line. There is going to be enormously contentious proscribing and banning of organisations—and individuals—here in Australia, through freezing their assets, without them being consulted or even knowing about it, with no parliamentary review. There must be parliamentary review.

What has happened to Labor on this? Labor has spent the last two days arguing that proscription is dangerous if left in the hands of the executive. Suddenly, not only has it fallen into line but the worst aspect of this emerging power of the executive—which is to proscribe organisations in this country that have not been mentioned by the Security Council—is that we get no overview at all; it is left to the executive and there is no appeal. We will have a debate some time down the line because some individual or organisation has been falsely proscribed and has had all their assets frozen by the executive and the parliament will not have the power to do anything about it, except to debate it. I ask the Labor Party to think again. We should not be allowing that to go through. This parliament is the supreme power in our democracy, not the executive, and it is a very dangerous situation if it is left to the executive. I am astonished that the Labor Party is going to support the government in doing that.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.08 a.m.)—It is quite simple: the Labor Party is supporting the government to give a United Nations convention force in domestic law. That is what the Labor Party is doing and that is in accordance with the traditions and values of our party. I am not ashamed to say so and I am not ashamed to see the Labor Party support the government if they are doing the right thing in seeing Australia, as a member state of United Nations, play its role as a member of the international community to ensure that we do something about the financing of terrorist
organisations. If it means that this parliament acts in accordance with a United Nations convention to ensure that we freeze the assets of terrorist organisations, I say, quite simply, good.

Senator BROWN (Tasmania) (11.09 a.m.)—What nonsense. The Green amendments would do nothing to tramnel the empowerment of the United Nations resolution, to give force to the international agreement on this—nothing at all—except to have this parliament oversee it. Labor is saying, ‘We won’t have the parliament oversee it.’ The Greens are saying, ‘We will have the parliament oversee it.’ Whichever option you take, it does nothing to alter the fact that a UN resolution is being enforced through this legislation. The implication that somehow or other the Greens amendments are going against the wishes of the United Nations is patently wrong.

The TEMPORARY CHAIRMAN (Senator Calvert)—The question is that Australian Greens amendment (6) be agreed to.

Question negatived.

Senator BROWN (Tasmania) (11.10 a.m.)—by leave—I move Australian Greens amendments (1), (7), (8) and (9) on sheet 2513 revised:

(1) Clause 2, page 2 (table item 6), omit the table item, substitute:

5A. Schedule 3, item 1A

| 30 days after the day on which this Act receives the Royal Assent |

6. Schedule 3, items 1B and 1

| A single day to be fixed by Proclamation, subject to subsection (5) |

(7) Schedule 3, item 1, page 18 (lines 28 to 33), omit subsection (3).

(8) Schedule 3, page 16 (before line 6), before item 1, insert:

1A After section 6

Insert:

6A Repeal of Charter of the United Nations (Anti-terrorism Measures) Regulations

The Charter of the United Nations (Anti-terrorism Measures) Regulations are repealed.

(9) Schedule 3, page 16 (before line 6), before item 1, insert:

1A After section 6

Insert:

6B Repeal of Charter of the United Nations (Anti-terrorism—Persons and Entities Lists)

The Charter of the United Nations (Anti-terrorism—Persons and Entities) Lists are repealed.

I have covered the absolute vital need for this suite of amendments. Through the Statutory Rules 2001 No. 297, the government has the ability to freeze the assets of and to backdoor ban organisations and individuals in Australia who are not listed by the Security Council. Notwithstanding this legislation, that power—outside this legislation—remains if these amendments are not passed. The Greens are saying to the opposition: join the Greens in getting rid of that power which has already seen organisations not listed by the Security Council banned effectively in this country.

The Greens amendments are responsible. They say there is a list being made up of proscribed organisations; the amendments will give time for that list to be incorporated into regulations under this legislation, which is reviewable by parliament. The organisations and individuals that have been proscribed will not be rehabilitated through this process. The parliament will get a review.

What can I say about this? Labor is making a huge mistake again in joining the government to give the executive a power that it should never be allowed to have without parliamentary oversight. This legislation is going to haunt the country through its potential to be abused by the executive in the years to come. I remind Labor that, once the legislation passes, we certainly cannot revoke it or amend it in the term of this parliament because the House of Representatives will not allow it through. This is a major grab for power by the executive, without the authority of the parliament, and Labor is endorsing it. This is a mistake equivalent to that made by Labor in the run-up to the last election when
it rubber-stamped what the government was doing about asylum seekers. I do not think that Labor’s constituency, when it gets to know about it, is going to appreciate it. I do not think Labor has thought this through. The argument it is putting forward is inconsistent with the voting power it is now manifesting at this vital stage in dealing with this piece of legislation.

We on the crossbench, and I know the Democrats support this point of view, do not have the numbers. But the argument is clear—it has not been rebutted; it cannot be rebutted—that we are transferring to this executive, through regulatory power outside this legislation which Labor is now endorsing, the power to proscribe organisations and individuals in this country without reference to them and to knock them out of business, with no review. We should not be doing that. I again appeal to the Labor Party to support the Greens amendments.

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (11.14 a.m.)—I assure Senator Brown that the Labor Party—both its membership and its constituency—has traditionally taken the view that Australia should act as a good international citizen. Whenever the Labor Party is faced with the question of whether domestic legislation should give an Australian government the necessary powers to fulfil our obligations under United Nations resolutions or conventions, we say yes. I can say that quite proudly, Senator Brown. That is what this legislation does: it gives force in domestic law to the United Nations International Convention for the Suppression of the Financing of Terrorism. Why should anyone in this parliament be ashamed, for one minute, of ensuring that we do something about freezing the assets of terrorist organisations? The legislation we have before us enables Australia to play its part as a member state of the United Nations—and play it properly. So I can assure Senator Brown—and I can certainly assure this committee—that this is very much in accordance with Labor values and principles. We will defend our role in ensuring that the international community works tirelessly to combat the threat of terrorism. This is a part—perhaps only a small part but nevertheless a very important part—of that challenge. It is one that the Labor Party is very comfortable being part of.

**Senator BROWN** (Tasmania) (11.17 a.m.)—I can tell Senator Faulkner and the Labor Party why they should be ashamed: this is not about the implementation of United Nations resolutions, because the Greens amendments do not alter that implementation; they say that there should be parliamentary oversight. The argument here is not about whether we are implementing a UN resolution. It is about whether we transfer power from the parliament to the executive—to a minister of this or some future government—to ban organisations through the back door in this country. Is that in accord with Labor principle? Is this the modern Labor Party platform we are dealing with that says, “Transfer the power to the executive; sideline the parliament”? That is what is happening here in the critical matter of proscription of Australian based organisations.

I thought that Labor was opposed to this. I thought its principle was to oppose government proscription. As of today, that principle has fallen by the wayside. As of today, Labor supports the conservatives in giving the minister the ability to ban—without reference to parliament—organisations and individuals in this country on the basis that they may be a threat to communications or public health and safety. That is it in a nutshell. Labor is making one hell of a mistake here. Labor is letting down a century of advocacy of the rights of organisations to function—and function robustly—in this country with- out proscription. Labor knows that, if organisations and individuals go over the boundary into terrorism, there are strong criminal sanctions against murder, injury, destruction and rape—the whole gamut of violent and dastardly things which our community regards as terrorism—which apply. Those powers are already there.

Today we are not talking about those things; today we are talking about the executive—a minister—having the power to proscribe and ban people and organisations in this country because, in his view, they are a threat to public health and safety or because they are threatening or interfering with
communications such as email flow and web sites. That is without reference to parliament; without any parliamentary oversight; and without any comeback to the fulcrum of democracy, the defence of civil and political liberties and democratic rights, which is this parliament. We are not a country run by the executive. We are run by the parliament. The people empower the parliament. They vote in the parliament—not the executive; not the minister. They are appointments made thereafter. I thought that Labor saw the elected parliament in the same terms in which I am portraying it now. But not any more. Now the executive has the right to proscribe and ban individuals and organisations. Remember that ministers are going to make these decisions on the basis of politics, amongst other things. Shame on the government for cutting parliament out of a review of this banning mechanism. Double shame on the Labor Party for backing it.

Senator HARRIS (Queensland) (11.21 a.m.)—I rise to speak briefly in support of the Greens amendments. One Nation would go one step further than Senator Brown’s comments. If we had the situation where the Australian people had their rightful right of appeal to the Governor-General, that would lessen but not remove the argument that Senator Brown has put forward. Where the situation becomes absolutely critical is that the Australian people no longer have that right of appeal against the government or the executive government when they are appeased. Where the situation becomes absolutely critical is that the Australian people no longer have that right of appeal to the Governor-General. The Governor-General clearly states in written form that he takes his advice from the executive government. So we are missing an extremely important part of our political scheme—that is, the separation of powers between this parliament, the executive government and the judiciary; I add to that the Governor-General. Our Constitution clearly sets out that it is not the executive government that advises the Governor-General what to do, it is the other way round. If Australians had that right of appeal against the government or the executive government when they are appeased, this place would find that it would not have so much anxiety in the transfer of power to the Governor-General.

Senator Faulkner previously referred to these amendments as removing the ability to seize the assets of terrorists. If that is the case, very simply move an amendment to separate those two powers. There is no need for the ability to proscribe an organisation to be closely aligned and tied to the ability to seize assets. Again, there has to be a separation of power and of the functions between the people who hold that power. I very clearly put on the record that One Nation totally objects to the Attorney-General and/or the executive government having the outright power to proscribe any organisation in this country. We will support the Greens amendments to remove that ability.

Question put:
That the amendments (Senator Brown’s) be agreed to.
(The Chairman divided. [11.29 a.m.]
(Ay es…………… 12
Noes…………… 51
Majority……… 39

AYES

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

NOES

Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Carr, K.J.
Chapman, H.G.P. Cook, P.F.S.
Collins, J.M.A. Cooney, B.C.
Coonan, H.L. Crossin, P.M. *
Crane, A.W. Denman, K.J.
Crowley, R.A. Ellison, C.M.
Eggleston, A. Ferguson, A.B.
Evans, C.V. Gibbs, B.
Fordshaw, M.G. Herron, J.J.
Heffernan, W. Hogg, J.J.
Hill, R.M. Knowles, S.C.
Hutchins, S.P. Ludwig, J.W.
Lightfoot, P.R. Macdonald, J.A.L.
Landy, K.A. Mason, B.J.
Mackay, S.M. McKiernan, J.P.
McLucas, J.E. Payne, M.A.

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Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.33 a.m.)—by leave—I move government amendments (1), (2), (3), (19) and (20) on sheet DT313:

(1) Title, page 1 (line 2), after “1995,”, insert “the Extradition Act 1988.”.

(2) Clause 2, page 2 (table item 4, 2nd column), omit “The day on which”, substitute “Immediately after the start of the day after”.

(3) Clause 2, page 2 (at the end of the table), add:

1. Schedule 4 Immediately after the start of the day after this Act receives the Royal Assent

(19) Schedule 3, item 1, page 21 (after line 10), after section 22, insert:

22A Regulations on procedures relating to freezable assets

(1) The Governor-General may make regulations relating to procedures relating to assets that are, may be or may become freezable assets.

(2) The regulations may provide for procedures relating to information (including personal information) relating to such assets in circumstances involving:

(a) a listing, or proposed listing, of a person, entity, asset or class of asset under section 15; or

(b) a question whether an asset is or may become a freezable asset; or

(c) an application for, or grant of, permission under section 22.

(3) Subsection (2) does not limit subsection (1).

(20) Page 22 (after line 23), at the end of the Bill, add:

Schedule 4—Amendment of the Extradition Act 1988

1 Section 5 (after subparagraph (a)(ii) of the definition of political offence)

Insert:

(iiia) Article 2 of the International Convention for the Suppression of the Financing of Terrorism, done at New York on 9 December 1999; or

In general there are a number of aspects to these amendments which are similar. Government amendment (19) will enable the Governor-General to make regulations under the Charter of the United Nations Act 1945 setting out procedures to be followed in relation to the freezing of assets. I have dealt with this at length during the previous debate on Greens amendment (6) and I do not think I can add anything further in relation to that. Government amendment (2) would make a minor amendment to the commencement provision to ensure that the financing of terrorism offence commences immediately after the headings and definitions relevant to that offence; it is merely a technical amendment.

Government amendments (1), (3) and (20) deal with the definition of political offence. Amendment (20) will ensure that financing of terrorism offences are excluded from the definition of political offence in the Extradition Act 1988 and, by reference, the Mutual Assistance in Criminal Matters Act 1987. This amendment implements Article 14 of the International Convention for the Suppression of the Financing of Terrorism. Amendment (1) amends the long title of the bill as introduced to include a reference to the Extradition Act 1988. That is a technicality, if you like. Amendment (3) amends clause 2 of the bill as introduced to provide that the proposed amendments to the Extradition Act will commence at the same time as the financing of terrorism offences. This brings those amendments to the Extradition Act into sync with the other amendments. I commend the amendments to the Senate.

Question agreed to.

Bill, as amended, agreed to.

CRIMINAL CODE AMENDMENT (SUPPRESSION OF TERRORIST BOMBINGS) BILL 2002

Bill—by leave—taken as a whole.
The TEMPORARY CHAIRMAN (Senator Hogg)—The question is that the bill stand as printed.

Question agreed to.

Bill agreed to.

BORDER SECURITY LEGISLATION AMENDMENT BILL 2002

Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.38 a.m.)—by leave—I move government amendments (1) to (5):

(1) Schedule 4, item 14, page 14 (lines 20 to 29), omit the definition of terrorist act, substitute:

terrorist act means an action or threat of action where:

(a) the action falls within subsection (4) and does not fall within subsection (4A); and

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

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

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

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

It is immaterial whether the action or threat, or any part of the action or threat or anyone or anything affected by the action or threat is within or outside Australia.

(2) Schedule 4, item 15, page 15 (line 3), after “serious harm”, insert “that is physical harm”.

(3) Schedule 4, item 15, page 15 (after line 4), after paragraph (4)(b), insert:

(ba) causes a person’s death; or

(4) Schedule 4, item 15, page 15 (after line 17), after subsection (4), insert:

(4A) For the purposes of the definition of terrorist act in subsection (1), action falls within this subsection if it:

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

(b) is not intended:

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

(ii) to cause a person’s death; or

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

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

(5) Schedule 4, item 15, page 15 (line 18), omit “subsection (4)”, substitute “subsections (4) and (4A)”.

These amendments deal with the revision of the definition of a terrorist act in exactly the same way as we dealt with it earlier in the previous bills, the Security Legislation Amendment (Terrorism) Bill 2002 and the Suppression of the Financing of Terrorism Bill 2002. I remind senators that one purpose of these amendments is to implement recommendation 2 of the Senate Legal and Constitutional Legislation Committee report on the bill. There has been a great deal of discussion in relation to these amendments and there really is no point in taking that further.

Question agreed to.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.39 a.m.)—I move opposition amendment (1) on sheet 2553:

(1) Schedule 4, item 15, page 15 (lines 3 and 4), omit paragraphs (a) and (b), substitute:

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

(b) causes serious damage to property;

or

It is a similar amendment that has found favour when we have proposed it in previous legislation so I will leave my remarks at that.

Question agreed to.

Bill, as amended, agreed to.

TELECOMMUNICATIONS INTERCEPTION LEGISLATION AMENDMENT BILL 2002

Bill—by leave—taken as a whole.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.40 a.m.)—The government is opposing schedule 1, item 15 in the following terms:

(2) Schedule 1, item 15, page 6 (line 30) to page 7 (line 33), to be opposed.

Item 15 of the bill deals with stored communications. The government is of the view that these provisions merely reflect the current requirements and practice in relation to stored communications and clarify the application of the act to modern communication services. The government remains of the view that the approach adopted in the bill with respect to stored information is appropriate. However, to avoid holding up this important package of legislation, the government has agreed to remove these provisions from the bill and to deal with the issue at a later date. This will allow the relevant issues to be fully considered. The government will be introducing a separate bill with these amendments at a later date.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.41 a.m.)—The government has indicated that it will at this stage excise from the bill these provisions. Of the whole terrorism package that the parliament has dealt with, these are amongst the most controversial provisions contained in that package. I think it is a step forward that the government has proposed not to proceed with them at this point. I note the minister’s comment that they will be brought back in legislation at some time in the future. If that is the case, I think that will require a close examination and scrutiny in the Senate committee system and of course will inevitably lead to a detailed examination in the committee of the whole as well. But the opposition will be opposing the proposal that these parts of the bill stand as printed. I support removing the provisions, which means I am going to vote against the question before the chair.

Senator GREIG (Western Australia) (11.43 a.m.)—Likewise, we Democrats support removing for the time being at least this particular section of the legislation. I would add, however, our very real anxiety and concern about the question of stored communications being a part of this bill. Access by security agencies is still an issue which we are strongly opposed to, at least in the sense of ensuring that an interception warrant—or at the very least, a search warrant—ought to be required to access stored communications. I think the question here is that there was some definitional debate around the question as to what constituted stored information. As I understand it, for example, if any of our spy agencies, our security agencies want to intercept telephone communications, whether that be landline communication or mobile phone communication, then an interception warrant is mandated, or at least required.

But this is not the case with stored communication. We heard evidence during the committee hearing from several people including the organisation Electronic Frontiers Australia, a civil libertarian Internet organisation. They argued that voicemail, email, and SMS text messaging via mobile phones, constituted to some degree stored information in that for some period of time—no matter how short—the communications being communicated from one point to another point using those technologies were stored either with some telephonic agency, if it were voicemail or, in the case of email, with an ISP.

The fear with many in the community, particularly those involved in the IT sector and peripheral sectors, is that we might have the scenario down the track where we see agencies having pretty much unfettered access to stored information, as it relates to voicemail, email and SMS messaging. To the extent that the government is going to revisit this—it is stated clearly that it will—we will retain our implacable opposition to having complete access to that and will argue at the time it comes up that either an interception warrant or a search warrant should be mandated. But we note that, for the time being, it has been removed from this bill, which will allow these bills to progress. To that extent, we support its excision and I, too, will be opposing that it stands for now on the paper.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.46 a.m.)—I move government amendment (1) on sheet DY325:
(1) Clause 2, page 2 (table item 2, column 1), omit “items 1 to 22”, substitute “items 1 to 14 and 16 to 22”.

This is consequential on that previous result which will remove item 15 from the date of commencement. It is a technical amendment.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.46 a.m.)—I move government amendments (2) and (1) on sheet DY322:

(1) Clause 2, page 2 (at the end of the table), add:

14. Schedule 3 The day on which this Act receives the Royal Assent

(2) Page 19 (after line 11), at the end of the Bill, add:

Schedule 3—Amendment of the Telecommunications (Interception) Act 1979 relating to emergency services calls

1 After subsection 6(2)

Insert:

Communications to emergency services numbers

(a) on which assistance in emergencies may be sought from:
   (i) a police force or service; or
   (ii) a fire service; or
   (iii) an ambulance service; and

(b) that is specified in regulations made for the purposes of this paragraph, or is in a class of numbers specified in regulations made for the purposes of this paragraph.

(2A) In this section, an emergency services number is a telephone number:

(a) on which assistance in emergencies may be sought from:
   (i) a police force or service; or
   (ii) a fire service; or
   (iii) an ambulance service; and

(b) that is specified in regulations made for the purposes of this paragraph, or is in a class of numbers specified in regulations made for the purposes of this paragraph.

(2B) If a person who is lawfully engaged in duties relating to the receiving and handling of communications to an emergency services number listens to or records a communication passing over a telecommunications system to the emergency services number, the listening or recording does not, for the purposes of this Act, constitute the interception of the communication.

These amend the Interception Act to allow the recording of communications to emergency services numbers. The effect of these amendments is to enable numbers such as 000 and the mobile phone or teletypewriter equivalents to be prescribed in regulations as emergency service numbers and to permit police and emergency service organisations to continue recording calls to such numbers. The amendments have the effect of excluding from the definition of interception, the monitoring or recording of communications to emergency service numbers, when the recording or monitoring is done in association with the lawful receipt and handling of such communications. This is a result of advice received to the effect that there is a possibility that recording these calls may currently breach section 7 of the act, whenever a particular caller is unaware of the recording.

Item 1 defines emergency service numbers as, a number or class of numbers prescribed by regulation on which emergency assistance from police, fire or ambulance service can be requested. Once a number is prescribed as an emergency services number, the monitoring or recording of communications to these numbers will not amount to an interception, as long as it is performed by persons lawfully engaged in duties related to the receiving and handling of such communications.

We believe these amendments are sound.

The Telecommunications Interception Legislation Amendment Bill 2002 affects a range of amendments to the Telecommunications Interception Act 1979. These relate to the definition of interception offences for which warrants may be sought, agencies who may receive intercepted information, and the context and purposes for which intercepted information may be used and other amendments. We believe this government amendment is necessary and I commend it to the Senate.

Question agreed to.

Senator GREIG (Western Australia) (11.49 a.m.)—I move Democrat amendment (1) on sheet 2560:

(1) After Schedule 2, page 19 (after line 11), add:

Schedule 3—Amendments relating to public interest monitors

Telecommunications (Interception) Act 1979

1 Subsection 5(1)

Insert:
48A Public interest monitors to test the validity of applications

(1) Subject to subsection (2), before issuing a warrant a Judge or nominated AAT member must allow a public interest monitor to test the validity of an application for a warrant by:

(i) presenting questions for the applicant to answer, either orally or by affidavit; and

(ii) cross-examining any witness; and

(iii) making submissions on the appropriateness of granting the application.

(2) The Judge or nominated AAT member is not required to comply with subsection (1) if, in the opinion of the Judge or nominated AAT member, the circumstances of the case are such that it would be contrary to the interests of justice to allow a public interest monitor to test the validity of the application. However, if the Judge or nominated AAT member does not comply with subsection (1), the Judge or nominated AAT member must send a copy of the affidavit and the warrant to a public interest monitor.

48B Public interest monitors

(1) Public interest monitors are to be appointed by the Governor-General on the advice of the Minister. There must be at least one public interest monitor appointed in each State and Territory.

(2) The Governor-General may, on the advice of the Minister, fix the terms and conditions of the public interest monitors.

(3) A person must not be appointed as a public interest monitor unless he or she is enrolled as a barrister and solicitor, and has been so for not less than 5 years.

(4) A public interest monitor must not be a person who is, or is a member of, or who is employed in or by or to assist, any of the following:

(a) the Director of Public Prosecutions of the Commonwealth or of a State or Territory;

(b) a commission of a State or Territory formed for the purpose of combating crime or corruption or for protecting the criminal justice system;

(c) the police service of the Commonwealth or of a State or Territory.

(5) The functions of a public interest monitor are:

(a) to monitor compliance with Part V and Part VI; and

(b) to test the validity of an application for a warrant by:

(i) presenting questions for the applicant to answer either orally or by affidavit; and

(ii) cross-examining any witness; and

(iii) making submissions on the appropriateness of granting the application; and

(c) to gather statistical information about the use and effectiveness of search warrants; and

(d) whenever a public interest monitor considers it appropriate—to give to the Minister a report on any non-compliance by members with Part V or Part VI; and

(e) to provide for the annual reports information about the performance of his or her functions during the period covered by the report.

(6) An annual report must not include information that:

(a) discloses or may lead to the disclosure of the identity of any person who has been, is being or is to be investigated; or

(b) indicates a particular investigation has been, is being, or is to be conducted.

3 After paragraph 50(1)(c):

add:

; and (d) send a copy of the warrant to a public interest monitor.

This amendment relates to the question of a public interest monitor, a theme which we Democrats carry through in many elements of legislation which deal with, you could argue, the public interest and perhaps their
entitlement to stronger security concerning privacy. As I have said, the Democrats welcome the government’s decision to excise the controversial provisions dealing with delayed and stored communications from these bills. As I said, the provisions would have ensured—and we are likely to return to them—that delayed messages such as email, SMS messages and voicemail were not protected under the Telecommunications Interception Act. During the committee process—that was the Senate’s Legal and Constitutional Legislation Committee—the federal Privacy Commissioner argued the following:

There seems to be little justification for reducing the privacy protection of a communication as intimate as voicemail message or SMS in comparison with a live communication, simply because the transmission of the former is temporarily delayed.

We Democrats agree with that. I understand the government wishes to pursue the issue through separate legislation. If the government feels a clarification of the powers of various authorities to access certain communications is necessary, we do not object to that. However, we will object to any attempt to establish a legislative regime that would make it possible for authorities to access email and other communications without a warrant. The government has indicated that its objective was to ensure that these communications could be accessed by other lawful means such as a search warrant. The phrase ‘other lawful means’ is vague and we believe that there are processes by which the government would have been able to access such communications that are far less accountable and rigorous than a warrant application process. No doubt, we will revisit these issues when the government reintroduces those particular provisions in a forthcoming bill.

The amendment I have moved addresses the telecommunications interception warrant application process. I accept that the nature of law enforcement requires a degree of secrecy and that it is not always appropriate to insist upon levels of transparency and accountability that are justified in other areas. Nonetheless, telecommunication intercepts are an intrusive violation of civil liberties when used improperly. The possibility of detecting their use, and thus exposing their misuse, means that we must be vigilant at the point at which interception warrants are issued. We Democrats suggest a modification to the current process that would allay concerns about the misuse of telecommunications interception powers while not compromising the secrecy or effectiveness of law enforcement operations. It is based on the procedure that currently operates in Queensland in relation to the granting of search warrants. Part 10 of the Queensland Police Powers and Responsibilities Act 1997 establishes the position and powers of a public interest monitor. The monitor has a range of responsibilities under the act. Of particular relevance is the requirement that the monitor appear at any hearing of an application to a Supreme Court judge or magistrate for a covert search warrant or surveillance warrant and to test the validity of the application by means including presenting questions for the applicant to answer, cross-examining any witness who has sworn an affidavit or given oral evidence in support of the application, and making submissions on the appropriateness of granting the application.

The current process by which telecommunications intercepts are approved is one-sided and unfair. Typically, an application is made to an eligible member of the AAT, who makes a decision as to whether to approve the intercept based solely on representations made and evidence presented by the relevant law enforcement agency. The rights, interests and privacy of citizens are deeply affected by these quasi-legal proceedings in which they are not represented. The covert nature of telecommunications intercepts obviously precludes direct legal representation of subjects, but that does not mean that their rights and interests cannot be represented by an independent party. The design of our legal system reflects the view that justice is best served by adversarial proceedings in which all interested parties are represented before an independent arbiter. It does concern me that there is no procedure by which representations can be made on behalf of prospective subjects of telecommunications intercepts as to the lawfulness of issuing warrants or the soundness of the evidence on which the warrant applications are based.
The success of the public interest monitor in Queensland confirms that a similar system in relation to telecommunications intercepts would be practical, worthwhile and cost-effective. The number of warrants currently issued is not so great as to require any significant bureaucratic structure. I would expect that appointing one or perhaps two barristers in each state or territory to appear as required and be remunerated for their services by way of an hourly rate would enable a monitor to participate in the vast majority of warrant applications. Obviously, where exceptional circumstances require the immediate determination of a warrant application and a monitor is unavailable to participate in proceedings, it is appropriate that the application proceed. However, the monitor should be required to review the case as soon as possible.

If the government is not in a position to support this proposal now, I would encourage it to consider the proposal as part of the process of re-examining the excise provisions in this bill dealing with delayed messages. I would also encourage the government to consider whether this model could be applied to the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002. We believe that the public interest monitor could play an important role in the warrant application process that is proposed under that bill. Implementing this proposal would go some way to assuring the community that ASIO will be appropriately accountable in exercising the extraordinary powers the government wishes to confer on it. Of course, this is not to suggest that the Australian Democrats are in any way supportive of giving ASIO the power to detain non-suspects incommunicado without charge. We think that is a totally inappropriate power. However, we do believe that, if extraordinary powers are to be given to ASIO, then it must be fully accountable. I commend this amendment to the Senate and, should it fail on this occasion, would encourage senators to give some thought to supporting the proposal at a later stage.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.57 a.m.)—The situation we face in relation to this bill is that the government has removed amendments dealing with stored data, emails and SMS. I think most senators would agree that what is left in the Telecommunications Interception Legislation Amendment Bill 2002 is relatively uncontroversial. It deals with terrorism offences, arson, child pornography and the 000 interception and state crime bodies. Those issues have been dealt with by the Senate committee. The matter before the chair, proposed by the Australian Democrats, has not been dealt with. I think the Democrat proposal is a significant one, but I do respectfully suggest to the Democrats that it requires some close scrutiny. I note the point that Senator Greig makes that a similar regime for a public interest monitor actually exists in Queensland and, as I understand it, appears to operate quite effectively.

I say to the Democrats and the government that it seems to me that the sensible way for us to go is to deal with this when the legislation that has been flagged by the minister comes forward. That legislation will obviously need to be re-examined closely by the Senate committee. I would hope that the government and the Democrats would be able to facilitate committee examination of this proposal as well. That might be a sensible way forward on this particular matter. It is an amendment that requires constructive and close examination. It is not a frivolous matter, and I think there is an opportunity for the Senate in its committee system to give the proposal that sort of examination. I would be keen to see the Senate committee explore the proposal when the new bill comes forward. I think that should include an examination of the Queensland experience of similar provisions because the scope of this proposal across the Telecommunications Interception Act is so significant.

It is a significant initiative in the view of the opposition and it does require scrutiny by the Senate committee. For those reasons I am not willing to commit opposition support to the proposal at this stage. But I do think there is a way forward on this. I think delaying full consideration of this matter until the government reintroduces its proposals for emails and SMS messages will actually give
a good outcome. It will give the parliament an opportunity to examine the legislation that the minister has flagged but will also give us an opportunity to have a thorough examination of what Senator Greig proposes. I certainly would facilitate a reference that enables that to occur as the matter is dealt with in the Senate committee system. I do not know if that gives Senator Greig any comfort, but I do think it is a sensible way forward in the circumstance. While we are not going to the merits of this Democrat amendment, I indicate that I think it is a matter that deserves thorough and constructive consideration. The opposition will not support the amendment at this stage. I really do think there is an appropriate way for this to be dealt with and I think this amendment is important enough to warrant that level of examination.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.01 p.m.)—The government oppose Democrat amendment (1). We have foreshadowed forthcoming legislation which no doubt, when it is brought into the Senate, will be subject to a Senate committee’s scrutiny.

Senator Faulkner—Yes, it will. Maybe the amendment could go there too. Wouldn’t that be a way of dealing with it?

Senator ELLISON—As Senator Faulkner says, it could well be dealt with there. Whilst I am dealing with this, I will just say that the government believes that there are very good safeguards in place in relation to the issuing of an intercept warrant. Without detaining the committee, I will just touch on that. It should be remembered that warrants can be sought only in relation to serious offences such as murder, kidnapping and drug trafficking. Evidence must be adduced to satisfy a nominated judge or member of the Administrative Appeals Tribunal that there are sufficient grounds to justify the grant of a warrant to undertake the telecommunications interception. The judge or AAT member specifically considers, when dealing with this issue, the privacy matters associated with each IT warrant application. If that judge or AAT member is not satisfied as to the seriousness of the offence justifying the overriding of privacy protection of the individual concerned, the warrant is not issued. I add that there are detailed reporting requirements made of the ombudsman in relation to these powers.

So, for the record, the government would stress that there are strong safeguards in relation to the interception warrants which are issued. In addition, the Attorney-General inspect each warrant on the general and special warrants register, which is prepared by the AFP. That records the details of every warrant issued in the relevant state, territory and Commonwealth jurisdiction. An annual report is tabled in parliament on the operation of the Telecommunications (Interception) Act and monitors the issue of warrants. There are strict requirements on which agencies may receive intercepted information and the purposes for which that intercepted information may be used. We believe that there are strong safeguards in place. I do believe that perhaps the Democrat concerns can be addressed at another time, when I am sure that this matter will be raised again. For those reasons, the government opposes the Democrat amendment.

Question negatived.

Bill, as amended, agreed to.

The Security Legislation Amendment (Terrorism) Bill 2002 [No. 2], the Border Security Legislation Amendment Bill 2002 and the Telecommunications Interception Legislation Amendment Bill 2002 reported with amendments; the Suppression of the Financing of Terrorism Bill 2002 reported with amendments; the Suppression of the Financing of Terrorism Bill 2002 reported with amendments and with an amendment to the title; and the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002 reported without amendment; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.04 p.m.)—I move:

That these bills be now read a third time.

 Senator BROWN (Tasmania) (12.04 p.m.)—I am forced into the position of opposing this terrorism legislation because at the kernel of the legislation, as now passed and supported by both the opposition and the government, is the ability of the executive,
without the authority of the parliament, to proscribe organisations in Australia and to proscribe individuals in Australia. Moreover, it can do that on the basis that these individuals or organisations were in some way a serious threat to health and safety or to communications in the country. That is such a broad brush. This is such an enormous jump in power to the executive without the overview of the parliament. I can hardly believe that the opposition has supported the move to give the executive that power without reference to the parliament and without the overview of the parliament.

The opposition argued very strongly in the course of the debate that the proscription of organisations has been a threat to our democratic system right down the line in history, yet it caved in in this debate and gave the government the power not only to proscribe organisations in the country but to do so without reference to the parliament or without the overview of the parliament. I am talking here about organisations outside those listed by the United Nations Security Council. The ability was here to pick up on the power which the government has taken unto itself to proscribe organisations under resolution 1373 of the Security Council, but which are not listed by the Security Council, and make sure that when that happened the parliament had oversight. But now organisations can be banned because a minister of the government says that they are infringing these very widely defined, ultimately nebulous, tenets of potential or real terrorism and the parliament and the people proscribed have no comeback.

Finally, let me say this: we are in an age where terrorism has reared its ugly head for more than some decades, and it has to be dealt with. This nation has very strong criminal laws and very strong surveillance laws to deal with people who are in the business of what the average Australian sees as terrorism. We certainly did not need to give this sledgehammer to the government to deal with the explosive nut of terrorism. We did not need to disempower parliament in its oversight of the banning of organisations in this country. The Labor Party should not have allowed that, but they have. The consequences may not show up for a long time, but sooner or later somebody in Australia is going to be very wrongfully tarred with the brush of terrorism; some group in Australia—an environmental group, a union, a group fighting for social justice, an indigenous group or a group wanting to help asylum seekers—is going to be labelled as terrorist by this government, and there is no comeback. They will have their assets frozen, their credit cards taken away and they will be put out of business as individuals and/or as organisations.

This parliament has had its teeth to review and to veto that situation extracted because the Labor Party caved in, gave the government that power and turned down the Green amendments which would have empowered the parliament. This legislation disempowers the parliament and gives mighty strong powers, untoward powers, to the executive. Now that the executive has those powers, under the authority of the Attorney-General any minister has those powers, because the Labor Party gave them to the government. We have strong powers to deal with terrorism in this country. We could have honed them, while abiding by the wishes of the United Nations Security Council and staying within the bounds of the resolutions of the Security Council and the United Nations, but this package of bills goes way beyond that, and we are opposed to it.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.10 p.m.)—The Australian Labor Party has formed government at the time of the two greatest military conflicts of the last century, the First and the Second World Wars. Labor has always had the determination and the ability to defend Australia’s interests. When the First World War broke out, Australia turned to Labor. Andrew Fisher was elected Prime Minister in September 1914, determined to defend Australia’s interests—and, of course, those of the British Empire—and fight to the last man and the last shilling. Labor was determined to do so without attacking Australians’ liberties, without introducing con-
scription. A bitter campaign saw the pro-
conscriptionists leave the Labor Party, and
Labor of course was badly damaged. But two
conscription plebiscites were opposed by
Labor and defeated. Labor’s position that
security and freedom are not incompatible
was proved right when Australia’s war effort
was sufficient without conscript troops.

The Second World War saw Australia turn
to Labor to lead the country through the
greatest threat to our peace and security that
Australia has ever seen. John Curtin was
elected Labor Prime Minister in October
1941, two months before Japan entered the
war. Curtin and Labor’s determination to
defend our shores saw all the RAN ships in
the Mediterranean theatre as well as the 6th
and 7th Divisions return to defend Aus-
tralia—of course, over the protests of the Brit-
ish high command. In World War II, Austra-
lia faced direct territorial threat. The Labor
government of John Curtin saw that those
changing circumstances required a concerted
effort to protect and defend Australia. The
Curtin government prepared Australia for a
total war effort. Expanding the Army and the
Air Force and totally overhauling economic,
domestic and industrial policies, Curtin’s
Labor government guided Australia through
our country’s darkest hours. The Labor gov-
ernment at the time invoked Australians’
courage and resilience for an unremitting
effort to defend Australia, knowing that the
alternative was the Brisbane Line.

Labor was not prepared then and it is not
prepared now to surrender parts of Australia
as undefendable. In fact, it was a member of
Curtin’s wartime cabinet, Doc Evatt, who
turned some of that energy and determination
that we saw from the Curtin government in
defending Australia’s interests during the
war and postwar years to defending Austra-
lia’s freedoms in the 1950s. When Menzies
sought to ban the Communist Party, Evatt
fought the case in court and campaigned re-
lessly against Menzies’ referendum. De-
spite the personal cost and the political cost,
Evatt was not prepared to surrender Austra-
lia’s civil liberties any more than he or any-
one else in Curtin’s cabinet was prepared to
surrender Australia’s territory during the war
and any more than anyone in the Labor Party
is prepared to surrender Australians’ rights
and freedoms today.

The Labor Party also has a proud record in
terms of looking at Australia’s international
obligations. Australia has had peacekeepers
in the field with the United Nations continu-
ously for over 50 years. In Indonesia in
1947, Australians were part of the very first
group of UN military observers anywhere in
the world. The Chifley Labor government
worked hard to ensure a peaceful solution to
emerging and difficult regional issues, most
critically the conflict between Indonesia and
independence supporters and the Dutch co-
lonial administration. Australia took the con-
flict in Indonesia to the UN and, with India,
raised it in the United Nations Security
Council. The Security Council got the parties
to agree to a cease-fire. Australia was pre-
pared, and the Australian military observers
were the first in the field. That enables Aus-
tralia to say proudly that, under Ben Chif-
ley’s leadership, Australians’ boots were the
first on the ground in the history of UN
peacekeeping.

The Australian Labor Party has champi-
oned Australians’ freedoms for the past cen-
tury: freedom from discrimination, freedom
of information, freedom of association and
freedom of speech. They are all causes that
the ALP has defended. Through leadership in
times of war, the ALP has protected Austra-
lia’s freedoms from external attack. In times
of peace, the ALP has protected our free-
doms from internal attack. The challenge that
we face in this parliament at this time with
the threat of international terrorism is to get
the balance right between ensuring a tough
response to the terrorists and to terrorism and
ensuring, as we do, we do not sacrifice any
of the freedoms or liberties that Australians
hold dear. I can say proudly to the Senate
that Labor has always been vigilant in de-
fending Australia and Australia’s national
security, that Labor will be vigilant in the
fight against terrorism and that Labor will be
equally vigilant in protecting Australia’s
democratic values and freedoms. Labor is
absolutely committed to safeguarding both.

Australia also needs to play its part as a
good international citizen to combat interna-
tional terrorism. I have said that the govern-
ment have been extremely tardy in signing and ratifying the United Nations Convention for the Suppression of the Financing of Terrorism and the Convention for the Suppression of Terrorist Bombings, and we have criticised the government often for that. Two of the bills in the package before the parliament give domestic legislative effect to our obligations under these important United Nations conventions. Australia also supported United Nations resolution 1373, which was passed on 28 September last year. That resolution requires UN member states to prevent and suppress the financing of terrorist acts, to criminalise the wilful provision or collection of terrorist funds by their nationals and to freeze the assets of those connected with terrorism. It also asks member states to take necessary steps to prevent the commission of terrorist acts and to ensure that terrorists and their accomplices and supporters are brought to justice, that terrorist acts are established in domestic laws as serious offences and that the punishment duly reflects the seriousness of such acts.

This package of legislation gives effect to our obligations, as expressed in that United Nations Security Council resolution and in those two United Nations conventions. We support tough laws on terrorists but, as we have said and as I will say again, we insist that the laws target the terrorists. Terrorism does threaten our values; it does threaten Australia. But, in responding to the threat of terrorism, we must ensure that we do not overreach and threaten those very important values that we hold dear. Our response has to be strong, our response has to be effective and our response must be consistent with democratic values and freedoms. From the outset, as the Labor Party have approached dealing with this important package of legislation, those objectives have been uppermost in our minds. They remain in our minds as we now look at the final result of the parliament’s examination of these important bills.

Labor has successfully argued for amendments to the bills to correct what many believed to be—and Labor believed to be—serious flaws that they contained. Labor has argued its principles strongly and consistently through the Senate committee, through direct discussion with the government, in the Senate chamber, and in the public arena. We have achieved amendments, we have achieved very significant changes to this legislation, which will ensure that humanitarian groups will not be affected by the sloppily drafted new treason offences and that the definition of ‘terrorist act’ contains the necessary higher level of intent associated with terrorism and will target only terrorists. I can say that the original definition did not distinguish terrorist violence from offences or forms of violence covered in other acts. The opposition has successfully argued that the definition had to be improved by describing it as the use of violence to influence the government or to intimidate or coerce the public or a section of the public. We have also ensured that any possibility at all that protest or industrial action could be dealt with as terrorist offences has been removed.

We have also ensured that the offences in the legislation target only terrorist activities and require the prosecution to prove knowledge of and intent to commit a terrorist act. Most importantly, we have ensured that the government’s proposal to give the Attorney-General the power to ban organisations never sees the light of day. We have also been able to ensure that there will be a full, thorough, independent, public review of all these antiterrorism laws in three years time. I note that the government has removed the most controversial proposals, in relation to easier access to emails and SMS messages, from the legislation. The challenge, through all this debate, has been to ensure that Australia will have a comprehensive, strong and safe package of laws to deal with terrorism without sacrificing key elements of our democracy.

Labor have knocked out of these bills several very harsh measures which could have affected innocent Australian citizens. Not only have we got a strong set of counter-terrorism laws; now we will have a safe set of laws to counter terrorism. We have been very consistent through this debate. We have held the government in check over its proposals. The original bill proposed by Mr
Howard and Mr Williams was a shocker; but, over the past few weeks, the Labor Party have worked very hard to sort out their mess, and we believe that we have been able to achieve that.

If Australia is under threat we must respond, as the Labor Party have always responded throughout our history. I can say on behalf of my party that Labor will always defend Australia’s sovereignty. We will always defend Australia’s interests. We will not resile—we will never resile—from those responsibilities. We have always been at the forefront in defending Australia’s interests from whatever threat our interests may face, and we will be at the forefront in defending this country against the threat of terrorism. I say again: we will also be at the forefront in defending the rights and liberties of Australian citizens. That is the Labor way. And we believe that this important package of legislation, as it now stands, very significantly amended by the Senate, accords with those important, fundamental Labor values. I know that the Labor Party have got the balance right, and I do think, in this parliament, we have now got the balance right. I commend the amended package of bills to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Hogg)—Before I call Senator Harris, I advise the chamber that a request has been made, when the third reading of the bills is considered, that the Suppression of the Financing of Terrorism Bill 2002 be put first—the request came from Senator Greig—and then the other bills will be put in a subsequent motion.

Senator Greig—Just a point of clarification, chair: it was not the Suppression of the Financing of Terrorism Bill 2002 which I asked to be dealt with separately but the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002.

The ACTING DEPUTY PRESIDENT—All right. I am sorry we had that wrong, and I am glad I made the statement now. We will correct that and we will ensure that that bill is put first and then the remaining bills will be put when the question of the third reading is being determined.

Senator HARRIS (Queensland) (12.29 p.m.)—I rise to place on the record the reasons why One Nation will be voting against this package of terrorism bills in their amended form. It is not that One Nation supports terrorism in any way, shape or form. We most certainly do not and abhor the destruction that was carried out in New York and in Washington, at the Pentagon. We sincerely believe that there exists within Australia the ability for the government to carry out its function and that is to provide for the Australian people safe, secure and stable government. These bills are more about removing the rights of the Australian people than protecting them. We have only to look at the Telecommunications Interception Legislation Amendment Bill 2002 and the records that have been presented to this place that show over 750,000 interceptions in different forms of transmissions, over half a million of which were achieved without the issue of any warrant. That clearly shows to the Australian people that the ability to surveil the actions of terrorists exists.

If anybody in this chamber was watching SBS quite some weeks ago they would have seen a 1½ hour documentary on the process of Project Echelon, a system on which all the communications worldwide are intercepted. I will be the first one to put on the record that such a task may not be able to deliver the finite answers that we would like, but there is a willingness and a process that is there. Australia does share in data transfer with the United States, with England and with the European countries. We also do the same thing with New Zealand, and I suspect sadly that that surveillance also includes the surveillance of private phone calls. There is an existing facility for the government to provide that stable, safe and secure government that we request. If we look at the Security Legislation Amendment (Terrorism) Bill 2002, the bill continues to erode the rights of a law-abiding citizen—and I emphasise a law-abiding citizen—in this country.

The government did, as a result of public pressure, remove some of the most prescriptive sections of these bills and I commend the government for having gone part of the way. I also commend the government for actually listening to the messages that have been coming in from the Australian people.
But they most certainly do not go far enough in relation to the erosion of our rights as citizens in this country, and it is on that basis that One Nation will be opposing the passing of these amended bills in their present form.

Senator ROBERT RAY (Victoria) (12.34 p.m.)—Time is against us. Could I first of all, at the conclusion of this debate, publicly thank Senator Faulkner for all the effort he has put in on these security bills; also his staff Mr David Williams and Mr Antony Sachs for all the work they have put in. It is a tremendously hard, difficult and complex job and I want to congratulate them. I want to thank the Minister for Justice and Customs, Senator Ellison, for all the efforts he has put in on this legislation. He has been responsive to questions asked of him. I want to thank the Minister for Justice and Customs, Senator Ellison, for all the efforts he has put in on this legislation. He has been responsive to questions asked of him. He has engaged in the debate with relatively good humour, given the difficulty that he has had to face over the last 3½ days. I want to acknowledge the efforts that Senator Ellison has put in to get this package in the form that it is in. I would also make reference to the efforts put in by the minor groups in this chamber. I may not agree with all the efforts but the effort was put in to scrutinise this legislation. I would also make reference to the efforts put in by the minor groups in this chamber. I may not agree with all the efforts but the effort was put in to scrutinise this legislation. I want to briefly compare that and the behaviour here over these last 3½ days with the farcical way the five bills were pumped through in the House of Representatives on 13 March. For five bills this important to be pumped through when people virtually did not have a chance to read them, let alone analyse or suggest amendments, does not reflect well on that other chamber. As an observer, I wanted to thank all those members of the Senate and those staff members on all sides who must have put in an intense effort. These are not easy bills to analyse and then correlate across the board; so all round—for those staffers in particular who have probably lived and breathed this for the last few weeks—congratulations on your efforts.

Senator GREIG (Western Australia) (12.36 p.m.)—I would very much echo the sentiments of Senator Ray. Also, without getting into a backslapping exercise, I would like to commend the Senate generally for the way in which we have progressed these bills over the last 2½ to three days.

Senator Faulkner—I think we are into our fourth day.

Senator GREIG—It has been a bit of a blur. Senator—I have been on the road for two weeks. There is no suggestion there has been an ounce of filibustering here. Every amendment has been sincere and every contribution has been sincere. I would particularly like to thank Mr Jeff Malone from my staff for the work that he has put in. I would also like to pay tribute to the grassroots outside this building—the many community people, the many activists and, in many cases, the very people who might have fallen foul of this legislation had it been maintained in its original form. The grassroots campaign has been extraordinary, and I have spoken on this at a couple of rallies, as has Senator Brown.

In processing my emails recently—I counted approximately 500—many of them were form emails which had been circulated on a pro forma basis, but many were spontaneous and they were all passionate. I did not agree with all of them, but I did detect a general sense of concern about what the government was doing and fear about where it might be going. I would be the first to acknowledge that, for the most part, much of that fear and concern has been alleviated—although not entirely—through the process we have gone through, and I also acknowledge that the bills that we have before us now are considerably better than the originally introduced bills.

At the outset the Attorney-General, Mr Williams, said that Australia is at a very low risk of terrorism, which struck me as very odd. I could not understand why there was such haste, urgency and clumsiness in the process of introducing these bills if, indeed, Australia is at low risk of terrorism. Yet, ironically, I think it was the unseemly haste and clumsiness of the process which to the greatest degree sparked the community anxiety and campaign that followed. I am convinced that it was that clumsiness which led to the appalling definitions of terrorism, terrorist acts and terrorists, much of which has been corrected but not to the point where the Democrats could comfortably support it. We heard considered argument that the clumsy
definitions would have captured activists, aid agencies and humanitarian groups, and much of that has been corrected.

Proscription was clearly the core issue for many people and it certainly was for the Democrats. I am delighted at and pay tribute to the broader campaign that was cross-party and community as well which ultimately saw the autonomous proscription by the Attorney-General completely obliterated. That was shocking and I am surprised that the government ever gave consideration to it. The proscription process we now have, while not perfect, is certainly better, although we Democrats remain deeply concerned and strongly opposed to the notion of proscription generally and still maintain the argument that it is criminal behaviour that ought to be proscribed as opposed to proscribing organisations themselves as being criminal.

The Democrats maintain our ongoing and deep concern with the issue of stored information which, while not addressed today, will be addressed in the future, indicating that the government is still going to persist with that and our persistence will still be there to oppose it. A peripheral issue which, for me, arose during the broader debate on this was the question of rights and responsibilities and freedoms. That is why I did entertain the notion of a charter of rights. Senator Faulkner unkindly described me as being both cynical and arrogant—a little unfair—but, if nothing else, I was trying to generate some debate around the issue. I had a better and broader opportunity to do that last Friday when I had the honour of speaking at the Gilbert and Tobin Centre for Public Law in Sydney, where we heard both the Attorney-General’s contribution and the shadow Attorney, Mr McClelland’s contribution on the question of a charter of rights. If nothing else, one of the great positives that has come out of discussions on these bills over recent days and weeks has been what appears to be a renewed interest in the notion of a bill of rights or a charter of rights for this country—something the Democrats feel very passionately about.

On behalf of the Democrats, I would summarise by saying: well done; these bills are much better than they were, though not to the point where we could publicly support them. We still maintain strong opposition to what we would argue are loopholes in some of the definitions or what Senator Brown has described as perhaps a backdoor route for executive proscription via the Suppression of the Financing of Terrorism Bill 2002.

However, one bill we could unambiguously support in this suite of bills is the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002, which gives effect to the International Convention for the Suppression of Terrorist Bombings and creates offences of international terrorist activities using explosive or lethal devices. I think that would be hard to argue against and it has our support. That is why I have asked for that particular bill to be voted on separately as we get to the final of the third readings.

Senator COONEY (Victoria) (12.42 p.m.)—The debate on the terrorism bills has seen the Senate chamber at its best, and I want to pay tribute to the Senate and to all those who took part in the debate: Senator Brown with his usual great passion, Senator Greig, Senator Harris and, of course, Senator Ellison, who has performed quite outstandingly. I want to praise the Senate and everyone who has taken part in the debate.

I would like to pay tribute on this issue to my leader in the Senate, Senator Faulkner, because he has carried this forward not only splendidly in the chamber but also through the party process where most of these things are decided. Without giving too many secrets away, these bills could have had a very different conclusion to that which they have had. A fortunate conclusion has been reached through the efforts of a great many people, including the Attorney-General’s Department, as I mentioned earlier in the debate, but one of the outstanding figures in all this, if not the outstanding figure, has been Senator Faulkner.

Senator Faulkner—Thank you, Barney.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.43 p.m.)—I thank senators for their contribution and it is an historic day because for the first time we have in place a national framework for counter-terrorism measures—measures
which will serve Australia’s interests. I acknowledge the cooperation of the opposition in this regard. The government was always intent on achieving an effective legislative framework in relation to counter-terrorism measures and the amendments that were proposed by the government largely came from the Senate Legal and Constitutional Legislation Committee, which did an excellent job of looking at this legislation. The government should not be criticised for taking up the suggestions of Senate committees. It is a good thing if there is constructive criticism and it is taken up by government. What we have achieved here is an excellent result for Australia and historic legislation in enhancing our counter-terrorism measures.

The ACTING DEPUTY PRESIDENT (Senator McLucas)—As previously advised, the question now is that the Criminal Code Amendment (Suppression ofTerrorist Bombings) Bill 2002 be read a third time.

Question agreed to.

Bill read a third time.

The ACTING DEPUTY PRESIDENT—The question now is that 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 Telecommunications Interception Legislation Amendment Bill 2002 be read a third time.

The Senate divided. [12.49 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes..........  51
Noes..........  12
Majority......  39

AYES

Abetz, E.    Barnett, G.
Bishop, T.M.  Bolkus, N.
Brandis, G.H.  Buckland, G.
Calvert, P.H.   Campbell, G.
Carr, K.J.    Chapman, H.G.P.
Colbeck, R.    Collins, J.M.A.
Conroy, S.M.   Cook, P.F.S.
Coonan, H.L.   Crane, A.W.
Crossin, P.M.  Crowley, R.A.
Denman, K.J.  Eggleston, A.
Ellison, C.M.  Evans, C.V.
Faulkner, J.P.  Ferguson, A.B.
Ferris, J.M. *  Forshaw, M.G.
Gibbs, B.      Harradine, B.
Herron, J.J.   Hill, R.M.
Hogg, J.J.     Hutchins, S.P.
Kemp, C.R.     Knowles, S.C.
Ludwig, J.W.   Lundy, K.A.
Mackay, S.M.   Mason, B.J.
McLucas, J.E.  O’Brien, K.W.K.
Patterson, K.C. Payne, M.A.
Ray, R.F.      Reid, M.E.
Schacht, C.C.  Scullion, N.G.
Sherry, N.J.   Tchen, T.
Troeth, J.M.   Watson, J.O.W.
West, S.M.

NOES

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

* denotes teller

Question agreed to.

Bills read a third time.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of Father Michael Tate AO, former senator for Tasmania.

Honourable senators—Hear, hear!

BUSINESS

Consideration of Legislation

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

That government business order of the day no. 12 (International Criminal Court Bill 2002 and a related bill) be postponed till after consideration of government business order of the day no. 15 (Taxation Laws Amendment Bill (No. 2) 2002).

Senator LUDWIG (Queensland) (12.53 p.m.)—Madam President, before you put the question, was that bill on the original list?

The PRESIDENT—It is No. 12 on the original list and in accordance with the order we would proceed immediately with it. The proposal is that it go from No. 12 until after No. 15, the Taxation Laws Amendment Bill (No. 2).
Senator LUDWIG—I am sorry, Madam President. I was just making sure it was one of those bills that was originally listed on the motion for the hours.

The PRESIDENT—Yes.

Senator LUDWIG—Thank you. Then it is agreed.

Question agreed to.

AUSTRALIAN PROTECTIVE SERVICE AMENDMENT BILL 2002

Second Reading

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

That this bill be now read a second time.

Senator LUDWIG (Queensland) (12.55 p.m.)—I rise to speak to the Australian Protective Service Amendment Bill 2002. I know that a number of bills have been scheduled during this time and I shall be as brief as I can. A number of points need to be made. The Senate Selection of Bills Committee recommended, and the Senate subsequently agreed to, the referral of the provisions of the Australian Protective Service Amendment Bill 2002 to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 13 June 2002. Referral was contingent upon the introduction of the bill into the House of Representatives and this occurred on 16 May 2002.

The primary purpose of the Australian Protective Service Amendment Bill 2002 is to create the Australian Protective Service as a statutory authority, with the Commissioner of the Australian Federal Police as the agency head. This would result in the commissioner being the head of both the AFP and the APS, which would remain separate agencies. So while the second reading speech describes the APS becoming an operational division of the Australian Federal Police, the new arrangements change the CEO in effect. The bill also updates the language used in the initial Australian Protective Service Act 1987 in order to make it clear that there are two types of Australian Protective Service employees: Protective Service officers and Australian Public Service employees. This distinction is relevant because the act gives Protective Service officers a range of powers, including arrest powers, search powers and the authority to carry a firearm. These powers are not available to an Australian Public Service employee in the Protective Service. These employees undertake administrative and similar duties and therefore do not require the power given to Protective Service officers.

This bill also broadens some of the delegation powers of the Director of the Australian Protective Service. Currently the act permits the director to delegate his or her powers only to another Protective Service officer; the director cannot currently delegate his or her powers to an APS employee in the Protective Service. The bill contains provisions that would allow the director to do so; however, this power is restricted to matters of an administrative nature. Further, the bill clarifies that the general orders which the director may issue are subordinate to a range of other laws and instruments. This provision is currently in place, but will be amended to take account of the transition from the Public Service Act 1922 to the Public Service Act 1999. It follows that the Australian Protective Service, as a statutory authority, is required to submit an annual report in the same manner as other statutory authorities.

The Australian Protective Service Amendment Bill 2002 has been presented by the government as part of its counter-terrorism response following the events of September 11 last year. The government announced the proposed changes to the APS with much fanfare. In February of this year, the Minister for Justice and Customs announced that the Australian Protective Service would become an operating division of the Australian Federal Police. He said in his press release of 14 February that this change ‘consolidates and enhances national security initiatives’. He promised that it was necessary in order to ensure ‘the closest possible co-ordination between two of Australia’s key counter-terrorist agencies’ and that it would strengthen ‘both organisations’ ability to fulfil their counter-terrorism responsibilities’.

We were told by the Attorney-General’s Department in Senate estimates in February that the relevant legislation would be comprehensive and detailed. The government
made much of the benefits that would follow from total integration and said that by 30 June the APS would be an operational arm of the AFP. It will not be—at least not in that meaningful sense. This bill does not do what the government said it wanted to do. It does not address the significant issues that the government knows to be important. It does not tighten or increase coordination of Australia’s operational effectiveness to counter terrorism. This bill resolves none of the strategic or organisational issues the government itself said were important in requiring the integration and consolidation of our Commonwealth law enforcement agencies. This bill has been put into parliament in an overcrowded legislative calendar in order to meet the government’s self-imposed deadline. In fact, what this bill does is make the APS a stand-alone statutory agency. All it does is change the CEO from the Secretary of the Attorney-General’s Department to the Commissioner of the Federal Police.

Labor had concerns that this bill had the potential to create an anomalous situation in which the Commissioner of the AFP, who enjoys a high degree of operational independence under the AFP Act, would be placed in the position of being instructed, directed and told what to do by the government of the day in regard to his position as the head of a statutory agency. This could have significant implications in relation to AFP-APS joint operations. The commissioner could never be sure that his operational plan for using the APS in partnership with the AFP would or could not be countermanded by political directions.

The committee sought information about whether the Commissioner of the AFP, in his role as CEO of the AFP, would indeed be subject to ministerial direction in relation to operational matters. The Attorney-General’s Department assured the committee that there is no power in any legislation to direct the way operations are carried out and that the government had put on record that there would be no interference with operational decision making. To that extent, we take some comfort from these assurances and place them clearly on the record.

Following the passage of this bill, the government will explore steps to further align the AFP and the APS and will introduce further legislation. Therefore, Labor does not oppose the government’s moves to integrate the APS into the AFP. We understand that it makes sense. This is, in truth, Labor’s policy. Labor proposed the creation of a federal protection service that would form an integral part of the AFP with its own deputy commissioner to command and control all the protective security and counter-terrorism responses necessary to ensure the safety of Australians and Australian interests.

Given the time available at this time of day, I summarise by saying that this bill has as its immediate consequence the certainty that another piece of legislation will follow. Parliament will have to consider further legislation prepared by this government sometime in the future in order for it to achieve what it said was urgent and necessary back in February. We know that there is going to be extensive consultation in the next phase, and Labor welcomes that. Labor is prepared to accept this bill. We are aware that all agencies involved are working hard, planning for the next stage which will see full integration of these two organisations. But, to use a hackneyed phrase, the devil is always in the detail. We wait with interest to see the detail and will examine those issues as they emerge. The government should, and we encourage it to do so, move quickly to spell out the detail of its plans for the eventual integration of the APS with the AFP.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.02 p.m.)—I thank Senator Ludwig for his comments. Nevertheless, this bill reflects the ongoing commitment of the government to effective national law enforcement. I commend the bill to the Senate.

The ACTING DEPUTY PRESIDENT (Senator McLucas)—I remind honourable senators that, under a sessional order agreed to on 20 June 2002, after the second reading of each of the bills listed for the lunch time session, I shall call the minister to move the third reading unless any senator requires that
the bill be considered in the Committee of the Whole. The question is that the bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.03 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

INTERNATIONAL TAX AGREEMENTS AMENDMENT BILL (No. 1) 2002

Second Reading

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

That this bill be now read a second time.

Senator HARRIS (Queensland) (1.03 p.m.)—I rise to speak against the International Tax Agreements Amendment Bill (No. 1) 2002 because of the functions it will carry out. There are issues of concern relating to international tax agreements—commonly known as the double tax act. The act was predicated on the basis that there would be a balance of Australian owned companies operating overseas which would repatriate their profits back to Australia and pay their taxes in Australia, being their place of domain, and, conversely, companies domiciled outside Australia which carry out activities in Australia and return their profits to the country where they are domiciled and pay their taxes. That is the basic fundamental process upon which international tax agreements were predicated.

There are two issues that have proven over time that the acts do not in any way achieve their original purpose. Firstly, we need to address the issue of Australian owned companies operating overseas that would and should repatriate their profits back to Australia. We see many and varied percentages on this. In some areas of our economy, we are 100 per cent owned and controlled by overseas corporations. In other areas, overseas ownership is in the high 90s. Progressively, depending on the particular industry, there has been an increase in Australian ownership of companies within those brackets. There are no Australian based companies substantially operating overseas to bring their profits back into Australia to be taxed here. Conversely, there is an unhealthy level of overseas ownership of Australian companies in some sectors of the economy. Therefore, there is no resultant tax revenue for Australia.

The second issue that renders international tax agreements void is the ability of companies to channel offshore costs on both imports and exports. For example, a company producing a product in the Philippines and ultimately selling that product in Australia will invariably tranship articles through a holding company in a tax haven. The cost structure in the Philippines will be minimal. The articles will be transhipped through the holding company and re-enter Australia at a maximum price just below that of the cost of operations in Australia. Therefore, they will be shifting their profit percentages offshore from both Australia and the country in which they are domiciled. Neither Australia nor the other countries will benefit from the original intention of this international tax agreement.

This particular agreement goes to an agreement with Russia and also changes some parts of the protocols with the United States of America. If it was the government’s intention originally to ensure that companies do not pay tax in two countries, I commend it. If it was the government’s intention to assist companies to pay tax in neither Australia nor their country of domicile, I deplore it. As it is clearly the outcome of our global economy that these international tax agreements assist companies to avoid their taxes in Australia and overseas, I believe it is time that the Australian government revisited this proposal and took a very good look at it in light of their responsibility to the Australian people. I place on record that One Nation will be voting against the legislation.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.10 p.m.)—The International Tax Agreements Amendment Bill (No. 1) 2002 is expected to in-
crease our international competitiveness and improve export performance for businesses that deal with the US. There are significant benefits for all Australians from the signing of this protocol; it means investment and more jobs. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.10 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Senator Harris—I ask that my opposition to that legislation be recorded in Hansard.

The ACTING DEPUTY PRESIDENT (Senator McLucas)—That will be done.

TAXATION LAWS AMENDMENT BILL (No. 2) 2002
Second Reading
Debate resumed from 24 June, on motion by Senator Ellison:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.10 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

INTERNATIONAL CRIMINAL COURT BILL 2002
INTERNATIONAL CRIMINAL COURT (CONSEQUENTIAL AMENDMENTS) BILL 2002
Second Reading
Debate resumed from 26 June, on motion by Senator Vanstone:

That these bills be now read a second time.

Senator LUDWIG (Queensland) (1.12 p.m.)—In speaking to the International Criminal Court legislation, let me say that ratification of the Rome statute establishing the International Criminal Court has long had the solid support of the opposition. The opposition welcomes the introduction of the International Criminal Court Bill 2002 and the International Criminal Court (Consequential Amendments) Bill 2002, which will give effect to Australia’s obligations under the Rome statute. The bills incorporate a number of amendments to the exposure draft of the legislation, which were considered by the Joint Standing Committee on Treaties. For Australia to fully participate in the assembly of state parties meeting in September, it is necessary for Australia to ratify the statute by 2 July. It is important that Australia be involved in the establishment of the court, and the opposition is prepared to cooperate to secure timely ratification of the statute. However, protracted turmoil in the Liberal and National parties has left little time for parliament to consider the new amendments. The government provided its amendments to the exposure draft to the opposition shortly before question time in the House of Representatives on Tuesday last and brought the bills on for debate that afternoon in the House of Representatives. As a result, parliament’s consideration of the amendments has unfortunately been short.

The amendments fall into three categories: amendments which seek to implement recommendations of the joint standing committee, amendments which the government describes as technical; and, amendments which seek to implement the declaration proposed by the Howard government to secure the support of the Liberal and National parties for the ICC. It has not been possible to review in as much detail as one would have liked the amendments described by the government as technical. However, issues may well arise in the future regarding their operation. To take one example, some amendments to the definition of ‘offences’ substitute specific references to provisions of the International Covenant on Civil and Political Rights for references in the exposure draft and the Rome statute to principles of international law.
The government obviously has sought to respond to criticism that the wording of some offences is too vague. However, given time to examine the provision in detail, we are concerned that this might result in a narrowing of certain offences under Australian law. If that is the case, it appears possible that Australia could be met with a request for surrender of a person to the ICC where the alleged facts fall outside the offence as defined in Australian domestic law, but within the offence as defined within the Rome Statute.

A cursory look at the definition of ‘persecution’ in clause 268.20 of the consequential amendments bill does nothing to allay this concern. The definition in that clause refers to deprivation of a number of rights in the International Covenant on Civil and Political Rights, yet the definition in article 7 of the statute refers simply to the deprivation of fundamental rights. The International Criminal Tribunal for the Former Yugoslavia has held that fundamental rights may include economic rights. But these are not part of the International Covenant on Civil and Political Rights, and so there may be an inconsistency in the definition. The opposition has raised this simply to highlight the uncertainties caused by the rushed consideration of the amendments resulting from the disarray of the coalition parties.

An issue that will attract some scrutiny in the international community is whether the government’s proposed declaration, as implemented in these bills, amounts to an impermissible reservation within the meaning of article 120 of the Rome Statute. For the purpose of the debate on these bills, it is necessary only to mention the second element of the declaration, which reads:

To enable Australia to exercise its jurisdiction effectively, and fully adhering to its obligations under the Statute of the Court, no person will be surrendered to the Court by Australia until it has had the full opportunity to investigate or prosecute any alleged crimes. For this purpose, the procedure under Australian law implementing the Statute of the Court provides that no person can be surrendered to the Court unless the Australian Attorney-General issues a certificate allowing surrender. Australian law also provides that no person can be arrested pursuant to an arrest warrant issued by the Court without a certificate from the Attorney-General.

This element of the declaration is implemented through a number of amendments to the exposure draft, which include the following measures: (1) no person may be arrested or surrendered to the ICC unless the Attorney-General has issued a certificate; (2) a decision by the Attorney-General to issue or to refuse to issue a certificate subject to a privative clause that is, in itself, final and may not be challenged in any court but the High Court; (3) a person is effectively not liable for prosecution for a crime against the administration of the Justice of the ICC if they either engage in conduct that results in a failure or a refusal by the Attorney-General to issue a certificate or engage in conduct in reliance on the absence of a certificate from the Attorney-General. The Attorney-General is also not liable to prosecution purely for failing or refusing to issue a certificate.

These measures concern Australia’s obligations under the statute to establish national procedures for cooperation with the ICC. Views may well differ about whether these measures meet Australia’s obligations under the statute and whether this aspect of the government’s declaration impermissibly seeks to modify the legal effect of the ICC statute. However, we are now considering in a short space of time whether to pass legislation that the government has insisted be passed before it is prepared to ratify the statute. For that purpose and in a spirit of cooperation, the opposition is prepared not to oppose these measures. We are concerned about the use of the phrase ‘absolute discretion’ in connection with the power of the Attorney-General. One would expect the Attorney-General to exercise his or her discretion in accordance with Australia’s obligations under the statute.

During the second reading debate in the House of Representatives, the shadow minister for foreign affairs sought an assurance from the Attorney-General that this discretion would be exercised in that way. The response from the Attorney-General was disappointing. He said:

The member for Griffith’s comments appeared to be based on a misapprehension that the Attorney-
General is bound by the international statute rather than the obligations contained in Australia’s domestic legislation ... The discretion will be exercised in accordance with the International Criminal Court Act 2002, when passed. The act will be the domestic implementation of Australia’s obligations under the International Criminal Court statute. Australia’s international obligations under the statute become effective domestically only because they are translated into domestic Australian law.

As the Attorney-General would be well aware, there is a distinction between exercising an executive discretion in accordance with domestic law and exercising it in accordance with international obligations. Once again, the opposition calls on the government to provide an assurance that this absolute discretion will not be exercised by the Attorney-General inconsistently with Australia’s obligations under the Rome Statute. We are equally concerned that the use of the phrase ‘absolute discretion’ could lend legitimacy to another country’s efforts to use the phrase to shield criminals from the jurisdiction of the court. The fact that this absolute discretion is accompanied by a privative clause compounds these concerns. The third element of the government’s declaration reads as follows:

Australia further declares its understanding that the offences in Articles 6, 7 and 8 will be interpreted and applied in a way that accords with the way they are implemented in Australian domestic law.

This is worded in terms of an understanding and, thus, has the clothing of an interpretive declaration for domestic political consumption. However it begs the question: what if at some point an inconsistency emerges between Australia’s jurisprudence and ICC jurisprudence on a particular crime? There is not a lot of Australian jurisprudence around on these crimes, as you would expect. It is also difficult to speculate how Australian jurisprudence will develop, given that there is a range of views in the Australian judiciary about the extent to which Australia laws should be interpreted consistently with international law.

Finally, I note that the Attorney-General issued perhaps what could be called an ‘ungracious’ press release last Tuesday evening. In that press release, he tried to give the opposition the full wet lettuce treatment when he used these words:

It now remains for the Opposition to stop grandstanding as it did in the House this afternoon and to demonstrate its much-touted support for the ICC by ensuring swift passage of this legislation through the Parliament.

The criticisms made by the opposition in the House of Representatives, in my view, were entirely justified. Describing those criticisms as ‘grandstanding’ manifests a contempt for the processes of parliament. No amount of tough talk from the normally demure Attorney-General can hide the chaos that has characterised the Howard government’s deliberations on the International Criminal Court. If the first Border Protection Bill 2001 and the antiterrorism legislation this year demonstrate one thing, it is that it is important that legislation emanating from this government be given close scrutiny. It is unfortunate in this case that such scrutiny has been shortened due to the agony and chaos in the Liberal and National parties and the savaging of the Attorney-General by the member for Mackellar.

Senator GREIG (Western Australia) (1.22 p.m.)—In 1874, the International Committee of the Red Cross proposed that there be an international court to try atrocities committed in war. Some 128 years later, the world is now poised to realise that dream. In the aftermath of World War II, the Nuremberg War Crimes Tribunal set out to punish those responsible for some of the worst atrocities in the history of humanity. It buoyed hopes that an end to impunity might finally come for those who commit such deeds. The promise of Nuremberg remains unfulfilled. After Nuremberg, the politics of the Cold War proved a difficult obstacle to establishing a permanent international criminal court. Today, the enforcement of international law remains selective and ad hoc. Tribunals have been established to deal with atrocities in Rwanda and Yugoslavia. Many argue that other countries such as Burundi, Cambodia, Somalia, Liberia and Zaire-Congo deserve similar attention.

The proposed International Criminal Court will be a standing court with jurisdic-
tion over certain serious crimes of international concern occurring in the territory of the state parties to the statute or by nationals of state parties. The purpose of the court is to ensure that future gross violations of international law, such as crimes against humanity and genocide, do not go unpunished. The arm of the law must be long enough to reach the perpetrators of these brutalities, even where domestic legal systems are unable or unwilling to deliver justice.

The International Criminal Court will provide a politically neutral forum in which gross criminal violations of human rights can be tried when normal legal avenues have been exhausted. The statute is based on three key principles. The first of these principles is complementarity. Under this principle, the ICC may assume jurisdiction only where domestic legal systems are unable or unwilling to exercise jurisdiction. The ICC is not intended to replace domestic courts but rather to provide an alternative avenue for the prosecution of criminals where domestic legal systems fail. Article 1 of the statute provides that the jurisdiction of the court ‘shall be complementary to national criminal jurisdictions’. Under article 17, the court has no jurisdiction over any case that is or has been investigated or prosecuted by a state. The only exception to this is where the state is or was unwilling or unable genuinely to prosecute. It remains the primary obligation of Australia to prosecute violators of international law. The court’s jurisdiction is deliberately minimal and deferential to national legal systems.

The second principle is that the statute deals solely with the most serious violations of international law. The court will have jurisdiction over a few ‘core crimes’ such as genocide, crimes against humanity and war crimes. The third principle is that the statute is almost completely confined to customary international law. The statute is not about promoting international law over domestic law; it is about providing the means for ensuring that those who brutally violate established core international human rights standards are brought to justice. The ICC will not have jurisdiction over past atrocities but will send a message that the international community will no longer tolerate gross violations of human rights. Future perpetrators of inhumane atrocities will no longer be able to take solace in the knowledge that there is no established body to try them for their brutality.

Future perpetrators of inhumane atrocities will no longer be able to take solace in the knowledge that there is no established body to try them for their brutality. History teaches us that individuals responsible for serious crimes against humanity are rarely brought to justice. We now have a unique opportunity to change that from this point forward.

Unfortunately, a number of misconceptions have been prominent in the Australian debate over ratification. It has been argued that the court will be political and will not meet the basic standards of fairness and independence required for the trial of serious crimes. There is considerable confusion about what matters the court will hear and a great deal of suspicion about the supposedly political nature of the court. Some have argued that the ICC will be used to revisit past atrocities. However, articles 11 and 24 of the statute clearly state that the court’s jurisdiction will be strictly prospective. Furthermore, some have argued that the court will be used to challenge national policies in relation to issues such as abortion. Under article 5, the mandate of the court is limited to ‘the most serious crimes of concern to the international community as a whole’.

The question of which crimes should fall within the jurisdiction of the court was a difficult issue during the treaty negotiation process. Ultimately, it was agreed that the jurisdiction would be limited to the four core crimes: genocide, crimes against humanity, war crimes and aggression. It was never intended that the court be a forum for the challenge of anything but the most extreme state policies.

Finally, it has been argued that the court will operate politically and that accused persons may suffer unfair trials. The experience of ad hoc tribunals generally would not support such criticisms. Even the Nuremberg trials, condemned at the time by some as ‘victors’ vengeance’, were considered fair by those responsible for defending the accused.
Indeed, in many cases it may be that an international court would be the fairest place to try a criminal notorious in his or her own country. The statute contains a number of safeguards to ensure the integrity of the court and the fairness of the trials it conducts. Firstly, the provisions relating to the appointment and qualifications of judges are quite rigorous. Judges will be appointed by an assembly of state parties. They must possess the qualifications required in their respective states for appointment to the highest judicial offices. There are requirements as to specialist expertise and provisions ensuring that the expertise on the court is balanced. No two judges may be nationals of the same state. The procedures for appointment compare favourably with the procedures for appointing justices to the High Court of Australia.

The statute provides that the court is to function as an independent body. Apart from special procedures applying to the first election of judges, judges will be elected for a term of nine years and will not be eligible for reappointment. Judges can be removed for serious misconduct or for an inability to exercise their functions. However, the decision to remove can be made only by a two-thirds majority of the state parties upon a recommendation adopted by a two-thirds majority of the other judges. This provides greater security of tenure and independence than, for example, Australian High Court justices enjoy.

The statute also offers significant protection of the rights of suspects and accused persons. Article 55 establishes a number of rights to be enjoyed by suspects, including the right against self-incrimination, the right to legal assistance and freedom from coercion and arbitrary arrest. Article 66 establishes the presumption of innocence and provides that the prosecution bears the onus of proving its case beyond reasonable doubt. The rights of the accused in relation to the trial detail are in article 67 and offer a high degree of procedural fairness. Article 81 offers a comprehensive right of appeal. The statute contains extensive provisions to promote the integrity of the court and protect the rights of the accused. While no institution can ever be completely immune from corrupting influences, the institutional structure is of a high quality.

Arguments about sovereignty have been a key theme of the Australian debate over ratification. One commentator remarked that, if Australia were to ratify, ‘the erosion of national sovereignty would be epic’. As a matter of international law, the concept of state sovereignty is no longer as fundamental as it once was.

In the Pinochet case, the House of Lords held that the Convention Against Torture and Other Cruel or Degrading Treatment or Punishment confers universal jurisdiction on a signatory state to prosecute for offences within the ambit of the treaty. Universal jurisdiction in relation to the crime of genocide was pioneered by Israel in Israel v. Eichmann. US courts have exercised universal jurisdiction, in one case prosecuting a Lebanese citizen suspected of hijacking a Jordanian aircraft in the Middle East. Increasingly, it appears that the maintenance of state sovereignty is not a ‘catch-all defence’ in law. This reflects a growing recognition that humanity is diminished when atrocities go unpunished.

It is clearly in Australia’s interests to have binding prescriptions on war crimes. From time to time we are called upon to participate in conflict. It is vastly preferable that, as far as possible, those conflicts comply with basic humanitarian standards. Even the fiercest critics of the court recognise Australia’s interest in seeing war criminals brought to justice. Even if Australia’s opponents are not state parties to the statute, the individuals responsible will still be liable to prosecution if the crime occurs in the territory of a state party. War crimes against Australians are clearly more likely so long as those who commit them enjoy a reasonable prospect of impunity.

Australia played a leading role in the negotiations leading up to the finalisation of the blueprint for the court. Australia chaired the ‘like-minded group of countries’ consisting of 65 countries which advocated a strong and effective court, and was active in the drafting and negotiation process. Australia has the opportunity to continue this active role. If
this legislation passes the parliament today, we will be able to participate fully in the assembly of state parties and will be able to contribute to the election of judges and prosecutors to the court. Given that Australians could be subject to the court’s jurisdiction even if we do not ratify, it is in our interests to have an effective voice in the assembly of state parties.

The current ad hoc approach to the prosecution of serious crimes of international concern offers only a modest contribution to the promotion of compliance with international law. Even in the early stages of World War I the campaign for an independent forum for the prosecution of such crimes was afoot. In 1915, Theodore Woolsey argued:

... unless something like this ideal is realised, we may well despair of the future of international law as relating to war. Punishment must follow crime with sufficient certainty to impress the criminally inclined. Punishment of the vanquished only, though better than nothing, fails of this certainty. It will be interpreted as revenge. Punishment of law breakers amongst the victors, as human nature goes, is unlikely except through neutral agencies.

It is impossible to know to what extent the horrors of humanity’s most brutal century could have been avoided if institutions had been in place to bring such criminals to account for their actions. Unfortunately, there are many who today oppose Australia’s involvement in the belated realisation of this ideal.

Participation in the court’s creation is a worthwhile endeavour. Uncertainties surround the creation of any new institution, but that should not be an insurmountable barrier to attempts to promote basic humanitarian standards. The perils of ratifying the Rome statute of the International Criminal Court have been significantly overstated in the Australian debate. Indeed, as far as the interests of humanity are concerned, the most perilous action is inaction. I sincerely congratulate the government for ratification and, in particular, compliment Minister Alexander Downer for this tremendous policy victory.

Senator HARRIS (Queensland) (1.35 p.m.)—I seek leave to have my speech on the International Criminal Court incorporated in the Hansard.

Leave granted.

The speech read as follows—

The legislation before us today will enable Australia to ratify the Treaty of Rome, giving the International Criminal Court jurisdiction within Australia. This Court—at best—is severely flawed and at worst, is unconstitutional. It threatens to diminish Australia’s national sovereignty, hinder military operations, generate selective and politicised justice, and eventually develop into an authoritarian master. Significant, long term problems will result if Australia ratifies this treaty.

TIMEFRAME FOR COMMENT ON BILL

It seems to be a characteristic of this government that Bills are now brought on in such haste that we have an extremely compressed time frame for public comment. The ICC Bill was not posted up on the government’s website until after 9pm Tuesday. The Consequential Amendments Bill was not posted up until Wednesday morning. Just after midday Wednesday, my office received a hard copy of the Bill. There is no bills digest. So...the best we had to work with up until Tuesday night was the exposure draft dated 30/8/02. The exposure draft was 147 pages long and ended up with 30 amendments, making it a whopping 247 pages.

On top of this, we have the Consequential Amendments Bill, which amends 6 Acts and is another 94 pages.

Can the government please tell us how we, as the people’s representatives in the Senate, the house of review, are supposed to digest this legislation, send it out to our constituents and respond to their concerns within 48 hours. If they do not have access to the Internet and email, how will they get a copy of the Bills? It seems the government just doesn’t care. Once again, they are trampling all over our democratic rights with an entirely undemocratic process.

I remind the government that the Spring sittings of Parliament commence on August 12. The Preparatory Commission of the International Criminal Court has set a September 2002 date for the first meeting of the Court’s Assembly of States Parties.

Australia will only be able to participate actively at this Assembly if the government passes legislation and ratifies, becoming a State Party by the time the meeting is held. Why wasn’t the legislation put back until August? Is it that the government didn’t want to give people time for consideration?
CONCERNS OF CONSTITUENTS
I note that the Joint Standing Committee inquiring into the 1998 Statute of the International Criminal Court has concluded that it is in Australia's interests to ratify. Acting expressly on feedback from my Queensland constituents, I report that One Nation does not concur with the Committee's conclusions. We vigorously oppose the ICC and all of its trappings.

Let me elaborate on some of the concerns expressed by my constituents.

GLOBAL GOVERNANCE STEP BY STEP
This Court will wither our sovereignty, freedom and independence. It is another step towards global governance. Non governmental organisations—as opposed to nation-states—played a pivotal role in the establishment of the ICC. The ICC will be a permanent Court that will investigate and bring to justice individuals who commit the most serious violations of international humanitarian law, namely war crimes, crimes against humanity, and genocide. In theory it sounds very nice. But the reality is that this is another one of those prickly civil society initiatives that smacks of international double speak.

A network of over 1000 civil society organisations, known as the Coalition for an International Criminal Court was funded—in part—by the Ford Foundation, the John D. and Catherine T. MacArthur Foundation and various national governments. The World Federalist Association, Amnesty International and Parliamentarians for Global Action are among those who agitated for the ICC. The Manual for the Ratification and Implementation of Rome Statute states that:

"Modification must be made to all states’ codes of criminal law and human rights legislation."

It further states:

"Should there be a conflict between the ICC legislation and existing state legislation, international law established under the ICC and decisions of the ICC take precedence."

If Australia ratifies it means we agree to these obligations and we will give the ICC the power to override Australian law.

This is a surrender of our sovereignty.

We are continually told by the ICC lobby that the Court is not meant to subordinate national Courts. Let me provide further evidence to the contrary. The treaty’s preamble states:

"is intended to be complementary to national criminal justice systems in cases where such trial procedures may not be available or may be ineffective."

It also appears that the ICC could ultimately decide what constitutes an "effective" trial.

The ICC would have the last word on whether a trial must be made “available” in a given circumstance. The ICC, in other words, could have de facto supreme judicial oversight.

CONTENTS OF THE BILL
I would like to point out that the scope of this Bill is extremely wide ranging and the definitions contained in the legislation are extremely broad—it sounds all too familiar doesn’t it?

The contents of the ICC Bill include: arrest and surrender of persons; identifying or locating per-
sons or things; taking evidence or producing documents or articles; questioning the person being investigated or prosecuted; facilitating the voluntary appearance of persons as witnesses or experts before the ICC; temporary transfer of prisoners to the ICC: examination of places or sites; search and seizure; provision of records or documents; protecting victims and witnesses and preserving evidence; identification, tracing and freezing or seizure of tainted property (assets); investigations or sittings of the ICC in Australia; search, seizure and powers of arrest; provisions relating to the execution of search warrants; stopping and searching conveyances; arrest and related matters; protection of Australia’s national security interests; transportation of persons in custody through Australia; enforcement in Australia of reparations orders made and fines imposed by the ICC; forfeiture of proceeds of international crimes; enforcement in Australia of sentences imposed by ICC.

So here, in this legislation we have some of the key elements that we have in the government’s anti-terrorism legislation—phone tapping, assets forfeiture, a broad definition of a ‘thing’, search and seizure powers and the list goes on.

CORPORATIONS FUND ICC

We are told that the International Criminal Court is a separate entity from the United Nations. According to the Rome Statute, its expenses will be funded by assessed contributions made by States Parties and by voluntary contributions from Governments, international organisations, individuals, corporations and other entities.

I repeat, corporations and other entities. Who are these ‘other entities’—moreover, which corporations will be funding the ICC and to what extent? How impartial will this criminal Court be if it is funded by multinational corporations? Will so-called ‘justice’ be dished out to various countries according to the level of funding pumped in by a particular TNC? How transparent is the funding process? Could the ICC be used to pursue the particular political or economic agendas of multinational corporations?

LEGAL OPINION

Several noted legal experts have expressed reservations about the International Criminal Court. Former Chief Justice of the High Court, Sir Harry Gibbs, regards the Statute as detracting from the right of national self-determination. Sir Harry bluntly condemns it as a surrender of part of our sovereignty, to a greater degree than other treaties because it would potentially subject Australian citizens to the jurisdiction of an international Court in respect of acts performed in Australia (article 12(2)(a)).

According to Sir Harry, ratification of the Statute would:

“in no way be advancing our national interests but would, on the contrary, be failing in its duty to preserve our sovereignty and to afford to our citizens the protection of our laws. Servicemen and women in particular would be exposed to the mercies of a Court whose standards of fairness might fall well short of our own and whose sympathies in some future conflict would be impossible to predict.”

University of New South Wales Professor of Law, George Winterton has raised the likelihood of the ICC being in conflict with the Australian Constitution in relation to the exercising of federal judicial power. Although Professor Winterton does not object to Australia’s accession to the ICC as a matter of policy, he noted in his submission to the Joint Standing Committee on Treaties: “Ratification may be appropriate, even though a successful Ch. III challenge (ie: a charge that the ICC violates the Constitution) in the Australian Courts could render Australia unable to fulfil its obligations under the Statute, and consequently liable therefore under international law.

Professor Richard Wilkins of Brigham Young University Utah criticises the Statute’s “sweeping” language, which he says is “limited largely by the imaginations of international lawyers and the judicial restraint (or lack of it) that will be exhibited by the judges on the ICC. The ICC, he believes, “has the potential to become... a tool for radical social engineering.” Clearly, this is the real agenda behind the Treaty of Rome.

EXPANSION OF POWERS

Although the preamble of the ICC draft statute states:

“The Court is intended to exercise jurisdiction only over the most serious crimes of concern to the international community as a whole”

many advocates of the Court do not want to limit its purview to the core offences of war crimes, crimes against humanity, and genocide. In fact, there has been a tendency on the part of advocates of the ICC to try to transfer human rights violations and violations of other international prohibitions to the domain of the Court.

For example, Amnesty International, one of the civil society organisations which supported the establishment of the ICC argued strongly that the Court handle war crimes, crimes against human-
ity, and genocide and that the “perpetrators of human rights violations must be brought to justice” there as well. One scenario could be that eventually the ICC would establish “complimentary” jurisdiction to that of the Court of Justice, if the treaties are an open invitation to abuse. Cases could be brought before the Court based upon the commission.

The powers of the ICC outlined in the Rome Statute are an open invitation to abuse. Cases could be brought before the Court. Concerns have been raised by the US administration that the ICC would establish “complimentary” jurisdiction to that of the Court of Justice, if the treaties are an open invitation to abuse. Cases could be brought before the Court based upon the commission.

The language of the ICC statute is broad and sweeping. The crime of genocide, for example, includes not only killing members of a “national, ethnic, racial or religious group,” but also “causing serious... mental harm to members of the group.” Professor Wilkins points out that the ICC would establish “complimentary” jurisdiction to that of the Court of Justice, if the treaties are an open invitation to abuse. Cases could be brought before the Court based upon the commission.

The ICC would be empowered to investigate, try, and punish certain crimes, such as war crimes and crimes against humanity. Currently, nation-states have primary responsibility for prosecuting these crimes. In exceptional cases, they have been addressed through ad hoc tribunals set up by the United Nations (U.N.) Security Council. Ad hoc tribunals are set up for specific crimes and given prescribed authority, which prevents them from expanding their original mandate. The ICC, by contrast, would have greater autonomy and powers to investigate and prosecute suspected war crimes. This unprecedented power could threaten the ability of Australia to engage in military action to protect its national security interests.

Former US secretaries of state Henry Kissinger and George Shultz, as well as former CIA director Richard Helms and former US national security advisor Zbigniew Brzezinski were among the signatories of a November 2000 open letter warning that the US must put “our nation’s military personnel safely beyond the reach of an accountable international prosecutor operating under procedures inconsistent with the US Constitution. There is a strong evidence indicating that their words are equally applicable to Australian defence personnel engaged in overseas military actions.

We need to consider that the Australian Defence Force has two major overseas deployments at the moment: its contribution to the United Nations peacekeeping mission in East Timor (approximately 1400 personnel); and its contribution to the coalition against terror which is not a UN run operation (approximately 1550 personnel have been committed). There are also commitments to other operations. For this reason alone, the ICC treaty should be vigorously opposed.

ICC AND SOCIAL POLICY

The ICC’s impact upon political decisions involving Australian defence force personnel reveals only the tip of the iceberg of new international laws. Professor Wilkins points out that not only soldiers, but corporations, churches and citizens could face potential prosecution by the ICC.

The ICC statute condemns “crimes against humanity” such as acts of murder, extermination, enslavement, forcible transfer of population, torture, sexual slavery, persecution and “other inhumane acts”. These crimes certainly sound terrible but the Rome Statute gives very little guidance as to what these words actually prohibit. For example, the crime of “persecution” as set out in the Statute and as further refined in the “Elements of Crimes” codifies the “severe deprivation” of a group’s “fundamental rights.” The crime of “inhumane acts” criminalises the infliction of “great suffering”, or serious injury to body or to mental or physical health, by means of an inhumane act. What do these terms proscribe? At present, it is impossible to say definitively. No international lawyer or jurist can predict with any certainty how far this language might sweep.
sions at international meetings however, suggest that such language could be used to completely refashion social policy on a world-wide scale. The language of the crimes of “persecution” and “inhumane treatment” could be used to dictate marital policies, abortion policies, strictures and rules for religious practices and so on. While these and related arguments unquestionably press the outer boundaries of the ICC Statute’s plain language, they cannot be dismissed; due to the vagueness of the ICC Statute’s language, these issues might easily fall within its reach.

CONCLUSION
In my concluding remarks, I wish to recap on the extremely compressed time frame for comment on this bill. The way the government has gone about the process is an outlandish display of autocracy. Not democracy. This sort of behaviour certainly does nothing for the government’s cause, in fact it compels us—to even more vigorously oppose the ICC.

Australian defendants brought before the ICC will be deprived of many of the crucial protections currently guaranteed by our common law system. The ICC is a hybrid of legal traditions and will operate with control and accountability mechanisms that, in some respects, differ from those in the Australian judicial system. For instance, in the ICC model the role of investigator and prosecutor are combined and operate without Executive oversight. What safeguards are there in relation to this role?

Ratification of the ICC should be resisted. History teaches us that unchecked power, unfettered powers are quickly and inevitably abused. The ICC threatens the rule of Australian law. It could obstruct our military operations. The long list of problems that are likely to emerge with the formation of the ICC—in any conceivable incarnation—creates doubt about the wisdom of establishing the Court in the first place. I urge the Howard government to change course and decline to ratify this treaty. It will open a Pandora’s box of legal mischief and political folly.

It will not be an International Criminal Court, it will be an international kangaroo Court.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.36 p.m.)—I seek leave to incorporate my remarks in the Hansard.

Leave granted.

The speech read as follows—
The Government believes that the International Criminal Court can make a valuable contribution to the future punishment of persons who commit acts of genocide, crimes against humanity and war crimes.

Events in the former Yugoslavia and Rwanda in the last decade have focussed world attention on the possibility of putting an end to impunity for individuals who commit gross atrocities under the guise of war.

It is an inescapable fact that the perpetrators of these crimes in the last century were largely left unpunished.

The new century must not follow suit.

The establishment of the International Criminal Court is one practical way that Australia can help ensure that this goal is achieved.

Senator Harradine has asked that I place several matters on record.

I would like to assure the Senate that the definition of forced pregnancy contained in the International Criminal Court Statute was carefully drafted to ensure that it specifically set a high threshold for “ethnic cleansing” intent, while stating unequivocally that the definition should not in any way be interpreted as affecting Australian domestic laws in relation to pregnancy—including abortion.

There was a clear understanding in negotiations that the crime of forced pregnancy could not be interpreted as a justification for carrying out abortions.

Australia firmly advocated the latter part of this definition together with delegations from the Holy See and many other countries who were concerned to ensure that the crime of forced pregnancy could not be interpreted so as to interfere with the legal rights to regulate nationally with respect to pregnancy (ie anti-abortion laws).

There was a clear understanding in negotiations that the crime of forced pregnancy could not be interpreted as a justification for carrying out abortions.

Indeed, the definition adopted in the Statute deliberately focuses on the forced pregnancy and confinement of a woman with the intent to effect ethnic composition, not the event of a birth arising from such action. An abortion in such circumstances would be no defence.

Moreover, for the Statute to have such an interpretation it would have to be amended.
This could only occur 7 years after the Statute enters into force on 1 July 2002.
Any amendment must be approved by a 2/3 majority of States Parties. This would be highly unlikely in relation to this particular definition given the very delicate negotiations which resulted in the agreement of the final compromise text included in the Statute.

Finally, no amendment to a definition of a crime (including forced pregnancy) will apply to a State Party (including Australia if we ratify) unless they agree to be bound by that amendment.

The Statute allows for a State Party (ie Australia) to withdraw from the Statute on 12 months notice. While it is not the intention for such action to be taken without proper consideration it is important to understand that the right to withdraw is available.

For Australia to exercise this right would only require the executive (ie the Government) to write to the United Nations.

It is worth noting that for persecution to be proved under the Statute and Australian domestic law, it must be committed “in connection with any other act” (that is with any other act that is a crime within the jurisdiction of the court. (see clause 268.20)).

This is a safeguard against expansive interpretation of what might constitute persecution. The Government is confident that persecution is defined domestically in such a way as to allow Australia, in all cases, to take advantage of the principle of complementarity.

Assuming that international law could ever form the opinion that there was a right to abortion in international law, even in this hypothetical case, the mere denial of access to abortion, for example or any other abortifacient, would not constitute the crime of persecution under the Statute unless that denial was accompanied by another crime within the jurisdiction of the Court (for example, genocide.)

The crime of forced pregnancy does not require a denial of access to abortion to be proved.

Nor would the performance of an abortion be sufficient to negate the commission of the crime, if the other elements are present.

This means any confinement, even if not until the birth of the child, is sufficient to prove the offence if the woman was forcibly made pregnant; and her forced pregnancy and detention were designed to affect the ethnic composition of the population; and that conduct took place in the context of armed conflict or as part of a widespread or systematic attack directed against a civilian population.)

Finally, it is useful to note that ancillary offences such as aiding and abetting are dealt with in Chapter 2 of the Criminal Code and would apply to the offences to be enacted in Division 268 of the Code through the ICC legislation.

However, critically, for these ancillary offences to be committed, all of the same elements would need to be proven as would be necessary to prove the primary offence.

Australia’s support of the International Criminal Court is based on the many of the checks and balances contained in the International Criminal Court Statute.

Its functions and role have been carefully articulated and its powers circumscribed to protect the sovereignty of the countries who support its establishment.

However, these Bills before us today provide safeguards additional to those in the International Criminal Court Statute to ensure the primacy of Australia’s right to exercise its jurisdiction over those crimes, protecting our national interests.

The International Criminal Court Act will be the domestic implementation of Australia’s obligations under the International Criminal Court Statute.

Australia’s international obligations under the Statute become effective domestically only because they are translated into domestic Australian law.

The International Criminal Court Bill 2002 will establish procedures in our domestic law to fulfil Australia’s obligations under the International Criminal Court Statute.

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 2002, 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 International Criminal Court.”

Under the Bill, The Attorney-General must not issue a notice for arrest, provisional arrest or surrender of a person for a crime unless he or she has signed a certificate that it is appropriate to do so.

Examples of the way the domestic law relates to our international obligations are provided in the explanatory memorandum.

Clause 181 of the International Criminal Court Bill 2002 and clause 268.122 of the amendments to the Criminal Code in the International Criminal Court (Consequential Amendments) Bill 2002 are
designed to ensure that domestic judicial review is limited.

In accordance with one of the recommendations made by the Joint Standing Committee on Trea-
ties, the Government will 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 Aus-
tralia’s national interests. Clause 189 of the Inter-
national Criminal Court Bill contains the report-
ing requirement.

The International Criminal Court (Consequential Amendments) Bill 2002 incorporates the offences of genocide, crimes against humanity and war crimes in the International Criminal Court Statute into the Australian Criminal Code.

This ensures that those crimes will be interpreted and applied under Australian law.

The offences apply to all conduct, regardless of whether it or its effect occurs within or outside Australia.

The offences apply to all persons regardless of nationality and apply equally to members of the Australian Defence Force.

This proposed legislation is designed to enable Australia to take full advantage of the protections afforded by the principle of complementarity.

This means that the Court will not replace national courts, but be complementary to them.

The Court cannot act except when national juris-
dictions are genuinely unwilling or unable to in-
vestigate 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 International Criminal Court (Consequential Amendments) Bill 2002 also sets out the principle of complementarity in clause 268.1.

Australia retains comprehensive jurisdictional coverage over members of the Australian Defence Force for crimes within the jurisdiction of the International Criminal Court, wherever committed.

The Defence Force is satisfied that, under this regime, the interests of its members are ade-
quately protected.

The Government believes that the establishment of the International Criminal Court is an impor-
tant development to ensure that those who com-
mit the most egregious crimes against humanity are brought to justice.

It is in Australia’s national interest to be part of this important international effort to deter and punish those who commit atrocities. This legisla-
tion will give effect to the Government’s com-
mmitment to this principle.

I commend these Bills to the Senate.

Question agreed to.

Bill read a second time.

The ACTING DEPUTY PRESIDENT (Senator Calvert)—I understand, and I wish to advise the Senate, that a senator has asked that this matter go into committee. It is so
ordered.

In Committee

Bills—by leave—taken as a whole.

The CHAIRMAN—The question is that the bills stand as printed.

Senator HARRIS (Queensland) (1.37 p.m.)—I specifically asked for these bills to go into committee stage today because of the significance of the bills’ impact on Australia

and the Australian people and because I be-
lieve there are aspects that we have not had the time to discuss or debate in this chamber.

One of those is the impact that this legisla-
tion will have on the reporting staff. It is pleasing to see that we have in the gallery somebody from the media. I hope they pay very good attention to what I am about to share with the chamber. I would like to quote from one of the many pieces of communica-
tion I have had relating to this matter. This comes through from America and relates to the Wash-

ington Post v. International Law. It is headed ‘A new world-wide criminal court endangers the free press’ and reads as fol-
lows:

We’ve never liked the idea of the International Criminal Court, and we like it even less having seen what happened earlier this month to the Wash-

ington Post.

The United Nations Tribunal investigating war crimes in the Balkans ruled that retired Post re-
porter Jonathon Randal, who is American, can be forced to testify about what he saw in Bosnia in 1993. If he doesn’t comply, the court can instruct the French police to pick up Mr Randal in Paris, where he now lives.
As the Post’s lawyers argued at The Hague, the ruling sets a dangerous precedent and puts journalists who cover wars at greater risks. Journalists bear public witness to conflicts. If they come to be seen as future prosecution witnesses, they might become victims of a tyrant’s second thoughts about allowing an important witness to stay alive. Reporters’ future access to troubled areas, and thus their ability to publicise wrongdoing, might be undermined by this ruling.

But more important, the court’s reasoning heightens an inherent problem with the International Criminal Court, which opens its doors on July 1. Unchecked by democratic institutions of a sovereign state, these tribunals can be and often are forced to make up the rules as they go along. They might ignore such niceties of American jurisprudence as, say, the First Amendment. That’s one reason the Bush Administration refuses to support it.

In this case, Mr Randal challenged a subpoena to testify in the case of a Bosnian Serb politician charged with genocide and crimes against humanity. Mr Randal had quoted the accused as advocating the expulsion of non-Serbs from north-west Bosnia. The ethnic cleansing campaign went into full swing a few months later. Court insiders say Mr Randal’s testimony isn’t crucial to the case as many journalists who covered Bosnia have testified voluntarily. Mr Randal was the first exception, and the judges were clearly piqued that someone dared question their authority. In the ruling they made clear the court ‘is not bound by the laws and judicial pronouncements of any State.’

And we need to read in there ‘or any country’—

That’s precisely our point. The court sees itself as free of the constraints that courts within a national judicial system must observe. That’s also what the International Criminal Court is asserting for itself. The Post’s editorial board has supported the International Criminal Court, but maybe this real world experience will prove to be educational.

Educational it will be. Senator Greig mentioned in his speech the issue of autonomy. How can this court have autonomy when it is financed by individuals and corporations? I spoke earlier this morning about the importance of the separation of powers. We have our parliamentary system, our executive government and our judiciary, but there is no inference whatsoever of any interference with the autonomy of the courts in Australia. That cannot be said about this court because it is funded partially by individuals and corporations. That is one of the reasons that I so vehemently oppose the ratification of this international court.

Question agreed to.

Bills agreed to.

Bills reported without amendment; report adopted.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.43 p.m.)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

Senator Harris—I ask that One Nation’s opposition to this legislation be recorded as a singular opposition.

The ACTING DEPUTY PRESIDENT (Senator Calvert)—It is so noted, Senator.

THERAPEUTIC GOODS AND OTHER LEGISLATION AMENDMENT BILL 2002

Second Reading

Debate resumed from 20 June, on motion by Senator Alston:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.44 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

HEALTH INSURANCE COMMISSION AMENDMENT BILL 2002

Second Reading

Debate resumed from 21 March, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.
Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.45 p.m.)—I move:

That this bill be now read a third time.

Senator LUDWIG (Queensland) (1.45 p.m.)—I rise to put a couple of points quickly on the record, given that the time allocated to deal with non-controversial legislation is running short. Labor recognises the need for the HIC to have a sufficient number of commissioners to adequately conduct its work, and we support this provision. Given the record of the Howard government and the gambling Treasurer, Labor is happy to support the provision that would prevent the HIC from engaging in financial hedging.

There are two provisions in this bill which have caused Labor some concern. These relate to the provisions that would allow the HIC to borrow moneys for the purpose of its statutory function and the provisions that will remove the special budget estimates provision applying to the HIC. Labor has had a number of detailed briefings on these two measures and the HIC has advised that the commission, not DOFA, requested these changes. The commission has also indicated that there are no specific projects identified for which borrowings would be made. This borrowing provision is uncapped, although the HIC has indicated to the opposition that any single loan would not exceed $30 million, with interest rates fixed at the 10-year bond rate. It is claimed that such borrowing provisions provide efficiencies to the Commonwealth. On the basis of the detailed advice from the government to the opposition on these matters, we are now satisfied that the new reporting requirements are no weaker than those currently in place. But we shall endeavour to monitor the HIC reporting closely. On that basis, we do not oppose this legislation.

Question agreed to.

Bill read a third time.

STATUTE LAW REVISION BILL 2002

Second Reading

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

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.48 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BANKRUPTCY (ESTATE CHARGES) AMENDMENT BILL 2002

Second Reading

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

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.49 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.
Bill read a third time.

DISABILITY DISCRIMINATION AMENDMENT BILL 2002

Second Reading

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

That this bill be now read a second time.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.49 p.m.)—I would like to thank the relevant stakeholders from the disability sector and the transport sector who have worked together cooperatively and willingly to achieve a practical, effective outcome in relation to the granting of appropriate temporary exemptions from the disability standards for accessible public transport. Unfortunately, this is in contrast to the conduct of some members of the opposing political parties. Passage of this extremely important legislation, the Disability Discrimination Amendment Bill 2002, has been hampered by non-government political incompetence and indecision.

In March this year, the government sought to expedite the passage of the bill through the House of Representatives as non-controversial legislation. Although the shadow Attorney-General’s office agreed to this, the debate did not occur until these sittings because it appears that the opposition whip did not receive the message to list the bill as non-controversial. Senator Allison also recently criticised the government for delaying the passage of this bill. Unfortunately, this is in contrast to the conduct of some members of the opposing political parties. Passage of this extremely important legislation, the Disability Discrimination Amendment Bill 2002, has been hampered by non-government political incompetence and indecision.

In March this year, the government sought to expedite the passage of the bill through the House of Representatives as non-controversial legislation. Although the shadow Attorney-General’s office agreed to this, the debate did not occur until these sittings because it appears that the opposition whip did not receive the message to list the bill as non-controversial. Senator Allison also recently criticised the government for delaying the passage of this bill. The Democrats were first approached on 11 March to list the bill as non-controversial to ensure its passage in these sittings. The Democrats finally changed their mind and agreed just this week. The government then acted to make sure that debate proceeded swiftly.

This bill is an important precursor to the formulation of disability standards for accessible public transportation services and facilities. Now that we have finally got the bill to the Senate, I would like to commend the bill to the Senate. It is an essential part of ensuring that the standards will operate in a fair, balanced and effective way for people with disabilities and for public transport operators and providers. Once the bill is passed, the Attorney-General will be able to formulate and table the standards. I am very pleased to commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.51 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Sitting suspended from 1.51 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

Taxation: Mass Marketed Schemes

Senator HUTCHINS (2.00 p.m.)—My question is to Senator Coonan, the Assistant Treasurer and Minister for Revenue. Twice this week the minister has failed to deny attempting to influence, or actually influencing, the Commissioner of Taxation to extend his deadline to investors in mass marketed tax schemes. Here, now, without waffle or qualification, I ask the minister: when she spoke to the Commissioner of Taxation on 25 May did she ask him to extend the deadline?

Honourable senators interjecting—

The PRESIDENT—Order! The question has been asked by a Labor senator and Labor senators should at least be quiet enough to allow Senator Hutchins to hear the answer.

Senator COONAN—Thank you for the question. Without waffle and without equivocation the answer is no, I did not influence the commissioner.

Senator HUTCHINS—Madam President, I ask a supplementary question. Given that the minister would not make such a denial on Monday or on Wednesday, is the Senate now entitled to conclude that she was not desperate enough to mislead us then but she is now?
The PRESIDENT—I think that question carries an implication about the conduct of a minister and I disallow it.

Economy: Growth

Senator CALVERT (2.02 p.m.)—My question is to the Minister for Finance and Administration, Senator Minchin. Will the minister inform the Senate of how the government’s policies are ensuring the continued growth and strength of the economy. Is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Calvert for that very good and timely question—timely because we are a few days away from the end of the first financial year of the new millennium and I think it is appropriate to reflect on the great performance of the Australian economy. The financial year just ending has been a tremendous year for all Australians. Under our government we have seen the Australian economy grow by 3 ¾ per cent, the strongest growth in the developed world. We have had 100,000 new jobs created, taking job creation since we came into office to nearly a million new jobs. We have very strong housing sector growth: up some 63 per cent for the year—of course, on the back of very low interest rates and our First Home Owners Scheme. We have enormously strong consumer and business confidence: the Newspoll today shows optimism about living standards at its highest for seven years. Wages growth is 3.2 per cent, whereas under Labor wages growth was only averaging 0.4 per cent a year. Productivity is up 4.4 per cent this year, compared with only 1.4 per cent under Labor. It really has been an outstanding year for the Australian economy, particularly given the shocks to the world economy in the last 12 months.

The next financial year looks just as good. We will continue to have 3 ¾ per cent growth—the strongest in the developed world—business investment is expected to increase 12 per cent, wages are expected to go up 4 ¼ per cent, unemployment should fall to 6 ¼ per cent and inflation will stabilise at three per cent. It is an extraordinary result, unimaginable only a few years ago. That very strong result is on the back of just one thing: good policy. We have had tax reform, we have had fiscal discipline, we have a very strong privatisation program and substantial cuts to government debt, and we have microeconomic reform in transport and communications.

It must be said and must be acknowledged that the Australian economy and the Australian people have benefited from the Labor economic reforms of the 1980s—which we supported from opposition. Back in the 1980s, Labor actually did understand the importance of economic reform. They understood the importance of international competitiveness. Under former finance minister Peter Walsh they even understood fiscal discipline. When in opposition we gave the then government the support it needed to put in place those critical reforms, which have, on the back of our policies, helped to produce the amazing results we are having at the moment—the best economy in the Western world.

It is a sad fact of life that the opposition today are a pathetic reflection of the party of reform that they once were in the 1980s. I go so far as to say that the Labor opposition are now the biggest single threat to the economic performance of this country. They are a leaderless, divided rabble. They have retreated to what I call the political deathbed of opposition for opposition’s sake—the death of all parties. They seem to have abandoned all hope of re-election. They have given up on being an alternative government and are conducting themselves like the political gangsters that they have become. They are doing their best to sabotage the very strong budget that we have brought down, they oppose further labour market reform, they oppose the further sale of Telstra, and they sit on the sidelines while one rogue union tries to wreck the Australian car industry and say nothing about it. They seem completely obsessed with fighting each other and could not care less about the state of the economy. They have no policies whatsoever, except to pick a fight with their own side. They have become a political irrelevance. Despite their continued obstruction and their continued blocking of what we are trying to do, we will continue to champion economic reform, be-
cause we care about the living standards of all Australians.

The PRESIDENT—Minister, I would ask you to withdraw the reference to the opposition that you used during your answer.

Senator MINCHIN—Which reference was that?

The PRESIDENT—‘Political gangsters’ I regard as unparliamentary.

Senator MINCHIN—I know they are very sensitive opposite, and if that really does upset them I am prepared to withdraw it.

The PRESIDENT—Minister, I asked you to withdraw.

Senator MINCHIN—Then I withdraw.

Senator MINCHIN—Then I withdraw.

Taxation: Bankruptcy Investigations

Senator LUDWIG (2.07 p.m.)—My question without notice is to Senator Coonan, the Assistant Treasurer and Minister for Revenue. Is the minister aware that Insolvency and Trustee Services Australia’s bankruptcy regulation branch is currently investigating eight part 10 bankruptcy arrangements and that the ATO has alerted ITSA to a further four part 10 bankruptcy arrangements which may warrant investigation? Is the ATO itself investigating those part 10 bankruptcy arrangements? How much tax revenue has been lost, or is under threat, because amounts owed to the ATO had been artificially reduced under fraudulent or false part 10 arrangements?

Senator COONAN—Thank you, Senator Ludwig, for the question. I will find out what investigations are taking place. In relation to what it would mean if there is any loss to the revenue, as I have said before in this place, and I will continue to say, it is not appropriate to be second-guessing and giving running commentaries on the revenue. The revenue is determined as a concomitant of many features and it is not something that can be answered on the run every day, and it is not appropriate that I do so.

Senator LUDWIG—Madam President, I ask a supplementary question. Whilst the minister is having a look at that issue maybe she could also take a look at this issue. Is the minister aware that as long ago as 1999 the Commissioner for Taxation said:

Analysis of debt cases has revealed that a relatively small number of high income debtors, with substantial tax debts, use bankruptcy as a means of avoiding tax … The objective of the exercise is to leave us with little alternative but to accept offers of settlement yielding only cents in the dollar or face a similar or lesser outcome from bankruptcy.

This matter has been around for some time. When will the minister know how much revenue has been lost? When will the minister act to ensure that high-income earners pay their fair share of tax?

Senator COONAN—Thank you for the supplementary question, Senator Ludwig. My earlier answer stands. In terms of any loss to the revenue from high income earners, I recall that at the beginning of the election campaign in 1993 there was a suggestion that there should be some recovery from high-income earners—some $800 million I think was identified. Of course it is not that easy to recover $800 million from any debtor or anyone who owes money to any authority, and it is something that is of ongoing concern. But, in terms of the revenue implications, as I have said, I will not be making running commentaries, and any up-to-date figures have, of course, been recently in the budget. There will be another revenue forecast in MYEFO and it is not my intention in this place to provide a running commentary every day on the revenue implications of any individual transactions.

Social Welfare: Disability Support Pension

Senator TCHEN (2.07 p.m.)—My question is to the Minister for Family and Community Services, Senator Vanstone. Will the minister inform the Senate about the status of the reforms to make disability support pension fair and sustainable?

Senator VANSTONE—I thank Senator Tchen for the question—it is a very important one. As you know, this government is determined to reform the disability support pension and disability support funding. In the early nineties Labor made changes which ensured that the disability pension numbers and costs rose at a far greater rate than they had before. I can understand the problem
they had. They were not managing the economy. They were tipping people onto the unemployment queues, and a reform of DSP enabled them to shove people off onto the DSP program to hide the unemployment that they had generated. Well, the time has come to make a change. We indicated we wanted to make a change. Our budget shows we want to put more into disability and that we want to force the states—who are frankly being mingy and mean in the funding they allocate to disability—to put more money in. We are determined to do this and we remain determined to do it.

It is very clear that the discussions or negotiations we have had with the Democrats are going nowhere. We made two very serious offers to them to accommodate any of the concerns that have been raised, either by Labor members or Democrats. At least they had the good grace to listen, unlike the opposition who simply said, ‘We are not interested.’ We come to the position where it is very clear that Labor and the Democrats would rather turn away from the need for this long overdue, long-term reform in Australia’s interests. I believe if we had proceeded with the original bill, Labor and the Democrats would have conspired together to make sure that the very reasonable offer we put was never formally on the record as a part of the bill. They would do that quite easily by voting the bill down at the second reading stage.

I announced this morning that we will not give them that opportunity. This afternoon we are introducing into the House of Representatives a new and separate bill that contains the most generous possible negotiating offer you could make. We will quarantine all of the existing DSP recipients from the change—no nitpicking, no halfway mark, full quarantining of all existing DSP people. Furthermore, we will continue to offer up to 73,000 additional places for disabled people who need help. Even though by the grandfathering we will not be shifting the existing people onto Newstart, we will still offer the 73,000 places. We gave the Democrats and Labor a genuine option to protect unmet need money to the states and make this positive reform. They said, ‘We do not care. We do not like being bullied—like at school—we do not like being bullied.’ So we will remove that concern and we will pay the unmet need money to the states.

There is now no possible reason for the Democrats and the Labor Party to turn away from the serious long-term question that faces Australia. The question can be put this way: does Australia really want to say to seriously disabled people, ‘We will pay you the same as someone with a bad back who could work 20 hours a week.’ Those on the other side may be prepared to say to disabled people that they think the guy with the bad back, who could work 20 hours a week at award rates, should get the same as someone living in an institution or the same as someone who needs 24-hour care at home, with a carer and all of the consequences that that has for the family. The opposition and the Democrats may be prepared to say, ‘Yes, we think they should get the same.’ We on this side say: no, they should not. We want to put disability funding to those with highest needs. (Time expired)

Taxation: Bankruptcy Laws

Senator CONROY (2.14 p.m.)—My question is to Senator Coonan, Assistant Treasurer and Minister for Revenue. Can the minister confirm that, in response to media reports of barristers using the bankruptcy laws to avoid tax obligations, a task force, which included the ATO, was established in March 2001 to determine whether the bankruptcy laws should be changed? Can the minister explain why there have still been no changes to the taxation laws to ensure that barristers pay their fair share of tax?

Senator COONAN—Thank you, Senator Conroy. I am glad to see you back in the game here, asking a few questions. You have been absent a few times—I know you are having a few problems in Victoria. It certainly is true that the ATO, together with the Bar Association of New South Wales and other professional groups, have under consideration—so far as I understand—certain matters relating to the nonpayment of tax by certain barristers. There are a number of them, and there were certain recovery actions in respect of some of them—and that is on the public record. As best as I understand it,
some of these matters are still under consideration, and there were some changes to the professional standards and Bar Association rules that largely address the issue in relation to barristers.

It is diverting, to say the least, when somebody from the Labor Party raises any matter to do with the revenue. There must come a time when those opposite realise that they can whinge all they like, but no-one is going to listen to them with these sorts of questions to me until they can find a better way of tackling this country’s genuine long-term problems without blowing the budget. You ask me questions daily about the revenue, yet what did you do to it? You left this country with a $96 billion debt and an annual interest payment of $8.5 billion. Before you worry too much about the revenue or what barristers are doing, Senator Conroy, you might well have regard for the fact that the opposition could not manage this economy and could not manage high taxpayers—could not manage any taxpayers, in fact. The way in which the Labor Party managed not only the administration of the tax office but the economy was an absolute disgrace. Mr McMullan, the shadow treasurer, has finally tumbled to the fact that Labor’s policy for economic mismanagement is something that people do not easily forget. Now that the Labor Party is in favour of some surplus, it is about time that you pass the budget bills and stop carping and whining about the tax office.

Senator Conroy—Madam President, I rise on a point of order going to relevance. I asked the minister to explain why there had been no changes to the taxation laws to do with barristers. I did not ask about revenue or what barristers are doing, Senator Conroy, you might well have regard for the fact that the opposition could not manage this economy and could not manage high taxpayers—could not manage any taxpayers, in fact. The way in which the Labor Party managed not only the administration of the tax office but the economy was an absolute disgrace. Mr McMullan, the shadow treasurer, has finally tumbled to the fact that Labor’s policy for economic mismanagement is something that people do not easily forget. Now that the Labor Party is in favour of some surplus, it is about time that you pass the budget bills and stop carping and whining about the tax office.

The PRESIDENT—The minister is ranging widely around the topic. I draw her attention to the question.

Senator COONAN—Unless I am much mistaken, barristers paying tax relates to the revenue. Senator Conroy, you might be having a bit of trouble understanding how that might relate to the revenue, but I have already outlined to you the fact that there has been a task force and there have been appropriate changes to the professional standards by the Bar Association of New South Wales.

Senator CONROY—Madam President, I ask a supplementary question. Can the minister explain why the recent amendments to the Bankruptcy Act did not deal also with this issue of barristers misusing bankruptcy laws to avoid their fair share of tax, as has been admitted by the Attorney-General? Can the minister inform the Senate when that task force is going to report and how urgently the government will consider the outcomes of that task force? Or is the minister more concerned about protecting her fellow barristers than the government’s revenue base?

Senator COONAN—I have already said that, in relation to the task force, there are some matters under consideration. The government always gives very prompt attention to any recommendations made by an independent task force, and will continue to do so.

Employment: Job Network

Senator CHERRY (2.20 p.m.)—My question is to the Minister representing the Minister for Employment Services. Is the minister aware that departmental officials have told a Senate estimates committee that the number of complaints lodged against Job Network providers is now around 10,000 a year—more than double the level they reported just two years ago? Does the minister concede that the doubling of complaints places greater emphasis on the need to beef up the code of conduct and the proposed service guarantee and make Job Network providers more accountable to their clients for the services they provide? What measures will the government be putting in place to ensure that Job Network providers better understand their obligations to their clients— for, if complaints have doubled in two years, to paraphrase Shakespeare, something is rotten in the state of Job Network?

Senator ALSTON—Job Network complaints are simply one matter that needs to be properly investigated before one jumps to all the further conclusions that Senator Cherry is anxious to aspire to. The fact is that job
seekers are generally very satisfied with the services they are receiving. The department conducts regular national surveys to ensure that quality services are available. The first telephone survey of job seeker perceptions of Job Network was conducted in May 1999 with approximately 13,000 job seekers. That large sample size meant that survey results could be disaggregated by service type within each region to feed into Employment Services’ contract round 2 tender evaluation process.

A more recent survey of approximately 4,000 job seekers was conducted during April and May 2001. Results from that survey will soon be available. The 1999 survey found that, overall, 81 per cent of job seekers were satisfied with the services provided through Job Network and 75 per cent considered that the services and assistance they received were of a very high quality. Of those job seekers who had followed up a vacancy with a Job Network member through job matching, 79 per cent were satisfied with all aspects of the service. So Senator Cherry should not somehow let a very small complaints tail wag a very successful Job Network dog, because the fact is that overwhelmingly customers are satisfied and overwhelmingly their needs are being met. It is a service that is light-years ahead of its predecessor. Whilst there may well be some matters that need to be addressed, by and large this is a system that is functioning very well.

Senator CHERRY—Madam President, I ask a supplementary question. If 19 per cent are dissatisfied, I think the minister needs to look at these figures again. Is the minister aware that departmental officials told the committee that they have no log of complaints made to providers as opposed to the department, so complaints are probably much higher than the figures I gave him? Is he concerned that, when stage 3 of Job Network locks the unemployed into a single Job Network provider with limited rights to move, the level of complaints will rise further? Can the minister assure the Senate that the government will listen to community and welfare groups and make sure that the code of conduct and service guarantee are as tough as possible so that captive clients are not clobbered and complaining?

Senator ALSTON—We are always concerned to ensure that we minimise the level of complaints and that a new system is not so inflexible that it causes more problems than it solves. I can certainly assure Senator Cherry that we will be doing our best to address those complaints because, whatever the level of complaints is, it is prima facie a matter deserving further attention. Of course, you can get enormous gradations in the quality of the complaints. I think all those matters will be addressed as we move through stage 3.

Superannuation: Policy

Senator SHERRY (2.24 p.m.)—My question is to Senator Coonan, Minister for Revenue and Assistant Treasurer. Is the Assistant Treasurer aware of the case of a superannuation fund retirement pension product known as Freedom of Choice Monthly Income Pool, now known as Power Monthly Income Pool, that has apparently lost a substantial proportion of their members’ money, causing their retirement pensions to cease? Is the Assistant Treasurer aware that the investment manager of this product, Power Asset Management, has been placed in liquidation? What steps are the government and its regulator, APRA, taking to ensure that members’ losses will be recouped and their retirement income pension streams recommenced?

Senator COONAN—I thank Senator Sherry for his question. The Freedom of Choice Masterfund is a product which allows members to choose their own investments. Prior to November 1998, Commercial Nominees of Australia Ltd offered a number of investment choices from this master fund. These included the life policy pool, the first mortgage pool and the monthly investment pool. These investments were not taken over by Australian Unity, the new trustee, as scheme pool trustee. However, Australian Unity, as the new approved trustee, acquired the membership and assets in these pools under its name as legal owner. I should say that on 12 November 1998, Australian Unity Funds Management acquired the Freedom of Choice Masterfund. The approved trustee of
the master fund prior to that was, of course, Commercial Nominees.

On the purchase date, Australian Unity deleted these three pools from their menu of investment choices, and no new money has gone into them since that date. Those members who had investments in these pools at the purchase date retained those investments unless they advised Australian Unity of their choice to switch to another investment product. Of the three pools, it appears that only those with exposure to the monthly income pool and the first mortgage pool will suffer any loss. But, as a result of investor complaints, APRA investigated the situation and is exploring with the approved trustee possible avenues for redress. APRA has been liaising on a regular basis to ascertain the members’ position. As a result of this liaison, the trustee has acknowledged that it intends to keep members regularly informed and has advised APRA that it has sent individual letters to affected members informing them of the current situation. I am informed that ASIC is also aware of the complaints.

Senator SHERRY—Madam President, I ask a supplementary question. In light of the dismal failure of the government regulator, APRA, to protect and in light of the government’s failure to fully compensate members of superannuation funds in the broader Commercial Nominees case, what, if anything, is the government going to do to protect recipients of pensions or annuities from similar misconduct?

Senator COONAN—Thank you for the supplementary question, Senator Sherry. I do not accept the proposition that APRA has been a dismal failure as a regulator. However, it is important that the performance of APRA be kept under review. Next year, the five-year term is up for the regular review of APRA and ASIC. As Senator Sherry would know, a working group, chaired by Don Mercer, has looked into all aspects of the safety of superannuation, and APRA participated extensively in relation to that inquiry. There have been some constructive suggestions coming out of the report of that inquiry which are certainly under very close consideration. The government takes very seriously the safety of superannuation. It is a matter that I certainly take very seriously. We will be looking carefully at the recommendations. (Time expired)

Research and Development: Centre of Excellence in Biotechnology

Senator HARRADINE (2.29 p.m.)—My question is to the Minister representing Dr Nelson, the Minister for Education, Science and Training. The minister will recall that, in 1988, when I introduced a bill to ban experiments on human embryos, the late Professor Julius Stone wrote to me supporting my action, stating:

This area of research is par excellence one likely to produce problems for mankind as a whole ...

My question to the minister is: how come the education portfolio and, indeed, the industry portfolio have paid out of taxpayers’ money $46.5 million for the Trounson venture, including experimentation and research using human embryos for the testing of drugs?

Senator ALSTON—I would like to begin by acknowledging Senator Harradine’s concern, which has been longstanding and very valuable, certainly in terms of the community’s interest, for ethics in scientific research. I think it is fair to say that he has made a great contribution to creating a greater focus on these issues at all stages of the processes. Certainly through the Australian Research Council and the NHMRC there are now strict ethical guidelines, particularly for assisted reproduction technology, and there is the National Statement on Ethical Conduct in Research Involving Humans, which are matters which have to be addressed on a standard basis.

As I understand Senator Harradine’s question, it is related to the recent decision to award the centre of excellence in biotechnology to the institution which is conducted by Professor Trounson at Monash University. The concern in particular is the extent to which ethical values and concerns have been addressed at each stage.

Senator Schacht—Madam President, I rise on a point of order. Yesterday I raised with you whether it was appropriate or disorderly for the Liberal Party to conduct a ballot during question time and you made some remarks that clearly indicated you were
not pleased. I now note that Senator Ferris, the Government Whip, is collecting ballot papers. I know it takes a long time for the Liberal Party to fill a ballot paper in, but what is your ruling about this?

The President—Order! There is no point of order and you are wasting question time.

Senator ALSTON—It is good to see Senator Schacht going out on such a high policy note. He is very big on ethical standards. I see he has even worn a tie to show us at last how seriously he takes the chamber. Unfortunately, he will go out with his hands in his pockets, and that is probably where he performs best.

Opposition senators interjecting—

Senator ALSTON—I’ve only got one. I am just sorry that a low-impact facility like Senator Schacht is no longer around in the communications portfolio—we will miss you greatly! Senator Harradine’s concern relates to ethical standards at each stage of the process. My information from Dr Nelson’s office is that, whilst there is only a requirement for a certificate from applicants that they will abide by those standards, that is ultimately built into the contract. So, whilst there may not have been persons with ethics backgrounds on the panel itself, the panel is obliged to follow the NHMRC guidelines and will do that in such a way that the contract negotiations will address all of those issues in significant detail. I think Senator Harradine’s concerns are very well founded, and that is why there is such a strict process to not only ensure that the guidelines are followed but require the centre itself to nominate an ethics committee. It will be subject to standard monitoring, and breach of those requirements will lead to the possibility of a termination of the grant under the deed. All of those matters, I think, will need to be addressed as soon as possible.

Senator HARRADINE—Madam President, I ask a supplementary question. Is it not a fact that this particular project, on which there has been $46.5 million spent, did not undergo any ethical evaluation at all, not even the minimal ethical evaluations that all grants from the ARC and all grants from the NHMRC must adhere to—none at all. Not only was there no ethics person on the panel but there was no certificate for the particular project to proceed. I ask that, in the evaluation that must now I hope take place, this is reconsidered by Minister Nelson and Minister Macfarlane, as this was a decision of theirs; it did not go to cabinet. (Time expired)

Senator ALSTON—I will ensure that Senator Harradine’s concerns are, once again, re-examined. I simply say at this point that the guidelines for applicants for the biotechnology centre of excellence require the centre to adopt and implement policies that ensure the centre’s activities are consistent with ethical and safety guidelines to be specified in the funding agreement. As I understand it, that is perfectly consistent with ARC grants and NHMRC grants. So it is not a one-off approach in this instance of not requiring an up-front statement of ethical values; it is a consistent approach that requires those values to be built into the end contract.

Taxation: Inspector-General

Senator SCHACHT (2.36 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. I ask whether the minister can confirm that the discussion paper she released on the proposed Inspector-General specifies:

The services of the Inspector-General can be activated by a written request from the Treasury Ministers...

Does the paper also say that requests for investigations may come from ‘taxpayers and taxpayer groups’? In light of recent information, how can the Senate be confident that this minister—you, Minister—will not be using the new device of the inspector-general to oil the wheels for groups of tax avoiders who want to interfere in Taxation Office administration?

The President—Senator Schacht, the use of ‘this minister’ was correct rather than your correction of ‘you, minister’.

Senator COONAN—Thank you, Madam President. Thank you for the question, Senator Schacht. I think it is a great pity that
you will leave this place having asked as your last question such a reprehensible question with a very unfair imputation about the intentions behind the Inspector-General of Taxation. As I think I have said earlier in this place, the whole intention behind the role of Inspector-General of Taxation is a serious attempt by this government to identify where there may be gaps in the points of review available to taxpayers who are otherwise unable to ventilate what may be legitimate concerns or even queries about systemic problems in their affairs relating to the tax office without having to go right through the whole process of going to court.

This government has identified the fact that there are systemic problems in the operation of the Australian Taxation Office where taxpayers do need assistance. Senator Schacht would know, from having read the discussion paper I released, that a number of areas have been identified where it would be possible for Treasury ministers, taxpayers or representative groups to bring issues to the attention of the commissioner—areas, such as the mass marketed schemes, which should have been identified much earlier than they were. The commissioner has said that. Indeed, it would be very helpful if there were an officer available to do that so that there is a much more seamless interface between the independence of the commissioner and ministerial oversight.

In this portfolio, I take very seriously the need to represent taxpayers’ interest as well as to provide ministerial oversight of the Australian Taxation Office. Obviously, the opposition have some different views as to what that involves. But I make no apology, and continue to make no apology, for bringing to the commissioner’s attention legitimate matters that are brought to my attention by taxpayers. If I did not do that, I would be completely remiss in the duty that I have taken on in this portfolio.

The discussion paper that has been released in relation to the inspector-general is exactly that: a discussion paper. Senator Schacht and the opposition—or indeed anyone who is interested in the administration of the tax office—could do something other than carp and whine. They could make a submission to the Board of Taxation, which is carrying out the negotiations and consultations in relation to the inspector-general discussion paper. It is at a stage where members of the public, members of the opposition and indeed anyone who can make a constructive improvement to the proposals put forward in the paper have an opportunity to do so. I urge those on the other side, instead of trying to pick holes in it and cast aspersions as to what might be the intentions behind it, make a submission about it. I will be glad to hear it.

Senator SCHACHT—Madam President, I ask a supplementary question. Why does the minister persist in a complete inability to recognise the proper independence of the tax commissioner as guaranteed by law and, instead, believe that it is proper and appropriate to ring Mr Carmody in the middle of a supermarket on a Saturday evening to pass on lobbyists’ requests? Why should the Senate be confident that she will not treat the future inspector-general in exactly the same compromising way?

Senator COONAN—All I can say is that even Senator Schacht as a private citizen would be welcome to come and see me if he had a problem with his tax. He would be very welcome to come and see me. I would not discriminate against Senator Schacht as a private citizen if he had problems with his tax. He can come and see me as, indeed, taxpayers who have difficulties are entitled to come and see me. They will be entitled, of course, to engage the services of the inspector-general in a legitimate manner, if one arises in relation to the administration of the tax office. It is a proper exercise of ministerial oversight to bring taxpayers’ concerns to the attention of the commissioner.

Insurance: Legislation

Senator McGAURAN (2.41 p.m.)—My question is also to the Assistant Treasurer, Senator Coonan. Will the minister advise the Senate of what the federal government is doing to improve the safety and stability of the insurance industry? Is the minister aware of any alternative policies?
Senator COONAN—I thank Senator McGauran for his question and, indeed, for his ongoing interest in this issue.

Opposition senators interjecting—

The PRESIDENT—Order! I have interrupted the minister to call the chamber to order so senators can hear the answer.

Senator COONAN—In the past year, we have seen the far-reaching and serious impact that spiralling costs of insurance premiums and, indeed, failure of a major insurance company can have on the community. I think many in the Australian community have become much more acutely aware of the role that insurance plays in our society. It is the very glue that enables us to carry on most of our activities. Insurance coverage is vital for so many of the day-to-day activities we have simply come to take for granted as part of the Australian way of life. Although the problems currently being experienced across Australia in relation to insurance are clearly not of the federal government’s making, I can assure you that the government is doing all it possibly can within its powers to address this issue.

Today, I am very pleased to be able to inform the Senate that the government has introduced legislation to allow individuals to assume their own risk when undertaking risky recreational activities. These amendments to the Trade Practices Act fulfil one of the Howard government’s commitments to the ministerial meeting on public liability insurance held in Melbourne on 30 May this year. The federal government has already introduced legislation to encourage the use of structured settlements in place of one-off lump sums to compensate negligent victims, and we are forging ahead on all other items for which the Commonwealth has responsibility.

The amendments to the Trade Practices Act that the government has introduced today will allow people undertaking risky recreational activities to waive their rights to sue. I can assure the Senate that this will be done with great care to maintain legitimate consumer protection and, of course, to balance the rights of consumers with the objective of allowing people to assume their own risk when they undertake risky voluntary activities. Businesses will be required to have in place reasonable risk management plans in respect of any activity to which a waiver can apply.

This legislation will help take the pressure off insurance premiums for small businesses offering adventure tourism or recreational activities, many of whom are located in rural and regional areas and have been severely impacted by these rises in premiums and face steep increases in their insurance premiums. I know that Senator Kemp will welcome this. State governments have primary responsibility for reforming the tort laws under which people are able to sue for negligence. The Commonwealth has taken a leadership role on this issue and has proved that the federal government is willing to do what it can to assist.

All states and territories must now move urgently to address the areas of tort reform. I urge those opposite to urge their state Labor counterparts to get on with the job of implementing law reform instead of running around the edges of it announcing plans to do it but never actually doing it, apart from New South Wales. So I urge all those opposite to do what they can to urge their state Labor counterparts to actually get on with law reform.

I am also pleased to inform the Senate that on Monday the most significant reforms undertaken to prudential supervision of general insurance in decades will come into effect. Prudential regulation is essential to ensuring the ongoing financial viability, indeed safety, of insurance companies. It is essential to ensuring that the funds are there to pay those Australians who need to make a claim against an insurer. This government is doing everything it can to assist. (Time expired)

Taxation: Barter Transactions

Senator MACKAY (2.46 p.m.)—My question is to Senator Coonan, Assistant Treasurer and Minister for Revenue. Can the minister confirm that the issue of the tax treatment of barter transactions was listed on the ATO rulings register in November 2000? Isn’t it true that a draft ruling will not be issued by the ATO until December this year?
Can the minister explain how taxpayers are supposed to have any idea how to apply the law in this regard when it is going to take the Australian Taxation Office itself more than 2½ years to figure it out?

Senator COONAN—Thank you, Senator Mackay, but you are dead wrong about that because there are ongoing consultations in relation to the barter transactions. Presently, they are being undertaken in relation to the draft ruling. The draft ruling will be issued when the matters that need to be dealt with are properly resolved. In fact, there are many representations in relation to the barter transactions that have been brought to my attention. It is matter that is under close consideration, and when the ruling is finalised it will be issued.

Senator MACKAY—Madam President, I ask a supplementary question in relation to this matter. Can the minister outline the ATO’s guidelines on the treatment of relevant taxpayers who might in fact be audited in two years’ time, by which time we can only hope the ATO will arrive at a final decision on issues such as the tax treatment of barter transactions? Is the minister prepared to promise those taxpayers that they will not have to pay penalties or interest if they have been wrong about how the ATO might apply the law?

Senator COONAN—Thank you for the supplementary question, Senator Mackay. The guidelines in respect of the way in which the barter transactions will be treated and what will happen to anyone who has made payments or indeed undertaken their transactions in reliance on certain positions they have taken will be dealt with in the rulings, and are supposedly the subject of negotiations with the commissioner.

Scrutiny of Bills Committee

Senator BOURNE (2.48 p.m.)—Madam President, under standing order 72(2), I seek leave to ask a question of Senator Cooney as Chair of the Senate Scrutiny of Bills Committee.

The PRESIDENT—Have you advised the senator of your intention to ask the question?

Senator BOURNE—I have, Madam President, and the whip. Leave granted.

Senator BOURNE—For the edification of those senators who have never served on the Scrutiny of Bills Committee, can Senator Cooney outline the importance of the work done by that committee and whether he is aware of any other portfolio outlines on it?

Senator COONEY—With complete sincerity, I thank you for the question. Pursuant to the standing order, I answer on behalf of my committee. I am very proud to have this committee, with Senator Crane as my Deputy Chair. Thank you for all you have done, Winston. Senator Murray, thank you for the efforts you have put into this committee, and Senator Crossin, Senator Mason and Senator Ferris, thank you very much. This committee has done great service to this parliament. In fact, all committees of the Senate have done great service to this parliament. As we go through question time and put the executive to the test with penetrating cross-examination—and so we should—it has to be remembered that this chamber is not only a chamber that deals with government but also a chamber with a life of its own. It has a committee system of its own set up, may I say, by the Senate. The senator most identified with that was Senator Lionel Murphy.

Senator Hill—Madam President, on a point of order: I do not think that is relevant to the question that was asked.

The PRESIDENT—There is no point of order.

Senator COONEY—It is not necessarily relevant but I think it is very important for me to make this point, and I thank Senator Bourne for the question. It is an area in which we as backbenchers have an opportunity to do something. This chamber is not simply a chamber for government and it is not simply a chamber for ministers. It is also a chamber with a committee system that we have all served on, including over the years the frontbench—with great distinction, I think. It is a chamber where we can get up and put ourselves before the public—this is the time when everybody is here—and point out just what great work this committee
does. All the committee systems do great work.

I think the Scrutiny of Bills Committee is a great committee. It is not the oldest; the Regulations and Ordinances Committee is the oldest and does the same sort of thing. It is about us, as senators and as the Senate, saying to the parliament and, through the parliament, to the people of Australia: we are on about serious issues and we ought to be tested on what we do because that is very important. I am very pleased that Senator Bourne, for whom I have the greatest admiration, has asked this question because she has asked it of us, the Senate, when we are doing what we can for the people of Australia.

Honourable senators—Hear, hear!

Senator BOURNE—Madam President, I ask a supplementary question. Is the senator aware of any other views and, in particular, can he give us some insight into why serial governments appear to ignore the findings of the Scrutiny of Bills Committee?

Senator COONEY—There have been some who have done that, and I will not say who has been the worst offender in the history of the committee, but on the other hand there has been I think great success on the part of this committee. The ministers do take it seriously, and I think one of the reasons it does work is that ministers do respond; it is a matter of them responding in the right way. There are times when they do not do what we think they ought to do but, by and large, I think the ministers do try to do something about this committee, do take it seriously and do do things about it. If they keep doing that, the system will work as it is working at the moment. Thanks for the question.

Taxation: Mass Marketed Schemes

Senator GEORGE CAMPBELL (2.54 p.m.)—My question is to Senator Coonan, the Assistant Treasurer and Minister for Revenue. Does the minister recall her press release announcing the inspector-general discussion paper? It stated:

It is important that taxpayers with an interest in this take the opportunity to provide some input and let the Government know what is right or wrong with the model and how it might be improved.

Who are these taxpayers who have an interest in the powers of the inspector-general? Isn’t it the case that these taxpayers are those involved in mass marketed tax avoidance schemes, the same people whom the minister was involved with at her infamous meeting at the Royal Perth Yacht Club?

Senator COONAN—Thank you, Senator George Campbell, for the question. The answer to that is no. All taxpayers, of course, have an interest in the future Inspector-General of Taxation. All taxpayers would have not only an interest in the final shape and form of the inspector-general’s office but also I am sure a need to at some stage feel that they can access the inspector-general to do with their tax affairs. I reject totally the concept that the Inspector-General of Taxation came into being to deal with mass marketed tax schemes. What an absurd idea, and what an absurd characterisation of a comprehensive discussion paper that talks about many of the issues that ordinary taxpayers have. They do not have to belong to any particular class; they do not have to be members of the ALP. They will be able to have access to the inspector-general if they are just ordinary people with ordinary problems relating to the tax office.

It speaks volumes that, in the last question time of this sitting of the parliament, all the Labor Party can do is trawl around and try to find obscure bits of administration of the Australian Taxation Office as their serious, concerted complaint when there are other issues that you might otherwise think concerned Australians—the important issues that affect the lives of everyday people. You do not find any reason to worry about matters such as our budget bills, which really are very important and which are going to mean something in the order of $1.4 billion worth of revenue. You are denying that to the budget and you are denying that to the running of this country. If you would get on and pass the budget bills, you really would do something for the revenue.

Senator GEORGE CAMPBELL—Madam President, I ask a supplementary question. Isn’t it the case that the minister’s
press release of 29 May also proposes to give to the inspector-general power with respect to penalties and interest for taxpayers caught up in tax avoidance schemes? Isn’t this issue of going easy on penalties for tax avoiders exactly what the minister raised with the tax commissioner straight after her working weekend meeting at the Royal Perth Yacht Club?

Senator COONAN—Senator George Campbell, I think I have squeezed this lemon about as hard as I can as far as giving you any information about the several different groups of people I met with in Perth. I do not really think there is much more—

Senator Conroy—I raise a point of order, Madam President. I was wondering if you could ask Senator Abetz to contain his continual interjections. He is keeping Senator Kemp awake.

The PRESIDENT—There is no point of order. That was a waste of question time.

Government senators interjecting—

The PRESIDENT—Order! I call to order senators on my right.

Senator COONAN—I was also about to say that this is a great waste of question time, but if that is the way the opposition want to run it then that is the way it will be. The Inspector-General of Taxation is a well thought out policy position to meet the legitimate needs of all taxpayers—no matter what sort of systemic problems they have had—to assist with issues that would otherwise take my time and attention and to better allow the administration of the portfolio and the supervision of the Australian Taxation Office.

Telstra: Sale

Senator FERGUSON (2.59 p.m.)—My question is for the Minister for Communications, Information Technology and the Arts, Senator Alston. How does the Howard government’s clear position on the future ownership of Telstra guarantee that all Australians will have access to high quality phone services? Is the minister aware of any alternative approaches and what their impact would be?

Senator ALSTON—Thank you to Senator Ferguson, who, of course, knows that this is a hugely important issue to Australian consumers and an issue that should have been resolved many long years ago. We all know that we have celebrated the anniversary of virtually every other country in the world having gone down this path a long time back. But what we have in Australia is a regime that ensures that the parliament can scrutinise customer service needs, can tighten the screws if necessary, whether it is imposing price caps, whether it is customer protection arrangements, whether it is timetabled local calls, whether it is universal service obligation: parliament can do all those things irrespective of ownership. Of course we could continue to do that. At the same time we have been able to use the proceeds of sale of T1 and T2 to roll out over $1 billion worth of infrastructure in regional and rural Australia. That is a pretty clear position on the one hand. We are making good use of the resources, but nonetheless we retain this huge conflict of interest as both shareholder and regulator. Whilst we are a reluctant passive investor, we would much rather be out there simply acting as the regulator.

I am asked if there are any alternative approaches. The problem is it depends where you want to start. If you want to start prior to the election, well, they were all out there signing pledges, weren’t they: no way, not on, won’t privatise Telstra in any shape or form. Of course, we all understood what that meant: it meant the whole Telstra operation—$70 billion worth. What did we get after the election? We were told every policy was up for grabs except the privatisation of Telstra. Well, that lasted a few weeks and then you had Mr Tanner coming out with basically a partial privatisation policy: you pander to the unions, you put the network into mothballs, you make the government own that and wear the costs of it, and you flog off everything else. Of course, that got people like Senator Mackay pretty excited, so she developed another policy position, which was that they were not in favour of structural separation. Now we understand that Senator Mackay has obtained a private assurance from Mr Tanner that structural separation is not on. And yet this options paper is out there in the marketplace of ideas—which, of course, is not inhibited by the Labor Party but they expect others to
visit it from time to time—and they are being invited to express a view on whether or not structural separation is a good idea. This is a charade because, quite clearly, the unions and Senator Mackay have jacked up, they have said it is not on, and yet poor old Mr Tanner is being hung out to dry arguing that structural separation is still worthy of consideration. He is ringing around the merchant banks right now, trying to drum up a bit more support for his position.

This really is a litmus test for the opposition. If they want to have a skerrick of credibility in the business community then they ought to get out there and get serious about this. Everyone else in Australia knows that you can walk and chew gum at the same time, you can actually regulate the environment. They all know it; they say it privately often enough, but in public they have to maintain this ridiculous charade that is for the benefit of their union mates but fundamentally opposed to the national interest. So whilst Labor continue to adopt that head in the sand approach they will simply be condemning themselves not only to policy irrelevance but also to not being taken seriously on an issue where every other country in the world has long recognised the inevitability of the approach we have outlined.

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

**QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS**

**Defence: Contracts**

**Senator HILL** (South Australia—Leader of the Government in the Senate) (3.03 p.m.)—Yesterday, Senator Lundy asked me a question about the Defence PMKeyS contract. I have some information to add to my answer. I seek leave to have that information incorporated in *Hansard*.

Leave granted.

The answer read as follows—

I am pleased to add to my answer to Senator Lundy’s question yesterday regarding Defence’s PMKeyS Project and in doing so correct the factual errors in her question.

By way of background, the Personnel Management Key Solution Project, or PMKeyS Project, entails the delivery of a major IT solution to replace over 20 large and purpose-built human resource and payroll computer systems throughout Defence. The Project commenced in September 1997 as part of the Defence Reform Program. On 10 July 1998 a contract was signed with PeopleSoft for the implementation of the PeopleSoft Human Resource Management System (HRMS), which is a commercial, off-the-shelf, human resource management and payroll system.

The PMKeyS Project business case provided initial estimates for the cost and timeframe of PMKeyS implementation across the whole of Defence.

The initial budget was $25m and the timeline expected completion in 3 years, or around the end 2000. The contract cost for the PeopleSoft HRMS element of the Project comprised $13.5m of this amount.

In addition to the software provided by PeopleSoft, other external providers have been engaged to provide services towards the PMKeyS Project, including for project management, training development, training delivery, and production system problem resolution.

Implementation of the project is a complex activity, involving the effort of PeopleSoft, Defence project staff and sub-contractors. Progress of the project has been monitored by Defence, and to date, there has been no action or failure in performance by PeopleSoft that has been judged to warrant legal action.

It is pleasing to advise the Senate that Defence implemented the civilian HR component of the PMKeyS Project, including payroll in October 1999.

The implementation of the civilian component was timely, and covered some 19000 civilian staff including staff on compensation payments, around 2500 military personnel on compensation payments, and around 2600 Instructors of Cadets.

As the initial project completion date approached in 2000, it became apparent to Defence that the time-scale and budget estimates for the ADF component of the implementation were ambitious, and the level of customisation required had been underestimated.

The level of customisation of the PeopleSoft HRMS product ultimately required to meet the complex functionality required by the ADF has had a significant impact on time and cost for implementation across the ADF.

Defence has worked with PeopleSoft and other contractors to deliver the requisite level of functionality, which includes career management and
professional development and training management.

The internal business process changes required to implement in Defence a uniform human resources management system have also taken longer than originally estimated.

This has been a massive systems integration task. Some 80,000 ADF personnel’s records are involved, including Reservists.

I can advise the Senate that from early July this year Defence will have rolled-out PMKeyS to the Army.

This will mark the implementation of a single, human-resources software system for all Defence staff; currently some 100,000 personnel records. The ADF payroll component is the remaining body of work to complete the Project.

The Project expenditure to date is around $61m. Approximately $46m of this has been paid to contractors.

Defence is currently undertaking a review of progress to date and of the estimated completion date and the total project costs. However, as advised to the recent Senate Legislative Committee hearings on the Defence estimates, completion is currently expected by the end of 2003 with total Project costs in the order of $70m.

ANSWERS TO QUESTIONS ON NOTICE

Question Nos 303, 304, 305, 306 and 307

Senator SHERRY (Tasmania) (3.04 p.m.)—Pursuant to standing order 74, I ask the Assistant Treasurer and Minister for Revenue, Senator Coonan, why she has failed to respond to questions on notice Nos 303 to 307.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (3.04 p.m.)—In respect of question on notice 333, I actually did clear it about a week ago and it was passed to the ATO for tabling. For some reason it appears as not being tabled, and I can arrange for that to be tabled immediately. As for the other matters, after Senator Sherry raised those matters yesterday I looked into each of them. They do involve some quite detailed responses and they are under consideration and in hand. I expect to be able to deal with them shortly.

Senator SHERRY (Tasmania) (3.05 p.m.)—I move:

That the Senate take note of the explanation.

There are two matters to raise in taking note of the minister’s response. Firstly, the matter as to process: there was an interjection, and I understand that is disorderly, but it did lead to the issue of whether or not my office had followed protocol and contacted Minister Coonan’s office prior to yesterday’s question time, when I initially raised this matter. That was a response to an interjection from Senator Patterson. I did say at the time that I was confident my office had rung Senator Coonan’s office. I did recheck that after question time and, yes, my staff had rung the staff of Senator Coonan and had spoken to two of her staff about this matter before question time yesterday. There appears to have been—I will be charitable—a communication breakdown in Senator Coonan’s office. I just want to make it clear for the record that my office had followed protocol and understood courtesy in phoning first.

Secondly, as to the questions themselves and the answers that we require, the minister is correct: they are quite detailed questions, and they are important questions because they go to issues in relation to modelling, revenue and costs of a range of measures—for example, matters relating to taxation revenue expenditures in the area of superannuation and other like tax expenditures. The minister did complain in question time about Labor’s alleged attitude to budget and revenue matters. I would just point out to the Senate that the sorts of questions that we have put on notice, and answers to them, are quite critical for any opposition and, indeed, for commentators in tax and economic and superannuation areas, to make reasoned judgments about policy initiatives. This is particularly so in light of the Intergenerational Report, which I will not go into today because of time but which I believe is not a full picture of the issues facing Australia with respect to the ageing population.

Question agreed to.

Question No. 333

Senator COOK (Western Australia) (3.08 p.m.)—I rise under standing order 74(5)(a). This is a question to Senator Coonan—and I say that quickly before she leaves the chamber. On 16 May, I put question No. 333 on notice to her, and the 30 days rule has now
expired. It is a question with 23 subparts and relates to mass marketed schemes. Can Senator Coonan give an indication of when that question might be answered?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (3.08 p.m.)—I understood that the answer was to go to Senator Sherry, but I know that I have cleared that question. It went to the ATO, and the answer can be tabled immediately. I understand that to be the position in respect of question 333. I would not suggest for a moment that Senator Sherry did not observe the usual courtesies in contacting my office, but personally I was not aware of this. I am now aware of it, and those matters are all in hand.

Senator COOK (Western Australia) (3.09 p.m.)—I move:

That the Senate take note of the explanation.

I am pleased to hear the answer that the question has been cleared and the answer can be tabled immediately. These questions, framed by me but asked on behalf of constituents of mine who happen to live in the Kalgoorlie area, relate to the offer made by the Australian Tax Office to settle claims for people who were participants in mass marketed tax schemes; this offer has now expired. So the information adduced by these answers was not available to taxpayers when they had to face the choice of electing which course of action to take, and that is regrettable. In concluding, I note that I do not think any of these residents in the Kalgoorlie area were members of the Royal Perth Yacht Club or were invited to that meeting that the Assistant Treasurer attended.

Senator WATSON (Tasmania) (3.12 p.m.)—The Senate would be aware that investors in mass marketed schemes had the opportunity to accept the settlement offer put forward by the Commissioner of Taxation in February 2002. The deadline for acceptance of the offer was 21 June 2002. To date, I understand that something like 46,000 settlement deeds have been received by the commissioner. I think that number indicates the success of that offer and the success of that program. But the final number will not be determined until all acceptances have been received by the tax office, and I presume that the number will be greatly in excess of that 46,000.

Despite the very large number of acceptances, it is quite clear that there will be a number of investors who are either unwilling or unable to accept the offer and may need ongoing assistance in dealing with the tax office. Investors who choose not to settle still have the power to access all the review mechanisms currently available to all taxpayers who wish to dispute an amended assessment. While the cost of funding an appeal through the courts can be quite prohibitive for some investors, there are additional challenges, as most senators know, in being able to get independent external advice or review of the tax office’s conduct. This includes the right to have the complaint investigated and dealt with, for example, by the Commonwealth Ombudsman.

Senator Cook—We know all this.

Senator WATSON—The Commonwealth Ombudsman, Senator Cook, has the role of investigating individual complaints and is-
sues which surround any administrative action, including those of the tax office. Within the Ombudsman’s office, as you well know, a special and dedicated team focuses on issues dealing with the Australian Tax Office. With all this information and this tax gathering power—

The DEPUTY PRESIDENT—Senator Watson, can I remind the Senate that it is considering Senator Cook’s motion to take note of the answer having not been given and is not a motion to take note.

Senator WATSON—I am canvassing the issues and the concerns raised by Senator Cook, and I am addressing each of them quite individually, Madam Deputy President. The Ombudsman has all these powers to collect this information, so I suggest to Senator Cook that his disaffected clients should access the Office of the Ombudsman. Senator Coonan has also sought to improve people’s rights and to improve the review mechanism by virtue of the new appointment of the Inspector-General of Taxation. This is subject to public consultation, it is not yet available, but I think it is a further demonstration of Senator Coonan’s concern in this area—concern that, in part, came about by the mass marketing schemes. I think it is a great thing for taxpayers to have an inspector-general in addition to the Ombudsman, as well as all the other internal review mechanisms and the ability to access the problem resolution department of the Taxation Office. I believe the success of the program is demonstrated by the very large number of people who have accepted the schemes.

Question agreed to.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Answers to Questions

Senator SHERRY (Tasmania) (3.16 p.m.)—I move:

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

I want to draw to the Senate’s attention the response of the Minister for Revenue and Assistant Treasurer to my question in relation to a superannuation fund retirement pension product—

Senator Watson—Madam Deputy President, on a point of order: I understand there is an agreement amongst the parties and the whips that the Senate would be dispensing with this procedure this afternoon with a view to proceeding to valedictories. Is Senator Sherry wishing to intrude into the time for valedictories?

The DEPUTY PRESIDENT—No, Senator Watson, that is not the agreement. I understand that will be happening not later than 4.30 p.m.

Senator Calvert—Madam Deputy President, there has been a misunderstanding here. I was led to believe after the leaders and whips meeting that we were not going to have taking note of answers today. That was my understanding and Senator Brown is nodding his head. Obviously, the Leader of the Opposition was not of that view, and it seems now that we are taking note, which makes it rather difficult for me because most of my take-noters have left the chamber.

Senator Robert Ray—Madam Deputy President, if we do want to get on to valedictories early, I make the point to Senator Calvert that we should keep to any agreement we have reached. Before we move on to the valedictories, if people are going to give a travelogue on a couple of reports, I would rather have the noting done because it is more valuable.

Senator Mackay—The Labor Party will be pursuing taking note today as normal.

Senator SHERRY—I want to draw the Senate’s attention to the issue that I raised with Senator Coonan, the Minister for Revenue and Assistant Treasurer and the minister responsible for superannuation matters. I did ask a question about a particular superannuation fund retirement pension product called ‘freedom of choice monthly income pool’. This product is an income stream or a retirement pension, as it would be more commonly known, that had been purchased by an individual who has contacted my office to complain that the pension has stopped being paid. This is a private pension, the individual is in retirement and the private pension that
they have purchased is no longer being paid. Of course, for any person in retirement this is a very serious matter. If you have saved over your working life, you get to retirement and you purchase an income stream, then you obviously have to live on that in retirement. For the individual—and there are others affected by this so-called ‘freedom of choice monthly income pool’—this is a very serious matter indeed.

Fortunately, for the Australian superannuation system the number of these failures is small in the context of the eight million Australians who have superannuation, but for those individuals where this occurs it is quite devastating. If you are elderly, you are retired and you are receiving an income, and you obviously need that income to live on, what on earth do you do if for some reason your retirement income, and in this case the ‘freedom of choice monthly income pool’, ceases to be paid? It is a very serious matter indeed for those individuals who are affected.

The minister did indicate that she had heard of this particular product. It comes under the broader banner of what has become known as the Commercial Nominees case. There are a particular number of matters that are a cause of concern to the Labor opposition in the approach taken by the minister in this area. One matter of great interest to me was that she did inform the Senate that the individuals who selected this ‘freedom of choice monthly income pool’ had exercised choice—they had actually gone out into the market and decided to purchase this retirement pension; they had exercised choice quite freely. That is what she alluded to. I find this interesting in view of the policy position of the Liberal government, which is to force choice on every Australian. Every Australian, under government policy not legislated for yet, will have to go out into the marketplace and choose a particular superannuation fund. It is a worry to the Labor Party that, under this proposed government model that is yet to pass this Senate, anyone who bought a pension called ‘freedom of choice monthly income pool’—I think it is quite aptly named, given the circumstances—will be dunned. Their retirement pension income has stopped, which is catastrophic for those who are retired.

I turn now to the issue of the regulator. The regulator is the Australian Prudential Regulation Authority, commonly known as APRA. The minister is staunch in her defence of APRA and its role as regulator. I, as deputy chair of the Senate committee, and Senator Watson, as chair—indeed, he has taken a much harder line than I have on this—know that, in this case, APRA was not as diligent as it should have been. Despite the evidence that emerged, APRA did not pick up on it or act quickly enough to ensure that the problems arising in this area were minimised. I hope that Senator Watson refers to this because the minister continues to defend the role of APRA. According to the Treasurer, Mr Costello—and he created this regulator—APRA is the world’s best regulator. After HIH and Commercial Nominees, I do not see anyone—other than the Treasurer and, apparently, the Assistant Treasurer—calling this Australia’s ‘world’s best regulator’. It did not act appropriately with respect to Commercial Nominees and the so-called ‘freedom of choice monthly income pool’. (Time expired)

Senator WATSON (Tasmania) (3.23 p.m.)—While I would like to respond fully to the issues raised by Senator Sherry, the coalition will not participate in this debate and will honour the undertaking given earlier this day, which even Senator Brown appeared to agree to as he left the chamber.

Senator GEORGE CAMPBELL (New South Wales) (3.24 p.m.)—I also wish to take note of the answers given today by Senator Coonan.

Senator Ferguson—You never keep an agreement, George.

Senator GEORGE CAMPBELL—I thought you did not want to take part in the debate, Senator Ferguson. The intervention by Senator Watson in response to Senator Cook taking note of the answers given by Senator Coonan demonstrates the difficulty we on this side have in dealing with the minister, Senator Coonan. I asked her a question today in relation to the meeting that took place at the Royal Perth Yacht Club. I
got a confused and confusing answer. That is not unusual in this place. A lot of the answers from Senator Coonan over the past few weeks have been confused and confusing. I recall asking her a question a couple of weeks ago about household debt. She proceeded to give me an answer with respect to rates of housing renewals or approvals in this country—an answer totally unrelated to the question. There was a similar set of circumstances in response to my question today.

It is clearly demonstrated that this minister does not have a grasp of her portfolio. She is not across the issues for which she has ministerial responsibility—and it is an important ministerial responsibility. Questions such as how revenue is collected, whom it is collected from, who pays it, who fails to pay it and who avoids paying it are of great importance to the Australian community. The minister has said that she attended a meeting at the Royal Perth Yacht Club with persons who had concerns and that she discussed issues relating to mass marketing schemes with those individuals. After that meeting, she took what I think is the extraordinary step of ringing the Commissioner of Taxation to put some views to him in relation to the issues raised at that meeting. We have had various answers from the minister as to exact views she put to the tax commissioner and what she requested of him. It is interesting to note that the minister was able to go to Western Australia and spend a significant period in Perth—she was certainly able to spend a Saturday, part of her weekend, at the Royal Perth Yacht Club—talking about these issues.

Senator Ferguson—You would have been on the golf course. That is where you would have been.

Senator GEORGE CAMPBELL—I am not the Minister for Revenue and Assistant Treasurer, Senator Ferguson. No members of my golf club are involved in mass marketing schemes, Senator Ferguson, or have the capacity to avoid their taxation commitments. The point is this: it has clearly been demonstrated that Senator Coonan was previously in the vicinity of Kalgoorlie for discussions about these issues. The biggest number of taxpayers affected by these schemes are in Kalgoorlie—an area that has been very well served by my colleague Senator Cook. He has gone out of his way to provide a service to that community that the local member has not been capable of providing.

While the minister was in that vicinity, did she take the opportunity to go to Kalgoorlie and talk to the people who were involved in any of these schemes? Did the minister invite any representatives from Kalgoorlie to come to the Royal Perth Yacht Club to hear what she had to say about mass marketing schemes? How much of her time did she spend on the water on that Saturday, sailing around the beautiful environs of Perth? How much time did she actually spend talking to the people who were involved in these schemes? She still has not answered the question. Why did she pick up the phone and ring the tax commissioner? What was the objective of that phone call? Who was she seeking to benefit by making that call? She has not answered that question; it remains unresolved. If she is concerned about all of the people in this community who pay tax and contribute to the revenue of the community, then she ought to attend more clubs than the Royal Perth Yacht Club.

Senator FERGUSON (South Australia) (3.29 p.m.)—I would like to respond to the wild accusations of Senator George Campbell, but in fact I will not because I have no intention of breaking an agreement and undertaking that was taken at the whips meeting this morning.

Senator COOK (Western Australia) (3.29 p.m.)—I too wish to take note of the answers of Senator Coonan during question time. I am not aware of breaking any undertaking. I do not understand such an undertaking was given because—

Honourable senators interjecting—

The DEPUTY PRESIDENT—Order! Senator Cook, you have the call for five minutes. Other conversations can take place outside.

Senator COOK—I do believe agreements should be kept.

Senator Knowles interjecting—

Senator COOK—You are not my whip. There is a serial history of considerable in-
competence in this chamber by ministers who are assistant treasurers. Senator Jim Short occupied that portfolio for a short time. He is now, I understand, at the European Bank for Reconstruction and Development. He moved out of that portfolio after an embarrassing display and a somewhat stuttering attempt to answer questions properly, and I think it is fair to say that many in the chamber felt a lack of confidence in him. Senator Rod Kemp then succeeded him in that portfolio, and we all know Senator Kemp as someone who would never allow an answer to get in the way of making a political statement. Often his answers were not to the question but simply regurgitated the lines of the day turned out by the spin doctors in the back room of the Liberal Party. He did that rather than try and answer the earnest questions of senators in this chamber and shed light on detailed matters. In fact, during Senator Kemp’s tenure, when he was asked detailed questions he appeared even more embarrassed.

Now we have Senator Coonan. From our side, Senator Coonan was extended a degree of respect and tolerance as befits a debutante to the front bench of the government, but she seemed to believe that her job was to start out with a bit of biff, beat up on the opposition, rather than actually answer a question. My observation is that it is always far better for ministers to get on top of their portfolios, to know the facts and to answer on the facts before they get into trying to best the political debate in this chamber. Senator Coonan has made a shaky start, and some of her answers to the questions over the last couple of weeks have left some doubts in the mind as to her competence. One hopes that during the break she can regather her forces and come back and start to answer those questions thoroughly and professionally.

That leads me to the question that Senator Campbell was referring to, the meeting at the Royal Perth Yacht Club. The Royal Perth Yacht Club nestles in the peppermint trees lining Matilda Bay opposite Perth, bordering on the stately sandstone of the edifice of the University of Western Australia. It is a select part of Perth; it is not a part that most people have access to. Not everyone is a member of the Royal Perth Yacht Club and therefore not everyone knew that they could consult the Assistant Treasurer on mass marketed tax schemes at such a select venue. Indeed, as has been said, a number of people in mass marketed schemes reside out on the red dust and saltbush of the Kalgoorlie alluvial plain, and many of those have been specifically targeted by what I regard as the serious problem in this issue, promoters, who said to themselves: ‘Hello! Here’s a chance to make a killing. People in the mining industry have big per capita incomes’—they also have big per capita costs but they have some disposable income—’and if we can turn our attention from doctors, lawyers and airline pilots we might be able to inveigle some of these people into investing their hard-earned dollars into mass marketed schemes.’ These promoters were gulling them with information that is shonky at best about the legality of some of these schemes. A number of innocent people were caught.

A series of important questions needed to be answered so that those people knew how to elect to accept an offer from the tax office or exercise their rights at law. The questions that those people had—and there has been considerable community trauma about this in the Kalgoorlie region—were not answered in time for them to make a fully informed decision. They had to go with a decision in the circumstances at the time. The answers are apparently going to be given today, but the offer from the tax office expired last week. So the answers will be interesting but not useful for the real problems that they face. This question of privilege and right seems to be being confused. Senator Coonan, I think, could have used her time to have gone to Kalgoorlie and answered the questions of those individuals so they would know. (Time expired)

Question agreed to.

Research and Development: Centre of Excellence in Biotechnology

Senator HARRADINE (Tasmania) (3.35 p.m.)—I understand the opposition’s point of view but I was not anywhere near the whips meeting; I was trying to save the government time by ensuring that a particular matter did go on the non-controversial area. I move:
That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to a question without notice asked by Senator Harradine today relating to the funding of stem cell research.

I thank Senator Alston for his response, although I did detect it was coming from, to a certain degree, the portfolio which he represents in this chamber. The fact of the matter is that this enormous expenditure of money, $46.5 million plus another $5.5 million, has been committed to a venture which has not been ethically evaluated. Even the smallest program of the ARC, of the NHMRC, at least has to receive a certificate from an ethics committee. That is unsatisfactory, I know, but at least they have to do that. This program did not do that. Not only that, but there was no-one on the panel from an ethics area at all—not one. There were no consumer representatives on the panel, no representatives of disability groups and no ethicists.

That particular amount of money, which was approved by Dr Nelson and Mr Ian Macfarlane, was approved by them without it going to cabinet. It can be argued that it does not have to go to cabinet, but a major amount of money like that ought to go to cabinet. Not only that, but it is pre-empting the debate that we are going to have in this place because it is paying for, in advance, the use of human embryos to test drugs, as in this example. It might be said that these are surplus embryos. What a nonsense that is. The very senior IVF researcher Dr Robert Jansen, in a statement to the committee on the legislation I introduced in 1986, said:

It is a fallacy to distinguish between surplus embryos and specially created embryos in terms of embryo research—any intelligent administrator of an IVF program can, by minor changes in his ordinary clinical way of going about things, change the number of embryos that are fertilised.

So much for the surplus: it can be rigged, and it has been rigged, by those who have overseen the generation of those embryos. I want to say, finally, that it is about time we heeded the warnings given to us by Professor Julius Stone. There is now a Julius Stone chair of jurisprudence at the University of Sydney; I am very proud to have a letter from Professor Julius Stone that warned of the dangers to humankind as a whole if experiments were permitted on human embryos.

Question agreed to.

DOCUMENTS

Department of the Senate: Travelling Allowances

The DEPUTY PRESIDENT (3.40 p.m.)—I table a document providing details of travelling allowance payments made by the Department of the Senate to senators and members for the period July to December 2001.

In accordance with an undertaking made at estimates hearings that senior officers of the Department of the Senate would declare their travelling allowance payments on the same basis as senators, I also present a document providing details of the payments made in the 2000-01 financial year.

COMMITTEES

Reports: Government Responses

The DEPUTY PRESIDENT—In accordance with the usual practice, I table a report on parliamentary committee reports to which the government has not responded within the prescribed period, as at 27 June 2002. The report has been circulated to honourable senators. With the concurrence of the Senate, the report will be incorporated in Hansard.

The document read as follows—

PRESIDENT’S REPORT TO THE SENATE ON GOVERNMENT RESPONSES OUTSTANDING TO PARLIAMENTARY COMMITTEE REPORTS AS AT 27 JUNE 2002

PREFACE

This document continues the practice of presenting to the Senate twice each year a list of government responses to Senate and joint committee reports as well as responses which remain outstanding.

The practice of presenting this list to the Senate is in accordance with the resolution of the Senate of 14 March 1973 and the undertaking by successive governments to respond to parliamentary committee reports in timely fashion. On 26 May 1978 the then Minister for Administrative Services (Senator Withers) informed the Senate that within six months of the tabling of a committee report, the responsible minister would make a statement
in the Parliament outlining the action the government proposed to take in relation to the report. The period for responses was reduced from six months to three months in 1983 by the then incoming government. The then Leader of the Government in the Senate announced this change on 24 August 1983. The method of response continued to be by way of statement. Subsequently, on 16 October 1991 the then government advised that responses to committee reports would be made by letter to a committee chair, with the letter being tabled in the Senate at the earliest opportunity. The current government in June 1996 affirmed its commitment to respond to relevant parliamentary committee reports within three months of their presentation.

This list does not usually include reports of the Parliamentary Standing Committee on Public Works or the following Senate Standing Committees: Appropriations and Staffing, Selection of Bills, Privileges, Procedure, Publications, Regulations and Ordinances, Senators’ Interests and Scrutiny of Bills. However, such reports will be included if they require a response. Government responses to reports of the Public Works Committee are normally reflected in motions for the approval of works after the relevant report has been presented and considered.

Reports of the Joint Committee of Public Accounts and Audit (JCPAA) primarily make administrative recommendations but may make policy recommendations. A government response is required in respect of such policy recommendations made by the committee. However, responses to administrative recommendations are made in the form of an executive minute provided to, and subsequently tabled by, the committee. Agencies responding to administrative recommendations are required to provide an executive minute within 6 months of tabling of a report. The committee monitors the provision of such responses.

The entry on this list for a report of the JCPAA containing only administrative recommendations is annotated to indicate that the response is to be provided in the form of an executive minute. Consequently, any other government response is not required. However, any reports containing policy recommendations are included in this report as requiring a government response.

Legislation and other committees report on bills and on the provisions of bills. Only those reports in this category that make recommendations which cannot readily be addressed during the consideration of the bill, and therefore require a response, are listed. The list also does not include reports by legislation committees on estimates or scrutiny of annual reports, unless recommendations are made that require a response.

A guide to the legend used in the ‘Date response presented/made to the Senate’ column

* See document tabled in the Senate on 26 June 2002, entitled Government Responses to Parliamentary Committee Reports—Response to the schedule tabled by the President of the Senate on 15 February 2002, for Government interim/final response.

** Report contains administrative recommendations only—response is to be provided directly to the committee in the form of an executive minute.

<table>
<thead>
<tr>
<th>Committee and Title of report</th>
<th>Date report tabled</th>
<th>Date response presented/made to the Senate</th>
<th>Response made within specified period (3 months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASIO, ASIS and DSD (Joint)</td>
<td>18.6.02</td>
<td>-</td>
<td>Time not expired</td>
</tr>
<tr>
<td>An advisory report on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community Affairs References</td>
<td>30.8.01</td>
<td>14.5.02 (presented 13.5.02)</td>
<td>No</td>
</tr>
<tr>
<td>Lost innocents: Righting the record—Report on child migration</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The patient profession: Time for action—Report on nursing</td>
<td>26.6.02</td>
<td>-</td>
<td>Time not expired</td>
</tr>
<tr>
<td>Corporations and Securities (Joint Statutory)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report on fees on electronic and telephone banking</td>
<td>8.2.01</td>
<td>20.6.02</td>
<td>No</td>
</tr>
<tr>
<td>Committee and Title of report</td>
<td>Date report tabled</td>
<td>Date response presented/made to the Senate</td>
<td>Response made within specified period (3 months)</td>
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<tr>
<td>---------------------------------------------------------------</td>
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</tr>
<tr>
<td>Report on aspects of the regulation of proprietary companies</td>
<td>8.3.01</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Report on the Financial Services Reform Bill 2001</td>
<td>20.8.01 (presented 16.8.01)</td>
<td>*(final)</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Economics References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report on the operation of the Australian Taxation Office</td>
</tr>
<tr>
<td>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</td>
</tr>
<tr>
<td>Inquiry into mass marketed tax effective schemes and investor protection—Interim report</td>
</tr>
<tr>
<td>Inquiry into mass marketed tax effective schemes and investor protection—Second report: A recommended resolution and settlement</td>
</tr>
<tr>
<td>Inquiry into mass marketed tax effective schemes and investor protection—Final report</td>
</tr>
<tr>
<td>Inquiry into the framework for the market supervision of Australia’s stock exchanges</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employment, Workplace Relations, Small Business and Education References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Universities in crisis: Report into the capacity of public universities to meet Australia’s higher education needs</td>
</tr>
<tr>
<td>The education of gifted children</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Environment, Communications, Information Technology and the Arts Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report on the Broadcasting Services Amendment (Media Ownership) Bill 2002</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>Environmental, Communications, Information Technology and the Arts References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committee and Title of report</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Report on the powers of the Commonwealth in environment protection and ecologically-sustainable development in Australia</td>
</tr>
<tr>
<td>Inquiry into Gulf St Vincent</td>
</tr>
<tr>
<td>Inquiry into electromagnetic radiation</td>
</tr>
<tr>
<td>Report on the Environment and Heritage Legislation Amendment Bill (No. 2) 2000, the Australian Heritage Council Bill 2000 and the Australian Heritage Council (Consequential and Transitional Provisions) Bill 2000</td>
</tr>
<tr>
<td>Above board? Methods of appointment to the ABC Board</td>
</tr>
<tr>
<td>Finance and Public Administration References</td>
</tr>
<tr>
<td>Re-booting the IT agenda in the Australian Public Service—Final report on the government’s information technology outsourcing initiative</td>
</tr>
<tr>
<td>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</td>
</tr>
<tr>
<td>Foreign Affairs, Defence and Trade (Joint)</td>
</tr>
<tr>
<td>From phantom to force—Towards a more efficient and effective army</td>
</tr>
<tr>
<td>Conviction with compassion: A report into freedom of religion and belief</td>
</tr>
<tr>
<td>Rough justice: An investigation into allegations of brutality in the Army’s Parachute Battalion</td>
</tr>
<tr>
<td>A report on visits to immigration detention centres</td>
</tr>
<tr>
<td>Australia’s role in United Nations reform</td>
</tr>
<tr>
<td>Australia’s relations with the Middle East</td>
</tr>
<tr>
<td>The link between aid and human rights</td>
</tr>
<tr>
<td>Committee and Title of report</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>A model for a new army: Community comments on the ‘From phantom to force’ parliamentary report into the army</td>
</tr>
<tr>
<td>Foreign Affairs, Defence and Trade References</td>
</tr>
<tr>
<td>Artillery Barracks, Fremantle—Inquiry into the disposal of defence property—Interim report</td>
</tr>
<tr>
<td>Inquiry into the disposal of defence properties</td>
</tr>
<tr>
<td>Japan: Politics and society</td>
</tr>
<tr>
<td>Recruitment and retention of ADF personnel</td>
</tr>
<tr>
<td>Information Technologies (Select)</td>
</tr>
<tr>
<td>In the public interest: Monitoring Australia’s media</td>
</tr>
<tr>
<td>Cookie monsters? Privacy in the information society</td>
</tr>
<tr>
<td>Inquiry into the Contract for a New Reactor at Lucas Heights (Select)</td>
</tr>
<tr>
<td>A new research reactor?</td>
</tr>
<tr>
<td>Legal and Constitutional Legislation</td>
</tr>
<tr>
<td>Freedom of Information Amendment (Open Government) Bill 2000</td>
</tr>
<tr>
<td>Inquiry into the provisions of the Copyright Amendment (Parallel Importation) Bill 2001</td>
</tr>
<tr>
<td>Inquiry into the provisions of the Measures to Combat Serious and Organised Crime Bill 2001</td>
</tr>
<tr>
<td>Inquiry into the provisions of the Proceeds of Crime Bill 2002 and the Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002</td>
</tr>
<tr>
<td>Inquiry into the provisions of the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and 4 related bills</td>
</tr>
<tr>
<td>Legal and Constitutional References</td>
</tr>
<tr>
<td>Committee and Title of report</td>
</tr>
<tr>
<td>-------------------------------</td>
</tr>
<tr>
<td>Inquiry into the Commonwealth’s actions in relation to Ryker (Faulkner) v The Commonwealth and Flint</td>
</tr>
<tr>
<td>Inquiry into sexuality discrimination</td>
</tr>
<tr>
<td>Inquiry into the Australian legal aid system—3rd report</td>
</tr>
<tr>
<td>Inquiry into the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999</td>
</tr>
<tr>
<td><em>Legal and Constitutional References (continued)</em></td>
</tr>
<tr>
<td>Humanity diminished: The crime of genocide—Inquiry into the Anti-Genocide Bill 1999</td>
</tr>
<tr>
<td>Order in the law: Management arrangements and adequacy of funding of the Australian Federal Police and the National Crime Authority</td>
</tr>
<tr>
<td>Inquiry into the Human Rights (Mandatory Sentencing for Property Offences) Bill 2000</td>
</tr>
<tr>
<td>Inquiry into section 46 and section 50 of the Trade Practices Act 1974</td>
</tr>
<tr>
<td>Inquiry into the outsourcing of the Australian Customs Service’s information technology</td>
</tr>
<tr>
<td><em>Migration (Joint Standing)</em></td>
</tr>
<tr>
<td>Not the Hilton—Immigration detention centres: Inspection report</td>
</tr>
<tr>
<td>2001 Review of Migration Regulation 4.31B</td>
</tr>
<tr>
<td>New faces, new places: review of state-specific migration mechanisms</td>
</tr>
<tr>
<td><em>National Capital and External Territories (Joint Statutory)</em></td>
</tr>
<tr>
<td>In the pink or in the red? Health services on Norfolk Island</td>
</tr>
<tr>
<td>Risky business: Inquiry into the tender process followed in the sale of the Christmas Island Casino and Resort</td>
</tr>
<tr>
<td><em>National Crime Authority (Joint Statutory)</em></td>
</tr>
<tr>
<td>Committee and Title of report</td>
</tr>
<tr>
<td>-------------------------------</td>
</tr>
<tr>
<td>The law enforcement implications of new technology</td>
</tr>
<tr>
<td>Native Title and the Aboriginal and Torres Strait Islander Land Fund (Joint Statutory)</td>
</tr>
<tr>
<td>Second interim report for the s.206 inquiry: Indigenous land use agreements</td>
</tr>
<tr>
<td>Public Accounts and Audit (Joint Statutory)</td>
</tr>
<tr>
<td>Corporate governance and accountability arrangements for Commonwealth government business enterprises, December 1999 (Report No. 372)</td>
</tr>
<tr>
<td>Public Accounts and Audit (Joint Statutory) (continued)</td>
</tr>
<tr>
<td>Contract management in the Australian Public Service (Report No. 379)</td>
</tr>
<tr>
<td>Review of Coastwatch (Report No. 384)</td>
</tr>
<tr>
<td>Review of the Auditor-General Act 1997 (Report No. 386)</td>
</tr>
<tr>
<td>Review of the accrual budget documentation (Report No. 388)</td>
</tr>
<tr>
<td>Review of Auditor-General’s Reports 2000-2001, Fourth quarter (Report No. 389)</td>
</tr>
<tr>
<td>Rural and Regional Affairs and Transport Legislation</td>
</tr>
<tr>
<td>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</td>
</tr>
<tr>
<td>Administration of the Civil Aviation Safety Authority: Matters related to ARCAS Airways</td>
</tr>
<tr>
<td>Aviation Legislation Amendment Bill (No. 1) 2001</td>
</tr>
<tr>
<td>The proposed importation of fresh apple fruit from New Zealand—Interim report</td>
</tr>
<tr>
<td>Report on the provisions of the Regional Forest Agreements Bill 2001</td>
</tr>
<tr>
<td>Committee and Title of report</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Inquiry into the administration of Motor Vehicle Standards</td>
</tr>
<tr>
<td>Quota management control on Australian beef exports to the United States</td>
</tr>
<tr>
<td>Rural and Regional Affairs and Transport References</td>
</tr>
<tr>
<td>Report on the development of the Brisbane Airport Corporation’s master plan for the future construction of a western parallel runway</td>
</tr>
<tr>
<td>Air safety and cabin air quality in the BAe 146 aircraft</td>
</tr>
<tr>
<td>Airspace 2000 and related issues</td>
</tr>
<tr>
<td>The incidence of Ovine Johne’s Disease in the Australian sheep flock—Second report</td>
</tr>
<tr>
<td>Scrutiny of Bills (Senate Standing)</td>
</tr>
<tr>
<td>Fourth report of 2000: Entry and search provisions in Commonwealth legislation</td>
</tr>
<tr>
<td>Sixth report of 2002: Application of absolute and strict liability provisions in Commonwealth legislation</td>
</tr>
<tr>
<td>Superannuation and Financial Services (Senate Select)</td>
</tr>
<tr>
<td>The opportunities and constraints for Australia to become a centre for the provision of global financial services</td>
</tr>
<tr>
<td>A ‘reasonable and secure’ retirement?: The benefit design of Commonwealth public sector and defence force unfunded superannuation funds and schemes</td>
</tr>
<tr>
<td>Enforcement of the superannuation guarantee charge</td>
</tr>
<tr>
<td>Report on the provisions of the Parliamentary (Choice of Superannuation) Bill 2001</td>
</tr>
<tr>
<td>Prudential supervision and consumer protection for superannuation, banking and financial services: First report</td>
</tr>
<tr>
<td>Committee and Title of report</td>
</tr>
<tr>
<td>--------------------------------</td>
</tr>
<tr>
<td>Prudential supervision and consumer protection for superannuation, banking and financial services: Second report—Some case studies</td>
</tr>
<tr>
<td>Prudential supervision and consumer protection for superannuation, banking and financial services: Third report—Auditing of superannuation funds</td>
</tr>
<tr>
<td>Report on early access to superannuation benefits</td>
</tr>
<tr>
<td>Treaties (Joint)</td>
</tr>
<tr>
<td>UN Convention on the Rights of the Child (17th report)</td>
</tr>
<tr>
<td>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)</td>
</tr>
<tr>
<td>Extradition—a review of Australia’s law and policy (40th report)</td>
</tr>
<tr>
<td>Who’s afraid of the WTO? Australia and the World Trade Organisation (42nd report)</td>
</tr>
<tr>
<td>Thirteen treaties tabled in August 2001 (43rd report)</td>
</tr>
<tr>
<td>Four nuclear safeguards treaties tabled in August 2002 (44th report)</td>
</tr>
<tr>
<td>The Statue of the International Criminal Court (45th report)</td>
</tr>
<tr>
<td>Treaties tabled 12 March 2002 (46th report)</td>
</tr>
</tbody>
</table>

**DOCUMENTS**

Auditor-General’s Reports

**DELEGATION REPORTS**

Parliamentary Delegation to Finland and Germany

DEPUTY PRESIDENT (3.41 p.m.)—I present the following report of the Auditor-General: Report No. 63 of 2001-02—Performance Audit—Management of the DASFLEET Tied Contract.

DEPUTY PRESIDENT (3.41 p.m.)—I present the report of the Australian parliamentary delegation to Finland and Germany, which took place from 7 to 19 April 2002.

Senator MACKAY (Tasmania) (3.41 p.m.)—by leave—I move:
Thursday, 27 June 2002

SENATE 2865

That the Senate take note of the report.

I seek leave to incorporate my remarks.

Leave granted.

The statement read as follows—

Madam President, I had the privilege of being part of an Parliamentary Delegation that visited Finland and Germany between 7 and 19 April 2002. The delegation undertook a series of meetings, inspections and discussions on issues of current relevance and importance. A central objective of the Delegation’s visit was to renew and reinforce the existing good relations between the Australian Parliament and the Finnish and German parliaments.

The Delegation was led by the President of the Senate, the Hon. Margaret Reid, and comprised Senators Winston Crane and myself, and three Members of the House of Representatives, Mrs Kay Elson, Mr. Michael Danby, and Mrs Margaret May.

The Delegation’s program in Finland, 7–12 April 2002, was hosted and arranged by the Finnish Parliament. The Delegation held meetings on a range of political, economic and social issues with the President of the Republic, the Speaker of the Parliament, members of the Finnish Parliament, the Speaker of the Sami Parliament, the Prime Minister, government officials and civic and business leaders.

The Delegation’s program in Germany was hosted and arranged jointly by both chambers of the German Parliament, the Bundesrat and the Bundestag, and included visits to Berlin and the new German States of Brandenburg and Thuringia between 13 April and 19 April 2002.

In Berlin the Delegation met with members of the Bundestag and Bundesrat, the President of the State Parliament of Berlin and senior members of the ministry and bureaucracy. The members of the delegation participated in a very informative forum arranged by the Australia Centre on “German-Australian Collaboration in Science, Education, IT and the Arts”.

The Delegation visited Potsdam, the capital of Brandenburg, and Erfurt, the capital of Thuringia, to meet with members of the State Parliaments and ministers responsible for European affairs.

The Delegation was shocked and saddened to hear of the tragic shooting of many students and teachers at a high school in Erfurt, the Thuringian capital, just one week after our visit there. The Leader of the Delegation wrote to the President of the State Parliament, and to others whom we had met during our visit to Erfurt, to express our deep sorrow and sympathy.

During the Delegation’s visit to Finland the Speaker of the Parliament, Mrs. Riitta Uosu-kainen, was presented with a formal letter from the President of the Senate and the Speaker of the House of Representatives inviting her to visit the Australian Parliament.

In Germany the Delegation presented letters to the presiding officers of the Bundestag, President Wolfgang Thierse, and the Bundesrat, President Klaus Wowereit, inviting them to visit the Australian Parliament. The Delegation is pleased to note that President Wowereit was able to respond almost immediately to his invitation and visited Australia in May 2002.

The Delegation is indebted to many people here in Canberra and in Germany and Finland for the success of their visits to both countries. A full list of those to whom we wish to express our gratitude is included in the report but today I would like to especially mention Madam President, the Leader of the Delegation, the staff of our Embassies in Berlin and Stockholm, and our colleagues in the Parliaments of Finland, Germany, Brandenburg and Thuringia who hosted the Delegation’s visits. Dr. Ditta Bartels, Managing Director of the Australia Centre in Berlin.

The Delegation’s discussions with members of parliament, ministers and officials in Finland and Germany covered a wide range of topics including, not surprisingly, immigration policies, refugees and asylum seekers; border protection; foreign policy; trade; education; and the problems facing the new States of Germany—the former East German territories which joined the German federation after the fall of the Wall.

In the time available today I wish to focus on just two aspects of our visit—our discussions concerning the European Union and the funding of Research and Development in the countries we visited.

**European Union**

Germany is one of the founding members of the EU, and Finland is one of the newer members, having joined in 1995. In both countries the Delegation met with the parliamentary committee responsible for oversight of EU matters, and in Germany with two State ministers responsible for EU affairs.

One of the questions we asked constantly during our time in both countries was: How do you maintain the balance between your sovereignty as a nation, and your commitment to a supranational organisation such as the European Union?

The answers to this question were never clear cut but we gained the impression that it was a matter...
of trade-offs, and that constant vigilance was needed to keep the balance right.

For example, the Finns told us that in foreign policy and security matters they retained a relatively high degree of sovereignty because such matters are determined in the EU by intergovernmental cooperation rather than supranational decision-making. However, in respect to other EU matters the Finns felt that they had ceded a substantive part of their autonomy. We were told that “the Finnish Parliament now not so much makes laws as defines the negotiating position to be taken by Finland in EU forums”.

On balance, however, the Finns felt that they had got the balance in the trade-off right. In response to a question about how one reconciles globalisation and democracy, the Delegation was told that Finland was looking at the EU as a test case of how this tension might be resolved. The members of the Finnish Foreign Affairs Committee were of the view that despite some loss of sovereignty on economic and social matters, Finland’s leverage in economic affairs had actually increased since it joined the EU. Prior to Finland joining the EU in 1995, two thirds of its trade was already with western Europe but because they were not members of the EU they had no say in policy making. Now that they are inside the EU the Finns feel that they have more power over trade matters today than they did in 1994 when they were outside.

In Germany the question of the relationship between an individual country and the governing bodies of the EU is complicated by the fact that Germany is a federation consisting of 16 States.

The Bundesrat, the German equivalent of our Senate—though very different in composition and powers—is the prime constitutional mechanism for involving the States of the German federation in EU affairs. Following the treaty of Maastricht the Federal Constitution was amended to require that the Bundesrat be consulted on EU matters, and that in the case of matters falling exclusively within the jurisdiction of the States, the carriage of the matter was to be delegated to a representative of the States nominated by the Bundesrat.

Thus, on some matters the German Federal Government goes to Brussels to negotiate, and in other areas where the States have the prime constitutional responsibility (such as policing and education) a delegation of State ministers will represent German interest in EU deliberations.

There is no Federal minister of European affairs, though this is a matter for consideration at the present, and at the Federal level EU matters are dealt with by the relevant portfolio minister. Each State, however, has a minister responsible for European affairs and these meet regularly to coordinate their responses to EU proposals. Individual German States each maintain an office in Brussels—in effect a “mini-embassy”—to monitor and lobby on EU matters.

The Minister for Federal and European Affairs in the Thuringian State Government neatly symbolised the complexity of these arrangements when he told us that he had to maintain three separate ministerial offices—one in Erfurt, the capital of Thuringia, one in Brussels and one in Berlin.

The European Affairs Committee of the Federal Parliament, the Bundestag, told the Delegation that Germany was hoping that the accession of 10 or 12 mainly eastern European countries to the European Union in the next couple of years would provide an opportunity to review the powers and procedures of the organs of EU governance—the European Parliament, the Council and the Commission.

Germany is keen to clarify the division of powers within Europe, including the possibility of re-nationalising some matters and confirming the powers of the German States in other areas. There is community pressure to address what has been called the ‘democratic deficit’ that characterises present arrangements, by giving EU decision-making some more public support and legitimacy.

The sheer size of the EU means that the original structures of governance are no longer appropriate. Unanimous decision-making had been feasible when there were only six members but with the current 15 members the requirement for unanimity is too cumbersome, and unless the situation is changed decision-making would be virtually impossible when the EU numbers expanded to 27. Majority or weighted voting were among the options that could be considered.

In Finland too there were some concerns about the “democratic deficit”. We were told that in the last municipal elections only 56% of Finns voted—much lower than the usual turnout prior to Finland’s accession to the EU. The Finns thought that this may have been because many people think that “the real decisions are made in Brussels anyway” and therefore local elections do not matter so much any more.

R & D

Though it has few natural resources other than the talents of its people, Germany is the world’s third largest economy after the United States and Japan. The German economy is almost as big as that of France and the United Kingdom combined. Leaving Japan to one side, the German economy is almost as big as the combined
economies of East Asia from ASEAN through China and Taiwan to South Korea. One of the keys to Germany’s economic success is the amount of resources devoted to research and development—2.5% of GDP compared to Australia’s 1.8%.

In the Delegation’s discussions with the Prime Minister of Finland we were told that the Government had a target of lifting R&D expenditure to no less than 3.6%.

In both Germany and Finland R&D is seen as a joint responsibility of both government and industry. In Finland the Delegation was able to gain an appreciation of industry’s perspective on R&D when it visited the splendid new headquarters of the Nokia Corporation just outside Helsinki.

Nokia is the great success story of the modern Finnish economy. It is now the world leader in mobile communications, manufacturing not only mobile phones but also network support systems. In 2001 Nokia’s net sales totalled US$ 28.15 billion and accounted for four per cent of Finland’s GDP and about 20% of export earnings. It employs 54,000 people in 18 production and research facilities in ten countries, including Australia. During a visit to Nokia headquarters the delegation was told that today Nokia invests eight to ten per cent of net sales in R&D and that 18,600 people, 35 per cent of Nokia’s workforce, works in this area. It was planned to continue this level of investment despite a slowing in the rate of sales growth.

In Berlin the Delegation was able to gain an insight into German perspectives on research and development when we attended a most useful forum on “German–Australian Collaboration in Science, Education, IT and the Arts” which was arranged by the Australia Centre, Berlin. Members of the delegation participated in discussions with more than forty representatives of German and Australian universities, research institutes, high-tech industries, government and broadcasting institutions, and the German–Australian Business Association. The Delegation wishes to express its appreciation for the work done by the Managing Director of the Australia Centre in Berlin, Dr Ditta Bartels, in arranging the forum.

Senator CALVERT (Tasmania) (3.43 p.m.)—by leave—On behalf of Senator Crane, I present the report of the Australian parliamentary delegation to the 22nd A IPO General Assembly, which took place in Thailand from 2 to 5 September 2001, and a bilateral visit to Singapore from 9 to 13 September 2001. I seek leave to move a motion in relation to the report.

Leave granted.

Senator CALVERT—I move:

That the Senate take note of the document.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.
NOTICES
Withdrawal
Senator ABETZ (Tasmania—Special Minister of State) (3.43 p.m.)—At the request of the respective senators, I withdraw government and general business notices of motion as set out in the list circulated in the chamber.

The list read as follows—

Government business notices of motion Nos 1 and 3

General business notices of motion Nos 1, 7, 14, 43, 55, 58, 59, 77, 83 and 91.

VALEDICTORY
Senator HILL (South Australia—Minister for Defence) (3.44 p.m.)—This is an opportunity for us to say farewell to a number of senators who are spending their last day in the Senate today. Interestingly, six are from the Labor Party, one is from the Australian Democrats and one is from the government side, so the new Senate is going to be a very different body when we return. I will be brief, bearing in mind the number of speakers and the pressure of business today. Not surprisingly, I want to make special mention of the government senator retiring, Senator Winston Crane.

Winston came to us with a strong record of public contribution in the rural sector. He was president of his state division of the Farmers Federation and, as I recall it, he was Senior Vice President of the National Farmers Federation. So he had been recognised as a contributor to agricultural politics at the highest level by his colleagues. He has pursued that knowledge and interest during his period in this place. He has been willing to recognise that to remain competitive the rural sector has had to change, and he has been able to take the farmers with him in that challenge. That has been particularly helpful to the government, but I think in the end it will be recognised by the farming community as having been particularly helpful to them as well. I believe he can be very proud of the contribution he has made to rural politics while being here. But Senator Crane has not simply been limited to rural politics.

In his maiden speech he spoke of his industrial relations interests. He has pursued those effectively and with vigour in this place, as he has the broader economic debate issues of trade, land conservation, and many others. If you look at his contribution in terms of committee work, it almost takes up a full page. He really has been a diligent contributor to this chamber and its work particularly as it relates to individuals through the committees. I say on behalf of the government he has done an excellent job and we wish to be recorded as recognising that on this occasion. Upon his retirement from the Senate, I wish Senator Crane and his family happiness in the future and, knowing Winston is not the sort of person who is likely to retire as such, I wish him success in whatever future endeavour he might undertake.

I also make special mention of Senator Vicki Bourne. Vicki Bourne has been around this place longer than I have, having started here as a staffer in 1978. Having endured that experience for many years, she has now endured the inside of the chamber for many years also, but always endured it with great heart and with great enthusiasm—and that is a good thing in this business. It has been to a background of very deep convictions and I think, when she looks back on her contribution, particularly to the human rights debates in this place and her practical efforts within the region to improve human rights outcomes in East Timor, Burma, Tibet and the like, she can be very proud of her contribution in that regard.

She will also be remembered fondly by us for her commitment to public broadcasting. She has taken every opportunity to make clear the importance of that element as part of our total information network. Occasionally we thought she lacked a little objectivity in her assessment of the ABC’s performance.
but, subject to that caveat, we believe she has made a very significant contribution to the media and broadcasting debates in this place, and she should be remembered for that. Vicki, I certainly wish you well in the future. The talents that you do bring to this place and your experience, I think, will be missed by the Senate. I am sorry that you lost your seat. If it had been my choice, I might have even voted for you.

On the Labor side, a few of those departing I have been quite close to and some, unfortunately, as is the nature of this business, I have not had much contact with. Barney Cooney, I guess, is close to all of us in one way or another. Barney sets a standard to which most of us seek to aspire, but rarely reach, in terms of his personal demeanour, his commitment and his values. Senator Cooney seems to have had a couple of extra opportunities above others to get his expressions on the public record in the last two days. He is always fighting for the underdog. He is committed to civil liberties and he determines to progress that in practical ways through the committees of this place—the regulations committee and the Scrutiny of Bills Committee and through the Legal and Constitutional Affairs Committee. Barney, I think you have demonstrated that it is possible to make a difference in this place. I think you can look back and see ways in which you have made a difference for the better, and I think you should be very proud of that. Certainly you are someone we will all miss.

I thought I ought to mention Chris Schacht because he comes from my state. Chris is a political warrior. He has basically been one for most of his working life, either working for the party or working as a senator for South Australia. I have always found that he has been very professional in the way he has gone about this business. We have had many tussles over the years in South Australia, bringing different political perspectives to the same issues. Chris has always been very professional in the way he has seen his responsibility to advance his cause. He has been determined in doing it. He always seems to me to be somebody who has enjoyed his politics—until very recently when it became a terrible experience. I had great interest in watching Chris on the television the other night reminding me of the internal traumas of the Labor Party. I hope, out of contributions such as Senator Schacht’s, reform will come to the Labor Party—

Senator Chapman—It is a big ask!

Senator HILL—perhaps that is a big ask—and that others in the future will not be treated in the most unfair way that he was during the last Senate preselection process.

I have worked closely with Senator Schacht in foreign affairs matters, defence matters and so many others. He has played a significant role here in communications, science issues and business, for which he was a minister, and many other areas as well. Chris, even if your party does not realise it, you will be somebody that they will come to miss in time.

I want to mention Senator Rosemary Crowley because she is also from South Australia. She helped me in the terrible time that I was shadow minister for the status of women. She was actually the Minister Assisting the Prime Minister for the Status of Women and she treated me with mercy, and I want to put on the public record that I appreciated it. Her contribution has been particularly in the health and community welfare areas and she has taken her job seriously and made a strong contribution over the years. Others retiring I wish them well. Brenda Gibbs, I do not know well, but I hope her retirement is a happy one. Thank you for your contribution to the Senate. Jim McKiernan, one of the characters of the Senate, if I might say that in a respectful way, brings a great heart and a great sense of humour to the Senate—

Senator Abetz—And a bad taste in ties!

Senator HILL—Yes, his dress sense and all of those things as well as his accent. He has played a positive role in international relations by building relationships between parliaments, but despite all those aspects of Senator McKiernan’s contribution I think his very serious and reform-minded approach to issues of migration will probably be that which most of us will remember him for.
The DEPUTY PRESIDENT—Senator Hill, I hate to stop you in mid-flight, but your time is up!

Senator HILL—Sue West, I congratulate you on your contribution and wish you well, and if I have missed anybody I wish them a happy retirement and thank them for their contributions. (Time expired)

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.54 p.m.)—We farewell eight senators today—six of those, of course, having represented the Australian Labor Party in this chamber. We had a farewell function last week for our departing colleagues on the Labor side and I was able to say that there were, between the retiring six senators, 92½ years of service in this parliament. I was able to go further and say that, as of last week, there were some 5,333 speeches from the lot of them. I might say between the lot of them, but Barney Cooney has added a considerable number this week! All these figures are out of date and I think a majority of those 5,000-odd speeches have come from Senators Cooney and Schacht, as you would expect. They have asked nearly 1,400 questions without notice—in fact, two of our colleagues, Senators Crowley and Schacht, have replied to a very significant number of questions without notice as ministers—and between the lot of them, and I do not like to report this but there was some disorderly conduct, there have been 2,762 interjections; but it is not as bad as it sounds because more than half of those did come from Senator Schacht.

In reverse order of seniority of those departing Labor colleagues, let me first mention Brenda Gibbs who joined us in this chamber in 1996. I know, as we say farewell to Brenda, that she will be disappointed, as are we, that she has served only one six-year term in the Senate. She has suffered the fate that so many have in running No. 3 on the Senate ticket for Labor in Queensland—fighting a great fight but not getting across the line. She is a great party stalwart and a great trade union stalwart. We have really enjoyed Brenda’s company in this place. I might say I am pleased that I will be able to continue to attend the Oxley FDE trivia nights—and I will not say any more about those in this speech. I look forward to joining Brenda and her family, and of course the wider Labor family, at Ipswich very soon for yet another fun evening.

Madam Deputy President, of course you are the only retiring Labor colleague who is a colleague of mine from the New South Wales branch of our party. In early 1987 you served five months in this place before you came in and served continuously from July 1990. I have many fond memories of campaigning with you in western New South Wales. I think all of us in the Labor Party would acknowledge your fine work as our caucus secretary for very many years and now as the party’s international secretary and, of course, as Deputy President in this chamber. You should have actually held the position, I have always said, of Deputy President a little longer than you did, but once the usurper lost the job it was great to see that you were in place and you have served your party and this chamber with distinction.

I also acknowledge Senator Chris Schacht, who of course is a former ministerial colleague in the Keating government. Chris was Minister for Science and Small Business from 1993 to 1994 and then became, a little later, Minister for Small Business, Customs and Construction. He has had a very long party career; he too is properly described as a party stalwart. Although he has had a long career in this chamber, he had a very distinguished career as a party official. I always say, and I think it is important to remember, that quite often we hear criticism of those who have had a career in the party organisation. It is a very honourable profession, it is a very difficult profession, and it requires dedication, it requires commitment, it requires hard work and it requires tenacity; and Chris Schacht has exhibited all of those qualities over a long period of time. He is, I know, disappointed that he is leaving, but he has had a significant and varied parliamentary career and he has made a great contribution to our party.

Jim McKiernan also leaves us. He joined this chamber in 1984. Jim is one of those people who is the most expert person in legal affairs who is a non-lawyer—the sort of per-
son we really want and we are really going to miss. As I think all colleagues would acknowledge, Jim has not only established an expertise in that area; he is genuinely an expert in immigration policy and immigration legislation. Earlier in my parliamentary career, he was my boss when he was the Deputy Government Whip in the Senate—and the less said about that the better! In terms of our parliamentary party, he was the returning officer who had the task in two very publicly fought and hard-fought leadership battles of announcing those results. He is a very experienced senator and has been very effective. He has been an effective and experienced representative of our party overseas as well. He has made a great contribution in this place. I think it is worth reflecting that Jim is the classic example of the sort of contribution that can be made with hard work, dedication, application to the task and, above all—and I cannot say a fonder thing of any of our retiring senators, because it applies to them all, and it certainly applies to Jim—absolute loyalty to our party and our movement.

Barney Cooney came in at the same time as Jim McKiernan in 1984. Anyone who ever asked why Barney did not get a question from the Senate tactics committee saw precisely why yesterday: as they were handed to Barney they seemed to morph; they seemed to change as they came out. As Senator Hill has said, Barney Cooney has a very fine record as a civil libertarian and a very fine record as a contributor in this place. He has taken his parliamentary responsibilities very seriously indeed, and he leaves a fine legacy as he leaves this chamber. He taught me a lot when I first came into this chamber, when I sat next to him. I think he felt that he should have done a better job with me than he did; nevertheless, I appreciate all his sage advice and counsel in those early years.

Rose Crowley is a former ministerial colleague in the Keating government, the Minister for Family Services. She has made a great contribution in so many areas. What a fun person to have here—apart from anything else. We are all going to miss those wonderful jokes we hear on a daily basis. Here is a person who has made a remarkable contribution in the areas of community affairs, health and the status of women, and has made a remarkable contribution to our party. We will very sorely miss Rosemary.

I know I speak on behalf of all members of our party when I say to all my six Labor colleagues: you have done wonderful service for our party. You have made an enormous contribution, and all of us are going to miss you a very, very great deal.

Finally, just to conclude my remarks, I would like to say something about the other two retiring senators from other parties. Senator Vicki Bourne, whom I have known along time—also, of course, a senator from New South Wales—had the misfortune of being the Democrat whip when I was Manager of Government Business in the Senate. I apologise for everything I said and did at that time, Vicki. You may forgive me for those things, but I suspect you will never forgive me for former Senator Kernot’s decision to leave the Australian Democrats. You were absolutely right not to speak to me for the two years after that occurred—and I do not blame you one bit. You have been a great person to know. It ought to be recognised that you have done a sterling job and an important job in the chamber management of this place. Often these things are not understood and often they are not said, and I think that it is important that that is placed on the record. We wish you well.

Senator Crane comes from the Liberal Party, so from this side of the chamber we acknowledge a political opponent. We know that Senator Crane, like some other colleagues who are leaving, has been relegated on the Senate ticket in his state. That has happened to other colleagues who are leaving this place. Senator Crane, every senator knows that there, but for the grace of God, go all of us. It can happen to any senator. It does happen to many of us. We wish you well in your retirement.

To all my colleagues, on behalf of the Australian Labor Party, I wish them well.

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (4.06 p.m.)—I rise on behalf of my Democrat
colleagues to wish all of those who are leaving best wishes for the future and to congratulate them on their contributions to this chamber. To begin with, I will focus my remarks on Senator Vicki Bourne and, if time permits, I will speak about other senators who are leaving. It is with great sadness that all Democrats tonight pay respect and tribute to Vicki. Like other senators in this place who are leaving, Vicki had a farewell last week. It was not really a dinner; it was more a mock parliament. It is up to you, Vicki, if you would like to share that with the chamber.

Back in 1977 Vicki Bourne was a student at the University of New South Wales. She had heard about the birth of a new political party called the Australian Democrats and she went along to the Sydney Town Hall meeting to see what it was about and to get involved. Later that year another meeting was held and she was there selling T-shirts. She was already an activist and was ambitious for a third force in Australian politics that was based on a commitment to environmentalism. She actually joined, as people have said, 24 years ago and has been working in the parliament since then; 12 of those years as a senator. She began by working for our first New South Wales senator, Colin Mason. When Colin said to Vicki that he was looking for a secretary, despite her extraordinary skills and her amazing degree, she realised that she did not have typing skills, so she took a two-week typing course in order to work with the then New South Wales senator. Vicki went on to work for former senator Paul McLean and became a senator herself in 1990.

Vicki was involved in drafting Australia’s first World Heritage bill. After more than a decade as a staffer in this place she was elected to the parliament, having campaigned strongly on the issues that have already been raised in relation to Vicki’s contribution: human rights, environmental issues and social justice. In her first speech Vicki said of the working conditions at the Old Parliament House:

Its very inconvenience engendered a spirit of camaraderie.

We all had to be civil to survive in that rabbit warren.

I think everyone tonight—including Senator Hill’s remarks already—would acknowledge Vicki’s extraordinary approach. She is liked by all colleagues and all parties in this place. She is undoubtedly one of the most popular figures in this parliament and she will be missed.

Foreign affairs was one of her first portfolios and she has held it ever since, throughout her time in the Senate. Over the years she has offered tangible support for the people of Cambodia, East Timor, Burma, Bougainville and many other countries across the globe. On numerous occasions she has spoken out in defence of the Falun Gong in China. It was at Vicki’s consistent urging that the Minister for Foreign Affairs took up the issue of Burma at ASEAN a few years ago. One of her other achievements is the establishment of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. I do not think that Vicki has missed many meetings since 1991, according to the record. She has regularly argued for the importance of the role of the UN and has been a strong advocate for the observance and respect of the Universal Declaration of Human Rights.

Vicki has campaigned on increasing the overseas aid budget. She has repeatedly called on this government, and all governments, to take a more progressive stance on human rights by linking human rights and trade. She has done extraordinary work on the issue of regulating Australian companies overseas in the areas of human rights, the environment, labour, and occupational health and safety standards, particularly through her private member’s bill, the Corporate Code of Conduct Bill 2000 [2002]. Before the first of the three human rights delegations to China, of which she was a member in the early 1990s, she said that her bottom line was that there had to be a visit to Tibet—and it happened. It was the first Australian human rights investigation to occur. Not long after, her motion supporting Tibet was successfully passed through both houses of parliament. Over the years she has become a pretty good mate of the Dalai Lama. Six years ago she
convinced the minister to meet the Dalai Lama and held a function for him in Parliament House. It is a sad reflection, however, that we and Vicki were not able to achieve that this year with this government.

East Timor is another example of her contribution to better Australian foreign affairs policy. For more than two decades, and this is largely because of Vicki’s work, the Australian Democrats supported an independent East Timor. Vicki’s involvement as an observer at both the independence ballot in 1999 and the first democratic elections must go on record. At dawn on the day of the independence ballot, Vicki and Tim Fischer were inspecting ballot boxes. By midnight, Vicki was speaking on the phone to Xanana Gusmao, the now President. She was able to tell him that the ballot appeared to have been conducted fairly and successfully. Tim Fischer’s book of that trip, Seven days in East Timor, makes much reference to Vicki’s emotion on that occasion and how she was shedding a tear or two.

Senator Bourne—Too much.

Senator STOTT DESPOJA—Not at all. There are other stories which were not in that book, Vicki; we may not put them on the record tonight. The culmination of Vicki’s many years of campaigning was being an official observer at the first East Timor election in April of this year.

In addition to her passion for social justice and the environment, as Senator Hill recognised, Vicki Bourne’s work on broadcasting legislation is quite extraordinary. She has been a vocal advocate for public broadcasting and increased diversity and local content in the Australian media. If this and former governments had listened to some of her recommendations on pay TV—and I think Bob Collins, a former minister, actually acknowledged this—it would have saved a lot of time and money.

She has introduced bills to depoliticise the ABC board, has opposed moves by the government to influence programming and has been the strongest supporter in this place of the ABC being free of commercial advertising. Over the last decade she has moved many motions and made many speeches about this issue and has tried to protect the ABC from massive funding cuts from both governments. She strongly advocated that Cox Peninsula should carry Radio Australia broadcast services, and we all know the reasons for that.

While the old parties note the importance of our relationship with Indonesia, Vicki pointed to what actually could be done. In 1994 she introduced the Parliamentary Approval of Treaties Bill. At the time, the parliament did not have any real say over which treaties were signed. She then put forward a proposal to establish a selection of bills and treaties committee. Eventually, in 1996, many years later, we created the Joint Standing Committee on Treaties. Vicki served on that committee, and it still operates in the parliament.

In 1990, when Vicki Bourne first became a senator, the Iraq conflict was looming and one of her first legislative acts on entering parliament was to move an amendment that Australian troops could not be committed overseas unless it was agreed to by the parliament—a debate that we have had only recently in this place. Vicki was the first to recommend that and place it in a private member’s bill. She has argued for stronger controls over defence exports and the provision of military training and equipment to countries with appalling human rights standards. She has been a strong supporter of disarmament initiatives and opposed Australia contributing to the production of weapons of mass destruction.

Since 1991 Vicki Bourne has been whip for the Australian Democrats. She has pursued positive policy measures to ensure greater accountability and transparency in government. She has negotiated pairs, sitting hours, committees, questions et cetera. In fact, Senator Faulkner alleged that Vicki has not spoken to him for the last two years. None of us in the Democrats will forget that night, on the day of the defection, when we saw Vicki—who, like most of us, was quite surprised and shaken by that announcement—going on Lateline calm and composed, not worried about Cheryl leaving so much as the fact that it was imperative that
She got us a pair for dealing with the native title legislation; and she did. She got a guarantee from the government of a pair for dealing with that bill. So she forever had an eye on policy and important social justice and human rights matters. Vicki held the position of interim Deputy Leader of the Democrats from October to December of that year.

**Senator Boswell**—It really flew!

**Senator STOTT DEPOJA**—It flew. It is a tragic irony that, in an election campaign that was dominated by international conflict and the issue of asylum seekers, the only seat lost in the Senate belonged to the parliament’s longest serving campaigner on the issue of human rights, particularly on an international level. We missed out on holding Vicki’s seat so narrowly, despite the fact that Vicki outpolled the senator who replaces her by around 70,000 votes.

Several years ago in this place, Vicki Bourne described herself as a small ‘d’ democrat, so as well as being a member of this political party she is a great believer in democracy. She can be proud of the part that she has played not only in our history, as we celebrate our 25th year, but in improving accountability and transparency in government, improving democracy and of course her role throughout the community. Vicki has many ties with many organisations, particularly NGOs, for example. There are many who have been helped by you, Vicki, who I know want to express their thanks and tributes to you today.

Vicki, as I said, is well known for her good humour and her rapport with colleagues from all parties. She is a campaigner who is passionate about those issues, particularly campaigning on behalf of oppressed peoples across the world. She has expertise in broadcast policy, foreign affairs et cetera. Vicki, all these things will be true as you leave the Senate as well. We wish you well. We are going to miss you terribly, as you heard from our speeches last week in the parliament. But—through you, Madam Acting Deputy President—with your skills, your intelligence and your dedication, we have no doubt that you will continue to make a substantial contribution to policy in whatever field you may choose.

Madam Acting Deputy President, I am conscious of the time but, on behalf of my colleagues, I do recognise that other senators will be departing. We wish Senators Cooney, Crane, Crowley, Gibbs, McKiernan, Schacht and West well. In particular, my wishes go to the two who are leaving who are my fellow South Australians. Rose: I have considered you a friend and a mate for a long time. I wish you well. You are an extraordinary role model, particularly for women who enter this place. And, of course, Senator Schacht: Chris, I would count you as a mate as well and I look forward to catching up with you in South Australia. To other departing senators, on behalf of all of my colleagues, I wish you well.

Once again, Vicki, you have our strongest respect and our love, and we look forward to many years of working with you, perhaps in other areas.

**Honourable senators**—Hear, hear!

**The ACTING DEPUTY PRESIDENT (Senator McLucas)**—I advise the Senate that I have been a little generous with time and I am going to be less generous from now on.

**Senator CONROY (Victoria)** (4.17 p.m.)—Thank you, Madam Acting Deputy President. Can I say, on behalf of all of my colleagues to follow, that it will be impossible to do justice to all of our colleagues here today in the time we have allocated. I am sure I speak on behalf of all of us.

I would like to start by talking about Barney Cooney. During the last election, when I travelled through country Victoria in particular, everywhere I went, all the branch members, all the people I met, had the same question: ‘How can anyone replace Barney?’ The job that he has done in rural and regional Victoria on behalf of the Labor Party is enormous. His are very difficult shoes to fill and if all of the senators in this chamber serve their constituents and their party members around the states as well as Barney Cooney, we will all be stars in our own lifetimes. Barney is known for his gentlemanly nature and his encouragement to his colleagues, and I can personally vouch for that.
But there is one dark little secret that Barney and I share: we share the same personal trainer. I have to tell you: Gavin will miss you. And if you have not already got the bill from that punch to the jaw you gave him that day, Barney, you will get it soon. Many of you would not know that Barney was a bit of a pugilist in his younger days and he liked to work out in the gym with the old boxing gloves. Gavin, who is known to many in this chamber, was helping him and holding up the gloves and lost concentration just for a fraction of a second as Barney Cooney unloaded a big right hook. Gavin unfortunately just moved the glove a fraction and got floored by Senator Cooney. So never underestimate Senator Cooney’s contributions.

To Senator Schacht: Chris, we share many passions. Most of you would not know that Chris is the president of Volleyball Victoria. It is a tough job.

Senator Schacht—Volleyball Victoria?

Senator CONROY—Sorry, I am president of Volleyball Victoria.

Senator Faulkner—Feel free to roll him!

Senator CONROY—Everyone else has. He is president of the Australian Volleyball Federation. I share Schachtie’s love of volleyball. Few of you would know that Chris’s son is one of the best beach volleyballers in Australia and one of the top volleyballers in the world. Chris’s commitment to volleyball is legendary. He has worked at it for years. He had the honour of representing us at the Olympics and hosting many nations from all around the world and he did a great job. Australia’s position is enhanced by Chris’s involvement. I know that he will continue to be involved and I look forward to working with him. We sometimes have differences, but I look forward to continuing to work with you, Chris, in that role. I know I certainly will not be seeing the last of you when the clock ticks over.

To Rose, who has been a minister, a contributor and has always maintained good humour—and all of us have been victim to and part of Rose’s many jokes and poking of fun: you have served the party well, you have served the country well, and you will be sadly missed. To Jim: John has put it as well as anyone can—you are a party stalwart. But you cannot say goodbye to Jim without saying goodbye to Jackie as well. To Brenda: it has been too short. We will miss you and we hope to see much of you in the future. We know that you will continue to serve the people of Queensland well.

Sue West and I have known each other for about 20 years—it is quite frightening, really. We used to be staffers together and a number of times I have had to help Sue out of the Private Bin late on a Wednesday night. Keep her away from those men in uniform—I tell you. She had an unhealthy interest in that defence department. I am only joking, as she knows.

Senator West—I am not sure about that. That is what worries me.

Senator CONROY—I will miss you and I hope to see you many times at the New South Wales conference.

Senator West—You might need a visa to get there.

Senator CONROY—that is true. You have also served regional New South Wales as few have before you or will after you. Winston, goodbye. You struck a blow for the battlers in the Hewitt case, and they are eternally grateful. Vicki, your smile will be missed. We will see you, I am sure, many times again.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (4.22 p.m.)—This is one of those sad occasions that we face at the end of every term. I do not think I could fulfil Mark Latham’s criteria: I do not think I am much of a hater. I find it pretty sad when I see some of my colleagues departing. Winston Crane is one from the government side who is leaving in a fairly hurtful way. I suppose politics is hurtful; I won my first preselection by one vote. But, Winston, it does not matter. You can say that you served well and that you served rural Australia and primary industry particularly well. You had hands-on experience in primary industry and you brought that experience into the Senate and into the party room.
I recall our first meeting. It was not here; it was when you were Senior Vice-President of the NFF, and we were talking about anti-dumping. I walked out of your office and I said to one of my staffers, ‘That is a real free trader.’ You always have been a free trader. Your interests have been in industrial relations. You come from a long line of parliamentary representatives: I think your uncle was a member of the National Party, and your father was a parliamentary member of the National Party. Obviously, we missed out on you and you went to the Liberals. That was unfortunate for us. Winston, I wish you and Thea a very happy and long retirement. I hope you go back to the farm and have six months off. I know it has been very hard for you to be living under a cloud, as you explained in the Senate today. I know that has been going on for years, and I am very sorry that it happened to you. A decent guy like you does not deserve that.

Senator Rosemary Crowley, I have it written down that you came here on 1 July 1982, but I can remember you and I making our maiden speeches together so you must have done that in March 1983. I remember being very impressed with your speech. It was the socialist marching song of Bread and Roses, and that has always stuck with me. In fact, I made my maiden speech off yours because I knew how strongly you believed in your party and in your philosophy. If you go back and check on my maiden speech, you will see that I have taken the Bread and Roses theme and converted it into a National Party theme. You might care to have a look at that when you go back. You have also been my personal physician from time to time. Once, when I came to you seeking medical advice and you wanted me to get a referral from my own doctor, I was in such pain that I had to remind you of your Hippocratic oath. I said, ‘Doctor, heal me.’ I have really enjoyed your company, Rosemary. You are a great person.

I think Barney Cooney, Chris Schacht and I. I do not know whether you can say this, but I will put it on the record: if that requirement had not got up in the Trade Practices Act then I think Australia would be a very different place at the moment. I can remember going to Chris and saying, ‘Listen, you delivered 21 votes to the Prime Minister; call your IOUs in,’ and he did. That substantially changed the merger test. I believe that, until that test was changed, we could have ended up with two banks—two of anything—as long as we had competition.

Chris, I can remember you were a very strong advocate for small business. Although I do not think your background was in small business, you certainly tried. I used to ask you questions regularly on small business and go and see you in your office about small business, and you always tried to respond in the best possible way for small business. In fact, I think you prevented a takeover by Woolworths of FAI in Western Australia. That was significant, too. You have played a great role. I am very sorry, as I think you have tremendous potential—although to say ‘potential’ would suggest that you have a lot more to achieve. You have achieved a lot in the time that you have been here. I do not know that the Labor Party can afford to lose people like you. You are a very good parliamentarian, you have had great experience in the party as secretary and you have led them to victory a number of times. It is very hard for me to understand how a person like you could miss out on preselection. I genuinely wish you well, and I hope you have a happy and long retirement.

Jim McKiernan, you have been one of the great characters around the place. I did not get to know you as well as I did Barney and Chris, but I also wish you a very happy retirement with your family. I always said that, if you hear the loudspeaker calling ‘Barney Cooney’, you know the Labor Party is in trouble; he is first bat down. When there were any difficult debates or when there was any trouble in estimates committees, Barney was there—with his very soft, barrister-type probing questions—trying to take the heat off the Labor Party. Barney, you have reached the time to retire. I know that you
are going to do some pro bono work, and it is an indication of the person you are that you want to continue to help people, in and out of politics.

Sue West was one of the few people in the Labor Party who did have a rural and country background. She understood it well and she presented, to her side of parliament and to the parliament in general, what was going on in rural and regional Australia. We will miss you too, Sue, and I wish you all the best.

To Brenda Gibbs, one of my Queensland state colleagues: it was a pretty cruel blow, Brenda, but you have been married to a politician and you have been in politics for a long time—and she’s a tough business. You suffered in the preselection ballot when you were only able to achieve third position. I know that you represented what I would call the battlers very well. You come from an area that is mainly battlers, and you stood in this parliament and spoke for them.

Vicki Bourne: I have known Vicki for a long time and she has always been a bright and breezy person with a tremendous sense of humour. I have met her around corridors, and in the whips meetings and leaders meetings. It is very sad, Vicki, that you were put out of business, shut down as a parliamentarian, and a Greens appointed in your place on One Nation preferences, which is quite bizarre. That is the luck of the draw. That is the way the game goes in politics, and it can happen to any one of us.

I say to all eight of my colleagues who are leaving today: you have done a good job, even the ones who are leaving because of preselections. You can hold your head up high. You have done a great job for your parties and the Senate and Australia as a whole.

Senator HARRADINE (Tasmania) (4.32 p.m.)—I will make up time, and I think that is the best way that I can say farewell to my colleagues, by cutting down what I have got to say. When you have a look at the Australian Electoral Commission’s paper on the senators retiring on 30 June 2002, just to look at the names shows how unique each of those individual senators are. If you think of them as I say the names, you appreciate their uniqueness.

There is Vicki Bourne and Barney Cooney. They are absolutely unique. We saw an interplay there today when Vicki said, ‘Can I seek leave to ask Barney a question?’ I said, ‘You not only have my leave, you have my thorough encouragement.’ So there was that interplay. Might I say that you impressed us all, Barney, with your exposition of what the committee does.

There is Winston Crane and Rose Crowley. They are different. Also, the interesting part about it is that all of these people come from different backgrounds. One is from the rural area. Rose is from the city area, with her interest in nursing and the like. Then there is Brenda Gibbs and Jim McKiernan—again, two very different people. Brenda, you have not been here long enough for me to serve on any committees with you, except for the human rights committee in recent times, and I am sorry about that. Jim, of course, I have known for quite a long time and we have been on one or two together, and I am sorry to see you go.

Then we have Chris Schacht and Sue West—again, the difference! But Chris, I must say this: I very much appreciated what you said to the joint committee yesterday. We have obviously differed on occasions, but we have found much in common in this field of human rights. Sue, I very much appreciate what you have done for this parliament as Deputy President. It is not easy in this particular situation, but the thoughtfulness that you have shown me over the period of time is very much appreciated. For instance, just today Sue was in the chair and sent a note down indicating when I might be able to get up and move to take note.

With all of you, I wish you all the best. Don’t do what I often do and think, ‘Over the last 27 years, what the hell have I done?’ You often get that temptation, but don’t think that. Each and every one of you has made a contribution not only to this parliament but also to this nation. I wish you all the best in your retirement or whatever you are going to do—all of you are too young to retire as such. I wish each and every one of you all the best for the future.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.37 p.m.)—In the five short minutes I have, it will be hard to do justice to what I would like to say. Firstly, I acknowledge my good friend and colleague Senator Crane. Senator Crane came to this parliament with great experience in the rural sector, having been a senior vice president of the National Farmers Federation. He represented farmers very well there but went on to do even better in representing rural and regional Australia in the Senate. It is interesting to see in his first speech that he spoke about budget, trade, export performance, agriculture and pastoral issues. Winston has certainly gone on to pursue those matters and more, industrial relations being another passion. He has been a great senator for Western Australia and has served his state with distinction. He is a credit to the Liberal Party and has been a great representative of rural and regional Australia.

Winston, you have left your mark in the great work you have done in the national parliament. I also acknowledge the great work that Thea has done in supporting you as a wife and also working with you on policy issues. Thea, too, has a great passion for the things you believe in and the two of you served Australia well. You are a great team. It has been fantastic watching your young children, Samantha and Lindsay, grow. I wish you, Thea and your young family all the very best for the future. It has been a great privilege to serve in the Senate with you as a colleague from Western Australia and, more importantly, as a friend. I have enjoyed your company in many respects socially and at Lee’s enjoying a good Chinese meal on a Wednesday night. We will certainly miss you a great deal.

I also want to mention Senator Cooney, who I worked with on the Senate Legal and Constitutional Committee. I remember that great work we did, *Trick or treaty?*, which led to the reforming of the treaty making process in Australia. I acknowledge the great work that Senator Cooney has done as the chair of the Senate’s Scrutiny of Bills Committee. When you look at the terms of reference, the first one springs out:

To guard against legislation which would trespass unduly on personal rights and liberties.

That is certainly a fight that I know Senator Cooney holds dear and has taken very seriously. Senator Cooney has been a great credit to his party, the Labor Party, and has made a great contribution to the Senate of Australia, importantly in protecting those personal rights and liberties to which I have just referred. Barney, it has been a great pleasure to work with you on those Senate committees. I wish you and Lillian all the best. It was great to see your grand-daughter Eleanor here. You can be assured that, when she is older, she will be looking back at what her grandfather did in this Senate.

I have been asked by the Minister for Immigration and Multicultural and Indigenous Affairs, Philip Ruddock, to acknowledge the work that Senator McKiernan has done in relation to immigration. He has asked me to pass on, as he is not able to do so personally, his best wishes to you and Jackie in your life after the Senate. Your work on the Senate Legal and Constitutional Committee, especially in the migration area, has been widely acknowledged, and the minister for immigration wanted that to be placed on the record. I, too, acknowledge the work we have done together on the Senate Legal and Constitutional Committee.

Senator Bourne of the Democrats, you have been a great contributor to the Senate. Even in your first speech you mentioned the importance of the Senate and you have demonstrated that view, not only as whip for the Democrats but as a member of the Senate and as a longstanding advocate of human rights. I wish you all the best in the future.

Senator West also leaves us. I remember working with Senator West in the Senate Standing Committee on Foreign Affairs, Defence and Trade. I acknowledge the great work you did on that committee—I think it was the one committee we worked on together. Again, I wish you well.

I wish the senators who are departing the Senate all the very best for the future. It has been a pleasure to work with you all. I am sure we will be hearing about all of you in one way or another through the work you undertake in the future.
Senator HOGG (Queensland) (4.42 p.m.)—I rise to say farewell to our colleagues this afternoon. I will not spend a great deal of time on all the individuals. I will select a couple to highlight my relationship with them over my period in the Senate. With respect to Senator Crowley, I want to say thank you to her in particular. Rose was with me in New York on 11 September, together with Lou Lieberman who has now retired from the other place. We went through the emotions of that day and lived it out over the next few days. Rose was able to give support to us and we gave support to Rose in that very testing time. That will be one memory I always have of Rose. She was most grateful of course that it was the Liebermans who put me up on their couch and not her, thereby saving any scandal.

Turning to Chris Schacht, I know that Chris has always had a healthy disregard for the SDA, the union I come from. I respect that disregard because we have quite diverse views in some areas. What I can say is that, in spite of those views, I do not think I have ever had a terse word with Chris, or vice versa. We have always had a good working relationship.

Senator George Campbell interjecting—

Senator HOGG—He is going to try in a few minutes. I asked someone to hold him down while I spoke! Seriously, Chris and I have always had a good working relationship, particularly on the Senate Foreign Affairs, Defence and Trade Legislation Committee at estimates. I respected the work that Chris put in on that committee, particularly for the veterans. He definitely worked hard for those people and strove valiantly to improve the lot of veterans.

As for Barney Cooney, my most fond memories of Barney are from the various tennis matches I have had with him. Of course, one always hoped that, whilst one respected Barney, he was on the other team because, as those who have played tennis with him here will know, the drop volleys were very hard for him to get from the baseline. Barney and I did win the odd match or two on the tennis court, but let me say the days that we did were very odd indeed.

To Jim McKiernan: my fondest memories of you are from the time I travelled to the IPU conference with you and Jackie. Sue and I enjoyed your company on that occasion. But you did show how to forge closer relations with our near neighbours in Asia and I will never forget the close relationship that, as a result of that particular IPU conference, you were able to forge with Mrs Heptullah. I know that has been the subject of discussion over a long period of time, but I will leave it at that.

To Brenda Gibbs: I know Brenda as a Queensland colleague and, unfortunately, I do not have enough time to say what needs to be said about her. You have been a great supporter of the party and of the people you represent. You have shown great composure and great dignity in the way in which you have taken the difficulty that now faces you in leaving this Senate after six years. I have enjoyed your friendship. I know that when you came to this place with me you had suffered personal difficulties in the loss of your son, but you lived through that. I will miss you.

Sue West is a great friend, with whom I developed a very good working relationship at the estimates, and Sue will be missed. To Vicki Bourne and to Winston Crane: I extend my best. Winston, you still have not shouted me a beer after 5½ years.

Senator Crane—How much wine did you drink last night?

Senator HOGG—I did not have much last night. Vicki, I will always remember you because in my earliest days here we were on the Radio Australia inquiry together and you showed great vigour to protect our interests in Asia through that inquiry. To all of you, I extend my best wishes from both my wife and me and we wish you all the best in retirement.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (4.47 p.m.)—These valedictories do get to a certain stage and I do not want to take a lot of the Senate’s time in repeating things that others have said. In these areas I also try not to indulge in hypocrisy, which some people might suggest happens sometimes.
Principally, I want to speak about my friend and colleague Winston Crane. I have had the opportunity at the estimates committees and again at question time, just briefly, to give a short indication of the very high regard in which I hold Senator Crane. Coming from a country area, I have always appreciated Winston’s contribution. Although I am a genuine country person, I was a solicitor and I have always admired the fact that Winston as a Liberal has had such a significant understanding of primary industries. I am aware of the contribution he has made through the Western Australian Farmers Federation to those industries.

I see Ron Boswell sitting there—Senator Boswell will excuse me—and the Liberal and National parties at times have contests over the ground, but I always used to be so very proud of my Liberal Senate colleagues, many of whom were genuine farmers, unlike Senator Boswell and I. You do not have to be a genuine farmer of course to be an advocate, but in the case of the late Senator Panizza and Senator Crane they were a huge support for the government and for the Liberal and National parties when we were in opposition.

The Prime Minister and Senator Hill have mentioned some of the great contributions Senator Crane has made. I always recall the contribution he made to the sugar industry when the sugar industry was having one of its real difficulties. There were pressures within the coalition and the Prime Minister appointed Winston Crane to look after that task force. I thought: ‘This is a bit odd. He lives down in the south of Perth and he probably does not even know what a stick of sugarcane looks like.’

Senator Crane—We grow it up in Karratha.

Senator IAN MACDONALD—You do in Karratha up in the north nowadays. The report that Senator Crane drove in that instance, you would have thought he had been involved in the sugar industry all his life. It was precise, concise, well directed and really addressed the issues. I think that is typical of Senator Crane, and others have spoken about some matters that he has been involved in. He will be missed. He will be a real loss to the Senate in the areas where the Senate needs a technical understanding of primary industry issues. Winston knows that he goes with my and my wife Lesley’s best wishes to him, Thea and the kids. I am sure we will see Winston around; so it is au revoir but not goodbye.

Briefly, can I wish all the others who are retiring at the present time all the very best. I will identify Senator Cooney. Barney, I was on the Senate Scrutiny of Bills Committee when you were there, but I think everyone has said it about him and there can be no greater accolade than the fact that Senator Cooney, against all standing orders, asked a 2 ¾ minute question yesterday and not one person objected and the President allowed it to go on. I think that, in a short way, says everything everyone in this chamber thinks about Senator Cooney. He will be missed. I do not know what the Labor Party are going to do in the future when they need someone to fill in until someone else gets here, but fill in in an intelligent way and in a way that shows a real understanding of whatever the issue is—and it could be anything. But you do it, Senator Cooney, and I think you are going to be sadly missed by your own party, as you will be by the Senate.

I also want to mention Senator Bourne briefly. She has been one of the great Democrats. I do not want to be too personal, but there are not too many of them. They are all nice people, but Senator Bourne has been particularly good to everyone. She has had to be to do the job that she has done so very well with her own party and with everyone else. I certainly wish her all the very best for the future. As I say, I will not elaborate with regard to all the other senators who are retiring, except to say that they go with my best wishes. I hope that the future is very successful and happy for them.

Senator Bartlett—We’re not all nice people?

Senator IAN MACDONALD—You are all nice people, but Senator Bourne has been particularly good to everyone. She has had to be to do the job that she has done so very well with her own party and with everyone else. I certainly wish her all the very best for the future. As I say, I will not elaborate with regard to all the other senators who are retiring, except to say that they go with my best wishes. I hope that the future is very successful and happy for them.

Senator HUTCHINS (New South Wales) (4.53 p.m.)—In the time I have available this afternoon, I want to concentrate on saying some words of farewell to my New South
Wales Labor colleague Senator Sue West. Madam Deputy President McLucas, you may or may not be aware that Sue has a number of firsts to her credit. She was the first woman to represent New South Wales in the Senate. Sue was also President of the New South Wales Labor Party and, I suppose, titular head of that famous machine, the New South Wales Right—and, as such, she was a Protestant amongst what has been regarded as a conservative Catholic rump, people might say. Sue’s father, Tim, whom I knew, who used to regularly run for state parliament for the Labor Party, was a Mason. So Sue has indeed established a number of firsts for herself. She has broken the mould. As I say, she was the first woman to represent New South Wales in the Senate—and that was in a period when no quotas were attached to representation in our party.

Sue’s first contribution to the Senate was on 23 March 1987. She may or may not recall it, but it was to advise the Senate that Arthur Fuller had passed away. It was a brief contribution from Sue. She said that all his life Mr Fuller had ‘fought for four freedoms: freedom from fear, freedom of choice, freedom from want and freedom of conscience’. All of us who know Sue know that she is a doer and a straight talker and, in talking about Mr Fuller, she gave an indication of what her contribution to public life would be.

In her first speech, being a health professional, Sue got quite worked up—if you know her, you would know that she can get quite worked up—about the Australia Card. Looking at her first speech, we see that some poor bugger from American Express approached her about signing up with that company. If you know Sue as we do, you will not be surprised to learn that she gave him or her the rounds of the kitchen for daring to approach her and for having her phone number. It looks as though she was very intimately involved in the Australia Card campaign, and she gave a very forceful speech to the Senate on that occasion. Unfortunately, she was not able to survive that double dissolution election, and we had to wait for Sue to come back in 1990.

I am very proud to have known Sue West. I cannot remember the first time I met her. I have been a member of the Labor Party since 1971; I imagine Sue has been a member for about that period. We would have come across each other on many occasions at numerous conferences. We would have been at many discussions about our colleagues on the other side of the party—whom we regularly did over, and still do.

Senator Bolkus interjecting—

Senator HUTCHINS—No; I am talking about the Left, Nick. As I said, we enjoyed doing that on a number of occasions, and we enjoyed making our contribution. Sue is a health professional, as I said, and she brought that professionalism to the various Senate committees on which she represented the party. It is interesting that Janet, our Opposition Whip’s office manager, brought out an old card the other day. Even though Sue and Janet have known each other for 10 years, Janet had never noticed this until she had a look at it. I have a copy of it here. It is a card for Janet’s son, Grant, from the Baby Health Centre in the Capital Territory Health Commission. Janet had to take Grant to the Baby Health Centre some 20 years ago, and you will see on this card that the attending sister was Sister Sue West.

I know that my time is slowly going. I want to say thank you very much to all the colleagues who are leaving. It has been a delight for me to have Senators Crowley, Gibbs, Barney Cooney, McKiernan and Chris Schacht here, all being very irreverent on occasions. It really has been my pleasure, and they will be missed. To Senator Crane and Senator Bourne, I wish you both well in the future—and I did not realise you were only 44!

Senator Crane interjecting—

Senator HUTCHINS—What did you think? Madam Acting Deputy President, I seek leave to incorporate a card from the Baby Health Centre in the Capital Territory Health Commission.

Leave granted.
The document read as follows—

9738616/4360/031

Baby's Name Field—Grant

CAPITAL TERRITORY HEALTH COMMISSION

BABY HEALTH CENTRE

Name of Centre KIPPA/HOLT
Address of Centre KIPPA-H.C./Beaurepaire Cr
Telephone No 542555/544037

Hours open: MONDAY HOLT
TUESDAY
WEDNESDAY HOLT
THURSDAY KIPPA—9-12.50
FRIDAY

Closed on Saturdays and all Public Holidays

Sister Sue West in attendance to help and advise mothers and weigh babies.

Senator KEMP (Victoria—Minister for the Arts and Sport) (4.58 p.m.)—I, too, would like to rise and pay tribute to all the senators who are leaving. For those who are staying, this is a forewarning of what may happen to us one day. It is always a sad occasion because some people leave of their own accord and some leave for other reasons. We are all in the same game and we know precisely the nature of what can happen in politics.

Winston Crane is a very old friend of mine, and I am particularly sad to see Winston go. Winston was one of the famous class of ’90. I must say that I am a bit shocked to see how our ranks are thinning, to be quite frank, Winston. One thing that distinguished the class of ’90 was that many of us came in with a pretty clear view of the sorts of ideas that we wanted to see brought into public policy: things like freer markets, tax reform and industrial relations reform. I think there were quite a number of us who, because we had a lot of debates and discussions in the latter part of the eighties, came into parliament with a fairly clear agenda. Winston was one of the people in those debates.

Senator Crane—Our group of four.

Senator KEMP—Indeed. Not only are we losing you, Winston, but I feel that I am losing a soul mate. I know the contribution that you have made in the area of ideas and encouraging governments and ministers to move even more speedily along those roads. I have no doubt that, as you leave this place, you will continue to pursue your longstanding interest in politics and public policy. I have no doubt that we will continue to hear from you, Winston. I certainly wish you well; you will be greatly missed.

Senator Crane—Just don’t slow down!

Senator KEMP—Indeed. I say to Vicki Bourne: most of us are not liked by everyone in the chamber, Vicki, but I think you are, to be quite frank. You are liked because of your character, the contribution you make and the particular style with which you make that contribution.

Vicki, I came to like you very much because of your attitude on treaties, I must say. In fact, when I did some research for this very brief speech, I noted that you went further than me in wanting to impose treaty reform in this place; you were very keen to ensure that it was the Senate that finally signed on to treaties. You were part of that debate. Contributions were made by me, by you from the Democrats, and by Senator Harradine. I am pleased to say that a few people on the Labor side gave us some silent encouragement on this issue. As a result of that debate, we did see changes—maybe not as many changes as we wanted to see, but it means now that when treaties are signed by Australian governments, they do come before the parliament and they are scrutinised in a far more thorough manner. I think that was a major reform, Vicki. I particularly want to pay tribute to you for what you have done in that regard.

Over the years, I think I have had some vigorous debates with all of the Labor senators who are retiring. I may have won some; I may have lost some. One with whom I have served on committees over a long period of time is Senator Barney Cooney. Barney, there is no-one in this chamber that has done more to raise standards than you. I refer to one example: the singularly gracious way in which you acknowledge your colleagues at functions outside this parliament is quite outstanding. As a new boy in this chamber,
some of your colleagues were not as generous to me. Frankly, it used to infuriate me. But I decided that the course I would follow would be your course, Senator. I think Labor senators would note when we are at functions together they are given the recognition that they should be given. That is one small example but it shows when someone decides that he can be gracious to his colleagues, and it has an impact.

Barney, you wrote me the nicest letter upon my ministerial appointment. I can say this because, as you are leaving the caucus, they won’t hammer you. You wrote me a very nice letter when I was appointed Minister for the Arts and Sport, a section of which I will share with the chamber:

May I say you fill what I see are two of the primary areas of any administration. Sport and the arts are things more of the spirit than are many other matters dealt with by government. They involve courage and dedication, teamwork, the pursuit of excellence, the graceful acceptance of victory and defeat, high endeavour, the creation of beauty and generally the pursuit of things of the soul. What can be more honest.

Thank you for that letter, Barney. It was an inspiring letter and one that I have quoted in a number of speeches. (Extension of time granted)

I have probably had more vigorous debates across the chamber with Senator Schacht— with the sole exception of Senator Peter Cook— than with any of his colleagues on the Labor side. Senator Schacht and I have had some more constructive contacts in more recent months, particularly in his area of interest in sport, which is part of my portfolio. Senator, I look forward to working with you. Sport is a great portfolio. The work that you and your colleagues are doing in the sporting area, and the management of these major associations, is extremely important. I will be looking forward to working with you.

Senator LUDWIG (Queensland) (5.04 p.m.)—I, too, wish to join my colleagues in this valedictory tribute to the departing six-pack of senators, along with Winston Crane and Vicki Bourne. Senator West has been an outstanding contributor to the party and this parliament during the past 12 years. I have not been here throughout that time but Senator West has, and she has served the Senate well in her capacity as Deputy President of the Senate, a position she has held for five years.

Sue could almost be described as the senator for everything, taking up a whole range of issues that affected people’s lives, like health, petrol prices, Telstra, regional airline services, public liability insurance, the shortage of bush doctors, the shortage of nurses, proposed imports of New Zealand apples, the sell-off of post offices, and some war graves issues.

As a qualified nurse, her big interest has been health, and she has never let a chance go by to say her piece in that area. She has agreed that there should be a national standard in registration for nurses because of the difficulties they face in moving from one state to another. She has pursued this very competently in her dealings in committees. It is my belief that Senator West will miss this hectic life and the continual meetings that go hand in hand with being a senator. Although Senator West is retiring, I am sure that she won’t in fact retire. I am pretty confident that she will continue on in the same vein. She has had a hectic life and I am sure she will continue to have a hectic life and pursue the interests that are at the forefront of her mind.

Turning to Senator Barney Cooney, what can I say? People have already said everything that could possibly be said about Barney in the years that he has been here. I believe it is a sad day for Senator Cooney’s colleagues to have to say farewell to him, particularly for those of us on this side of the chamber, but not exclusively so. I have found it comforting to go back and read some of Senator Cooney’s earlier speeches to see what he has said. It is sometimes enlightening. Senator Cooney, in his first speech in the parliament on 27 February 1985, said:

I pray that I will discharge my duty as a member of it honourably.

I believe, Senator Cooney, that in your service to this parliament you have acted with integrity, honour and dignity at all times, which can be quite difficult considering some of the things that have come at you over the years from not only this side of the
chamber but also the opposite side, where they should come from.

People in rural Victoria will miss their editions of Cooney's Country Counsel, a newsletter that also got itself to Queensland and also, I am sure, far broader and wider than that. It discussed a range of country issues and many other issues as well. I would like to wish Barney and his wife Lillian good health and good times in their retirement. I know that Barney Cooney will not in fact retire. I suspect I will see him wandering around like Rumpole of the Bailey in the various chambers and magistrates courts in Victoria. I am sure that is where I will run into him at some stage on my way to some other place.

Senator Rosemary Crowley—what can I say? She was the first South Australian Labor Party woman to enter the federal parliament in the House of Representatives or the Senate, as I understand it. She is a former Minister for Family and Community Services, from 1993 until 1996, and Minster assisting the Prime Minister for the Status of Women in 1993. You have been in this parliament for some 19 years. But I think 'doctor' describes you first and foremost in your mind. Senator Crowley has used her time in this parliament to improve the way in which those people in receipt of a benefit from the government are treated. More particularly, Senator Crowley, you have often championed those people who have found it difficult to access social security services, and you have helped them. I wish you well in your retirement.

Senator Schacht—I can see I am going to run out of time—and Senator McKiernan: thank you very much. Senator Schacht, perhaps you should wear a tie more often. Senator McKiernan has ties he can give you. Brenda, thank you very much for the wonderful time I have had with you. I will continue to see you in Brisbane. The work that you have done has been excellent. The understanding we have had and the way we have been able to deal with issues over the time is really something that words cannot describe.

Thank you, Winston Crane. I missed actually getting to know you and now you are going. Vicki Bourne, I can say, yes, you have got environment and you have got regional and rural. I can pass that on as one of the last things I can do in this place for you—at least to confirm those committees. (Time expired)

Senator FERRIS (South Australia) (5.10 p.m.)—I rise this afternoon to pay my respects to Senator Crane in his retirement from the Senate. Senator Crane and I both came to Parliament House in 1990. He came as a senator and I as the chief of staff to the former member for Barker, Ian McLachlan. All three of us share another similar background in addition to the date 1990, and that is a period of time at the National Farmers Federation during the 1980s: Ian McLachlan as the president, Senator Crane as vice-president and me as a member of staff.

Senator Forshaw—Thank God you did not bring Houlihan with you.

Senator FERRIS—I will not recognise the interjection from Senator Forshaw because I know his union background and I know what the National Farmers Federation was able to do to it and for it. Our days at the National Farmers Federation saw very important industrial milestones. Many of those opposite will remember, perhaps with a little less pleasure than I do, some of the very important gains that were made for primary producers and the input that the National Farmers Federation and its farm leaders in those days were able to make for primary producers and also the wider community. I will certainly never forget the time that Senator Crane as the chair of the NFF's industrial committee and I were in the team that worked on the Mudginberri meat dispute. Certainly I will never forget sitting in the court when Justice Morling handed down his decision and gave $1.7 million in damages to Jay Pendarvis and his family, who had suffered remarkable standover tactics from the meat workers union in Queensland. They were very important days for primary producers in this country. Senator Crane and other members of the National Farmers Federation played a very major role in those gains.

So my experience and contact with Senator Crane go back a long time to the mid-1980s when I joined the National Farmers
Federation—I think it was in 1983. More recently of course Senator Crane and I have worked together on a range of committees related mostly to primary industries, resource development and agribusiness. We serve together on the backbench committee and I would like to thank him very much for his support in my succession of him to the position of chair of that backbench committee. Just this week we have also worked together on the very difficult issue of US meat quotas. The experience that Winston has had over the years in the meat industry was very useful in the evidence that we took during those hearings.

I would also like to mention some of the opposition senators with whom I have had contact over the years that I have been here. I would like to begin with Senator Cooney. He is a very special and a very generous senator. When I joined the Scrutiny of Bills Committee he was very patient and generous with his time in helping me to become more familiar with the work of that very important committee.

Until recently, Senator Crowley has been my corridor neighbour. Senator Crowley may not remember my first meeting with her when we took part in a debate in the lead-up to the 1996 election in Adelaide, but I have a very clear recollection of it—I was terrified.

Senator West, our Deputy President, Senator Bourne and her very charming partner my old colleague and friend Walter Pearson, Senator McKiernan and Senator Gibbs have a special place in my memory for the time we spent together in Marrakech. I enjoyed that time very much. I am sure you did too. I wish all of you a very peaceful future life after this place.

Senator COOK (Western Australia) (5.15 p.m.)—A lot has been said by others about the exiting eight senators, but I want to say a few words from my point of view. I say at the beginning that I will not be able to do justice to two of my closest friends in this place, Senator Schacht and Senator Crowley, in the time allowed so I will say less about them now and more about them later. After they have left, behind their backs I intend to utilise the opportunity of the adjournment debate to put down some of the more detailed recollections of what I think has been fabulous service to this chamber, great service to the Australian Labor Party and the great distinction, as citizens of this country, that they bestowed on us by being here and doing their job properly.

I will start with Senator Winston Crane. Winnie, I knew you for a long time before you came into this place. I remember you being in my office in Perth when I was having a reception which farmers were invited to. I think I caught you feeling the quality of the curtains in anticipation of your entry into this chamber—something that I did not know about then. We have not had a lot to do together in the chamber, although I do remember you posing some very awkward questions to me when I was the industrial relations minister and you were taking up the cudgels for the opposition, as it then was, on industrial relations. Unfortunately, I am required to say that you were wrong then and you remain wrong on those issues now. But I always welcomed your interest in them and always thought there was a possibility of turning you around. You are leaving unwillingly. That sometimes happens to us, but you do go with our best wishes.

I say to Senator Bourne, Vicki, I have not really worked with you so I cannot say very much about you. But in everything I have had to do with you you have presented to me as a very decent and human person. I would like to think that there were more people in Australia who exhibit the qualities that you exhibit in this chamber, under pressure, when a bit of grace, commonsense and humanity is necessary. I thank you for being with me on this part of my journey in the Australian Senate.

Senator Jim McKiernan is my Western Australian colleague. Senator McKiernan and I have had a long history in the trade union movement in Western Australia before both of us came into the Senate. Sometimes we have been at different ends of the argument; often we have been at the same end of the argument. Jim, you go with our best wishes. You have distinguished yourself, I believe, as a Western Australian senator. All of the tributes to you refer to your being a character and your ties. Those things are
true, but I would rather concentrate on the contribution rather than the character. I think Senator McKiernan has carved a niche in this chamber, particularly on immigration matters, that will be greatly missed when he goes. He brings a fund of information, a lot of commonsense and a great deal of human compassion to those matters. Let me pay tribute to Jim.

I have not had a great deal of opportunity of working closely with Senator Gibbs, but I obviously know of her in the party. I listened closely to what John Hogg said about her personal travails and the way in which she has surmounted them and been a delightful member of our caucus and a friend to us all. So, Brenda, thank you very much.

A bit more is required of me to say about Senator West. These words come to my mind when I think of Sue: she is straight, she is honest, she is persistent, she is an experienced senator and she is committed to the causes in which she believes. She has played a great role on health issues in this chamber. She has been one of the Labor senators who has toiled, sometimes against the odds, in rural Australia to uphold issues that are vitally important to rural Australia and that without her presence would not have been represented as well as they have been. That is only part of her political life. She has played as well a major role, unknown to most of us, in the Australian Labor Party's international relations with fraternal parties in the world. It is too big a role to explain here, but it is fundamental to how we relate to the rest of the world and something that all of us should admire.

That leaves me with Barney Cooney. Almost everything has been said that can be said about Barney other than that Barney and I go back a long way too. Barney is a union stalwart, as I like to think I am as well. I remember when he was representing the BLF and Norm Gallagher and I was a union official in what was then the BWIU. We were having arguments at those times. Barney has stuck with causes which are sometimes unfashionable but nonetheless require principle and commitment to stand by. The thing about Barney is that he has stuck, no matter how unfashionable they are, to those principles. (Time expired)

Senator EGGLESTON (Western Australia) (5.20 p.m.)—I rise to farewell our departing colleagues and in particular Senator Winston Crane, one of my Western Australian colleagues. I would say that he is the most genuinely agrarian senator we have in this place. Winston's family has a long history of involvement in the agricultural sector in Western Australia. Winston himself has a long history of involvement in agropolitics in Western Australia. He was involved in the WA Farmers Federation and the National Farmers Federation from 1973 to 1988. When he came to the Senate he made his mark very quickly and he was a member of the shadow ministry from 1993 to 1996. He has been the chair of the Senate Rural and Regional Affairs and Transport Committee and also of the coalition policy committee by the same name. In those roles he has made a major contribution across a wide variety of topics related to regional and rural Australia.

Winston is a true Liberal. He is not one of those agrarian socialists who we are in coalition with, may I say. He is a believer in the free market. In his first speech he stated:

To become internationally competitive it is essential also that we address immediately the problems of high levels of protection in a number of our industries, particularly textile, clothing and footwear and the motor car industry.

I remember that not long after Winston became a senator he was in Port Hedland for the annual general meeting of the Port Hedland branch of the Liberal Party. I sat in the Walkabout Hotel with him and he expounded free market economic principles to me and he thought that those principles would change Australia and make it a much more competitive country. Those principles have been adopted by the Howard government in particular.

More than anything else, Winston has strongly represented the agricultural sector of Western Australia in the Senate, and it is no surprise to anyone to know that he has been called the second member for O' Connor. The O'Connor division of the Liberal Party certainly believes that, with Wilson Tuckey and Winston Crane representing them, they have...
had a powerful voice here in Canberra. As I said, Winston has made an enormous contribution to the Senate. On a personal level he is very much a countryman, a very friendly person, a very generous host and a high achiever. But in many ways he is a modest man. He is, I am sure, going to have a very active retirement with his wife and family, and I wish him a very pleasant and interesting life after the Senate.

I would like to make a few remarks about some of the other senators who are leaving, particularly Senator Barney Cooney. Barney Cooney is a man I have greatly admired for his thoughtful wisdom on issues both in his speeches in the Senate and in conversations I have had with him in the corridors of this place—usually when he has been coming back from the gym and he has bailed me up and we have had a long talk about something. I must say that he will be greatly missed. Here he is returning to the chamber. Barney, I am just saying that you will be greatly missed in the Senate, and the Senate will be a poorer place without you.

Senator Chris Schacht is another man who will be missed in this place. I have been on several committees with Chris Schacht and have found him to be a person with an inquiring mind who is prepared to ask questions until he gets reasonable answers. More importantly, he is a man with a great sense of humour. Jim McKiernan, of course, will be remembered for his colourful ties. Vicki Bourne is someone with whom I have shared views about Radio Australia and the republic. I wish you well in the future, Vicki. Briefly, I also wish Rosemary Crowley, Brenda Gibbs and Sue West all the best in their retirement.

Senator GEORGE CAMPBELL (New South Wales) (5.24 p.m.)—It is not possible in the short period of five minutes to do justice to eight individuals, who, as Brian Harradine said, in their unique way have each made a very significant contribution not only to this chamber but to the Australian community generally and to the development of our society.

I want to speak briefly about a couple of those individuals. I am a bit bemused by the comments that are being made about Barney Cooney—that he is such a wonderful person. I first met Barney in 1969-70—around that period. I happened to be in Bendigo working on a by-election handing out how-to-vote cards, and I vividly remember sitting in the Bendigo Town Hall having something to eat. It was about six o’clock on a Saturday night. I was a young, rather green activist at the time. A group of individuals walked in. I thought they were policemen—detectives. They were all well dressed, which was pretty unusual for a Labor Party function in those days. One of them gave me a bit of paper and I said, ‘What’s that?’ They said, ‘It’s a writ.’ I said, ‘I thought it was the election results.’ But it was Barney and a few of his friends—John Cain, Frank Wilkes and a few others who were suing the central executive of the Labor Party at that time. It was a group known as ‘the participants’. So I did not particularly think Barney was a lovely, nice person back in 1969-70. But I have got to know him a bit since then and I recognise his contribution to the Labor movement, particularly in Victoria but also generally. More importantly, I came to recognise Barney’s absolute commitment to issues of human rights, civil rights, social justice and those types of things. He has had an absolute commitment to defending the underdog and pursuing and arguing for the rights of the underdog in our society. He has done it without fear or favour. He has done it very effectively in this chamber, and I am sure he will continue to do it when he is out in society generally.

The other person I want to pay particular attention to is Jimmy McKiernan. Both Jimmy and I are Ulstermen, albeit Jimmy came from the wrong side of the border in Ulster. We both have a very similar history. We are both migrants and we both come from Ulster. We are both members of the AMWU and proud of it. We were both activists in the union. We both finished up in the Australian Senate, and we are both fairly active around Irish issues. I have known Jimmy for a very long time. I think I first met Jim in 1977. I was at a national conference of the then amalgamated union. I put through a whole series of rule changes, which were foisted upon us by the strike amendments and the Fraser government back in 1975, as Jim would well remember. He
came up afterwards and said, ‘That was terrific, mate; I understood every word you said. I am not too sure I understood what you meant by it but I understood every word you said.’ That is how far back we go.

I was looking at Jim’s family, who have been around the building over the past couple of days, and the little grandchild has been in the pram. When I first met Jimmy his sons were about that size. I see that they have sprung up quite a bit since then. They are big, strapping lads, as we would say back in Ireland. There are three things I can say about Jim that mark his commitment over the years. His absolute commitment to his union has been unstinting over the period since he joined it way back in 1969, when he first arrived. He has been an activist in the union ever since that period, even through the period of being a member of this chamber—he has been absolutely committed to the union movement all that period of time. His commitment to the party has been also a feature of Jimmy’s period of involvement in the Labor movement, as is his commitment to the Irish community. I did not know until the other night when we went to a function that Jimmy actually was the Irish Australian of the year back in 1991-92. That is an honour he ought to be very proud of and, I think, something that he will cherish, I am sure, for the rest of his life. It is an acknowledgment of the role he plays in the Irish community and, more importantly, the esteem with which the Irish community holds him for the role he has played over the years.

I will just briefly mention the rest of our colleagues who are retiring. As I have said, you have all made very significant contributions over a long period of time. I think that I first met Winston at a Senate hearing on industrial relations. The only difference was that I was on the other side of the table. We had a very rigorous debate about the live sheep issue and whether or not 45D and 45E were appropriate to be used in the dispute. I acknowledge your interest in that area. To the rest of my colleagues, I will get the opportunity to make mention of your contributions at some stage in the near future—in the adjournment debate perhaps. In my role as president and secretary of caucus for three years, Sue and I worked together very effectively. (Time expired)

Senator FERGUSON (South Australia) (5.31 p.m.)—I want to associate with the remarks that have been made about our retiring colleagues and I want to particularly mention Senator Crane. When I first came into this place in 1992 I had an office right next to Senator Crane. I must say that for the first six or eight months I wore a bit of a passage in and out of that office because Winston had been here for a couple of years by that time and, if I wanted to know anything, it was easy to go around and talk to him. We had very similar interests. We both came from farming backgrounds and were genuinely interested in rural affairs, and he usually kept his cabinet reasonably full. Winston, you have made a mark in this place over the past 12 years. We know where your interests lie, and you have always been a very dedicated performer in those areas. You have always fought for what you believed in. We certainly wish you well as you leave this place. I know that it is not the last we will hear of Winston because he will soon become involved very actively in other organisations, as he has continued to do all the time that he has been in this place. I wish you, Thea and the family well.

To my colleagues on the other side of the chamber, you really only get to know people when you work with them on committees, travel with them or spend some quality time with them. I want to speak briefly about my three colleagues on the other side who have been on the Joint Standing Committee on Foreign Affairs, Defence and Trade. I start with Senator Vicki Bourne as she is the only Democrat on that committee, and she has been as long as I can remember. Vicki’s commitment to that committee, her commitment to human rights and the things that she believes so passionately in have warmed the hearts of everybody that she has worked with. She is totally respected by everybody on that committee for the way she conducts herself and also for the manner in which she presents her arguments to her colleagues who do not always agree with all of the things that she says. Vicki, it is always sad to leave when you are a defeated candidate, but that
happens to many people in this place. You can be sure that the things that you have done on the Joint Standing Committee on Foreign Affairs, Defence and Trade will be remembered. I wish you and Walter well.

Brenda Gibbs was also on that committee for a short time. Brenda, I appreciated working with you then because it was the only chance that I had. You have been a very regular attender and a very conscientious worker on that committee.

I want to specifically single out Senator Schacht. Senator Schacht was a former chairman of this committee. It was as a result of his insistence and persistence that the human rights subcommittee of the foreign affairs, defence and trade committee was formed. He was the first chairman. He took up that chairmanship while he was also the chair of the joint standing committee. His commitment to human rights and the way that he has fought for issues and people whom he feels have been wronged and poorly treated in this world will remain the highlight of, and what I will remember the most about, Senator Schacht’s career. He was a minister for a short time as well. But I will particularly remember Senator Schacht for his commitment to the formation of the subcommittee on human rights, for his chairmanship of that committee and the way that he fought for all those issues that he believed strongly in. Congratulations on your efforts here, Chris. I do wish you well.

Senator Crowley has also been a long-serving South Australian colleague. She was here long before me, weren’t you, Rosemary? She has also been very conscientious. I have not had a chance to work with Rosemary on committees, but I know that she has served the people of South Australia well. We wish you well in retirement.

I have never worked with Senator Cooney or Senator McKiernan on committees. Everybody knows Senator Cooney because he is the most gracious man who greets every new member and makes them feel so much at home. Senator Cooney, you will go out of this place well respected by every member whom you ever worked with, those who are here now and also those who have been here in the past. You can go out with pride because you know you will be well remembered.

I had the opportunity to travel with Senator McKiernan and Jackie when we made a trip to Ireland. It did not take me very long to know that Jim was Irish and proud of it; it did not take him very long to know that I was Scotch and fond of it. We had a wonderful week away with the Irish friendship group and that is when I got to know Jim at his very best. I have never had a chance to work with him because he has always been on the legal and constitutional or migration committees. I know from what other people have said how much you are respected for the work that you have put in, particularly in the area of migration. We do wish you and Jackie well, and you can go out of here a very proud man.

Senator West has risen to the position of Deputy President and she has done that because she is the choice of her colleagues. We all have enormous respect for her in the position of Deputy President. Sue, you have been in this place for some time and you have had a lot of influence on the committees you were on before your present role. Your colleagues on this side wish you well in your retirement. (Time expired)

Senator JACINTA COLLINS (Victoria) (5.36 p.m.)—It has been an honour and a privilege to work with all of those coined the ‘exiting eight’—certainly, some much more so than others and I will try very briefly to cover that. This is my first contribution to a valedictory. Usually, there are others ahead of me who I think deserve the right to make a much larger contribution and I defer to them. On this occasion, I have reflected that time really has caught up with me. I often reflect on my time here when I consider the age of my son James. I have now realised that all but Brenda have been here my full seven years and there are many experiences with all the senators departing that I have valued. With respect to our ‘sixpack’, I know that all of them will continue in our broader labour movement and will continue to make very constructive contributions. I look forward to joining them in that endeavour.

I think that Sue West will be very badly missed by the Senate not only for the contri-
bution that she has made as Deputy President but also for the contribution that she has made to all of us in facilitating our communities. She did that for me when I first arrived—as a New South Welshman for a Victorian in the absence of another Victorian. As well as that, to add to Steve Hutchins’s comments, it has been a great assistance to me to have Sue as a support—and in particular as an infant nurse—within our caucus.

It has been similar with respect to Rose. She has been a seating companion for me for quite some time now, and I have valued that company. I have also found Rose’s humour and companionship quite a joy. Chris Schacht is perhaps the one I have had, within our own caucus, the least involvement with in terms of committee and party work. Chris was earlier my seating companion; some have previously suggested his loudness, and I certainly experienced that. I want to share this with Chris: my reflection of your work within the Senate is that it has been one of outright commitment and enthusiasm. That is an aspect of your work that I have great respect for.

Let me pause with Barney; Barney is a great Victorian. One thing that I share with Barney is that some find a conscience can be a very frustrating thing. I know that he and I have generated frustration for many of our colleagues, but that is an important role and it is something that I hope we both continue to do.

Jim and Jackie McKiernan have added to my working environment both colour and character. I reflect also the nonlawyer element of Jim’s work. I share, I suppose, a similar perspective in relation to industrial relations to the one Jim has added in his valuable committee work. Often a significant perspective can be added from those who look at policy issues from a nonlegal perspective, and that should never be undervalued. Brenda, I have been pleased to share and observe your growth with us during your time here. I join with John’s comments in acknowledging the composure and dignity with which you have dealt with some very difficult situations, and I want to share with you my best wishes for the future. You deserve them very well.

I want to make a couple of brief comments regarding the other two senators. Winston Crane, I have to say this today: I know it irritates some of your colleagues, but I cannot think of you in terms of anything other than Winnie and WACCI. My first experience with you was during the first wave of the industrial relations inquiry where WACCI travelled with us the whole time in your company. That was my introduction to your perspective. So, when I have heard the comments today about your involvement in the NFF, I suppose I have thought of it more in terms of your participation with WACCI. I should say, though, that your involvement in industrial relations and your views in that respect have always been genuinely held and reflected with integrity. Your companionship is another refreshing element in a cross-party perspective. Vicki, I have had limited involvement with you, but I wish you well and value the positive aura you have added to this environment.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.41 p.m.)—I would like to join with other senators in wishing the departing eight all the very best for the other activities that they are going to undertake—or less activity, whatever the case may be. It is a shame that we have to do these at the end of the session and somehow acknowledge eight people in five minutes. It is a bit rough. Each of them will have to accept that I would have more to say if there was more time. I am not sure whether everyone would indulge themselves that way; whether each of the eight senators would want to listen. You are doing very well to put up with all of us saying what we think.

I have not had the opportunity to work on committees, other than estimates committees, with Senator West or Senator Gibbs, or even with Senator Schacht from my state. I have not done so with Senator Bourne or Senator Crowley. But, to the extent that they have come across my path, either through estimates committees or in the conduct of other affairs, there is not one senator on the list that I think behaves badly. There are plenty of people on that list, but none of
these people has ever behaved badly—none that I know of, anyway, in a parliamentary sense and in the chamber. What they do privately is up to them! I am simply trying to say in plain English that in the 18 years I have been here, to the extent that I have interacted with any of these people, they have all been charming people, committed to their own political views. They are not people who get down into being personally rude, personally nasty. We all have our arguments about things and that is another matter.

Senator Bourne in particular I would like to acknowledge. She and I have parts of our personality—she will not mind my explaining—that are referred to as ‘Miss Folly’. On the way back from the chamber at question time we share our views about what each of our Miss Follies would really like to do. I will miss Miss Folly when she leaves, and I look forward to finding another one somewhere—even perhaps a Mr Folly—who has a lighter side of their personality they are prepared to share. In working with Jim McKiernan, on estimates committees in particular, I would like to mention that, while there have been a couple of difficult occasions—he has probably forgotten them because he has done so many estimates committees—I have never, ever seen him being rude to public servants. That is not to say that any of the others on the list have, but I remember a couple of occasions where he was prepared to step in and agree to protect them. That is typical of someone who is Irish and proud of it. As I have three-quarters Irish blood, I think you are lucky to have more. Half your luck and I wish you well. I would particularly like to acknowledge the role that Senator Bourne has played vis-a-vis Timor and the strong support she always gave the Australian Federal Police, who everyone knows I think never get enough credit for the job that they do.

Then I come to Senator Cooney. If Gareth Evans were here he would probably describe Senator Cooney in a similar way to that in which he described former Senator Alan Missen. I may be misquoting him slightly but as he reminded us unkindly all of us have a portion of megalomania in us and a portion of idealism and he thought that Alan Missen had the smallest percentage of the former of any politician he had come across. I think that is true of you, Barney. Putting it in my words: he has the greatest degree of parliamentarian in him and the smallest degree of politician. I mean that as a compliment, not as a criticism.

I recall on one occasion when we had someone coming before a committee who was not sure whether she could come and give evidence. She came with a letter of abuse about the legal profession—because we share interests that go well beyond politics, including the cost of justice. We had all these legal eagles lined up telling us why the cost of justice was not too high; it was like brain surgery, and everyone had to pay a bit. But Barney said, ‘Look, I would just like you to come up to the table—you don’t mind, do you, Mrs So-and-So, just pull up to the table.’ He turned to the legal eagles and said, ‘You don’t mind, do you, if Mrs So-and-So comes and puts her case?’ I think that one of you might have had something to do with it. Come on, Mrs So-and-So, up you come to the table.’ And up she came, and he was quite right: one of the legal eagles did have something to do with it and was looking quite embarrassed and uncomfortable.

But that is what committees should be about. They should not be just about lobby groups that are interested in themselves and not the national interest. They should be about committees listening to people saying something about the national interest and personal little stories. So we will miss you, Barney. (Time expired)

Senator FORSHAW (New South Wales) (5.46 p.m.)—Today we say farewell to eight senators, and I am pleased to say that I regard each of them as a good friend. To Senator Vicki Bourne: we are going to miss your pleasant, friendly smile. I had the good fortune to have an office adjacent to yours in Sydney for quite a number of years. That is where I came to know you and to appreciate your strong passion for the causes that you have supported over the years such as Burma, Timor and human rights. One I was able to share with you on a committee was the ABC. Your contributions have always been dignified and effective. I wish you and
Walter—who I also regard as a very good friend—all the best.

To Senator Winston Crane: Winston, I knew you before I came into this parliament, as I did a number of the other senators. We met during the heady days of the AWU and the NFF confrontations—if I can call them that—particularly in the pastoral industry award. They were interesting times. They were battles fought. I think they were fought hard but fair particularly through the Conciliation and Arbitration Commission. Therefore, it was indeed a pleasure to make contact with you again when I came to Senate, and particularly through your work on the rural and regional affairs committee.

To Senator Rosemary Crowley: Rose, I have always admired your hard work and the long years of support you have given to the party and to the parliament, particularly in the areas of health and education. I was on a committee you chaired. I certainly wish you all the best as well. To Brenda, who I have only known a short time, you are a great friend. You are a person with a tremendous heart and a person who has certainly worked to highlight the importance of issues in the area of disability services. I know you will continue to do that when you leave this place. To Chris Schacht who I also met in my days with the Australian Workers Union when Chris had an office at the AWU building, Chris and I have known each other for many years. There are many stories I could tell but I just say I applaud your strong commitment to the party and to your ideals.

I first met Jim McKiernan when I appeared before him on a committee he was on when I was representing the AWU with regard to the issue of New Zealand shearers. I tried to give Jim a hard time; he gave me an even harder time and we became good friends. I think it is almost tragic that Canberra loses in one year not only Ambassador Richard O’Brien but also Senator Jim McKiernan. That has a huge impact upon the Irish community and us here in this place. Jim has done tremendous work in the Legal and Constitutional Committee and in immigration.

To Barney Cooney: I am going to miss your wise counsel. I wish we had played more games of tennis, I really do. We have fallen down in that regard. I certainly regret the fact that we did not get to St Petersburg last year but I know that you will get there, and I hope to also at some stage. I tried to think of a suitable quotation, because Barney is a person who has such tremendous literary and legal knowledge and has read so widely. I could have thought of Shakespeare or Lawson but I actually thought of the words of St Francis of Assisi:

Where there is hatred, let me sow love;
Where there is injury, pardon;
Where there is doubt, faith;
Where there is darkness, light;
Where there is sadness, joy.

To me, Barney, you have always striven to pursue those ideals. Finally, to my good friend, my great friend, Senator West. She has represented our party in New South Wales so well. She has almost single-handedly represented the ALP in the bush in New South Wales. She has done tremendous work over many years for the party and in the Senate. I will have another opportunity to say some more words about Sue but for now, Sue, Jan and I and Jeremy and Simon and Martin send you our best wishes. I am sure we will continue our friendship in the many years ahead.

Senator BARTLETT (Queensland) (5.51 p.m.)—I only have five minutes so I apologise in advance for not spending as long as I should on recognising the contribution that all of these senators have made. Firstly, with virtually all of the people that are leaving, I have a great respect for the work they have done and the way they do it. I have not served on many committees with Senator Crane but I have watched him closely, even back when I was a staffer. He seemed to me to be one of those important people—a chair that was willing to listen to other views, to reach consensus and not just be forced into submission by having to toe the government line. Whether that has anything to do with why he is leaving today, I do not know, but certainly he did the job effectively and it made a big difference.

My involvement on committees is part of the reason I have such respect for the work
of Senator Cooney and Senator McKiernan, particularly in the migration area. I have immense respect for their knowledge in that area and I think that will be a great loss to the migration committee of this chamber and to the joint committee. That is a lot of expertise that will now be lost.

I wish Senator Cooney’s views were more often accepted and agreed to by his broader caucus colleagues in relation to migration matters. I think we might even have another case tonight, unfortunately, of his views perhaps not being fully reflected in how his party is going to vote, but I will deal with that issue then. I have had less to do with Senator Crowley and Senator Schacht but certainly all of my engagements with them have been pleasant and it was clear they had the intellect, the ability and the freedom of thought. They have made a great contribution, as have Senator Gibbs and Senator West in their various contributions. Senator Gibbs, of course, is from my home state of Queensland and I acknowledge the contributions they have made.

I want to acknowledge the work of my colleague Vicki Bourne, both in the human rights area and as the party whip. A lot of people do not have a great understanding of what the whip does—even amongst my colleagues who figure, ‘Vicki knows what she is doing. We’ll leave it up to her. We don’t need to think about it too much.’ In practice, that means the things the whip does—and part of the job, I guess, is not being noticed—do not get the recognition they deserve. I saw that one journalist this week said the job was not worth much more than ‘a bucket of warm spit’. It is worth a lot more than that in terms of the impact it has on the chamber.

After the week the Democrats have had and, indeed, the parliament has had, I imagine Vicki is quite happy to be leaving. Given that our colleagues down in the House of Representatives have once again been dragging all of our reputations down into the gutter, being able to walk around saying, ‘I am not a politician’, is probably going to be quite a nice thing. I hope the public does distinguish between the Senate and the sordid behaviour that continues daily down in the House of Representatives. I think this debate highlights the big difference that there is.

It also needs noting why it is that Vicki is leaving today. It is that she lost her seat in the election to a Greens senator. There was an excellent article by Tim Colebatch in The Age on Tuesday, which I recommend everyone read because it shows how that happened. Vicki, of course, outpolled the person who beat her by nearly 2 per cent, about 80,000 votes. In that election, by a great deal of luck—less than 15,000 votes difference—if the Liberals had got an extra 15,000 votes or if One Nation had got an extra 15,000 votes or if the No GST party, as it was then named, had been in the donkey position, we would now have here a person who ran initially as an Abolish Child Support candidate from the extreme right wing of the political spectrum, renamed himself No GST, aligning himself with other characters such as David Etteridge, who managed to almost get elected, despite polling less than 0.7 per cent. That is because the Green Party preferred parties like the No GST/Abolish Child Support Party and also the extreme right wing party, Advance Australia Party. Of course, as Senator Boswell acknowledged, they managed to get in themselves on the back of One Nation preferences who also, I might add, outpolled the Green Party.

I can understand One Nation being glad to get rid of a great defender, one of the greatest defenders in the Senate for human rights and for foreign affairs. I was a little disappointed, to put it politely—particularly given their sanctimonious, high moral ground windbagery during the election about people selling out on preferences—that the Greens were more keen to have an Abolish Child Support person in the Senate than they were Vicki Bourne. Obviously, I am more pleased there is a Green here than an Abolish Child Support person in the Senate than they were Vicki Bourne. Obviously, I am more pleased there is a Green here than an Abolish Child Support person, but I think the Greens should be a little more careful when they play their little preference games with psychos on the far right because we nearly got one. I hope the new Greens senator enjoys representing her One Nation constituency.

Senator BRANDIS (Queensland) (5.56 p.m.)—I have been a member of this chamber for about two years. It struck me very
soon after I came here how different the reality of parliamentary life is from what the public sees. It is such a shame that perhaps fewer than a dozen people in the gallery tonight, and those of us in the chamber, and maybe a couple of people watching on the Internet broadcast will be the only people who see this debate. The sentiments of goodwill and friendliness and cordiality that are being exchanged across the chamber tonight, with absolute sincerity, capture the true spirit of parliament, every bit as much as the most ferocious exchanges in question time. If only the people could see this debate, they might have a different perception of politicians and realise that politicians are people just like everyone else.

I want, as a newcomer, to express my good wishes and farewell to all eight of the senators who are retiring this evening. I particularly mention three of them. Senator Crane has been a senator who has always been the most generous to newcomers—I am sure from all parties. He certainly has been most generous to me. The one thing I will always remember about Senator Crane is the way he always stood his ground in the party room, always said what he thought, never gave an inch, always spoke the truth and was very effective, as the Prime Minister most graciously acknowledged on Tuesday when he made some valedictory remarks.

I mention my Queensland colleague Senator Brenda Gibbs who I have come to know quite well. She has been my neighbour on the ground floor corridor and I have found her a most delightful, dignified and kind person. Notwithstanding that, I suspect Senator Gibbs is somebody who has had more hardship in her life than most people have. I want to say to you, Brenda, that it has been wonderful to come to know you. I wish we had come to know each other a lot better. From the bottom of my heart, I wish you well.

And, finally, I mention Senator Cooney; one of my absolutely favourite senators. Whenever I saw Senator Cooney on the monitor, if I could get away from my office, I would come in here and listen because to listen to Senator Cooney was an education: that owlish aspect; that idiosyncratic cock of the head; those distinctive gestures of the right hand; and that wise rich voice so full of wisdom and experience. To me and, I am sure, to all of us he is an example of how strong views can be held without rancour and can be expressed always with good humour. He is an example of how a person can be both passionate about their politics and a perfect gentleman at the one time—in Senator Cooney’s case, for as long as I have had the pleasure to know him, unfailingly. Senator Cooney, I hope when you retire back to the bar in Melbourne that you will not mind if I come and seek you out one day because I think there is a lot of wisdom that one could learn at your feet. I very much look forward to having the opportunity to do that, and I wish you very well.

Senator CALVERT (Tasmania) (6.00 p.m.)—Can I just say that Senators O’Brien, Carr, Bolkus, Buckland, Crossin, Sandy Macdonald and Mason and I would have liked to have made a contribution but, unfortunately, because of the arrangement, we could not.

Senator WEST (New South Wales) (6.00 p.m.)—Tonight is the night for some of us to be saying our farewells and our thanks. Along the thanks line, Madam President, I thank you for your friendship and your support and the good times that we have had working together. I think we have been a pretty good team. I also thank your staff because, without the help and support of your staff and my staff, it would be impossible.

Also in the thanks line, a big thanks goes to the Clerk, the Deputy Clerk, the assistant clerks and all of their particular officers. I thank Hansard, the Library, the gym, Comcar, Transport, the attendants, security, the cleaners and the gardeners. I have got many a good idea about what to do with my garden from the gardeners. I am one of those fortunate four in this building who actually have access to the outside world—to a courtyard. I have taken many an opportunity to duck out and ask the gardeners, when they have been there doing whatever they have had to do,
‘Where does this grow best?’ I have told them about my garden and have received all sorts of agricultural advice or horticultural advice from them. I thank them very much. I do appreciate the beauty and the respite that the gardens actually provide for us all.

There is another large group that needs to have paid to them a very big vote of thanks, and that is those who work here and are never seen. Seventy-six of us and a few others play in here in the circus pit and everybody sees us. The people in the background, particularly those in the basement, are never seen, but if they were not there this place would fall to pieces. So a big thank you goes to the maintenance staff, the computer staff and the dining room staff—particularly Kate in the members dining room. We are going to miss you, Kate. Everybody knows and loves Kate and the wonderful work that she does. I thank the staff of the Senate committees, the joint committees and the House of Representatives committees, and particularly my personal staff. One member of my staff has been with me for 12 years—she must have been a hog for punishment is all I can say—and two have been with me for 6½ years. I have not had much of a staff turnover. To them and to my Canberra staff, I publicly place on the record my big thanks.

I also thank my family and friends, particularly my family. There is one who cannot be here tonight to see this happen. If he had been here, we would be off fishing next week because that is what he wanted to do. I speak of my husband Peter whom, 8½ years on, I still love dearly and still miss. He will not enjoy the fishing time that was going to take place. But that is life; that is the way it goes, and we go on.

I have many great debts to pay. The first one has to be to the Australian Labor Party and to my union friends. Without the ALP and the union, I would not have been here. Many people aspire to be members of parliament. Thousands would aspire from all of our political parties and from the Independents—but they never make it. Very few of us have the privilege and the honour of sitting on green or red leather. That is a huge privilege and one that we should not take too lightly. It is one that should be valued, and it is one that I value very greatly. I leave the parliament but I do not leave the party—and I am not writing a book.

Senator Bolkus interjecting—

Senator WEST—Thank you, Senator Bolkus. My next task as far as the ALP goes is to work for the return of a Carr Labor government in New South Wales, particularly for the return of my local state member, Gerard Martin. There are few local members better than Gerard, and I am damn sure I am going to be there helping as much as I can and doing everything that I can to ensure that he makes it back. I am sure that he will—he has a big margin—but you can never take anything for granted. That is the role that I see myself playing to repay those candidates of the Labor Party for their hard work and the support that they have given me over many years. Like Steve, I joined the party in the mid-1970s. I do not know when I first met Steve, Michael, John or George. For the last 25 to 30 years they have just been there—along with Stephen Conroy, but he was from another state.

Senator Jacinta Collins interjecting—

Senator WEST—He has always been wherever he shouldn’t be, so what is new? Steve Hutchins and I did do things together—and Mike as well—as Young Labor people. We actually appear in a book that is written about the current Treasurer, which lists the names of those who attended a McKell school in Sydney. Both our names are there, as is the Treasurer’s name. Next to my name is the word ‘paid’, but I notice that ‘paid’ is not next to your name, Steve. Did you ever pay?

Senator Hutchins—I’m still paying.

Senator WEST—There have been some great times. As I say, I am not leaving the party; I am continuing to work with the party. Barney, Jim and I shared a corridor in this place, and the thing I will always remember about Barney is something that nobody else has mentioned: his burnt toast. You had to live in the corridor to know about Barney and his burnt toast. Barney always cooked breakfast on his toaster. I think four days out of five you burnt the toast, Barney. If we were all feeling a bit hungry, the waft
of toast cooking would come down the corri-
dor.

Senator Carr—Very appetising!

Senator WEST—It was if you were hun-
gry, Kim. That is my recollection of
Barney—his burnt toast. I do remember you
for a one-line condolence speech, but burnt
toast is the one I will always remember you
for, Barney.

Rose, of course, I remember for terrible
jokes. Rose and Amanda used to cause me
problems if I was taking a vote in the com-
mittee stage. They would sit together in a
mickey mouse division and suddenly there
would be a great shriek of laughter from
three or four people, with others wishing to
dive under the desk, and obviously Amanda
and Rosemary were telling jokes.

Brenda, I valued your friendship; you
have had a tough time here but you have car-
rried out your work with great dignity. I look
forward to trying to keep up contact with you
in Brisbane.

Winston, we did work on a number of
committees together and we trooped around
a number of drought stricken areas through-
out Australia. I hope that the work we did on
that is of value to rural communities. As we
see another El Nino coming along, I hope
that the work we did was beneficial.

To Vicki, my fellow New South Wales
representative, I think I can only support and
reinforce what your colleague Senator
Bartlett has said. I know that he will
enjoyed his company. I know that he will
continue to be forthright and say what he
believes in the future. It has been an inter-
esting time. I am not one for valedictories. I
think this is probably the first one that I have
spoken in because I do not think I spoke in
the valedictories of 1987, when I was de-
feated.

Senator Chris Evans—It is because you
knew you were coming back.

Senator WEST—Well, I thought I was
coming back and I hoped I was coming back;
of course, I did not.

Senator Forshaw—It was a temporary
interruption.

Senator WEST—There are 245 people in
New South Wales that I need to say thank
you to.

Senator Sandy Macdonald—I know
them!

Senator WEST—You know them; thank
you, Sandy. I got back in 1990 by 245 votes.

Senator Faulkner—They were in Lee-
ton!

Senator WEST—Yes, Senator Faulkner;
I knew that you would think they were in
Leeton. I know you think it is because you
and I had a photo taken outside your child-
hood home in Leeton during the campaign.
The photo was to appear on the front page of
the paper. It appeared on the front page of
the paper, but there was only Senator Faulk-
ner there; I did not appear and neither did our
candidate. I do not think they were all in
Leeton, but I would like to say to those 245:
thank you very much. I have always chal-
lenged our lower house colleagues, when
they go on about having slim margins, by
saying to them, ‘Well, if you extrapolate this
out across the 50 seats, as there were, in New
South Wales, I have got a margin of about
nine or 10. I could not afford to go and of-
fend five people in each of your electorates;
so beat that.’ That has usually shut them up.

The Senate is an important place. It plays
a valuable role in the democracy of this
country. I think it is a rather individual place;
there is probably really nothing like it else-
where in the world.

Senator Bolkus interjecting—
Senator WEST—Stop trying to put me off, Senator Bolkus. But it does play an important role. I appreciate that fully, and I wish you all well. There is a poem that I always remember the first line of:

“The time has come,” the Walrus said,
“To talk of many things;
Of shoes—and ships—and sealing wax—
Of cabbages—and kings.
The time has come to say goodbye. Thank you.

Senator GIBBS (Queensland) (6.11 p.m.)—I rise to give my final speech here tonight with a sense of gratitude for the opportunity to have represented the people of Queensland and the Australian Labor Party in the Senate, and also with a sense of great sadness because as from Sunday I will no longer be able to do so. Since being elected to the Senate in 1996, I have brought to the attention of this chamber the plight of the disadvantaged and vulnerable in our society: people with disabilities or with drug problems, the aged, women and children in violent situations, and the poor. We all have a responsibility and a duty to do whatever we can to alleviate the situation these people find themselves in, no matter which side of the chamber we are on, whether we are in government or in opposition. In my first speech in this chamber I spoke of the plight of people with disabilities, whose needs have not always been met by mainstream Australia. They are people who want to be afforded the right to work and have a fulfilling lifestyle that most of us take for granted.

I have enjoyed thoroughly being a member of the Community Affairs References Committee. I have enjoyed working with the members of the committee from both sides: with Senator Knowles, Senator Tchen, with Rosemary, our chair, and with whoever the Liberal person was, depending on the inquiry—Andrew or Vicki or Meg.

Senator Crowley—Democrat.

Senator Crossin—Sometimes it is hard to tell the difference!

Senator GIBBS—Sorry, I mean Democrat. I am not thinking terribly straight at the moment and I have not had anything to drink except water. The inquiries that we have been on have been extremely important and extremely interesting. They have been a great learning experience to me. It has just been wonderful to meet with people and to actually learn from these committees. I think that is the great thing about committee work: you do learn so much. I hope that I have made a contribution; I do believe I have. I am, of course, very disappointed that I will not be part of a future Labor government, but to my colleagues in both houses I say: please be assured that I will be working very hard behind the scenes to work towards that goal.

In my first speech, I made mention of the loss prior to entering the Senate of my son, Reed. At that time, my colleagues gave me tremendous support, and I thank them very much for that. The person I particularly want to thank is John Hogg. It would be fair to say that John and I hardly knew each other before we came into the Senate. In fact, we became friends during the election process of 1996. That friendship grew and strengthened when Reed died a week after we were elected. John was absolutely fantastic. He went out of his way to look after me and really helped so much to make my life bearable in my grieving process. His friendship, his kindness and his support were, I think, the main reason I actually got through that very, very difficult first year here in the Senate. It was not a pleasant time, and he was always there, supporting me, making jokes, laughing. Of course, the staff of Ansett at the time were absolutely appalled, because he booked my tickets, and we travelled together. And he was always making jokes. Whenever we had our cup of tea, he would say to the flight attendant: ‘Do you have any arsenic out there? Senator Gibbs loves a teaspoon of arsenic with her tea.’ He would also say: ‘Have you got any more red wine? Just link up the blood transfusion, put that wine in and we’ll do it.’ Or he would say to them: ‘Look, we’re approaching Ipswich now. Just open the door and throw her out—she’ll be fine.’ They got used to us after a while. I do thank John very, very much for that. I also would like to thank his beautiful wife, Susie, and of course the little Hoggs. They took both me and my daughter into their family, they offered us their friendship and I know I say on
Toni’s behalf as well that it is a friendship that we cherish very much and that we wish to continue forever.

Canberra can be an extremely lonely place, but I have been very fortunate during the last six years. I have made a lot of very good friends both here in the Senate and in the House of Representatives. I was in somewhat of a quandary as to whether I should name people, but I decided against it, because that is very dangerous—if I had accidentally left somebody out, they would have been extremely upset. To my friends: the most important thing is you know who you are and, more importantly, I know who you are. So to my very dear friends both here and in the House of Representatives: I would like to thank you all for your advice, support, friendship and companionship. We have had great times together and a lot of fun. I know we will keep in touch, because real friends are very hard to find and far too precious to lose. I have also been fortunate to have been able to make friends with senators on the other side of this chamber. I know we do not always see eye to eye on issues, but that is what makes life interesting, and I thank you for your friendship, too. To those I have served on committees with, I must admit that you have all been very nice to me and very pleasant, and we have had a lot of fun travelling around together, too.

To the other retiring senators: Winston, I have not really got to know you very well, but the few times we have come together on different committees I have always found you very pleasant and very courteous, and you have always been lovely to work with. Thank you for that. Vicki—what can I say about Vicki? Vicki is an absolute delight. We have been on committees together, and she is a ray of sunshine. She is always laughing, always positive, so you can always depend on Vicki, if you are feeling down, to lift your spirits. Thank you, Vicki; I will miss you. I am sorry we will not see each other. Maybe we will—we might run across each other. To my friend Jim McKiernan—what can I say about Jim? Jim is Jim. He is a lot of fun. He can be quite horrible but he does not always mean it; it is that Irish streak in him, of course. He is a lot of fun, and we have been together on a couple of IPU conferences. You have been a good friend to me over the years, Jim. Thank you for that. I will miss you. But I get all these flights, which is totally bizarre, so I will come over and see you. I will ring you up and say: ‘I’m coming. Make up a spare bed.’

Barney, I have enjoyed sitting across the passageway here from you. You are an absolute delight. Everybody has already said everything about you, Barney, but you really are lovely. I just adore you. You have given me great advice over the years. Schachtie: unfortunately, you and I suffered the same fate. I have always found you a great person. I just love the way you have always defended women. You are one of those men of whom it can truly be said that you really like women. I say that very sincerely; he really likes women in the sense that he defends us all the time. Thank you for your company. I know your history in the party, because I have been in the party now for 34 years or something—and I will miss you, I really will. I have enjoyed your company. I think you are a great guy—no matter what other people say about you! Rose, thank you for sitting beside me for these six years. We have had a great time, with your filthy jokes. We have had a lot of fun, haven’t we? And we will definitely see each other again. Sue, we are both going. No doubt we will drop in on each other. We have had a good six years together, and I thank you for your friendship. And please don’t keep reminding me that I am actually two days older than you; we are getting too old for that. But thank you so much for your company.

To the clerks, to the DPL staff and to all of those other hardworking members of Parliament House, I would like to put on record my thanks for your support over the last six years. I think sometimes the services provided by the staff of Parliament House are greatly undervalued. I do not think this is deliberate, because we all know that without you this place simply would not function. Thank you for making my life and the lives of my staff run smoothly for the last six years. It has been a pleasure working with you. I would like to thank my staff—Tony, Robert, Chris and Lee—for their support,
loyalty and work over the last six years. It has been a pleasure working with them, and I am going to miss them very much. My final word of thanks is to my daughter. Toni has been a great support and a great friend to me over the years. She has always been a tower of strength, and I do not think I could have been here or done this without her.

For me, the last six years have been a very memorable and wonderful experience. It is a time of my life that will never be forgotten. No matter what happens from now on, the memories, the experiences and the friendships are things that nobody can ever take away from me. I was wondering what I should do for a conclusion and I was thinking about quotes, like Mike Forshaw was. I thought of a quote from the great Ben Chifley. He said:

We have a great objective—the light on the hill—which we aim to reach by working for the betterment of mankind not only here but anywhere we may give a helping hand.

I hope I have been able to live up to this objective during my time here.

Honourable senators—Hear, hear!

Senator COONEY (Victoria) (6.25 p.m.)—I do not want to sound like a preacher, but it is important that we are here as a Senate.

Senator Hill—You’ve been giving us a few lectures lately!

Senator COONEY—I have had to get my speeches in. I am going to put this in the context of what we are all here for: we all come here to serve. Also when we come here we get great status and we get the ability, as it were, to harm others and to do good to others. That is the big question: do we do good or do we do bad, as a group of senators and as a body of men and women dedicated to great purposes? I think I am amongst very noble people tonight, and that is why I want to put this in that context. That is also why I want to thank, first of all, every senator I have sat with since I have been here. We do our jobs and we go about our work—and our work includes getting here, of course, which requires at times manipulation. It is not that that would have happened at the hands of anybody on this side of the chamber or on that side of the chamber—

Senator Murray—Or on ours!

Senator COONEY—When I talk about how there is often manipulation in getting here, I am really talking about people in the House of Representatives! Even if people happen to have gone through that process, they still come here I think with noble purposes. As I have sat here over the years, and as I have heard people debate, I have had nothing but the utmost respect for people on this side, on that side and, of course, at that end of the chamber. I start by thanking everyone who sat with me and went through here with me over the years.

Senator Bolkus—And the President.

Senator COONEY—Madam President is one of the outstanding presidents of this chamber. As we sit here, we have to go through the processes that any human being has to go through: we need food for the soul, we need food for the heart and we need food for the mind. The people who support us most are our families. That is why—and I am getting emotional now—I want to thank my family. I thank first of all my wife, Lillian, whom I love now more than I did when I married her, and I loved her mightily then. I thank the children we have, who are the greatest children you could possibly have: Sean, Justin, Jerome and Megan. I tell you how I know they are great people—by the people they have married. Sean has married Emma and Megan has married Joe, and they are outstanding people. All I can do is thank them for all they have done over the years, and I reckon that will resonate with everybody in this chamber.

Honourable senators—Hear, hear!

Senator COONEY—When I thank them—and I cannot thank them enough—I will be doing what everybody in this chamber would do. Everybody relies so much on their families to contribute to the people of Australia through these chambers. I cannot leave aside my grand-daughters, whom you have all met over the last couple of days, Eleanor and Emma. If I go on, I will get emotional again, so I will leave it at that.
I will now go to the staff, and I should get emotional about them because they have contributed magnificently. I can face up there, to the public gallery, now. Kevin, thanks very much, you have been with me longest, all those years. We have gone at it together and I think we have done some good work. Susan Scalise, who is not here, has not been here so long but I want to put her on the record; and Lidia—I might get emotional when I talk about Lidia, because everybody knows about Lidia and I want to pay a great tribute here if I can. I want to acknowledge here my huge debt to Marcia O’Hara. I notice that Mary Day is sitting up there. We have shared offices over the years—Lindsay Tanner and myself, Mary and Barbara and Nathan. I was accused, in the last speech I made, of leaving out Peter van Vliet. If I did that, that was a great shame. Peter, did I really? You cannot answer from up there!

If we are going to do the right thing—again, I think this would resonate here—there would be nobody in this chamber who does not have anything but appreciation for their staff. And you would all realise that family is first but staff is second. They are the ones that really get us going in this place. How do you thank the staff? What I have admired all my life is excellence; people who go about and do their job and do their job well, whether they are people who drive trams, or people who are plumbers—my son Jerome, who is up there, is an industrial officer with the Plumbers and I should thank Tony Murphy and Earl Setches for giving Jerome the time off; thanks very much. But whether you are a plumber, whether you are butcher or whether you are doctor, lawyer, solicitor or what have you, if you do your work, do it well. That is what it is all about. Because you are a doctor and do your work well, that does not make you any better than the tram driver that does his or her work well.

I want to say that the work done by people around this place is outstanding, and you would have to agree with that. I was wondering how I was going to mention them all, Madam President. How could I thank everybody? I have been trying desperately over the last few days, as people know, to name them all—but how could I thank them all? I was wondering whether I could pay proper tribute to everybody in this chamber and name them all by tabling the Parliament House Communications Directory: Fortieth Parliament, because I think that is the only way.

Leave granted.

Senator COONEY—Thank you. You are in there, Lorna. You have been one of the great people—the chamber attendants are great. Thanks very much, Lorna, not only for that but for all the times you have served me.

I spoke about how to get here and the people who have supported me in doing so. If we all look at how we got here and how we stay here, there are particular people who have helped. I think they are in a category of people who ought to be mentioned—and again this will resonate, that there are people who have helped us get here. I have had particular support from the Australasian Meat Industry Employees Union, with Wally Curran as secretary. Somebody said to me earlier today, ‘Your political support comes from across a wide spectrum, from Carr to Curran.’ That is an in-joke on this side, and I should not have gone in for in-joking. But I don’t withdraw that.

I also want to mention another sector who we oftentimes overlook in these sorts of speeches, and that is the media. I say that because—

Senator Hill—Don’t be too generous, Barney!

Senator COONEY—I know you say I should not be too generous, but on the other hand, Senator Hill, they are very much—

Senator Carr—He speared you!

Senator COONEY—the fourth arm of government. I have a legal background, but I think in lots of ways the way that journalists think is more akin to the way parliament works and how parliamentary thought takes place than the law. That is oftentimes where I think a difficulty arises when you go to these conferences where there are both lawyers and parliamentarians. The press does bring out those issues that need to be brought out and does keep pressure on us all, and that is
something which would certainly resonate around the chamber. I did not mean to speak
you, Senator Hill. I would not do that because you are a man I have got tremendous
respect for. If I have, I withdraw all that.

I will mention the colleagues that are going with me. Chris, you did some outstand-
ing work as minister for Customs. You may remember you introduced some very civil
libertarian laws, and that is great stuff.

Senator Schacht—And they never forgave me.

Senator COONEY—They never forgave you, but nevertheless that is what you have
accomplished. You can always remember this: you are going out with a high con-
science. And how better can you go out than with a high conscience?

Turning to Jim, who is nearest: we have shared now for many years, and I have
grown old and he's grown middle-aged over that time. I am almost going to get emotional
mentioning Jackie up here, and your family, Jim: it is great to see them there, and Steven,
Stephen and Sue, so you do not get all of the praise. It is your family, I think, that has kept
you going.

Senator McKiernan—Yes, very much so.

Senator COONEY—But you have done grand work. Put it there!

Senator Crowley—Senator Cooney, tell Hansard you just did a handshake.

Senator COONEY—No, they've got that.

Senator Jacinta Collins—A handshake!

Senator COONEY—Brenda, you have been here and contributed magnificently—
brilliantly—for six years in the most important chamber, in my view, in Australia. It is the
one elected chamber where there can be debate and where the result of that debate is
not decided beforehand, and you have done magnificently well there.

I now turn to my great friend Rosemary: we used to romp together in the surf at An-
glesea all those years ago. We were in the Newman Society together! We were great
members of the true faith and we still are—I am anyhow; I turn up to confession! I am a
member of the true faith still.

Senator Crowley—I am discussing it with God.

Senator COONEY—Do not give him away, he will come back.

Senator Crowley—I will talk to his mother!

Senator COONEY—Rosemary, you were a great minister; you have been a great friend for many, many years. Will we keep
seeing each other? Too right we will. Sue, how are you over there? You have had a
great time as Chairman of Committees, as Madam President said the other night, and
you have been an outstanding contributor in this area. Vicki, thanks for the question! I
think it is a great shame you are going. You have been one of the great minds and one of
the great examples of conscience—I love conscience. I am a member of the true faith
and I love conscience, and you are it. You have been terrific and you are going to keep
being terrific.

I turn to Senator Crane, who has formed the executive of the Standing Committee for
the Scrutiny of Bills with me for some years now, and I think we have done great work. I
was glad to hear, earlier in the day, that you stood up in the party room and did a lot. I
think the party room in a certain way is the most essential part of the work that we do in
this place because we come here, as we
— that is how the system works
— with
predetermined positions. We have to; other-
wise the system would not work. But the
party room is a place where we can do
something, where people can get up and can
discuss things and can come to different con-
clusions. When I heard that about you today,

stating your position in the party room, I
said, 'Yes, that is Winston Crane,' because
whenever I have known him to talk he has
always spoken, like Vicki Bourne, from con-
science. I am not saying that my own side
does not speak from conscience. I think what
you have had to go through has been a bit
tough, Winston, but I think things will come
out in the end.

Lots of people have said nice things to me
and I would like to name them; I cannot. I
have already overtaxed your patience,
Madam President, but I will end as I started.
We are all part of a great institution and it is a great institution that will keep going. We have a heavy responsibility. We have a sacred—and I use the word advisedly here—duty in this place and by and large we perform it, with the great help of the Clerk, Mr Harry Evans, the Deputy Clerk, Anne Lynch, and all the others I have mentioned. There is one person I should have mentioned in my ramblings this week, and I have not, and that is Neil Bessell. Anybody else I have not mentioned I will get George Campbell to mention in years to come while he is in here. I finish by saying thank you very much for being the sort of people you are and for having me in here with you.

Senator SCHACHT (South Australia) (6.42 p.m.)—When I made my maiden speech, just on 15 years ago, I spoke without a tie, so I thought that, to be inconsistent, I would turn up on this occasion and speak with a tie on. Senator Faulkner made mention of my level of interjections and disorderly behaviour in the Senate. I should point out that when I made my maiden speech I did not make it in the Address-in-Reply, which is the normal arrangement. On the first day in the Senate I started interjecting and I was called over by Senator Hamer, who was in the chair. He pointed out that you were not supposed to interject until you had made your maiden speech because the convention was that no-one should interject on someone making a maiden speech and therefore I was breaking the convention. I thought, ‘Goodness me, I had better get over that problem.’ Rather than wait for an Address-in-Reply speech next week, I looked to find the next bill to speak on and it was an obscure railway bill about Australian National. I made the speech without a tie and mentioned how I would rather put a necktie tightly around Senator Stone’s throat—I disagreed with him. I made a number of flippant remarks and then said something about trains. If you look at my maiden speech to find any profound remarks about what was my philosophy, you will not find them. I hope that you do not have to rely on coming to my last speech in the Senate to find any more profound reasons why I have been here. However, I will make some effort to thank a number of people.

First of all, I want to put my thanks on the record to those people who have served me as a staff member when I was a senator and before that as a minister and, previous to that, who served and worked with me in the ALP office when I was an official for many years. I would like to pay tribute to Guy Ballantyne, Julie Ligertwood, Margaret Parry, Lee Heath, Carol Sutherland, Mark Hough, Jayne Taylor, Allan Joy, Jill Hardy, Christine Walker, Alison Wood-Pottle, Jenny Reimitz, Graeme Rankin, Tony Free, Cassandra Scott, Jenny Fox, Julia Sumner and Susan Gillett; and from the party office some years ago the late Howard O’Neill, Colin McKee, Fay Scown, Julie Ligertwood and Mandy Bower. They are people who have made my political life much more successful than I have deserved. If it was not for their work, commitment and loyalty, I would not have achieved whatever modest achievement I have had in my political life.

My political life in one sense goes back to 1969. I have been very fortunate that, from the age of 22, for most of my adult life, I have been able to work full time for the Australian Labor Party. Most people in the Labor Party are not given that opportunity. I was elected at the age of 22 in a ballot to be a temporary state organiser for the Labor Party in September 1969—that was at the beginning of the halcyon days of the Dunstan decade in South Australia. So many people have moved on—and it shows my age I suppose—that there are so few of us left around in forums like this who can talk about the halcyon period and what it meant to be in South Australia when Don Dunstan was Premier and what he did to mark out that state, to make it stand for something quite different, not only in Australia but worldwide.

Jane Lomax-Smith, presently a minister in the new Labor government in South Australia, openly states that when she was working in England in the mid-1970s she saw a job application for a position at Adelaide University. She thought that might be interesting and her professor said, ‘You ought to apply for that, Jane. There is a very interesting bloke who is the Premier of that state called Don Dunstan. He is doing something quite
remarkable in that state.’ What I point out about Dunstan, and why I have always been a Dunstanophile in one sense, is that Don Dunstan never gave up being radical, progressive and arguing for change. Sometimes that is not popular in Australian politics, even within the Labor Party, unfortunately—we have become too pragmatic.

In five consecutive elections, Don Dunstan won. He never once got less than 50 per cent of the two-party preferred vote and on four out of five occasions he got 50 per cent of the first preference vote. Can you believe that in the Labor Party! Wouldn’t we dream of getting an election in Australia where we got 50 per cent of the first preference vote? Don did this by being open, progressive and asking for people to support change. He stated why the Labor Party should be different. We should define ourselves to do different things to change society. I believe that is a lesson for the Labor Party right now to take on board, and I am pleased to see that there is some debate in the Labor Party about that.

Since 1969 I have counted up that in one form or another, either in the party office as an official or as a politician, I have been through 26 state and federal elections in South Australia and too many by-elections that I cannot remember. I have been through the good ones and the bad ones—the ones where we have lost in a landslide and the ones where we have got drunk on champagne and beer where we have won in a landslide. I have to tell you something: winning always beats losing an election, as we all know on all sides of politics.

I also had the opportunity to serve the Whitlam government as a staffer for two years with Reg Bishop, first as Minister for Repatriation and then as Postmaster-General. That, again, was a halcyon period, and it is remarkable now to remember that many people who wanted to spit on Whitlam in 1975 now treat him as the great icon figure of reform and change in Australian society. I think that is a lesson for the narrow-minded and the bigoted: they may have a temporary victory but in the end those with the great ideas and those with the great visions will get the better history written about them and will be remembered longer. I make no bones about the fact that I am a devotee of Dunstan and Whitlam, and I just hope that in the years ahead the Labor Party can continue to follow their lead.

In my own period in the Senate, a number of you have been very kind to mention a few things that I have done. A number of you have been very kind to mention my style. It is true: I am up front, I tell people what I think is correct and what my argument is. That has done me a lot of damage in the short term, but over my 32 years I believe it is the best way to live as you can sleep soundly every night because you have told it as you believe it. You may be wrong, but you have not been duplicitous, you have not gone behind people’s backs; you have been up front about it. I think that is still the best way in politics and you will all achieve more that way. I have enjoyed the cut and thrust across this chamber, in Senate estimates committees and working with people on committees.

I cannot go around the chamber and mention everybody whom I have dealt with, but there are a couple on the other side I do want to mention. First of all, I want to mention Senator Ron Boswell. Ron Boswell is everything basically that I am not. He is a monarchist, he is a conservative and he is a religious person. I am a Republican, I am an agnostic—I was described the other day as a hard agnostic which I actually found a nice compliment—I am a secularist and I argue for an open, civil, libertarian view about the way modern society should conduct itself. Ron has a different view on a number of those issues. I have always found it strange that the coalition never made him Minister for Small Business after 1996. There is no one in the coalition in this parliament who has spoken more passionately and with more knowledge and detail about small business than Ron Boswell. He made some nice remarks about me, but I have to say that when I was minister he was the only coalition member who would ring me or come to my office to ask my help for someone in small business. I want to pay tribute to Ron and wish him well in the future.

Senator Hill made some nice remarks about me. It is true, Hilly, we have been through a few things and fought each other
in South Australia—Labor versus Liberal—but we have also worked together on foreign affairs issues. Back in the eighties we went on a number of delegations to the South Pacific such as that very memorable occasion for the funeral of Jean-Marie Tjibaou in New Caledonia. I have enjoyed working with most people in this place. I have enjoyed having abuse across the table. I have never taken too many points of order when people have tipped a bucket over me. I think that is just a part of the fair go that you should accept—and if you are thin-skinned enough to be worried about it you should not be here.

There are a number of issues that I am proud to have been involved in. The first one, which I have already mentioned, is promoting humanism and secularism. There are not enough people on all sides of politics now—and I have to be critical—who are willing to speak up and argue that we should have a humanist and secularist view about our society; that religion should be completely separate from the operation of the state. I think that we are drifting slowly into areas that are going to create great long-term problems for this country unless we ensure that we separate religion from the operation of government policies.

I am delighted to have been part of the republican debate. In 1988 I made a speech in the Senate on the need for Australia to become a republic. I was offended that this parliament was opened by a citizen of another country who happened to be our head of state: Queen Elizabeth II. I would have much preferred that this new building, which will last for 300 years, had been opened by the President of the Commonwealth of Australia. I am delighted to have had the honour to move, at the national conference of the Labor Party in 1991, the motion committing the Labor Party to try to achieve a republic by 1 January 2001—the Centenary of Federation. I am still a member of the ARM committee and proud to be so. I hope that, in the years ahead, I can still contribute to Australia becoming a republic.

I have already mentioned small business. I thoroughly enjoyed working in that area. I think I have visited 450 to 500 small businesses in three years—my wife reminded me that I must have done because I was away from home for over 200 nights a year. I was pleased to start the process of strengthening the Trade Practices Act to help small business.

In communications, I used the opportunity to argue against changes to the rules which would have allowed the concentration of media ownership. That is an important issue. I also used the opportunity to defend the ABC, whether we were in government or opposition.

I also enjoyed the period of being shadow minister for veterans’ affairs. Having the opportunity to meet people who served this country and did extraordinary things as ordinary citizen soldiers is still one of the most moving things I have been able to do. Though veterans’ affairs may not have the profile in the bear pit of politics, when you have the opportunity to meet the veterans who served Australia it is a moving and humbling experience. I am pleased to see that some senators mentioned that I moved and negotiated the establishment of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, and I was very pleased and honoured to chair it. I pay tribute to Vicki Bourne for her role in that as well. I will come back to human rights in a moment.

I also want to take this opportunity to thank my family: my wife, Robyn, who has shown great forbearance with me over the last 30-odd years and also my two children, Philippa and Andrew. I think Senator Conroy mentioned that it is a matter of great pride to me that both my children have represented this country at the highest level playing the sport of their choice: volleyball. My daughter has captained South Australia at the national championship and by winning the national championship they were the best state in Australia. For six years, my son has played hundreds of games of volleyball and beach volleyball, representing this country all over the world. Right at this moment he is in training in France for a tournament next week. He has been Australian champion and national tour champion, and he is aiming to qualify for the Athens Olympic Games. It would be one of the great moments of my
and Robyn’s life to be able to go the Athens Olympic Games should he qualify. My family have been fantastic.

I return to human rights. I have had two lessons in human rights. In the first, I had probably the best compliment I have ever received in my public life. In 1991 I attended a rally in South Africa organised by the ANC. There were 25,000 black faces in a disused soccer stadium. In front of us, on the stage, were 42 coffins for high school kids who had been massacred the week before by the apartheid regime. It was a funeral service. I was invited to join, and it was a very humbling experience to sit on stage with people like Desmond Tutu, Albertina Sisulu, Walter Sisulu, Tokyo Sexwale and others.

I sat there as one of three white faces in 25,000 black ones. It certainly gave me my first lesson on what it is like to be a racial minority. Towards the end, they asked me to speak. I was a bit overcome by that, partly because the regime had helicopters hanging overhead with machine guns out the doors. So I arose, the adrenaline pumped and I made some remarks for about five minutes.

When I sat down, Desmond Tutu, Nobel Peace Prize winner, turned to me and said, ‘Thank you, Senator. They were very fine words. Thank you for representing the people of Australia so well at our rally.’ I thought, ‘Well, for the rest of my life, that one will do me.’

In 1989, I visited Burma. I was the first foreign politician into Burma after the military coup that squashed the democracy movement. During that period, I met a number of people who defended democracy. It was arranged for me secretly to meet a number of these young demonstrators, and there were six or seven of them at a meeting one morning. One of them was a young kid only 15 years of age. His name was Maung Maung Kywe. I spoke to him and said, ‘What are you doing?’ He said, ‘I have organised the demonstrations at my high school for three months.’ I found out later that, every day for three months, that small kid had organised the students out onto the street against the guns and the tanks of the army. Some of them had been shot, some had been arrested and disappeared; yet they went back every day to continue demonstrating until, in the end, he had to go underground. That is when I met him.

I said, ‘What are you demonstrating for?’ He said, ‘We are demonstrating that we want democracy for Burma.’ I said, ‘You have never known democracy; how do you know what it means?’ He said, ‘My grandmother told me that, in the fifties, we used to have free elections in Burma.’ I said, ‘But what does that mean?’ I had studied politics for three years at university. In five minutes, he gave me the best description of democracy, and we should all remember it. He said, ‘It means that you elect a government and they serve. The really important point is that, when the next election is due, if you do not like them you can vote them out and there is a peaceful transition.’ I thought that, if a 16-year-old kid can understand that and is willing to campaign for it, whatever else we may learn, that is as good an example of an understanding of democracy as we may ever see. The great sadness was that, when I returned to Burma in 1982 and asked to see him, I was told that he had died fighting on the Burma-Thai border for democracy in Burma.

When he died, he was only 17 years of age. What really struck me was that he was the same age as my volleyball-playing son. I cannot imagine what I could have done at 17 to risk my life for democracy like young Maung Maung Kywe. Maung Maung Kywe was five feet two inches tall and would have weighed six stone wringing wet, but he had more courage in his heart and his brain than any other person I have ever met. All I could think of when I came back to Australia was: what can you do to remember someone who paid the great sacrifice? The only thing I could think of was to mention him in the first report of A review of the Australian efforts to promote and protect human rights, published in December 1992—and I want to pay tribute to Margaret Swieringa for helping to draft this report of which I am extremely proud. On the dedication page we put the following:

This first human rights report to the Australian Parliament is dedicated to Maung Maung Kywe who in 1988 at the age of fifteen and a half led his fellow high school students on to the streets of
Rangoon to demonstrate for democracy and who at the age of seventeen was killed as a student exile on the Burma/Thai border.

We also dedicated this to:
Wang Wei Lin who, alone, confronted the tanks of the Chinese Government on Chang an Avenue near Tiananmen Square in June 1989 after the demonstrations for democracy had been crushed. His whereabouts is now unknown.

It is the courageous spirit of such ordinary citizens in the face of overwhelming power that most clearly denotes the struggle of the individual against the authoritarian state.

Thank you everybody; good luck.

Senator McKIERNAN (Western Australia) (7.01 p.m.)—This is probably the last time I am going to stand in the Australian parliament and I think it is appropriate in doing so that I acknowledge the traditional owners of the land that this building stands on—that is, the Ngunnawal people—and that I pay my respects to the elders.

It is an unusual occasion tonight because I have in front of me a prepared speech. It is a long time since I came in here with a prepared speech. But more unusual is the fact that my family are in the gallery. Seventeen years ago, Jackie, my wife, my son Steven, my son Jimmy and my daughter, Donna, came here to watch me being sworn in. Tonight the family is bigger; it has grown over the years but it is a larger number that is here tonight. Steven and his beautiful wife, Sandy, are here with my gorgeous grand-daughter, Caitlin. I am very, very proud that they are here. Jimmy and his beautiful wife, Sheila, have got my wonderful 13-month-old grand-son, Sean, up there with them. He is sleeping at the moment, but he is there, and he is getting a mention. I have been very, very lucky in my family and I thank them for their love and their support over the years. It would not have been possible for me to do the job that I have done over the last 17½ years, on behalf of the people of Western Australia and the people of Australia, without their love and support. I thank them very much for that. I love them very, very much. I also include in that my relatives, my immediate siblings in Ireland and England and other relatives in other parts of the world.

Also in the gallery with my family are members of my electorate staff—Sue Reid and Stephen Dawson. Sue has been part of the McKiernan team for some 15 years. I think she is the chief reason that the reputation of the McKiernan electorate office is as it is. She is a renowned expert on immigration and refugee matters. I am not exaggerating when I say that she has an international reputation. There is tremendous respect in Australia’s embassies for the work that she does in those areas. Of course, her reputation feeds mine and I thank her for that. She has been an exceptionally loyal and dedicated staff member and I am very sorry that the relationship is ending, but it has to end. Stephen Dawson is somewhat different; he has been with me only for some four years, but he is almost as well loved as Sue. He spends an enormous amount of time on the telephone; people love to hear him talk, which is a bit surprising because he has a Dublin accent! Stephen is a very loyal, dedicated and articulate workmate who will achieve great things in his lifetime. It has been an enormous pleasure to work with him.

Jackie is also present in the gallery, as both a staffer and a spouse. I have to go on the public record and admit that I have exploited her for the last nine years. She was previously a member of the Western Australian parliament for 10 years, in a marginal seat, and she was an exceptionally popular individual there. I took her on board, paid her for 16 hours a week and worked her for 60 hours a week. And she still had to go back and do the washing, ironing, cooking and all the rest.

Senator West—When will you learn how to wash!

Senator McKIERNAN—I could tell you about that, but I won’t! When Jackie joined the staff, I gained not only a person of tremendous expertise but a great campaigner and a person who is a counsellor, a spell-checker and a proofreader. She comes with all the things that are necessary in a busy electorate office. My electorate office was a constituent office and that was one of the things that kept the reality. I would have much preferred to have been a member of the other place, but that was not to be. Jackie
also was a very calming and sobering influence on me when I was not being a calming and sobering influence on her—not that she threw too many ashtrays when she came to work with me. To all three staff members: I thank them very much for their support.

My generation of Irish people were, as the saying goes, born for the road. We were part of what was then Ireland’s greatest export—people. I took to that road very early in the piece; at the age of 16 I went off to England. Fortune later smiled on me. It smiled on me in England, but more so some 33 years ago when the West Australian Employers Federation sponsored me as a migrant to this country.

It was fate that got me involved in the trade union movement, not any sense of animosity against the sponsor who brought me here. A fellow worker got sacked one day simply because of his union activity. I was one of the people who spoke up for it and got rewarded by being made a shop steward in the AEU, later to be the Metal Workers Union. It was through the Metal Workers Union that my involvement with politics and the Labor Party came into being. It was the Metal Workers Union, rather than the education I received at De La Salle Christian Brothers school, that prepared me for parliament. Many in this place would know that I have no academic qualifications, and that I left the education system in Ireland before I reached the tender age of 14. The Christian Brothers’ brutality caused me to lose interest in school and, despite the two years that I spent in the two-room national school some four long miles out of Cavan town, under the teacher Andy O’Brien—who was later a senator in Ireland—I was not a fan of the education system. Steven, my eldest son, at about the age of 10 coined the phrase ‘unionversity’. The WA Labor Council and the Trade Union Training Authority used to run summer schools on the weekend at the University of Western Australia. I deprived them of my time with them by going off to the unionversity.

As a parliamentarian I have been involved at the committee level in a wide range of areas. The Brothers did not prepare me for decision making on legal and illegal immigration, refugees, family law, euthanasia, in-vitro fertilisation, mandatory sentencing, the Australian Constitution, native title, the stolen generations, legal aid, citizenship laws, copyright, sexual discrimination and a range of other matters. My parliamentary involvement has been greatest in the area of migration. Australia has been very generous to me and to millions of others; I decided I would give something back through my work. I have done so through some 110 reports of the legal and constitutional committee and of the Joint Standing Committee on Migration, of which I was a founding member in 1989 and have been a member ever since. I have served as chair and deputy chair of that committee. That involvement has been arduous. It is not easy work, but it has also been rewarding. It has been traumatic at times, particularly when the committee dealt with very sensitive matters, such as refugee policy, the determination process, illegal entry, mandatory detention and resettlement services. I have participated in this area by choice. I could have turned my back on it; I could have adopted the naive and simplistic attitude that asserts that all persons who claim to be refugees are in fact refugees. I could have accepted the lie that all persons in immigration detention are refugees or even asylum seekers, but to do so would have been to let the constituents of my adopted country down, and I am pleased that I did not.

As a member of parliament I have had the opportunity to travel extensively and to many exotic places, including Rome, Mexico, Cape Town and New York. My lasting impression, though, as I retire as a senator and leave this place, is not of magnificent architecture or bustling metropolises. It is of a place called Gatelay, a refugee camp in Eritrea, in Africa. I witnessed at first-hand absolute poverty and destitution, conditions much worse than those that some of our Indigenous population live in—and I know some senators have seen those conditions. However, I also recall the pleasure on the faces of the people at Gatelay when water was being pumped from a well that the Australian taxpayer had spent some $4,000 putting in for those people, who had absolutely nothing. That well gave those people some-
thing, and it also gave them hope. And it gave me a mission to help refugees. The United Nations Convention on Refugees is a precious resource. It, and its processes, must be protected. There are those who seek to exploit its provisions and who attempt to gain its benefits when they are not entitled to do so. At the same time their actions—and it is a debate that is going on now in other parts of the world—can be depriving genuine refugees of its benefits.

I receive constant reminders of the world’s most unfortunate people, refugees, every time I look at the watch on my wrist. It was given to me by the United Nations High Commissioner for Refugees, Ruud Lubbers, at the launch of a handbook on refugee law at the IPU conference in Marrakech this year. I had helped to develop the joint UNHCR-IPU handbook that is designed to aid parliamentarians in their work on refugee law. I hope to continue to work with refugees, people in genuine need, after I leave this place. Even as I leave, I have circulated a note to my colleagues in the Labor caucus asking them if they can assist, because I am not going to be in a position to assist, an organisation that wants to assist refugees on the Thai-Burma border. I had expected an immediate response to that but after 48 hours there has been no response. I hope this prompts the conscience of some of those people to aid those very unfortunate people.

When I retire I also intend to become more involved in the Irish community in Perth. I have not been able to give as much attention to that as I would have liked. George Campbell has mentioned my being Irish Australian of the year in 1991; other work that I have done for the Ireland community and for the relationship between Ireland and Australia was recognised earlier this year when I was received and thanked by the President of Ireland, Mary McAleese, the Taoiseach, Bertie Ahern, the Foreign Minister, Brian Cowen, the President of the Seanad, Brian Mullooly and the then Speaker of the Dail, Seamus Pattison. One of the things I have been remembered for was the small part that I played in encouraging Australia to make a contribution towards the International Fund for Ireland—some $7 million over four years. I am very pleased, as I stand here, to say that Ireland is a much more peaceful place now than it was 17½ years ago, when I mentioned that in my first speech in this place.

I am now reaching a fork in the road. It has been a long road, but on this occasion plenty of notice has been given. I made the decision in about 1995 that I was not going to seek another term if I was successful in preselection and in election in 1996. This gave the Labor Party—the great party that I am so privileged to be part of—the chance to prepare, and gave all aspiring senators the opportunity to test whether or not the party would select them for office. I am very pleased that this time I have been able to do so.

It has been a wonderful honour and a great privilege for me to represent the people of Western Australia in the parliament of Australia as a Labor senator. I have never seen my presence here as a right; it is not a right that any individual can hold. I know in my case, had it not been for my union, had it not been for the Australian Labor Party, had it not been for the people who voted for me, had it not been for the family support that I have received, I would never have had the privilege of being here. So many people in my political party—and I guess in all other political parties—do strive to get here. We are the fortunate few that actually get here, and I am very privileged and recognise that privilege here tonight.

I do not have the time to thank all the colleagues that have assisted me over the many years. That is the problem coming in with prepared speeches—you end up with too much material. But can I just associate myself with the remarks of Senator West, who did it most admirably, and, for those that have been missed out, the tabled document from Senator Cooney will suffice as well. I do have some very brief words about the colleagues that are leaving with me.

To Winston Crane: we are on different sides of the parliament but on so many occasions we represented the same issue on behalf of constituents. That was a wonderful thing to be able to do. It is not something that our colleagues in the media get to know of
because they want to report the conflict rather than the hard work. Vicki Bourne, I hope one day you will win a ballot when you are counting. I really do. Whatever you do after this life, it has been a pleasure working with you. I know that your personality, your marvellous smile, your wonderful humour, will get you through and you will bring joy to those that meet up with you on the way through.

Brenda Gibbs was my travelling companion to Ouagadougou. I reckon that on September 11 Ouagadougou in Burkino Faso was the safest place in the world because very few people knew where it was. Brenda became an expert on haricot beans during that trip. She was a wonderful travelling companion. You have not been here long enough, but in the short time that you have been here you have made a contribution and it has been a pleasure to serve with you. Sue West, a lot has been said about you tonight and I endorse all the good things that were said to you. What has not been said though is that you got me out of a big hole one evening when I had the audacity to come into the chamber without a jacket. You got me out of the hole by lending me a jacket. But even that got me into trouble because, apparently in the interpretation of the chair at the time, males were not allowed to wear females’ jackets—I am not into cross-dressing, in any case.

Like I was, Chris Schacht was a factional warlord. When we were in the chair negotiating, we were getting the rough end of the stick from the left. We were not getting a fair share of the distribution of things because of the manner in which the negotiations were able to be held. Maybe it was because I was not such a great negotiator—I do not know. However, I know in those times we learned to take the rough and enjoy the smooth. It is a bitter lesson but sometimes you do have to learn to take the rough with the smooth. Rosemary, I am going to miss your jokes—some of them anyway—and the good counsel that you gave me in a whole number of policy areas that I know absolutely nothing about. I have gone to you for advice and I thank you for that advice. It was always readily given.

Last but not least is my colleague Barney Cooney. Barney and I entered the place together. We sit together. Our rooms are next door to each other. We flatted together in the same unit for some 15 years. Phil and Buster are going to separate now and that is a great shame because from time to time we shared so much. We did not on every occasion share the same views and opinions—some of Barney’s additional comments were a great insight to me. Barney was the master and I was the pupil. It was a tremendous privilege to serve with him and be so close to him—and not only to him but to his family, who are here today. I have shared with Barney the birth pains of his grandchildren—and I was not the only one. Barney made sure that the Senate, and those who are interested in the Senate, also knew. One thing I will never let Barney do is iron my shirts. He did iron one of his own on one occasion but he forgot to take the plastic cover from the ironing board in doing so, and ruined his shirt. So he never got to touch mine.

I wish all of you a great, happy, and, importantly, very long retirement. I leave this place with a sense of fulfilment. I was the 24th Irish-born member of the parliament and the 24th person to represent Western Australia as a Labor senator. I wish good sense and judgment to the 25th Irish-born Aussie pollie, George Campbell, and to the next Western Australian Labor Senator, Ruth Webber, who is succeeding me.

I wish great positive activity to the Australia-Ireland Parliamentary Friendship Group. I was a founding member of this group in 1985 and, as I leave the parliament tonight, the Australia-Ireland Parliamentary Friendship Group is the largest group in the parliament. Thank you all for joining it. I wish the Senate well in its governance. We do in this place a very important job on behalf of the people, both in the chamber and, more importantly, in the committees.

The second last thing I want to do is thank my deputy on the Senate Legal and Constitutional Committee, Senator Marise Payne, for the support that she has given in the very arduous work that we have had to do in both the references and the legislation committees. It was a joy to work with Marise—that
is not to say that we agreed on every occasion; there have been minority reports on both references and legislation committees. Having served with a previous deputy chair in Senator Abetz, it was a joy to work with Marise. Thank you.

Go raibh maith agaibh bhi tamail maith agam. That means, ‘Thank you, I’ve had a great time’. Slan Libh go leir—thank you all.

Senator CROWLEY (South Australia) (7.21 p.m.)—Madam President, thank you for your assistance over many years from that position—in particular the extraordinarily splendid deaf ear you have to my interjections. One of the reasons I am not listed so often, Senator Faulkner, is that Madam President decided to let it pass. It is appreciated. Also I never thought that I would be agreeing with Senator Brandis. I have not had many opportunities to talk with Senator Brandis, but I have to say I thought his speech tonight was splendid—in particular his comments about how little we really know about each other. If I have learnt anything about my colleagues tonight, I have learnt a lot about how much I do not know about them and, I am inclined to say, perhaps how little they know about me. But I do not mind that we go laughing into the night.

I leave this place with considerable sadness and I go to my post-parliament life with considerable joy. I arrived here in 1983 and I can still remember the absolute thrill I had of attending my first federal Labor caucus meeting. I mentioned this to Simon Crean the other day and he said, ‘I asked my father how it felt when he sat in the chair for the last time and he said, “Not nae as well as when I sat in it for the first time.”’ My sentiments entirely. I also remember when I arrived here that I came in with a federal Labor government, the Hawke Labor government, that put paid to the vile injustice of the sacking of Whitlam and the seven years of Malcolm Fraser. Maybe that sounds a little harsh, but that was the sentiment when we arrived here—the injustice done to Whitlam was finally being balanced.

Most of you know my interests and my passions: Medicare, everything to do with health, child care, sport and issues of all sorts and their impact on women. I am very pleased to see so many women in this place. I make it clear—and I have said it in many speeches in this place and outside—that, while I welcome women across the parliamentary spectrum, I will fight the Liberal women across the chamber at every opportunity. And from time to time I am delighted to be joined by my Democrat colleagues too.

I want to acknowledge Susan Ryan, who is a great celebrator of emerging women in the Labor Party. She was a great celebrator of mine, and I thank her for her long support. I also thank, as I said the other night, Mick Young, Howard O’Neill and Chris Schacht. Those three in particular assisted my preselection and my success in coming into the Senate well before affirmative action. As Mick Young said, ‘We need a couple of Sheilas, the odd boiler,’ and I might say that I am probably just getting a bit close to fulfilling his definition. We understood the idea of a few boilers! Susan Ryan and I constantly failed the feminist test by laughing at Mick Young’s jokes. Now you know where it all comes from. Mick was a great politician and an extremely wonderful and effective communicator and debater. But he was a man who did not carry venom. He did not have malice in his heart—and to that extent he reminds me of my colleague Senator Cooney.

I was part of the great reforms of that Hawke Labor government of Medicare, sex discrimination, child care and the Mabo legislation, to name just a few. I well remember the night the Mabo legislation passed in this place, and most of us burst into applause for a great injustice now redressed.

I had the opportunity to chair an inquiry into women’s sport and the media, and that has allowed me to pursue the greater recognition of women in sport in this country. We have come some considerable distance but, my goodness, we have a long way to go. I noticed Kathryn Harby-Williams, the captain of the hugely successful Australian netball team—I might say I am patron of netball and that is a great honour—was asked the other day: ‘You are very successful in your sport; you are the best, you are the captain, you are the champion: what does sport return you each year?’ And she said, ‘About $5,000.’ If
you put that against what any footballer is paid, it is well worth noting that we still have a considerable way to go for wage justice for women in sport.

My history in this place is the history of more women and women’s issues on the parliamentary agenda, and I am reminded of Senator Pat Giles’s wonderful comment that it has taken ‘women in parliament to put uteruses on the political agenda’, and women’s health, and domestic violence, and equal pay for women; and much more.

I have been in both government and opposition, and while I would like to have never been in opposition it is a very important role and I value the time. It has been good for the soul, if nothing else. It does teach you a whole lot and it gives you different opportunities. One of those opportunities that I have had was to chair many Senate inquiries, and that is one of the great roles of this place. I have loved the work of the Senate committees, I have loved to opportunity to travel the country and I have loved what I describe as bringing the parliament to the people. It is, to my mind, an extension of democracy in this country, and I thank you, Senator Cooney, for your comments because maybe I could think that in taking our Senate committees around the country we take a little bit of this chamber with us. It is a point of great distinction in contrast to the Senate committee hearings in the United States. Indeed, it is something they could well learn from us.

There was as I arrived here in 1983, when we were putting paid to the injustice of Whitlam, an element of division across the chambers. Since that time there have been fewer friendships across the divide here than there were in times past. Most of us like to remember Fred Daley and Jim Killen as an example of a long and enduring friendship across the parliamentary divide. I would like to acknowledge that it is probably true I have not had deep or memorable friendships across the parliament in this place in my time here. But I do thank Senator Natasha Stott Despoja for her kind comments. Yep, I will count you as a mate. Thank you. And, if I don’t, my sons would come round to see that. After all, that is the advantage of being at university and being so much younger than I—but thank you.

I have had a number of friendships with the Democrats. I travelled closely with Meg Lees on a number of hearings about all matters of health for a long time and, in large part we have agreed and done that with, I think, considerable benefit. I have certainly learned a lot—thank you, Meg. I have also had the pleasure of working with Senator Andrew Murray on the British child migration inquiry—a tough gut wrenching inquiry. I also worked on that inquiry with Senator Knowles. I would like to acknowledge my appreciation to both of you for your contributions there, and more besides. Lyn Allison took me off to Maningrida—and that was a colourful time, was it not! I particularly want to thank Vicki Bourne. You have a passionate concern for human rights and for the underprivileged. Vicki and I worked together on the all party parliamentary group on population and development. We have met in some of the best slums in this world, and the real tragedy is that we have not yet made much difference to some of those slums. I
You would like to think that, if the Americans do not understand, they will soon understand why the rest of the world does not necessarily like them: it is because the great capital in this world has not yet set out to seriously address the injustice and the slums in Third World countries.

I did not think I would, but I will tell one small story. It has a bit to do with friendship across the divide. Senator Vanstone—I hope she is listening—and I often travel on the same plane and often travel beside each other. One particular time I was flying beside Senator Vanstone and she started—of course, I would never use this language, but I am quoting—‘What are you doing this weekend, Crowley?’ ‘I am picking up walnuts off my lawn,’ I said. ‘Do you have a walnut tree?’ she asked. ‘Yes, I have,’ I replied. ‘Why haven’t you brought me any?’ she asked. I was learning the rules pretty quickly, so I said, ‘What’s it worth?’ She said, ‘What about a wonderful Italian chocolate walnut date tart recipe?’ and I said, ‘You’re on.’ When I got the recipe, I sent her a little bag labelled ‘You’re nuts’. We are a few more recipes down the line and she has had a few more bags labelled ‘You’re nuts’. I would say in passing that the label on the bag says a lot about someone who has tried to convince this parliament, as Senator Vanstone did, that her party was offering choice to people when, whereas previously they had the opportunity of a free education at the point of entry, she was offering them the choice of being able to pay $30,000 to $50,000 for it. I think the label on the bag says a lot about that decision.

I want to thank all the people I have not specifically mentioned in this place. I am so grateful to Senator Cooney for tabling the list of the lot. That was a wonderful idea. I do like what I learn from my colleagues. So I add my name to Senator Cooney’s in thanking everybody, in particular the attendants in this place who make our lives so easy, and nothing is too much trouble for them. I thank you all very much. I thank Hansard, who struggle to interpret what we are saying. I hope Senator McKiernan has it written down in English letters: I can only say to you, Senator, Cidad Mile Failte!
When Senator West and I leave this place there will be very few people in the Labor caucus to talk seriously about health and issues related to it. Senator West is a good nurse who has been keeping this doctor on the straight and narrow for years.

Senator Bolkus—What a job!

Senator CROWLEY—Thank you, Senator Bolkus. I want to particularly acknowledge Senator Crane, with whom I have worked very little.

Senator Crane—You were my first chairman of a committee.

Senator CROWLEY—Indeed I was, Senator Crane—you are quite right. Thank you for reminding me of that. I am actually quite shocked at how much one can forget after being in parliament for 20 years. Senator Crane, thank you for reminding me and thank you for your assistance at that time.

Senator Crane—It was drugs in sport.

Senator CROWLEY—It was indeed. It was a bit colourful, as I recollect it. We will not mention other senators from Western Australia at this time.

I love the great Australian Labor Party—warts and all. I expect to stay a member of the great Australian Labor Party for the rest of my life, and I want to spend much of my time in post parliament life continuing to work and contribute to the great Australian Labor Party. I want to live in a fairer, more compassionate and caring society, and I reckon that the only way we will do that is when we see the Labor Party in power. When I came into parliament my theme was bread and roses; as I leave parliament it still is. I hope that, as well as working for the Labor Party, I can work to see that, as well as bread, we do provide the roses for the people in our communities. I thank the Labor Party for sending me here, and I thank the people of South Australia who have supported me. It has been an honour and a privilege to represent them.

There are great debates ahead for this parliament and, as I say, it is rather a regret that I will not be able to have my pennyworth. I shall be watching with great interest the outcome of the stem cell research debate, continuing debates on matters of that sort and debates on areas that are not yet even known to us. Parliamentarians have the challenge, and I here acknowledge Senator Cooney’s description of us all as being here in an honourable task and on a pretty serious business: to make the laws for the land to make this a civil and decent society. How important it is to have some sense of what we are talking about when we make the laws. So, if we do not know what a stem cell is or a mitochondria or how things migrate from DNA to RNA within our cells, it probably behoves us to find out before we pass legislation.

It is time to go. Thank you for a splendid adventure; it has been a great ride and I have loved it. I would like to close by paraphrasing Dylan Thomas, and it will surprise none of you at all: I do not intend to go gentle into that good night. I intend to rage, rage against the dying of the light.

Senator BOURNE (New South Wales) (7.38 p.m.)—Let me start by thanking my colleagues and in particular thanking them for their forbearance. Every one of them wanted to be on the speakers list for this valedictory and I am afraid that today I have fallen down a bit in my job as Whip. Only Senator Stott Despoja, as leader, and Senator Bartlett, who went and put himself on the list of valedictories, actually got up to speak. I know they would have all liked to speak. They all spoke very politely about me last Wednesday night when we had a farewell; I hope they would have done so again tonight. But I thank them very much for their forbearance. I thank them very much also for their good humour and their forbearance in putting up with me for the last 12 years; it cannot have been easy.

In particular I thank Meg Lees, who has put up with me living in the same flat for the last 12 years; so I thank her for that as well. I cannot let this go past without mentioning that she loves cold air and during winter it is a bit of a trial to live with her, but we have lived quite well together—the odd couple, I am afraid—over the last 12 years. I should thank my fellow retiring senators; I should thank everybody for the kind words that have been said about me tonight.

I turn now to my fellow retiring senators. Barney, thank you for that fabulous answer.
What an answer! What a pity you were never a minister. Really, what a waste. However, that was not up to me. I look forward to hearing about your great exploits at the bar in Victoria from now on.

Chris Schacht and I travelled to China, to Tibet, to Xinjiang, to some of the most amazing places on earth. The trip to Cambodia was a good one. In fact, I think Chris and I were the two members of the only Western delegation ever to go to the Khmer Rouge compound before it was totally destroyed by ordinary Cambodians who loathed the Khmer Rouge. That was a pretty scary thing to do, particularly in 1991 when we went, and I felt pretty good when we got out of there. I remember we went in and it was a completely dark compound and there was light spilling out of a building. Khieu Samphan was standing there to greet us. I got out of the car and I smelt disinfectant. I thought, ‘Oh my goodness, what has been going on here?’ We sat down and they served us green tea. I waited until Chris had drunk his entire cup and he was still alive, so I drank a bit myself. They were good times. Tibet was particularly interesting, as were Xinjiang, the rest of China and, of course, Cambodia.

I also travelled to Cambodia with Rosemary—this sounds a bit like a travelogue now, doesn’t it? I should not do that. We had a really good time on that trip and I smelt disinfectant. I thought, ‘Oh my goodness, what has been going on here?’ We sat down and they served us green tea. I waited until Chris had drunk his entire cup and he was still alive, so I drank a bit myself. They were good times. Tibet was particularly interesting, as were Xinjiang, the rest of China and, of course, Cambodia.

I have been to East Timor with Brenda, and that was fun. I remember you standing outside that helicopter saying, ‘Now, let me get this straight. If there is an emergency, I am sitting on this piece here which is outside the helicopter; is that correct?’ And they were saying, ‘Yes, ma’am; that is correct.’ And you said, ‘You want me to get on the helicopter now; is that correct?’ They responded, ‘Yes, ma’am; that is correct.’ And you did. You got on the helicopter and we all went down to Suwai.

Senator Gibbs—I sat next to the man with the big gun; do you remember?

**Senator BOURNE**—Oh yes, the man with the big gun. He was very comforting. That was fun and I am really pleased to have done that with you.

Sue West has been a colleague of mine from New South Wales. She was in fact the third woman to represent New South Wales ever in this federal parliament. I know that because I was the next. I was in fact the third woman to be elected by the people of New South Wales; she came to fill a casual vacancy. Considering how long the two of us have been in here, that is a pretty damning indictment of the people of New South Wales. Although—thank heavens!—they saw the light and elected both of us; so things improved.

I would like to mention Jim McKiernan. I see that Jim has been joined by a very important future senator who is obviously enjoying herself—I am not quite sure. Jim, I have worked on the migration committee with you. We did not always agree—in fact, I do not think we agreed at all on the migration committee—but I have worked on other committees with you where we have agreed. I have really enjoyed doing things with you, particularly at the Irish Embassy. I think it was your idea that the Irish Ambassador come up with a bottle of Jamesons every Christmas for all the Australia-Ireland Friendship Group. What a brilliant idea; that was one of your best ideas.

**Senator McKiernan**—Next year is going to be the most expensive.

**Senator BOURNE**—Winston, we came in together in 1990. I think you had a plan at the time to help greenhouse gases by cutting down all of the trees in Western Australia or something similar. I am not sure that it would have worked; however, I know that it was a brilliant plan. Possibly you could try it out on a couple of little places and see how it works; it might improve things. Good luck to you and to Thea. I know that life is going to be so much easier for you without that travel. I cannot believe you did that. Sydney to Canberra is bad enough—those 5.30 a.m. starts—and it is only a couple of hours. I am sure your life will be hugely improved when you are out of this place.
I really would like to thank everybody whom I have dealt with in and around this place, in particular, and in the departments that we all deal with, and I have dealt with over many years now. It is a very long list. In fact it is a list as long as that communications directory that Senator Cooney tabled. I am really pleased that he did that as I would like to thank all of those people as well. But I will mention a couple. Madam President, I have travelled with you as well. I count you and Tom as good friends. Whatever you do in the future, and I hope it is continuing as the President, I wish you and Tom well. It has been a privilege to know you. You do have the respect of this chamber and you certainly have the respect of the Democrats. You have probably been the best President that I have served with.

I have to thank my fellow whips: Paul Calvert, Sue Mackay and everybody who comes to the whips meetings. Margot generally comes for Senator Harradine and she is always fun at those meetings. We get on very well together. I have really enjoyed being a whip. It was the one thing that I really wanted to do in this parliament. I am so pleased and feel so privileged to have done it for the last 11 years. If, as Senator Bartlett says, somebody thinks it is a worthless job then I point out that that is total, utter rubbish. It is one of the most worthwhile jobs that anybody can do in here. I have enjoyed it so hugely.

I thank the clerks, Harry and Anne in particular, because I have known the two of you longer than anyone else. Thank you very much for everything you have done for me. You have both been so wonderful. Every time I pick up the phone and say, ‘What the hell am I going to do next?’ you tell me. It has been wonderful. I do not know what I would have done without you.

My thanks also go to the parliamentary liaison officers over the years. Myra Croke is the current Parliamentary Liaison Officer and she is wonderful. The other two I should mention are George Thompson and Rob Jones. Both of them I consider to be friends. Rob, unfortunately, has left us but George is still around, which is excellent. I thank all the library staff, particularly Rob Lundie who has been with the parliamentary Amnesty International group for I do not know how long—nearly as long as me and that is a long time. He still does an awful lot of work, so much hard work.

I thank the committee secretariats—the JSCFADT and Margaret Swieringa in particular. I shared a room with Margaret in Bougainville. That trip to Bougainville was very difficult. I know that there was a plan to get us out, in case anything horrible happened to any of us. I was very grateful for that. I did not actually feel that anything horrible was going to happen to any of us and particularly not to me. Although Margaret pointed out to me at one point when we were walking through a derelict building that there were an awful lot of vines covering the ground that the PNGDF soldier in front of us kept tripping over. He had a gun over his shoulder that looked like it might have gone off at any second had he fallen over. That was the only time I felt even slightly nervous about being in Bougainville.

I thank all those in Hansard and SA VO. They have always been so good to me. There was one occasion where I discovered that I had given a wrong figure by a factor of 10, 100, 1,000 or something like that and they very kindly changed it back for me. I thank all the chamber attendants that I have dealt with. They have all been so kind and pleasant to me. I thank all of the attendants in the building, including the security, catering, and transport staff. My thanks go to Lizzie the hairdresser and the staff at the bank—Judy and Rhonda, in particular. I thank the staff at Aussies. It is very pleasant to go to Aussies now, probably even more pleasant than it used to be. I thank those Qantas staff who were here in the building. They were always very kind to me.

I thank the Sydney DOFA staff: Bruce, Brian, Stuart, Chen, Chris and particularly Joy. I particularly want to mention Joy whom I have known for many years and knew long before I became a senator. She has had a very hard time of it, and if there is anybody who does not deserve to have a hard time, it is Joy. I thank the Comcar drivers. They are always courteous and friendly and are fabulous drivers. They are much better drivers...
than I am not just because they have been well trained but because they have the right mindset, which is what they keep telling me. Sometimes when I am driving along and feel like snapping into road rage mode, I think, no, go into Comcar driver mode and it will be fine. I just let people go past me and I do not worry about the idiot who just cut me off. So I would like to thank them for that advice.

I thank my staff over the years. Nada Vlatko and Andrew Larcos started with me in 1990 and are still two of my closest friends. I thank them for all the work that they did to make me look good in this place and also for their friendships. I thank my staff: Fay, Carrie, Hazel and Richard, and, more recently, Gaby Russell, Joanne Yates, Cameron Andrews and David Sutton. Heaven knows, David knows more about digital broadcasting than anybody else I think in the country. He sure made me look good, I hope. If I did look good it was due to him and I thank him for that. I thank Brenda Padgett who has been with me for quite a while now. Of course, I thank Jene Fletcher. I have been working with Jene for longer than I have been a senator. We have been working in the same office for 11 years. Jene organised last week’s farewell which was one of the most wonderful evenings I have had in my entire life. She makes me look good as whip all the time. I cannot thank any of them enough.

I thank my family: my mum; my sisters, Debbie and Suzanne; my brother, Peter; my brother-in-law, Ben; and my nephew, Scott. I particularly thank Walter Pearson who probably is my best adviser. He is sitting in the advisers’ bench tonight, which is very appropriate. He keeps me sane, thank goodness. Somebody has to do it.

Probably, most important of all, I should thank the Democrat members. Members of the party have put me here. I am well aware of it and I know that I would never have been elected the first time or the second time without them. I know how hard they tried to get me elected the third time and I thank them so much for that. Every time I rang up one or two of them and said, ‘Can you come in here and help me?’ they did. They were always cheerful and pleasant and lovely to deal with.

I have had two passions while I have been here and I thank everybody for their comments and their compliments on them. The first, of course, is human rights. The second is the national broadcasters. East Timor has been a passion for a very long time. I would particularly like to thank Senator Payne for making me the inaugural chair of the Australia-East Timor Parliamentary Friendship Group, which I appreciate hugely. It is a great honour and I really appreciate it. We were together in East Timor on many occasions. We shared a room and I will not tell any stories about that because I have two minutes remaining and I have much more to say, but thank you. Tibet has been another passion of mine, as people know, as have Bougainville and Burma.

On the ABC, I would like to give the minister a little bit of the gratuitous advice that I probably give him once a week: fund them properly; they desperately need more funds. They have to be able to maintain their independence, to inform and to educate all Australians, and they can only do that if you give them another $200 million a year. I am looking forward to that. It is quite ironic and, I think, absolutely appropriate that the first thing I am going to do on Monday, 1 July—when I am no longer a senator—is accompany my partner, Walter, who has been invited to the opening of the new ABC transmitter in Gosford. He is able to bring somebody with him, so he is bringing me. I think that is just wonderful. I am looking forward to that—what a way to start your new life. Excellent! SBS really need only another $18.6 million to properly fund the production of World News on their second channel. That is so much less than $200 million. Think about it.

Finally, I am so proud to have served in this Senate. This place we are in is responsible for the transparency and the accountability that comes out of this parliament. There is huge camaraderie across the chamber amongst all of us. Why on earth would anybody in their right mind want to go to the Reps? Nobody in their right mind would want to do that. I would like to thank all of
my Senate colleagues from all sides, including everybody I have served with on committees and, particularly, all my colleagues in the Democrats. I would like to thank my staff for putting up with me. I would like to thank the people of New South Wales for letting me represent them for 12 years. It is a privilege to be here that comes to very few people, and I have been so honoured to have been the recipient of that privilege.

Honourable senators—Hear, hear!

Senator CRANE (Western Australia) (7.54 p.m.)—At the beginning of my comments I will say that I am an emotional person, but I will try to stay under control. It is a delight to have my wife and my daughter with me. Jim, we didn’t let young Lindsay in here tonight, because we thought he would go over there and check you out! He is back at the office. Because I will miss people out, I started with notes, and I now have three pages of notes from what everybody said.

Senator Hill—Nothing has changed!

Senator CRANE—You’re right, Hilly, nothing has changed. Can I say thank you to everyone before I start. I put my hand on the document you tabled, Barney, because I think that will be very handy to cover all those people I will miss out. Tonight is also a special night because my eldest son’s wife, Nicki, at this moment is in labour, and when I wake up in the morning I will be a grandfather.

There are a couple of things I would like to say at the start of my comments. I was very fortunate when I came into this place because, apart from the new members, I knew everybody here. I had had the luck of being a senior member of the National Farmers Federation, and I made it my business every time I came here to spend every spare moment I had in either this chamber or the other chamber. If I could not get an appointment, I just went and knocked on the door. It was amazing—they always let you in. That is one of the things we as members of parliament must do: we must let in whoever knocks on the door, because they see us as their hope. It is very important to remember that message.

Vets have been into my office, as have people involved with immigrants or with trying to get people out of countries such as Iraq or Iran. I particularly want to comment on the work that we do as members of parliament that nobody knows about. We have the little fields we slip into. I know where mine lie, and everybody in this place knows where they are. Lin Holmes, who has left today to go home, has been a very important and loyal staff member of mine. Apart from Jim and his colleagues, I do not think there is anyone in Australia who knows more about immigration and vets.

Recently a very small group of people came to us who did not know where their husbands were, and some of their sisters were in Jordan because they had had to flee from Iraq. They were from a very small sect, and I will not try to pronounce the name other than to say that they were followers of John the Baptist. They were persecuted in Iraq, and the treatment that they were getting in Jordan was far worse. We have been able to take up that issue through our Minister for Immigration and Multicultural and Indigenous Affairs. I must pay tribute to Mr Philip Ruddock, because he has never refused to take on any particular case. I know that and I found it very important because it is so often part of my work, and I am sure everybody in this place has had that experience.

I want to make a statement in terms of principle; I made it when I came here and it was a very simple one. As I said, I was lucky enough to have appeared before Senate committees and a number of other committees, including the industry committee, as it was then. I believed when I came here that, when we were working on committees and working out of this place, we were members of the Australian Senate and it was our duty to try to come back into this place with a resolution that the government of the day would accept. I have always worked very hard to achieve that, and I am proud to say that, with almost every committee I have been involved in—other than, I must confess, the industrial relations one—we have been able to bring back reports that have been adopted by the government of the day. That was either previously when we were in
opposition, which I did not like very much at the time, or since we have been in government, and I have enjoyed being in government much more. It is much more fun on this side, let me tell you—and we intend to stay here for a while. We had to listen to people from either side tearing the reports apart and all the rest of it, but at the end of the day the ministers knew that we had got the best views, the best consensus and the best information in terms of our recommendations.

In my view, our politics and our party lines must stay outside of the work that we do as members of the committee. If we all adopted that attitude, I think we could do one hell of a lot more for the people we represent and for the citizens of this great nation we live in. Vicki, I cannot help but start by responding to your little comment about conservation because it is rather interesting. My last committee report was very difficult, and there are people in this chamber who know a lot about it. I took my report on the US beef quota to the minister last night—and let me tell you, very quietly, he was not happy. When we had the meeting this morning, he realised—

Senator Conroy—You won.

Senator CRANE—Well, the Senate won. The meat processors won, the meat producers won. I think those regulations will be altered to reflect the report that we brought down as a team in this place. The last meeting I had in this place, Vicki, was two hours ago or a bit more than that. I left it to come down when you started speaking and when Hilly started speaking. It was about using salt bush to make properties drought resistant and using it—equally as importantly—as a carbon collector. All we have to do now is go the next step and get effective carbon credits in this country and a lot of our carbon problems can be resolved. That is something I intend to continue to work at.

There are a couple of other people I want to acknowledge tonight. They have left us now but we did not get the opportunity to say goodbye or to acknowledge their work. I worked very closely with them. One was John Woodley and the other was Bob Collins. I certainly have great respect for both of those former senators and the work we did together—on the dairy inquiry and a couple of safety reports, which I did with Bob Collins when he was a minister—in getting legislation through. It was incredibly important and I acknowledge the time I spent with them.

Senator Panizza, I cannot let him go. This was mentioned in the party room by George Brandis, and I appreciate that very much. Our party room is one of the great forums of democracy. I have always been encouraged by the leaders we have had, and particularly by our current Prime Minister who tells us all regularly to stand up and have our say and make our contribution. I cannot remember one occasion when any of us who wanted to have a say has been refused that say. I just think that is so important in this process.

Senator Panizza, Wilson Tuckey and I were named by none other than John Sharp as the Three Musketeers. Ron Boswell said I was a free marketer earlier on but let me tell you, Ron, that I was the person who got the commitment from our Prime Minister that the single desk would stay—remember that? That was little Winnie Crane. I put a press release out about that. I think that is so important in the context of having fair marketing. Unfortunately, today, there are only two of the Three Musketeers left. I cannot pay enough respect to John Panizza or acknowledge enough the important role that he played in this place—not only here but also in local government in Western Australia and in the Italian community. He also introduced me to the president of the Portuguese community in Western Australia, and I do remember that.

To my colleague Sue West, you are right, the work we did has borne fruit. It bore fruit from your minister—I think it was Bob Collins—at that time. I remember well that it opened up the eyes of one Paul Keating, and it has borne fruit since we have been in government with the changes that have been made in terms of that and the policies that have been adopted. We have one other thing that needs to be finished and that is tax credits.

To Rosemary Crowley, I remember well my first committee with you. I am not sure whether I thought I was in a farmers meeting
or where I was but you thought I had a bit too much to say or I intervened too much at my first committee meeting. You came and told me how the process worked. I have never forgotten that; I do not know whether you remember that. You did not try to knock me down in the meeting, which I think is one of the skills of the chairman. When we had a cup of coffee or tea you came over and said, ‘You’ve got to wait your turn. I’ll give you the call. You will get your fair share of the time.’ I tried to adopt that principle in the opportunities that I had as a chairman.

To Chris Schacht, I think I only ever did one thing with you and that was a tour of Hungary and Poland and that was great fun. I learned the skills from you, Chris, of how to go to interesting things and miss out on boring official functions. To Brenda Gibbs, I hardly got to know you but I appreciated the comments you made today and I certainly respect your contribution to this place. Vicki, I have already mentioned you and I do not think I can say any more. We did come in together and we have had a lot of fun together at various times.

Senator Ferris—Oh?

Senator CRANE—Somebody said oh! It is not what you are thinking; it was better than that! To Barney Cooney, there is nothing more I can say but I will remind you of one thing. You know I have had some difficulties over the last four years. If you ever get poor, send me the bill for your advice. It has been greatly appreciated to know that I could go and talk to somebody, speak in confidence and not have any political pressure whatsoever put on me. I will never forget it.

To Jim McKiernan: you mentioned earlier about how we found ourselves working on the same side of so many things and that is so true. I first met Jim in the mid-eighties when we were invited up to Merredin—actually it was John Kerin who invited us—to a growers’ meeting. I was not sure at that time—I hadn’t made it rain. I hadn’t got the price of wheat up and I hadn’t got the costs of production down or what have you—whether John Kerin was more unpopular than me, because he had not done them either. Anyhow, we went up to that meeting and, from that day on, I had the greatest respect for you, Jim, because you took in very carefully each detail of that meeting. When I saw John Kerin afterwards, he informed me that you actually came back and presented a very strong case on the growers’ behalf. That is what it is all about. I will never forget that.

At this moment I cannot miss acknowledging your wife—is Jackie still in the gallery? Yes, hello darling. I have to tell a little story. Jackie and my Uncle Bert, who is well known around this country, served in the Western Australian parliament. I spoke to Uncle Bert just last week—he is not well; he has serious cancer—and he said, ‘There’s one thing I want you to do. Just pass a message back to Jackie wishing her all the best and tell her I still love her.’ Jackie told me about the message she sent very recently to my uncle, which is greatly appreciated. That has got through that part of my role.

I am a lucky fellow, a very lucky fellow. I am very fortunate in having had the honour of serving, from a very young age, the National Farmers Federation. When I started doing that, I was a bit wild—wilder than I am now. I was a rebel and I was certainly prepared to challenge authority. I was like a wild bull when it gets out amongst the heifers: it is better to put him in a large bullpen with a top on it and keep him inside. I was invited at the tender age of, I think, 23 or 24 to become an executive member of the Western Australian Farmers Union, as it was known then. But I also believed—because I had a fairly strict father—that you changed things from the inside; you rarely did it from the outside. I think that is absolutely true. Anyhow, I got involved in that and it was a great experience—considering that was on top of the fact that I had left school before I turned 15. I had to, otherwise my next brother could not go to school. Things were tough then, and they were very tough out on the land.

During my earlier years I did all sorts of things: I contracted, I was a shearer for 20 years, I developed the farm. I got my capital from shearing. Eventually, I got nominated and elected to this place. That is one of the greatest honours; it is the greatest privilege your colleagues can give you. I am not sorry in some ways to be leaving here; what I am
sorry about is the way it was done. What I am sorry about—I did not intend to mention this, but it was mentioned earlier on during these speeches—is that it was not resolved before I left. Four years is too long for anybody. I hope this Senate, when I leave, puts some disciplines around how long a person can be left swinging in the breeze. It happened to Senator Sowada. It has happened to me. Who is going to be next?

I just say to you all here: in some ways I am not sorry. I will spend more time with my family. I will spend more time on my farm. I have already accepted two board positions that will give me more money than I get here—but money is not everything. I have some children to educate, which I intend to do to the best of my ability. I have been offered the chairmanship of another board. So there is no shortage of opportunity for me or my wife and family out in 'real land', as I call it. But I do regret very strongly that I have not been able to walk out of here as a free man—and I think after four years I should have been able to do that. I am sorry I had to say that, but I think it had to be said.

To Madam President, I have been privileged to be here with you. I have always felt confident that I could go to you, and to each of the presidents before you, and speak in confidence with regard to matters that I needed to know about. I have appreciated that. I think we have been a very fortunate party in that we have had Robert Hill as our leader. I can say the same thing about Robert—often very personal—that I have discussed with him as we have worked through the workings of this place. Most people know that Robert comes from a different side of the Liberal Party political fence from me but I have never once been stifled in terms of putting my point of view. I think I can say that on behalf of every person on our side of politics. That is a great attribute when you are a leader—incredibly important. I do not know how much longer I have got to go. How much time do I have?

The PRESIDENT—It has expired actually.

Senator CRANE—Okay, I shall hurry. I want to acknowledge all of the people who worked on the committees with me. As I said, we endeavoured—and we did, on virtually every occasion—to bring a report to the Senate that could run the gauntlet of the parliament.

I must mention Paul Calvert and David Brownhill as foundation members of the rural and regional affairs committee. When I came to this place I could not believe that, given the contribution country people make to our national wealth and to all the things that are decent about Australia, there was not a committee here that looked after their particular affairs. I congratulate Senator Calvert and Bryant Burns. I said this in my valedictory to Bryant Burns: he is the only person I have ever known who within 100 kilometres of Canberra was totally mad and when he got 100 kilometres out he was one of the most decent people I had ever met. I can remember very well when the drought was on—Sue mentioned this—in my home town of Jerdacuttup. To see those eyes so grateful that a Senate committee actually cared enough to go down to the south coast of Western Australia, where it was absolutely terrible, and talk to the people was an experience. I can say quite confidently that that got 80 per cent of them through that drought. We demonstrated, as senators, that we cared. The fact that I nearly killed myself in a car smash is beside the point.

I must mention Neil Bessell and Andrew Snedden and their teams. They have been absolutely terrific. There are two stories I would like to tell before I wind up. The first one is about the time we saw Bob Collins turn absolutely pink from the top of his head to the tip of his toes. That was when Joy Baluch, the mayor of Port Augusta, had a few kind words to him about National Rail. For those of you here who have never seen Bob anything but a sort of fading white, I can tell you that seeing him pink was really novel.

The other story is about the shearing inquiry hearing at Muttaburra. It was not called the shearing inquiry; it was the inquiry into the impact of overseas visitors on the work force of Australia. Actually, it was the in-
quiry into New Zealand shearers coming here, as Mike Forshaw would well remember. We got down there and there was this terrible New Zealander, and on the Saturday night it took us a considerable amount of time and some good Queensland beer to get him to appear next morning. This guy was somewhat darker than most of us—darker than me, certainly. I do not say that disrespectfully. He got up there and said, ‘The first thing I want to say is that I am an Australian citizen and have been for 20 years. The next thing I want to tell you is that I have been married to an Australian girl, my lovely wife, for 18 years. I have four Australian children.’ Then he said, ‘I am not a New Zealander; I was born in New Guinea and I was a New Guinean until I became a naturalised Australian.’ I found that rather interesting. It was rather misplaced and it brought the place down.

Finally, I want to pay tribute to my wife, Thea, and my children. I hope all goes well for Nicky and Paul tonight. I particularly wish to mention that terrible program that was run by Channel 9 on nepotism. They rang us up because they knew that Thea had worked for me for eight years in the Farmers Federation before we got married. They knew that she was a highly qualified and successful person in her own right. They ran the program, and her answer that they put on was not to the question they asked but to a mixture of two other questions. At least the answer from me was the answer to only one question, but, again, it was not the question they asked. I say to Channel 9 that they should be a little more careful in what they do. Thea is a professional, she is incredibly knowledgeable and she is tough, articulate, fair, highly qualified—probably more so than most people in this place—fearless and, above all, loyal. What happened was not right.

I have not mentioned Mike Forshaw or Kerry O’Brien or many of the other people I have worked with, or people on my side of the chamber—they are great people. Brian Harradine remarked that we are all different: we have all made different speeches, we have all had different roles in this place. There is one particular person on the other side that I want to mention but he is not a senator, and that is Jack Lake. I want to pay tribute to Jack. Over the time I have been in this place he has worked closely with my office—whether it was for Bob Collins, Kerry or whomever—to make sure that we got outcomes that were in the best interests of the people involved in the inquiry we were undertaking. If we had a little bit more of that in this place, it would be a better place for us all and we could win back some of the respect we deserve from the Australian people for the work we do.

The PRESIDENT (8.21 p.m.)—From 1901 until today only 486 Australians have had the opportunity to serve in the Australian Senate, whether in Melbourne, in the pro- vissional Parliament House or here. This evening we gather to farewell eight of our colleagues and to wish them well as they go into the next phase of their lives and careers. We thank each and every one of them for the unique contribution they have made to the Australian Senate.

Listening to the speeches this evening, the theme that has run throughout has been the contribution that each and every person has made to the Senate committee system. I sometimes wish that those who observe the Senate and write about it took a little more interest in and had a better understanding of the role that all of the committees play in the parliament. I wish they understood that when the Senate is not sitting we are not on holidays. If you looked at the record, you would find that most senators spend as many nights away from home in the up weeks as they do when the Senate is sitting. It is indeed a huge contribution. I hope that one day that will be known and understood a little better than it is today.

I particularly want to refer to Senator Cooney’s contribution to the Scrutiny of Bills Committee. The committee was established in 1981. He joined the committee in February 1985, just after he was elected in 1984. He has served from that time on the Scrutiny of Bills Committee, and he has been its chairman now for some time. Whenever the history of the Scrutiny of Bills Committee is written, everyone will be able to see the significant role that he has played in de-
developing the committee’s conventions and things it does for the people of Australia—not by looking at legislation from a philosophical point of view or a policy point of view, but how it actually affects the people of Australia. He has made his mark on that committee for all time. When the history is written, you will feature there and will be remembered because of it.

Sue West, thank you. It has been great to work with you in your role as Deputy President and Chairman of Committees. Now is not the time perhaps to go through the relationship that we have developed over this time. You have been cooperative, friendly and helpful, and it has been a great pleasure to work with you. I wish you well as you go on from this place. I commend you for the role that you have played as Deputy President and Chairman of Committees; it has been outstanding.

Sitting suspended from 8.24 p.m. to 9.25 p.m.

COMMITTEES

Membership

The PRESIDENT—I have received letters from party leaders and an independent senator seeking variations to the membership of certain committees.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (9.25 p.m.)—by leave—I move:

That senators be discharged from and appointed to committees, with effect from 1 July 2002, as follows:

Appropriations and Staffing—Standing Committee—
Appointed: Senators Allison, Bolkus and Herron
Discharged: Senator Ian Macdonald

Broadcasting of Parliamentary Proceedings—Joint Statutory Committee—
Appointed: Senators Ferris and Stephens
Discharged: Senator Knowles

Community Affairs Legislation Committee—
Appointed: Senators Barnett and Hutchins
Discharged: Senators Bishop and Herron
Participating members: Senators Bishop and Moore

Community Affairs References Committee—
Appointed: Senators Barnett, Hutchins and Moore
Discharged: Senator Tchen

Corporations and Financial Services—Joint Statutory Committee—
Appointed: Senator Wong

Economics Legislation Committee—
Appointed: Senator Webber
Participating members: Senators Kirk and Lundy

Economics References Committee—
Appointed: Senator Webber
Discharged: Senator Bolkus
Participating member: Senator Kirk

Employment, Workplace Relations and Education Legislation Committee—
Appointed: Senator Johnston
Discharged: Senator Ferris
Participating member: Senator Nettle
Substitute members:
Senator Crossin to replace Senator George Campbell for the consideration of the Higher Education Funding Amendment Bill 2002
Senator Crossin to replace Senator Carr for the consideration of the Workplace Relations Amendment (Paid Maternity Leave) Bill 2002

Employment, Workplace Relations and Education References Committee—
Participating member: Senator Nettle

Environment, Communications, Information Technology and the Arts Legislation Committee—
Appointed: Senator Tierney
Discharged: Senator Calvert
Participating member: Senator Wong
Environment, Communications, Information Technology and the Arts References Committee—
   Appointed: Senator Wong
   Discharged: Senator McLucas
   Substitute member: Senator Buckland to replace Senator Wong for the committee's inquiry into environmental performance at the Ranger, Jabiluka, Beverley and Honeymoon uranium operations

Finance and Public Administration Legislation Committee—
   Appointed: Senator Heffernan
   Discharged: Senator Lightfoot
   Participating member: Senator Marshall

Finance and Public Administration References Committee—
   Appointed: Senators Heffernan, Marshall and Wong
   Discharged: Senators Lightfoot and Lundy

Foreign Affairs, Defence and Trade—Joint Standing Committee—
   Appointed: Senators Bartlett, Bishop, Bolks, Eggleston and O'Brien
   Discharged: Senators Chapman and Hutchins

Foreign Affairs, Defence and Trade Legislation Committee—
   Appointed: Senator Ridgeway
   Participating members: Senators Cook, Evans, Marshall and Nettle

Foreign Affairs, Defence and Trade References Committee—
   Appointed: Senators Bishop, Johnston, Marshall and Ridgeway
   Discharged: Senators Hutchins and Lightfoot
   Participating members: Senators Cook and Nettle

House Committee—
   Appointed: Senators Lightfoot and Stephens
   Discharged: Senator Knowles

Legal and Constitutional Legislation Committee—
   Appointed: Senators Bolkus and Ludwig
   Discharged: Senator Ludwig as participating member
   Participating members: Senators Kirk, McLucas, Nettle and Stephens

Legal and Constitutional References Committee—
   Appointed: Senators Bolkus, Kirk and Stephens
   Discharged: Senator Ludwig
   Discharged: Senator Bolkus as participating member
   Participating members: Senators Ludwig and Nettle

Library—Standing Committee—
   Appointed: Senators Herron, Kirk, Ludwig and Wong
   Discharged: Senators Boswell, Mackay and Sherry

Migration—Joint Standing Committee—
   Appointed: Senators Kirk and Tehen
   Discharged: Senator Tierney

National Capital and External Territories—Joint Standing Committee—
   Appointed: Senator Scullion
   Discharged: Senator Colbeck

Native Title and the Aboriginal and Torres Strait Islander Land Fund—Joint Statutory Committee—
   Appointed: Senator Scullion
   Discharged: Senator Mason

Privileges—Standing Committee—
   Appointed: Senator Johnston
   Discharged: Senator McGauran

Procedure—Standing Committee—
   Appointed: Senators Allison and Brandis
   Discharged: Senator Ian Campbell

Public Accounts and Audit—Joint Statutory Committee—
   Appointed: Senator Moore

Publications—Standing Committee—
   Appointed: Senators Colbeck, Johnston, Kirk, Marshall and Moore
   Discharged: Senators Bishop, Chapman, Lightfoot and McLucas
Regulations and Ordinances—Standing Committee—
  Appointed: Senators Barnett, Marshall and Moore
  Discharged: Senators Brandis, Buckland and Ludwig

Rural and Regional Affairs and Transport Legislation Committee—
  Appointed: Senator Heffernan
  Participating member: Senator Stephens

Rural and Regional Affairs and Transport References Committee—
  Appointed: Senators Heffernan, McGauran and Stephens
  Discharged: Senators Ferris and Mackay

Scrutiny of Bills—Standing Committee—
  Appointed: Senators Barnett, Johnston and McLucas
  Discharged: Senator Ferris

Selection of Bills—Standing Committee—
  Appointed: Senator Ludwig
  Discharged: Senator Crossin

Senators’ Interests—Standing Committee—
  Appointed: Senators Webber, Wong and Bolkus, Collins and Herron

Treaties—Joint Standing Committee—
  Appointed: Senators Barnett, Kirk, Marshall and Stephens
  Discharged: Senators Ludwig and McGauran.

Question agreed to.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (9.25 p.m.)—by leave—I move:
  That senators be discharged from and appointed to committees as follows:

Economics Legislation Committee—
  Substitute member: Senator Bartlett to replace Senator Murray for the consideration of the Space Activities Amendment Bill 2002

Employment, Workplace Relations and Education References Committee—
  Substitute member: Senator Murray to replace Senator Cherry for the committee’s inquiry into small business employment for public hearings in Western Australia and Melbourne

Foreign Affairs, Defence and Trade Legislation and References Committees—
  Participating member: Senator Bartlett.
  Question agreed to.

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

Second Reading

Debate resumed from 20 June, on motion by Senator Ian Macdonald:
  That this bill be now read a second time.

Senator BARTLETT (Queensland) (9.26 p.m.)—We start on our long journey into night with a large number of bills still before us. I will try to truncate my comments somewhat more than I otherwise would. But I do think we should do the issues we debate some justice, so I will take some time outlining the Democrats’ view on the Social Security and Veterans’ Entitlements Legislation Amendment (Disposal of Assets—Integrity of Means Testing) Bill 2002. We heard from the Labor Party representative, Senator Bishop, on this matter a day or two ago and I will now give the Democrats’ perspective.

This bill relates to the assets test as it applies to social security payments, particularly pensions. The assets test contains rules, commonly known as the gifting rules, whereby assets disposed of for low or no consideration remain included in the asset value of a person for five years after their disposal. Aside from those recipients who wish to gift assets for purely benevolent reasons, the gifting rules in practice can operate to address situations where people who may be eligible for a benefit except that they are excluded by the operation of the assets test, can arrange their financial affairs to dispose of assets so that they are eligible for either a
full or part benefit or pension and, where relevant, the associated fringe benefits.

The free area for gifting of assets in the Social Security Act has not changed in the past 10 years. Prior to 1991, it was $4,000 for couples and $2,000 for singles. That was changed by the Keating government, and the free area was increased to $10,000 for both couples and singles. It was justified at the time as both a reasonable improvement to pensioners’ benefits and a simplification of the rules. Back in 1991, of course, $10,000 was worth a lot more than it is now. Essentially, the value of the gifting limit has diminished through depreciation to the point where, based on CPI increases, $10,000 then is worth close to $13,000 today. So, in effect, the true value of the gifting limit has reduced by almost a third over the past 10 years. This legislation before us seeks to reduce it by 50 per cent over a rolling five-year period.

From the Democrats’ examination of the issues—and it is not a new examination; the matter was brought up in legislation a couple of years back and at that time the Senate rejected what was a slightly different change to what is being proposed here—there is a clear tension between the deliberate usage of the gifting provision to maximise pensions and the disadvantage or negative impact on those people who do not use the provision for specific pension maximisation purposes but for genuine gifting. The question often asked is why those who receive income support payments should be constrained in their generosity by governments. Frequently, the question is raised as to why Australians who have paid taxes during their working lives should be denied social security payments just because their assets are over the means test limits. The line is often put: why should the thrifty be penalised when they have managed to save sufficient to have so many assets that they do not qualify, while those who were not able to save for whatever reason or perhaps chose not to save do receive all those entitlements with no questions asked?

There is no simple black and white answer to this. The complexity of some aspects of the means test arises from a conflict between rights and freedom of choice on the one hand and the affordability of our welfare system on the other. There is also the question as to what level of need we should identify people as having before they qualify for payments and assistance. That is why we as legislators must question the provision in a means test that permits those who are reasonably well off to systematically divest themselves of their assets to acquire and retain publicly funded income support.

Three years ago in this place we considered legislation that sought to reduce the gifting provisions by halving the $10,000 a year free zone to $5,000. The Democrats opposed that bill at the time because we were not convinced that it was sufficiently justified to support, particularly given the available evidence. Things have of course changed financially over the last few years in not only the rate of the Australian dollar and unemployment rates but also, and more particularly, the development and expansion of the financial planning industry. The term ‘creative accounting’ now extends to ‘creative financial planning’. There has been a political consensus for some years that some amount of gifting by pensioners is a legitimate practice and that gifting without loss of pension entitlement up to a limit is reasonable. The question then becomes where that limit should be set. We now regularly see financial planners advertise in the print media and on the Internet that they can find ways in which people can have thousands of dollars above the assets test limit and still receive a part pension. In consideration of recent tightening of loopholes, such as trusts and private companies, financial planners are increasingly turning their attention to gifting.

Each year, a small number of Australians give money and other assets to family members to maximise social security income support and/or qualify for a concession card. Gifting has been widely promoted as a financial planning strategy in its own right but it is of dubious long-term value for many people in that the amount of the gift is usually more than the increase of pension received as a result. Many older people are motivated to dispose of money and other assets by misinformation or myths about the huge value of the concession card or the possible winding back of the age pension down the track. The
problem is that many fail to recognise the possible long-term financial implications of their action. This to some extent may be justification in itself for limiting their capacity to gift large sums, which might assist financial planners in getting business but does not assist the person themselves in any financial sense.

It remains that there is a community expectation, one that I am not particularly opposed to, that some form of assets test or cap should operate so that those with sufficient resources to support themselves do so. Indeed, some financial planners will tell you there are strong reasons for discouraging the practice of gifting with the primary purpose of welfare maximisation, particularly if those involved are reasonably young and healthy. It is much better to maintain your capital base at as high a level as possible rather than continually whittling it away so you can get small amounts in pensions or other concessions. This is a regular message that other Democrats and I have received from financial planners.

We are not much aided by the government’s failure to get extensive data on the amount of gifting that occurs by Centrelink customers now to estimate the impact of the proposed new gifting rules. Instead, they use Department of Veterans’ Affairs data extrapolated to age pensioners. I think that when we are looking at savings measures we need to have as much detail as possible about what the impact of those savings could be in not only pure dollars but also the number of people affected. Through this loose statistical extrapolation, the government indicates that the measure is expected to apply to about 0.2 per cent of all pensioners, which is about 4,000 people. The Australian Society of Certified Practising Accountants estimates the deprived assets totals several hundred million dollars.

Despite this government’s recent attempts to remove certain people’s access to the disability support pension, I am sure that there is no plan to scrap the age pension. It is often floated as something that may need to happen down the track because of the dramatic ageing of our population. I do not see that as likely to be the case. It is certainly something that is flagged from time to time as a possibility. It does remain though that the money people give away today could be needed in future for their self-provision or health care.

It is also important that we make the distinction that pension recipients can gift as much as they please. There arises occasionally the misperception that pensioners are somehow limited in how they dispose of their own funds. The Social Security Act 1991 and the Veterans Entitlement Act 1986 do not prevent people spending or disposing of their assets as it suits them. What they do is prescribe a limit above which there should not be an obligation by taxpayers to fund the resulting increase in pension for every dollar they give away beyond a certain limit.

We believe that the gifting of assets by part pensioners in return for an increase in pension is generally legitimate and socially beneficial. We recognise that older Australians at times want to or indeed need to assist younger or less fortunate members of their own families including assisting with the deposit on a home or education fees. That reminds me that I have not paid back my mother for the loan she gave me for a house deposit. I had not thought of that for ages. I know what it is like. Parents can come in handy in terms of providing extra cash to help get a house deposit. Obviously that, and I am now speaking from self-interest, is not necessarily a bad thing—the issue is how much that can be without affecting their assets test. In many cases gifting assets can help the younger family members concerned and is also of wider social benefit. At the same time we want to ensure that only those who are legitimately in need of income support receive it.

Those are some of the arguments that we have had to consider in looking at this bill. The bill retains a maximum gifting limit of $10,000 per year and that is the free area that people can give away without it affecting the calculation, but it places a $25,000 limit on the total in any five-year rolling period. You could actually give away $10,000 two years in a row and $5,000 the next, but then you would have to wait two or three years before you could gift any more—you would have used up your limit. An amount of $25,000 is
not necessarily terribly much. In Sydney the median house price is now around $300,000, and $25,000 is not even a house deposit; $25,000 does not pay the university fees for a student studying a band 3 university degree.

Accordingly, the Democrats intend to move an amendment to increase this total rolling figure from $25,000 up to $30,000. This is not just an arbitrary figure grabbed out of the air. This will enable older Australians who genuinely wish to assist family members through a major purchase to do so more freely without unreasonable impacts upon them. But it would be an irregular occurrence because the five-year rolling total remains in place; it would still mean that sizeable gifts would only be irregular occurrences rather than people being able to gift large amounts year after year and whittle back their own capital base.

On balance, the Democrats have come to the conclusion that, with the slight change that the government has made from its previous proposal to still allow a maximum of $10,000 a year and with that extra Democrat amendment I will move in the committee stage, we will support this bill on this occasion. It should be noted in passing that special arrangements have been put in place in the past for the rural sector, for whom it is a cultural norm, if not an expectation, that gifting of properties from one generation to the next will occur. And it is worth noting that from 1997 until late last year a moratorium was in place on the gifting of farm properties of up to half a million dollars in value, and many rural people made full advantage of that in gifting rural properties to family members.

We also note that earlier this year the minister provided a three-month extension for people who wanted to transfer control of their private trusts or private companies before social security deprivation provisions were applied. This measure particularly advantaged the farming community. Additionally, farmers who are currently winding up their involvement in farm trusts and who have complied with all the other requirements of surrendering control of their businesses have been able to continue operating their farming partnership until the end of this financial year without necessarily having all the farm assets attributed to them under gifting provisions. So we are satisfied that adequate consideration has been extended to the rural sector.

On balance, we are willing to support the Social Security and Veterans’ Entitlements Legislation Amendment (Disposal of Assets—Integrity of Means Testing) Bill 2002. We think it does overcome some of the issues of inappropriate gifting strategies that are being proposed and pushed more and more by financial planners to achieve social security maximisation, often for an illusory benefit to the person who gifts their money away and, with the benefit of our amendments, it will also be equitable for those for whom gifting is a legitimate activity.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (9.40 p.m.)—I thank Senator Bartlett for his contribution. As he rightly pointed out, people are able to gift $10,000 a year. Some time ago the government wanted to reduce the opportunity for wealthier people to maximise their opportunity for the pension by gifting by reducing that amount down to $5,000 a year. That met a not terribly positive fate in the parliament and so we have come back to look at it another way. That other way is to say, ‘If in any one year you think there might be a genuine need to make a gift of over $5,000, surely you cannot imagine those genuine needs are going to come up every year, so we would like to see’—and this is what this bill proposes—‘a five-year limit of $25,000 on a rolling basis.’

I note that Senator Bartlett gave advance warning of his intention to move an amendment to shift the total amount up to $30,000. It is strange to have the Democrats moving an amendment to help out those who are wealthy enough to give away $30,000 over five years. Usually it is the Liberal Party that is accused of doing things for people with a bit more money. I was equally touched, Senator Bartlett, by your suggestion that some older people might use this to assist, as I think I understood you to say, their grand-
children to pay for one of the band degrees—
because I remember the higher education
debates and the Democrats had some very
strong views about those whom they called
the 'rich and thick'. I would have thought
that any kid whose grandparents can fork out
and pay for all of their fees would fit into
that category and the Democrats might not
be so happy that that was happening. In any
event, we are very grateful for the support.

Senator Mark Bishop—I wouldn’t go
crook.

Senator VANSTONE—I am not going
crook; I am just saying I am touched—
touched at the comparison between how
people who could give away $30,000 were
thought of before and what they can do now.
I welcome this refreshing change of attitude.
I am genuinely pleased, Senator Bishop.
You, for example, went and paid for a de-
gree. You recognise the value of an invest-
ment in education and that it is an asset.

Senator Mark Bishop—Mine wasn’t a
gift, though.

Senator VANSTONE—Yes, that is right:
you did not have a rich granny who paid for
you to go, who could maximise her pension
by flipping a bit of money your way. None-
theless, Senator Bartlett, we are terribly
grateful for your support in this matter and
we hope that it stops more people who have
got a few bucks using the gifting rules to
palm the money off elsewhere to maximise
their pension when really we would rather
the pension money goes to people who are
really in need. So thank you very much, and
I indicate we will be supporting your
amendments.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BARTLETT (Queensland) (9.44
p.m.)—by leave—I move amendments (1) to
(9) on doubly revised sheet 2544:

(1) Schedule 1, item 15, page 7 (line 25), omit
“$25,000”, substitute “$30,000”.

(2) Schedule 1, item 15, page 9 (line 16), omit
“$25,000”, substitute “$30,000”.

(3) Schedule 1, item 15, page 12 (line 5), omit
“$25,000”, substitute “$30,000”.

(4) Schedule 1, item 18, page 15 (line 19), omit
“$25,000”, substitute “$30,000”.

(5) Schedule 1, item 25, page 18 (line 20), omit
“$25,000”, substitute “$30,000”.

(6) Schedule 1, item 25, page 21 (line 10), omit
“$25,000”, substitute “$30,000”.

(7) Schedule 1, item 28, page 24 (line 10), omit
“$25,000”, substitute “$30,000”.

(8) Schedule 2, item 19, page 32 (line 3), omit
“$25,000”, substitute “$30,000”.

(9) Schedule 2, item 19, page 34 (line 24), omit
“$25,000”, substitute “$30,000”.

I addressed these amendments in my second
reading contribution, so I will not speak at
length, although I should respond to the
warm acknowledgment by the Minister for
Family and Community Services of our co-
operation in relation to this. It shows that if
you persevere long enough—I do not know
how long it took from when it was first tried;
three years I guess—there is always hope
that somehow or other down the track you
can reach agreement.

I should probably correct what I am sure
were slight misimpressions about some of
the rationale that I gave. Obviously, it is all a
matter of perspective, but I am not necessar-
ily sure it is a good thing that the cost of
education has become so high that some-
times the only way people can afford it is by
relying on money scrounged from elsewhere.
I think it is appropriate to recognise that, a
lot of times, parents may provide money—
whether it is to children, siblings, partners or
anybody that they see in need—for genuine
reasons, not just because they think, 'I'll give
them a bit of dough to get through university
and that will help with my pension as well.' I
do not think that is a particular motivation
for many people. I think the primary motiva-
tion for people who assist family members in
need is assisting family members in need;
any flow-ons are consequential.

The fact that there is a free area in place at
all—and, as I said in my speech, the fact that
it was increased to $10,000 by the Keating
government some 10 years ago—is a recog-
nition that people should not be penalised for
occasionally providing assistance in the form
of a gift. I think it is appropriate to put that in
a better context. This is not going to make a
great deal of difference to people who are
staggeringly wealthy; it is really to assist
those people floating at the margins of where
the assets test kicks in. As with any measure
where you have a line—and we all accept
that you have to have a line somewhere,
whether it is with assets tests, income tests or
whatever—those at the edge of where the
test kicks in are often the ones who are, in-
advertently, put in slightly unjust circum-
stances. That cannot always be prevented,
but I think it is worth recognising that we are
not talking about trillionaires here.

This is a slight modification, but it slightly
more accurately reflects the reality of cir-
cumstances where people are gifting for
genuine reasons, rather than just trying to
circumvent the intent of social security law
on the basis of what is often fairly dodgy
financial investment advice. I commend the
amendments to the chamber. I trust that they
will meet with the support of enough of us
here to ensure that this bill can progress.

Senator MARK BISHOP (Western Aus-
tralia) (9.47 p.m.)—On behalf of the opposi-
tion, I make a few brief comments concern-
ing the amendments proposed by the Demo-
crats and which will be supported by the
government. We have listened closely to
Senator Bartlett and the Minister for Family
and Community Services in response. At
first instance, we raised four matters of con-
cern with the original bill. The first was that
the government had chosen not to provide
any evidence that the system was being
tightened to prevent systematic abuse by
pensioners. No data has been provided. Sec-
condly, we pointed out that the then incurrent
remaining $10,000 limit on gifting has never
been indexed, which means that it is auto-
matically becoming more restrictive as the
real value of the limit decreases over time.
Thirdly, we pointed out that the government
is not taking any cohesive or across-the-
board—and certainly not any unilateral—
action to crack down on financial planning
approaches that enable some people with
significant assets to avoid payment of tax.
Finally, we paid particular heed to the argu-
ments of groups such as the Australian Pen-
sioners and Superannuants Federation. They
are in favour of more generous gifting provi-
sions to enable our older Australians to sup-
port their families in times of need and are
strongly opposed to moves to tighten the
current rules.

The amendments moved by the Demo-
crats—Senator Bartlett said the word was
‘marginal’ or ‘slight’—increases the amount
from $25,000 to $30,000 per annum. That is
an increase of $5,000—20 per cent over five
years or four per cent a year. On those basic
maths, it is indeed a marginal increase that
has been negotiated and agreed between the
government and the Democrats. We do not
see that shift as being significant enough to
warrant a shift in our position. So, having put
those few remarks on the record, I indicate
that the opposition opposes these amend-
ments and will continue to oppose the bill.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report
adopted.

Third Reading

Senator VANSTONE (South Australia—
Minister for Family and Community Serv-
ices and Minister Assisting the Prime Min-
ister for the Status of Women) (9.50 p.m.)—I
move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator VANSTONE (South Australia—
Minister for Family and Community Serv-
ices and Minister Assisting the Prime Min-
ister for the Status of Women) (9.51 p.m.)—I
move:

That intervening business be postponed till
after consideration of government business order
of the day No. 9 (Workplace Relations Amend-
ment (Fair Dismissal) Bill 2002).

Question agreed to.
WORKPLACE RELATIONS AMENDMENT (FAIR DISMISSAL) BILL 2002

Second Reading

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

That this bill be now read a second time.

Senator MACKAY (Tasmania) (9.51 p.m.)—In the interests of time, I seek leave, on behalf of Senator Hutchins, to incorporate his speech on the Workplace Relations Amendment (Fair Dismissal) Bill 2002. I understand that it has been shown to the government.

Leave granted.

The speech read as follows—

One of the main reasons given by the Government for the introduction of this bill is the alleged burden that unfair dismissals claims place on small businesses. When speaking on the Workplace Relations Amendment (Unfair Dismissals) Bill 1998, I discussed the true impact that the introduction of such legislation would have upon small business. The Government has continually told us that as many as 50 000 jobs would be created by scrapping unfair dismissal laws. Results from the Australian Workplace Industrial Relations Survey published in 1997 showed that unfair dismissals are not in any way considered to be a significant impediment to the creation of jobs. Unfair dismissal laws did not rate a mention as an impediment to hiring new employees. In fact the figure of 50 000 jobs was merely estimated by the head of the Council of Small Business Organisations of Australia. It was not based on an analysis or research, yet the Government has taken that figure and repeated it like a mantra on an analysis or research, yet the Government.

As much as the Government may wish to allege otherwise, the Australian Labor Party is committed to an industrial relations system that provides for the creation of jobs. There is no evidence, however, that any jobs would be created by the proposed changes. We would simply see the advent of an industrial relations system where there are two tiers of workers: those who are protected under Federal award protection, and those who are not.

The obvious effect on a worker’s ability to keep a job that he or she deserves and does well, the bill would be an opportunity for unscrupulous employers to force workers into a situation where
they are compelled to work under poor conditions. Any small business owner who wanted to employ their workers under Australian Workplace Agreements would be able to sack a worker if they refused to sign an AWA and insisted upon their rights under the award system of wages. The worker would not have any legal right to appeal such an unjust decision. As was seen during the Patrick’s Dispute, there would be clear opportunity for employers to create smaller shelf companies to become exempt from unfair dismissal laws. The exemption from unfair dismissal laws could allow employers to circumvent obligations to existing employees and replace them with new employees at a cheaper rate. It is fairly clear that the proposed laws in this bill are by no means watertight.

While the Government’s aim is to provide greater freedom for small business, quite the opposite could result from the introduction of these laws. The removal of the right to use unfair dismissal laws could see workers making claims under unlawful dismissal laws. Unlawful dismissal claims are heard in the Federal Court, where costs for the claimant, the employer and the taxpayer are higher. The main advantages of the Australian Industrial Relations Commission are its relative cost-effectiveness and speed. While unfair dismissal laws may be of some concern to small business it must be noted, as it was by the Shop Distributive and Allied Employees Association in their submission to the Senate inquiry into this legislation, that the concern for small business “is not really the cost of compliance, but the inconvenience of compliance”.

The Labor Party’s position on this bill is clear. As it stands, the Government’s proposed changes to the unfair dismissal system do not address the problems that exist. The current system is open to exploitation by advocates who are less interested in workers getting their jobs back than obtaining a source of funds from which to deduct fees. The current system’s bias against reinstatement is evidenced by the fact that since 1997, of the 5% or so of unfair dismissal cases that actually proceed to arbitration, 838 applicants were awarded compensation and only 132 were reinstated. One of the main reasons there has been such a bias towards compensation payouts is because of the manner in which many advocates get their fees through operating on a contingency basis. Labor’s amendments will amend section 170CH(3) of the Workplace Relations Act to restore the emphasis upon reinstatement rather than compensation.

A recent CPA survey showed that one of the greatest problems for small business was confusion about the operation of the unfair dismissal laws. There is a lot of misinformation about unfair dismissal laws. For that reason, the Australian Labor Party’s amendments aim to make the system quicker and simpler for small business. The amendments will streamline the system by encouraging the Commission to make better use of electronic means of communication in the process so that claimants or defendants don not have to attend face to face meetings in the conciliation phase of the claim. Better education will be provided to small businesses about how unfair dismissal laws work through publicly available guidelines. Our amendments will allow bulk applications for multiple claimants in the same workplace to streamline the process and provide faster resolution of unfair dismissal cases. Our amendments will also establish indicative time-frames to ensure claim cases do not drag on do the detriment of the business and employee concerned.

Labor believes that every employee has a right to appeal against a decision by their employer to sack them if that has been done unfairly and unjustly. But we recognise there are problems with the current system, including the current system’s tilt towards compensation payouts, the over-involvement of unscrupulous advocates and the complexity and length of the process. Our amendments will strike the right balance between protecting employees’ rights and making it easier and simpler for small business people to deal with claims. Our system will ensure a fair go all round.

Senator JACINTA COLLINS (Victoria) (9.51 p.m.)—I would like to make a comprehensive contribution on the Workplace Relations Amendment (Fair Dismissal) Bill 2002. In my case, there is a history attached to dealing with this piece of legislation; I think this is now about the seventh time that I have done so. I could not miss the opportunity to make the point I have reiterated on many occasions that merit is not with this piece of legislation; it is part of the government’s political agenda. In the interests of time, I seek leave to incorporate my remarks.

Leave granted.

The speech read as follows—

I find it ironic that the Government presents to the Senate the Workplace Relations Amendment (Fair Dismissal) Bill 2002 as one of its first pieces of legislation in this 40th Parliament. New Parliaments are supposed to be about new vision, new vigour and new ways of tackling common issues for the national good. Unfortunately, the Government presents this place with
a piece of old legislation that’s driven by an old agenda. 
In fact, the only new thing about this Bill is the name, with a minor amendment to the word ‘unfair’, replacing it with the word ‘fair’. But while the title may have changed, the disdain and disparagement has not. 
I have lost count of the number of times this Bill has been presented and re-presented in this place. Each time it has been rejected for very sound reasons. So why doesn’t the Minister listen and learn, or as we do in the Senate, negotiate. 
The reason is because this Bill is not about finding a workable and fair solution for small employers and employees. It’s about politics—very cynical politics. 
I certainly hope this is the last time this dismal piece of legislation is brought before this place. And so on that hope, I want to catalogue briefly the many reasons why the draft legislation before us should be dismissed as unworthy. 
Firstly, and fundamentally, the Bill divides Australian workers into two classes. It removes for anyone unlucky enough to be working in a business of 20 employees or less, protection against and recourse from unfair dismissal. 
The explanatory memorandum to this Bill states that it is designed to “prevent small business employees (other than apprentices and trainees) from applying under the WR Act for a remedy in respect of ‘harsh, unjust or unreasonable termination of employment’”. Let me say that again: harsh, unjust or unreasonable termination. This alone should be enough to stop a reasonable Government from pursuing such reform. But the lunacy does not stop there, as there is no rhyme or reason to the dividing line of 20 employees between businesses that do and do not have to meet due process in terminating an employee. In fact, earlier versions of this Bill set the cut-off mark at 15 workers. Where is the Government’s explanation for this change? 
The Government loves to claim that the Opposition plays up the issue of class warfare, particularly in the arena of industrial relations; but here we have the Government actively attempting to create a new underclass of worker. 
Second in the line of reasons to reject this Bill, is the lack of evidence that the legislation will actually benefit a small business person. 
Over the years the Government has proffered a range of flawed and poorly crafted market research in support of its agenda to exempt small business from the unfair dismissal laws. Not once has the Government said ‘right, we are going to get independent professional research on this matter and really find whether it will benefit small business’. The inaction of the Government to develop any credible research highlights the games they are really playing. The best example of this lack of substance to the Government’s proposals is its consistent claim that around 50,000 jobs in the small business sector will be created if unfair dismissal laws are removed. Wha is the origin of this figure? 
Well, as I have pointed out before, it was a figure plucked out of the air by Mr Rob Bastian, the head of the Council of Small Business Organisations of Australia, COSBOA, at the time. Mr Bastian admitted, under questioning from Senator Murray during a Senate hearing, that he had no scientific basis for the figure; rather, it was his extrapolation, calculated from unsolicited off-the-cuff comments by businessmen contacted by COSBOA telemarketers. 
As it happens, there is some very recent independent research into what will assist small business: a small business survey carried out by CPA Australia earlier this year. The survey asked 600 small businesses across metropolitan and rural areas in all states, what were the main impediments to hiring new staff. In response to the question, only 5% said that unfair dismissals were an impediment, and only three percent (3%) of small businesses nominated “changes to unfair dismissal laws” as something that would encourage them to employ more staff. I note that Senator Murray in his address highlighted limitations with the CPA survey data, and I’m not declaring it to be a definitive piece of research, but as far as I know it is independent and professionally developed. I think it ironic as we debate that a relatively simple piece of market research can easily highlight the Government’s priorities do not seem to be the same as many a small business person. 
For the record, I’d like to point out that the most authoritative national research on the subject of unfair dismissals was the 1995 Australian workplace industrial relations survey. While the research is now out of date, it was extremely comprehensive and the results were very indicative of where business were at. Over 78,000 workplaces were surveyed in that research, a very large statistical sample. And out of 78,000 workplaces, when asked why they had not recruited employees during the previous 12 months, unfair dismissal got a response of 0.9 per cent. Less than one per cent of businesses felt
hindered from recruiting because of the unfair dismissal laws.

I could go on about the spurious research that the Minister and his predecessor have trumped up time and again over the years on this matter. Quite simply, the empirical evidence does not provide any support for the Government’s bill here today. But don’t take my word for it. This is what the Federal Court of Australia said recently on the matter in the case of *Hanzy v Tricon International Restaurants* (15th November 2001):

“It seems unfortunate that nobody has investigated whether there is any relationship between unfair dismissal legislation and employment growth. There has been much assertion on this topic during recent years, but apparently no effort to ascertain the factual situation.”

But, let me move on and look at a third reason to reject the Bill. At the end of the day, it won’t solve small businesses’ problems.

Referring again to the recent CPA survey, it highlighted that the main impediment to recruitment for small business was the lack of skilled or experienced applicants. In fact, twenty-five percent, a quarter of all small businesses surveyed, nominated this frustration.

And what is the Government is doing to make people work ready. The clearest indication of the Government’s priority on helping people become skilled for work is the delay of the Government’s working credit policy.

Here’s a chance to increase the supply of skilled people who are job ready (a term that Minister Abbott has been known to use), and what does the Government do, delay, delay, delay.

The Howard Government has always claimed a special connection with small business, asserting that this is the sector that drives our modern economy. I don’t disagree with the engine-room assertion, but the Government has done little to actively help the sector tackle the issues of attracting qualified people to work in it and now wants to actually further reduce worker confidence that small business is an inviting sector to work in.

The Workplace Relations Amendment (Fair Dismissal) Bill 2002 makes the small business the option of the desperate person—hardly the way to build a modern vibrant sector.

Now it could be left there, with the Government and the Opposition at loggerheads over this Bill. However, earlier this year, the Labor Party began to highlight that it wanted to remove any unreasonable burden on small businesses in regards to the unfair dismissal process.

The Labor Party is not anti-small business. If we can make matters more efficient and ensure fairness for all parties, we will look at any ideas. And this is what we have done and what we are putting to the Government: a raft of proposals that will improve the efficiency and effectiveness of the unfair dismissal process. The proposals will give small business quicker resolutions, greater certainty of outcomes, and reduce legal costs.

In particular, Labor proposes:

1. We want to restore the emphasis on reinstatement (rather than compensation) as the primary remedy for unfair dismissal. This will enhance job security while discouraging applications directed at securing a payment of compensation rather than the restoration of the applicant’s job.

2. We want to restrict the capability for unscrupulous private paid industrial agents to profit from unfair dismissal laws. This is to be done by creating a register of agents and allowing the Commission to remove from the register those agents who are incompetent, who abuse the processes of the Commission or who exploit workers.

A number of states have already put this measure in place, and has obvious benefits for all concerned.

3. It’s also important that the Commission be required to consider the appropriateness of granting leave for a person to be represented by a lawyer or paid industrial agents in unfair dismissal conciliations.

4. Labor wants to streamline and simplify the litigation process by encouraging the Commission to make better use of electronic means of communication in the early resolution of matters.

The New South Wales Commission has issued a Practice Direction that sets guidelines for the conduct of Telephone Conciliation Conferences. The direction allows parties to participate in the proceedings, where the Commission considers it appropriate, by telephone. This may be appropriate where distance make its hard for people to attend the Commission.

5. We think it’s vital to reduce business uncertainty about unfair dismissal laws. In particular we want to see the Commission establish practical examples that provide guidance for business operators on how the
laws apply in relation to typical workplace situations.

6. It will also be helpful to introduce provisions into the Workplace Relations Act that allow a union to make an application against unfair or unlawful dismissal on behalf of a worker or workers who were dismissed at the same time or for related reasons.

A union, with its knowledge of the workplace, will in many cases be better placed than a law firm to evaluate the merits of the case and to conduct negotiations with the employer.

7. Finally, it is important to establish an indicative time frame for the resolution of unfair dismissal applications, including appeals, so that applications are resolved promptly and without undue delay.

These seven amendments will have an immediate and concrete benefit to all parties in an unfair dismissal dispute. Employers and employees will both benefit.

It is now up to the Government to come to the party and show that it will back some common-sense legislation.

In closing I want to point out that the Labor Party is taking the issue of employment and small business very seriously. An inquiry into Small Business Employment is currently underway under the chairing of Labor Senator George Campbell. The inquiry seeks to understand the impact that government regulations are actually having on the small business sector. There is a special emphasis within the inquiry on the capacity of small businesses to employ more people, and the measures that would enhance that ability.

I look forward to seeing the inquiry’s report later in the year when it is tabled.

The Government would do well to pay attention to this inquiry. It’s a chance to have an independent, objective and non-partisan look at what Australian small businesses need in the 21st century.

However for the Bill at hand, its time for the Government to show if it will move past partisan politics, and embrace reform that benefits all parties.

Senator CROSSIN (Northern Territory) (9.52 p.m.)—I realise the chamber is pushed for time this evening. I am not seeking to incorporate my speech; I just want to say a few words on behalf of my constituents in the Northern Territory. People in this chamber should realise that the Workplace Relations Amendment (Fair Dismissal) Bill 2002 will, for a number of reasons, severely disadvantage those people who live in the Northern Territory. Firstly, the Northern Territory only benefits from the federal industrial relations laws. There is no state based legislation, so this will have an impact on every single employee in the Northern Territory, as the federal bill is their only recourse to justice and fairness. But there is no fairness in this bill, despite what its title says. People will be interested to know that 80 per cent of the businesses in the Northern Territory employ fewer than 20 people, and 70 per cent of those employ fewer than 10. So the economy of the Northern Territory is based on an extremely large number of small businesses. In fact, only 20 per cent of businesses in the Territory rely on a large and substantial work force. The rest have fewer than 20 employees, and more than 50 per cent of those have fewer than 10.

The basic premise of my speech tonight is that the rights of all employees should be the same, regardless of the size of their employer. Why should 20 per cent of the businesses in the Territory and their employees have the same rights as those people whom this bill will affect—those employed by 80 per cent or more of the businesses in the Northern Territory? In doing some consulting about this bill, as I travelled around some of the regional centres in the Northern Territory during the last six months, it was interesting to note that when I met with people from small business this was not an issue that was raised with me. It was not raised when I asked them what changes in particular they would like to see to the Workplace Relations Act. What they did raise with me, though, was the increasing burden of the GST and BAS compliance. What they did find was lack of assistance for small business in other areas such as liability insurance. On a trip to Alice Springs earlier this year, I met someone from a small business assistance office who was based there who said to me that the biggest problem for employers in the Northern Territory was in fact the introduction of the GST and the time that was required to complete the associated paperwork. When I asked that person, representing small business in Alice Springs, what he thought was the biggest hurdle for small business and
where did, say, dismissals rate, he clearly said: ‘Way down the ladder, Senator, way down the ladder.’ It was not an issue that he was concerned about at all. NT employees do not have any other unfair dismissal laws to turn to for protection.

As Senator Collins said, the government has attempted to put this bill through this chamber many times. There is no evidence to support the claims that the federal unfair dismissal laws have acted as a significant brake on employment growth. Exclusions from the unfair dismissal laws are already significant and the case for further exemptions, specifically directed to small business, fails to take this into account. The current unfair dismissal laws give substantive rights to the individual employees—not just the trade union movement but all employees across the board.

Back on 20 February this year, the member for Solomon, David Tollner, spoke in the House of Representatives in support of this bill. I am not sure what evidence he had to support this bill, given that in the Northern Territory for 2000-01 there were only 257 applications before the courts regarding unfair dismissal. In light of the large number of unfair dismissal applications in this country as a whole, 257 is a very small problem. But Mr Tollner had to rely on only one business in Alice Springs—and my knowledge of Alice Springs would tell me that it is probably some place that predominantly employs backpackers. In his speech, he referred to the fact that this business had to budget for $10,000 in additional payments to departing employees in order to insure themselves against the possibility of these applications. There is no law in this land that ensures that businesses have to do that and, I would have thought, with only 257 applications in the Northern Territory in a year, that is probably some place that predominantly employs backpackers. In his speech, he referred to the fact that this business had to budget for $10,000 in additional payments to departing employees in order to insure themselves against the possibility of these applications.

The issue I put before the Senate tonight is this: the dismissal provision in the Workplace Relations Act has not been raised with me in a significant way by small business. It is not one of the major issues that they want to see this government deal with and make reforms of this nature on, but if this bill were to pass the Senate it would unfairly disadvantage a significant number of employees in the Northern Territory who are employed by the significant number of small businesses that we have in the Top End.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (9.59 p.m.)—Madam Chairman, I do not believe the amendments have been circulated.

The CHAIRMAN—No, they have not as yet, Senator; you are right. I understand they are on their way.

Senator MURRAY—If I may assist, most of us are familiar with the bill and, if the committee were so minded, Senator Sherry could read his amendments and we could proceed on that basis.

Senator SHERRY (Tasmania) (10.00 p.m.)—by leave—I apologise to the chamber that the amendments are still in the process of being circulated, but the bill was brought on earlier than we anticipated. I move Australian Labor Party amendments (1) and (2) on sheet 2519:

(1) Schedule 1, page 3 (before line 4), before item 1, insert:

1A Subsection 42(3)

Omit “A party” substitute “Subject to subsection (3A), a party”.

(2) Schedule 1, page 3 (before line 4), before item 1, insert:

1B After subsection 42(3)

Insert:

(3A) The Commission must not grant leave under subsection (3) to a counsel, solicitor or agent acting for a fee or reward in a conciliation under Subdivi-
sion B of Division 3 of Part VIA of this Act unless it is satisfied that it would assist the just and expeditious resolution of the proceeding, having regard to:

(a) the complexity of the proceeding; and
(b) the capacity of another party to the proceeding to secure representation; and
(c) the likely cost of such representation; and
(d) any other matter the Commission considers relevant.

These amendments would require the Commission specifically to consider, according to the criteria in proposed subsection (3A), the appropriateness of allowing paid representation in a conciliation conference. The criteria the Commission would be required to consider are: the complexity of the proceeding, the capacity to secure representation, the cost of representation and any other matter the Commission considers relevant. Such other factors might include the presence of a question of law and the capacity of the party to represent himself or herself adequately.

To sum up on these two amendments, there have been some concerns and criticisms about two key issues: the alleged lack of speed and some of the costs involved. We see both of these proposals as improving the speed and minimising the costs involved. I suspect an issue might be raised about a person being able to adequately represent themselves, for example. It is certainly Labor’s belief that at the Commission they are all sensible, well-skilled and experienced persons and, if they believe that a person could not adequately represent themselves, they would point that out to the applicant party and provide advice to them in terms of any representation they may need to seek at that point in time. To finalise, we believe that, without taking anything away from the level of representation of persons before a Commission in their application, the balance of that issue against the issue of cost minimisation and improving speed means that these two amendments are sensible and appropriate, given the legislation we are considering.

Senator MURRAY (Western Australia) (10.05 p.m.)—I have a question for Senator Sherry. I have some doubts about these amendments, but I can see why they are in the right direction. My doubts are these. Would a person who might seek to be represented in this manner be pre-advised that representation is likely to be refused? As you know, they might have had a briefing and gone to see a solicitor or an agent or somebody beforehand. They might incur the expense of doing that and bring them along, and then find representation is refused at a hearing. I would like to know if there is an early warning process in mind.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.06 p.m.)—In relation to these matters, it would seem clear that the intention of the opposition is to fundamentally limit the right of parties to be fully represented in proceedings. It would spell out a number of circumstances that would have to be satisfied before you would be able to have that representation which people ought to be able to regard as an entitlement and not simply as a matter for leave. In those circumstances, we do not regard these amendments as germane to the bill. They simply add on unacceptable requirements which we think are an attempt to move away from the merits of the legislation. I think the opposition realises that. It knows why we have brought this bill forward. We have always been prepared to consider sensible proposals, but we do not regard these proposals as necessary or indeed helpful to the current legislation.

Senator SHERRY (Tasmania) (10.08 p.m.)—In response to Senator Murray’s question, my understanding is that at the present time the Commission does not have to advise parties about representation. Our
amendments really go to clarifying the current position so it would lead to an improvement. But I think the observation you make practically improves the current situation to the extent that there is clarification about the grounds on which a commissioner can deny representation in the circumstances.

Question agreed to.

Senator SHERRY (Tasmania) (10.09 p.m.)—By leave—I move opposition amendments (3) and (4):

(3) Schedule 1, page 3 (before line 4), before item 1, insert:

1C After subsection 42(3A)

Insert:

(3B) A party may not be represented by an agent in a proceeding under Subdivision B of Division 3 of Part VIA of this Act unless:

(a) the agent is a registered industrial agent within the meaning of section 42A of this Act; or

(b) the agent is not a registered industrial agent within the meaning of section 42A of this Act but is a member, officer or employee of an organisation registered under this Act; or

(c) the agent is not a registered industrial agent within the meaning of section 42A of this Act but the Commission is satisfied that the agent is not acting for reward.

(4) Schedule 1, page 3 (before line 4), before item 1, insert:

1D After section 42

Insert:

42A Register of industrial agents

(1) In this Act:

registered industrial agent means a person who is registered as an industrial agent in the register of industrial agents referred to in subsection (2).

(2) The Industrial Registrar must create and maintain a register of industrial agents in accordance with the regulations.

(3) The regulations must prescribe:

(a) the manner in which the Industrial Registrar must create and maintain the register of industrial agents;

(b) the conditions, including qualifications and experience, an applicant must meet for registration;

(c) a code of conduct with which registered industrial agents must comply;

(d) the manner in which the Industrial Registrar may remove or suspend a person from the register of industrial agents.

The amendments we are moving, (3) and (4), would require a paid industrial agent or other officers, employees or members of organisations registered under the act, to be registered with the commission before they could appear in an unfair dismissal proceeding. These measures would address the concerns expressed by both employers and employees with the professional conduct of certain paid agents working in the unfair dismissal system.

To obtain registration, agents would have met prescribed conditions, including qualifications and experience, and comply with a code of conduct. Those found to be acting unprofessionally or unethically could be removed from the register. South Australia and Western Australia have for some years required such agents to be registered and to comply with a code of professional conduct. Queensland, as I understand, is closely considering such a measure, and there is a lively debate about such a proposal in New South Wales. Labor believes it is time for a similar safeguard to be put in place at the federal level.

This is not unusual, I might say, in other areas. For example, I know from my time at the Senate estimates committee some weeks ago looking at migration matters—it is not an area in which I had had previous experience—we had the Migration Agents Registration Panel, which has only been recently created, as I understand it. That requires the registration of migration agents. In a normal court of law, in all states, as I understand it, lawyers have to be members of the Law Society as a form of registration. Codes of conduct vary from state to state. In terms of some of the undesirable cases—whether the
accusations have been correct or not—there is certainly a belief amongst some who have had representation in a hearing that matters could have been improved if there had been a registration system with a code of conduct. It certainly does seem strange to me that, where people are receiving a fee for service, there is not a registration system with a code of conduct.

I mention the migration system but I am sure senators considering this legislation would be aware in a whole range of other areas where people are represented before a whole range of tribunals that there is generally a requirement for some sort of registration together with a code of conduct. It does not totally prevent abuse by the agent but it certainly provides an avenue for considering allegations of abuse should they occur, and some measure of redress should the allegations of abuse, misconduct or breach of a code of conduct be found to be correct. It is a way of providing some sort of compensation if that should occur. It seems to us to be a sensible move, and one that is long overdue. It parallels that which has occurred in most other areas that I can think of where people are paid to do a professional job, presumably, that there are the appropriate registrations and codes of conduct for them to act under.

Senator Murray (Western Australia) (10.13 p.m.)—I have a question to Senator Sherry. With regard to the number of agents available, I would like to be assured that there is a good pool of people whom respondents and applicants would have access to.

Senator Sherry (Tasmania) (10.15 p.m.)—Senator Murray, at the recent industrial relations estimates I asked for the actual number of current practitioners and they could not tell me. I am advised, however, that in the various state and federal jurisdictions there does not appear, at least from the potential applicants point of view, to be a shortage in this area. There appear to be sufficient, some would claim surplus to requirements, persons who are pushing their services in this area. I cannot give you the exact number because we could not find out at Senate estimates. There is no registration system so it is a bit hard to find out the actual numbers.

Senator Murray—Are there tens or hundreds?

Senator Sherry—There would be in the hundreds, not in the tens. I cannot be any more specific than that. I am happy to pursue the issue further at next Senate estimates. It is a bit like the cart before horse: if you do not have a registration system you do not know the precise number but you can gain an estimate. It is in the hundreds those who have appeared on behalf of individual applicants.

Senator Murray (Western Australia) (10.16 p.m.)—Senator Sherry, I presume the purpose of this proposal is to avoid persons presenting themselves as agents when they do not have the skills and background necessary for representation in this area—an area where costs need to be kept as low as possible and matters need to be dealt with as speedily as possible.

Senator Sherry (Tasmania) (10.16 p.m.)—As I said in my comments, the registration includes basic qualifications and experience. As I said earlier, I cannot think of too many cases where people are paying for representation before any form of tribunal where we do not have some form of registration and at least some basic understanding as to background and qualifications of those individuals. At the moment anyone can present themself as an agent. It is very difficult to find out their background. There is no registration so you cannot check their background other than by going to someone else to get some advice. No formal qualifications are required. Anyone can set themself up as an agent. It reminds me a little of the financial services industry 10 or 15 years ago—it is
certainly better now—when people could call themselves financial planners. We have learnt through fairly long and bitter experience that these sorts of claims that people make, whatever they call themselves, should be supported by a registration system, appropriate qualifications and experience, and particularly a code of conduct.

Senator MURPHY (Tasmania) (10.18 p.m.)—I have a question with regard to part 3(b) of amendment (4). I understood Senator Sherry to say that South Australia already has a system of registration in place. Do you have any information on the number of agents who are registered in the South Australian system? I am interested in particular part 3(b) which states:

(b) the conditions, including qualifications and experience, an applicant must meet for registration;

Can you inform us what the conditions are as set out, say, in the South Australian model? As we both know, there are a number of firms that advertise themselves as industrial lawyers and/or representatives. What happens when a firm sends somebody along who may not have the qualifications? Is the judgment made of the person or of the company?

Senator SHERRY (Tasmania) (10.19 p.m.)—I can provide some information on Senator Murphy’s questions. I cannot think of the exact number, but there are in excess of 100 registered in South Australia and Western Australia. The sorts of bases for registration—and that would be included in detail in the regulations, and the Senate has the capacity to oversight those regulations—in South Australia include provisions for professional indemnity, years of practice and experience, the company name that the individual works for if they are incorporated and any qualifications of a relevant nature. Those sorts of matters are included by prescription in the regulations in that state.

Senator MURPHY (Tasmania) (10.20 p.m.)—What concerns me about this approach is that a person has to acquire X years experience before they are entitled to seek registration on the industrial registrars list of people or companies able to represent parties in industrial disputes. A person may qualify at law and seek to become a registered agent and have good intentions, as both Senator Sherry, other senators and I know, but cannot because they do not have the experience. In some instances those people may be better representatives than those on the industrial registrars list. I would like to see more detail about the conditions and qualifications. Can you explain a little further what you mean with regard to the code of conduct. I understand that professional indemnity is a natural thing, but it does worry me what qualifications and experience an applicant for registration must have.

Senator SHERRY (Tasmania) (10.22 p.m.)—Dealing with that last issue first, with respect to the code of conduct—again, this is pretty common to codes of conduct in other industries—there is a provision, for example, that you be open, fair and honest in your dealings with and the advice that you give the client. That is always useful if someone is trying to maximise their fee or their charge and they exaggerate the likely success of a claimant. There is at least a provision in a code of conduct for that person to be judged against or for it to be argued against if they engage in some gross misconduct. The disclosure of fees and charges is important in any code of conduct. Again, that is very common across other codes of conduct in other arenas.

I understand the problem you are getting at, Senator Murphy. It reminds me a little bit—I know it is a very different area of my experience—of the issue with respect to the transitional provisions in recognising non-trade cooks as qualified trade cooks without them having gone through a formal apprenticeship. I remember a long debate in Tasmania where half the industry had people who called themselves cooks without having done a formal apprenticeship and the other half of the industry had gone through a formal four-year trade qualification. The argument with respect to the cooks who were not qualified tradespersons but might have been in the industry for five, 10 or 15 years went to what level of experience, topped off with some academic qualifications—not the full four years; some academic qualifications at the college of hospitality—and how many years
they should have had in terms of minimum experience as a cook in the industry.

To cut a long story short, the relevance in terms of South Australia and Western Australia is that the regulatory authorities overseeing the registration carry out consultation with those groups—as occurred with all these cooks in Tasmania, as I recall—and look at the skill base of the unqualified people, and then determine an appropriate number of years of minimum service. There is consultation with the individuals concerned and, if it is to be years of service, a call has to be made on what the minimum number of years of service is, and that is then certified. If it is based on level of experience, and they do not have the full experience that the consultations reveal would be appropriate, a call has to be made on what additional experience they would have to have, including some level of formal qualification. So there is a consultative process to go through, and those conditions would have to be determined through that process.

I concede that it is not easy to do, but it is the case whenever you have the introduction of codes of conduct and registration of particular practitioners in any field. I mentioned the example of the cooks, but I know with financial planners and the financial service industry a call had to be made as to what was a financial planner. They had to undergo some very extensive consultations with people who called themselves financial planners. An overwhelming majority received registration but some did not. As a consequence, some disappeared—which, from my understanding, was probably a good thing. Some of those who did not meet those minimum codes of conduct when registration was introduced had to go through some transitional training and that sort of thing—too detailed to include in legislation; appropriate for regulations. That is the sort of process that would have to be gone through.

Senator BOSWELL (Queensland)—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (10.27 p.m.)—The government is not of a mind to accept those amendments. We have watered this legislation down and down to a stage where it covers only mini businesses employing 20 people. You have to draw a line in the sand somewhere. Small business have demanded this legislation; you have ignored them. As I said in my speech in the second reading debate, you will ignore them at your peril. The main concern of 57 per cent of the biggest employer in Australia, small business, is unfair dismissals. If you continue to knock it back, you will continue to be over there. As I pointed out before, the government has watered down this legislation time and time again trying to get something through. You just cannot water it down any more and have any meaningful legislation.

Senator SHERRY (Tasmania) (10.28 p.m.)—Very briefly, this does not water it down; this in fact protects small business. This protects some employers who have been claiming that these agents have been out there touting themselves and, on behalf of their clients, making extravagant claims that cannot be met and putting in dodgy claims. We think that a code of conduct and registration will improve the situation in those circumstances, Senator Boswell. I appreciate your passion, but I think if you actually read these amendments I would convert you.

Senator MURRAY (Western Australia) (10.29 p.m.)—Senator Boswell amused me slightly. I cannot see how increasing the cut-off from 15 employees to 20 employees is watering it down; it actually increases the number of businesses affected. Just in case you are not across this particular bill, Parliamentary Secretary—because I know you have other interests—it covers about 20 per cent of all small businesses in Australia which have 20 employees or less. Eighty per cent are covered by the state laws and would not be affected at all by this legislation. I just thought that might be helpful for you to know.

The TEMPORARY CHAIRMAN (Senator Cook)—The question is that opposition amendments (3) and (4), moved by Senator Sherry, be agreed to.

Question negatived.
Senator SHERRY (Tasmania) (10.30 p.m.)—I move opposition amendment (5) on sheet 2519:

(5) Schedule 1, page 3 (before line 4), before item 1, insert:

1E At the end of Section 98
Add:
(2) The regulations may prescribe an indicative time frame for the progress and resolution of a proceeding under Subdivision B of Division 3 of Part VIA of this Act.

This amendment would enable the minister to establish an indicative time frame for the resolution of unfair dismissal proceedings. While the commission has reported that the average time for the settlement of a matter is 53 days, there are instances where proceedings have continued for years, and this is very undesirable. A notable example is the infamous Rio Tinto case, where 108 coalminers who had been dismissed by Rio Tinto filed unfair dismissal applications back in 1998. Only 11 test cases were ever heard. In July 2001 these cases were successful but Rio Tinto then appealed. Before the appeal was resolved Rio Tinto finally made a settlement offer which was accepted. If settlement had not taken place, all 108 cases would have been outstanding four years after they were commenced. Such protracted litigation is in no-one’s interest; employees want to get on with their lives and employers want to get on with their business. These amendments contemplate that the minister would consult with the commission to establish a realistic and indicative time frame to keep matters moving and avoid delay.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.31 p.m.)—As worthy as indicative time frames might sound in theory, the reality is that, when people are able to take points of natural justice, you will never deprive a litigant of his or her right to be heard and to argue that it is essential that enough time be made available to consider various matters. We have looked at this in other contexts and what we find is that, at the end of the day, it is up to the judge in charge of proceedings to hasten matters along as quickly as possible. Indicative time frames, by definition, mean that they are not binding on anyone; they are meant to be a guide. All that happens is that the parties say, ‘We would love to resolve this within three weeks but the reality is that it is going to take us six months.’ As long as it is reasonably plausible, the court has no option but to go along with it. So I have sympathy for the proposition, because I have been looking at it in other contexts, but the fact is that it is not much more than a pious proposal because it will not override natural justice and it will not for a moment force a court to do something prematurely or in a narrower time frame than it might believe is necessary to resolve the issues. I wish you luck, Senator Sherry, in urging the speedy resolution of matters.

Senator Sherry—Spoken as a true lawyer, Senator Alston.

Senator ALSTON—I am on your side in the sense that I have been looking for ways in the telecommunications arena to resolve matters that have sometimes been before arbitration for five years. And yet what you are told every time you propose a precise time line is that you will simply be overruled on appeal because you have not given parties their rights to be heard. So, much as we all like to see things dealt with expeditiously, the reality is that courts and tribunals will never allow an indicative time frame to get in the way of what they regard as a reasonable time for resolution.

Senator MURRAY (Western Australia) (10.33 p.m.)—I, too, Senator Sherry, am extremely sympathetic to your intent. I think all those who heard the speech were touched and affected by Senator Crane’s observation that swinging in the breeze, as he put it, is a singularly unpleasant experience. Where matters are stretched out, the stress on the individuals concerned is very high. I have thought that somehow we must get our minds around the equivalent of a statute of limitations. If you can have only so many years after which a prosecution can no longer be brought, perhaps you should only have so much time after which an investigation or a matter has to be concluded, particularly where issues are of a lower order in terms of penalty or consequence. However, I recog-
nise the difficulties that the minister is expressing. I do not quite know how, if ever it gets to court matters or matters where there is a judicial consequence, you can actually constrain them as the law is presently constructed. It almost might have been better if the amendment actually had a time cap on it so that you literally had a more specific time frame rather than an indicative time frame. If that is not capable of being done on the run, I regret that I would have to reject it. I am extremely interested in it because the fundamental things you have to address in unfair dismissal cases are time and cost—and this is a good idea.

Senator SHERRY (Tasmania) (10.35 p.m.)—I would like to address that point very briefly. A specific cap would, I am advised, be unduly harsh in a sense that it might be found to be illegal at a later date. I am advised that in the District Court of New South Wales there are provisions for indicative time frames in respect of personal injury claims. So we are not dealing here with something that is totally new; it does exist in another jurisdiction. I will leave my contribution at that.

Senator MURPHY (Tasmania) (10.36 p.m.)—I have a similar concern with regard to the indicative time frame. As we know, one of the major problems with industrial relations cases is if a company seeks an adjournment of a matter. In terms of dealing with time frames, I would have thought that you could set specific times for the period that the matter could be adjourned for. One of the other problems in terms of the court is the court’s own time frame. That is a major problem in terms of the time taken in resolving some of these issues. For anyone who has been involved in industrial relations, that has been an age-old problem, but I do not think that this solves that problem.

I do appreciate the fact that you cannot restrict the process of the normal law, but what we could be looking at—and maybe with some additional funding for the Industrial Relations Commission—is providing the opportunity for there to be less time spent on matters being adjourned, and to lessen the time that they are adjourned. I agree with what Senator Sherry says in terms of personal injury matters, but I think that that indicative time frame is more by agreement between the parties, and I guess that has been the accepted practice for some time. In the case of industrial relations, where it can quite often be more adversarial, what we really need to look at trying to deal with is the time that the commission deals with it in terms of adjournment.

Question negatived.

Senator SHERRY (Tasmania) (10.38 p.m.)—I move opposition amendment (6) on sheet 2519:

(6) Schedule 1, page 3 (before line 4), before item 1, insert:

1F  After section 170CA

Insert:

170CAA  Minister to publish information to assist employers and employees

(1) The Minister, in consultation with the relevant Minister of each State and Territory, must publish information, which may include practical examples, to assist employers and employees to comply with this Part.

(2) After publishing information under subsection (1), the Minister must promote the publication in workplaces and make it readily available free of charge.

This amendment would require the Minister for Employment and Workplace Relations, in consultation with state and territory governments, to develop an information package which includes practical examples to assist employers and employees with recruitment and termination procedures. The minister would be required to make the package available free of charge and disseminate it as widely as possible in the community. I am frankly surprised that this does not happen at the moment. The need for such a measure was highlighted by the astonishing survey conducted this year by peak accountancy body CPA Australia which revealed that 27 per cent of small business operators were worried that ‘you can’t dismiss a person even if they are stealing from you’ and that 30 per cent thought that the employer always lost unfair dismissal cases. Another classic example comes from page 32 of the Daily Telegraph newspaper of 25 June. In a question and answer style article headed ‘Ask an
expert how to sack a lazy worker’, a small business expert provided an answer to the question:

I run a small hardware store and have employed one junior to help out on Thursday afternoon and Saturdays. What happens if it doesn’t work out and I want to get rid of him—can I give him the sack or is there some procedure I have to follow?

The so-called expert’s answer read as follows:

This is a really grey area. The thing you need to be careful about when dismissing employees, whether casual or not, are the Unfair Dismissal laws.

Senator Murray—Which ones?

Senator SHERRY—Exactly, Senator Murray. It is not made clear. The ‘expert’ continues:

Under these, you cannot dismiss an employee if that dismissal is deemed to be harsh, unreasonable or unjust. Just what qualifies as harsh, unreasonable or unjust is open to determination—ultimately by the Courts.

I would recommend to any business that every employee be employed under an employment contract and that that contract should set out the terms and conditions of employment and how and when they can be terminated. Even so, there are still provisions that protect the employee against unfair dismissal.

This area is a bit of a minefield so I would suggest that you contact the Department of Industrial Relations and ask what your rights are under the particular award for your employee.

That is an answer from a so-called expert. I do not think he was named, was he?

Senator Murphy—Signed ‘Tony Abbott’, was it?

Senator SHERRY—I do not know who signed it or where the expert came from, but it is a good case for the registration of experts who promote their views in the newspapers.

Senator Murray—Shall we recommit the amendment?

Senator SHERRY—Yes. It is clear this government’s misinformation campaign is causing the widespread confusion about unfair dismissal. We believe it is time for the government to promote an understanding of what fairness requires in the termination of employment. In reality, the principles of fairness in termination of employment can be reasonably simply stated. In the case of an employee who is performing at an unsatisfactory standard, the employee should be given a reasonable opportunity of improving their performance. In the case of an employee who an employer believes has engaged in misconduct, the employee should be given a reasonable opportunity of responding to any allegations against him or her. In the case of a dismissal arising from the operational requirements of the business, the employer should consult with the employee regarding the proposed changes and provide the opportunity to explore any alternatives to dismissal. It is not the case, as this government likes to suggest, that fair dismissal means the employer is always wrong and is forced to pay go-away money when an employee complains that they were sacked unfairly. Nor should it be the case, as appears to be the government’s wish, that fair dismissal means an employee is instantly expendable and should be grateful simply to have had a job.

The government should be playing a constructive role in helping employers and employees understand and implement these basic principles of fairness in termination of employment. Importantly, the requirement to consult with states and territories would ensure that the information package properly reflects the unfair dismissal system around Australia. If the minister is serious about his stated ambition to achieve greater uniformity, here is an opportunity to progress the process of harmonisation by opening a genuine dialogue with each state and territory. It would be more productive than seeking legal advice on using the external affairs power to override state unfair dismissal laws. I note the minister’s Liberal Party colleagues have been very quiet on this issue, on this proposal to use the external affairs power to roll the states on industrial relations. The minister talks about keeping faith with small business. I think a few of his colleagues need to be more up front with small business about whether the Liberal Party is serious about using the external affairs power to override state unfair dismissal laws.
To conclude, I really cannot understand why appropriate education material is not produced and made available to workplaces. Whilst education material does not overcome all levels of misunderstanding, it certainly helps to overcome some of the misunderstandings that do exist at the present time.

**Senator MURRAY** *(Western Australia)*

(10.43 p.m.)—This is an excellent amendment. It is a much-needed initiative by the opposition. Minister, since I rejected the earlier suggested amendment (4)—which would have cost you a lot of money to set up an industrial relations register—you can use the money I have saved you on that for this education campaign. We will be supporting it.

**Senator ALSTON** *(Victoria—Minister for Communications, Information Technology and the Arts)*

(10.44 p.m.)—I will not delay in the face of that. I have to say that unfortunately we deal with each amendment on its merits, Senator Murray, much as your trade-off is enticing. The reasons why we are not attracted to this are—

**Senator Alston**—It might educate people?

**Senator ALSTON**—Yes; but, you see, the fundamental flaw in that proposition is that a government could be out there, busy misleading people, putting its own propaganda spin on it, and yet, if you carry this, the very people that you think are irredeemably biased are the ones you would now expect to go out and promote this whole area. So you would only end up having a lot more to complain about.

**Senator Murphy**—But you would be bound by facts in this instance.

**Senator ALSTON**—No, you would not be. You only have to ‘publish information to assist’. Senator Sherry would say that that is in the eye of the beholder: we would think it is neutral and helpful and he would say it is absolute propaganda. What does ‘publish information’ mean? Also, ‘in consultation with the relevant Minister of each State and Territory’ certainly does not ensure anything. All you would be doing is buying a fight, because our view of the world would presumably differ from the views of the eight state and territory governments that are all controlled by governments of the opposite complexion. Consultation would simply slow down the process and presumably add considerably to administrative costs, and at the end of the day what would you get? You have ‘may include practical examples’, so it does not have to, and ‘publish information’, which I would have thought is so vague as to be meaningless. Then you have ‘the Minister must promote the publication’. That is great if you are in the publication business—if you are a printer you would love it—but I cannot see how it is going to assist the cause.

The unions are well and truly capable of educating their members—declining though the numbers may be—and it is a perfect opportunity for them to do a bit of recruitment by telling the other 85 per cent of the workforce. If you expect the government to somehow promote the publication in 800,000 workplaces, you would expect a very expensive commitment, and I would be absolutely positive that you would not for a moment be happy with what we regarded as useful and helpful information. As much as I am crushed under the weight of Senator Murray’s support, the fact is that we do not see that achieving very much at all.

**Senator MURPHY** *(Tasmania)*

(10.46 p.m.)—In light of the minister’s contribution, I would like to move an amendment to Senator Sherry’s proposed amendment (6). I move:

Omit “publish information”, substitute “publish factual information about the relevant Industrial Relations Acts”.

I think it is of concern that the minister’s approach is to say, ‘Well, regardless of some proposal to publish information, we will still put our own spin on it.’

**Senator Alston**—I am saying he would accuse us of that. We would act honourably, of course.

**Senator MURPHY**—Which is, of course, how you have been acting all along! That is why there are some amendments being proposed to what was ridiculous legislation in the first place—but, nevertheless, here we are. I move that amendment to the opposition’s proposed amendment because I think it is important to make sure that the informa-
tion that is to be published is relevant and is on the relevant acts.

Senator SHERRY (Tasmania) (10.48 p.m.)—I move:

That further consideration of my proposed amendment be postponed.

Question agreed to.

Senator SHERRY (Tasmania) (10.48 p.m.)—I move opposition amendment (7) on sheet 2519:

(7) Schedule 1, item 1, page 3 (lines 4 to 6), omit the item, substitute:

1G After subsection 170CE(1)

Insert:

(1A) The Commission must not accept an application seeking relief on the ground that the termination was harsh, unjust or unreasonable if the applicant seeks only financial compensation, unless the applicant satisfies the Commission that exceptional circumstances exist for not seeking a restoration of the employment relationship.

(1B) Before rejecting an application under subsection (1A), the Commission must give the applicant a reasonable opportunity to be heard. The party named as respondent need not be present at any such hearing.

Note: Reasonable opportunity includes providing such assistance to the applicant as may be necessary to overcome any language difficulties that may confront the applicant.

This opposition amendment would restore the emphasis on reinstatement as the primary remedy for unfair dismissal rather than on simply financial compensation. This reflects the policy behind unfair dismissal laws: promoting job security. It is proposed that the Industrial Relations Commission not accept an application if it seeks only financial compensation, unless exceptional circumstances exist for not seeking a restoration of the employment relationship. ‘Insuperable breakdown of employer-employee relationship’, I think, is the common term for that. Such circumstances might include, for example, where the applicant has been subject to victimisation in the workplace. An applicant would be given an opportunity to persuade the commission that the application should be accepted.

I am reminded of a case I dealt with in my long-distant past that did, I think, outline an insuperable breakdown of employer-employee relations. A hotel employee came to see me after he had been sacked because he had had a relationship with the wife of the hotel proprietor, and he came to see me with his girlfriend. I advised him that reinstatement in those circumstances would be extraordinarily unlikely, whatever the merit or lack of merit of the dismissal. Those are the sorts of circumstances where you get such overwhelming personal conflict that it is in reality very unlikely that you would get reinstatement. What did shock me—and I suppose nothing in life shocks me—was that the next day the girlfriend of the bar attendant who had been dismissed came to see me privately and disclosed that she had had a relationship with the owner of the hotel. At that stage it was getting incredibly complicated and I advised him to look for another career, frankly. So those sorts of circumstances do exist.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.51 p.m.)—I am advised that proposed subsection 170CH already makes reinstatement the primary remedy, and I think what Senator Sherry is doing is reinforcing it to the point where employers may well feel they have no option but to settle the matter to get rid of the claim. I do not know that it is necessary to constrain proceedings in this manner anymore because they are already tilted in favour of reinstatement. This is saying that, in a sense, damages are pretty much always inappropriate. I do not know that that is right. There may well
be a case for awarding damages but for not allowing reinstatement. Therefore, we see this as quite unnecessary.

Senator SHERRY (Tasmania) (10.52 p.m.)—I am informed that the commission rarely orders reinstatement. We are attempting to put a greater emphasis on reinstatement than currently exists and, frankly, minimise one of the complaints—the extent to which it is valid, of course, varies—about people making applications purely in order to obtain monetary payment. I think it does improve the emphasis on what should be the correct approach in most cases, but not all, and that is an attempt to reinstate the work relationship in the interests of promoting job security.

Senator MURRAY (Western Australia) (10.53 p.m.)—The opposition have hit upon a real problem. The minister’s response was quite accurate: the act does in fact encourage reinstatement. But the statistics show that that encouragement is failing. Very few people are reinstated as a result of taking action under the unfair dismissal laws. It would seem to me, Minister, that some of the anecdotal evidence we have heard from small business is that they feel at times that matters have been—how should I express it?—fabricated or constructed in such a way as to elicit a financial payment; whereas if the person was told, ‘You are not going to get money, you are going to get your job back,’ they would say, ‘Goodbye, I’m off.’ So I think the opposition has hit upon a problem, that although the act is constructed in the way you outline it is not achieving its outcome. It may be that whilst the opposition’s wording or construction of their amendment may not be ideal they might be onto something here—that the act does need some kind of reinforcement in some way. So the question really is whether we should pass this amendment and leave you to fix it up in the House of Reps, or whether you need more time to think about responding to the particular solution that Labor are offering.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.55 p.m.)—In response to Senator Murray’s constructive assessment, I think it is difficult for me, and probably the government, to make a judgment on the run about this because you are dealing with it in isolation. But in the sense that you are right in saying it is already a primary responsibility, Senator Sherry is also right in giving that example which he may think is extreme but which may in fact be not all that unusual in the context of a small business with only a small number of employees where personal relationships are quite critical. So you may well find that the commission is quite reluctant, in many circumstances, to order reinstatement because of the friction that will inevitably arise. I suppose my point really is that it is much better to leave it to the discretion of the commission, where you are represented on both sides, you argue your case, you will put all these propositions and where, at the end of the day, if the umpire says, ‘Well, I don’t think it is appropriate here,’ then, to me, you have both had a good hearing.

To tilt it to a point where you have got to demonstrate exceptional circumstances before they will allow anything other than reinstatement just makes it all that much harder for someone who is trying to be objective to decide what is the right thing to do in the circumstances. So my response to you is that we do not think it is appropriate, certainly on the run, to be adding it onto this bill. But I certainly would not object to asking the minister to have a further look at it and see whether it might be appropriate, in another context, to bring forward some further amendment. But on the face of it, and not having had a great practice in industrial relations but having done a bit of it, I can certainly anticipate as many problems as I can see solutions.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Calvert)—We return to Senator Sherry’s amendment (6) and we have an amendment from Senator Murphy to that amendment.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.58 p.m.)—I understand where Senator Murphy is coming from.

Senator Sherry—It is your suggestion!
Senator ALSTON—No, it is not. I was in the business of pointing out numerous flaws. To the extent that Senator Murphy has attempted to marginally improve a couple of those, it still does not persuade me that it is worth going down a path of consulting with state and territory ministers, who will all have a different view, and then requiring a minister—you would say, of a heinous Liberal government—to publish information. We might think it is factual, you will not; it may still include practical examples, it may not; whether it will assist is problematic. And then we have got to promote it in 800,000 workplaces. I understand that you have probably helped a bit, but you have not demonstrated that this will really be of any practical assistance.

Senator SHERRY (Tasmania) (10.59 p.m.)—I would just say to Senator Murphy that I think the minister, with due respect and not wanting to be provocative, was being a touch mischievous in his comments. I think at this stage we would not want to go further than the wording we have presented in our amendment.

Senator MURPHY (Tasmania) (10.59 p.m.)—I do not agree at all with the minister saying that this is problematical from the point of view of providing the information. Information can be provided by many avenues. Frankly, I think it ought to be relevant and factual information about industrial relations acts and their unfair dismissal clauses. In that way, at least you would be aware of, and could avoid, any spin being put on such information. You could also avoid what has been a common practice—Senator Sherry, I think you read out an example earlier—of someone putting a spin on whatever the current situation might be. The quicker we get factual, relevant information into the system, the better.

However, if the opposition is not prepared to accept the amendment, so be it. I then have the tendency to say that, frankly, I have a view which is not dissimilar to that of the minister: if you are just going to publish information, what that information is is a matter for conjecture and debate; but if you specify what the information is, you are at least heading in the right direction.

The TEMPORARY CHAIRMAN (Senator Calvert)—The question is that Senator Murphy’s amendment to Senator Sherry’s proposed amendment be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question now is that amendment (6) moved by Senator Sherry be agreed to.

Question agreed to.

Senator SHERRY (Tasmania) (11.01 p.m.)—by leave—I move:

(8) Schedule 1, page 3 (after line 6), after item 1, insert:

1H Subsection 170CE(3)
Repeal the subsection, substitute:

(3) If:

(a) an employee’s employment has been terminated by the employer; or
(b) more than one employee’s employment has been terminated by the employer at the same time or for related reasons; and

a trade union’s rules entitle it to represent the industrial interests of the employee or employees the union may, on behalf of the employee or employees, apply to the Commission for relief:

(c) on the ground that the termination was harsh, unjust or unreasonable; or
(d) on the ground of an alleged contravention of section 170CK, 170CL, 170CM or 170CN; or
(e) on a ground or on any combination of grounds in paragraph (b), and the ground in paragraph (a).

This amendment would enable a registered organisation to bring an application for unfair dismissal on behalf of a number of employees whose employment was terminated at the same time or for related reasons. This replicates a sensible mechanism available in the New South Wales unfair dismissal system. Currently, each applicant must bring an individual application, which results in unnecessary procedural complexities where there are a large number of employees whose circumstances are virtually the same. This amendment will simplify the procedure and lower the costs in such cases.
Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.02 p.m.)—The vice of this is that each application needs to be considered on its merits and individual employees can be represented by their union. The notion of unions bringing, effectively, class actions on behalf of groups of employees, I think, is a sort of rounding up attempt to insert the union into the action and markedly complicate it—and I think each case ought to be dealt with individually. We cannot see that this amendment advances the cause. They simply provide an opportunity for more involvement in a way that is likely to substantially expand and delay and, therefore, make more expensive any application for wrongful dismissal.

Senator MURRAY (Western Australia) (11.03 p.m.)—My impression is that these would relate to instances such as the coal industry lay-offs that occurred in Queensland. It seems to me that there is some merit in addressing both time and cost issues, which I mentioned earlier, by having an agent, a lawyer or whomever deal with a group of employees all dismissed for the same reason, at the same time and in the same circumstances. Looking at this and off the top of my head, my only concern is that you may have been unduly restrictive. I cannot see why it would just be a trade union’s representatives or rules; surely it would be anybody entitled to act for these employees where they have been dismissed as a group.

Senator MURPHY (Tasmania) (11.04 p.m.)—I think these amendments are important in addressing some of the issues where more than one employee has been terminated. I do not have a problem as such with the fact that mention is made only of ‘a trade union’s rules entitle it to represent the industrial interests of the employee or employees the union may’. Of itself, that is a much more practical and efficient way of dealing with it. I had to deal with a case some years ago that would probably represent an instance like this—and, I say to Senator Murray, for such employees to have sought legal representation, given their lack of understanding and knowledge of the industrial relations system, quite often it would be the case that they would founder for their lack of knowledge just of the system itself. So this measure is important for trade unions. Whether or not you amend this legislation to include agents or other representatives, I do not know. But I certainly think this point is very important in terms of any industrial relations legislation. I certainly support these amendments.

Senator MURRAY (Western Australia) (11.07 p.m.)—I am interested in this, but I am a bit wary, I must say, of doing it on the run. It seems to me that the ability for a representative to act on behalf of a group who have been dismissed at the same time, under the same circumstances and at the same place would make sense—not just for the employees, but for the employer as well. I propose to circulate an amendment to opposition amendment (8) moved by Senator Sherry, which I will read out and it will be circulated shortly. If you look at amendment (8) on sheet 2519 before you and in the second paragraph under (b) where it says ‘a trade union’s rules entitle it to represent the industrial interests’ and it would read ‘a representative of the employee or employees may’. So it would simply take out the union. I do not mind whether it is a union or a lawyer or anyone else. I just think it is unnecessarily prescriptive. But I will circulate that, if I may.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.08 p.m.)—I certainly agree with what Senator Murray is seeking to do. But the problem is that the act currently allows consolidation of actions, but to go to the point where you can actually allow bulk claims in the first instance is an invitation to bring together a whole range of matters where some employees may or may not wish to have the matters dealt with in that form. This would seem to entitle a union to make an application in its own right and to pursue the matter in a way that really ignores individual interests and circumstances. If you really think there is virtue in having the matters heard together, I think it is much more appropriate to seek an order for consolidation once they are separately before the
commission. But the notion of allowing proceedings to be instituted in bulk is not a healthy way of initiating proceedings. So, whilst I agree with Senator Murray that it ought to be broader than simply the trade union’s rules and rights, the fact remains that I still do not see a need for consolidation at the initial stage.

Senator Sherry (Tasmania) (11.10 p.m.)—We agree with Senator Murray’s suggested amendment to our amendment (8). I do not know how long it will take to distribute it in writing, if indeed we need to. I am sure the clerks can read the handwriting, Senator Murray, and I have sufficient confidence in the clerks and your handwriting.

Senator Murray (Western Australia) (11.10 p.m.)—My revised version of amendment (8) would now read—and I will leave out (a) and (b) because that stands—‘a representative of the employee or employees may’ and the second paragraph continues.

The Temporary Chairman (Senator Watson)—Senator Murray, you were talking about representatives earlier of the employer and the employee. Have you changed your wording?

Senator Murray—No, I missed that out. The wording is ‘a representative of the employee or employees may’. That is how it reads. I move:

Omit “and a trade union’s rules entitle it to represent the industrial interests of the employee or employees the union may”, substitute “a representative of the employee or employees may”.

Senator Alston (Victoria—Minister for Communications, Information Technology and the Arts) (11.11 p.m.)—You need to take out ‘and’ because what you are saying is if (a) or (b) apply then ‘a representative may’.

The Temporary Chairman—The question is that Senator Murray’s amendment to opposition amendment (8) be agreed to.

Question agreed to.

The Temporary Chairman—The question is that opposition amendment (8), as amended, be agreed to.

Question agreed to.

Senator Sherry (Tasmania) (11.12 p.m.)—I move opposition amendment (10):

(10) Schedule 1, item 3, page 3 (line 28) to page 4 (line 28), omit the item, substitute:

3 After subsection 170CF(1)

Insert:

(1A) The Commission may, on the application of a party or of its own motion, conduct a conciliation conference by telephone or other electronic medium, subject to such conditions as it considers appropriate.

(1B) In determining whether to conduct a conciliation conference by telephone or other electronic medium, the Commission must consider:

(a) whether it is impractical or inconvenient for a party to attend a conciliation conference in person for reasons including cost, distance, physical or other disability, the nature of the relationship between the parties, or the nature of the party’s business or employment commitments; and

(b) whether the party applying to appear by telephone or other electronic medium has made reasonable attempts to obtain the consent of all other parties to the matter; and

(c) any other matter the Commission considers relevant.

Amendment (10) would encourage the commission to consider using electronic means of communication such as telephone or videoconferencing for conciliation proceedings where it is impractical or inconvenient for a party to attend the commission in person for reasons including cost, distance, physical or other disability, the nature of the relationship between the parties or the nature of the parties’ business or employment commitments.

Before an application is made to appear by telephone or video, a party should seek the consent of the other parties. This measure is based on a practice note issued by the New South Wales Industrial Commission. It would benefit, for example, small business employers who would find it difficult to be away from their businesses to attend the commission or employers and employees who live in rural and regional Australia who presently must travel to a capital city to attend the commission. It should be noted that this provision would not apply to arbitrations in which the credit of witnesses may be an issue for the commission to determine. In such proceedings, it is appropriate the com-
mission have the opportunity of observing the demeanour of witnesses in person.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.13 p.m.)—I indicate that the government would like to point out that this already happens—that tribunals do set their own procedures—and it is much healthier to leave it to the discretion of the tribunal rather than trying to, essentially, empower what is already able to happen now. It is not saying that you have to do this; it is saying you may, on such conditions as it considers appropriate. That is already the practice. So, whilst there may be a practice note that elaborates on the detail of how you do it, the fact is that the power is already there and it is utilised when the circumstances require it.

Senator MURRAY (Western Australia) (11.14 p.m.)—I am surprised by the minister’s response. Perhaps I am less acquainted with what went on than I thought I was. I was not aware—and perhaps the minister can confirm—that these kinds of conciliation conferences were happening on this basis with regard to unfair dismissal circumstances. Perhaps, if the information is not readily to hand, at some stage it would be helpful if the department could provide the minister with some kind of substantiation of the point you have just made.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.15 p.m.)—I do not think it is a matter of it being particular to unfair dismissal cases; it is a general power vested in the commission to conduct its affairs in a way that seems appropriate. The High Court has probably been using video conferences for 10 years or more. So, in this day and age, courts and tribunals will bend over backwards to accommodate witnesses and save them time and expense. I do not think this is doing anything more than simply underlining a practice that has already been long in use.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Watson)—Senator Sherry, I have just been advised that it is necessary for us to return to opposition amendment (9) in terms of admitting items at paragraph 3, because we had been looking at an earlier version of the running sheet. That amendment is consequential on amendment (8) rather than amendment (7).

Senator SHERRY (Tasmania) (11.16 p.m.)—There is a typographical error. Amendment (9) is consequential on amendment (8) having been passed, not on amendment (7); you are right. I now move:

(9) Schedule 1, item 2, page 3 (lines 7 to 27), omit the item, substitute:

2 Subsection 170CE(6)
Omit “(3)”.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.17 p.m.)—I seek advice from Senator Sherry in relation to my information that that effectively removes the limitation of 20 employees. If that is right, that is a fundamental change to the nature and character of the bill.

Senator Sherry—You are right, Minister.

Senator ALSTON—Senator Sherry stands exposed and I trust that I do not have to argue the case in any more detail. This is a very slippery backdoor way of—

Senator Sherry—I have more amendments.

Senator ALSTON—Even worse, you mean? Even more extraordinary and extravagant?

Senator Sherry—On the same point.

Senator ALSTON—On the same point; all right. I think that all this does is underline the fact that, despite commitments and indications given by Mr McClelland a few months ago, the opposition has not the slightest interest in addressing these issues. I am only sorry that Senator Boswell is not here to tell them that they have already watered it down far enough. I am sure that Senator Murray will want to apologise in due course because, quite clearly, the opposition want to make the legislation even more draconian than they have already made it. On that basis, we oppose the amendment.

Senator Murray—I record that the minister’s integrity has been exposed: somebody
duplicitous would have accepted it, wouldn’t they?

Senator SHERRY (Tasmania) (11.18 p.m.)—As has been clear from the debate tonight and on previous occasions, Labor believes that we should not deprive a particular group of Australian employees of a fundamental right: the right not to be dismissed unfairly from their employment. We have debated the matter extensively—that is on the record—and the next amendments effectively make the same points. It is an intrinsic part of the safety net enjoyed by Australian workers. It underpins job security. Without job security, how can we expect people to take hard economic decisions? As I said, many other comments have been made about the unsatisfactory approach of this bill. Given the time and the comments that have been made, I do not want to press that argument further than it has already been pressed.

Senator MURPHY (Tasmania) (11.20 p.m.)—This is an amendment I support very strongly—and for all the good reasons. You cannot segregate out one set of employees to be lined up for no unfair dismissal law. The reasons are more than abundant. As someone who has represented workers from a trade union point of view, I cannot believe that we ever had this sort of legislation in the first place. The government said that this is a big issue for small business. It is only a big issue for small business because the government wants it to be.

If proper information was in circulation and employers were properly informed and educated about employing people in the first place, you would not have any of these problems. It is simply not good enough to say that, because an employer employs fewer than 15, 20, 10 or five people, somehow those people are excluded from access to unfair dismissal laws. Frankly, I cannot believe that we are debating this sort of nonsense—and nonsense it is. Let us say there are two people: one who works for someone with 21 employees and another who works for someone with 19. If both employers do the same wrong thing, one worker is protected by unfair dismissal laws and the other is not. What a stupid situation.

As I said, this is one of the amendments that I will support strongly because I think it deals with something that is just and fair in this country. It has taken a long time to come to this point. I hope that the Senate will see its way clear to make all Australians workers equal before the law and not turn this country into some Animal Farm where some pigs are more equal than others. That would be a total and utter disgrace. I hope that this amendment is supported. Frankly, I hope this bill is defeated holus-bolus because it does nothing for industrial relations in this country. I know a lot of small business people and I have had the opportunity to speak to them. Those who are poorly informed and, as was given in the example by Senator Sherry before, those who have been misinformed are half the problem. I hope the amendment is supported. I hope the bill goes down.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that Senator Sherry’s amendment be agreed to. Senator Murray, have you indicated your intention?

Senator MURRAY (Western Australia) (11.24 p.m.)—I was taking advice. I got confused by that impassioned speech about amendment (9) which says ‘2 Subsection 170CE(6) Omit “,(3)”’. What was that impassioned speech about? I did not hear Senator Sherry move that. If I heard the speech correctly, it was amendments (11), (12) and (13).

The TEMPORARY CHAIRMAN—Which you are yet to put.

Senator SHERRY (Tasmania) (11.25 p.m.)—My advice is that it is a consequential amendment of the preceding amendment that passed, amendment (8). It would be consistent with that and amendments (11), (12) and (13).

The TEMPORARY CHAIRMAN—Which you are yet to put.

Senator SHERRY—Yes, we have not got to them yet.
Senator MURRAY (Western Australia) (11.25 p.m.)—I have just consulted the act. Unfortunately, because of the typo on it that it is a consequential amendment, I am not convinced that it does what you say it is going to do.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.26 p.m.)—My advice is that the last words ‘omit ‘(3)’’ are consequential, but the first line of amendment (9) which omits the item removes the 20-employees limitation. That is why we say that it is fundamental, and I think Senator Sherry agrees. Senator Murphy was making an impassioned speech because that goes to the heart of this whole debate: whether you have a cut-off point or whether you apply it across the board to all employers.

Senator MURRAY (Western Australia) (11.26 p.m.)—That is why I made the remark I did. Minister, as I understood it, what you are saying is that the amendment expands the exemption that you are seeking from 20 employees and under, to all employees and all businesses. Did I misunderstand you?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.26 p.m.)—Yes, that is right.

Senator MURRAY (Western Australia) (11.27 p.m.)—Why on earth would Labor want all employees and all businesses exempted, if that is the response?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.27 p.m.)—My advice is that omitting the item omits the 20-employee provision so it then applies to all businesses.

The TEMPORARY CHAIRMAN—The question is that the amendment moved by Senator Sherry in relation to subsection 170CE(6) omitting (3) be agreed to.

Question agreed to.

Senator SHERRY (Tasmania) (11.28 p.m.)—by leave—I move opposition amendments (11), (12) and (13) on sheet 2519:

(11) Schedule 1, item 4, to be opposed.
(12) Schedule 1, item 5, to be opposed.

(13) Schedule 1, item 6, to be opposed.

The TEMPORARY CHAIRMAN—The question is that items 4, 5 and 6 stand as printed.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ALSTON (Victoria—Deputy Leader of the Government in the Senate) (11.29 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

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

Second Reading

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

That this bill be now read a second time.

Senator SHERRY (Tasmania) (11.30 p.m.)—The measures in the Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002 and the Superannuation Guarantee Charge Amendment Bill 2002 include a requirement for quarterly superannuation contributions, a reduction in the so-called surcharge tax rates by 30 per cent, provision for children’s superannuation accounts, an increase in the deduction limit for the self-employed, and an increase from 70 to 75 in the age up to which working members of superannuation funds can make personal contributions.

First I turn to the issue of the lack of equity in the surcharge reduction. A number of these measures are benign enough and, while they do little more than make some minor changes rather than address some of the significant issues and problems with the superannuation system, we do intend to support some of them. However, we will not support the government’s intention to reduce the superannuation surcharge tax on contributions by 30 per cent over the next three years, at a cost of $370 million. The surcharge tax cut is
highly inequitable. It only affects those on surcharge tax incomes of over $90,527. Let me repeat that: it only reduces the tax for persons earning over a surcharge tax income of $90,527 in 2002-03—a group that represents approximately three per cent of the working population.

What needs to be remembered is that the surcharge tax on contributions is the Liberal government’s very own tax, which they introduced in 1996. They broke their promise coming into the 1996 election not to introduce new taxes. Mr Howard promised on behalf of his party on 1 February 1996:

We are not going to increase existing taxes and we're not going to introduce new ones.

That is a very clear promise—which was broken six months later when they announced a tax on superannuation and, to compound it, made an attempt to defraud the Australian public and call it a surcharge. At the time, the government justified the surcharge tax as an equity measure. The Treasurer, Mr Costello, stated in his budget speech on 20 August 1996:

The measures I am announcing tonight are designed to make superannuation fairer.

A major deficiency of the current system is that tax benefits for superannuation are overwhelmingly biased in favour of high income earners. For a person on the top tax rate, superannuation is a 33 percentage point tax concession while a person earning $20 000 receives a 5 percentage point tax concession. High income earners can take added advantage through salary sacrifice arrangements that are not available to lower income earners.

The Government is remedying this situation.

.........

For high income earners the superannuation contributions will still be highly concessional but are more in line with concessions to middle and low income earners.

He went on to say, when discussing the fairness aspect with Mr Alan Jones on 21 August 1996:

Well if they're paying 30 per cent on their marginal tax rate, they'll still get an 18 per cent break. Now I think that's pretty good, but I've got to tell you there'll be a lot of people out there quaffing their wines down in Pitt Street today that won't like it.

With the fairness principle that underlines the surcharge tax it would be hard to disagree. For high-income earners, the differential between their top marginal rate of 48.5 per cent including Medicare levy and the standard 15 per cent contributions tax is significant. So what has changed since the government introduced the surcharge tax that would make it suddenly so appropriate to slash the rate by 30 per cent over three years? The answer is: very little, except that those Pitt Street wine quaffers that Mr Costello, the Treasurer, was willing to stand up to in 1996 have obviously won the day just six years later.

Mr Howard, the Prime Minister, confirmed this during his 5 November 2001 superannuation policy launch, when he said:

We recognise the need for some change and reform in relation to that surcharge and I believe that this will go a distance towards meeting the concerns that have been expressed throughout the community about certain aspects of the impact of that particular measure.

One of the biggest problems—and this is commonly acknowledged—with the way this government has tried to hide the fact that the surcharge was a tax has been the extreme difficulty for superannuation funds to implement it administratively. In terms of administration costs, the surcharge tax was unacceptably expensive. In its first year of operation, superannuation funds incurred as much as 30 per cent of the revenue paid as associated administrative overhead. While that estimate reflects implementation as well as ongoing costs, ongoing costs are themselves onerous. To this must be added the collection costs incurred by the Australian Taxation Office, which are considerable, and significant employer costs.

This tax is Australia’s most inefficient and costly tax to collect. The administrative burden of the surcharge tax means that all fund members meet increasing costs, regardless of their incomes. One way or another, the associated monitoring, collection and compliance costs must be met, and are likely to reduce the overall accumulation of all fund members, not just those on behalf of whom the surcharge is levied. Reducing the rate of the surcharge does absolutely nothing to redress
this situation. This is one of the perverse im-

pacts of reducing the surcharge. You do not
do away with the administrative cost; you in
fact add to it. You do not solve the quite le-

gitimate concerns about administration. And,

at the same time, you do not solve the added
administrative costs that have been added to
those persons who are not surchargeable—

who are not paying the particular tax.

Let us look at superannuation in the year
2002. Where do we find ourselves today? We
have the highest taxing Treasurer since Fed-

eration and solid economic growth, and yet
all this government can produce for 2001-02
is a budget deficit of $3 billion. We know we
cannot turn to this government to come up

with decent policies to help fund the retire-

ment incomes of anyone except a relative
few.

They took away the three per cent gov-

ernment contribution in 1997—and I think
this is particularly important to emphasise. It
was this government that refused to make the
government contribution to superannuation
to three per cent. In 1997 they abandoned
that commitment. In doing that, the Treas-

urer, Mr Costello, and the Prime Minister,
Mr Howard, effectively cut by a quarter the
superannuation retirement incomes that
Australians would have collected at some
point in the future when they retired. This
was despite the fact that the costs of these
were factored into the forward estimates
even after the very significant cuts that oc-
curred in 1996. That is the reality we face
today. We know that there is a tight budget-

ary situation. Labor accepts that circum-

stance. We know this government failed to
deliver the three per cent government contri-
bution to superannuation. We have to priori-
tise. We have to do the best we can. We have
to target these sorts of measures. If there are
to be tax reductions, they have to be appro-

priately targeted.

That is why Labor has put forward a fairer
option for superannuation. Labor’s plan is to
cut the contributions tax, and it has been an-
nounced—it was announced by our leader,
Mr Crean, in his budget response. We be-
lieve it is the best way to deliver higher re-
tirement incomes to millions of working
Australians. Labor has proposed two fairer
options, and urges the government to redirect
the Treasurer’s superannuation tax cut away
from the few and to all superannuation fund
members who pay the contributions tax.

The Treasurer, Mr Costello, believes it is
impossible to cut the contributions tax bur-

den. He said in a radio interview on 22 Oc-
tober 2001:

It’s pretty complicated. The taxing of contribu-
tions on the way in started back in the mid eight-
ties ... and I think now that it’s started that’s going
to always be with us ... it’s still better to put
money into superannuation, than to take it as in-
come. But that system having commenced 15
years ago would be incredibly complicated to
unravel now.

That is from the Treasurer who has intro-
duced the most complex tax seen in recent
times. I am not talking about the GST here; I
am talking about the so-called surcharge tax.
We do not agree with the Treasurer. We
know that cutting the contributions tax can
be done with a minimum of fuss, as con-
firmed by the many industry representatives
who have spoken to us over the last few
months. Labor has proposed it. We now have
an opportunity to implement a fairer pro-
posal which will improve the budget and
boost retirement savings. But this chance
will be lost if the government gets its way
with these unfair changes. Labor’s alterna-
tive propositions are: option 1, cut the super-
annuation contributions tax for all Austra-
lians who pay it from the present 15 per cent
to 13 per cent or, option 2, cut the tax to 11.5
per cent for people aged 40 and over. Either
option would add many thousands of dollars
to retirement incomes. Both are economi-
cally responsible.

As an example, Matthew is 20 and earns
$40,000 a year on average over his career.
He receives an extra $7,128 in a retirement
nest egg under option 1 and $4,748 under
option 2—Labor’s options. Matthew wouldreceive nothing under the Liberal govern-
ment’s proposal to reduce the surcharge tax.
Another example for someone already well
into their working life is Heather: she is 40
and earns $60,000 a year for the rest of her
career. She would receive an extra $4,069
under option 1 and $7,122 under option 2.
Heather would receive nothing under the proposal to reduce the surcharge tax.

These examples are in present values so they reflect the value in today’s terms. The benefits will be substantially more in the dollars of the future. These outcomes provide a powerful incentive for Australians to invest in their own future, helping us to cope with our future needs. The Labor package for a fairer superannuation system is revenue neutral. This is achieved by opposing the reduction in the superannuation surcharge tax and the proposal to allow the splitting of superannuation contributions, which effectively doubles the 2002-03 reasonable benefit limits of $1,124,384 for pensions or $562,195 for lump sums, which we expect to see in another superannuation bill in the spring sitting.

In addition, Labor will not support expensive changes to the Commonwealth public sector schemes that the government has proposed. After the evidence presented by the department responsible for the changes to Public Service superannuation, the Department of Finance and Administration, whose officers admitted during budget estimates they had little idea about key aspects of the current arrangements or the alternatives, there is really no other choice but to oppose the changes. They did not seem to understand the comparative costs of the fees and charges of the CSS/PSS, presently nil to members, compared to the general market. They had a self-confessed lack of understanding and familiarity with the largely detrimental experience of UK public servants regarding the privatisation arrangements undertaken by the wildly zealous ideological Thatcher government some years ago.

The department admitted they had not even undertaken a study, evaluation or benchmark of the relative costs of administering CSS/PSS as compared to alternative funds, and they were unable to rule out a reduction in superannuation entitlements for public servants as the matter would be made the subject of negotiation from agency to agency. It is really quite frightening to listen to the evidence at estimates from Finance and from Treasury. Any public servants must really be wondering at the level of knowledge within the departments responsible for overseeing these sorts of policies.

The government attempted to discredit the ALP’s plan. They did not like it because it meant they had to start arguing that a tax cut to the select few was better than a tax cut to millions of working Australians. They chose a different route: they went with what they thought would be much easier. They argued that Labor had allegedly got the figures wrong. We had the Prime Minister early on 17 May saying:

You save about $50 million a year out of the surcharge if you lock that back, but I am told it is about seven times more than that, about $350 million, in order to fund a cut of two per cent in the contributions tax.

What he forgot to say was that his surcharge reduction would quickly climb to a cost of $200 million a year and that Labor were offering other cost savings to fund their proposal. Then the Treasurer released Treasury costings later that afternoon—all done on an accruals basis. That was rather hypocritical given that the Treasurer constantly refuses to refer to the budget for this financial year as being $3 billion cash in the red.

The figure for cutting the contributions tax had also suddenly jumped from the one the Prime Minister was touting earlier that day of $350 million. One might think that the Prime Minister had access to some of the best advice the government could muster but apparently not. While it took all day, the Treasurer was able to get to a figure, from the figure the Prime Minister had given earlier that morning, for a two per cent cut that was $150 million more than the Prime Minister had suggested that morning which was $505 million. But Treasury ignored the full savings of the ALP plan and the fact that our tax cuts for all were to be phased in from 1 July 2003. We never said we were going to start on 1 July 2002 or that we could give the full tax cut in the first year, as clearly evidenced in my press release of 16 May. It was to be phased in just as the government planned to phase in their tax cut for those earning more than $95,000. During the estimates process, Treasury officials admitted that they had made mistake after mistake in
that 17 May costing and yet they still refused to hand over the revised costings they gave the Treasurer when they realised just how wrong they had it.

Another measure in this bill relates to the Liberal government’s proposal to require the payment of superannuation contributions on a quarterly basis. There is a cruel sting in the tail with this measure. It will exclude tens of thousands of casual, part-time and seasonal workers who are currently covered by superannuation. I know my colleague Senator Hogg will deal with this in greater detail. There is absolutely no reason for excluding thousands of casual employees who are currently covered.

I will deal with this issue in greater detail in the committee stage. A recent issue of public note has been the theft and fraud case involving Commercial Nominees—the first of its type in the last 10 years. It is an important case because it sets a precedent for the future as to how theft and fraud cases will be compensated. Under the current S1(S) Act there is a provision for up to 100 per cent compensation where theft and fraud has occurred. This has not happened in this case. The minister has provided for 90 per cent compensation allegedly on the basis of the need for moral hazard to be recognised. The minister advanced that argument in the Senate during question time.

Superannuation is compulsory, is tax concessional, has limited access until age 55 to 60 and is very long-term savings for retirement. Labor believes passionately that, given the nature of superannuation and its central place in Australia’s retirement income system, where theft or fraud occurs then full compensation should be paid. There should be no cutting of compensation below full compensation. The stated reason that 90 per cent compensation was provided by the minister related to some need for moral hazard. Apparently it was claimed that HIH victims received 90 per cent compensation. My information is that many victims of HIH received 100 per cent compensation. Some reference was made to the United Kingdom experience where 90 per cent is apparently what is used there.

This is Australia. In the United Kingdom superannuation is not compulsory; in Australia it is. In Australia superannuation will form a far greater proportion of Australian’s retirement income than it will in the United Kingdom. The United Kingdom analogy is just not right. I do not think the minister should be put in a position to determine a level of compensation once the threshold of theft and fraud prima facie has occurred. I think it is unreasonable for the minister to be in that position. What will be next—50, 60 or 70 per cent, who knows?

Fortunately, theft and fraud is very rare in the Australian system, and that is because of the regulatory framework. Unfortunately, in this case APRA was found wanting, at least to some degree. I cannot put all the blame on them, but certainly to some degree they were found wanting. It is very rare for it to occur in Australia. But where it does occur—the hundreds of people in Commercial Nominees, a very small proportion of Australian superannuation fund members—full compensation should be paid. It is very traumatic for these individuals who have worked all their lives, saved hard for their retirement and cannot go back into the work force in many circumstances. Full compensation should be payable.

**Senator ALLISON (Victoria) (11.50 p.m.)**—I rise to speak on the Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002 and the Superannuation Guarantee Charge Amendment Bill 2002. Superannuation is a tax effective investment but it is complex and subject to frequent change, as evidenced by the number of occasions it comes before this parliament. More of these changes are before us tonight. From next Sunday the superannuation guarantee, which requires all employers to provide a minimum level of superannuation for their employees in each financial year, will rise to nine per cent of earnings. Superannuation increases the available pool of national savings and is about providing secure living standards for Australian employees. Superannuation provides for an ageing population and provides for a better standard of living in retirement. For this reason the Australian Democrats strongly support the principle that employ-
ees’ superannuation rights must be protected and control strengthened.

The issue of quarterly payments has been around for some time. Quarterly payments were originally proposed in the 1992 super guarantee legislation but, of course, they were deferred at the time due to administrative complexities and compliance reasons. Currently, the Superannuation Guarantee Administration Act requires employers to make one SG contribution on behalf of their employees on 28 July each year following the end of the financial year. This has been the case since 1994 and has created a number of problems for the employees, some of which include situations in which an employer delays making the payment until the last possible date. In those circumstances, the employee loses up to 12 months earnings on the contribution. It is also likely that business closures mean employee entitlements can be lost completely. If an employer becomes insolvent, the average full-time employee stands to lose $3,970 in superannuation for just one year. This could compound over time: after, say, 10 years to $7,000, after 20 years to $18,000 and after 30 years to $42,000.

The present system represents both an actual and a potential loss of benefits to many thousands of Australian employees, particularly those in part-time and casual employment. Whilst it is pleasing to note that the ATO reports a compliance rate by employers of more than 90 per cent, the remaining 10 per cent represents a very significant number of Australian workers. Typically, these employees are those with the least access to financial resources that might be needed to pursue defaulting employers.

The Australian Democrats support the policy intent of quarterly payments to ensure that employee entitlements to employer superannuation contributions are paid in a timely manner. As with other entitlements, the longer the gap between an entitlement arising and the entitlement being due for payment the greater the risk that for one reason or another the entitlement will never be paid, or be lost to the member. Indeed, we believe there is a strong case for monthly payments. We note that many, particularly larger, employers—currently about 85 per cent—already pay their required contributions monthly.

Monthly payments would reduce the risk of default and further mean that contributions start earning interest earlier. Accordingly, I will move a second reading amendment, which I have circulated, urging the government to introduce monthly payments for superannuation guarantee. However, quarterly payments will at least reduce the loss of investment returns for employees whose employers currently remit contributions to a fund only annually, in arrears. It will reduce the loss of superannuation contributions for employees whose employer gets into financial difficulties and reduce the number of instances where insurance cover may lapse due to lack of regular contributions.

This change is really about requiring about 15 per cent of employers to pay at least quarterly. Regrettably, what it does not do relates to the issue of unclaimed superannuation guarantee vouchers. We believe that at some stage the administrative provisions need further review to reduce the number of persons who miss out because of unclaimed guarantee vouchers. The Australian Democrats support the move to quarterly payments but we do not support the change to the minimum eligible threshold from $450 per month to $1,350 per quarter. This element of the bill directly penalises low income casual and part-time workers, the very workers who will need every cent of superannuation that they can get. Casual employment is becoming more prevalent in the economy, particularly for younger Australians, and for some women it is the only form of employment available to them. These employees may well miss out on superannuation guarantee contributions. It does not seem to us to make sense to hit this sector of the community just to save costs for employers. The witnesses to the recent committee hearing into this bill pointed out that employers may manipulate employees’ hours of work to minimise their obligation to pay the guarantee. We strongly oppose that change.

Coupled with the surcharge reduction, which is now, I note, not part of this bill, this
is a package of measures that do not do much, we think, for low income earners whilst assisting wealthy Australians. The $300 million advantage to wealthy Australians should more equitably be extended to a broader section of the community. While we note, as I said, that the surcharge has been excised from this bill, it will no doubt be presented to this place at a later time and we give notice now that the Australian Democrats will not support that measure.

The Democrats welcome the extension of the deduction limit for contributions for self-employed persons. We note that the current $3,000 limit has applied since 1988. Currently, most self-employed people make the $3,000 contribution only to gain advantage for the full deduction. Increasing the limit to $5,000 does redress some of the disadvantage that deduction limits place on self-employed people when compared with employees whose superannuation contributions are fully deductible up to the age based limits. It will bring the self-employed person into line with an employee on a salary of about $55,000 who receives the guaranteed contributions of nine per cent of income. The self-employed people who take advantage of the increased limit will receive a big boost to their lump sum on retirement.

Preservation rules were intended to ensure that superannuation is used for retirement purposes only—hence the present age limit is 65, on or after which contributions generally cannot be accepted. Currently, 12.3 per cent of Australia’s population is over 65. The Australian Democrats recognise that, as the current population of baby boomers age in a healthier manner and the proportion of those over 65 grows, many older Australians will want to work longer and make financial provision for their extended life expectancy. We support the change that this bill provides that gainfully employed members of funds can now make personal superannuation contributions up to the age of 75. We do have concerns that there is potential for this to be used as a tool for wealthy Australians to store wealth which will not be used for their retirement but rather salted away as inheritances for family members. In our view this is at odds with the basic precept of superannuation. Accordingly, we will be moving amendments to limit the capacity of high income earners to benefit from taxation deductibility of superannuation for other than retirement purposes.

It is with similar caution that we view changes in the bill that allow parents, grandparents and other relatives and friends to contribute up to $1,000 per annum into a child’s superannuation account. It is a fairly minor element in terms of costings—supposedly $42 million over four years. However, we also note that most of the detail about how these accounts will operate will be in regulations that are not yet before the parliament. The Democrats support in principle this element of the bill to the extent it provides a tax effective savings vehicle for children. In reality, however, there will be few Australians who have the disposable income to put away $1,000 for superannuation for children. Parents struggle daily with mortgages and raising families, and the economic reality is that they are more likely to require money to put away for children to fund university education or to assist with house deposits. Despite the noble intention of this bill the Australian Democrats believe it should be tempered with caution to minimise the opportunity for wealthy Australians to manipulate the tax advantages of funds intended to support retirement for other purposes. We will propose a cap on the number of children to whose super account a person can contribute.

I could not conclude my speech on superannuation without referring to the failure of this government to use this and other opportunities to give gay and lesbian Australians equal rights to superannuation benefits. The definition of ‘spouse’ in existing superannuation law continues to be held to be gender specific, recognising only heterosexual relationships where a man and a woman are legally married or in a de facto relationship. The use of the term ‘spouse’ in superannuation legislation has the effect of excluding a surviving member of a same sex couple from receiving the benefits provided. Reform of superannuation to recognise the partnership of same sex relationships is long overdue. This government chooses to remain in the
Dark Ages; it chooses to continue to disad-
vantage same sex surviving partners as com-
pared with opposite sex surviving partners.
Of course, we think this directly contravenes
standards of human rights for those of the
same sex who undertake a permanent com-
mitment to a shared life.

The Democrats repeatedly proposed
amendments to superannuation legislation to
end gay discrimination on superannuation
matters, but the coalition and Labor senators
have consistently voted to defeat those
amendments. Claims by the government and
the opposition that broader legislation is
needed to cover all gay and lesbian superan-
nuants is laughable and talk of superannua-

tion law reform is shallow, given that neither
party takes the prime opportunity offered by
Democrat amendments to ensure that same
sex partners have automatic rights to claim
similar taxation treatments on the funds of a
partner who dies before retirement.

The Taxation Laws Amendment (Super-
annuation) Bill (No. 2) 2002 is not the most
relevant for putting up amendments in this
respect. I do give notice now that the Demo-
crats will be moving amendments to the sur-
charge reduction legislation when it comes
along and to other legislation where it is
relevant. I move the following second read-
ing amendment:

At the end of the motion, add “but the Senate is of
the view that:

(a) requiring employers to make at least
quarterly superannuation guarantee
contributions on behalf of their em-
ployees does not provide for full
protection of employee entitlements
against business failure;

(b) a more frequent contribution pay-
ment for businesses would:

(i) strengthen employer compliance
with the superannuation guaran-
tee and assist with protecting
employee entitlements against
business failure, and

(ii) contributions would earn more
interest in the fund as they would
be invested sooner; and

(c) the Government should redraft the
provisions of Schedule 1 to provide
monthly contribution periods and
forwarding of superannuation guar-
antee funds”.

Friday, 28 June 2002

Senator HOGG (Queensland) (12.01
a.m.)—As my colleague Senator Sherry indi-
cated, I rise to speak specifically on the su-
perannuation guarantee charge paid by em-
ployers and, specifically, the reduction from
an annual payment to a quarterly one. One of
the things that I addressed in my first speech
in this place was the issue of security—secu-
rity when you are in your youth, security
when you are at work and, of course, secu-
rity when you are retired. The Taxation Laws
Amendment (Superannuation) Bill (No. 2)
2002 goes to the very issue: it attacks the
retirement income prospects of many people
in the workforce.

When we quizzed the officers of Tax and
Treasury at the hearing on this bill recently,

we found a number of things that were quite
alarming indeed. The consultation that they
had prior to the government making its deci-
sion—surprise, surprise!—was only with
employer organisations. There was no con-
sultation with employee organisations what-
soever. Having listened to the employer or-

ganisations, the government then arrived at a
very skewed, biased and distorted set of con-
clusions. Of course, whilst bringing forward
the payment from an annual one to a quar-
terly one, they set out to move the qualifying
threshold from $450 per month to $1,350 per
quarter. I understand that the minister justi-
fied the change from $450 per month to
$1,350 per quarter on the basis that the
quarterly payment would increase compli-
ance costs—for a number of small employers
throughout Australia.

The evidence at the hearing showed that
this is complete and utter nonsense, and that
is the only way it can be described. When the
officials were pressed, we were told such
great comments that they came to this con-
clusion by just a ‘general feeling’. I wonder
how much air they sniffed. Maybe when they
arrived at this decision they had been in the
same smoke-filled room which certain peo-
ple on the coalition benches occupy from
time to time. But only certain people on the
other side would know about those things, as
some of my colleagues over there would re-
alise. I also found out that it was probably a hunch. It was really a surprise to me indeed that such a decision could be made—that stretching the $450 per month to $1,350 per quarter would lead to a reduction in compliance costs—with no foundation being established by the Treasury or tax officials. It showed just what a stitch-up, what a deal, this was.

All the government will achieve by pushing out the $450 per month to the $1,350 per quarter is to cut out the eligibility of about 100,000 employees to superannuation. That was based on evidence given to us by the ACTU. When I tried to press this issue at the committee inquiry, none of the witnesses before the inquiry could give me any definite number of how many people would be affected. But 100,000 employees seems to me to be a reasonable figure indeed. The people who are going to be affected are casual workers, seasonal workers and piece rate workers. These are people who are in the most precarious forms of employment in our community, the people who are most vulnerable and need to have superannuation such that they can establish a reasonable retirement income. Given the level of income that these people are paid, any level of retirement benefit is not going to be of any great magnitude.

As a matter of fact, the actions of the government fly completely in the face of the need for a retirement benefits policy for our ageing population. What we see in the government’s attitude in this instance is absolute policy nonsense. There is no policy at all. What they are doing is saying that they need retirement policies on the one hand, but they are then putting into operation initiatives such as this which take superannuation away from a large number of people in the workforce. Many of those people are on low incomes, many are women and many are young people. Further pressed at the inquiry into the bill, I found that there was no modelling done to determine the impact of pushing the threshold out from the $450 per month to the $1,350 per quarter. It was as intellectually and mathematically rigorous as multiplying the $450 per month by three.

I just could not believe it when I read the Hansard. If anyone wants to read the Hansard, it makes a quite comical read. This move to just multiply the $450 per month by three and come up with $1,350 was designed to fulfil the wish list and fantasies of the National Farmers Federation and a few retailers who did not want to pay super at all, who wanted to deny their employees—people, as I say, who are in casual employment, who are seasonal workers—the right to superannuation.

Senator Sherry—Did they front up to the committee to put their case?

Senator HOGG—No, they did not, Senator Sherry. Let us face it: when you look at organisations such as that, they do not want to pay wages, let alone super or anything else. So the government have got this wrong in a policy sense. The government are out, of course, to punish those people who are most vulnerable—the people who are poor. There was no evidence of additional cost to employers paying the SG quarterly. The vast majority of employers now pay the SG on a monthly basis and are happy to do so. Of course, we saw here a tawdry move by the government which was going to remove from a number of people the benefit and the right to superannuation.

Employees, by the move now to have their SG paid on a quarterly basis as opposed to an annual basis, as Senator Allison rightly said, will find that their money begins to work for them earlier and they will also find that they will be protected from loss of superannuation where an employer’s business fails. The very people who should be helped by superannuation, who need to be helped, are not helped by that part of the sting in the tail, as Senator Sherry described it, where the $450 was multiplied by three and became $1,350.

We heard evidence—again, it was not modelled; it was hypothetical evidence—that someone could earn $600 one month, $600 the next month and then in the third month earn nothing at all. Because they failed to earn the $1,350 over the three-month period, they would be denied their right to superannuation, whereas currently, if that were to remain at $450 per quarter, at least for two of those quarters, they would receive nine per
cent on the $600 for each of those two months, which is at least a reasonable contribution, whilst it is not the greatest contribution, towards a reasonable retirement benefit for them. Whilst it will never reach any great magnitude in terms of the superannuation that some people at the high-income end of town will receive, it nonetheless does contribute in a positive way to a retirement income policy for those people.

The most that could be said of the government’s initiative here is that one must applaud the move from annual to quarterly, but one must condemn, soundly and roundly, the move from $450 per month to a quarterly figure of $1,350. I understand that an amendment will be moved which will ensure that people are not denied their reasonable and proper right to the superannuation benefits that should be made available to them and that should be protected by this government, rather than being cut to pieces because people are being made ineligible to receive superannuation under the SG.

Senator MACKAY (Tasmania) (12.11 a.m.)—I appreciate that time is short. In the interest of saving time, I seek leave to incorporate in Hansard a second reading contribution to the debate by Senator Buckland.

Leave granted.

The speech read as follows—

I rise to speak tonight on the Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002 and the Superannuation Guarantee Charge Amendment Bill 2002.

Both Bills were referred to the committee on the 19th June for inquiry and were to be reported by 26 June 2002.

These Bills deal with very significant concerns regarding superannuation. The Bills were referred to the committee because there was a concern that they failed to provide satisfactory solutions in the superannuation system.

Labor’s concern of course is that the average Australian would receive an adequate and equitable retirement income which would to some measure lend weight to improving national savings.

The purpose of the Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002 is to implement five measures aimed at manifesting the overall attractiveness, accessibility and security of superannuation, while the Superannuation Guarantee Charge Amendment Bill 2002 aims to amend Superannuation Guarantee Charge Act 1992, in order that the Superannuation Guarantee Charge be imposed on a quarterly basis.

The majority of the committee recommends that the Superannuation Guarantee Charge Amendment Bill 2002 be agreed to however, the majority of the committee also recommends that the Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002 not proceed in its current form.

It is vital to note that as a majority, the committee recommends that the amendments to reduce the rate of the surcharge and the changes to the SG threshold be removed from the bill because of the inequity that it will create.

The change would encourage employers to roster their casual and part-time workers to ensure they earned less than $1350 over the quarter. Under the current SG arrangements casual and part-time employees would at least get SG for 2 months out of the quarter.

Workers would essentially lose $90.00 in employer contributions for every $1000.00 they earned.

The casual and part-time workforce constitutes millions of Australians of which 72% are women. Labor does not support this change to the minimum wage levels.

The Surcharge Rates

It was noted that the proposed reduction in the surcharge rate would result in $370 million per annum in revenue. This will effectively provide a considerable tax cut to the highest 3 per cent of salary earners. The surcharge tax cut is a highly inequitable measure. It is really quite incredible that the budget cuts are being made to services for some of the most underprivileged Australians and that at the same time the government is proposing a tax cut which only affects those on surcharge tax incomes of over $85,000 a year.

In other words a tax cut to the highest 3 per cent of salary earners.

The Labor Party and the committee did not support this tax cut for the wealthy.

It was deemed more suitable and more equitable by the committee for the $370 million cost of the surcharge reduction to be directed to a reduction of the superannuation fund contributions tax.

This measure would prove to be more equitable and would consequently apply to a greater number of people especially those in the lower income brackets.
It was proposed by the ALP on 16 May 2002 to introduce a fairer cut to the contributions tax for all Australians who pay the tax by 2 per cent or 3.5 per cent for those aged 40 or above.

**Quarterly Payments of the SG & Monthly Reporting**

Quarterly Payments of the SG & Monthly Reporting was another issue that was dealt with in the committee.

It was recommended that employers should be making the SG Contribution more frequently rather than annually; ie on a quarterly basis.

The justification for making such frequent contributions would be to primarily assist in protecting employee entitlements against business failure and in the process earn more interest in the fund because the investment was made sooner.

On the whole the more frequent the contributions will lead to more compliant small business employers, who in turn will become more compliant in making payments of the SG consistent.

The majority of businesses, particularly the larger and medium sized establishments already do make quarterly or monthly contributions but it is essential that smaller business owners become regular SG payers.

The Superannuation deputy commissioner, Mr Leo Bator, said industries including hairdressing, security firms, panel-beaters and cafes had been identified as areas of significant non-compliance for superannuation contributions.

It is necessary that this be addressed as many employees are left without their entitlements.

**Deduction Limits for the Self-Employed**

Increasing the deductions limits available for the self-employed would provide more opportunity for savings for retirement.

The arrangements made applicable to the deductions available to the self-employed remain different from those available to employees.

**Superannuation Contributions for Children**

This measure that supports better access to superannuation for children would develop an important savings culture for young people.

It should however be noted, that this scheme would have very little appeal for the lower income earners. It would in the main be accessed by the more well off in the community.

**Age Test for Contributions**

The proposal to increase the age for making personal contributions assists the ability of older workers to save for their retirement.

Many older workers have however, not had the advantage of a full working life under the compulsory SG system.

**Senator COONAN** (New South Wales—Minister for Revenue and Assistant Treasurer) (12.12 a.m.)—I thank honourable senators for their participation in the debate. The Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002 and the Superannuation Guarantee Charge Amendment Bill 2002 give life to many of the superannuation policies that this government was given a mandate to deliver. A significant proportion of the policies outlined in the election document ‘A better superannuation system’ are contained in this legislation.

Superannuation is, as we all recognise, a vital element in planning for a comfortable and secure retirement. The government is providing for a superannuation system that gives accessibility, security and safety to all Australians. These bills introduce amendments to the superannuation guarantee law so that employers will have to make superannuation guarantee contributions for their employees on at least a quarterly basis. Currently, an employer has until 28 July, following the end of the financial year, to make the required level of superannuation contributions or be subject to the superannuation guarantee charge.

The new regime will provide much more certainty to employees. More frequent contributions will create higher superannuation benefits because of compounding interest, a lower risk of workers losing superannuation entitlements if a company falls over and more timely evidence of noncompliance making it easier for the ATO to detect those employers who are failing to pay, and will lower the risk that a member’s death and disability insurance where it is provided by a super fund might lapse between annual contributions. Furthermore, the bills require employers to report to their employees the amount and destination of their SG contributions. This will encourage employees to take an interest in their superannuation and alert them to any noncompliance sooner.

As has been raised in the debate by each of the speakers, it was originally our intention in this legislation to translate the current
$450 a month threshold to the equivalent amount of $1,350 per quarter. This change would have aligned the threshold with the requirement to make superannuation payments quarterly. The government believes this is a sound, commonsense measure which would ease the compliance burden being placed on employers by the introduction of a quarterly payment system. However, there have been some reservations expressed by industry groups over the past weeks, and the government will be agreeing to moves by the Senate to retain the current $450 a month threshold. I understand that a government amendment has been circulated to this effect.

There are, of course, some other measures contained in the bill and I will deal with them very briefly. Other measures both support and strengthen retirement incomes policy. Firstly, workers aged between 70 and 75 will be able to make personal undeducted contributions to superannuation. The government recognises with this measure that many people choose to work beyond 70 and should therefore be able to contribute to superannuation. Secondly, not only are we looking after older workers in our community; we are encouraging the youngest members of our society to start planning for their futures. Contributions will be able to be made by third parties on behalf of children who are under the age of 18 and who otherwise do not receive superannuation support. Thirdly, the self-employed must always be supported in their endeavours. These bills increase the fully deductible amount available to the self-employed for personal superannuation contributions made to complying superannuation funds or retirement savings accounts. Self-employed people who claim an income tax deduction for personal superannuation contributions will now have an increased limit where full deductibility is available for the first $5,000 of contributions, plus 75 per cent of the excess over $5,000, up to the taxpayer’s age based deduction limit. The measures in this bill do deliver important changes to make superannuation more accessible, attractive and safe.

Senator Sherry, in his contribution, has discussed the surcharge at length, and I think Senator Allison mentioned it. All senators are aware the government will be moving an amendment to remove the surcharge reduction from this bill. However, I remind senators that the surcharge reduction is only one of a suite of measures to make superannuation more attractive and more accessible. No doubt we will have that debate on another day. Finally, Senator Sherry raised the issue of the amendment to the act to pay 100 per cent of an eligible loss. The government will not be supporting the ALP’s amendment and I wish to spend a couple of minutes on explaining why. Their proposal that the government have no discretion but to pay 100 per cent of an eligible loss clearly indicates that the ALP do not understand the basics of internationally recognised financial regulation principles and, indeed, I would say, their own history in limiting restitution to 90 per cent. Standard internationally recognised practice is to place a cap on payments or to provide a percentage based level of compensation.

The Howard government’s policy in this area is consistent with international best practice. It is well understood in financial markets around the world that 100 per cent guaranteed outcomes do not encourage prudent behaviour. This is the concept of moral hazard that seems too difficult to grasp for those on the other side. Moral hazard relates to the propensity of superannuation fund trustees and other officers of financial institutions to behave in a riskier way by putting members’ balances in jeopardy. It is a well-known concept in all sophisticated financial centres; it is a term of art. By placing a very generous limit which, it must be stated, I in fact determined in relation to the Commercial Nominees matter, we are taking account of the moral hazard issue. We are encouraging those operating in the financial industry to exercise due care and skill. The Labor Party appeared to understand this concept in the early 1990s. After the failure of two life insurance companies due to fraud—Occidental Life and Regal Life—the ALP Treasurer at the time, Mr Keating, issued a press release in January 1991 concerning arrangements for the protection of policyholders. Mr Keating said:
In those cases where levy support is proposed to be provided to reduce a loss that might be borne by a policyholder, the amount of payout would depend on the nature of the policy and whether the payout is as a result of the policy maturing, death or other circumstances, but would not exceed 90 per cent of the total claim under the policy.

When the ALP introduced legislation to enable compensation in relation to Occidental and Regal, the legislation limited restitution to:

(a) not more than 90% of so much of an amount due and payable by the eligible company under a life policy as is not excessive;

(b) not more than 90% of so much of an amount due and payable by the eligible company in respect of the surrender of a life policy as is not excessive;

(c) liabilities in respect of administrative expenses reasonably incurred by the eligible company in meeting liabilities covered by sub-paragraph (a) or (b) ...

I do have a responsibility to those superannuation fund members who have suffered as a result of fraud or theft by fund managers and trustees. I also have a responsibility to the Australian taxpayer and to be fiscally responsible with taxpayer funds. We simply cannot put the Australian taxpayer at such extreme risk by guaranteeing, without discretion, 100 per cent of every loss that arises through fraud or theft or by guaranteeing, without discretion, business performance. Appealing as the notion of zero risk may be, we must remember that government money is taxpayer money and that every bailout imposes financial burdens on others.

In the case of the eligible loss arrangements, compensation increases the burden on other superannuation fund members who, through no fault of their own, have to pay the assistance through an industry levy. That does not mean that the government fails to understand the great financial difficulties that arise from fraud and theft of funds. That is why the government has gone beyond the level of compensation recommended by the independent Wallis review. The government has determined recently in relation to Commercial Nominees that investors should be paid 90 per cent of their loss. This is a generous determination, particularly given that fees and charges of the replacement trustee were treated as part of the loss. Indeed, you could argue that if you paid 100 per cent of the amount lost by the fund, you could not then have any discretion to pay any more for the fees.

Labor is now proposing a policy of 100 per cent guaranteed compensation that is contrary to legislation that Labor itself put in place when it was in government. In proposing that the responsible minister should have no discretion, it is clear that that is not a policy and is certainly not a position that is supported either by international best practice or by previous precedents that I mentioned the other day in relation to HIH.

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—The question is that the amendment moved by Senator Allison be agreed to.

Question negatived.

Senator SHERRY (Tasmania) (12.22 a.m.)—I move Labor’s second reading amendment, which has been circulated:

Whilst noting that the Liberal Government has withdrawn the proposed surcharge tax reduction for high-income earners from this bill, the Senate is of the opinion that the surcharge measure, along with the proposal to allow splitting of superannuation contributions and the closure of the public sector funds, should not proceed and that the Government should instead provide for a fairer contributions tax cut that will boost retirement incomes for millions of superannuation fund members to assist in preparing the nation for the ageing population.”

Question agreed to.

Original question, as amended, agreed to.

Bills read a second time.

In Committee

TAXATION LAWS AMENDMENT (SUPERANNUATION) BILL (No. 2) 2002

Bill—by leave—taken as a whole.

The CHAIRMAN—The question is that schedule 1 of the Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002 stand as printed.
Senator SHERRY (Tasmania) (12.23 a.m.)—The opposition opposes item 126 in schedule 1 in the following terms:

(1) Schedule 1, item 126, page 20 (lines 11 to 13), to be opposed.

This amendment, which is identical to the Democrat amendment, relates to the earnings threshold for casual employees. My colleague Senator Hogg has made a significant contribution and outlined our concerns about this particular provision, so I do not intend to speak at length, particularly given the time. The earnings threshold is currently $450 per month. Someone—we understand it may be the Farmers Federation; I do not want to criticise them but that is the information I have—has convinced the government to shift the threshold to a quarterly threshold of $1,350. We know that this will have a significant adverse impact on a significant number of casual employees who are currently covered by superannuation. I would like to make a couple of points on this. I noticed that a number of contributors in the other chamber argued that for casuals at this relatively low level of pay it is not worth receiving superannuation contributions because it is all eaten up by fees and charges.

Senator Hill—I understand it.

Senator SHERRY—Agreement? Not that I have been told. You are not supporting it?

Senator Hill—You are very persuasive.

Senator SHERRY—Very persuasive. The government is accepting Labor’s amendment that up to 100,000 of these casuals should be excluded from the provisions of superannuation. I would like to make a couple of points on this. I noticed that a number of contributors in the other chamber argued that for casuals at this relatively low level of pay it is not worth receiving superannuation contributions because it is all eaten up by fees and charges.

Senator Hill—I understand there is agreement.

Senator SHERRY—Agreement? Not that I have been told. You are not supporting it?

Senator Hill—You are very persuasive.

Senator SHERRY—Very persuasive. The government is accepting Labor’s amendment that up to 100,000 of these casuals should be excluded from the provisions of superannuation. I must say it is a surprise because it is it is the first I have been informed of that. That is a win. I will sit down.

Question negatived.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.30 a.m.)—The government is rejecting the Democrat amendments. The government will propose its own amendments to remove the surcharge from the bill. I move government amendment (1) on sheet DY326:

(1) Clause 2, page 2 (table items 4, 5 and 6), omit the table items.

Senator Sherry—I thought we had all furiously voted to get rid of the surcharge tax
reduction and that we had dealt with that matter.

The CHAIRMAN—We have removed schedule 2, but the government has moved amendment (1) on sheet DY326 which also relates to the surcharge.

Question agreed to.

Senator ALLISON (Victoria) (12.31 a.m.)—I move Democrat amendment (3) on sheet 2539:

(3) Schedule 3, item 3, page 49, (after line 33), after subsection (6), insert:

(6A) Subsections (4) and (5) are limited in their application to persons whose pre-tax income is less than $150,000.

This amendment relates to introducing a cap so that income earners may contribute to their superannuation and receive a tax concession for doing so only if their income is up to $150,000 per annum. We think this is a good safeguard to put in place to make sure that very wealthy older Australians are not using this vehicle to maximise their tax benefits. We think it is important that these contributions are used for retirement and not, as I said in my speech on the second reading debate, for some method of stashing away money for other purposes. We think that that is a reasonable limit on contributions over the age of 70 and up to age 75. We think it is not likely to be a much used vehicle. Nonetheless, it is worth having a cap.

Senator SHERRY (Tasmania) (12.33 a.m.)—This is a complex area because of the interrelationship with the minimum hours of work provision for making superannuation contributions. I have some sympathy with the approach taken by Senator Allison in trying to minimise potential abuse. We thought long and hard about this particular matter. We do not think that is likely. We would prefer to see the evidence that emerges from what is going to be a relatively little used provision, as important as it may be. The opposition will not be supporting the Democrat amendment. We want to see the evidence of the usage of this particular provision and will review our provision in a couple of years based on that evidence.

Could the minister tell us why superannuation guarantee contributions for a person over the age of 70 will not be compulsory. That seems to be an inconsistency in approach. The opposition would like some indication of government reasoning as to why that is not happening. It would seem logical, if you are going to allow the age for superannuation contributions to be extended that, consistent with that, superannuation guarantee contributions would also be provided for that class of people. We would like an explanation of what appears to be a contradictory approach for this group of people.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.35 a.m.)—The government’s policy intent in relation to this measure was to allow only personal undeducted contributions. In that respect, it was not appropriate to be extending any compulsory element in relation to it.

Senator SHERRY (Tasmania) (12.35 a.m.)—I understand the government’s position is to allow only personal undeducted contributions, but when previously the age was increased for personal undeducted contributions to the current age, SG contributions were also provided for. I know what the policy is; I am trying to establish the rationale for the policy, given the previous change.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.36 a.m.)—Extending superannuation guarantee obviously imposes costs on business. The government was not prepared to extend it any further. It obviously recognises that people over 70 may need to work. That is going to be a matter for their personal choice. It is not something where the government wishes to or will be imposing any compulsory element.

Senator ALLISON (Victoria) (12.36 a.m.)—Is it possible for the minister to advise whether figures would be available in one, two or three years which would show the amount of contributions and whether those contributions would be coming from people with extremely high incomes—incomes over $150,000? Senator Sherry says that the opposition is not prepared to support this amendment, that they would like to see the evidence of whether or not this is being
exploited. I wonder whether it is possible to do that.

Senator COONAN (New South Wales—
Minister for Revenue and Assistant Treas-
urer) (12.37 a.m.)—I am advised not and that it would be difficult. I will see whether that request could be accommodated, but the advice I am getting from the officials is that it is not possible to do that at the moment.

Senator SHERRY (Tasmania) (12.37 a.m.)—I think that is an important point, Senator Allison. One of the difficulties Labor has found with respect to a range of superan-
nuation matters—and I am sure Senator Coonan would understand this, given the considerable numbers of questions on notice we have put recently—is that it is hard to find what I consider to be pretty basic factual information about significant areas of superannuation. For example, in terms of salary sacrifice, we do not know how many, who or what level is occurring in this country, and I find that quite extraordinary.

Senator Allison—That is why it is a good idea to have a cap.

Senator SHERRY—I will get to that in a moment. I find it quite extraordinary that the tax office cannot tell us that when there is a very significant tax concession. There is an inappropriate and poor level of information on what are significant concessions—and I hope the government is able to produce the figures that we have asked for in our questions on notice. This is not a big area, but that does not mean we should not be concerned. There are other options, Senator Al-


These amendments relate to another cap: to limit the amount of contributions that can be made for people under the age of 18 and impose a limit of $30,000. That would effectively mean that a person might only contribute $1,000 per annum to 10 children. We think that is reasonable, remembering that a person may contribute to children other than his or her children, grandchildren or other-
wise. We think this is a necessary safeguard to again make sure that this is not exploited. I would ask the same question: would the minister indicate whether, if the government is not supportive of this amendment and if Senator Sherry does not commit the ALP to it either, the government would be prepared
to monitor this situation and take action, should it be obvious that persons are using this mechanism to great advantage and not in accordance with the government’s policy intent?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.41 a.m.)—Thank you, Senator Allison. Whilst the government is not supportive of your amendment, you do raise a point and obviously we want to make sure that the policy intent is met. If there is any improper use or exploitation of it, we would be interested in that and would keep an eye on it.

Senator SHERRY (Tasmania) (12.42 a.m.)—The minister may be able to help us here. I spent some time questioning Mr Gallagher of the retirement group in Treasury—I know you were not there, Minister—and asked for the specific number of people who were estimated to be taking up the ‘kiddies’ accounts’ proposal. There were some percentages given, but we were not able to get an actual number at the time. If you have that information available, we would appreciate it now.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.43 a.m.)—I know that there was some evidence given at the time about the estimated take-up. I do not have those figures on me, and I will check if any of the officials do. I am advised that we will be responding to the question on notice; unfortunately I do not have that information for you now, Senator Sherry.

Senator SHERRY (Tasmania) (12.43 a.m.)—I am a bit concerned about that because I would have thought that, given the legislation was coming up and estimates were a few weeks ago, it would have been available. This was an item for questioning Mr Gallagher of the retirement group in Treasury—I know you were not there, Minister—and asked for the specific number of people who were estimated to be taking up the ‘kiddies’ accounts’ proposal. There were some percentages given, but we were not able to get an actual number at the time. If you have that information available, we would appreciate it now.

One of the issues that was considered was this: if a person was very young and contributions were made on their behalf—they might be five or six or whatever the age is that contributions start—when they get to 18 they will find they have to wait another 42 years. Under current access provisions they have to wait until they are 60. Goodness knows what the age will be in 55 years time when they actually get to 60. I suspect it will not be 60, but that is something for future governments to have to deal with. The incentive for taking this up is not significant.

As I said in the previous contribution I made, we would prefer to see the evidence that becomes available as to the take-up rate and whether there is abuse. It is obvious that, with a $3 million cost to revenue over three years, the take-up rate is very small. We will
weigh up the evidence when we receive it as to whether there is tax minimisation and avoidance and abuse, and we will consider that evidence at the time.

I will just raise one other point. Superannuation is so complex—and I know the minister gets this all the time, and so do I—that adding this sort of provision would make it even more complex. We have to have this consideration all the time when we are dealing with superannuation. The children’s accounts for superannuation do have merit but the funds have advised me that they will be administratively costly to provide, particularly as the take-up rate will be so low. To then have even more complex administrative requirements, which will be more costly, has to be a consideration when looking at these particular provisions and has to be weighed up against whatever the potential abuse may be. For that reason we are not supporting this Democrat amendment.

Question negatived.

Senator SHERRY (Tasmania) (12:49 a.m.)—I move:

(3) Page 54 (after line 24), at the end of the bill, add:

Schedule 7—Amendments of the Superannuation Industry (Supervision) Act 1993

1 Subsection 229(1)
Repeal the subsection, substitute:
(1) If a fund suffers an eligible loss after the commencement of this Part the trustee may apply to the Minister for a grant of financial assistance for the fund.

2 Section 231 (heading)
Repeal the heading, substitute:
Minister must grant financial assistance.

3 Subsection 231(1)
Repeal the subsection, substitute:
(1) If, after considering the application, any additional information given by the trustee, and APRA’s advice under section 230A, the Minister is satisfied that the fund has suffered an eligible loss as mentioned in subsection 229(1), the Minister must determine in writing that a grant of financial assistance equal to the eligible loss should be made to the trustee for the purposes of the fund.

4 After subsection 231(2)
Insert:
(3) This section applies to all determinations made after 1 June 2002, regardless of the date of the eligible loss or of the application.

5 Section 232
Repeal the section.

These amendments are particularly important. In my speech in the second reading debate I did speak about the Commercial Nominees case. The minister in her contribution referred to the Occidental and Regal Life group of insurance companies. My understanding is that was 1991, and that is before the changes to the Superannuation Industry (Supervision) Act 1993 and the theft and fraud provisions that the minister has activated in respect of Commercial Nominees. My understanding is that Commercial Nominees are the first case of theft and fraud under the current provisions of the Superannuation Industry (Supervision) Act 1993.

Senator Coonan—You passed the 90 per cent in 1993.

Senator SHERRY—Let us get to the SI(S) Act. There is no doubt that the SI(S) Act does allow for 100 per cent. We are dealing with the first case of compensation under that provision, theft and fraud, and the minister has declared 90 per cent. Perhaps it is because we have a Liberal government that they have declared 90 per cent. All I can say is that a Labor government—I am confident—would have declared 100 per cent because we have provided for it in the act.

Senator Coonan—What would you have done about the fees?

Senator SHERRY—I will get to the issue of the fees because that is an interesting issue. We know that the cost in this case of Commercial Nominees is about $5 million so far. The fees that are applying in the Commercial Nominees case, of approximately $5 million, are as a direct consequence of the theft and the fraud and the appalling state of all the records.

The fees and charges would normally be a lot less than $5 million. I do not know what
Commercial Nominees were charging but I suspect the fees would not have been more than $100,000. The normal fees, if the fund had continued without the theft and the fraud, would have been minute compared to the $5 million. The $5 million worth of fees and charges is the cost of cleaning up the mess. Why should the victims pay the huge cost of cleaning up the mess? Labor argues that the victims should not pay for the cost of cleaning up the mess—which is extraordinarily high in these circumstances: $5 million—and Labor argues that there should be 100 per cent compensation for the capital that was lost plus the interest accrued over time up to the point where the fund was shut down by the regulator, APRA, and effectively taken over. There is even an argument that some form of interest should also apply. So in terms of the issue of the administration costs, they are quite extraordinary costs because theft and fraud occurred. Those administration costs would not have occurred if the fund had been run without the theft and the fraud.

The minister—I have touched on this point—has referred to the United Kingdom. As I said, the United Kingdom does not have compulsory private pension funds; they are voluntary. They cover a minority of the workforce. The extent of coverage in the United Kingdom is very similar to the extent of coverage in Australia before Labor introduced compulsory national superannuation back in the late 1980s. So in the United Kingdom example we are not dealing with a system that is as comprehensive in its coverage. What we do know about the Australian system is that superannuation will provide an increasing proportion of a person’s retirement income, together with a full or part pension subject to means testing. It is not a voluntary product. If you are an employee, you do not volunteer to have superannuation; it is compulsory. It is extraordinary long-term saving that you cannot access—subject to the early access provisions—until the age of 55 to 60, depending on when you were born.

So there are very special circumstances that surround superannuation as a retirement income. It is fundamentally different from other financial products. It is fundamentally different even from loss of entitlements when you lose your job, because if you lose your superannuation you are never going to catch up. Even if you have lost superannuation, as a result of theft and fraud, prior to retirement and you remain in the work force for another 10, 15 or 20 years, you cannot catch up on the money that you have lost. If you are retired, obviously you cannot catch up because you have lost the money and you cannot go back into the work force. So superannuation is unique in a number of regards and that is why the Labor government made the call that the provision in the act should ensure full compensation.

As I said earlier today in the Senate, I think it is unreasonable for the minister to have to make the call about the level of compensation. I think it can be argued that that puts the minister in an invidious position. So we do not believe there should be discretion in terms of the level of compensation. The other important point about this is that where theft and fraud occurs, and it is very rare, the persons whose money has been stolen should not be in the invidious position of having to wait for the declaration of the minister as to the level of compensation. It is bad enough for them to have to wait for however long before the declaration of theft and fraud is made, worrying about whether in fact that declaration will occur, without them worrying, ‘If it does occur, will I get 100 per cent, 90 per cent, 80 per cent?’ or whatever.

I am very concerned about this. I am very passionate about it because I think people in a society such as ours have a fundamental right, when it comes to retirement income, to know that, with respect to theft and fraud, what was in the fund is what they are going to get when they retire. I do not accept the moral hazard argument in this sort of circumstance. It is compulsory to be a member of a fund; the members of the fund should not have to bear the moral hazard responsibility in any way because of the compulsory nature of superannuation.

I understand that the Democrats are not voting for our amendments; that is disappointing. But we will fight on this issue again and again because it is a fundamental
Labor principle in this area that there should be full compensation. So I put the parliament on notice that this will be an ongoing campaign of the Australian Labor Party. Fortunately, sometimes I think the issue of theft and fraud is overstated in the general community and in the media, but it is very rare that this does occur. *(Time expired)*  

**Senator ALLISON** *(Victoria)* *(12.58 a.m.)*—I indicate the Democrats’ opposition to this amendment. This matter was not canvassed at any stage during the hearing into this legislation. We do not see that it is crucial to this legislation. We have only had it for about 24 hours and there has not been a chance for us to ask about what the implications of this are. We do not think that bringing on an amendment such as this at this stage is reasonable given the other pressures of the current sitting requirements. I am inclined to support the government’s arguments on this question. We would be happy to look at this again at some later stage and, if Senator Sherry is going to put this amendment again when we are considering other legislation, if we have a little more time to understand the implications, we may consider supporting it.

**Senator SHERRY** *(Tasmania)* *(12.59 a.m.)*—I will be brief; there was one other point. Our amendment is retrospective; I do not know whether the Democrats know that. It is deliberately retrospective because it applies to one case that is part determined and obviously if it was passed it would apply to all future cases. Obviously, it is retrospective to cover CNAL victims. We believe retrospectivity in these circumstances is reasonable. We know who will be covered by the retrospectivity and that is the victims of CNAL because, as I have reiterated firmly, it should be full compensation. For that reason, we will be moving the amendment on future occasions. The longer you leave these things, Senator Allison, the harder it is to argue practically for retrospectivity and the harder it will be for the victims of CNAL to benefit from that retrospectivity. That is the reason why we have had to bring it on tonight. The issues involving CNAL were beyond our knowledge, in terms of the level of compensation, until two weeks ago. It is a very recent issue in that sense and we feel that, because of the urgency of this matter, it does have to be dealt with tonight. The Democrats’ position is unfortunate, but as I say we will persist with this at future times.

Question negatived.

Bill, as amended, agreed to.

**SUPERANNUATION GUARANTEE CHARGE AMENDMENT BILL 2002**

Bill—by leave—taken as a whole.

The CHAIRMAN—The question is that the bill stand as printed.  

Question agreed to.

Bill agreed to.

Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002 reported with amendments; Superannuation Guarantee Charge Amendment Bill 2002 reported without amendment; report adopted.

**Third Reading**

**Senator COONAN** *(New South Wales—Minister for Revenue and Assistant Treasurer)* *(1.02 a.m.)*—I move:

That the bills be now read a third time.

Question agreed to.

Bills read a third time.

**NEW BUSINESS TAX SYSTEM (CONSOLIDATION) BILL (NO. 1) 2002**

Second Reading

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

That this bill be now read a second time.

**Senator SHERRY** *(Tasmania)* *(1.03 a.m.)*—I am not listed on the speakers list and I am not trying to upset the flow of the chamber; I just think a quorum count at this stage of the night would be potentially difficult. I am waiting for my colleague Senator Conroy to come and make his contribution to the debate. He is on his way. We are dealing with the New Business Tax System (Consolidation) Bill (No. 1) 2002. Senator Conroy has a very impressive and extensive knowledge of this bill, and I am glad he is now here to inform us of that.

**Senator CONROY** *(Victoria)* *(1.04 a.m.)*—Thank you, Senator Sherry, for stepping into the breach, so to speak. The New
Business Tax System (Consolidation) Bill (No. 1) 2002 arises from one of the main recommendations of the Ralph Review of Business Taxation. In essence, it seeks to implement a system which allows wholly owned groups to choose to be taxed as a single entity for income tax purposes. The existing grouping provisions of the Income Tax Assessment Act 1997 and the Income Tax Assessment Act 1936 and the intercorporate dividend rebate allow groups of companies to obtain the benefits of single entity treatment for some purposes. In other respects, however, the current income tax system continues to allow each entity to account separately for intragroup transactions and intragroup debt and equity interests.

It is well known that this has led to some significant deficiency and integrity problems in the tax system. For example, the explanatory memorandum to this bill provides the following list of problems: compliance in general tax costs; double taxation where gains are taxed when realised and then taxed again on the disposal of equity; tax avoidance through intragroup dealings; losses cascading by the creation of multiple tax losses from the one economic loss; and value shifting to create artificial losses where there is no actual economic loss.

The Labor Party has consistently supported the principle of consolidation reform to address these problems within the existing system. We supported it at the time that the Ralph reforms were brought forward and we continue to support it today. In supporting it, our goals have always been to strengthen the integrity of the tax system and minimise compliance costs. In referring this bill to the Senate Economics Legislation Committee, the opposition wished to explore the costings of the measure in further detail to see if the measure did indeed meet these goals. After all, the original costing provided in the explanatory memorandum was ludicrously lacking in detail for such a major measure. The full extent of the costing was a consolidation measure. It was expected to cost approximately $1 billion over the forward estimate period. This cost largely relates to the transitional concessions and the expectation that groups will be able to use their losses faster than is allowed under the current law.

The parliament was being asked to pass a $1 billion measure on the basis of a 50-word costing. That is $20 million a word. So I welcome the further information that has now been provided on this costing through the legislative committee process and, in passing, thank the committee for its informative report. I note that the year by year breakdown of the aggregate costing is $180 million in 2002-03, $370 million in 2003-04, $335 million in 2004-05 and $280 million in 2005-06 for a total cost to the revenue of over $1 billion over the forward estimates period. This total is fully $165 million more than the cursory estimate previously given in the explanatory memorandum.

So yet again we see the extraordinary contrast between where the government wants to spend extra money and where it wants to extract savings. The government is happy to allow businesses an extra $165 million of tax concessions in moving to these new tax arrangements, without even blinking an eye or providing an extra word of explanation—or should that be an extra eight words of explanation, as per a previous calculation? But the government insists that it must cut disability payments in the pretence of fiscal rectitude, even though that savings measure will, at most, raise only double this amount. It is an extraordinary illustration of where this government’s priorities lie in spending public money.

The Treasury information provided to the legislation committee shows that the main costs of the measure are from the faster utilisation of losses through their transfer into the consolidated groups. The opposition has been concerned about the departure from the Ralph Review of Business Taxation recommendations in the treatment of losses in this bill. In particular, we raised questions about whether these departures may have further increased the cost of the revenue beyond what was originally envisioned in the Ralph review. In this regard, we note the evidence from Treasury that the major departure from the Ralph review recommendations involves a relaxation of the entry rules for the same business test losses. A counterbalancing im-
pact arises from the tightening of the entry rules for the continuity of ownership losses. The revenue impacts broadly cancel each other out. We welcome the assurance from the Treasury that the net impact of these departures is broadly revenue neutral. However, we expect a continuing watch to be kept on this potential threat to the revenue.

The opposition was also concerned that the measure could potentially provide a considerable tax break to companies which obtained a higher reset cost basis of the assets at the time of consolidation. The evidence provided in the hearing by the Australian Taxation Office and the Treasury indicates that for this part of the measure the rules were intended to broadly replicate outcomes under the current law. Nevertheless, we remain concerned about the arrangements allowing this to be done on a subsidiary by subsidiary basis. This may leave open the possibility of conducting asset transfers in such a way as to generate artificially favourable tax outcomes. We would also expect a continuing watch to be kept on this potential threat to the revenue.

The opposition remains concerned that there appears to have been no quantitative attempt of the compliance implications of this bill with regard to both the transitional period and the longer term. I note that the transitional compliance costs are likely to have an impact through both the setting up of initial systems to consolidate taxation information for the group and the need to establish market valuations of assets on entry to consolidation. This is a very large and complex measure and represents a significant change in taxation arrangements. Under these circumstances, we would have expected more detailed quantitative work to have been done on the likely compliance impacts. I note that the explanatory memorandum admits:

14.15 Due to the magnitude of the consolidation measure, for large corporate groups, especially head companies, the start-up costs may be significant.

Press reports suggest that these significant transitional costs could last for at least two years for these businesses. In addition, I have had repeated representations that these transitional costs will impact even more heavily on small businesses, although I recognise that this measure only affects a small proportion of the small business community. I note that these concerns about the impact on small businesses were also shared by the Taxation Institute of Australia in its submission to the legislation committee. In this regard, I commend the government’s decision to begin to address these transitional costs through allowing the existing grouping provisions to operate in parallel with the consolidation regime until 1 July 2002. This extension to the grouping provisions will provide necessary and reasonable relief to small businesses in coping with this change, and we support it primarily on that basis. However, we urge the government to take the necessary precautions to ensure that the extension does not simply provide an extra year for larger businesses to arrange their losses in such a way as to generate artificially favourable tax outcomes on entry into consolidations. Given the government’s proven form in imposing horrendous compliance burdens on business through its BAS debacle, we will be watching the compliance costs during the implementation of this measure very carefully indeed.

With regard to the long-term impacts of this measure to the revenue, we note the Treasury’s view that the revenue cost from the consolidation of losses is expected to decline over time as the existing fall of carry-forward losses in exhausted. In contrast, the revenue gains from consolidation and related integrity measures which address the creation of artificial and duplication losses through intergroup dealings are expected to increase over time, in line with growth in the economy.

The opposition would have preferred to have seen a quantitative forward projection of the costings to allow the parliament to judge the full impact of this measure on the revenue over time. We recognise that the principle underlying the measure is a long-term positive reform to the business tax system and that it is likely to deliver dynamic gains to the economy in the long term. We also recognise that not all of the elements of the Ralph review reforms will be revenue
neutral in and of themselves, but it is not possible to make a fully informed judgment about any proposed trade-offs without full quantitative assessment of costs over time.

That brings me to the vexed question of the true state of the balance sheet on the overall Ralph business tax package. It is well known that the Labor Party has long supported genuine business tax reform in this country, even during times when the government cravenly backs away from it. Consolidation was a key part of the package of business tax reforms agreed between the then shadow Treasurer and the then and now Treasurer—some things do not change—in November 1999. Labor made it clear at the time that our support for the package was unequivocally based on the condition that it was revenue neutral. As the Leader of the Opposition stated in his letter to the Treasurer:

… Labor is willing to pass the business tax package if it pays for itself. Labor will hold the Government to its promise on revenue neutrality. We cannot accept a reduction in business taxation at the expense of individuals and families who will be bearing the brunt of a GST, nor the use of the Budget surplus to fund business tax reforms.

We stand by these principles and will apply them to the overall package of business tax reform as it is brought forward by the government.

So it seems a straightforward question then to ask: what is the current state of the balance sheet on business tax reform? The shadow Treasurer recently asked the Treasurer this question in the House during the debate on this legislation. There was no answer. I asked the Treasury the same question during the recent budget estimates hearing. Again, there was no answer. So I am taking the opportunity once again to ask the government in this chamber to release the detailed costings on the progress of the overall business tax reform package as soon as possible. Stop making excuses that you do not know what to include and what not to include. Start with the specific measures committed to by the Treasurer in his two-stage response to the Ralph report in 1999, and give us an up-to-date costing on those. Then add in separately any extra measures since then. Release the lot, and make sure when you do so that these costings include not only the impact of any general taxation measures but also the myriad special concessions offered to particular companies and projects. It is time for some transparency on business tax reform. If, as we suspect, the tax concessions for business have been delivered rather faster than the measures designed to ensure that they pay their fair share of tax, then the Australian people have a right to know.

I now turn to some matters of process with regard to how this consolidation measure has been submitted to parliament. We have been waiting a long time for this reform to take shape. After all, it was announced with great fanfare as part of a new tax system package back in August 1998, with a proposed start date of July 2000. By the time of the announcement of the results of the Ralph Review of Business Taxation in September 1999, it had already been deferred, with the promise being given instead that it would come into effect in July 2001. Then, come March 2001, we heard from the Treasurer that it had been deferred yet again, this time to start in July 2002.

I am a little surprised that, despite having the benefit of a gestation period of 3½ years, the government has only managed to introduce this bill in the parliament a matter of six weeks before it is due to come into effect. Of course, this is wholly consistent with the contempt with which the government is now accustomed to treating the parliament—six weeks for the parliament to scrutinise nearly 200 pages of legislation which is of fundamental importance to the future of business tax reform in this country. When you get to the fine print, the legislative timetable actually gets more absurd, not less. The legislation committee heard that the full detail of this measure will require a further two tranches of legislation to be presented to parliament. For example, critical rules on the valuation of assets on the formation of a consolidated group are not contained in this bill and will instead be contained in subsequent legislation.

I understand that the second tranche of legislation on this measure was introduced in
the parliament this morning, and that it represents a further 300 pages of legislation. So perhaps the parliament should have been grateful to have had six weeks to review the first tranche. After all, we have been presented with only a single day to review the second tranche. Of course, the third tranche is yet to come.

This all seems eerily familiar to me. This seems awfully like another ‘Ralphing’ in the offing. After all, at the time of the Ralph review, Labor indicated that it would support the package, with the condition that the measures, not then as yet before the parliament, particularly the revenue raising measures, would be implemented as stated and in full. The Labor Party was concerned that any slippage on these measures in the future could expose the government in terms of its commitment to maintaining the integrity of the tax system.

To be charitable, merely taking a further 2½ years to deliver on the consolidation as part of the agreement probably does not constitute real slippage by the government’s usual standards in business tax reform. After all, some of the other measures have never materialised at all. But you can understand, Madam Acting Deputy President, why we would baulk at the suggestion that we should pass this bill now and that we should accept the subsequent bills on an act of faith.

We reiterate our in-principle support for this bill. We also reiterate our support for the proposed starting date of 1 July 2002. However, we cannot support the passage of this bill until such time as the subsequent bills are also available for scrutiny in the Senate. We have heard no evidence as to why a proper scrutiny of the subsequent bills, in conjunction with this bill, should in any way affect the proposed start date of 1 July 2002. Accordingly, I move:

Omit all words after “That”, substitute “further consideration of the bill be postponed until an order of the day for the second reading of bills determined by the Senate to be associated with the bill is called on”.

Senator MURRAY (Western Australia) (1.20 a.m.)—The New Business Tax System (Consolidation) Bill (No. 1) 2002 is part of the new tax system, and it has its origins in the August 1998 statement and the Ralph report which accompanied it. August 1998 is pretty well four years ago, and the Ralph report did indicate that a major reason for the proposed changes was the removal of high tax compliance costs where each member of a group has to individually comply with tax laws while also passing losses and profits between members of the group of commonly owned companies. It was also indicated that a consolidation regime would allow members of the consolidated group greater flexibility in the way they could operate compared to the current grouping rules.

Missing from that brief description is a major consequence of the consolidation measures; that is, by allowing greater flexibility as regards the tax affairs of entities within a group—and that is an option; you are not required to become a group—and freeing it up, you actually free up the market somewhat and you make available corporate entities which can move ownership, hopefully into hands that can better manage those companies and operations. So it is a beneficial activity from a market point of view.

In the inquiry that Senator Conroy and I participated in, the Treasury officials acknowledged that as a significant benefit of this bill; however, they could not quantify the effects of it in terms of additional revenue or productivity or economic growth or any other measure that you might use. However, I concur with them: I think the result would be a positive for the market. It is one of the reasons that the Labor Party and the Democrats supported the government’s initiative and the Ralph recommendations right from the start.

The question of losses, either grouped or ungrouped, is a difficult one to assess. Treasury provided us with figures in their evidence that there are about $80 billion worth of losses in the market. I am not quite sure how they arrived at that figure; I assumed they had gone along to the Australian Taxation Office and asked it to consolidate the accounts and tell them what was there. But perhaps they have other methods. I have no reason to doubt it. The question, to which no-one really knows the answer, is: how much of that $80 billion is clogged up? You
will always have a natural level of losses which must exist within the corporate world but the difference between what I would call the natural level and that $80 billion is an amount which acts as a market impediment—it is a structural impediment to the full operation of the market. It is that which represents the danger to revenue. Losses in companies eventually wash through. They are set against revenue or in some way utilised over time so once again you would be dealing with a timing effect.

Let us assume for argument's sake that, of the $80 billion, $20 billion was the overhang that would be sorted out by a more fluid and flexible consolidations regime. If that $20 billion hit you in year one it would pretty well wipe out most of the corporate revenue for that year and would be a very difficult matter for the government to deal with. Treasury have indicated that their own calculations of the revenue cost of an accelerated utilisation of those losses—because that is what is going to happen—is around $1 billion. I have no idea how you would know that, and both Treasury and parliament have experience with being wildly wrong on those sorts of estimates—that is not a criticism; it is just an incredibly difficult exercise. So the parliament and the government would take some risk with these issues; however, all the parties that have reviewed this do believe that sort of risk is worth taking for market activity purposes.

So you then move on to the question that Senator Conroy posed in his speech, and that was the hook that the whole business review hung on—the hook of revenue neutrality. I always think the idea of revenue neutrality in a particular budgeting period is a bit overstated because quite often there are lagged effects as a result of market integrity or taxation integrity efforts. Whilst those effects may not be revenue neutral in the budgetary period available for examination over time, the benefits are greater than the front end costs. However, Senator Conroy does make the point that a $1 billion hit over a budgetary period, if expensed as a result of savings made in welfare, education or social costs, makes parties on this side of the benches a little nervous, frankly, especially when the government is making a great play on having a go at people in the disability sector or the lower income sector.

However, having said that, you have to address as a parliament the issues of taxation and market integrity. If you just sat with it, those losses would still be in there as a kind of treacle in the machinery of corporate taxation structures. I retain the view, and I gather from Senator Conroy's remarks that he retains the view, and our parties retain the view that this bill is an appropriate instrument even given the risks that we face. If there is that overall approach then the next issue is one of process and whether there are greater risks facing us with the arrival of two further major consequential pieces of legislation which attach to this, I do not share Senator Conroy’s criticism of it taking a few years to get to this stage. I simply think that the consultation embarked upon was probably worthwhile. I do not really criticise the Minister for Revenue for producing it six weeks ago. What I am nervous about is having my face pushed against the windowpane of 30 June, when I will be quite happy to retain the start-up date of 1 July 2002 but I would need to be assured as to the legislation that is going to come with or follow this bill.

This bill does allow wholly owned groups to choose to be taxed as a single entity for income tax purposes. It is painted as likely to be first utilised to effect by the bigger end of town. I do not think that is a negative. That is a market reality. But it is certainly open to be used productively in the smaller business sector, although I note that the Digest does point out that the Institute of Chartered Accountants is concerned that smaller businesses may struggle a bit with whether they should take it up or not and what the likely cost to them would be. The measure does have the claimed purpose of reducing compliance costs and strengthening the integrity of the tax system, and I think that claimed benefit is true. I am not so sure that the estimated benefits for small and medium sized businesses are more marginal. My own experience of the sector is they have commensurate losses locked up in their own structures, so I would be interested to see if that prognosis turns out to be true.
Consolidation will strengthen the integrity of the tax system by reducing tax avoidance through intergroup dealings, through attacking loss cascading through the creation of multiple tax losses where there is only one economic loss and through value shifting to create artificial losses where there were no economic losses. And this consolidation measure is a business and productivity incentive. I think the productivity measures are very difficult to estimate, so I am really guided by the expectation rather than any modelling of that sort. I wish to hear what the minister has to say about the process. I am very alert to the lobbying we have received from some pretty high-powered people, which I am sure we have all been subjected to. Not you, Senator Conroy?

Senator Conroy—We are at the bottom of the food chain!

Senator MURRAY—I see. Okay—well, that your colleagues in the other place might have been subjected to. It is a measure which obviously matters a great deal to certain businesses and business groupings and they would feel uncertain about committing money now, even with the warm noises that I hope I am making about my attitude to the bills and the warm noises that I thought I heard Senator Conroy make on behalf of the ALP. I think the real issue here is that the first tranche of the legislation has been available, at least the explanatory memorandum, and the consultations started back in February, so this has really been out there in the public domain and has been the subject of almost unprecedented public consultation.

Because of the hour I will not go on about it but it is very important to say that, following the release of the February draft, public feedback sessions were held nationally by the ATO, 23 sessions were held in the CDB and regional areas, 468 members of the public participated, 47 written submissions on the legislation were received, and nine walk-through sessions have been conducted by the ATO in major capital cities and regional locations. These have attracted an attendance of in excess of 1,000 members of the public. This legislation is very well understood and well accepted in the business community. The whole purpose of this consultation and transparency—if I can say through you, Madam Acting President, to Senators Murray and Conroy—has been to ensure the smoothest possible implementation of the measures by business. It is arguably the most important business tax reform measure since probably the 1970s, and to hold it up where there is no fundamental opposition to the measure itself but for some other reasons or concerns about process is disappointing.

A prime ingredient to ensure a smooth implementation is certainty. No doubt they are the representations that you are referring to, Senator Murray—that business wants
They will all be getting on with entering into contractual arrangements from 1 July, and to be put in a position of some uncertainty as to whether the consolidation rules affect these transactions I think will significantly impact on their certainty in negotiating these matters. It is a very risky decision, and very significant, to delay passage of the bill.

The second tranche of the consolidation is included with a number of other measures, including the introduction of the general value shifting regime and demerger tax relief measures. There are concerns about linking the passage of the New Business Tax System (Consolidation) Bill (No. 1) 2002 to a number of further bills which may include other important tax measures and even further uncertainty.

I will say in conclusion that, while both Labor and the Democrats obviously do support the principle of consolidation—and that is welcome because it will minimise compliance costs and strengthen integrity—I am sure the business community might think that these words ring a bit hollow if the opposition parties are intent on delaying this measure for what I would say is no good reason. It is very difficult to have it both ways—to support the measure in principle but to prevent it in practice—particularly when business is way ahead of us here. Business has had the legislation since February. It is understood well; it is wanted; it has been waited for and, in my submission, there is no good reason to hold it up.

Senator MURRAY (Western Australia) (1.39 a.m.)—This is a difficult issue. Frankly, I would prefer to deal with this in committee, where we can have an interaction for a while, but I do not know how that is possible given the amendment is structured.

Senator CONROY (Victoria) (1.40 a.m.)—by leave—I appreciate that the government has attempted to address the concerns by circulating its proposed amendment which addresses the question of assent and when it would be granted. I appreciate that genuine offer by the government. The difference between the government’s amendment and our amendment is simply this: in light of the extra information from the next bill and subsequent bills, if we need to amend the existing bill, we are unable to do so because it will already have been passed and we cannot revisit it. The substantive difference between how we deal with it is that if, in the view of the parliament, we need to amend the first bill, it has already gone. That is what will happen if we go with the government’s amendment as opposed to Labor’s amendment, which allows us the flexibility to perhaps deal with an issue that arises. If we could find a more satisfactory way, we would happily do it.

We have consulted with the Clerk’s office about trying to find the best possible way to give us the maximum flexibility. It has been indicated that this is the best way we can come up with. If Senator Murray has an alternative, I would happily consider it on behalf of the opposition. Again, I appreciate the government’s attempt to address this as well. It is really just a question of the process rather than the substance of the debate. I will sit down and maybe Senator Murray might want to seek leave to make a statement as well.

Senator MURRAY (Western Australia) (1.42 a.m.)—by leave—Very briefly, the only possible thing I can think of as an out in this would be an absolute binding commitment from the Minister for Revenue and Assistant Treasurer that this New Business Tax System (Consolidation) Bill (No. 1) 2002 would be capable of being amended, if the Senate so chose, as amendments to the next bill. If the consequent legislation, or part of it, directly relates to this bill, I would have thought it falls into the area of relevance. The Clerk is there and he knows far more about process than I will ever know but, if that were possible, it would satisfy Senator Conroy’s approach. We are simply extremely nervous about passing a bill when there is consequent legislation linked to it which we have not seen. That is the nub of it.
(Consolidation) Bill (No. 1) 2002, it would be unlikely, even though it is linked, that there would be any issues that would arise in this bill. The second package of bills deals with other issues such as demergers and value shifting and the formation case. So it marches on. The rules are very much in this bill, but how the formation case proceeds is in the next bill. I am informed by those instructing me that I am in a position to inform the Senate that, on the consideration of the second bill, it would be possible, if you wish, to move amendments to this bill—because it relates to the formation case, it does relate back.

Senator CONROY (Victoria) (1.45 a.m.)—by leave—Could I seek an indication from Senator Murray. On behalf of the opposition, if the Democrats are comfortable, we are happy to give consideration to the government’s offer and accept it as a binding offer. Unfortunately, we have had written binding offers previously, which Senator Murray has also been given. I joked with him in the Senate hearing of the committee that he had been given a binding offer about entity taxation on two separate occasions and we are yet to see any legislation. We were given a written offer about the whole package which this is part of, and it has been broken. While I accept in good faith Senator Coonan’s offer, I am not completely convinced that we will be able to successfully negotiate the potential difficulties down the track.

Senator MURRAY (Western Australia) (1.46 a.m.)—by leave—There are two things to say. Firstly, I gain some comfort by the government’s own proposed amendment because that delays the assent until one of the other two bills is dealt with. Secondly, I have no grounds whatsoever to mistrust the minister’s word but, to be a little earthy, as a Senate we do have leverage because they want the next bill and we will cut up rough if the commitment is not honoured. That is not a threat; it is just the reality of it. So, with those two mechanisms, I am more comfortable than I would be otherwise.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that Senator Conroy’s amendment be agreed to.

Question negatived.
Original question agreed to.
Bill read a second time.

In Committee
Bill—by leave—taken as a whole.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (1.48 a.m.)—I move government amendment to clause 2 on sheet DR239:

Clause 2, page 1 (lines 7 to 9), omit the clause, substitute:

2 Commencement

This Act commences on the day on which the New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002 receives the Royal Assent.

Question agreed to.
Bill, as amended, agreed to.
Bill reported with amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (1.49 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.
Bill read a third time.

NEW BUSINESS TAX SYSTEM (IMPUTATION) BILL 2002
NEW BUSINESS TAX SYSTEM (OVER-FRANKING TAX) BILL 2002
NEW BUSINESS TAX SYSTEM (FRANKING DEFICIT TAX) BILL 2002

Second Reading

Debate resumed.

Senator CONROY (Victoria) (1.49 a.m.)—Given the time of day, I am happy to incorporate my remarks.

Leave granted.

The speech read as follows—

Labor supports the principle that the tax system should be simple to apply, consistent with fairness and other objectives.

These simplified imputation system bills are designed to make the franking of tax paid on dividends to shareholders less complex. Labor’s in-

...
introduction of a franked dividends system during our last period in government was a major reform that helped to extend ownership of shares to a wider section of Australian society.

These Bills make some incremental improvements to the Labor designed system and we support them.

There are four major elements to the Bills:

- the flexible franking and new anti-streaming rule;
- permission for private companies to frank retrospectively;
- the simpler franking account structure;
- consistent treatment of franked dividends received by entities.

The proposed new anti-streaming rule requires distributions of dividends made within any “franking period” (generally six months) to be franked “to the same extent”; and that the ATO be notified if the level of franking varies between franking periods by more than 20%.

The permission for private companies to frank retrospectively, allows companies to frank dividends up to four months after the declaration date. This means they will not have to finalise their franking amount before they can confirm their financial position.

The simpler franking account structure provisions should make it easier to accommodate changes in the company tax rate and remove the need to maintain different classes of franking account. This appears to be a genuine simplification.

The consistent treatment of franked dividends received by entities removes the distinction between individuals and other entities, which apply a ‘gross-up and credit’ imputation, and companies, which receive an intercorporate dividend rebate for franked dividends. This should provide greater integrity and consistency as well as simplifying the imputation system.

Labor supports the Bills.

Question agreed to.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (1.51 a.m.)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

TAXATION LAWS AMENDMENT BILL (NO. 4) 2002

Second Reading

Debate resumed.

Senator CONROY (Victoria) (1.51 a.m.)—Given the hour, I am, once again, happy to speed our journey by incorporating my speech to the second reading debate.

Leave granted.

The speech read as follows—

The Taxation Laws Amendment Bill (No 4) is made up of four distinct schedules.

The first two schedules are not controversial.

Schedule 1 to the Bill tightens some of the provisions of the thin capitalisation regime.

The Bill redefines the exemption from the thin capitalisation regime for companies with minor overseas operations.

It ensures that interest-free loans are considered as equity for the purposes of the regime.

The consistent treatment of franked dividends received by entities removes the distinction between individuals and other entities, which apply a ‘gross-up and credit’ imputation, and companies, which receive an intercorporate dividend rebate for franked dividends. This should provide greater integrity and consistency as well as simplifying the imputation system.

Labor supports this measure.

Labor will not oppose this measure.

The Proposal in Schedule 3 to give temporary residents of Australia a tax exemption on foreign sourced income is extraordinary.

Labor opposes this provision.

If this becomes law, this would mean that temporary residents in Australia pay no Australian tax on most foreign-source income and capital gains, and their banks would be exempt from paying withholding tax on residents’ interest payments on overseas borrowings.
The cost of this tax cut would be $200 million over four years.

We have a serious concern about the distribu-
tional effects of this tax cut.

The Parliamentary Secretary to the Minister for
Finance has already said that this measure is de-
signed to attract “key personnel” for Australian
companies.

In other words, it is a tax cut for corporate high
fliers.

The foreign income tax cut is totally regressive.

Labor opposes the provision.

I foreshadow that Labor will be moving an
amendment to remove this regressive tax cut from
the Bill.

Finally, let me come to Schedule 4 of the Bill.

The schedule provides for legislative caps on the
effective life of assets used for gas transmission
and distribution, oil and gas production compa-
nies and companies operating aeroplanes and
helicopters.

The Commissioner of Taxation has announced his
determination on the effective life of a number of
asset types; aeroplanes; helicopters; gas transmis-
sion and distribution assets; and oil and gas pro-
duction assets, including offshore oil and gas
platforms.

The provisions in the Bill would legislate a form
of accelerated depreciation—in other words,
would legislate a statutory cap on the effective
life of these assets.

The cost to revenue of these caps is very signifi-
cant, $1.9 billion over ten years.

Of course Labor does not oppose a legislative
override of the Commissioner’s ruling on effect-
ive life in principle.

However, the Senate needs to assess this very
significant expenditure proposal carefully against
other priorities.

As part of business tax reform, a whole raft of
accelerated depreciation provisions for particular
sectors, along with a range of other sectoral subsi-
dies, were replaced by a lower corporate tax rate
across the board.

A central part of that trade-off was that the old
underlying depreciation schedules would be re-
viewed by the Commissioner of Taxation on an
“effective life” basis.

As the Ralph Report said:

The accelerated depreciation/company tax rate
reduction trade-off is the key issue.

Labor supported this sound reform.

We argue that investment should be driven by
economic return, not tax advantage.

We are pro-market, not pro- any particular busi-
ness interest.

It is a good reform and we supported it.

Frankly, these effective life caps have finally
killed off the idea that the Ralph reforms would
be revenue neutral.

Some of those companies that will benefit from
this Bill are flagrantly double dipping.

Some of those companies told the Government,
the Opposition, and indeed through the Business
Coalition for Tax Reform they told the whole
country that they supported a cut in the corporate
tax rate to be funded by getting rid of accelerated
depreciation.

Well here we are, just a few years later, and who
would have thought it. Capital-intensive compa-
nies are walking around these corridors pleading
for accelerated depreciation to be reinstated under
the new badge of effective life caps and threat-
ening to quit the country if they don’t get their
way.

There is a serious issue here about corporate re-
ponsibility.

The Government loves to apply mutual obligation
to the poor and the weak.

This is a massive tax expenditure on the rich and
the strong, and it comes with no strings attached.

A huge corporate subsidy like this should be con-
ditional upon the corporations that benefit from it.

There should be commitments to jobs, to training,
to apprenticeships.

Corporations must accept the responsibilities that
come with a huge subsidy of this kind.

In conclusion, the Opposition is not opposed to
the thin capitalisation provisions and the trust to
company roll-over provisions of Schedule 1 and 2
of this Bill.

With regard to the effective life caps, I register
the Opposition’s serious misgivings about the
process that the Government has followed and the
substantive outcome that the Government has
arrived at.

However it is not possible to unpick the provi-
sions of the Bill and on balance the package is
important to the national interest.

However the Opposition is completely opposed to
the Government’s $50 million tax cut for rich
foreigners.

We propose an amendment in the Senate to op-
pose that tax cut.

Question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator CONROY (Victoria) (1.52 a.m.)—I indicate that the Labor Party will be opposing schedule 3 of the Taxation Laws Amendment Bill (No. 4) 2002. I understand that Senator Brown also has an amendment, which we have not yet seen. I am not sure whether it has been circulated in the chamber.

Senator Brown—It will be circulated shortly.

Senator CONROY—It will be circulated shortly; thank you. The question of foreign source income for foreign executives is the substance of our amendment. We are concerned at the amount of revenue involved in a measure that will, surely, only be going to a small number of foreign executives, and we do not see the need for this. As the remarks in my incorporated speech in the second reading debate indicate, we are very unhappy about this measure. I give notice that we do not believe it is an appropriate use of taxpayers’ funds to give this sort of tax break to foreign executives, particularly given their somewhat colourful and successful regimes that run some of our larger public companies.

It is difficult to justify giving some of the richest people in the country $250 million worth of tax breaks at the same time as we are sluggng diabetics and the disabled. Those tax breaks would cover quite a large amount—if not all—of the cuts to disability benefits, but we are used to this government’s priorities; we do not expect anything different. We seek the support of the chamber, but I flag on Labor’s behalf that, if we are unsuccessful, we intend to revisit and redress this issue at the earliest opportunity.

Senator MURRAY (Western Australia) (1.54 a.m.)—Madam Chair West, because I was not able to do so during the valedictory session, I now take the opportunity to wish you very well in the future.

The CHAIRMAN—Thank you.

Senator MURRAY—I turn to the amendment. The Ralph provisions as originally put forward in this area were a narrower set than those now before us. One of the measures we are presented with in this bill is exempting all foreign income sourced from assets, regardless of when the assets were acquired. These measures are estimated to cost between $40 million and $50 million per year. While these measures are based on the recommendations of the Ralph review, they are much broader in scope. The Ralph recommendations were that income received from foreign sourced assets prior to residence in Australia be exempt. This has been extended to all assets, irrespective of when they were acquired. That is quite a different approach. The purpose of the Taxation Laws Amendment Bill (No. 4) 2002 has been stated to be attracting foreign workers and assisting the retention and attraction of corporate executives to Australia.

There are two elements to these measures. One is a fairness element that makes sure that foreign workers and executives coming to Australia are not unfairly taxed as a result of their previous taxation jurisdiction and their new one in Australia. The other element is an incentive to bring expats into Australia. The automatic assumption, of course, is that this affects highly paid executives. But it does not do just that. Expats and foreign workers range from nursing aides in country areas to the highest paid. We think that Ralph had a point, but we think that the government has extended the point too far. If the government returned to the original intention of Ralph, they might find us looking at the legislation with a friendlier eye. We will support Labor’s amendment.

Senator BROWN (Tasmania) (1.57 a.m.)—The Greens also support this amendment. I congratulate Labor and Senator Conroy for bringing it forward. The arguments already given for supporting the amendment are compelling, and I will not add to them except to say that it has our total support. I also flag a Greens amendment in relation to another component of the Taxation Laws Amendment Bill (No. 4) 2002. I ask the government about that component now; that is, the arrangements which affect the depreciation for taxation purposes on a wide range of goods, particularly aircraft.

The government will be aware that there is, apparently, a difference in what this im-
post will mean for Qantas and Virgin Blue with regard to the purchase of new fleets. I understand that the aviation industry is not keen on the legislation because it will lead to increased taxation; that does not greatly worry me. It would worry me, though, if this measure led to one airline gaining an advantage over the other—Qantas gaining an advantage over Virgin Blue—simply because of the timing of the purchase of new fleets by each airline. I flag that the nature of my amendment is to have a starting date of 1 October for the new taxation regime as far as commercial aircraft are concerned. My understanding is that this would put both airlines on an equal footing. Could the minister give me information about representations that may have been made to the government on this matter and whether there will in fact be a difference in impact on Qantas and Virgin Blue with regard to the purchase of new aircraft?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (1.59 a.m.)—Firstly, I want to make some brief comments in response to Senator Murray and Senator Conroy. This measure has been attacked as being a special concession for rich foreign executives, but the information provided by the Department of Employment and Workplace Relations in the latter half of 2001 identified that there was a national shortage of accountants, registered nurses, pharmacists, occupational therapists, radiation therapists and information and communication technology professionals. People granted a temporary visa to come to Australia to alleviate those skill shortages would all benefit from the temporary resident tax exemption. It is a fair assumption that more nurses, computing professionals and accountants will use the exemption than chief executives or managing directors. In fact, the exemption will be available to those who come to Australia to work on a temporary entry visa—that was the proposal—or the New Zealand equivalent.

There has been an indication that the measure will not be supported. It is a matter of great regret, because it is very much an equity measure to assist people to come to Australia and, indeed, to assist with the costs relating to temporary resident employees. It is an important consideration for business in establishing regional offices and headquarter offices and in making Australia the financial centre that we want it to be. I do not think there is any inconsistency at all regarding the fairness of this measure and the assistance to business that was intended.

In response to Senator Brown, there has been, I think it is fair to say, speculation about how the airline industry would be affected if the measure did not go ahead. There have certainly been some representations to that effect. The government, as a result of that, has committed to providing more internationally competitive depreciation regimes for airlines. Canada has a depreciation life for aircraft of six years; in the USA it is seven years. New Zealand’s depreciation life for aircraft is 10 years, the same as we are proposing for aircraft for general use. In fact, I think we have probably been a bit on the conservative side in the cap we have set.

Qantas has said that the failure to enact the cap would place pressure on them to consider relocating some of their operations offshore. Virgin Blue has made representations that the cap is very important for its ability to compete in the Australian skies because it will allow them to proceed with aircraft acquisitions that otherwise would have been very difficult.

I say to Senator Brown that it is not just big international companies that are affected; it is also small regional airlines, charter and courier companies, and all the other businesses which use aeroplanes and helicopters. Unless I receive any advice to the contrary, certainly my understanding, to the extent to which I have been personally involved in some of the representations that have been made to officials and through my office, is that Virgin Blue is certainly pushing for the existing cap and regards it as being very important. Obviously, it does not regard itself as being disadvantaged by the measure.

Senator BROWN (Tasmania) (2.03 a.m.)—I ask the Assistant Treasurer whether the start-up date of 1 July is of concern to Virgin Blue. My understanding is that it is, and that if it were delayed for 90 days, that would put the airline on a more equal footing.
with Qantas. I might be wrong about that, but that is my understanding.

**Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (2.04 a.m.)—** That is not something that I am aware of. As far as I know, that has not been brought to my attention or that of anyone in my office. I have in the advisers box people from the office and people from the department, and they are all shaking their heads.

**Senator BROWN (Tasmania) (2.04 a.m.)—** Is it the government’s understanding that Virgin Blue is absolutely pushing for the measure as it stands and is quite happy with it?

**Senator Coonan—** That is my understanding, Senator Brown.

**Senator CONROY (Victoria) (2.04 a.m.)—** Could I clarify the answer given to Senator Brown: are we aware of whether there would be an additional cost to revenue if Senator Brown’s option were to be supported by the chamber? The indication is that one particular airline may be caught out. Maybe that is just the way the cookie crumbles; you go for a level playing field and then the cards fall where they fall. But do we have an indication? Certainly, no-one has raised this with the Labor Party.

**Senator Coonan—** No-one has raised it with me that I am aware of.

**Senator CONROY—** No-one has raised it with us, so we are trying to work out whether there is a major competitive disadvantage and whether the minister is aware of anything.

**Senator BROWN (Tasmania) (2.05 a.m.)—** With respect to the debate so far, I will withdraw the amendment.

**The CHAIRMAN—** You have not moved it yet; you have only foreshadowed it. I have something from Senator Conroy that I want to put first.

**Senator BROWN—** Yes, but I have circulated it and I am informing the committee that I will not be moving it. I will acquaint the government with the representation that I have had.

The question is that schedule 3, page 34 line 1 to page 40 line 9, stand as printed.

Question negatived.

**Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (2.06 a.m.)—** I table a correction to the explanatory memorandum relating to the Taxation Laws Amendment Bill (No. 4) 2002. The correction was circulated in the chamber on 26 June 2002.

Bill, as amended, agreed to.

**Bill reported with amendment; report adopted.**

**Third Reading**

**Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (2.08 a.m.)—** I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**DIESEL FUEL REBATE SCHEME AMENDMENT BILL 2002**

**Second Reading**

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

That this bill be now read a second time.

**Senator BROWN (Tasmania) (2.08 a.m.)—** I am concerned about this scheme. It simply goes on and on. It is interesting to see that for the first time the Labor Party is flagging an amendment to chide the government over not doing more about renewable electricity generation as a viable alternative. That is a remarkable breakthrough. Not only did the mover of that amendment, Senator O’Brien, become very disparaging about the Sun Fund Bill, which I put before this parliament five years ago—which was to give landowners an option so that they could get 10 years of the diesel fuel rebate up front in order to have the capital to put in renewable energy such as solar and wind power—but Labor was the prime agent in blocking that measure then. So it is great that Senator O’Brien is now catching up and is beginning to see that this is the century of renewable electricity generation and that the fossil fuel
century has ended. The Labor Party is welcomed into the new age.

I also want to mention Senator Winston Crane—he is not here at the moment—who was very much taken by the Sun Fund Bill and, I think, has had something to do with the fact that the government has made some steps toward accepting that there are better alternatives to burning fossil fuel. We still have, in this legislation, government subsidy for the burning of fossil fuels and, therefore, the promotion of greenhouse gas escaping into the atmosphere. Under this government, Australians are the worst per capita greenhouse gas polluters on the face of the planet. That is a terrible record. Instead of this bill, we ought to be having comprehensive legislation to promote energy renewables and energy efficiency in this country. That is what we should be debating tonight.

Mr Acting Deputy President Ferguson, you will remember that three days ago I moved and the Senate adopted an order for the government to produce a number of documents which would allow us to chart the nation's progress in greenhouse gas production and global warming. So far as I know, the government has not even had the courtesy to produce those documents or a statement to the Senate. After some effort, I have had one given to me by the minister and it is a curt and peremptory dismissal of a request for those documents. I would have expected a bit of courtesy and a little bit of information from the office of the Minister for the Environment and Heritage. If the documents are not ready, I would have expected an offer for a briefing on where we are at, but there was none of that. Rather, there was a very curt dismissal, a rude rebuff to the Senate's order—in fact, no compliance at all—and a failure by the government to recognise that this is a serious matter, of great concern to many constituents. The government needs to keep the Senate and the country much better acquainted with its progress or lack of progress as we move towards the 10-year review of the Rio conference to be held at Johannesburg the month after next. I have a second reading amendment which has been circulated and I move:

Omit all words after “That”, substitute “further consideration of the bill be an order of the day for the day after the order of the Senate of 26 June 2002 for the production of environment and greenhouse gas emissions documents is complied with”.

Senator Hill (South Australia—Minister for Defence) (2.13 a.m.)—I would like to respond to Senator Brown's amendment and throw myself at his mercy because it is true that I missed the fact that the Senate had passed an order that certain documents be tabled no later than 2 p.m. this day.

Senator Faulkner—It's already 2 a.m. the next morning. You're 12 hours late, Senator Hill.

Senator Hill—Not only were the documents not tabled but an explanation was not given to the Senate within that time frame explaining the default, Senator Faulkner. I did think that Senator Brown was a touch unfair, however, when he characterised what followed from the grievous failure to comply with the Senate's requirement—that was, when he brought it to my attention, I acted promptly and sought advice from the Minister for the Environment and Heritage on how this failure to comply could have occurred. What I was told—I have informed Senator Brown of this and have received more detail as a result of following up further discussions he and I have had—is that each of the four documents, which are basically this year's reports on a series of different things, are still in draft form. They are expected to be completed before the parliament resumes. I am told by the Minister for the Environment and Heritage that they will therefore be available for tabling on the first day of sitting in the next session.

It is not normal practice of course—and I think Senator Brown would accept that—to table documents whilst they are still in draft form and have not yet been approved by the minister. But as I said to Senator Brown, as I understand it, each of them will be made public in any event, so if they are made public in the meantime, obviously we could make an effort to specifically bring them to Senator Brown's attention. But certainly I am instructed that I can give the undertaking that they will be available for tabling on the first
day of sitting in the next session. I hope in those circumstances Senator Brown might be prepared to accept that as a reasonable outcome, notwithstanding the fact that we should have made such a statement before 2 p.m. this day.

Senator O'BRIEN (Tasmania) (2.16 a.m.)—Mr Acting Deputy President, I have a not insubstantial contribution to make to the debate on the Diesel Fuel Rebate Scheme Amendment Bill 2002, but I am proposing to incorporate it, if that is acceptable. There are some short points that I will make in addition to that.

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Senator O'Brien, you will need to seek leave to incorporate that.

Senator O'BRIEN—I seek leave to incorporate a contribution and I will add to it now.

Senator Faulkner—Leave is granted.

Senator O'BRIEN—Thank you, Senator Faulkner. I was hopeful I would have your support.

The ACTING DEPUTY PRESIDENT—I am sure you will get leave, Senator O'Brien.

Senator O'BRIEN—If Senator Faulkner wants me to do more than incorporate my speech, I am happy to do that as well.

Senator Faulkner—Leave is not granted if you do any more than incorporate.

Senator O'BRIEN—I thought that might be the case, so let's get on with it.

Leave granted.

The speech read as follows—

This bill seeks to amend both the Customs Act 1901 and the Excise Act 1901 to extend the Diesel Fuel Rebate Scheme to operators of retail and hospitality businesses in remote areas who use diesel fuel to generate electricity for their own use. While the Opposition will not oppose this Bill, I plan to move a second reading amendment. Because the rebate will only apply to businesses where there is no ready access to a commercial supply of electricity, it will principally benefit businesses in remote areas of Australia. Typically, businesses that will benefit from this rebate include caravan parks, tourist resorts and roadhouses.

If a drafting change to the Explanatory Memorandum is undertaken, it will indicate that to be eligible for a rebate the electricity generated by the fuel must be used at premises where a retail or hospitality business is carried on. The fuel does not need to be used at the premises, however, it must be used nearby. In other words, the diesel generator does not need to be physically located on the premises of the business seeking a rebate.

This Government made an election commitment to this initiative and as such we will not oppose this Bill.

The Legislation states that the level of rebate is to be at the same rate as if the diesel fuel had been used in primary production. In the Second Reading Speech, the Minister advised that the rate is currently equal to the full amount of excise paid on the fuel, 38.143 cents per litre.

The Government has estimated that the introduction of this Bill will result in additional expenditure of approximately $20 million per year. At first glance this may not appear to be much in the context of the Federal budget. However, it represents more than 52 million litres of diesel fuel per year.

52 million litres of diesel fuel, simply to get the Member for Kalgoorlie over the line. It is hard to believe that this Government is giving up on developing renewable remote power generation alternatives such as photovoltaic arrays, wind turbines and hydro units.

It is shameful that this Government is happy to support the burning of 52 million litres of diesel fuel each year without investigating alternate energy sources. Establishing renewable sources provides a long-term solution. They can continue to provide the energy year after year. They will overcome the need to burn 52 million litres of diesel fuel each year, year in and year out. Renewable sources will also decrease the emission of greenhouse gases. Although not very large in the overall scheme, surely this is an opportunity to demonstrate that the Australian Government is committed to reducing the increase in greenhouse gas emissions.

It is interesting to note that the extension of this rebate is only to retail and hospitality businesses.
Why is it for these businesses and not all businesses in remote locations that have no access to a commercial supply of electricity?

Why is it not extended to isolated indigenous communities? Why is it not extended to remote manufacturing and construction industries? The Government gives no explanation for this.

It is yet another example of this government providing funds to mates, continuing their habit of dishing out unfocussed largess on the pretence of supporting ‘problem’ regions or communities. This only creates busy but unfocussed local action, removes local control and stifles enterprising initiative.

When will the Government learn that it is its responsibility to support the process of being enterprising in regions and stop reinforcing a culture of dependency on Government handouts?

Providing the infrastructure to all in remote locations within Australia is a legitimate role of Government. It supports the process of being enterprising. It enables businesses and communities to take the initiative to develop their own solutions.

It enables communities to generate and implement new ideas.

Increased community capacity will encourage effective local leadership that can galvanise the enterprising strength of the local community from within.

It would bring the community together and make it worthwhile for the members of the community to provide their own social capital. It will increase trust in the communities. It will boost cooperative action and innovative outcomes.

It would assist in building vital networks and partnerships, in and between regional communities. By bringing people together it will enhance cooperation and the building of strong informal and formal networks and partnerships.

Instead this Government has continued their long standing tradition of providing largess to a few and dividing communities, partnerships and regions.

All this does is reinforce a culture of dependency on Government handouts.

Madam President

In a little cheapjack deal with the Democrats to get the GST through the Senate, the Howard-Costello-Anderson government introduced the Diesel and Alternate Fuel Grants Scheme and the Diesel Fuel Rebate Scheme in June 1999.

The Democrats, in a vain attempt to restore a modicum of credibility after their disastrous marriage of convenience over the GST, pushed the Government to include sunset clauses in each of these bills. The sunset date was set at 30 June 2002.

30 June 2002 is fast approaching. The Government has done nothing about developing an alternative to these two schemes. As a consequence, we reluctantly agreed to an amendment to these schemes to extend the sunset date out to 30 June 2003.

The Deputy Prime Minister’s alternative to these two schemes is an Energy Grants (Credits) Scheme. So far neither we nor anyone else has seen what this Energy Grants (Credits) Scheme is going to look like.

We are eagerly awaiting the release of information about the new scheme.

Everyone in the transport industry is eagerly awaiting the release of information about the scheme.

So desperate was the Minister for Transport and Regional Services to control the Energy Grants (Credits) Scheme that he wrote to the Prime Minister identifying the Department of Transport and Regional Services as the lead agency for the development of the scheme, and then, only days later, as the Acting Prime Minister he wrote back to himself confirming that his Department would be the lead agency.

If he were so keen to be in charge of the process, then you would think he would be doing something about it. What has been done so far? Nothing.

At the time of the original legislation the Howard Government said that the new scheme would maintain the equivalent benefits of the old ones. The Minister for Transport and Regional Services, Mr Anderson also said that the new scheme would “provide active encouragement for the move to the use of cleaner fuels.”

The Road Transport Industry needs to know the nature of the new Energy Credit Scheme as it is likely to impact directly on operating costs, decisions about capital investment, business expansion, markets and technological choices for their businesses and families.

I trust that the Government will give these interested Australians the opportunity to fully discuss the proposed Energy Grants (Credit) Scheme prior to the sunset of the Diesel and Alternative Fuel Grants Scheme and the Diesel Fuel Rebate Scheme.

Fuel Taxation Inquiry

Although you wouldn’t know it from the Treasurer’s less than enthusiastic launch of the Fuel Taxation Inquiry, many of the issues I have cov-
ered today have been addressed by the “Trebeck” report.
The Fuel Taxation Inquiry made a number of recommendations that establish a framework for the establishment of the Energy Grants (Credits) Scheme.
It outlined design principles for the scheme including the introduction of a Business Fuel Credit Scheme for all businesses, not just those that are the favourite of the day of the Coalition Government.
It recommended that the Business Fuel Credit Scheme should replace the Diesel and Alternative Fuel Grants Scheme and the Diesel Fuel Rebate Scheme, and it recommended mechanisms to develop the environmental component of the proposed scheme.
The Fuel Taxation Inquiry therefore provides the framework for this Government to implement its commitment to a Fuel Grants (Credits) Scheme. It has chosen to completely ignore the recommendations of the Inquiry.
It makes you wonder why the Inquiry was established at all.
Why did the Government spend almost four million dollars of tax-payer’s money for an inquiry that they always intended to ignore?
Why did the Government invite almost 300 Australian organisations, businesses and individuals to prepare detailed and costly submissions to this Inquiry?
The Government robbed them blind.
The Government has set in train a process that has raised expectations. The response from industry clearly indicates that this issue is of the utmost importance to them.
This Government has duded them.
It is clear that you called the Fuel Taxation Inquiry for cynical election purposes with no intention of a genuine review of fuel taxation issues.
In doing so this Government has plainly misled the Australian community.

Senator O’BRIEN—The opposition is not opposing this legislation. In relation to it, we say that the government ought to be condemned for its failure to deliver on its commitment to develop an energy grants credits scheme to replace both the Diesel and Alternative Fuels Grants Scheme and the Diesel Fuel Rebate Scheme; its failure to prioritise support for the accelerated take-up of renewable electricity generation as a viable alternative to diesel rather than extend the diesel rebate that would lead to long-term greenhouse gas reductions; and for conducting a fuel tax inquiry only for cynical and expensive election purposes, with no intention of a genuine review of fuel taxation issues. I will move the opposition’s second reading amendment at the appropriate time.

The ACTING DEPUTY PRESIDENT—You will have to foreshadow it because Senator Brown already has an amendment before the chair.

Senator O’BRIEN—I will foreshadow that. In relation to Senator Brown’s second reading amendment, I can indicate that the opposition hears what Senator Hill says in terms of giving an unequivocal undertaking that the return to order will be complied with on the next day of sitting. The opposition does not propose to adjourn the debate on this bill until that time, given that undertaking, and we will therefore not support the second reading amendment moved by Senator Brown.

Senator ALLISON (Victoria) (2.19 a.m.)—I have a very long and detailed second reading contribution and, in the interests of getting to bed before dawn, I seek leave to incorporate it. But I want to quickly indicate that the Democrats are extremely disappointed that we are having to deal with the Diesel Fuel Rebate Scheme Amendment Bill 2002. We will oppose it in its entirety. We will be supporting Senator Brown’s second reading amendment, because this is not good for the environment and it is not good for the future of renewable energy or alternative fuels.

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Senator Allison, do I understand that you are seeking leave to incorporate your speech?

Senator ALLISON—Yes, I am.
Leave granted.

The speech read as follows—
The Diesel Fuel Rebate Scheme Amendment Bill 2002 seeks to extend the diesel rebate scheme to include power generation by retail/hospitality businesses that do not have access to mains electricity. The Government says the bill is needed, particularly for remote tourism operators, although no evidence been provided to support this
claim. Absolutely none. And the reason why no evidence has been provided is because there is none. We hear that the reason this bill came about is because of the pre-election campaigning of a roadhouse owner in WA. An outstanding example of pork barrelling, which will cost Australians $20 million per year. $20 million, which I’m sure most Australians could suggest a number of better uses for. Like more funding for education or health.

As my initial comments indicate, the Australian Democrats are extremely disappointed by the presentation of this bill. Despite what the Government says, this bill will result in the increased use of diesel fuel (adding to Australia’s already woeful level of greenhouse gas emissions). It will further mean that there will be no incentive for the remote retail and hospitality businesses to switch to cleaner renewable or alternative fuel systems. We are informed that the payback renewable remote area power systems are only marginally cost effective now and that a rebate on diesel would effectively mean that there would be little if no price differential between diesel and LPG.

Now the Government, if it were genuinely committed to reducing the use of diesel fuel in remote communities, would be concerned that the extension of the diesel fuel rebate to remote retail and hospitality businesses will adversely affect the operation of their Renewable Remote Power Generation Program (RRPGP). This is a program which the Democrats negotiated in good faith with the Government and which is so far considerably underspent.

Most businesses, and this is understandable given their short term prerogatives, will not be persuaded to outlay considerable sums on a new renewable remote power system when diesel is going to be so cheap after this bill is passed. Why, for instance, would a roadhouse pay $180,200,000 for a 12-14kW PV system if diesel is going to be 38 cents per litre cheaper, and when the relative payback period for the new investment will now be that much longer? The low cost of diesel is already one of the main reasons that hybrid renewable or gas systems have not been taken up to the extent that we might have hoped.

The Australian Greenhouse Office, the Commonwealth’s lead agency for dealing with greenhouse matters, agrees. In its submission to the inquiry on this bill, it stated that:

Reducing the effective price of diesel by 38.143 cents per litre for power generation by small retail/hospitality business may result in reducing the incentive for a small segment of consumers to take up renewable energy and alternative fuel opportunities, to lower greenhouse gas emissions. This is because the measure will increase the relative payback period for affected projects to recover the up-front capital cost of such new investment.

They further argued that:

The AGO estimates that the extension of the Diesel Fuel Rebate to small retail/hospitality businesses could reduce the potential target market for the Commonwealth Renewable Remote Power Generation Program by up to 21 million litres, or about 4% of total diesel fuel consumed, although accurate data on the diesel fuel used by these businesses is not available.

I found it very interesting that when my staff contacted those officers responsible for the delivery of the Remote Power Generation Program (RRPGP) in State Sustainable Energy Authorities none of them had been consulted about the bill by the Federal Government despite the fact that this bill will impact on their programs. One of the agencies heard word of the bill through a roadhouse owner who was interested in moving from a diesel only generator to a hybrid remote area power station with renewables until he heard that this bill was on the cards. Unfortunately, for this agency, roadhouses were to be their next target group under the RRPGP program.

How this Government can support this bill when it directly conflicts with its policy objective under the RRPGP program is beyond me. This policy objective, which the Government obviously needs reminding of, is “... to increase the uptake of renewable energy technologies in remote areas of Australia, which will:

1. help in providing an effective electricity supply to remote users;
2. assist the development of the Australian renewable energy industry;
3. help meet the energy infrastructure needs of indigenous communities; and
4. lead to long term greenhouse gas reductions.”

It is important to recognise that it is not just renewables like wind and solar that will be affected. This bill will also adversely affect the uptake of combined diesel/LPG systems that like the hybrid renewable systems produce less greenhouse emissions and other air pollutants.

An example is the combined diesel/gas generator currently operating at the Palm Bay Hideaway on Long Island. The old, polluting diesel only generator was converted to operating on diesel and
Interestingly, the ALP argues that this bill is our fault and that they wouldn’t be in this position if the Democrats had pushed the Government harder on the start-up of the Energy Credits Scheme. Indeed, it’s all very well for the ALP to sit back and say that it’s all the Democrats fault. This is a very convenient excuse. Because the truth of the matter is that the ALP is of a like mind with the Government on this issue. If it wasn’t the ALP wouldn’t support this bill and wouldn’t have supported the extension of the start-up date for the Energy Credits Scheme. It’s my view that the ALP’s support for this bill, like the Government’s was made some time ago, and that this bill is unfortunately a fate accompli.

Their rather loosely veiled strategy is to attack us so that their own hypocrisy will not get as much attention. But this isn’t working. The environment groups and the alternative fuels groups can see through this. Those who appeared at the hearings will know that the ALP was so disinterested in the issue of how this bill will impact on the uptake of renewable energy and alternative fuels that it did not ask one question at the Committee hearings. Not one.

In my opinion this is a very sorry episode. The only glimmer of hope I take is the knowledge that we now have the ALP’s full support for the implementation of an Energy Credits Scheme. We look forward to them joining us in pressuring the Government to develop and implement the scheme poste haste.

Senator COOK (Western Australia) (2.19 a.m.)—I want to make a few remarks about the Diesel Fuel Rebate Scheme Amendment Bill 2002. I was all dressed up and ready to deliver a 20-minute speech, but I will bring it down to about five minutes, given that it is now 2.20 a.m. and the pressure is on to complete our deliberations.

This bill does extend the diesel fuel rebate to include diesel used for power generation at remote roadhouses and hospitality and tourist businesses which have to generate their own electricity because they are not on the grid. The diesel is much more expensive there than elsewhere where it is used for power generation. It corrects an anomaly created by the GST which left mines and farms eligible to claim the rebate, but not small businesses on the remote highways of Australia, who do a great job for the travelling public. Those roadhouses are places the travelling public relies on in case of being stranded due to floods or cyclones. They form an essential part of the infrastructure for the travelling public and the business owners ought to be encouraged to go to these

Remote renewable power generation is a clear opportunity to replace fossil fuel generation with renewables, invest our regional infrastructure and provide a more sustainable future for our regions. It will then provide them with access to cheaper fuel and electricity costs, yet the government has failed to deliver on its promise of such investment. It shows that Prime Minister Howard and the government’s professed greenhouse abatement commitment and their professed commitment to the sustainability of our regions are a farce.

As a result, many of our remote retail and hospitality operations remain dependent on diesel power generation and they are the victims of increasing fuel prices.

Interesting, the ALP argues that this bill is our fault and that they wouldn’t be in this position if the Democrats had pushed the Government harder on the start-up of the Energy Credits Scheme. But I’d like to remind the ALP that it was them, not us, that supported the extension of the start-up date for the scheme to July 2003 instead of July this year.
very remote locations unhampered by an additional, unfair impost.

This was an issue encountered during the Labor Party’s fuel inquiry last year, which I chaired. I recall one publican from a remote location who said that his diesel bill was bigger than his brewery bill. In other words, it cost more to chill the beer than it cost to buy it. I would particularly like to acknowledge the assistance of a couple of people at the inquiry: Mrs Helen Tees from Widgiemooltha, an hour’s drive south of Kalgoorlie on the Goldfields-Esperance Highway, and Mr Bob Bongiorno from Baladonia, 930 kilometres from Perth, out on the Nullarbor, who made the seven-hour return trip to put his case on diesel fuel to us in Kalgoorlie. I would also like to acknowledge the Hon. Julian Grill, former WA state member for Eyre, and his successor, John Bowler MLA, who also fought hard for their remote constituents on this issue and who must share the credit too.

In the case of Bob Bongiorno, who drove for seven hours to speak to us, he said it was because of the shameful incompetence that he and Helen Tees received from their federal member in the House of Representatives, Barry Haase. Mr Haase’s sole interest seemed to be, at every opportunity, to use it as a political football and to somehow blame Labor for the government’s flawed fuel taxing regime. Indeed, when this bill was debated in the other place, he did not even speak on it.

I am very pleased that Labor has forced the correction, because I believe it was pressure from us that forced the correction of this injustice for those living in remote localities in Australia. There was pressure particularly from Kalgoorlie. That provides us with some encouragement to make sure these small businesses are safeguarded in the future.

Senator McGauran (Victoria) (2.22 a.m.)—I seek leave to incorporate my speech in Hansard.

Leave granted.

The speech read as follows—

I rise to speak on the Diesel Fuel Rebate Scheme Amendment Bill 2002.

The amendments to the bill are aiming to extend the eligibility for the rebate to retail and hospitality businesses that use diesel to generate power when they do not have access to mains electricity. This was announced as an election promise by the Coalition government during the 2001 election campaign and will benefit small business operators in remote areas of Australia by providing a rebate on the customs or excise duty paid on diesel and like fuels used by them to generate power for their own use.

The extension of the Diesel Fuel Rebate Scheme originated from the recognition of some of the difficulties suffered by small outback tourism operators. The National Party’s policy document Securing Australia’s tourism future states:

‘Another measure which will help tourism operators is the extension of the Diesel Fuel Rebate Scheme. A re-elected Coalition government will extend the eligibility for the Diesel Fuel Rebate Scheme to small retail/hospitality businesses producing their own electricity from diesel, provided there is no access to grid power. Businesses such as caravan parks, tourist resorts and road houses will benefit from the Scheme …’

This measure compensates such businesses for the considerable costs of power generation in regions where there is no access to the power grid and where excise imposts can disadvantage isolated communities. This government had constantly indicated its commitment to rural and regional Australia, including those people resident in isolated communities. The government does this by providing a rebate of excise or customs duty on fuel used by retail and hospitality businesses—not just small retail and hospitality businesses—to generate power for use in the business after 1 July 2002.

It is worthy to note that this is the second extension to the Diesel Fuel Rebate Scheme by the Coalition, since it came into government in 1996. The introduction of the New Tax System in 2000 saw an extension of the old scheme of rebate from agriculture, fishing and mining to rail and marine transport, as well as bush nursing homes, hospitals, aged people’s homes and the like.

At a time of budgetary constraint, and in a time of surplus budgets, the Diesel Fuel Rebate Scheme, may have been seen as an easy target for Treasury to cut, but the truth is the government sees its value and have in fact extended this tax rebate, it plays a vital role in reducing the costs structures of rural and regional Australia. Not only does the rebate scheme provide major benefits to rural and regional Australians through the lowering of transport and production costs but it also improves Australia’s competitiveness in the export
market, and export competitiveness is the lifeblood of the rural community. Fuel is probably one of the largest costs for families and business in rural and regional areas.

The Coalition, while being fully committed to the scheme, are only too aware a tight administrative control over the accounting procedures is necessary so that the scheme runs effectively. I know this often leads to complaints from users that the system has more red tape than is necessary, but it is important to keep the integrity of the scheme before the taxpayer and, in particular, those who do not use the scheme. It is important that the scheme does not lapse from a tax incentive to a tax evasion. That is why we moved to make several worthwhile administrative changes following the 1996 Audit Office report on the abuse and misuse of the system.

So, while the government will come down hard on misuse scheme, we are committed to the scheme because we know, as they would be aware, fuel pricing is what is known as an ‘inelastic’ price. In other words, if the price of fuel goes up, the usage does not automatically fall; likewise, if the price of fuel goes down, it does not mean that the usage of fuel automatically goes up. It is with this in mind that the importance of the Diesel Fuel Rebate Scheme can be fully understood. Therefore, it is imperative that rebates are provide on such an ‘inelastic’ cost to those people and businesses that provide the Australian domestic market and also export market consumer products.

Alternatively, the record of the Opposition when in government from 1983 to 1996, saw fuel as nothing more than something to be feasted upon, something for the Treasury coffers. It was the Labor Party in government that introduced indexation on petrol and diesel. We abolished indexation. And it was the Labor Party who increased petrol and diesel excise as a discretionary budget measure. Worse, this was at a time of budget deficits which they tried to plug.

In contrast, this government has not once increased the excise level of petrol and diesel. We do not see fuel as a way of meeting budget demands. We resisted the temptation to use fuel taxes to support our budget surplus aims. I believe it is a credit to our economic management and to the ongoing efficiency and competitiveness of the rural sector as a result.

As for the minor party in the Senate, the Democrats, we know only too well their stated policy is to abolish the Diesel Fuel Rebate Scheme. The Democrats have a somewhat genuine concern regarding the environmental effect of diesel fuel production and greenhouse effect, but their solution is extreme. We believe there is a balance to be struck between a genuine concern for the environment and the reality of the use of diesel.

I rely upon the second reading speech of the parliamentary secretary who introduced this bill in the other house when he said:

The government is indeed committed to introducing the Energy Grants Credit Scheme by 1 July 2003. The scheme will maintain entitlements equivalent to the Diesel Fuel Rebate Scheme and the Diesel and Alternative Fuels Grants Scheme while providing greater incentives for cleaner fuels...government is strongly committed to increasing the use of renewable energy in Australia as a way of meeting our increasing energy needs without adding to our greenhouse gas emissions. To this end we have committed over $300 million for renewable energy support focused on three areas. Key achievements include the Mandatory Renewable Energy Target—world first legislation—that guarantees that enough new renewable electricity is generated over the next 10 years to supply the residential needs of a city of four million people. This initiative is being achieved by establishing an innovative market in renewable energy certificates and is expected to deliver in excess of $2,000 million of new investment in renewable energy in Australia.

As part of an agreement made with the Democrats at the time of the introduction of the New Tax System—read GST—improved emissions standards for petrol and diesel vehicles have been introduced with the Diesel and Alternative Fuel Grants Scheme and Diesel Fuel Rebate Scheme being combined into the Energy Grants (Credit) Scheme to commence in July 2003. It is worthy to note this agreement was an effective result-driven use of the Democrats’ use of their numbers.

The new standards will means that emissions rates from oxides of nitrogen and particulates in new medium to heavy duty trucks will be 50 per cent and 90 per cent lower respectively after 2006 than in today’s vehicles.

I reiterate the essence of the Diesel Fuel Rebate Scheme. Road and rail transport tourism is the very lifeblood of rural and regional Australia. It moves produce to markets and it delivers the necessities of life. Thus, the cost of this transport impacts heavily on the price of that produce on the domestic and international market and on the cost of virtually everything needed for day-to-day life. Cheaper fuel means lower costs which, in turn, mean enhanced prospects for our exports and a dampening on the cost of living for regional and rural Australians.
It is with great enthusiasm that I recommend this bill to the Senate.

Question negatived.

Senator O’BRIEN (Tasmania) (2.23 a.m.)—by leave—I move:

At the end of the motion, add “but the Senate condemns the Government for:

(a) failing to deliver on their commitment to develop an Energy Grants (Credits) Scheme to replace both the Diesel and Alternative Fuel Grants Scheme and the Diesel Fuel Rebate Scheme;

(b) failing to prioritise support for the accelerated uptake of renewable electricity generation as a viable alternative to diesel rather than extend the diesel rebate that would lead to long-term greenhouse gas reductions; and

(c) conducting the Fuel Taxation Inquiry only for cynical and expensive election purposes with no intention of a genuine review of fuel taxation issues”.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator ALLISON (Victoria) (2.24 a.m.)—by leave—I move:

(1) Schedule 1, item 1, page 3, (lines 7 to 12), omit paragraph (ad), substitute:

(ad) at particular premises to generate electricity from a hybrid remote power system incorporating renewable energy or a combined diesel and alternative fuel generator using at least 30% alternative fuel for the total fuel usage, for use in the course of carrying on, at those premises, an enterprise that:

(i) has, as its principal purpose, the retail sale of goods or services or the provision of hospitality; and

(ii) does not have, at those premises, ready access to a commercial supply of electricity;

Note: For the purposes of this paragraph, alternative fuel includes Liquefied Petroleum Gas (LPG).

The purpose of these amendments is to confine this diesel rebate scheme—in other words, reduce the diesel excise—to those premises that have a remote area power generation scheme. This would mean that they had a dual diesel and renewable energy generator, as is provided for under the remote area power generation scheme. This has been slow to get going but, nonetheless, is very successful in converting a lot of remote area power generation previously using 100 per cent diesel into solar and wind energy to supplement that diesel. This has already seen an enormous reduction in pollution from diesel, in noise, and fumes from diesel affecting remote area generation and remote communities.

As I said earlier, it is an enormous disappointment that the government has seen fit to put this forward. I think the ALP has been very cynical in suggesting, through its second reading amendment, that it essentially opposes it, so I wonder why we are even moving into committee for this part of the debate. It does mean that diesel will increase in terms of consumption. In fact the Australian Greenhouse Office gave evidence to the committee which inquired into this measure and they said that reducing the effective price of diesel by 38.143c per litre for power generation by small retail and hospitality businesses may result in reducing the incentive for a small segment of consumers to take up renewable energy and alternative fuel
opportunities to lower greenhouse gas emissions. This is because the measure will increase the relative payback period for affected projects to recover the upfront capital cost of such new investment. The AGO estimates that the extension of the diesel fuel rebate to small retail and hospitality businesses could reduce the target market for the Commonwealth remote power generation program by up to 21 million litres of diesel. That is about four per cent of the total diesel consumed. Accurate data is not available for these businesses but that was their best estimate of what this measure means.

The Democrats are very sympathetic to lowering transport costs and costs generally for people in remote locations. This is one of the reasons we backed the renewable remote power generation program, because it did give those communities the opportunity not to be locked into diesel forever into the future. They would be able to afford to put in new generation which would be cleaner and much more beneficial for the environment. So it is a great disappointment that this is occurring.

I have spoken to both renewable energy and LPG operators who say that there are a number of tourist operators in particular who are just about to shift across from diesel to dual fuel, using gas injection or using renewables, but with this measure it simply will not be worth their while and they will continue to operate on a 100 per cent diesel. That includes islands in sensitive remote areas in the Great Barrier Reef. Rottnest Island is one case in point. Generation there for a long time has been by diesel, and here was an opportunity to put in a cleaner generator which would have used gas and, ultimately, would have probably achieved about 80 per cent gas. But this measure will see that completely off the agenda for those operators. It is not in their financial interests to proceed down that path. So it is a lost opportunity.

It is shameful that the ALP is supporting the government in this instance. I feel that if we can at least restrict this measure to those that have already taken the step of moving to alternative fuels or renewable energy as part of their electricity generation then at least we put the right incentives in place for those operators to move in this direction. This is an enormous blow to renewable energy. It is an enormous blow to alternative fuels and gas and it is a big mistake. This will not be able to be corrected by the energy credits scheme even though it will take over the diesel rebate scheme, because of course what is inherent in that arrangement is maintaining entitlements. So this entitlement will continue to be provided.

It is a very sad day indeed for me. I think there was great prospect that we would see remote areas switching across from diesel to other fuels, and this will simply stop that in its tracks. There is no question about it, it is a grave and sad day. I would like to talk for longer but, as I said earlier, I am as keen as anybody else to get to bed. I would urge the ALP, and the government for that matter, to think seriously about these amendments. They are reasonable and they are the right thing to do. If we need to assist roadhouses, remote caravan parks and island resorts in various places, let us find another way of doing it. Let us find a way of providing them with some further subsidies so that they can move to cleaner fuels instead of locking them into diesel, which is, as we all know, noisy, smelly and highly polluting when it comes to transporting it around. I urge the government and the ALP to seriously consider these amendments.

Senator BROWN (Tasmania) (2.30 a.m.)—I am totally in support of the amendments put, for all the reasons that Senator Allison has outlined. I cannot believe that she can be right about this. I have just reread the second reading amendment from Senator O’Brien and he is very clear about it. He is chiding the government—in fact, he is condemning the government—for failing to prioritise support for the accelerated uptake of renewable electricity generation as a viable alternative to diesel. Senator Allison’s motion does just that, so surely Senator O’Brien is going to support this. Just five years ago he was blocking the Sun Fund Bill on behalf of the Labor Party. Surely it could not be that five years down the line he is now advocating through his amendment the very premise on which the Sun Fund Bill was put forward but then going on to effectively knock out
the same philosophy in terms of Senator Allison’s amendments. I do not think any politician could possibly be putting forward an amendment to undo the bad work done before and then turn straight around and go right back to past form. That would be incredible.

I expect Labor will be supporting Senator Allison’s amendments. That would be consistent, logical and dinkum. It is actually a misuse of the Senate’s time and fair process to bring forward an amendment like this on second reading which we know has no teeth in it and then, when Senator Allison brings forward an amendment which does have teeth in it, to vote it down. It is in the hands of Senator O’Brien and the Labor Party. It has chided, it has condemned the government. Here is the real test. Senator Allison has brought these amendments forward. Let us see whether Labor is dinkum about this or is simply involved in greenwash, in double-speak, in trying to put up a greening front when it is simply back there in the polluting fossil fuel promotion old days.

Senator O’BRIEN (Tasmania) (2.33 a.m.)—I would have thought that the last person to accuse anyone of wasting the Senate’s time would be Senator Brown. Given that we have a limited amount of time to deal with all the legislation and messages that we are going to deal with tonight, I will confine my remarks to the amendments. The reason that we are here is that, firstly, the Democrats did a deal with the government on the GST and part of the deal was to introduce the Energy Grants Credits Scheme. But of course nothing has happened, so we were left with a situation of seeing a problem emerge for the users of diesel fuel in remote parts of Australia. What the ALP has done has allowed a further 12 months, and 12 months only, extension of this legislation, requiring the government to develop the overdue Energy Grants Credits Scheme.

We believe that the pressure ought to be placed on the government to conclude that, and that is the reason that we have said we will not extend the sunset clause past the 12 months which is allowed. We believe that that is the appropriate course of action. This is the government which has promised much in relation to establishing an Energy Grants Credits Scheme, this is the government that has taken to the Australian people a fuel tax inquiry promising some sort of magical solution to the problems of fuel tax in this country—but this is the government which has to date delivered nothing. We do not see it as practical to amend this legislation, which has 12 months to run from Sunday.

We see the solution to this matter being the promulgation of the Energy Grants Credits Scheme in legislation passed by this parliament before a further 12 months has elapsed, and we say again that we will not be extending the sunset clause provision on this legislation. The government has committed to promulgate that legislation within 12 months and to give effect to such a scheme. That is the deal the Democrats did, so I do not see why they can complain. They arranged to pass the GST and this was a quid pro quo. We are now saying to the government, ‘Live up to your undertaking.’ We are saying to the Democrats, ‘The pressure you ought be bringing to bear is the delivery of that deal.’ We will do what we can to make sure the deal is forthcoming, but we are not going to tinker with this legislation, which has only 12 months to run.

Senator BROWN (Tasmania) (2.36 a.m.)—What a flop. There is only one thing that is needed here to bring pressure on the government, and that is for Labor to support the Democrat amendments.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (2.37 a.m.)—I move:

That this bill be now read a third time.

Senator BROWN (Tasmania) (2.37 a.m.)—by leave—Could the Senate record that I oppose the bill on behalf of the Australian Greens.

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—The Senate will record that.
Senator ALLISON (Victoria) (2.37 a.m.)—by leave—Could it be recorded that the Democrats are also opposed to it.

The ACTING DEPUTY PRESIDENT—Certainly.

Question agreed to.

Bill read a third time.

WORKPLACE RELATIONS AMENDMENT (FAIR DISMISSAL) BILL 2002

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Workplace Relations Amendment (Fair Dismissal) Bill 2002, acquainting the Senate that the House has disagreed to the amendments made by the Senate and requesting the reconsideration of those amendments.

Ordered that the message be considered in Committee of the Whole immediately.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (2.38 a.m.)—I move:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Senator SHERRY (Tasmania) (2.39 a.m.)—I indicate on behalf of the Labor Party opposition that we will be insisting on the amendments that we have successfully passed through the Senate chamber earlier this evening. The Labor Party position is on the record very clearly, and I do not intend—particularly given the lateness of the hour—to reiterate that.

Senator MURRAY (Western Australia) (2.39 a.m.)—In 1996 the coalition gave a commitment that they would abide by a fair go and that they would not do what they are attempting to do, which is exempt small business from access to the unfair dismissal regime. They have turned full circle on this matter, and that is for political reasons. I do not mind that, but you need to admit it; and that is the main reason. Twenty per cent of all Australian small businesses would be affected by your proposal, not the 100 per cent who you have misled into believing they would be. That is 600,000 employees, and you believe that would create 53,000 jobs. It is a load of baloney—you know it, we know it. And if this is the beginning of a double dissolution trigger, it is not a threat which deters us from standing by the principles we have stood by I think seven times now. We are slowly moving up; we want to get to double figures. Without too much more levity, I indicate that the Australian Democrats will insist that the amendments be conveyed.

Senator BROWN (Tasmania) (2.41 a.m.)—To seal the fate of this legislation, the Greens are also unchanged in our opposition to this legislation.

Senator MURPHY (Tasmania) (2.41 a.m.)—I want to say to the House of Representatives: what we need outside this chamber is a junk mailbox, and that is where this should be filed. In fact, we need some system that does not allow this sort of nonsense and crap through the door in the first place. We should insist on the amendments.

Question put:

That the motion (Senator Alston's) be agreed to.

The Senate divided. [2.46 a.m.]

(The Deputy President—Senator S.M. West)

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AYES

Alston, R.K.R.
Boswell, R.L.D.
Calvert, P.H. *
Colbeck, R.
Eggleston, A.
Ferris, J.M.
Herron, J.J.
Knowles, S.C.
Mason, B.J.
Patterson, K.C.
Reid, M.E.
Tchen, T.
Troeth, J.M.

NOES

Thursday, 27 June 2002

EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL 2002
Second Reading

Debate resumed from 19 June, on motion by Senator Ian Campbell:
That this bill be now read a second time.

Senator FORSHAW (New South Wales) (2.51 a.m.)—I rise to speak on the Export Market Development Grants Amendment Bill 2002. I have here a most detailed and informative speech for members of the Senate.

Government senators interjecting—

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! Would members please leave the chamber or continue their discussions elsewhere.

Senator FORSHAW—I had hoped to read it tonight—don’t tempt me.

The ACTING DEPUTY PRESIDENT—The hour is late, Senator Forshaw.

Senator FORSHAW—I realise that. In fact, one of my constituents who has a great concern about the way in which the government is managing the EMDG scheme was going to be waiting up tonight to listen to this speech. But as this is not on broadcast he has probably gone to bed, so in the interests of time I seek leave to have my remarks incorporated in Hansard, and I invite you all to read them tomorrow.

Leave granted.

The speech read as follows—

Austrade and the Government have announced that there are insufficient funds available to pay in full all the claims assessed in the current year. In response to a question from Stephen Martin in the House yesterday (Wednesday), Minister Mark Vaile said that 28% of grant recipients (about 900 businesses) would only receive 75.62% of their second tranche entitlements.

The $150 million EMDG budget cap is administered under a split payment system for applicants whose grant entitlements are determined to be in excess of $60,000. These companies receive $60,000 when their ‘provisional grant entitlements’ are determined. Subject to the amount that remains in the $150 million pool once all applicants’ initial payments have been made (and Austrade’s admin costs, capped at 7.5%, are deducted), the balance of the applicant’s entitlement is paid at the end of June.

For the last few years, there have been sufficient funds available to pay out all applicants in full. In fact, last year Austrade returned about $7 million in unused allocation to the Government. Unfortunately, those funds aren’t rolled over into the next year’s budget. This year, the Austrade budget is short by about $11 million.

As a result of the budget shortfall, all companies receiving in excess of the $60,000 will have the second payments (their remaining ‘provisional grant entitlements’) reduced. For example, a firm with a provisional entitlement of the maximum $200,000 will only receive a net $165,868.

There are a number of direct consequences of this situation. Firstly, about 900 firms will now receive less than their full entitlement, an entitlement based on meeting Austrade’s stringent legislative and investigative EMDG requirements. This will directly impact on the amount of funding they will have available to commit to export marketing. Many will have put plans into place for the current (and future) financial year(s) in the reasonable expectation that full EMDG support would be available.

Secondly, there will be flow on effects in future years. The EMDG budget is capped at $150 million (about to be increased to $150.4 million) until 2005/06. Based on the current year experience, and changes that will apply from this year
that will increase access to the Scheme, it seems certain that the budget allocation will be insufficient for every year from now to 2006. Meanwhile, the Government and Austrade are still promoting EMDG as providing up to $200,000 in funds when they know that it will be almost impossible for anyone to receive that amount.

Several reviews of EMDG (including the most recent one in 2000) established a direct connection between the level of export marketing expenditure and levels of export sales achieved. With the certainty of EMDG support removed, companies will be less inclined to spend on export promotion, leading to smaller export sales.

Firms contemplating discretionary export marketing activities—such as an overseas visit, participation in a trade show, or appointment of a representative office—will be less inclined to commit these funds to such risky endeavours if they can’t be sure that they will receive EMDG support. Consequently, fewer export sales will result, to Australia’s economic and social disadvantage.

These were the specific findings of the Austrade Board in their Review of the Export Market Development Grants Scheme (June 2000). Many findings were based on extensive econometric analysis undertaken by Professor Ron Bewley of the University of NSW.

Let me quote a few extracts from the Review of the Export Market Development Grants Scheme produced by the Austrade Board in June 2000 to illustrate those findings.

Firstly, at page 15 the Review said:

... the Board also notes that the lower level of funding that accompanied the 1996 changes means that there has been a reduction in expenditure on export promotion by grant recipients and in additional exports generated compared to what would have occurred without the changes.

On page 16 the Review also commented:

Business clearly stated that certainty was a key factor that contributed to effectiveness and that business should be able to plan export activities on a reasonable expectation that some reimbursement of costs will occur. The less certainty exporters have, the less the grant will act as an incentive.

On the same page the Review said:

The cap on funding set at $150 million per year may result in the diminution of the value of grants for more than 1,000 grant recipients each year over the period to 2005/06. The Board considers that the returns from the Scheme are such that the best outcome would be for all grantees to receive the full value of their entitlements.

The Board clearly recognised the problems that would be caused by exporters receiving less than the full value of the grant payment. At page 59 of the Review they said:

While difficult to estimate, it is likely that, under the scenario, described previously, over 1,000 firms each year would see the value of their gradually diminished over time. The Board, in considering the consequences of this, noted the findings of the PWC report.

This evidence suggests strongly that although they have not been guaranteed the full amount of the possible grant, applicants at all stages appear to fully expect to receive the grant payment and spend on export promotion accordingly.

It is the Board’s assessment that once exporters begin to expect to not receive the full value of the grant payment they will make adjustments to their export promotion expenditure. This is likely to reduce the amount of additional exports generated compared to what would have occurred if the grant was paid in full.

Unfortunately, the findings of that Review have come to pass. This Government has allowed the success of this great scheme, and therefore the contribution of many exporting business to the Australian economy, to be jeopardised by their failure to support the EMDG scheme.

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (2.52 a.m.)—Mr Acting Deputy President, I also want to seek leave to have my remarks on the Export Market Development Grants Amendment Bill 2002 incorporated in Hansard, but I want to seek some advice from you first. I have a second reading amendment. In the context of incorporation, how might that be dealt with?

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—You can seek leave to incorporate your speech and then move the amendment.

Senator RIDGEWAY—I seek leave to have my speech incorporated in Hansard.

Leave granted.

The speech read as follows—
I rise to speak in favour of the bill and to suggest some additional changes. The EMDG Scheme has been in operation since 1974 providing funds to small and medium size businesses in order to assist them with the cost of promoting and developing export markets. A range of industries, small and medium, have already accessed these funds. While we would commend to the Government, the need for investment in small export businesses, the Australian Democrats believe that it is also vital that there is also long-term investment in health, education and the environment. My colleague Senator Bartlett has previously raised the matter of inclusion of exemptions in the assistance package recognising these same concerns. The amendment I will move today is an attempt to do the same. The Democrats want the Export Market Development Grants Scheme to represent a more comprehensive collection of community values. Currently, the scheme allows support of businesses that export products made from native forests. Currently the scheme also allows support of industries that develop, produce and export fossil fuels—therefore increasing our greenhouse emissions. Such a scheme should not be used to assist business operations which could cause long-term environmental damage. Although there is no indication that fossil fuel exports comprise a major part of the Scheme, grants to the fossil fuel industry have occurred. The Australian Democrats believe this practice must not continue into the future. Currently, the scheme provides no ethical framework for assessing grant applications. This means exporters of guns are just as likely to be funded in the same fashion as exporters of educational software. This situation demonstrates that there is a need to have an ethical framework within which the funding decisions are made. Accordingly I put forward a second reading amendment to reflect this, and has already been circulated in the chamber. Having said that, it is important to remember that the program has changed in structure and orientation. It is not set in stone. And with each review, the focus of the scheme has been modified to assist SMEs and improve the effectiveness of the scheme as a trade stimulant.

We are aware that the Scheme itself has been operating for over 25 years. It has obviously been successful at many levels, but the Australian Democrats believe it is time for such subsidy schemes to become smarter and more representative of community concerns and values. Regarding the amendment in front of us to increase the minimum grant from $2500 to $5000, I believe this offers a welcomed increase in support for businesses who are able to access this scheme. By most accounts the EMDG Scheme has been a success. Recent reviews indicate that the Scheme has helped develop an export culture, has assisted businesses establish products and reputations and has resulted in an increase in export earnings. The Australian Democrats believe further increases in export opportunities are to be commended and supported. Again, the Australian Democrats will support the passage of this amendment bill.

Senator RIDGEWAY—I move this second reading amendment, which has been circulated in the chamber:

At the end of the motion, add “but the Senate is of the opinion that export market development grants should not be used to facilitate the depletion of fossil fuels, the logging of native forests or the promotion of unethical business practices”.

Senator LUNDY (Australian Capital Territory) (2.53 a.m.)—I would like to take this opportunity to say a few words about the Export Market Development Grants Amendment Bill 2002 to indicate that Labor will be supporting the bill. But we did take the opportunity in the lower house to move a second reading amendment to articulate some of our ongoing concerns regarding the operation of the export market development grants. I will not go into the detail now because it is on the record in the other house. I would also like to indicate that Labor will be opposing the Democrat amendment.

Senator TROETH (Victoria)—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (2.53 a.m.)—I would simply like to indicate that the government will not be supporting the Democrat second reading amendment.

Question negatived.

Senator TROETH (Victoria)—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (2.54 a.m.)—
I have some remarks to make on the Export Market Development Grants Amendment Bill 2002 and I seek leave to have them incorporated in Hansard.

Leave granted.

The speech read as follows—

The Export Market Development Grants Amendment Bill 2002 furthers the Government's strategy of encouraging and assisting Australian businesses into the international marketplace.

The government has continually made the Export Market Development Grants scheme more accessible and more attractive to small business.

In 1997, we:

- reduced from $30,000 to $20,000 the minimum expenditure required to access the scheme
- gave the tourism sector access to the full 50 per cent grant rate, and
- limited the scheme to firms with annual turnovers of under $50 million in order to better target EMDG funds to small business.

Then, last year, we extended the scheme for five years, and—after a thorough review—made it even more “small business friendly” by:

- allowing small businesses on limited budgets to access the scheme—by reducing from $20,000 to $15,000 the minimum expenditure required to access the EMDG scheme
- recognising the important role of family run businesses in our exporting community—by reducing the period that related family members need to be employed in a business before their travel expenses are eligible
- cutting red tape—by removing the requirement that intending first-time claimants must register with Austrade before applying for a grant
- giving firms more options in terms of the activities that may be claimed under the scheme
- and increasing the scheme’s relevance to our tourism industry—by giving Professional Conference Organisers and similar businesses that engage in “foreign delegate boosting” access to the scheme.

These changes, along with Government’s sound management of the Australian economy, have helped Australian exporters achieve bumper export figures.

In 2001, Australia exported $154 billion worth of goods and services. That was an eight per cent increase on the previous year, which itself was an increase of 25 per cent on the year before that.

The policies that we proposed in the 1996 election campaign have taken our export effort from $99 billion in 1996 to $154 billion in 2001—a 54 per cent increase.

And it is important to note that behind these big numbers are real people and real businesses—businesses that are entering export markets, winning sales and, most importantly, creating jobs for Australians.

The EMDG scheme is a key plank of the government’s strategy to encourage small businesses into the export marketplace, and is playing a major role in delivering on our commitment to double the number of Australian exporters by 2006.

This bill further increases the contribution of the scheme to these goals by increasing the minimum grant from $2,500 to $5,000.

While the increased minimum grant will be available to exporters in all years of the scheme, it will be of particular benefit to smaller firms that are claiming EMDG grants for the first time.

Small businesses often find themselves in a difficult situation. They usually have very limited budgets and are not in a position to spend much on overseas travel and other export promotion activities. With this amendment, a first time EMDG applicant will need to spend only $15,000 over two years in order to receive a minimum grant of $5,000.

This bill will increase the scheme’s impact in encouraging more small businesses to invest in export, and thus contribute to a more globally competitive and prosperous Australia.

I commend the bill to the Senate.

Original question agreed to.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (2.55 a.m.)—

I move:

That this bill be now read a third time.

Question agreed to.

Bill read a second time.

Bill read a third time.
WORKPLACE RELATIONS AMENDMENT (PROHIBITION OF COMPULSORY UNION FEES) BILL 2002

Second Reading

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

That this bill be now read a second time.

Senator HILL (South Australia—Minister for Defence) (2.57 a.m.)—The Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 is a very important piece of legislation. The Australian Democrats have proposed certain amendments to the government this day on this bill. I am instructed by the Minister for Employment and Workplace Relations that the amendments go at least part of the way towards what might be a compromise outcome that would be acceptable to the government. He indicates, however, that the matter does need further attention. It cannot very easily get that further attention at 3 o'clock in the morning. Therefore we would propose that it be adjourned until the next day of sitting. In saying that, obviously, that the matter does need further attention. It cannot very easily get that further attention at 3 o'clock in the morning. Therefore we would propose that it be adjourned until the next day of sitting. In saying that, obviously, we are disappointed that the bill cannot be completed tonight because, in responding to an unsatisfactory situation that has developed in recent times, we were very anxious to find a legislative solution before this parliament rose. But in these circumstances, and being prepared to accept the Democrats’ proposals as an attempt to find a constructive way forward, Mr Abbott has indicated that he would wish to reciprocate in a constructive way and therefore proposes at this time that the debate be adjourned and that further consideration be an order of the day for the next day of sitting. Accordingly, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

MIGRATION LEGISLATION AMENDMENT (PROCEDURAL FAIRNESS) BILL 2002

Second Reading

Debate resumed.

Senator SHERRY (Tasmania) (2.59 a.m.)—The background of this legislation was a round of amendments in respect to the Migration Act that were implemented by the former minister Mr Gerry Hand when he was minister for immigration in 1992 in the Keating Labor government—and a very fine minister he was too. Minister Hand at that time sought to introduce a complete code to guide immigration decision makers. The aim was to give immigration decision makers certain rules that they needed to follow to give a valid decision. It is clear from former Minister Hand’s second reading speech that in his view and parliament’s view they were creating an exhaustive code. However, in the High Court case referred to as Miah—the same name as my daughter, although I suppose it would be appropriate to give it its full title of Minister for Immigration and Multicultural Affairs ex parte Miah—which was decided last year, the view was taken by the court that if parliament thought in 1992 it was introducing an exhaustive code to guide decision makers in the immigration area it had failed in that endeavour and, in particular, it had failed to exclude the common-law natural justice hearing rule. If you look at the High Court case, one can say the High Court effectively invited parliament to relegate and clarify the matter if it really was parliament’s intention to create a clear and exhaustive code for immigration decision makers. This Migration Legislation Amendment (Procedural Fairness) Bill 2002 represents a response to that invitation.

The bill is largely technical in nature. It relates to codification of decision making powers. The Labor Party’s approach to this legislation has been laid out in a very full and comprehensive manner by our shadow minister, Ms Gillard. I would invite those who require further detail on this matter to examine her contribution on the second reading debate in the House of Representatives. I should make it clear that the Labor Party think good decision making in this area is to have fast and fair processing and, to achieve fast and fair processing, codification of the obligations of decision makers is a good thing. The former Labor minister Mr Hand thought it was a good approach, and Labor’s view on the question is unchanged. Labor support codification of the obligation of decision makers to achieve fast and fair decision making in this area.
The Labor Party support codification of the obligations of decision makers. We do not think that there should be endless appeal rights. We understand why the government wants to clarify the question of whether or not the common-law hearing rule survives outside the codification of the obligations of decision makers in the immigration area. We do understand why the government would be viewing with some concern the fact that various single judges in the Federal Court have announced different versions of the law in this area. That is not a desirable result. In that respect we think that prudent and better decision making lies in waiting until the decision of the full Federal Court is available so that we know whether or not it is in an appropriate form. There is not the urgency that the government has stressed in respect to this matter. We think that the approach and the reason for dealing with it in the House of Representatives and the Senate is of an obvious political nature, to attempt to milk whatever they can out of the broader debate that has been occurring in the refugee area. Nonetheless we recognise that clarification in this area is required, and the Labor Party are supporting the legislation.

Senator BARTLETT (Queensland) (3.04 a.m.)—I should indicate in advance that anything I say now is no personal reflection on Senator Sherry. But here we go again: three o’clock in the morning; another migration bill ripping away rights from people who wish to have any sort of appeal on any decision relating to migration matters. This is obviously directed at refugees, as is everything this government does. As Senator Sherry did correctly say, that is the reason this is being pushed through. There is no urgency. There is no reason why this needs to be brought forward tonight—along with many other bills we have dealt with tonight—other than political purposes. It is purely for the sake of wedge politics. But the fact is that we are here debating it, we vote for this and it becomes law. What this bill does is remove the opportunity for people to appeal against a migration decision—not just a refugee decision, any migration decision—if natural justice is not followed.

Senator Sherry quite correctly said that back in 1992 former Minister Hand and the parliament introduced, along with a whole range of other things, a code of procedure that some say was intended to replace natural justice. That may or may not have been the intent of the parliament at the time. I am willing to concede that it possibly was. That was 10 years ago. The number of migration bills that have been through this place in the last 10 years—almost all of which have removed people’s rights on grounds of appeal on such an unbelievable range of issues—would stagger people if they knew the truth.

Since that time, it is a basic fact that if a person, a member of the Refugee Tribunal or the Migration Review Tribunal, makes a decision that is so unreasonable that no reasonable person could have made it—for those of you who like legal jargon that is called ‘Wednesbury unreasonableness’—you cannot appeal about that. If somebody makes what is basically an insane decision, an unreasonable decision that is so unreasonable that no reasonable person could make it, you cannot appeal about that. That is the way it has been since 1992, even though that principle existed way before former Minister Hand.

Just last year we had a privative clause brought in, attempting—none of us know how effectively yet—to remove the opportunity for people to appeal to the courts any decision on any migration matter, including refugee matters, on anything but the most unbelievably narrow grounds. As the shadow minister quite rightly said in her speech in the House of Representatives a couple of days ago, nobody knows how that is going to be interpreted. There is significant full Federal Court consideration being given at this moment to this decision and to this whole area, and of course, as always, it may subsequently be appealed to the High Court. Nobody knows what the law is in relation to this.

This goes back to the fundamentally disgracefully flawed decision the Senate made in September last year—without reflecting on that decision, other than to say it was completely stuffed—to let a whole range of migration bills through without proper scru-
tiny, without recognition of what they were doing and without any subsequent follow-up about what that meant. It is always awful getting technically legal, especially at 10 past three in the morning, on things like privative clauses. They are the sorts of things that lawyers love, because they can all argue about what they mean. We have already had individual decisions by various Federal Court judges about what the privative clause that was passed last September means.

I should point out to the Labor Party that they opposed that privative clause, that removal of appeal rights in a whole range of areas, for more than two years. There was a comprehensive Senate committee examination into that, and as part of that examination Labor looked at the clause and said, ‘This is a bad idea. We don’t support it.’ It never came up in the Senate for debate. Minister Ruddock just would not bring it on and left it sitting on the backburner, bubbling away, while he was doing all his other stuff like vilifying refugees, turning up the heat one notch at a time on the whole migration issue.

We had an unequivocal report from Labor members of that committee and me saying: ‘This is a bad idea. This is removing fundamental components of justice. This is undermining the rule of law.’ Even though we had this unequivocal report, eventually the political heat post-

Tampa got so bad that the Labor Party not only rolled over on all the stuff to do with the Tampa and everything else but rolled over on everything else that had been sitting there, which they had opposed for years, including the privative clause.

Because we are all in politics, even though I acknowledge all of the people that criticise the government’s approach to refugees and criticise what Labor has done to refugees, I also acknowledge to some extent the pure political reality that if Labor had at that time said, ‘No, we oppose all this,’ they would have got wiped out. I acknowledge that; it is a political reality. Given everything you have done before, including the flip-flop on the border protection bills post-

Tampa, my assessment—based on nothing other than my own political judgment, which probably is not worth anything of great significance—is that you would have got wiped out. So, in that sense, I guess you made a political decision. That is what people do, particularly when they are in larger parties; I acknowledge that.

I agree with the view that is sometimes professed amongst people about the approach to refugees that, if Labor had just finally said ‘enough is enough’ two weeks out from the election, you would have got creamed. You should have said ‘enough is enough’ three years before the election, particularly at the crunch time when temporary protection visas were introduced in 1999. At that time, I moved to disallow temporary protection visas and Labor senators in this place—as I have reminded them since in debates—said, ‘This temporary protection visa policy is stupid. It is not going to work. It is terrible; it is appalling; it is dumb, but that is the government’s problem and we will support it.’

That date in 1999 was when you lost the last election. If you had stood firm then and had the opportunity to argue that consistently for three years, based on facts, you would have had a fair chance when this Tampa thing arose. But even that far back, in 1999, the political judgment was such that that decision was made—against some advice, including some in the shadow cabinet who, I know, argued that that should not go through. The decision was made; we all make decisions and that happens. But that decision was made then, and I think that that is when you lost the election.

Nobody could have predicted the Tampa, of course, and nobody could have predicted that the coalition would have plumbed the depths so low—even I did not believe it. I did not believe that the Prime Minister would be willing to cause that much destruction, that much suffering, that much pain to the most vulnerable people on the planet, purely to win an election. But my political judgment was obviously wrong. Now I know we have a Prime Minister who will go that low. Now I know we have a Prime Minister who is the most disgraceful Prime Minister we have had, over more than 100 years, because of what he has done. Now that you know that, you are still letting him go and putting this—
The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! You should withdraw those reflections on the Prime Minister.

Senator BARTLETT—that is based on the advice that you have received?

The ACTING DEPUTY PRESIDENT—You should withdraw them unequivocally, Senator Bartlett.

Senator BARTLETT—you are advised that way?

The ACTING DEPUTY PRESIDENT—you should withdraw those reflections on the Prime Minister unequivocally.

Senator BARTLETT—I do not believe I should withdraw, because they are true.

The ACTING DEPUTY PRESIDENT—What you have said is unparliamentary, and you should withdraw it unequivocally.

Senator BARTLETT—if it is unparliamentary, I withdraw them because I have the—

The ACTING DEPUTY PRESIDENT—it is not that it is unparliamentary. I am requesting that you withdraw those reflections on the Prime Minister and do it straightforward.

Senator BARTLETT—if it is unparliamentary, I withdraw them because I have the—

The ACTING DEPUTY PRESIDENT—it is not a matter of whether it is unparliamentary. You have been requested to withdraw and you should withdraw unequivocally.

Senator BARTLETT—I will withdraw any remark I have made that is unparliamentary, because I have the greatest respect for this parliament. I have no respect for this—

The ACTING DEPUTY PRESIDENT—Thank you, Senator Bartlett.

Senator BARTLETT—Thank you. I have no respect for the Prime Minister in terms of what he has done in this regard. What has been done needs to be made clear. Without taking a point of order against myself, I am possibly going slightly beyond the subject matter of this bill except insofar as it relates to what the Senate has already done.

We have had lots of good speeches tonight. I am not trying to be disingenuous in saying that I was enriched and uplifted by the valedictory debate, which a lot of people may have thought was self-indulgent but which I thought reinforced the immense value of what people do here from all parts of this chamber. I did give a very faint indication of that in relation to Senator Cooney and all the Labor Party senators. Senator McKiernan has great expertise in refugee law and migration law. I do not agree with him on a number of aspects, but I have immense respect for his understanding of it, and I concede without the slightest hesitation that he has a better knowledge of it across the board than I do.

If you look at the report of the Senate committee into this bill that we are debating now, all the Labor senators recommended that the bill not proceed at this time, although not necessarily for the reasons I am putting forward—I acknowledge that as well. The shadow minister, Ms Gillard, earlier this week moved a motion in the lower house in relation to this bill. I do not bother watching what happens in the lower house very often. After the member for Werriwa's contributions and others in the last couple of days, I am even less inclined to pay any attention to the lower house. It is no wonder that it is called the lower house. Ms Gillard spoke quite well about this bill and some of the issues involved. She moved a motion in the lower house and I have a motion which reflects that almost word for word. Only one thing is different. The lower house had to request that the government defer this bill until the crucial full Federal Court decision comes down. I can understand them moving that because obviously the opposition do not have the numbers and they just put forward a request. Almost word for word I have circulated that amendment, and I now hereby move that amendment:

Omit all words after “That”, substitute:

(a) the Senate notes that:

(i) immigration matters should be determined in a fast and fair manner;
(ii) a five person Full Court of the Federal Court commenced hearing on 3 June appeals from five decisions of single judges and that these appeals will determine a central issue dealt with in this bill;
(iii) the Department of Immigration, Multicultural and Indigenous Affairs has conceded that it is not certain that the bill is needed to achieve its end of ensuring that the common law natural justice hearing rule is excluded from immigration decision making; and
(iv) the passage of this bill prior to the Federal Court decision may confuse the law in this area and cause more delays and uncertainty; and
(b) further consideration of the bill be an order of the day for the day after the decision of the Federal Court on the matter is delivered.

Instead of requesting that the government defer the bill, the Senate—which obviously has the power and the numbers—can ensure that further consideration not occur at least until that decision of the Federal Court is delivered.

Those who are on the Senate committee—and again I do not want to get into complex legal arguments about this—heard about this privative clause, this Hickman guy from the 1940s. I am sure that he is not alive anymore. He would be astonished that his name lives on forevermore because of some obscure court case to do with some meat tribunal or some damn thing back in 1945. How it applies is so unclear. We passed this last year. As with so many things we passed last year leading up to the election, we did not know what we were doing. None of us knew what the impact was. None of us know now what the impact is. We still have not had a proper consideration of the impact of what we passed last year. We can get lots of lawyers giving us letters here and there, but we still do not know what the hell we did last year.

We did it—as I am sure all would concede at least privately if not publicly—for political reasons. The Democrats opposed it for political reasons at the time, although also for procedural and legislative reasons. If we are going to pass a bad law, at least we have to know how bad the damn thing is before we pass it. The government do not even know what they did. They probably wanted bad law; they might not have wanted very bad law. We probably got extraordinarily appallingly bad law—and we do not even know if we have got it yet. We will not even know for another year or two, until we finally get a High Court case about what the hell this privative clause means.

Senator Abetz is a person with some legal expertise. He can probably give us an exposition on what he thinks the Hickman clause—the privative clause—means. That will be interesting but we can get the highest QC in the land and every High Court judge individually to tell us what they think it means, but we will not know until they have handed down a decision. If you cut away everything else, what this bill does is remove the right for people to appeal a decision on any migration matter, and it does not apply just to refugees—to all those evil, horrible queue jumpers the government wants the whole country to hate. In any migration matter you will not be able to appeal against a decision made by the tribunal, the review tribunal or the department, even if they do not follow natural justice.

If they do not follow natural justice, bad luck; it does not matter. Natural justice: who cares? We do not need that in migration law! Who wants that stuff? That is inconvenient. They have replaced it with this thing called the code of procedure which is clearly not even remotely like natural justice. This inverts the minister’s pathetic language about ‘refugee plus’ or ‘processing plus’ or ‘sugar on the candy’ or some rubbish. It is the opposite: it is not natural justice; it is like Z-grade natural justice; it is unnatural injustice. It is the most pathetic, tiny, constrained thing.

I acknowledge that that is what was passed in 1992. So many things have happened since then, including restricting the right to appeal on virtually everything. But you still want to remove natural justice, despite the fact that you cannot appeal on virtually anything any more, including unreasonable unreasonableness. That is what you want to put through now. It is quite possible that if courts decide that the privative clause
is as narrow as the government would like, not only could you exclude natural justice but you could exclude even this code of procedure that is supposed to replace it. If the decision maker does not follow it, there is no opportunity to appeal. It is a joke! (Time expired)

Senator BROWN (Tasmania) (3.24 a.m.)—I must say at the outset that I am glad that the term ‘most disgraceful’ when applied to a member of another place was withdrawn.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Are you taking a point of order, Senator Brown?

Senator BROWN—No.

The ACTING DEPUTY PRESIDENT—You should speak to the subject matter.

Senator BROWN—I am. I think the word ‘most’ was totally inappropriate when applied to someone of such enormous mediocrity. The Greens go further on the matter at hand: we totally oppose this legislation.

Senator ABETZ (Tasmania—Special Minister of State) (3.25 a.m.)—In the face of the great provocation delivered by Senator Bartlett, I will continue to show the restraint for which I am known and I will not comment. Suffice to say, the Migration Legislation Amendment (Procedural Fairness) Bill 2002 is part of the legislative program of the government that we want passed. The reasons for the legislation were ably set out by the Minister for Immigration and Multicultural and Indigenous Affairs, the Hon. Philip Ruddock, on 13 March this year when he introduced the legislation in the other place. I commend the bill to the Senate.

Question negatived.

Original question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BARTLETT (Queensland) (3.27 a.m.)—I move:

(1) Clause 1, page 1 (line 6), omit “Fairness”, substitute “Unfairness”.

My amendment relates to the title of the Migration Legislation Amendment (Procedural Fairness) Bill 2002. It appears clear that other senators in this chamber wish to pass this bill. In that case I think at a minimum the title of the bill should reflect what the Senate is passing. There has been a bit of a habit in recent times of using flowery names. The most blatantly ridiculous name was the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999. Here we have a bill that is called the Migration Legislation Amendment (Procedural Fairness) Bill 2002. If the Senate wants to pass this bill and put it into law, that is a decision that the Senate can make. The least it can do is indicate to the public what they are doing. We should not have this Orwellian rubbish—which we have probably had in migration law more than in any other area—of saying black is white. It is saying people fleeing persecution, people trying to avoid being killed, are equal to criminals. We have had this from the government for so long.

What we have here is a bill called the procedural fairness bill. It sounds wonderful; don’t you just want to cuddle up to it. Of course, what it actually means is the ‘remove procedural fairness’ bill: remove the right to appeal on grounds of natural justice and replace that maybe with a really narrow code of procedure from 10 years ago before we introduced all these other bills that removed all these other rights. That is at best; at worst, forget about the code of procedure. It is in the act; it looks good. You can say, ‘Look, you have to follow this code of procedure, see.’ Of course, if they do not follow it, because of the privative clause you cannot appeal against it anyway. What the hell have we got an act for? We may as well scrap the whole act. Why not just say, ‘The government can do what it wants’? We would not have to come back here all the time debating more and more of these bills that are always aimed at removing people’s rights.

Why not just pass one straightforward act saying that any migration decision is up to the minister? Forget everybody else—absolute power to Mr Minister or Ms Minister in the future. It would save a lot of time. I am sure that people in the government would
probably like that. Lots of people, when they are in government, tend to like having absolute power. That is what we have a parliament for. That is what we have the courts for. That is what the whole basis of our system of government is about: the separation of powers. The elements are the executive, or government; parliament; and the courts. And these days parliament is basically the Senate. The House of Representatives is good for a few insults and some comedy on the news, but basically balancing what the government does is up to the Senate.

To a large extent what this parliament and this Senate have already done, for some inexplicable reason—well, it is explicable: it is due to politics, unfortunately—has weakened that enormously and has tried to remove the courts, tried to remove the parliament and tried to put all power in the hands of the minister, the department and the tribunals, whose members are appointed by the minister. This bill goes one step further. I meant quite genuinely what I said earlier this evening about Senator Cooney and indeed Senator McKiernan, Senator Ludwig and others on the relevant Senate Legal and Constitutional Committee about this matter. This was looked into; we sent this to a committee. The shadow minister’s speech was a good speech which reflected the views and concerns of the Labor Party members of that committee. I refer again to the second reading amendment. We have a major court case—and it got more publicity than it otherwise would have because Minister Ruddock chose to attack the court before it had even started making its decision. He knew what it was doing: it was looking at his laws.

This whole bill is occurring only because the High Court made a decision in the case of Miah which the minister did not like. The minister appealed it all the way to the High Court. The minister lost. What did the minister do? He did not like that so he changed the law again.

As is often the case with migration law, a lot of the changes occur—including our infamous mandatory detention regime—because the High Court made a decision that the government did not like. The High Court tried to provide justice; the government said, ‘We cannot have justice; let us change the law.’ Any connection between law and justice is purely accidental and shall be removed as soon as it is identified. Every time the High Court say, ‘We have found another way to deliver justice,’ the government say, ‘That is no good. We will take it away and change the law so that it does not enable justice.’ And here we have it again: remove natural justice—the basic, fundamental component of any legal decision.

Just to bore senators to death, let me remind them again, as I have said many times, particularly on refugee decisions, these are life and death decisions. These are not just some vague, arcane, administrative decision. That is probably what is so tragic about the Hickman principle. The Hickman principle was about some damn meat tribunal or something; it was nothing to do with refugees. Here the Hickman principle is being used to determine whether or not the courts can decide a matter about whether or not someone can die. I suppose a long-established legal principle is that the law is an ass. It is probably the only legal principle that never changes and it is the only legal issue that the government never tries to change through laws. Let us change that one. Let us try and introduce a bill that stops the law being an ass; that would be a nice change. But, no, here we are reinforcing the law being an ass and reinforcing the absurdity of the law delivering injustice.

To pay final tribute to some of the things Senator Cooney has done in this place, I draw senators’ attention to his additional comments in the committee report on this particular bill. He said, ‘The bill weakens quality control over decisions.’ And this is
for any decision on any migration matter; let us move this out of the emotional area of refugees and focus on any migration issue. I think most, if not all, senators in this place recognise the value that migrants have for this country. But what this bill does is to weaken quality control over decisions to do with any migration issue. What this bill does is to prevent people who have a decision made over their migration issue being able to appeal it even if natural justice is not followed. If it did not follow natural justice, bad luck: they followed the code of procedure. If it did not follow the code of procedure, maybe that is bad luck too, because the privative clause may already have knocked you out. Where do you go? Migration has delivered great benefit to this nation but we will allow a decision making regime where, even if you have decision makers who ignore natural justice and ignore the provisions of the act, as long as they can do it in a way that does not make them so extreme that they are acting in bad faith or so extreme that they are demonstrating actual, clear-cut, undeniable bias, it does not matter what they do.

It does not matter if they make a mistake of fact; it does not matter if they ignore a whole bunch of evidence. As long as they can construct their decision in a way that they are able to be protective against clearly showing actual bias or bad faith, it does not matter. It does not matter if they follow the code of procedure; it does not matter if they follow natural justice. If this bill gets through, you lose. Of course, let us not forget that all these supposedly independent decision makers in the department or the supposedly independent tribunals are appointed by the minister.

Going through Senator Cooney’s report, it says ‘rule of law prejudiced’ and ‘taking away common law natural justice’. Surely senators realise that hundreds of thousands of decisions are made every year on a migration issue. Taking away common law natural justice—that is what we are doing now. The most fundamental part of Senator Cooney’s comments is ‘diluting the rule of law’, ‘undermining the basic foundations of the rule of law’.

It is a shame that the vote on this bill will be the last vote that will be taken in this Senate before appropriations—something that will further dilute the rule of law. For all those senators that we have said farewell to, that will be the final vote they will take and, because of the reality of the political process, that will be what the majority of them will enforce, including Senator Cooney. I do not criticise him for doing that—unless he has got a pair, which he may have, or he can do the mickey mouse thing and say that he does not need to come in. That is just the way it is; it is not a personal criticism. But I think it is a shame that the final bill before we get to appropriations will be something that further weakens the rule of law and removes natural justice from an area that is so fundamental.

Once again, we have the situation where apparently the ALP—unless by some magic mechanism my rambling words have changed any perspectives—will support the government in doing this. I presume, again, that they will do so because of the politics of the situation. It was a good report that the Labor people did. Ms Gillard gave a good speech. Not all of their arguments aligned with mine purely; they are saying that in 1992 Gerry Hand introduced an intent to remove natural justice. I accept that that was probably the intent. As I said, lots of other things have been removed since then—natural justice is virtually all that anybody has got left, but apparently that has got to go as well. Their own report clearly recognised the unbelievable uncertainty. What is this privative clause—which we all pushed through last year despite the fact that we did not know what it would mean—going to mean in practice? We do not know. We do not know what it would mean—going to mean in practice? We do not know. We do not know if it is going to be interpreted so broadly that this bill is a waste of time and the courts can still let an appeal stand on natural justice—they may do. We do not know if it is going to be so narrow that this bill is a waste of time and that we do not even need it; so narrow that we do not even need the code of procedures in the act. We do not know.

All we know is its fundamental, basic, simple components. It is quite a small bill. The fundamental thing it aims to do is remove the ability for people to appeal a deci-
sion made by a tribunal or the department if they do not follow natural justice. There will be no natural justice any more on anything to do with migration. Locked in stone—that is the aim. That is why my amendments says that, if you are going to pass it, at least you can be honest. The least you can do is say, ‘This has nothing to do with procedural fairness. This has to do with locking in procedural unfairness.’ Be honest about what the hell you are doing, if you are going to do it.

Question negatived.

Bill agreed to.

Bill reported without amendment.

Adoption of Report

Senator ABETZ (Tasmania—Special Minister of State) (3.43 a.m.)—I move:

That the report from the committee be adopted.

Senator BARTLETT (Queensland) (3.43 a.m.)—I shall not detain the Senate for that much longer—maybe a tiny bit! The Migration Legislation Amendment (Procedural Fairness) Bill 2002 is a joke. We know it is a joke; we know it is unfair. The least you can do is all come down and damn well vote to let it through and put your names against it. I still find it staggering, given all the arguments that have been put forward by Labor senators in their quite cogently argued report and by the shadow minister. I do not suggest that this was the government’s intent, but to once again have a migration bill that removes people’s rights—pretty fundamental rights: I think natural justice is reasonably significant—passed at a quarter to four in the morning, not even on broadcast, adds a bit of extra insult to injury, if you like. Once again, we are ramming this stuff through. Not only is it being agreed to, it is being done in the dead of night with no real awareness amongst the general public or those who are concerned about these issues.

Whilst I was willing to give credit where credit was due to the Labor Party last week—I think it was—in relation to their stand on not excising even more of Australia’s boundaries and not reducing Australia’s sovereignty even further because of the imaginary bogeyman of those awful refugees, who might actually be trying to stop being persecuted or not be killed, I think the ALP’s approach on this fundamental issue is a less encouraging sign. We are doing this at a quarter to four, people have been incorporating speeches all over the place—I understand why that happens—and it is unfortunate to detain people further, but it is such a fundamental issue that it should not just pass with no remark. In some respects, what the Labor Party have said tonight is, ‘Actually we have decided our immigration policy now is whatever we thought back in 1992; we did it 10 years ago so we have got to agree to it now.’ If they want to take that approach then I will look back at whatever else they agreed on in 1992, and we might get some interesting outcomes. I can understand the politics of it—as we all can—but the legal reality needs to be acknowledged and the precedent is an atrocious one.

Question agreed to.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (3.48 a.m.)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [3.52 a.m.]

(AYes………… 43
Noes………… 8
Majority……… 35

AYES

Abetz, E. Alston, R.K.R.
Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Campbell, G.
Carr, K.J. Chapman, H.G.P.
Colbeck, R. * Collins, J.M.A.
Conroy, S.M. Cook, P.F.S.
Crossin, P.M. Eggleston, A.
Evans, C.V. Ferguson, A.B.
Ferris, J.M. Forshaw, M.G.
Hoffman, W. Hill, R.M.
Hogg, J.J. Knowles, S.C.
Ludwig, J.W. Lundy, K.A.
Macdonald, I. Macdonald, J.A.L.
Mackay, S.M. Mason, B.J.
McGauran, J.J.J. McGurk, J.
O’Brien, K.W.K. McLucas, J.E.
O’Brien, M.K. Patterson, K.C.

Noes

Austen, K.R.K.
Bishop, T.M.
Brandis, G.H.
Campbell, G.
Chapman, H.G.P.
Collins, J.M.A.
Cook, P.F.S.
Eggleston, A.
Ferguson, A.B.
Forshaw, M.G.
Hill, R.M.
Knowles, S.C.
Lundy, K.A.
Macdonald, J.A.L.
Mason, B.J.
McLucas, J.E.
Patterson, K.C.
Mr Senator Crossin:—

FAMILY PAYMENT SYSTEM

In this Budget the Government had an opportunity to make family payments easier for families, but instead they have retained the impractical and burdensome income estimation test which resulted in 665,000 overpayments in relation to 1.8 million families. The average debt after the Government was forced to put in place a $1000 tolerance level was $1040. The Govt could have revised the test to meet the circumstances of contemporary families, with many employed in casual work and large numbers of women moving in or out of the workforce in a given year. Instead, the Govt has dug its heels in and ordinary Australian families will continue to carry the burden of administration, having to crystal ball gaze in relation to their income over the next year.

BABY BONUS & PAID MATERNITY LEAVE

In relation to understanding the lives of ordinary Australian women, this Budget clearly fails. What we have is the much touted baby bonus. I’d like to say this about the Government’s Baby Bonus: it’s not much of a dividend unless the family income exceeds $50,000. And it won’t deliver anything to women who have to return to work or those women who are having their second or third child. There is no mention of what working women in Australia deserve and need: a national maternity leave scheme. In this Budget, the Government has failed to accept the recommendation of the Sex Discrimination Commissioner and the ranks of blokes in the Coalition who are lining up to oppose it is growing. These include Abbott, and Minchin “middle class welfare” as well as Hockey’s ambivalent attitude (he says small business won’t employ young people). But so far this Govt hasn’t shown much interest in shaking off the embarrassing tag of being one of the last two industrialised countries to bring in a national scheme or to show some real commitment to equality for women in this crucial matter.

CHILDCARE

Childcare: so low a priority that it doesn’t even feature in the Minister’s women’s budget statement. This budget provides

• no new places to ease the crisis in family day care & outside school hours care
• no new investment in early childhood development
• no initiatives to solve the staffing crisis in child care
• no response to the Government’s own Child Care Advisory Committee Report crying out for a long term plan in child care
• no children’s health, wellbeing or protection initiatives.

I know that in my electorate there is a definite shortage of after school hours places. The Minister recently admitted that the Government’s policies have to this shortage. It was recently confirmed that the $35 million of debt which has occurred because of overpayments made under the old childcare system could have funded over 4,000 children of low income families for After School Hours Child Care for at least 5 hours per week if the Government had not created a massive debt problem.

I’m sure that with the school holidays now upon us, many of my constituents who are working parents would appreciate some of those places
which the Government has failed to provide in this Budget.

**DISABILITY**

Disability services: With this Budget, the Govt has crudely attempted to blackmail the Parliament in a way never seen before.

“Pass our changes to the DSP”, the Minister for Family and Community Services said, “or the States and Territories won’t get the growth money under the Commonwealth State and Territory Disability Agreement we promised them two years ago”. I am pleased that the Minister withdrew her threat in this chamber earlier today but I am disappointed that this Government’s “new” position is really unchanged in relation to the DSP. They still want two classes of disabled people—one of which will be out on the dole queue with a lot less money. The Labor Party does not oppose welfare reform and we want to do everything we can to help people participate but we will never accept that taking $52 a fortnight out of a disabled person’s helps him or her to participate.

*Senator Collins’s speech read as follows—*

I rise tonight on the last sitting day before the parliamentary winter break to speak on a particular aspect related to the appropriation bills. The measure in this budget to push people with a disability off the disability support pension has been one of the most malicious and disturbing policy directions of this Government in recent years.

Fortunately, the Opposition and the Democrats made it clear that this measure would not pass the Senate, and it was not taken any further.

But sadly, today, during Question Time, the Minister for Family and Community Services, Senator Vanstone, announced that a new bill restricting disability support is just about to enter the other place. And from her brief comments it would appear that she has again missed the fundamental principle of equity. But I will wait to see the detail of that bill. Possibly, I suggest, she could consult a little wider that the accountancy unit within the Department of Family and Community Services with this new piece of legislation.

But, while the Government’s first proposal appears to have been abandoned, it is important to record what has transpired over the past few weeks.

The Government tried to dress up its budget measure as being one of helping disabled people engage more with society and the Australian workplace. Noble sentiments, but when the proposal was looked at in the cold hard light of day, it became clear that this was primarily an exercise in cost cutting and budget trimming. Under the Government’s budget measure, thousands of people were going to be living under a threat of being removed off the disability support pension. This threat would hang over people’s heads for years, causing stress and anxiety, as it would take the department quite a while to assess everyone to see if they were fit to work 15 hours a week.

People who were assessed as able to work the new minimum level would find themselves on the NewStart Allowance: the government payment for unemployed people. Unfortunately, the NewStart Allowance has a stricter means test and a greater compliance burden. People are expected to look for up to 10 jobs a fortnight and fill out a dole diary. And for all this, the allowance is at its best $52.80 per fortnight less than the disability support pension. At its worst, disabled people could be left a couple of hundred dollars out of pocket each fortnight.

But the hardship would not stop at fortnightly payments. A person with a disability assessed able to work fifteen hours a week and moved to the NewStart Allowance would also lose access to a range of support allowances. Travel, phone and medicine allowances would all be removed.

I would like to point out to the Government that the word ‘support’ has been intentionally placed within the title ‘Disability Support Pension’. It’s there for a reason, and the reprehensible and reckless behaviour of the Government in targeting people with a disability in this budget is something they should seriously reflect on.

In the early 90’s Labor replaced the Invalid Pension with the Disability Support Pension. It was a program that connected people to training programs and other support mechanisms with an aim to help people be engaged in society and community as much as possible. The word ‘support’ was an apt description of what Labor in government created. Such a program stands in stark contrast to the mean-spirited, bureaucratic nightmare that the Government has been pushing recently.

And that leads me to my next point. Madam President, the most breathtaking aspect of this policy debacle must be the lack of intellectual scrutiny that has been applied to the policy proposal.

It was only days after the budget that the Opposition was starting to say that the mechanics of the proposal did not meet up with its publicity. And it was not long before it became clear that the Government had missed a whole group of people with
a disability who were currently working fifteen hours or more in business services, or shelter workshops to use the previous jargon. This group, which is estimated well over 10,000 people, was going to suffer severe financial hardship under the proposal.

When this oversight was brought to the notice of the Minister for Family and Community Services, in Question Time, she proclaimed that “the Prime Minister has made it clear and I have made it clear that the gate on that policy discussion has not shut”.

You could practically hear the media pounding their way to the Prime Minister who had to deny that the Government was doing a policy backflip.

But over the ensuing weeks it became obvious that the gate was wide open. During Estimates, it came to my attention that over 81 % of DSP recipients received on average $84 of private income per fortnight, above the disability support pension. When I asked Department officials how this group of people would be impacted by the proposed policy change, the question had to be taken on notice.

And again, Senator Vanstone stated that the gate was not shut on policy development in this area.

However, as the mistakes, flaws and community opposition have taken their toll, even the Minister saw that this proposal was a millstone for the Government, and the matter had gone quiet until today.

In closing, I want to make a point to the Government. The Opposition will not tolerate blunt and poorly crafted measures that victimise and trau-matise vulnerable groups in our community. Australians have a strong sense of equity. We don’t kick people when they are down, and this is what the Government’s budget measure was doing.

NewStart was never designed for people with a disability. It is a payment for short-term benefit recipients who have the capacity to move off the payment and into full-time work. Placing people with disabilities, who by definition cannot participate in work full-time, onto the NewStart Allowance will leave them on a very low earnings, which they will barely be able to live on and can never hope to escape from.

Senator Vanstone said today the Labor is not interested in hearing anything the Government has got to say in the area of disability support. That is categorically untrue.

Labor’s offer to discuss DSP reforms with the Coalition stands. It’s time to move on. We are happy to work on a legislative framework that optimises participation for people with disabilities, consistent with the principles established in the McClure Committee.

But Labor will not be backing the dismantling of the social safety net or advocating a two-tier system that offers different level of support and hope to people who are doing it tough in our communities.

Senator George Campbell’s speech read as follows—

I rise today to speak on the Budget. I wish to comment on two elements of the budget:

1) The government’s unprincipled attack on the nations poor, and

2) Its complete lack of vision in industry policy.

This is the greatest taxing and spending government in Australian history, which is extraordinary given how little it actually does for those who need it most.

On the other side of this chamber is a government who have attacked our public institutions, our children’s educational opportunities, those who have been left on the scrap heap by economic rationalism and now they seek to scapegoat disabled pensioners and the sick.

Apparently this government thinks it’s OK to blow $3 billion on foreign currency markets. It’s OK to hand out interest free loans of $138m to mates like Comalco and to give $125m with no strings attached to Rio Tinto. But it’s not OK to live in a wheelchair, or suffer an injury while working. No—because under this government’s view of the world you’re obviously a bludger if you possess those characteristics.

I warn the Australian public not to get sick. I warn the Australian public not to suffer a genetically inherited condition. Because this government won’t be there to help you.

But it will be there to impose penalties on your welfare benefit or to provide you with inappropriate assistance to get back into a job. The Government didn’t get away with it his time, but it will be there next time to try and slug you every time you need painkillers or anti-histamines or contraception.

Labor was committed to blocking the Government’s proposed changes to the PBS and the Disability Support Pension from the start. They are unfair, unjust and inequitable. They are against everything Labor stands for and they show this Government’s true colours.

Just look at the details of what the government was proposing, and look closely at the shallow nature of their arguments:
You’d have thought Peter Costello had had a conversion to socialism and sustainability the way he was carrying on about inter-generational equity in the budget. But he wasn’t talking about an investment in our future.

Peter Costello was merely using inter-generational equity as the latest ruse to divert attention from what his Budget razor gang was really doing—attacking our most needy and the few government services still available to them. The Inter-Generational Report (IG Report) is a limited document that the government is manipulating to achieve its proposed budget cuts.

If economic growth over the last 40 years is repeated over the next 40 years, the Australia’s GDP will quadruple in real terms. It will be less double today’s real per capita GDP. This would create ample opportunities to support a generous PBS scheme well into the future.

But don’t take my word for it. We need look no further than the Organisation of Economic Co-operation and Development to see evidence that the imagined future health care crisis of the government is exactly that. Imagined.

In 20 years time Australia will only just be reaching the age dependency levels several European nations like Belgium and Italy are experiencing now, and which Japan has experienced for some time. Are their budgets being slashed and burnt? No. And they weren’t being slashed and burnt 20 years ago either.

Going back to the IG report, it shows Australia’s total age related spending in 2045 would be in the vicinity of 22% of GDP. That is LESS than the CURRENT spending in the Czech Republic, Denmark and Sweden, with New Zealand not far behind.

The way you achieve inter-generational equity is to invest in the future, not to slash and burn programs that are popular and that work.

A good start are things like properly funded public schools, well resourced universities, world-leading research and development, high speed and readily available internet connections, and a health system that gives incentives to healthy lifestyles and guarantees universal care. Jacking up the cost of medicine is a short term and damaging cure to the problems a Treasurer might have with their bottom line.

This government has not acted to protect inter-generational equity in six years of office. We should not believe them now.

The PBS was never meant to be about some imaginary ‘balance’ of contributions between the government and individual citizens. Indeed, the whole point of our universal health system is to recognise that a body such as government with $170 billion in income a year has a lot more resources than a family on $40,000 a year to pay for medical treatment.

Just have a look at what cowards they really are. Instead of calling a spade a spade, in the budget papers this government called their thwarted price hikes for prescription medicine; “realigning patient co-payments and safety nets”. What absolute nonsense. A price hike is a price hike is a price hike.

If there are problems with PBS it is not with patients. It is with the approval process multinational drug companies have to undergo to get their products onto the scheme. Jacking up prices isn’t going fix the problem of an inappropriate drug being placed on the scheme, potentially costing hundreds of millions of dollars to government each year.

And if PBS is meant to make people well, how is it going to do that if citizens are avoiding using necessary medicines because of cost and then landing themselves in hospital—at great public expense—because their conditions was not addressed at an early stage?

If we’re going to go down the path of balance, then the government should commit to reducing contributions to PBS when it saves money through efficiency gains, or when outlays on drugs fall. That’s a true representation of a ‘balanced’ system, but we hear nothing of the sort from this lot in their mean-spirited attempts to undermine universal health care in this country.

If there such a lack of money floating around and there really has to be cuts to the health budget then, why was PBS the first program to be lined up against the wall? I would like to know if the government considered the ballooning cost of the 30% private health insurance rebate when it sought to save money in the health budget. Billions of dollars a year—not all of it going to needy middle income families—is spent on this Howard Government initiative. And I wonder who needs the money more. Millionaires in Double Bay on premium private health cover or working families struggling to pay for essential medicine for their sick kids or themselves.

While this government bankrolls another $107 million—on top of the extra $20 billion or so it has already promised—to the Defence Department in 2002-3, it doesn’t seem to care about how it is consistently failing job seekers.

The job seeker account is one policy that really takes the cake in terms of being a total waste of time.
I find it offensive that as a representatives of the jobless in this chamber, that the Australian Government thinks giving $11 over 12 months—that’s right, less than a dollar a month—in some way helps people to find jobs.

$11 will buy you just one return train fare from Campbelltown to Sydney. It gets you two hours in an Internet cafe. And it buys you 1/3 of the cheapest tie on sale in Grace Bros. or Myer.

If the Government gets its way and you happen to have been shoved from the Disability Support Pension to the Job Network, then $11 will probably get you half a cab fare to a job interview. This policy is a disgrace.

To get access to the big bickies—$935—you have to wait twelve months. Twelve months is too long for the long term unemployed to have to wait for decent support in the quest for meaningful work. Twelve months is too long for a disabled person with expensive medical overheads to wait before they have a shot at boosting their income.

But at least after this Budget we can we own more guns.

If you’re lucky enough to be a multinational company you won’t have to wait twelve months for anything though with this government—they hand you the cash to fatten your bottom line. But just as small players like ordinary people get dudded in health and welfare, small and medium enterprises get dudded by this Government’s industry policy too.

Let’s look at the impact of the Government’s policy on the manufacturing sector and industry generally since it was first elected in 1996—particularly their appalling decisions to simply cut off a number of vital programs over the last year. These are cuts that have left hundreds of companies wondering what on earth this government is doing.

They promised 200 000 new jobs. The net result was a loss of 88 000 jobs—$5 billion has been cut from industry assistance.

Backing Australia’s Ability is a furphy. It is back-loaded to 2004-5 and much of its promises are merely loans rather than extra funding grants.

Our Research and development investment is less than half the OECD average. Expressed in percentage terms, in 14 OECD countries R & D worked out at 6.6% of manufacturing value added, while in Australia in 1999 it came to 3%.

This government has halved the money going the Export Market Development Scheme, and all this is before we even look at the mess Industry Minister Ian MacFarlane has been presiding over.

Everywhere you turn this government seems to have managed to stuff up another industry program, cut us out of another export market, left another company’s funding application sit on a desk for months.

Regional Australia, Departmental cuts, R & D start, EPICS and PICS, TCF cuts, Rio Tinto and Comalco.

I had an unfortunate wake up call to the Government’s attitude to regional manufacturing when I conducting several regional tours earlier this year. Yes, regional manufacturing has some excellent success stories. Yes, there are indeed signs of strong growth. But no thanks can go to the government on this front.

In the absence of any resources or desire to seek out the needs of small and medium enterprises looking to break into tough global markets—these companies have had to band together and fend for themselves. That’s right—with basically no government assistance grassroots networks are forming to share the skills, the training and the contacts necessary for our companies to compete overseas. They would be able to do it a lot quicker, and lot easier if this government was prepared to come to the party.

When it’s targeted correctly more government support = more jobs = more growth = more security. The Pacific Solution won’t provide lasting security to Australian families, but some decent forward thinking industry policy might.

The recent Budget Estimates hearings for the Department of Industry, Tourism and Resources reveal a stunning lack of resourcing to one of our most vital departments.

Let me run through the facts:

- 167 jobs cut or to be cut in the coming months—that’s 10% of the whole department—gone.
- $128m cut from annual department funding—another 10% simply not there to assist industry development.

The government is also proposing to double the number of Exporters operating in Australia. And what are they doing to achieve that? Giving an extra $400,000 a year to the Export Market Development Scheme.

The government is giving just 2 cents from every Australian’s tax bill to further develop our export potential. It’s a joke Madam President.

For the uninitiated R & D start is a program providing funding in advance to small companies needing to expand research and development. Or at least it was.
But in January 23 this year the Government was told that because of the usefulness of the program all money allocated to it, would be spent well before the end of the financial year. What did this government do?

- Did it deliver the $40m extra funding needed to invest in Australia’s long-term economic growth? No.
- Did it let companies know so they could factor this information into their budget considerations? No.
- Did they develop a timeline for renewing application processing? No. This government chose to simply keep the public and industry in the dark about their stuff-up.
- And what happened when they finally went public in late April? For the first time 115 companies found out that this government had left them high and dry, with no advice or support to address the situation.
- And did we get a solution in the Budget in May? No.

It’s a similar story wherever you turn in industry policy these days.

The Printing Industry Association of Australia certainly has some choice words about the Government’s budget and policy priorities. A letter from the Printing Industries Association to the Minister protesting at the Government’s decision to break their 1998 election and GST compensation promises by ending two Printing Industry Competitiveness Schemes said it all.

They’ve lost “confidence and trust in the government ... Not only was the decision to prematurely terminate the schemes made without any industry consultation, but no coherent or cogent justification was given. This compounds the damage done when your government terminated the Book Bounty scheme in a similarly abrupt manner.”

And they’ve got good reason to be angry. 41 companies, including many from regional areas, will lose $3million because of the cuts to the PICS and EPICS schemes.

The Printing Industry has a friend in the Australian Meat Council who’ve condemned the Government’s blase approach to our agricultural trading relationship with the USA.

“I’m speechless,” said Dennis Carl, a director of the Australian Meat Council “As far as I’m concerned the Minister isn’t taking this issue seriously.

Beef’s not the only thing the Government isn’t taking seriously. Or at least that’s the message they’ve given to TCF manufacturers who’ve just been told their
- Market Development Program
- Technology Development Fund and the
- National Framework for Excellence in Training
HAVE BEEN AXED.

If that’s their idea of a smooth transition to free trade in TCF, I’d hate to see how they treat industries they don’t like. Or perhaps we need only to look to jobseekers to answer that question.

Unlike the TCF industry, Rio Tinto, who rake in an after tax global profit of over $1.5billion annually—and brought union bashing to new levels in Australia—are being looked after nicely by the Government. They’re getting $125m with few questions asked for a project that will make them a packet. No dividends will be returned to the government for their outlay. If that’s not enough, Rio Tinto’s subsidiary, Comalco is getting a $138 interest free loan not repayable for at least 25 years.

Nice work if you can get it.

But that sums up the 2002 Budget, really. Money for rich companies. Money for guns and tanks—but nothing for those who want to invest in a knowledge nation and Australia’s economic future. And nothing for those who need it most.

Senator Conroy’s speech read as follows—

I rise to speak on Appropriation Bill (No. 1) 2002-03, Appropriation Bill (No.2) 2002-03 and Appropriation (Parliamentary Departments) Bill (No. 1) 2002-03.

These bills provide us with an opportunity to assess the Government’s performance in fiscal management and its honesty with the Australian people.

Prior to the election the Treasurer promised a surplus. In his own words: “We are giving a guarantee that we will keep the budget in surplus, yes we are.”

What he has delivered is a deficit of $3 billion in 2001-02.

In fact, the budget will be in cumulative deficit over three years.

The deficit is the direct result of the Government’s pre-election spending spree.

And the deficit comes despite deep cuts to health and welfare payments.

Proposed changes to the Disability Support Payment arrangements would have cut the support of
hundreds of thousands of people with disabilities by $52 per fortnight by 2004-05.

Proposed changes to the Pharmaceutical Benefits Scheme would have resulted in the cost of essential medicines rising by 30%.

Labor opposed these changes and we also opposed the Government’s proposal to give a tax break to high-income earners on their superannuation.

Instead Labor proposed viable alternatives that achieved the same outcome but shared the burden for the Government’s past fiscal mistakes more evenly rather than targeting the poorest and most vulnerable Australians.

The Government claimed that proposed cuts in health and welfare payments were justified by the War on Terrorism.

However, the numbers just don’t add up.

The Government is cutting $2.6 billion from the health and welfare budgets but spending $2.3 billion on the War Against Terrorism and Border Protection.

But the fiddles don’t end there.

The Treasurer has long extolled the virtues of accrual accounting saying it would result in:

“more transparent and informative public accounts”.

The Treasurer committed the Government to achieving fiscal balance—that is balance based on the accrual method—over the economic cycle.

However, in this latest budget the Treasurer has chosen to focus on the old measure of the budget balance: the cash balance.

Why? Because it looks better than the fiscal balance.

On this measure the Treasurer has only delivered a budget deficit of $1.2 billion in 2001-02.

Why is there a deficit?

The budget balance is inevitably be influenced by cyclical factors.

Revenues will rise and expenditure will fall during periods of strong economic growth and the reverse will occur when the economy slows.

That, at least, is the theory.

The Treasurer has waxed lyrical about the strong economic performance of the Australian economy.

He has raved about the resilience of growth in the face of global weakness.

Yet despite the fact that Australia has enjoyed a decade of growth....

Despite delivering this budget in a year when the economy grew by 4 per cent...

The Treasurer has delivered a deficit.

To achieve a deficit against a background of sustained growth is an extraordinary achievement.

Even using the Treasurer’s preferred measure—the cash balance—the deterioration in the budget is remarkable.

In 1998-99, the Treasurer estimates that the 2001-02 budget would show a surplus of $14.6 billion.

Yet by the time the budget was brought down, it had collapsed into a $1.2 billion deficit.

The deterioration is not cyclical.

It is not the result of an unfavourable economic environment.

Rather it is the result of an explosion in spending in recent years and in particular in the run-up to the last election.

And it gets worse.

The Government has delivered a deficit despite the fact that it is the highest taxing Government in Australian history.

Data provided by the Auditor General to Senate Estimates confirm that Peter Costello is the highest taxing Treasurer of all time.

Peter Costello seeks to hide this fact by arbitrarily excluding the GST from his budget in breach of Australian Accounting Standards.

When GST is added back in, the real tax take in 2002-03 is around $200 billion dollars.

Commonwealth taxes now account for 25 percent of the economy’s output.

In other words, one dollar in every four generated by Australians each year goes to the Treasurer’s coffers.

Taxpayers are paying more in income tax today than they were before the income tax cut that was meant to compensate them for the GST.

What’s more, the budget would still be in deficit in the next financial year was it not for three accounting fiddles.

First, the Budget Papers state that “Defence has rephased $150 million of its specialist military equipment acquisition program from 2002-03 to 2003-04.”

When Finance officials were asked at Senate estimates what this meant they explained:

“Essentially it (expenditure on specialist military equipment) has been shifted from 2002-03 to 2003-04 “It is $150 million off (expenditure in) 2002-03”?
Secondly, Finance officials were also asked at Senate Estimates what was meant the budget decision to “reschedule” the roads budget and they explained that:

“It is a deferral of expenditure. It is $200 million in 2002-2003”.!

Thirdly, the Budget Papers also states that $40 million of welfare reform measures had been rescheduled, including the working credit measure.

All three measures-$150 million of spending on specialist military equipment, $200 million of spending on roads and $40 million of spending on welfare reform measures or a total of $390 million-were election commitments contained in the Charter of Budget Honesty that the Government has now broken.

More importantly, were it not for these $390 million of broken election promises and budget fiddles the Government would deliver a second budget deficit in 2002-03.

I would like to talk now about asset sales.

It is a common misperception that asset sale proceeds have no direct impact on the budget bottom line.

This is true of proceeds from the sale of financial assets such as Sydney Airports.

However, the proceeds from the sale of non-financial assets such as property and land are treated as revenue and therefore do directly impact the budget bottom line.

The proceeds from such sales have amounted to around $10 billion over the last six years.

And these sale proceeds went directly into the Treasurer’s coffers.

The Treasurer has sold off our assets for a $10 billion windfall and yet he has still managed to deliver a deficit.

And of course the disastrous mismanagement of the property sale process has been well documented.

Only last week an Auditor General report highlighted the Government’s appalling mismanagement of its $15 billion Defence property portfolio.

The report revealed that the Government is selling and then leasing back properties when it has no idea on how much they cost to operate.

How can the Government make sound commercial decisions about these sales, worth hundreds of millions of dollars, when they do not know what it costs to maintain the buildings?

The Audit Office also raised this issue in December 2000, but the Government has done nothing to fix the problem.

This is not new.

The Government often ignores warnings from the Auditor General at great cost to the taxpayer.

For example, they failed to respond to his concerns about the management of currency risk raised in May 2000.

By this point the Defence Department had incurred losses of almost $3 billion as a result of adverse currency movements.

The Government failed to respond and Defence has since lost another $800 million.

This is more than the entire cost of the war on terrorism.

If you need an explanation for the proposed savage cuts in the health and welfare budgets, you need to look no further than the Government appallingly bad management of foreign currency risk.

$3.8 billion dollar of currency losses later, the Government finally responded to the Auditor General’s recommendations this year.

The Auditor General recommended that the Government adopt an overarching policy to manage foreign currency risk and end automatic appropriations to agency budgets to compensate them for currency movements.

What we actually got was a non-policy.

The Government argues there is no need to manage our foreign currency risk because we have a natural hedge.

A natural hedge means that assets and revenues in US dollars are broadly equal to expenses and liabilities, so that any movement in the exchange has no meaningful impact on the budget.

The only problem is there is no natural hedge.

If there was a natural hedge on revenues and expenses, the $3.8 billion of currency losses could never have been incurred.

Senate Estimates revealed that the Government’s US dollar liabilities managed by the AOFM are currently almost $18 billion.

Compare this the net foreign exchange reserve assets of $7 billion reported for May in the latest Reserve Bank Bulletin.

There is no natural hedge.

When taken together with the Treasurer’s $5 billion of gambling losses on foreign currency swaps, total losses due to currency mismanagement amount to almost $9 billion.
It’s getting easier to see how the Treasurer has run the budget into deficit.

One of the key implications of the Government’s poor fiscal management is higher interest rates. The Prime Minister himself made the argument on October 25th last year when he said:

“I do not believe we should go into deficit and we won’t go into deficit if we are re-elected. Once you start with deficits they get bigger and bigger... you end up with higher interest rates, higher unemployment”.

Well the Government has delivered a deficit.

And the Reserve Bank has raised interest rates and the expectation is for further rate rises in coming months.

Research presented at Senate estimates explains just why families were feeling under financial pressure even before the Treasurer tried to slug them with a 30% increase in the cost of essential medicines.

Deutsche Bank calculated the interest payments Australian households would have to make if the official cash rate rises to 6 per cent.

6% is the level suggested by Reserve Bank Governor Ian Macfarlane in his recent testimony to the House Economics Committee.

The research showed that at 6% interest rates, Australian families would be paying a larger share of their income on their mortgage than at any time in the past 15 years.

And the reason for this is because Australian families are now carrying more debt than at any other time in Australia’s history.

National Accounts data for the December quarter 2001 shows that household debt had soared to almost $560 billion.

That’s an average of $78,000 per household in Australia compared to $41,000 when the Government first came to power.

And the level of debt compared to household income stands at a record 119 percent.

The bottom line for Australian families, Treasurer, is that under your management Australians now owe more money than they earn each year.

And they are soon likely to be paying more of their monthly budget on mortgage payments than at any time in the last 15 years.

I would now like to move on to what the Treasurer fondly refers to as “below the line”.

One of the more interesting revelations in this year’s Budget Papers is the Government’s secret plan for the use of the proceeds of asset sales, including Telstra.

On the face of it, the Budget Paper’s suggest that the Government will use asset sale proceeds to pay down debt.

And this implies that the Government bond market will virtually disappear by 2005-06.

The Treasurer has long maintained that sale proceeds will be used to retire debt.

As recently as his post budget address to the Press Club on May 15 he said:

“the proceeds of Telstra ... would allow the Commonwealth to completely retire all of its debt. That is, the Commonwealth would not be carrying any debt”.

He went on to say:

“we have always said that our programme is to retire debt”.

And to ensure he had made his point, the Treasurer said:

“So the forecast surpluses would be applied to debt retirement and the proceeds of asset sales, if that were to proceed, would also be applied (to debt retirement).”

However, Senate Estimates revealed that the Treasurer is considering quite a different option.

The Treasurer is considering using asset sale proceeds to buy other assets and keep the bond market alive.

Treasury officials said.

“A necessary consequence of maintaining a bond market around the current levels or at any particular level would be the accumulation of assets”.

When asked about the type of assets that would be considered they said:

“You might move into equities ... and you would have to make a decision whether you were going to restrict your activities to, for example Australian or international assets, and ... about whether you were prepared to take an open foreign currency position or not”.

So the Government is considering whether the sell its shares in Telstra to buy shares in other companies.

And some of these companies could be international.

So the Government may sell its shares in Telstra and end up buying shares in Microsoft.

The Southern Cross Syndicate that bought Sydney airports this week is considering a public float of the company.

So in the future, the Government may end up once again owning shares in Sydney Airports ... and in Qantas and in the Commonwealth Bank
The Treasurer has argued that asset purchases are only one option being considered. However, as the Treasurer’s own Parliamentary Secretary, Senator Campbell admitted to Estimates:

“It is an issue that is before the Treasurer at the moment”.

And as the Treasurer’s own departmental officials admitted, the Budget Paper’s already assume that the Government will have a very substantial asset portfolio.

You have to dig deep, but on page 12-10 in Budget Paper No. 1 there is a line item in the table Interest and Dividend Revenue” which rises from $500 million in 2002-03 to over $2 billion in 2005-06.

When pressed at Senate Estimates, officials admitted that this was based on an assumption that assets would be accumulated over the forward years.

When pressed at to how big an asset portfolio, they did not challenge a suggestion that on a 5% rate of return, $2 billion in income suggested a $40 billion asset portfolio.

The Finance Minister has, however, seen the folly of the Treasurer’s plan.

In response to a question without notice in the Senate, Senator Minchin made it very clear that he does not believe the Government should even be considering the purchase of assets, in particular shares.

He said:

“... it is my view that it is highly unlikely that the government would ever be in a situation where it would be investing in other market shares. That I think is a most unattractive option, and entirely inconsistent with our whole approach to debt reduction and management of Commonwealth government finances. We don’t want to be a shareholder, that’s the whole point.

Of course for Labor the issue of what to do with the proceeds from the sale of Telstra does not emerge.

The Labor party remains committed to retaining public ownership of Telstra.

The only issue for Labor is how to ensure a competitive telecommunications market for all consumers and businesses.

Finally I would like to turn to an issue that emerged in the Budget Papers that has serious implications for the accountability of Government and transparency of the budget process.

The Auditor General’s recent report on Agency Banking showed that the mismanagement of the incentive scheme introduced to encourage agencies to outsource their banking had cost taxpayers $150 million over three years.

Worse still, in its third year of operation, the Finance Department attempted to hide their mismanagement of the scheme and its mounting losses by simply not making an appropriation for the scheme in 2001-02.

To achieve this the Department employed creative accounting techniques that would have made Enron and WorldCom blush.

To get the offending transaction off the books, they simply transferred the appropriation to an account called the Crown.

The Committee asked what exactly the Crown was and no adequate answer was forthcoming.

This establishes a dangerous precedent whereby agencies could avoid seeking an appropriation for government expenditure that they are not keen to explain ...

And in doing so avoid scrutiny and accountability of the use of taxpayer’s money.

Fortunately, in its most recent Portfolio Budget Statement, the Finance Department has seen the error of its ways and included an appropriation for interest payments.

The Crown-whatever that was-has disappeared from the Department’s Portfolio Budget Statement.

And the Committee sought and received an assurance that the Crown will not be used in this way again.

However, it was with great concern that I read the Auditor General report on DASFLEET tabled today (yesterday if after midnight).

The report savages the Government’s management of the sale and leaseback of Commonwealth vehicles.

Settlement of the dispute cost taxpayers over $20 million plus a further $11 million in legal and management costs.

But the report also noted that the funds were not separately appropriated for but paid from a standing appropriation.

Is this another example of Finance bending the rules in order to avoid drawing attention to its mistakes?

I assure you that this is a question that I will be putting to the Finance Minister and in due course Finance officials at Senate Estimates.

However, the report notes:

In conclusion
The Treasurer guaranteed a surplus before the election.
He delivered a deficit.
And the budget would still be in deficit next year were it not for his accounting tricks.
And the deficit comes despite proposed deep cuts in expenditure targeted at the most vulnerable Australians.
Labour has proposed viable alternatives that would not alter the overall outcome but would share the burden for the Government’s mistakes more fairly.
The Treasurer blames the War on Terrorism for the deficit.
But the numbers don’t add up.
The real reason was the vote-buying spending spree prior to the election and the Treasurer knows it.
The Government has delivered a deficit despite 10 years of economic growth.
Mr Costello has delivered a deficit despite being the highest taxing Treasurer of all time.
Despite grabbing one dollar in every four generated by the Australian economy.
Despite a $10 billion windfall from non-financial assets sales which the Treasurer has frittered away.
Of course, $3.8 billion alone has been lost through currency mismanagement.
$800 million after the Auditor General had warned the Government to take action on this front.
$800 million is more than the entire cost of the War on Terrorism.
In May the Finance Minister announced a non-policy for managing currency risk that relies on the flawed premise that there is a natural hedge.
Minister, there is no natural hedge.
And this takes no account of the Treasurers own $5 billion of losses gambling taxpayer’s money in international currency markets.
What is the implication of the deficit?
As the Prime Minister himself explained before the election: higher interest rates and higher unemployment.
The Reserve Bank has duly raised interest rates and further rises are expected.
If cash rates reach 6%, as the Governor has suggested, Australian families will have to set aside a higher share of their monthly budget to pay for their mortgage than at any other time in the last 15 years.
The Senate Estimates process also revealed the Treasurer’s secret plan to break his promise to use asset sale proceeds to pay down Government debt.
The Treasurer is instead considering using the proceeds to build a massive portfolio of assets that could encompass international shares.
The Treasurer is considering selling Telstra to buy Microsoft.
The Finance Minister disagrees with the Treasurer arguing the ‘Government should not own shares ... that is the whole point of selling Telstra’.
This is not an issue for Labor who remains committed to retaining a stake in Telstra.
The only focus for Labor is delivering competitive and efficient communications services to consumers and business, in particular those in rural and regional Australia.
The Government’s financial management record now lies in tatters.
The Government’s dishonesty now lies exposed.
Labor is committed to ensuring that it is the Government, not low-income earners and the sick, that are held to account.

**Senator MACKAY**—On behalf of Senator Conroy, I move the following amendment on sheet 2573:

At the end of the motion, add “but the Senate condemns the Government for:

(a) its failure to deliver a budget surplus in 2001-02 after a decade of growth;
(b) its failure to deliver a budget surplus in 2002-03 without breaking previous commitments on defence, roads and working credits;
(c) imposing the cost of a pre-election spending spree on the families via higher interest rates and cuts in health and welfare spending;
(d) falsely claiming that cuts to health and welfare payments are needed to fund the war against terrorism and border protection;
(e) wasting $5 billion of taxpayers money by gambling in foreign currency markets through cross currency derivatives;
(f) wasting almost $3.8 billion by failing to manage currency risk on defence
spending despite warnings from the Auditor-General;
(g) wasting $31 million on maintenance services for 40-year old helicopters that are years overdue despite a $800m downpayment;
(h) its failure to recognise the GST as a Commonwealth tax and this Government as the highest taxing of all time; and
(i) its failure to consider the fairer options put forward by the opposition to balance the budget.

Senator BARTLETT (Queensland) (3.58 a.m.)—I have no comment on the amendment, but I seek leave to incorporate a speech which was circulated three hours ago—people have probably forgotten what is in it—on the Appropriation (Parliamentary Departments) Bill (No. 1) 2002-2003, the Appropriation Bill (No. 1) 2002-2003 and the Appropriation Bill (No. 2) 2002-2003.

Leave granted.
The speech read as follows—
As we come together to vote on these bills tonight we demonstrate that we are not blocking the budget, but making a better budget. These Appropriations bills authorise the Minister for Finance to issue the required funds from the Consolidated Revenue Fund to enable the ongoing activities of Government.

In passing these Bills we pass what is widely referred to as supply. We are not obstructing the operations of the Government. We will be allowing them to go on with the core activities of Government.

However, we will be performing the role people expect us to when they vote Democrat in the Senate. We will scrutinise the Governments strategy, expose its flaws and protect the vulnerable from a Government that has already become arrogant with its power.

While we will pass these bills I want to lodge our philosophical objection to a number of things continued in these bills. We will address these concerns, and where necessary stop their implementation when they come before the Senate in other legislation.

In any budget there are the macro issues of the nation’s economic settings and the micro issues of particular measures and initiatives.

This budget revealed that the Howard/Costello Government abandoned its commitment to macroeconomic settings in its pre-election fluster. It went on a huge spending spree in the lead up to the last election that turned the budget to a $3 billion deficit in accrual terms.

Mr Costello would have us believe that this is due to the tragic events of September 11, but the War on Terror accounts for just 10% of that deficit. The majority of the deficit is due to the Government’s election pork-barrelling.

This is despite the fact that Government revenue is running at 38% of GDP, up from 32% of GDP when they came to office. These numbers—when combined with the growth rates—mean that this Government is spending in the order of $40 billion more per year than they were they came to power. And still we are in deficit.

Deficit spending at this time of the economic cycle is irresponsible, and Australians are wearing the costs in the form of increased interest rates. And they will be paying the costs for some time. Interest rates are set to continue to rise by as much as 2% over the next 2 years.

These interest rates will hit doubly hard because the Governments approach to spending its huge revenue was to encourage the expansion of household debt, rather than to invest in our future. The Treasurer has failed in is role of providing oversight to the financial matters of the nation as we watch an explosion in household debt. As interest rates rise, this debt will become crippling for many Australians.

As a result, the Australian Democrats advocate fiscal responsibility. We consider that recurrent spending should be in surplus in these boom times. We would consider making important capital investments in Australia’s long-term future, but recurrent spending should be in surplus.

However, the Australian Democrats have very different views to the Government on how this surplus should be achieved.

This Government has repeatedly robbed the least well off to pork barrel marginal voters. This Government ran up a huge deficit in the lead up to the election, and now it wants the poor, the sick and the vulnerable to pay for it.

The priorities of this Government are very clear. On the one hand, we have tax cuts in the superannuation surcharge for those earning over $85,000 per year. A handout of $370 million over four years to Australia’s wealthiest 3%.

And, yet, the Governments major cost cutting measures, increasing PBS prescription co-payments hit concession card holders.

Department officials acknowledged in estimates that about half of the $1.1 billion dollars raised by
the measure will come from concession card holders.

Concession card holders are pensioners, low income people and health care card holders.

The Government acknowledges that the co-payments rise is just a revenue raising measure. It will do nothing to address the deeper issues of the PBS. Can you think of a more regressive, more unjust revenue raising measure?

That is only the beginning. Then we have the restrictions to the eligibility criteria for the disabilities support pension. They want to pay for tax cuts to the superannuation surcharge for people on $85,000 by cutting the benefits to marginally employed disabled people.

To keep our election promises, the Australian Democrats must stop these measures. We are not doing it here in the Appropriations Bills, but we will do it in other issue specific legislation.

Instead, we suggest the Government meet its fiscal responsibilities by reigning in the disastrous Private Health Insurance Rebate.

The Private Health Insurance rebate has comprehensively failed to achieve its goal of expanding private health insurance coverage, increasing coverage by less than 3% in the first 18 months of operation.

The bulk of the $10 billion scheme has become a handout to the wealthiest one third of Australians. A 10% cut to the massive scheme would cover the co-payments rise, but Mr Costello won’t hear of it.

Australians have choices about how we reign in this Government’s electoral spending spree. The Australian Democrats will make sure it is achieved by tackling the big issues, and not through bandaid solutions that hit the sick and the poor.

Then there is the War on Terrorism.

The security and border protection expenditure sounds a lot if you aggregate the costs over five years, but it is still only one quarter of the costs of the Private Health Insurance rebate.

This Government has taken three buckets of money. One small bucket and two very large buckets. The Government has said they are all because of the War on Terrorism.

The small bucket is the actual costs of the War on Terrorism. There is $194 million being spent on military commitments resulting from the September 11 attacks. We support this funding. It is vital that if we send troops into the field, we resource them.

Then there is a much bigger bucket, $1.3 billion for making Australia safer from terrorism.

We will look at all of these expenditures one by one. If the Government’s priorities are anything like their Anti-Terrorist legislation, Australians should be very afraid. The focus on increased security is prudent. But it is vital that in protecting ourselves from terrorism, we do not sacrifice everything we are trying to protect.

Then we come to the third bucket of security money. This to prevent asylum seekers reaching our shores. This bucket does not belong with defence spending. It belongs with our social policy discussions. The Howard/Costello Government are trying to convince Australians that the most pressing problem facing Australia at the current time is the trickle of women and children in leaky boats. They act as if our problems are not long term unemployment, or environmental degradation, or poverty or suicide. It is a few thousand terrified people asking for our help.

The Australian Democrats are appalled that this is how the Howard Government is going to squander the fruits of the economic boom. Not only are they not investing in our future. They are actively undermining it.

They are attacking Australia’s social fabric. They are propagating the myth that refugees are Australia’s biggest threat. They have replaced hope with fear.

This is a vital time in Australian history. We have a once in a generation opportunity. When the Howard Government squander this opportunity, it is not just a cost for now. They are costing us the opportunity to set ourselves up for the 25 years to come. The Treasurer’s attempt at vision proved that had none. This is the time that we should be healing our social fabric and tackling the big challenges of our age, making bold inroads into our environmental crises and equipping ourselves for a rapidly evolving world.

I will finish by acknowledging the positive measures in the Budget that the Democrats welcome. Some of them are actually initiatives we proposed.

These include the Government’s increased benefits for the aged, for some veterans and for most war widows.

The Australian Democrats have welcomed and support the introduction of guaranteed minimum levels of service in the Job Network.

And we acknowledge greater funding for e-security, which recognises the increasing need for
a safe and secure electronic operating environment for both the private and public sectors.

The Democrats welcome the increased capacity for the Health Insurance Commission to identify ‘doctor shopping’ for inappropriate medicines, as well as fraudulent PBS practices by pharmacies.

There are funds to improve patient access to radiation oncology services in rural and regional areas and extra grants to drug treatment organisations.

Overall, there are not a lot of positive measures and that is not only disappointing but surprising.

We pass these Appropriations Bills tonight, but we will do the job we were elected to and reform this budget as it comes through the House in other Bills.

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (4.00 a.m.)—Madam President, I also seek leave to incorporate a speech on the second reading debate.

Leave granted.

The speech read as follows—

I would like to make some brief comments tonight in relation to one particular aspect of the Appropriations Bills that is of great importance to the Australian book printing and publishing industries.

I would like to congratulate the Government on its decision earlier today to restore funding to the Enhanced Printing Industries Competitiveness Scheme, or EPICS.

This decision has been warmly received by the book printing industry, which regards the EPICS program as a "strategically successful scheme."

It is a key means by which the industry can reposition itself in the very competitive international market by investing in:

• new technologies
• R&D
• infrastructure development
• industry analysis and market development, and
• training and skills development.

Investment in each of these areas is essential if Australian companies are to gain a more secure foothold in the emerging knowledge management domain—and our book printing industry is no different.

As Senators may recall, the EPICS program was a key plank of the Book Industry Assistance Package that the Government and the Australian Democrats negotiated as part of our agreement on the GST reform package in 1999. The Government agreed to put this assistance package in place to safeguard the book printing industry against any negative impacts that the tax reforms might have on the price of Australian books.

As part of the GST negotiations, the Democrats received a written undertaking from the Prime Minister to the effect that no changes would be made to the tax agreement without prior consultation with our Party.

The EPICS program was instituted in 2000, and some $48 million was allocated to be spent over the next four years on projects that encourage innovation, business development and skills formation in the Australian book printing industry.

So on behalf of the Australian Printing Industry, the Democrats welcome the Government’s decision to stick to this agreement and honour its commitment in terms of the EPICS program.

By reinstating the promised funds for the EPICS program, the Government has acknowledged that in the broader Budget picture, the potential benefits to be reaped from the full implementation of the EPICS program far outweigh the marginal and very short-term monetary benefits associated with its axing.

On behalf of the Democrats, I would like to extend the Party’s thanks and congratulations to the Australian book printing industry, and Mr Gary Donnison of the Printing Industries Association of Australia in particular, for their efforts to highlight just what would be at stake if the EPICS program was not allowed to run its full course, and why the Government needed to reconsider its decision from Budget night.

I am conscious of the need for brevity tonight, but I think it is important to refer to some of the reasons why the Government has made a very wise decision today, and one which is in the long-term economic interests of this country.

Firstly, I would like to remind Senators of the size and value of Australia’s book production and printing industry:

• it is made up of 6,000 companies and 120,000 employees;
• it is larger than the car and TCF industries combined; and in comparison to these industries
• book producers and printers receive relatively little direct support from Government.

At the time that the Budget decision to cut funds to the EPICS program was taken, AusIndustry was considering a total of 74 applications from 41 companies.
Each company had invested significant amounts of money and other resources to undertake the research and financial planning that was required to lodge a strong application under the EPICS program. The printing industry estimated that collectively, these 79 companies had invested $3 million in their applications to the program.

In addition, AusIndustry had committed funding to the tune of about $28 million for 300 projects, some of which are underway.

So the sudden halt to the program that was announced on Budget night had serious financial consequences for a number companies, and cast a dark cloud over the future economic viability and employment capacity of others, particularly in regional Australia.

And all of this at a time when the industry was just beginning to invest in new infrastructure, strategic business plans and technological innovation (in part as a result of EPICS) that would help Australia become the centre of high-quality book production in the Asia-Pacific region.

I want to refer to one example of a company that had applied for funding under the EPICS program and had a great deal at stake as a result of the premature axing of the program. The example of CCH that I want to refer to tonight is exceptional—it just demonstrates the position that most of the 79 companies that had lodged applications found themselves in on Budget night.

CCH Australia has operated in the Australian market for over 30 years and has particular expertise in the publication of legal books. It also has a long-standing relationship with McPherson Print Group for the provision of all of its print requirements.

Under the EPICS scheme, CCH intended to undertake a corporate Business Plan as well as a major internal change process, which it referred to as “Next Generation Publishing”.

The purpose of the CCH Business Plan was to draw together the existing business plans operating in each of the publisher’s divisions, so it could better co-ordinate all decision-making processes across its divisions. A further intended benefit was the relocation to Australia of all printing being done offshore for its Asia and New Zealand subsidiaries. This would have amounted to more than $20 million worth of new business for local printers each year.

The “Next Generation Publishing” component of CCH’s application was costed at $1.5 million over 9 months, and aimed to develop a common framework for content creation and delivery across all of its divisions in the Asia/Pacific region. The overall benefits expected from NGP were better quality content; shorter updating and production times; and easier reuse of content.

CCH’s application for funding of the Business Plan was lodged in October 2001 and for NGP was lodged in April 2002. Whilst I note that CCH’s applications did not reach the AusIndustry approving committee prior to Budget night, and therefore have not been funded, I think the reinstatement of the EPICS program gives the company hope that its plans may yet win Government support.

But, up until tonight, CCH felt that it was actually worse off than it was 2 years ago when the EPICS program was first introduced. It had expended many hours and considerable resources in the development of these two funding applications—only to have the program pulled at the critical moment.

CCH was forced to put the plan to repatriate the printing being undertaken in Asia and New Zealand “on hold”—knowing that without the injection of EPICS funds, it simply could not embark on the scale of investment required to make it a leader in the domestic industry.

It is when you closely examine how the untimely withdrawal of the EPICS program would have impacted on individual companies like CCH that you begin to get some picture of just how valuable its restoration will be to the book printing industry and the Australian economy.

And I want to point out that some of these rewards will take time—they are medium to long-term investments. EPICS is a program that cannot be judged and evaluated in the space of one budget cycle—and I hope that Government will not go down this road.

Conclusion

The Australian economy can expect to benefit handsomely from the repositioning the Australian book printing industry so that it is technologically smarter and more internationally competitive. It is these qualities that will put the industry on the trajectory from small to medium enterprises, to best practice world leaders. And it is programs like the EPICS scheme that are instrumental in making this transition happen.

That is why the Democrats welcome the Government’s decision today to restore funding to the EPICS program today. However, we would like to flag our intention to continue discussions with the Government about the importance of also restoring funding to the Printing Industry Competitiveness Scheme or PICS, which was cut from the Budget.
This subsidy scheme was introduced in 1999 to help partly offset the tariff-inflated prices of paper and paperboard used in the production of books, in recognition that books imported into Australia pay no such duties and therefore have an unfair competitive advantage. The amount of money we are talking about here is about $6 million over the next twelve months, which I think is a modest amount to fulfil the Government’s commitment to the industry to develop a stronger, sustainable printing industry.

But these are discussions that will occur in the near future and in the spirit of good faith that led to the restoration of funding to the EPICS program.

The PRESIDENT—The question is that the second reading amendment, as circulated, be agreed to.

Question negatived.

Original question agreed to.

Bills read a second time.

In Committee

APPROPRIATION BILL (No. 1) 2002-03

Bill—by leave—taken as a whole.

Senator BARTLETT (Queensland) (4.01 a.m.)—by leave—I move:

That the House of Representatives be requested to make the following amendments:

Schedule 1, page 105, Immigration and Multicultural and Indigenous Affairs portfolio, Outcome 1, reduce the vote for the Department of Immigration and Multicultural and Indigenous Affairs by $9.5 million being the amount for the construction of a purpose built permanent immigration reception and processing centre on Christmas Island.

Schedule 1, page 126, Transport and Regional Services portfolio, Outcome 2, reduce the vote for the Department of Transport and Regional Services by $11.6 million being the amount for the construction of a purpose built immigration reception and processing centre on Christmas Island.

Statement pursuant to the order of the Senate of 26 June 2000

These amendments are framed as requests because they are to a bill which appropriates monies for the ordinary annual services of the government.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000

As this is a bill appropriating moneys for the ordinary annual services of the government it is moved as a request. This is in accordance with the precedents of the Senate.

I will speak to these requests for amendments with regard to Appropriation Bill (No. 1) 2002-2003 and Appropriation Bill (No. 2) 2002-2003 together. They all relate to an immigration detention centre on Christmas Island.

Senator Ferguson—Which you know nothing about.

Senator BARTLETT—I take the interjection from Senator Ferguson. I actually know quite a lot about the immigration detention centre on Christmas Island. If he wishes to encourage me to speak longer, I am happy to do so, because I think this is a particularly disgraceful facility and a particularly disgraceful waste of public money. Whilst appropriation bill debates more broadly tend to be ones where we speak on whatever we want, they are, let us not forget, about extracting money from the taxpayer to spend on things. These requests and amendments go to a particularly bad thing we are going to spend money on, which is a detention centre on Christmas Island. I make the important point that these two separate requests for amendments deal with the appropriation of well over $130 million to build a detention centre on Christmas Island that is not necessary. We already have an empty detention centre in Darwin and we have another detention centre planned and committed to be built in Brisbane. The whole purpose of this detention centre is to detain people somewhere where they can have no legal rights.

Apart from the waste of money, it will cause immense environmental damage. This detention centre project has been exempted from the strong federal environmental protection laws on the ground of so-called national interest.

Senator Faulkner—They are now strong laws, are they?

Senator BARTLETT—They are strong laws. We would always like to make them stronger, but they are strong laws. One of the weaknesses is that the federal environment minister can exempt a proposal on the
ground of national interest. That is a weakness; I acknowledge that. The disgraceful misuse of that part of the act is a clear-cut example of why we need to amend the act to remove the ability of the minister to exempt any proposal on the ground of national interest. Clearly this is a case where it has been misused. The minister did not consider national interest on the grounds of all the environmental aspects. He said national interest is that the government needs to be able to lock away refugees somewhere where no one can get to them and they have no legal rights. I do not believe that comes even remotely close to national interest. Despite the hour of the morning that has been forced on us by agreements between the government and the opposition—

Senator Ian Macdonald—And by long boring speeches.

The CHAIRMAN—Senator Macdonald, would you please cease interjecting. It is disorderly, and you are out of your seat, which makes it even more so.

Senator BARTLETT—And not even interesting, which is totally unforgivable. I could cope with an interjection if it was interesting.

Senator Faulkner—Your leader and whip were present when these negotiations were being conducted.

Senator BARTLETT—The main thing is that we are agreeing to pay hundreds of millions of dollars to build a detention centre that we do not need so that we can lock up refugees somewhere where they do not have any legal rights, in a manner that will destroy the environment of a place that has natural heritage values. That is what the parliament is agreeing to, among many other things. I am sure we all agree to the totality, but the point needs to be made that that is what is being done.

The reason I am saying this is to point out to the public of Australia that the government is willing to waste hundreds of millions of Australian dollars to put people in a situation where they have reduced legal rights and to destroy the environment purely so it can win elections. I am sure you are happy about the fact that you won an election on dividing the nation, wasting hundreds of millions of dollars, removing people’s legal rights, putting people in a situation where they may die. You are happy to be in government because of that—I am not happy that you are in government because of that. This appropriation bill is yet another representation of the fact that this government is willing to waste hundreds of millions of dollars of Australian taxpayers’ money building a facility we do not need in order to imprison people without rights in a way that destroys the environment. It is straightforward, simple and cut and dried. It totally sucks. We should oppose it, and that is what these requests for amendment are about.

The CHAIRMAN—The question is that the request for amendments be agreed to.

Question negatived.

Bill agreed to.

APPROPRIATION BILL (No. 2) 2002-2003

Bill—by leave—taken as a whole.

Senator BARTLETT (Queensland) (4.07 a.m.)—by leave—I move Democrats amendments (1) and (2) on sheet 2574:

(1) Schedule 2, page 54, Immigration and Multicultural and Indigenous Affairs portfolio, equity injections, reduce the vote for the Department of Immigration and Multicultural and Indigenous Affairs by $75.4 million, being the amount for the construction of a purpose built permanent immigration reception and processing centre on Christmas Island.

(2) Schedule 2, page 59, Transport and Regional Services portfolio, reduce the vote for the Department of Transport and Regional Services by $41.0 million being the amount for the construction of a purpose built permanent immigration reception and processing centre on Christmas Island.

If I manage to have complete silence from my left, I will move this and not say anything.

Senator Ian Campbell interjecting—

Senator BARTLETT—I think I have made my point. I still think it is particularly tragic, as is the fact that we are sitting here at this time of the morning debating anything, let alone this—
Senator Ian Macdonald—It more like a tragedy that you should even be here.

Honourable senators interjecting—

The CHAIRMAN—Order! Senator Bartlett is the only one with the call and I would appreciate it if that was the only voice I heard.

Senator BARTLETT—I did have Senator Ian Macdonald talking about tragic things.

Senator George Campbell—He’s a moron with a tongue.

The CHAIRMAN—Senator Campbell, order!

Senator BARTLETT—I am sure Senator Macdonald, who does in a totally genuine sense have a genuine commitment to his portfolio area, would actually love the amount of money that is being removed here to go into his portfolio area. We heard Senator Bourne earlier tonight, in her final speech, talk about all that was needed to make an effective ABC and SBS. What we are doing now is wasting money on something that we do not need to torture people, to remove their rights and to destroy the environment. The money that we could save could be spent on the ABC, SBS and Senator Ian Macdonald’s portfolio. That would be a much better way to go.

Senator Faulkner—Thank you, and goodnight.

Senator BARTLETT—Do not do a Senator Ian Macdonald impersonation, Senator Faulkner; it does not become you. The point needs to be made that when we do pass these bills with all this money in them, we should look at what the impact will be and what other alternatives we could have if we recognised the opportunities before us. I think it is a shame that we have not done so in this case.

Senator BROWN (Tasmania) (4.09 a.m.)—Senator Bartlett has spoken with great passion and he is right.

The CHAIRMAN—The question is that the amendments moved by Senator Bartlett be agreed to.

Question negatived.

Bill agreed to.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (4.11 a.m.)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

Bills reported without amendments or requests; report adopted.

MEMBERS OF PARLIAMENT (LIFE GOLD PASS) BILL 2002

Referral to Committee

Senator HILL (South Australia—Leader of the Government in the Senate) (4.13 a.m.)—by leave—I move:


Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.13 a.m.)—There is no doubt about the urgency of the motion that has been moved by the Leader of the Government in the Senate. He has snuck it in there at 4.13 a.m. As Senator Hill has been so persuasive in demonstrating its urgency, I indicate to the Senate that, reluctantly, the opposition will agree with the motion.

Question agreed to.

SUPERANNUATION: POLICY

Return to Order

Senator HILL (South Australia—Leader of the Government in the Senate) (4.14 a.m.)—I table a statement relating to the order of the Senate of 24 June 2002 for the production of documents concerning the superannuation system.

BUDGET: INTERGENERATIONAL REPORT

Return to Order

Senator HILL (South Australia—Leader of the Government in the Senate) (4.14 a.m.)—I table a statement relating to the order of the Senate of 25 June 2002 for the production of documents concerning retirement and income modelling.
BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Messages received from the House of Representatives agreeing to the amendments made by the Senate to the following bills:

- Border Security Legislation Amendment Bill 2002
- Telecommunications Interception Legislation Amendment Bill 2002
- Suppression of the Financing of Terrorism Bill 2002
- Security Legislation Amendment (Terrorism) Bill 2002 [No. 2]
- Social Security and Veterans’ Entitlements Legislation Amendment (Disposal of Assets—Integrity of Means Testing) Bill 2002
- Taxation Laws Amendment (Supersession) Bill (No. 2) 2002
- Taxation Laws Amendment Bill (No. 4) 2002
- New Business Tax System (Consolidation) Bill (No. 1) 2002

ADJOURNMENT

Senator HILL (South Australia)—Leader of the Government in the Senate) (4.16 a.m.)—I thank all Senators for their cooperation tonight and thank the staff for their tolerance. I move:

That the Senate do now adjourn.

Zimbabwe

Senator MURRAY (Western Australia) (4.16 a.m.)—I seek leave to incorporate a copy of my adjournment speech.

Leave granted.

The speech read as follows—

Tonight I stand to again speak to the Senate about the crisis in Zimbabwe. Many of my parliamentary colleagues are acutely aware of my personal interest in the turmoil that is wreaking havoc with the lives of millions of Zimbabwean citizens and its economy. I thank many of them for the efforts they have made in the interests of Zimbabwe. They know as I do that the Shona, N’debele and other peoples of Zimbabwe deserve much better than they are getting from their leaders.

Zimbabwe is far distant from Australia but we are intimately tied to it because of the many Australians who have friends and relatives who are desperately trying to survive events in that strife-torn country. We are intimately tied to it because as international citizens we cannot and must not ignore the human rights abuses that occur and have occurred there. We are intimately tied to it because of our support for international condemnation of the racist corrupt murderous and incompetent Mugabe regime. Lastly we are intimately tied to it because of our nation’s commercial interests.

The catalyst for this, my fourth adjournment speech on Zimbabwe is yesterday’s deadline for 2443 commercial farmers in Zimbabwe to stop farming or risk being jailed under the country’s compulsory land acquisition laws.

I am a supporter of land reform in Zimbabwe, and the Zimbabwe opposition has a proposed programme that would achieve land reform, and retain the capacity of Zimbabwe to not only feed itself, but export food—a previous capacity that the Mugabe regime has destroyed. The importance of productive commercial farms to Zimbabwe’s economy cannot be underestimated. Previously Zimbabwe’s commercial farms allowed it to feed itself and generate very large sums of vital foreign exchange through significant exports. Two years ago I asserted that if existing commercial farmers were forced to leave the land, Zimbabwe would lose its ability to feed itself and to earn much of its foreign exchange. That has happened.

Now let’s deal with Mr Mugabe’s real motives for his land campaign. The following communication is reportedly accurate: For obvious reasons I will not name anyone.

“The new owners of Zimbabwe’s commercial farms are not farmers at all. They are not graduates from our agricultural schools and colleges. They are not young men and women who are ready to toil under the baking African sun tending crops and livestock. The new owners of Zimbabwe’s farms include the following people: Vice Presidents Muzenda and Msika; the Ministers of Transport, Industry, State, Energy, Defence, Higher Education and Youth; the Deputy Ministers of Health, Employment Creation, Justice and Local Government; the Mayor of Bindura and ex-Mayor of Chitungwiza; six MPs; five Permanent Secretaries; four Governors; four District Administrators and two Provincial Administrators. From our armed and security forces are the Commissioner of Police, his deputy and the ZRP official spokesperson. The Head of the Prisons service, chief prison officer and his deputy, two retired army generals, six brigadiers, a colonel, major and wing commander. From our judiciary beneficiaries so far named include the Chief Justice of the Supreme Court, three lawyers, one attorney and one retired Judge. From the state owned television service, beneficiaries include ZBC Chief Correspondent Reuben Barwe, an-
The private sector, which played such an important role in 1992, is very much weakened by price controls, rampant inflation and demotivated management that it is not in any position to help significantly.

The government itself has a national debt that now exceeds twice that of the GDP, is struggling to cope with existing obligations and certainly does not have the resources to pay for what is needed in any serious way. Foreign exchange receipts have fallen by 40 per cent and there are no resources available for imports on the scale required.

We have insulted our friends and supporters abroad so that even the Scandinavians have given up on us and said we are beyond redemption. We have violated every rule of good governance in the book and are a pariah state by any measure of the word. In the past two years we have destroyed a commercial farming system that was the pride of Africa 20 years ago and the huge resources of these thousands of farms lie idle and destroyed.

Now suddenly the cold dawn of reality. This week supplies of the last remaining foodstuffs in free supply, wheat and bread, has been cut by 50 percent to try and eke out stocks which were about to run out despite repeated assurances from our genius of a Minister that ‘stocks are enough’. I fully expect that this will be the trigger of massive, nation wide food shortages on a scale we have never seen before. Before you blame the weather for this, or accept Mugabe’s facile explanations in Rome, we have full dams, no water shortages, plenty of grass in most areas, rivers are still running and if our farms were working, the capacity to feed ourselves from irrigated land alone, if this was required. In fact all the crops that were grown under normal conditions—tobacco, soybeans and cotton are all yielding between 70 and 90 per cent of their potential. This is not a repeat of 1992 in any way and attempts to draw parallels do not do justice to the situation.”

To quote the headline of an article in the June 8, 2002 edition of the “The Spectator”—DON’T FORGET ZIMBABWE. The Spectator asserts that, “It is now on the brink of starvation with six million in need of food aid ... the reason so much of black Africa is a disaster is nothing to do with colonialism or droughts. The trouble is the despotic behaviour of Africa’s rulers. It suits Mbeki and its suits Blair, quietly to forget about the horrors of Zimbabwe. They must not be forgotten.”

The challenge for our government and its citizens is to ensure that we do not forget.

**Returns to Order**

Senator **SHERRY** (Tasmania) (4.16 a.m.)—I intend to respond briefly to the two returns to order that were tabled just a few

chairman Supa Mandiwanzira and Head of Sports Admire Taderera. The VIP beneficiaries have got farms ranging in size from 300 to 1200 hectares which include the houses, infrastructure and equipment.

The list of Zimbabwe’s new commercial farmers is **a Who’s Who in Zanu PF.** It is a list of the people who have been at the forefront of what has been called Zimbabwe’s Third Chimurenga. Our government got back into the power on the promise of land to the people and now we can see exactly which people they were talking about.

Nearly 200 people have lost their lives in this Third Chimurenga. Thousands of others have been tortured, beaten, burned and raped and are refugees in their own country. Six hundred thousand people are already surviving on donor food and our government says seven million refugees face starvation.”

It must be acknowledged that Zimbabwean land rights issues are complex. There is the profoundly unfair, historical and race based colonial context. Zimbabwean blacks were precluded from individual ownership of productive farming land.

Secondly, although dryland farming does require large acreages, many farms had under-utilised land on them. Thirdly, land redistribution since independence in 1980 has not satisfied land hunger at all, since it has largely benefited elite members of the ZANU-PF party rather than black Zimbabweans living in crowded communal lands in the country.

The revelations contained in the quoted communication are cause for alarm and again highlight Zimbabwe’s badly designed Constitution that provides few constraints on power and little accountability. I will remind the Senate that in May 2000 Transparency International rated Zimbabwe on its Corruption Perceptions Index a 4.1. The index relates to perceptions of the degree of corruption as seen by business people, academics and risk analysts, and ranges between 10 (highly clean) and 0 (highly corrupt). The 2001 index rated Zimbabwe at 2.9 and I shudder to think what rating it will be allocated in September when this year’s results are collated.

To assist the Senate in its understanding of the very real threat Zimbabwean citizens must face I will now quote correspondence received from another resident. It reads:

“Zimbabwe has allowed itself to run out of food stocks completely. It’s left the supply situation so long that it is no longer physically possible to get enough food into the country to feed the people. The private sector, which played such an important role in 1992, is very much weakened by price
minutes ago at this very late hour. The first return to order was moved by the Senate on 24 June, on my initiative, and the order went to the government laying on the table of the Senate on the last day of the 2002 winter sitting the revised costing documents in brief of the Australian Labor Party’s plan for a fairer superannuation system prepared by Mr Phil Gallagher, the manager of the Retirement and Income Modelling Unit in Treasury.

Firstly, in respect of the answer we have received in the Senate this evening, it is clearly not the work of Senator Coonan, the Minister for Revenue and Assistant Treasurer. I think I can guess who wrote the response. It is an outright rejection of the material that has been requested by the Senate. As I said earlier, it went to the costings of Labor’s proposed alternatives for a fairer superannuation system announced by the leader, Mr Crean, in the other place in his budget reply speech. There are a number of inaccurate assertions in this response. To put it in context, when the government handed down its budget and the Leader of the Opposition responded with costed alternatives in respect of its two superannuation options, the following day, 17 May, the Prime Minister said: You save about $50 million a year out of the surcharge, if you knock that back. But I’m told that it’s about seven times more than that, about $350 million in order to fund a cut of 2% in the contributions tax.

The importance of Labor’s request is highlighted by the fact that, on that occasion early in the morning of 17 May, the Prime Minister had forgotten to acknowledge that the government’s own surcharge reduction was not $50 million a year. It would climb to $200 million after three years, and this was clearly in the government’s own budget. Later that day the Treasurer revised upwards the Prime Minister’s costings of Labor’s proposals from $350 million to $505 million—it jumped about $150 million in one day. Naturally Labor was a little bit suspicious of the figures being handed out by the Prime Minister and the Treasurer.

What became apparent at Senate estimates during that process of questioning Mr Gallagher was that in the government’s costings of Labor’s superannuation plan the Treasurer’s request for the costings failed to take into account that Labor’s proposals were to be phased in over a three-year period rather than introduced in one year. This was a critical omission from the government’s costings. On that request by the Treasurer to Treasury and the subsequent release of those costings, the public was given incorrect information. The government did come unstuck a little later that day because it was pointed out to the media that the Labor Party had clearly announced the phase-in periods in a press release that I had released. The costings, it was clear from Senate estimates, had been inaccurately prepared at the request of the Treasurer and that is why it was necessary to have these costings provided to the Senate—hence the order.

One other remark in respect of the response that we have received: in the middle of page 2 it refers to the further clarification, by me, of details of Labor proposals which were not previously clear. This is an incorrect claim by the Assistant Treasurer. What is clear is that the head of the government’s retirement income group, Mr Gallagher, had not understood the application of a contributions tax reduction to defined benefit funds versus accumulation funds, and had not taken that factor into account. This was an error made by the costings unit in Treasury, and so there was no further clarification required by me. It is a piece of information that one would expect modellers as senior as Mr Gallagher to understand in taking into account costings in the area of superannuation.

The second return to order relates to the modelling that was carried out on the government’s Intergenerational Report, which was a central element of the budget document. The Senate has requested that the draft costings that were prepared for the Intergenerational Report by the retirement modelling unit in Treasury be provided to the Senate. Because of the lateness of the hour, I will not go into any more detail other than to say that it is apparent that the Intergenerational Report’s modelling is not a true total and correct picture of the particular problems and challenges that Australia will face as a nation due to the consequences of an ageing
population; hence, Labor’s request to obtain a copy of the draft modelling that we know was prepared by admission of Treasury officials at estimates in January of this year.

Labor has made a request for many other aspects of particular government expenditures in the taxation area to be appropriately modelled and provided in order to ensure we have a full and complete debate about the consequences of the ageing population—a debate that is not based on what is, at best, only a partial picture of the consequences of the ageing population that is outlined in the Intergenerational Report. It is now 4.25 a.m. If it were summer we would be walking out into the rays of the sun.

Senator Bartlett—It is close to snow!

Senator SHERRY—I understand it is close to snowing outside. I conclude my remarks there and indicate to the Senate that the government has not heard the last of these issues that I have touched on briefly tonight. We will be returning to these matters when the Senate resumes after the winter break.

Bourne, Senator Vicki

Senator BARTLETT (Queensland) (4.25 a.m.)—I will not make a 10-minute speech about refugees. I would like to make a 30-second speech. We had truncated valedictories earlier today but I think, seeing the opportunity is here, it would be terrible of me not to once again pass on the good wishes of all of my Democrat colleagues to Vicki Bourne. Despite all the peculiarities of this week, I am sure one thing all of my Democrat colleagues would universally agree on is that we wish Vicki Bourne incredibly good fortune and a good life in what she does after moving out of this chamber.

Once again, I reinforce the absolute tragedy, and some bastardry, that accompanied her being removed from this chamber. I think it is a loss to the chamber, to the Senate, to the country, to the world for that matter. I think it is appropriate to wish her all the best.

Given that it is also the end of a session, I pass on all the extra acknowledgments that many people have made to all the staff—the attendants, clerks, drivers and everybody else in Senator Cooney’s phone book that he tabled. Without the staff none of us could function; assuming people think we do function effectively. In as much as we do function, we could not do it without them. I particularly recognise the role of party members, not just our party but all members of parties, who work hard to keep all of us in this chamber doing what all of them believe is important, for what they believe in—that this chamber is the most important chamber in the country in terms of delivering good outcomes for the nation.

Vicki Bourne has been amongst the best Democrats in acting in a way in this place that has encouraged cooperation across the board. I could go on for another nine minutes. In fact, I could go on for a lot more but it is late. I thought it would be remiss of me to not grab the opportunity to put those comments on the record once more, for one final time.

Parliamentary Staff

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.28 a.m.)—I will be brief. On behalf of the opposition, I take this opportunity to thank all those staff members, both inside the chamber and outside the chamber, who have assisted us all in this late night sitting. It is nearly 4.30 a.m. I think everyone appreciates that for those who work in support of the Senate this causes great strain in every sense. Of course, for many, their families and their daily business is certainly upset by such an extraordinarily long sitting and I wanted to say that we do really appreciate the efforts that have gone in. As always, the dedication of our Senate staff is exemplary. It is much appreciated by us all and I thought it appropriate—even at this late hour—to place that on record and thank them once again.

Parliamentary Staff

The PRESIDENT (4.29 a.m.)—It is indeed, at this stage, appropriate to thank those who have served the Senate in enabling us to sit to this late hour. I ask the Clerk of the Senate to convey to all members of the Department of the Senate our sincere thanks, and perhaps our apologies for keeping them so late, and to Mr Templeton and the Parliamentary Reporting Service and all others
who have been required to be here, inside and outside the building, as Senator Faulkner has said, to enable this to happen. I think the kindest way is to close now and not go into more detail on the topic.

**Senate adjourned at 4.30 a.m.**

**DOCUMENTS**

**Tabling**

The following documents were tabled by the Clerk:

- Customs Act—CEO Instruments of Approval Nos 18-23 of 2002.
- Export Market Development Grants Act—
QUESTIONS ON NOTICE

The following answers to questions were circulated:

ComLand: Former Australian Defence Industries Site

(Question No. 172)

Senator Brown asked the Minister for Finance and Administration, upon notice, on 7 March 2002:

With reference to the proposed development by the Catholic Education Office of Xavier College High School on approximately 6 hectares of land excised from the north-western sector of the former ADI site lands, adjacent to Llandilo, New South Wales: Is this land presently owned by the Catholic Church; if so when and on what terms did the Catholic Church acquire this land from the Commonwealth.

Senator Abetz—The answer to the honourable senator’s question is as follows:

Being the Minister responsible for ComLand, I am responding to the question raised by Senator Brown on behalf of Minister for Finance and Administration.

No, as of 21 June 2002, the site is not owned by the Catholic Church.

Immigration: Programs

(Question No. 234)

Senator Brown asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 12 April 2002:

(1) How many people detained in immigration detention centres have formally applied for protection visas.
(2) What is the longest length of time that people have been detained without having formally applied for protection visas.
(3) How many Iraqis are in detention in Australia.
(4) How many Iraqis have been denied their request to rejoin family members in Australia under the family reunion category.
(5) Is the department employing Sayar Dehsabzi, an Afghan interpreter, as an adviser.
(6) Is the department aware of any connection between Sayar Dehsabzi and the ISI (Pakistan Secret Service).
(7) Is the Afghan Community Support Association (ACSA) funded by the ISI.
(8) How many people from the United Kingdom migrated to Australia under the family reunion category in 2001.
(9) How many people from Afghanistan migrated to Australia under the family reunion category program in 2001.
(10) How many people from Iraq migrated to Australia under the family reunion category in 2001.
(11) How many Iraqi women and children were refused entry to Australia under the family reunion category in 2001.

Senator Ellison—The Minister for Immigration and Multicultural and Indigenous Affairs has provided the following answer to the honourable senator’s question:

(1) As at 14 June 2002, of the 1164 persons in mainland detention, 913 are protection visa applicants. Fifty are awaiting a primary decision and 31 are awaiting grant, subject to health and character, following remittal by the Refugee Review Tribunal. The remainder of the group is at various stages of review or awaiting removal.
(2) As at 14 June 2002, of the persons currently in detention who have not applied for protection visas, the longest period of time a person has been detained is 4 years 11 months. The person is being detained under Section 253 of the Migration Act 1958 and is refusing to cooperate with completing forms and relevant documentation to facilitate his removal from Australia.
(3) As at cob 14 June 2002 there were 80 Iraqis in immigration detention in Australia.
(4) The following information deals only with applications and rejections under the Humanitarian Program. Applications under the Migration Program have not been included.
Under the Humanitarian Program, those in Australia holding permanent stay Humanitarian visas are eligible to sponsor the entry of immediate family members overseas. Family reunion is permitted under all Class XB, and former Class XA visa categories (subclasses 200, 201, 202, 203, 204).

For program years 1997-1998 to 2001-2002, a total of 14 persons (who stated Iraq as their country of birth) had applications refused under the Humanitarian subclasses. This consisted of 12 persons refused subclass 202 (Global Special Humanitarian) visas whose proposers in Australia held permanent protection (subclass 866) visas, and 2 persons whose proposers held refugee (subclass 200) visas.

Data relating to approvals are not necessarily related to the applications received in that same program year. That is, the visa grants in any one program year may be for applications received in previous program years.

For program years 1997-1998 to 2001-2002, a total of 875 persons (who stated Iraq as their country of birth) had applications approved under the Humanitarian subclasses. This consisted of 34 persons who applied under the split family provisions of subclass 200 (refugee); 45 persons who applied under the split family provisions of subclass 202; 788 persons who applied under the split family provisions of subclass 866; and 8 persons who applied under subclass 204 (woman at risk) family reunion provisions.

The following tables provide a breakdown by program year for each visa subclass.

### Table 1: Subclass 200 Refugee—Iraqi (Country of Birth) For Iraqi proposers holding subclass 200 visas

<table>
<thead>
<tr>
<th>Program Year</th>
<th>Applications Received</th>
<th>Grants (persons)</th>
<th>Rejections (persons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-1998</td>
<td>8</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>1998-1999</td>
<td>21</td>
<td>21</td>
<td>1</td>
</tr>
<tr>
<td>1999-2000</td>
<td>8</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td>2000-2001</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>2001-2002*</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>38</td>
<td>34</td>
<td>2</td>
</tr>
</tbody>
</table>

*As at 30 April 2002.

### Table 2: Subclass 202 Global Special Humanitarian—Iraqi (Country of Birth) For Iraqi proposers holding subclass 202 visas

<table>
<thead>
<tr>
<th>Program Year</th>
<th>Applications Received</th>
<th>Grants (persons)</th>
<th>Rejections (persons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-1998</td>
<td>10</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>1998-1999</td>
<td>3</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>1999-2000</td>
<td>39</td>
<td>11</td>
<td>0</td>
</tr>
<tr>
<td>2000-2001</td>
<td>0</td>
<td>13</td>
<td>0</td>
</tr>
<tr>
<td>2001-2002*</td>
<td>0</td>
<td>11</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>52</td>
<td>45</td>
<td>0</td>
</tr>
</tbody>
</table>

*As at 30 April 2002.

### Table 3: Subclass 202 Global Special Humanitarian—Iraqi (Country of Birth) For Iraqi proposers holding subclass 866 visas

<table>
<thead>
<tr>
<th>Program Year</th>
<th>Applications Received</th>
<th>Grants (persons)</th>
<th>Rejections (persons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-1998</td>
<td>162</td>
<td>111</td>
<td>0</td>
</tr>
<tr>
<td>1998-1999</td>
<td>359</td>
<td>140</td>
<td>1</td>
</tr>
<tr>
<td>1999-2000</td>
<td>509</td>
<td>263</td>
<td>3</td>
</tr>
<tr>
<td>2000-2001</td>
<td>40</td>
<td>235</td>
<td>2</td>
</tr>
<tr>
<td>2001-2002*</td>
<td>5</td>
<td>39</td>
<td>6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1075</td>
<td>788</td>
<td>12</td>
</tr>
</tbody>
</table>

*As at 30 April 2002.
Table 4: Subclass 204 Woman At Risk—Iraqi (Country of Birth) For Iraqi proposers holding subclass 204 visas

<table>
<thead>
<tr>
<th>Program Year</th>
<th>Applications Received</th>
<th>Grants (persons)</th>
<th>Rejections (persons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-1998</td>
<td>4</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>1998-1999</td>
<td>2</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>1999-2000</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>2000-2001</td>
<td>1</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>2001-2002*</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>10</td>
<td>8</td>
<td>0</td>
</tr>
</tbody>
</table>

*As at 30 April 2002.
(Source: MPMS)

(5) No.
(6) No.
(7) The Department has no information on this matter.
(8) In the calendar year 2001, 2188 people born in the United Kingdom migrated to Australia under family reunion provisions of the Migration Program.
(9) In the calendar year 2001, 68 people born in Afghanistan migrated to Australia under family reunion provisions of the Migration Program.
(10) In the calendar year 2001, 390 people born in Iraq migrated to Australia under family reunion provisions of the Migration Program.
(11) In the calendar year 2001, a total of 41 women and 16 children born in Iraq were refused entry to Australia under family reunion provisions of the Migration Program.

Kennedy Electorate: Program Funding

(Question No. 251)

Senator O’Brien asked the Minister for Defence, upon notice, on 18 April 2002:

(1) What programs and/or grants administered by the department provide assistance to people living in the federal electorate of Kennedy.
(2) What was the level of funding provided through these programs and/or grants for the 2000-01 and 2001-02 financial years.
(3) Where specific projects were funded: (a) what was the location of each project; (b) what was the nature of each project; and (c) what was the level of funding for each project.

Senator Hill—The answer to the honourable senator’s question is as follows.

(1) (2) and (3) Nil. The portfolio does not “provide assistance” to people living in any particular Electorate.

Defence: Weapon Systems

(Question No. 280)

Senator Chris Evans asked the Minister for Defence, upon notice, on 24 April 2002:

With reference to the ground-based air defence weapon systems (GBADWSs):

(1) Can the Minister confirm that the Australian Defence Force (ADF) uses the Rapier weapon system as the main GBADWS.
(2) When did that system enter service.
(3) What is the proposed end of life for this system.
(4) Currently how much does it cost to purchase each of the missiles for this system.
(5) (a) How many missiles are fired from this system each year for training purposes; and (b) does this level of use ensure required skills, as specified by the ADF, are maintained for all units required to use this system.
(6) (a) Was this system deployed as part of security arrangements for the recent Commonwealth Heads of Government Meeting; and (b) why were F-18s used to provide air defence for the site, given the existence of the GBADWS.
(7) With reference to the JP 117 system, what is the expected in-service delivery date.
(8) Is there a gap between the end of life for the current GBADWS and the next system; if so, why.
(9) (a) In the period between the end of life for the Rapier system and the delivery of the JP 117 sys-
    tem, what GBADWS will be used in the ADF; (b) what is the capability of this interim system; (c)
    will it provide the necessary ground-based air defence for ADF units; and (d) will the interim sys-
    tem provide the equivalent capability of the current Rapier system.

Senator Hill—The answer to the honourable senator’s question is as follows:
(1) The Army is equipped with GBADWS—Rapier and RBS 70. RBS 70 is a point defence system
    maintained at a high degree of readiness and Rapier is a limited area defence system, maintained at
    a medium degree of readiness.
(2) Rapier entered service in 1980.
(3) The current planning date is 2005.
(4) The missiles when last purchased were at a cost of about $56,000 per missile, in 1995 prices.
(5) (a) Each year sufficient missiles are fired to prove system reliability and operator performance.
    The precise numbers are classified information.
    (b) Yes.
(6) (a) No.
    (b) This was a decision of Government.
(7) The current planning date is 2009.
(8) See 9(a).
(9) (a) The RBS 70 Short Range Air Defence System.
    (b) The RBS 70 is not an ‘interim’ capability.
    (c) Defence constantly looks to improve capabilities to ensure that they remain viable against
    evolving threats. Rapier and RBS 70 were acquired to meet a defined threat level. Project JP
    117 proposes to address GBAD developments since the introduction of existing GBAD sys-
    tems and overcome any perceived deficiencies.
    (d) Yes.

Defence: White Paper
(Question No. 285)

Senator Chris Evans asked the Minister for Defence, upon notice, on 26 April 2002:
With reference to page 19 of the 2001-02 Defence portfolio budget statement, which includes funding
for the implementation of the White Paper for the financial years 2001-02 to 2004-05:
(1) Are those figures still current; if not, what are the current estimates of the funding that will be
    provided to implement the White Paper for those four financial years.
(2) Can a detailed breakdown be provided for this funding for the current financial year, i.e. for the
    $507 million allocated to the White Paper, indicating specifically what projects have been funded
    and the amount funded.
(3) Can a similar detailed breakdown be provided for the White Paper funding for: (a) the 2002-03
    financial year; (b) the 2003-04 financial year; and (c) the 2004-05 financial year.
(4) (a) Were the capital projects funded under the White Paper already funded in the 2000-01 budget
    out years; and (b) was this funding reallocated; if so, to what was it reallocated.

Senator Hill—The answer to the honourable senator’s question is as follows:
(1) The Defence White Paper funding allocation represented by the figures in Table 1.5 of the 2001-
    02 Portfolio Budget Statements is still current, however the figures have been updated to reflect
    movements in price and exchange.
(2) Detailed spend spreads are not made publicly available for projects that are yet to go to contract.
    This policy reflects the commercial sensitivities of contract negotiation processes. Major capital
    equipment projects approved in the 2001-02 budget are listed on page 80 of the Portfolio Budget
Statements 2001-02. Major capital equipment projects approved subsequent to the 2001-02 Budget are listed on page 59 of the Portfolio Additional Estimates Statements 2001-02.

(3) No—see above. A list of new major equipment projects that are planned for approval in 2002-03 is included on pages 75-76 of the Portfolio Budget Statements 2002-03. Projects planned for approval in 2002-03, 2003-04 and 2004-05 are also discussed in the Defence Capability Plan 2001-2010 Public Version.

(4) (a) and (b) While many of the projects in the Defence Capability Plan were previously planned for inclusion in the Defence capital budget, the level of capital funding anticipated in the 2000-01 Budget (prior to the White Paper) could not have been sustained without the increase in funding provided by the White Paper. In some cases, the level of capability that could have been acquired under pre-White Paper funding levels would have been lower than is now affordable in the Defence Capability Plan over the same period.

Defence: Capability Plan
(Question No. 286)

Senator Chris Evans asked the Minister for Defence, upon notice, on 26 April 2002:

With reference to the following statement, ‘The Government has reorganised the net additional cost of current operations. Notwithstanding this, there are likely to be some impacts on Defence capability in the near and medium term due to the need to reschedule some planned maintenance and upgrade programs.’ (Portfolio Additional Estimates Statements) 2001-02: Defence portfolio, page 4):

(1) What programs have been affected by the rescheduling indicated in the above paragraph.
(2) Can a description of each of the programs be provided, including the platform involved and relevant project under the Defence Capability Plan.
(3) For each affected program: (a) what savings will be generated by the rescheduling; (b) exactly what delays are now planned; (c) what was the original timetable for the program; and (d) what impact will the delays have on future capability.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) The cost of funding new measures associated with increased operational commitments in 2001-02 is being met partly through the re-phasing from 2001/02 to 2002/03 of some of the expenditure that was originally planned for a number of approved but not yet in contract major equipment projects. To preserve commercial confidentiality, and to retain flexibility in the management of its capital budget, Defence does not make detailed information on the year by year expenditure provision for particular projects available in the public domain.

(2) The re-phasing of expenditure from 2001/02 to 2002/03 was applied across a number of projects. As indicated in the answer to Question 1, detailed information on the year by year expenditure provision for particular projects is not made available in the public domain. The funding reductions that have been applied in 2001/02 have not had a material impact on the timetable for the affected projects, and will not threaten the development of future capability. The funding will be restored to the affected projects in 2002/03.

(3) (a) Total expenditure of $60 million was rescheduled from 2001/02, and will be restored in 2002/03, so there is no overall saving. (b) (c) and (d) The $60 million is part of the expenditure that was planned for the last quarter of 2001/02. This expenditure will now start in July 2002 so the delays are minor, as are the impacts on project schedules.

Christmas Island: Phosphate Mining
(Question No. 309)

Senator Brown asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 15 May 2002:

With reference to the current application by Phosphate Resources Ltd for nine new mining leases on Christmas Island:

(1) Can the Minister confirm that on 11 February 1988 the then Minister for the Arts and Territories, the Honourable Gary Punch MP, announced that the Federal Government would not allow any further rainforest clearing on Christmas Island as it was inconsistent with the Government’s long-term strategy for the island.
(2) Can the Minister confirm that the then Prime Minister, the Honourable Robert Hawke MP, wrote to the Duke of Edinburgh in 1988 regarding new mining proposals stating that, 'My government has made it clear, in examining these proposals, that approval will only be granted under the strictest environmental conditions and provided that no further clearing of rainforest occurs'.

(3) Did mining leases granted in 1988 or at any time thereafter for the mining of phosphate prohibit rainforest clearing as a condition of the lease.

(4) Is it still Government policy to allow no further clearing of rainforest on Christmas Island; if not, when was the policy changed to allow for such clearance.

(5) Do the Environment, Protection and Biodiversity Conservation Regulations pertaining to the conservation of biodiversity in Commonwealth areas prohibit the clearing of habitat for native species in those areas.

(6) Why was an application for new mining leases on Christmas Island advanced to the stage of an Environmental Impact Statement (EIS) assessment when most of those leases were for land covered by primary rainforest.

(7) Will the Minister: (a) now reject the application for new mining leases over areas covered by primary rainforest; and (b) in view of the above, abort the EIS process as redundant for those areas.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) Yes.

(2) Yes.

(3) Yes.

(4) Government policy on the environmental protection of rainforest on Christmas Island is implemented through application of the relevant provisions of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and the Environment Protection and Biodiversity Conservation Regulations 2000. Decisions under the EPBC Act and Regulations concerning the clearance of rainforest on Christmas Island have regard to the moratorium over further clearance of rainforest on Christmas Island that has been in place for more than a decade. The moratorium cannot, however, override the obligations under the EPBC Act and Regulations to have regard to the merits of each particular case and give appropriate weight to the range of considerations required under the Act.

(5) Regulation 9.03 of the Environment Protection and Biodiversity Conservation Regulations 2000 (EPBC Regulations) prohibits a person killing, injuring or taking a member of a protected species, or damaging or destroying a nest or dwelling place of a member of a protected species except where the action is taken in accordance with a permit in force under Part 17 or is taken in one of the various circumstances set out in Regulation 9.03.

(6) The referral by Phosphate Resources Ltd of an action under Part 7 of the EPBC Act to undertake surface mining and associated actions has been determined to be a controlled action under the Act. It is not legally possible for the Minister for the Environment and Heritage to stop the proposal from proceeding to the assessment stage.

(7) (a) & (b) No.

Environment: Christmas Island

(Question No. 311)

Senator Brown asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 15 May 2002:

With reference to the Christmas Island Detention Centre:

(1) Was mining lease 138 a designated Abbott’s Booby recovery site prior to the decision to proceed with the construction of the detention centre.

(2) When did mining operations cease on lease 138.

(a) Did the conditions of the lease require the site to be rehabilitated; and

(b) was any work being done on the rehabilitation.

(4) Has the Commonwealth ever been informed that mining had ceased on lease 138.
(5) If lease 138 was not being mined and was required to be rehabilitated under the lease agreement why has the Commonwealth not taken action to enforce the provisions of the lease.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) Mining lease 138 was one of a number of sites listed for rehabilitation of the Abbott’s Booby when mining is completed.

(2) Mining was suspended on ML138 last year to allow the company to dedicate resources to mining priority areas elsewhere on Christmas Island. Mining was scheduled to recommence.

(3) (a) The Mining Lease required a conservation levy to be paid by the lessee to be used for minesite rehabilitation by relevant Commonwealth agencies.

(b) Approximately 5 hectares of ML138 was under rehabilitation by Parks Australia.

(4) No. The suspension of mining activity was known to be temporary.

(5) See answers to questions 3(a) and 4.

Heritage: Departmental Properties
(Question No. 312)

Senator Allison asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 15 May 2002:

With reference to questions on notice numbers 61 to 76, which the Minister has advised will all be transferred from the departments to which they were addressed, to the Department of the Environment and Heritage:

(1) What is the reason for this decision.

(2) If individual departments are unable to answer the questions, how is it that the Minister for Environment and Heritage can do so.

(3) What is the process by which questions will be coordinated.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) Following discussions between the Department of the Prime Minister and Cabinet, the Department of the Environment and Heritage, and the Senate Table Office, it was agreed that as the Minister for the Environment and Heritage is responsible for heritage matters, including the Australian Heritage Commission, it would be appropriate for the Department of the Environment and Heritage to coordinate a consolidated response.

(2) Individual departments have provided their own answers and submitted them to the Department of the Environment and Heritage to enable that Department to provide a consolidated response.

(3) See the answer to (2) above.

Defence: Staff Surveys
(Question No. 318)

Senator Chris Evans asked the Minister representing the Minister Assisting the Minister for Defence, upon notice, on 16 May 2002:

(1) Can a copy be provided of the current exit survey form given to Australian Defence Force (ADF) personnel, as well as those used in the past 3 years, if the questions asked have changed at all over this period.

(2) If the current attitudinal survey form asks any different questions to those in the past 3 years, can copies of the latter be provided.

(3) Are the same exit and attitudinal survey forms used across the ADF, or are they different for each service.

(4) Can copies be provided of the ‘executive summary’ (or similar type of document) of Defence’s attempt to analyse the results of exit and attitudinal survey responses for the past 3 years.

(5) Are all personnel leaving the ADF obliged to fill out an exit survey form (or similar document); if not, are any categories of personnel obliged to fill out exit surveys (for example, personnel from a
certain category, such as all totally and permanently incapacitated personnel; all personnel who leave within 2 years of joining, etc (please list the categories of personnel that are obliged to fill out exit surveys).

(6) Are attitudinal survey forms given to all ADF personnel, or only to particular groups selected within the ADF (please detail the selection or distribution criteria for these forms, and how often surveys are done).

(7) (a) Which part or parts of Defence currently construct, distribute, collect and analyse the data obtained from exit and attitudinal surveys; and (b) if this is different to the part or parts responsible for administering any stage of the survey process over the past 3 years, please list these as well.

(8) (a) Which part or parts of Defence currently construct, distribute, collect and analyse the data obtained from exit and attitudinal surveys; and (b) if this is different to the part or parts responsible for administering any stage of the survey process over the past 3 years, please list these as well.

(9) Can a copy be provided of the most recent census form circulated to ADF personnel, as well as copies of any ‘executive summary’ (or similar type of document) analysing the results of each of the censuses.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) Yes. Copies have been forwarded separately to your office.

(2) The most recent Attitude Survey (March 2001) differs slightly from the form used in 1999. Copies have been forwarded separately to your office.

(3) A single Exit Survey form is used for all three Services. There are four variants of the Defence Attitude Survey, one for each of the services and one for Defence Civilians. Copies have been forwarded separately to your office.

(4) Yes. Copies have been forwarded separately to your office.

(5) No. There is no obligation for any member, or category, to complete the Exit Survey.

(6) The Defence Attitude Survey is administered to a 30% sample of ADF military and civilian personnel. The stratified random sample is drawn from the various service and personnel databases. The surveys are mailed to each of the members selected, along with a replied paid envelope to enable them to return the completed instrument. There have been two Defence Attitude Surveys, conducted in September 1999 and March 2001. The next Defence Attitude Survey will be conducted in October 2002, and annually there after.

(7) (a) The Directorate of Strategic Personnel Planning and Research (DSPPR) within the Defence Personnel Executive. (b) DSPPR has had responsibility for the past 3 years.


(9) Yes. Copies have been forwarded separately to your office.

Australian Defence Force: Recruitment

(Question No. 319)

Senator Chris Evans asked the Minister representing the Minister Assisting the Minister for Defence, upon notice, on 16 May 2002:

(1) For the 2000-01 financial year: (a) how much did it cost per permanent recruit to recruit him or her to the Australian Defence Force (ADF), including the total cost of: (i) advertising on all forms of recruitment (ie, brand, single and tri-service advertisements and marketing exercises), (ii) operating ADF career and call centres, and (iii) physical and psychological assessments pre-enlistment etc; and (b) what were the precise types of costs used to calculate this per person figure.

For this or any other part of this question for which particular cost types cannot be calculated, please specify what the cost relates to (ie, what goods, service, salary etc) and why it cannot be calculated.

(2) Can the same figures be provided for each financial year since 1995-96.

(3) For each financial year since, and including, 1998-99, what was the total cost (ie, including lease or building maintenance costs, salaries with on-costs of employees involved in relevant administration etc) to Defence of providing each of the following services: (a) ADF information/career centres; (b) call or inquiry centres; (c) promotional and information material about Defence jobs, other than direct advertising in the media; (d) compulsory screening and assessment procedures for potential ADF entrants; and (e) any other recruitment-related service.
(4) Can a list be provided of: (a) the location of all current ADF career and call centres; and (b) those that have either opened or closed since the 1998-99 financial year.

(5) What is the cost per trainee of training a permanent entrant to the ADF (broken down for each of the services) after each of the first, second, third and fourth years of service for: (a) officer employment groups; and (b) other rank employment groups (for the Navy, sailor employment groups and for the Air Force, airmen and airwomen employment groups).

(6) What is the cost per trainee of training the following specific employment groups: (a) pilot (Navy); (b) weapons electrical aircraft engineering (Navy); (c) operator special vehicle-engineer (Army); (d) air traffic control (Air Force); and (e) communications electronics (Air Force).

(7) With reference to the May 2001 Defence submission to the Foreign Affairs, Defence and Trade References Committee which indicates that, in general terms, fixed Return of Service Obligation (ROSO) has been replaced with a ROSO determined proportionally to the training investment: (a) can the figures on which the various ROSO levels are currently based be provided (that is, the calculation of the training investment for each category of entrant to the three services); and (b) can these figures be provided in tabular and formulaic form, if available.

(8) Can information be provided on the length of service of each permanent member of the ADF who separated from each of the services since the 1998-99 financial year, setting out how many in each service left: (a) before completing 12 months of service; (b) between 12 and 24 months of service; (c) between 24 and 48 months of service; and (d) above 4 years of service.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) (2), (3) and (5) The information sought in the honourable senator’s question is not readily available. To provide a complete response would require considerable time and resources and, in the interest of efficient utilisation of Defence resources, I am not prepared to authorise the expenditure of resources and effort to provide the information requested.

(3) (a) The location of all Australian Defence Force Recruiting Units (ADFRU), Careers Reference Centres (CRC) and Call Centres is as follows:

<table>
<thead>
<tr>
<th>CURRENT ADF CAREER AND CALL CENTRES</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW/ACT</td>
</tr>
<tr>
<td>Sydney</td>
</tr>
<tr>
<td>ADFRU</td>
</tr>
<tr>
<td>Level 3 Parkview Building/157 Liverpool St SYDNEY NSW</td>
</tr>
<tr>
<td>Sydney</td>
</tr>
<tr>
<td>CRC</td>
</tr>
<tr>
<td>Ground Floor, 270 Pitt St SYDNEY NSW</td>
</tr>
<tr>
<td>Canberra</td>
</tr>
<tr>
<td>CRC</td>
</tr>
<tr>
<td>GIO Building 250 City Walk CANBERRA ACT</td>
</tr>
<tr>
<td>Newcastle</td>
</tr>
<tr>
<td>CRC</td>
</tr>
<tr>
<td>461 Hunter St NEWCASTLE NSW</td>
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<tr>
<td>Parramatta</td>
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<tr>
<td>CRC</td>
</tr>
<tr>
<td>144 Marsden St PARRAMATTA NSW</td>
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<tr>
<td>Defence Service Centre</td>
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<tr>
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<tr>
<td>COOMA NSW</td>
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<tr>
<td>Manpower Defence Recruiting</td>
</tr>
<tr>
<td>Call Centre for MDR</td>
</tr>
<tr>
<td>CANBERRA ACT</td>
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<tr>
<td>QLD</td>
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<tr>
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<tr>
<td>ADFRU</td>
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<td>CRC</td>
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<td>Cairns</td>
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<tr>
<td>CRC</td>
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<tr>
<td>Cnr Swallow Rd &amp; Hargreaves St EDMONTON QLD</td>
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<td>Coolangatta</td>
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<tr>
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</tr>
<tr>
<td>92-100 Griffith St Centre Olace, COOLANGATTA QLD</td>
</tr>
<tr>
<td>VIC/TAS</td>
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<tr>
<td>Melbourne</td>
</tr>
<tr>
<td>ADFRU</td>
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<tr>
<td>2nd Floor 661 Bourke St MELBOURNE VIC</td>
</tr>
<tr>
<td>Albury</td>
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<tr>
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<tr>
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<tr>
<td>Hobart</td>
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<tr>
<td>CRC</td>
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<td>Anglesea Barracks Davey St HOBART TAS</td>
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<td>SAINT</td>
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<td>Adelaide</td>
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<td>ADFRU</td>
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<tr>
<td>5th Floor 55 Currie St ADELAIDE SA</td>
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<tr>
<td>Adelaide</td>
</tr>
<tr>
<td>CRC</td>
</tr>
<tr>
<td>26 Flinders St ADELAIDE SA</td>
</tr>
<tr>
<td>Darwin</td>
</tr>
<tr>
<td>CRC</td>
</tr>
<tr>
<td>36 Mitchell St DARWIN NT</td>
</tr>
</tbody>
</table>
CURRENT ADF CAREER AND CALL CENTRES

(b) A list of all ADFRU, CRC and Call Centres, which have opened or closed since 1998-1999, is detailed below. The list is not inclusive of Reserve units throughout Australia, which undertake Reserve recruitment as a result of Army’s ‘Direct To Unit Recruitment’ initiative.

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Dubbo</td>
<td>CRC</td>
<td>CRC function relocated from Lismore March 2002</td>
</tr>
<tr>
<td>Dandenong</td>
<td>CRC</td>
<td>Opened October 2000</td>
</tr>
<tr>
<td>Geelong</td>
<td>CRC</td>
<td>Call Centre for MDR</td>
</tr>
<tr>
<td>Launceston</td>
<td>CRC</td>
<td></td>
</tr>
<tr>
<td>Defence Service Centre</td>
<td>National Call Centre</td>
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<td>Cooma</td>
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<tr>
<td>MDR Call Centre</td>
<td>Call Centre for MDR</td>
<td></td>
</tr>
<tr>
<td>Lismore</td>
<td>CRC</td>
<td>CRC function relocated to Coolangatta March 2002. Lismore facility still operates as an Army Recruiting Information Centre.</td>
</tr>
</tbody>
</table>

(6) (a) Pilot (Navy)—the estimated direct cost of training a Navy pilot is $2,126,570. The cost includes flying training, pilot conversion (Squirrel helicopter) and pilot operational flight training (Seahawk helicopter). Costs of prerequisite training and academic education, together with student salary and overheads, are not included.

(b) Weapons electrical aircraft engineering (Navy)—the Navy title for this specific employment group is Aircraft Engineering Officer Weapons Electrical. The direct cost per student of the Aircraft Engineering Application Course conducted by Navy is $19,900. Costs of prerequisite training and academic education, together with student salary and overheads, are not included.

(c) The current cost per trainee attending the Operator Special Vehicle-Engineer course is $11,865.

(d) Air traffic control (Air Force)—the direct cost (excluding overheads) for initial employment training as an Air Traffic Controller is $25,952.

(e) Communications electronics (Air Force)—the cost of training an Air Force Communications Technician is $15,343.

(7) Since making the May 2001 submission to the Foreign Affairs, Defence and Trade References Committee, the Defence People Committee directed a review of the Defence policy on Return of Service Obligation (ROSO). This review has commenced but is not yet complete. Work to date has confirmed that a significant element in the philosophy behind the length of a ROSO period is to obtain an economic return on the taxpayer funded training investment incurred by the ADF. However, consideration has also highlighted that a reasonable economic return is not the sole criteria that a Service Chief should use when making a determination in respect to the length of a particular ROSO. Other factors include the duration of training, the ability of Defence to maintain operational efficiency and career progression in the particular trades and categories that may be affected, ‘employer of choice’ considerations and the administrative convenience of managing the process for hundreds of different courses. Given these additional non-financial factors, a direct correlation between the financial cost of a course alone and the length of the associated ROSO, is no longer considered the best approach.

Related to the length of a ROSO is the issue of determining a financial consideration to be applied, in the event that the Service Chief approves separation prior to a ROSO being served. The review in progress is also examining this matter. In addition to the factors cited in determining the length of a ROSO, individual circumstances on a case by case basis will need to be taken into account. Work on developing the precise method of determining the financial consideration is not yet complete.
The following table provides information on permanent ADF members who separated for each Service.

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<td>Less than 1 year</td>
<td>99</td>
<td>239</td>
<td>77</td>
<td>152</td>
<td>370</td>
<td>93</td>
<td>211</td>
<td>468</td>
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<tr>
<td>1 year</td>
<td>55</td>
<td>107</td>
<td>38</td>
<td>47</td>
<td>127</td>
<td>50</td>
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<tr>
<td>2 years</td>
<td>56</td>
<td>88</td>
<td>54</td>
<td>58</td>
<td>65</td>
<td>31</td>
<td>42</td>
<td>82</td>
<td>19</td>
</tr>
<tr>
<td>3 years</td>
<td>102</td>
<td>137</td>
<td>68</td>
<td>166</td>
<td>85</td>
<td>57</td>
<td>48</td>
<td>85</td>
<td>19</td>
</tr>
<tr>
<td>4 years</td>
<td>204</td>
<td>427</td>
<td>60</td>
<td>130</td>
<td>340</td>
<td>58</td>
<td>110</td>
<td>138</td>
<td>32</td>
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<tr>
<td>5 years plus</td>
<td>1187</td>
<td>1808</td>
<td>1363</td>
<td>1210</td>
<td>2003</td>
<td>1826</td>
<td>1129</td>
<td>1664</td>
<td>1015</td>
</tr>
</tbody>
</table>

**Defence: Asset Sales**  
(Question No. 321)

Senator Chris Evans asked the Minister for Defence, upon notice, on 16 May 2002:

With reference to the sale of Defence assets, the Government’s Mid-Year Economic and Fiscal Outlook (MYEFO) document for the 2001-02 financial year indicates that since the 2001-02 Budget there was a decision made to sell additional Defence assets (see attachment B of the MYEFO document, page 33):

(1) (a) Can the Minister confirm that the MYEFO indicates that an additional $74 million will be returned to the Government in the 2001-02 financial year through the sale of excess property, and sale and lease-back arrangements; (b) when was this decision taken; and (c) can a list be provided of the additional properties to be sold.

(2) (a) Can the Minister confirm that the MYEFO indicates that an additional $272 million will be returned to the Government in the 2002-03 financial year through the sale of excess property, and sale and lease-back arrangements; (b) when was this decision taken; and (c) can a list be provided of the additional properties to be sold.

(3) (a) Can the Minister confirm that the MYEFO indicates that an additional $166 million will be returned to the Government in the 2003-04 financial year through the sale of excess property, and sale and lease-back arrangements; (b) when was this decision taken; and (c) can a list be provided of the additional properties to be sold.

(4) (a) Can the Minister confirm that the MYEFO indicates that an additional $166 million will be returned to the Government in the 2004-05 financial year through the sale of excess property, and sale and lease-back arrangements; (b) when was this decision taken; and (c) can a list be provided of the additional properties to be sold.

(5) (a) Can the Minister explain why the amounts shown in the 2001-02 Defence Additional Estimates Statements, released after the MYEFO, show no increase in the projected proceeds from asset sales to the Government for the 2003-04 and 2004-05 financial years, when compared with the 2001-02 Defence Budget Statement; and (b) why were the measures included in the MYEFO not reflected in the Additional Estimates Statements.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1-4) (a) I can confirm that the MYEFO indicates that the Defence Housing Authority (DHA) would realise from the sale of excess property and from the sale and lease-back program an additional $74 million in 2001-02, $272 million in 2002-03, $166 million in 2003-04 and $166 million in 2004-05. However, as DHA is a Government Business Enterprise and is not funded by direct appropriation, DHA returns funds to the Government in the form of dividends or returns of capital as determined by the DHA Board as part of its corporate planning process and approved by DHA's Shareholder Ministers. Dividends and capital returns to Government include funds derived from a number of sources including, but not limited to, proceeds from the sale of property. (b) The decision was made on 7 October 2001. (c) No, DHA has extensive programs for the disposal of surplus properties and the sale and lease-back of properties that are still required to meet the housing needs of the Defence Force. The measures in the MYEFO relate to these programs generally, rather than to any property specifically.
(5) (a) DHA is a statutory authority and Government Business Enterprise and, whilst part of the Defence portfolio, is independent of the Department of Defence and does not contribute to the Department’s financial statements. The measures in question from the MYEFO relate to property sales by DHA and so are incorporated in DHA’s financial statements in the Defence Portfolio Additional Estimates Statements for 2001-02, but not in the Department of Defence’s financial statements. (b) The measures included in the MYEFO are incorporated in DHA’s financial statements in the Defence Portfolio Additional Estimates Statements for 2001-02.

Defence: Project Sea 1431
(Question No. 323)

Senator Chris Evans asked the Minister for Defence, upon notice, on 16 May 2002:

With reference to Project Sea 1431:

(1) (a) When were the four ‘attrition’ Seahawks purchased under Project 1308; and (b) when were they delivered.

(2) What was the cost of each of these helicopters.

(3) What was the rationale of purchasing four helicopters without the logistic support to use them.

(4) Were these four attrition helicopters exactly the same as the other Seahawk helicopters used by the Royal Australian Navy; if not, what modifications or equipment differences exist between these four helicopters and the other Seahawks.

(5) Prior to the implementation of Project Sea 1431 were these four helicopters flown; if so, for how many hours.

(6) (a) What was the total cost of storing the four helicopters at Nowra prior to Sea 1431; and (b) how many people were employed to maintain these helicopters while stored.

(7) Does this project now allow the four helicopters to be fully used in addition to the existing capability.

(8) (a) What was the total funding for Project Sea 1431; and (b) what was the funding for its first year and each subsequent year.

(9) When did this project commence.

(10) Is it still due to be completed in mid-2002; if not: (a) what is the new completion date; and (b) what were the causes for the delay.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) (a) On 30 July 1985 the Commonwealth signed a contract with United Technologies Corporation (Sikorsky Aircraft Division) for the supply of eight S-70B-2 Seahawk Helicopters. On 6 May 1986 the Commonwealth exercised an option to procure an additional eight S-70B-2 Seahawk Helicopters. The four attrition S-70B-2 Seahawks were purchased as part of that option. (b) The 16 Seahawks, of which 4 were purchased for attrition, were delivered from 30 September 1989 to 30 June 1991.

(2) $16,937,339 each for the first eight helicopters at January 1984 prices. In exercising the option for the second batch of eight Seahawks it was agreed that the unit price for each of the first four would be $US10,589,277 and for each of the remaining four it would be $US10,239,277 stated in January 1984 US Dollars, plus applicable escalation.

(3) The four attrition aircraft were purchased by the Commonwealth to replace aircraft in the operating pool that it was predicted would be lost due to mishaps. When the sixteen S-70B-2 aircraft were acquired, the worldwide attrition rate was in the order of 1:13,000 hours. With the first Guided Missile Frigate due for retirement in 2008 and the last in 2021, planned S-70B-2 Rates of Effort (ROE) for the Life of Type of the aircraft indicated that statistically, four of the sixteen aircraft could have been lost due to peacetime attrition by 2021. In the event that a helicopter is damaged beyond repair, it does not destroy its logistic support at the same time, therefore the attrition aircraft would have replaced the crashed aircraft and utilised the existing logistic support.

(4) Yes.

(5) The attrition aircraft were rotated throughout the operating fleet for fleet management purposes. This was done to distribute the number of flying hours evenly across the entire fleet and in doing so stagger aircraft maintenance and early retirement of some airframes due to higher than ex-
pected airframes hours. As the each of the aircraft have entered attrition storage at some stage and the ‘attrition’ aircraft are not separately identifiable, the question of how many hours were flown is not quantifiable. Aircraft in the S-70B-2 fleet have flown between 2,000 and 3,000 hours.

(6) (a) There was no specific identifiable cost associated with the storage of the ‘attrition’ aircraft as the storage of the aircraft was not identified as a separate item in the contract and is a component of the commercial contract for the support of aircraft at Nowra. (b) As there was no specifically identified item in the commercial contract for support of the attrition aircraft the number of people employed cannot be specifically identified, however it is estimated that one person per year was dedicated to maintain the aircraft.

(7) See above.

(8) (a) Project Approval was for $42.100 million (December 1996 Price Basis).

(b) 1996/97 $0.042 million
1997/98 $9.640 million
1998/99 $14.940 million
1999/00 $9.860 million
2000/01 $3.410 million
Management Reserve $4.208 million

(9) The project gained approval in August 1996.

(10) (a) The greater bulk of acquisition will be completed by mid 2002, however due to some procurement long-lead-time activity it is now not anticipated to complete until mid 2004. This affects approximately 2% of the total acquisition. All four aircraft have been operational since early 2002. (b) Some of the components, such as radar avionics and dynamic components required extensive spares assessment which led to delays in placement of purchase requests. It is also the nature of these particular components that they have long lead-times for manufacture and delivery.

Defence: Initiatives White Paper
(Question No. 327)

Senator Chris Evans asked the Minister for Defence, upon notice, on the 16 May 2002:

(1) What are the initiatives funded under the $507 million allocated for the implementation of the White Paper in the 2001-02 financial year.

(2) With reference to the $507 million, for each initiative, what is the projected expenditure for the 2001-02 financial year.

(3) If there is a shortfall between the $507 million and the projected expenditure, what is the explanation for the shortfall.

(4) For each initiative can the Minister indicate whether its implementation is on schedule, completed, delayed or halted; if delayed or halted, can an explanation be provided as to why.

(5) Given that the Defence Annual Report notes that the quarterly reports on the implementation of the White Paper are provided to the Minister, can a copy of each of these reports be provided.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) The initiatives funded under the $507 million allocated for the implementation of the White Paper in the 2001-02 financial year are listed as the major capital equipment projects approved in the 2001-02 Budget on page 80 of the Portfolio Budget Statements. Major capital equipment projects approved subsequent to the 2001-02 Budget are listed on page 59 of the Portfolio Additional Estimates Statements 2001-02.

(2) Detailed spend spreads are not made public for projects that are yet to be contracted to protect contract negotiation processes.

(3) There will be no shortfall; the total $507 million will be spent in the 2001-02 financial year on major capital equipment items.

(4) All but one of these initiatives are on schedule. There has been a delay in the Military Satellite Communications Ground Infrastructure project due to the Project Definition Study requiring 6 months longer than was originally anticipated.
The White Paper Implementation Reports provided to me by the department are classified and cannot be made public.

Environment Australia: Spectacled Flying Foxes

(Question No. 331)

Senator Bartlett asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 16 May 2002:


2. If no action was taken, in light of the Federal Court’s finding that in the order of 18,000 Spectacled Flying Foxes were culled and that this had a significant impact on the world heritage values of the Wet Tropics World Heritage Area, why was no enforcement action taken.

3. In light of the finding of significant impact by the Federal Court, what was the basis for the decision to assess the permit based on preliminary information and not a more rigorous assessment such as an environmental impact assessment.

4. Is it not the case that granting an approval to Rohan Bosworth to cull 5,500 Spectacled Flying Foxes in 2002 (EPBC Referral 2002/571) would effectively be an open licence to kill unlimited Spectacled Flying Foxes, as the total of 5,500 could not be enforced in any practical term.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

1. No prosecution action was undertaken by Environment Australia in relation to the culling of Spectacled Flying Foxes in November-December 2000.

2. No enforcement action was taken by the Commonwealth as Mr Bosworth was restrained by the Federal Court from operating the electric grid for the 2001-2002 season and has subsequently made a referral under the EPBC Act for the 2002-2003 season.

3. An assessment report based on preliminary documentation would provide the Minister with enough information on the relevant impacts of the proposed action to enable the Minister to make an informed decision whether or not to approve the proposed action.

4. Assessment of Mr Bosworth’s application under the EPBC Act is not yet complete and therefore I am unable to speculate on whether an approval will be granted.

Defence: Lancelin Defence Training Area

(Question No. 341)

Senator Greig asked the Minister for Defence, upon notice, on 23 May 2002:

1. Can the Minister confirm that the department intends to increase the area of the Lancelin Defence Training Area (DTA) by acquiring an additional 36,600 hectares of land, comprising vacant crown land, freehold private property and some pastoral leases.

2. What is the status of the land-use agreement that the department has entered into relating to the ‘permissive occupancy area’, which extends from the north-east side of the Lancelin DTA adjacent to the naval gunnery to north of Nilgen Reserve, which has been described by the department as part of the existing training area.

3. Is the land-use agreement renewable, ongoing or is it due to expire; if so, when.

4. What is the reason for the haste of the department in pushing through the formal environmental assessment process.

5. Will the proposal be considered or assessed under the Environmental Protection and Biodiversity Conservation Act 1999 or a previous Act.

6. What period of notice was given to stakeholders in the area directly affected by the proposal.

7. How is the additional land justified, given the existing area is already 17,300 hectares.

8. Is the Minister aware that the land involved: (a) is fragile coastal land and is subject to erosion if not managed properly; and (b) contains valuable wetlands, rare flora and fauna, underground caves and a number of heritage sites that need protection.
(9) (a) Have more stable training areas at Northam or Bindoon been considered; and (b) has the possibility of relocating training areas to a more remote area where they will not cause serious impact on the environment been considered.

(10) Is it the case that the department will prepare environmental management plans and other management strategies only after it secures the land.

(11) Is any of the land listed on the Register of the National Estate.

**Senator Hill**—The answer to the honourable senator’s question is as follows:

(1) Yes. On 20 May 2002, Defence released a Public Environment Report/Public Environmental Review on Lancelin Defence Training Area extension proposal. A final decision on the proposal to expand the Lancelin Defence Training Area will rest with ministers, including approval of an agreement with the State of Western Australia in relation to the proposal.

(2) The land you refer to is north-east of the Naval Gunfire Support Range and is the part of the Lancelin Defence Training Area that has been traditionally used by the Army. Until 30 June 1997 it was a Defence Practice Area, however, since then it has been used with the agreement of the Western Australian Government, which has agreed a series of training activities in the area.

(3) Until the Commonwealth obtains formal tenure over this area Defence will continue to seek the agreement of the Western Australian Government for the conduct of training activities.

(4) The proposal has been initiated with the support of the Western Australian Government and has been in development for several years. A Notice of Intention was developed in 1999 and the environmental impact assessment process was commenced in 2000. On 15 March 2000, the Minister for the Environment directed a Public Environment Report/Public Environmental Review (PER) on the proposed expansion of the Lancelin Defence Training Area.


(6) The development of the Public Environment Report/Public Environmental Review (PER) includes a public consultation process. Consultation was undertaken with the Billinue Aboriginal community in January 2002 and later that month with the Yued Native Title Claimant Group. The Shires of Gingin and Dandaragan were consulted at separate meetings on 20 March 2002 to determine their views on the proposal. In early March 2002, a letter was sent to four private landowners who have a direct interest in the land. Defence’s environmental consultant, Ecoscape sent a follow-up letter in late March 2002 inviting comments on the proposal and the landholders to a public meeting. Defence presented an outline of the proposal at a public meeting held at Dandaragan on 16 April 2002. Upon receiving a request from community representatives, a second public meeting was convened at Lancelin on 20 May 2002. There is an 8 week public comment and exhibition period, which runs until 15 July 2002.

(7) For many years, the relative small size of the existing Lancelin Defence Training Area has restricted the scope and scale of training able to be undertaken by Australian Defence Force elements based in and around Perth, the primary user being 13th Brigade. Defence only has formal tenure over the Naval Gunfire Support Range—some 13 000 hectares. The construction of the Lancelin to Cervantes Road will further restrict the training area, as it bisects the area traditionally used by the Army, some 17 300 hectares, and make Army and joint training untenable. The proposed extension will compensate for the training area restrictions created by the new road but also serves to provide an enhanced training capacity. The area is not necessarily large in comparison to other training areas around Australia used for similar purposes. However, one reason for the size in this case is that some of the area will have constraints on how it can be used due to environmental concerns and the need to rotate areas. The area also needs to be large enough to meet the expected long-term needs of Defence and for sustainability. The Lancelin location is unique in that it provides capability for limited scale joint and combined training that incorporates the use of the existing naval gunnery range, as well as meeting individual service needs. The proposed extension is contiguous with the existing Commonwealth owned and leased area. It is also close to major Defence assets such as HMAS Stirling, RAAF Base Pearce, Campbell Barracks at Swanbourne and Irwin Barracks at Karrakatta, thereby reducing training costs of fuel and travelling time. The
option to extend the Lancelin Defence Training Area will allow Defence to concentrate its infrastructure and environmental management resources.

(8) I am aware that the land and ecosystems affected by the proposal are relatively fragile and will need to be managed properly. Defence has undertaken to implement an appropriate environmental management regime to ensure that the proposed Defence use of the land is environmentally sustainable and that heritage sites are protected.

(9) (a) Consideration has been given to potential alternative locations within a 500 kilometre radius of Perth, however, no suitable alternatives have been identified. The facilities at Northam and Bindoon are too small and do not have the preferred coastal access. (b) The location of the training area needs to be within a reasonable travelling time from Perth, which is considered to be no greater than 300 kilometres. The potential impact on the environment has been considered in the selection of the preferred site and the proposed management strategies.

(10) The preparation of detailed environmental management plans and implementation plans before final decisions on the training area’s size, orientation and constraints is not considered to be an efficient or effective use of Defence resources. It is normal procedure to wait for the outcome of the environmental impact assessment process to be known before management documents are prepared. The outcomes of the assessment process will lead to the structure and content of environmental strategies and plans.

(11) The land is not listed on the Register of the National Estate.

Defence: Statement of Principles for Enhanced Cooperation in Matters of Defence Equipment and Industry

(Question No. 348)

Senator Chris Evans asked the Minister for Defence, upon notice, on 27 May 2002:

Can a copy of the Statement of Principles for Enhanced Cooperation in Matters of Defence Equipment and Industry which came into effect on 17 July 2000, be provided.

Senator Hill—The answer to the honourable senator’s question is as follows:

Yes. A copy has been forwarded separately to your office.

South East Asia Treaty Organisation

(Question No. 349)

Senator Chris Evans asked the Minister for Defence, upon notice, on 28 May 2002:

For each of the events listed below, can the Minister confirm: (a) the veracity of the events; (b) the fact that members of the Royal Australian Air Force (RAAF) took part in these events during the presence of the RAAF Contingent at Ubon, Thailand, from 25 June 1965 until 31 August 1968; and (c) whether these events undertaken by the RAAF were, in fact, a ‘direct supporting role’ of the United States Air Force’s Vietnam War effort conducted from within Thailand during the period concerned:

- RAAF Fire/Crash Rescue Crews performed ‘crash rescue’ operations on ‘combat damaged’ United States Air Force (USAF) F4 aircraft returning from Vietnam and Laos. (USAF Letter 18/7/66; 8TFW to OC Ubon)
- RAAF Motor Transport drivers refuelled USAF ‘combat aircraft’ for flights into Vietnam and Laos. (Department of Defense Letter 37/12/87)
- RAAF Surface Finishers helped in repairing of damaged USAF aircraft, that sustained ‘combat damage’ in Vietnam and Laos. (RAAF Unit History Sheets AFO 18/F/5; 1965)
- The USAF’s 8th-Tactical Fighter Wing (8TFW) and 79 Squadron conducted ‘Combat Flight Training Operations’ together, for the benefit of young inexperienced USAF replacement pilots conducting ‘combat missions’ into Vietnam and Laos. These operations were defined by letters of agreement. (8TFW History Apr-Jun 1968 & Dep Air Letter 68/5/Air (18))
- The Air Defence Posture for Ubon Royal Thai Air Force Base (RTAFB) was not accomplished by the USAF’s 8 TFW. The RAAF stationed at Ubon RTAFB, and equipped with F 86 fighter aircraft, had the responsibility for the Air Defence Alert Posture. (8TFW History Jul–Dec 1966; Maxwell AFB)
• The RAAF was placed on ‘Alert 5’ Air Defence Alert duties by the 7th Air Force (7AF) wef.
25.6.65 and at times ‘increased alert posture’ as required. (meeting USAF RAAF 12.6.65: Signal
Ubon to DCAS 5/7/65 and June 1966)

• That ‘Command Control’ was given to the USAF and that the Deputy Commander 7/13th Air
Force (USAF), and the designated TACC Battle Commanders were delegated authority to: (a) or-
der scramble (USAF and RAAF only) including mandatory scrambles, when required for accom-
plishment of Active Air Defence missions; and (b) order engagement of the first hostile airborne
object. (HQ PACAF 7 AF Regulation 23-25 1 Oct 1966)

• The RAAF was part of the tactical control force in Thailand that remained assigned to the tactical
air support group in Vietnam because this group was charged with the operation of the South East
Asia Integrated Tactical Air Control System. The RAAF Sabres at Ubon, Thailand, came into this
system by a combined agreement for air defence executed by the RTAF, the USAF and the RAAF.
(History PACAF Jul-Dec 1965)

• The implementation of the USAF 7th AF O Plan 427-66 (wef. 1.7.66) combined the air defence
systems of Thailand and Vietnam as components of a Single Integrated Air Defence System. (7AF
O Plan 427-66)

• The RAAF 79 Squadron was included as ‘augmentation forces—Thailand’ under the USAF 7AF O
Plan 427-66. (7AF O Plan 427-66)

• The RAAF provided RAAF Airfield Defence Guards (ADGs) for external perimeter fence ‘ground
defence duties’ (they patrolled out to 40 kilometres from the base). The USAF provided a USAF
Air Police Squadron for internal perimeter fence duties (they were not allowed to patrol outside the
base). Attacks using standoff weapons such as rockets and mortars accounted for 96 per cent of
ground attacks on main operating bases during the war. This outside patrol role by RAAF ADGs
was to counter this threat.

• RAAF aircraft were being employed in the defence of an air base from which offensive opera-
tions were being mounted against North Vietnam could be considered by North Vietnam and Communist
China as being similar to participation in the actual offensive operations. (Defence Committee
1965)

• RAAF ADGs entered Laos covertly and illegally collecting intelligence information regarding
bombing targets in Laos and passed this to USAF authorities in contravention of the 1954 and 1961
Geneva Accords that made Laos a neutral country. (July 1962 agreement signed recognising Laos
neutrality) (Aust. Military Attaché, Bangkok; SEAREview evidence)

• The RAAF, as required, maintained and performed these allotted duties until released from duty by
the Commander USAF 7th Air Force, Headquarters at Tan Son Nhut, wef. 27 July 1968. (File
566/2/311)

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) For each of the events listed below, I can confirm that the RAAF element based at Ubon was a
South East Asia Treaty Organisation (SEATO) commitment to help maintain the territorial integ-
rity of Thailand.

• RAAF and USAF teams did combine to provide an emergency service to all aircraft operating
out of Ubon.

• There is no record of RAAF Motor Transport Drivers refuelling USAF combat aircraft.

• The only record of RAAF maintenance personnel assisting in the refurbishment of battle dam-
aged USAF aircraft occurred on 2 March 1965. An F-100 aircraft made an emergency landing
at Ubon after being damaged by anti-aircraft fire. This incident occurred before the USAF
45th Tactical Fighter Squadron arrived at Ubon on 7 April 1965.

• No. 79 Squadron did undertake combat training sorties with USAF F-4 Phantom aircraft that
were based at Ubon.

• The RAAF was responsible for the defence of Ubon and the surrounding area.

• From 25 June 1965 the RAAF commitment to Thailand’s integrated air defence system was
two fully armed Sabre aircraft on five minute alert from dawn to dusk, seven days a week, at
Ubon. There were strict provisions applied by the Australian Government on the operational
employment of the aircraft.
All USAF aircraft in Thailand and South Vietnam came under the authority of the commanding general of the 2nd Air Division of the Thirteenth Air Force in Saigon, who was responsible to the commander of the United States Military Assistance Command Vietnam. The 2nd Air Division Task Operations Centre at Don Muang, Bangkok, Thailand, controlled operations by USAF and RAAF aircraft in Thailand. In March 1966, the 2nd Air Division was redesignated as the 7th Air Force under the direct command of Pacific Air Force.

The RAAF was part of Thailand’s integrated air defence system. The RAAF participation in the Thai integrated air defence system was as a result of agreement between the governments of Thailand, United States of America, and Australia.

7th Air Force Operational Plan 427-66 was a plan for the Air Defence Organisation for the Mainland South East Asia Region, and came into effect on 1 July 1966. This plan did not meet with Thai approval and it is uncertain whether the proposal was implemented.

The provisions of 7th Air Force Operational Plan 427-66 did not alter existing agreements on the operational employment of No. 79 Squadron in the air defence of Thailand. There is no evidence on records held by Defence that No. 79 Squadron was considered as ‘augmentation forces—Thailand’.

There is no record of RAAF Airfield Defence Guards (ADGs) undertaking security patrols outside the Ubon perimeter. There are no records of the base at Ubon being subjected to rocket or mortar attacks during the period of RAAF deployment at the base. The figures quoted, in all likelihood, relate to attacks on bases located in South Vietnam.

The Defence Committee did make this comment. However, it also considered that ‘the probability of enemy air attacks [on Thailand] would be slight’.

There is no record of Australian ADGs covertly and illegally collecting intelligence regarding bombing targets in Laos.

No. 79 Squadron was released from ‘alert status’ on 26 July 1968.