The Journals for the Senate are available at:
Proof and Official Hansards for the House of Representatives,
the Senate and committee hearings are available at:

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**RADIO BROADCASTS**

Broadcasts of proceedings of the Parliament can be heard on the following Parliamentary and News Network radio stations, in the areas identified.

- **CANBERRA** 1440 AM
- **SYDNEY** 630 AM
- **NEWCASTLE** 1458 AM
- **BRISBANE** 936 AM
- **MELBOURNE** 1026 AM
- **ADELAIDE** 972 AM
- **PERTH** 585 AM
- **HOBART** 729 AM
- **DARWIN** 102.5 FM
FORTIETH PARLIAMENT
FIRST SESSION—THIRD PERIOD

Governor-General

His Excellency the Right Reverend Dr Peter Hollingworth, Companion of the Order of Australia, Officer of the Order of the British Empire

Senate Officeholders

President—Senator the Hon. Paul Henry Calvert
Deputy President and Chairman of Committees—Senator John Joseph Hogg
Leader of the Government in the Senate—Senator the Hon. Robert Murray Hill
Deputy Leader of the Government in the Senate—Senator the Hon. Richard Kenneth Robert Alston
Leader of the Opposition—Senator the Hon. John Philip Faulkner
Deputy Leader of the Opposition—Senator Stephen Michael Conroy
Manager of Government Business in the Senate—Senator the Hon. Ian Gordon Campbell
Manager of Opposition Business in the Senate—Senator Joseph William Ludwig

Senate Party Leaders

Leader of the Liberal Party of Australia—Senator the Hon. Robert Murray Hill
Deputy Leader of the Liberal Party of Australia—Senator the Hon. Richard Kenneth Robert Alston
Leader of the National Party of Australia—Senator the Hon. Ronald Leslie Doyle Boswell
Leader of the Australian Labor Party—Senator the Hon. John Philip Faulkner
Deputy Leader of the Australian Labor Party—Senator Stephen Michael Conroy
Leader of the Australian Democrats—Senator Brian Andrew Greig (Acting)

Printed by authority of the Senate
## Members of the Senate

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<th>Senator</th>
<th>State or Territory</th>
<th>Term expires</th>
<th>Party</th>
</tr>
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<tbody>
<tr>
<td>Abetz, Hon. Eric</td>
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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

(2) Chosen by the Parliament of Queensland vice Warwick Raymond Parer, resigned.

(3) Chosen by the Parliament of Queensland vice John Woodley, resigned.

(4) Chosen by the Parliament of South Australia vice John Andrew Quirke, resigned.

(5) Appointed by the Governor of Tasmania, vice Hon. Brian Francis Gibson AM, resigned.

### PARTY ABBREVIATIONS

- AD—Australian Democrats
- AG—Australian Greens
- ALP—Australian Labor Party
- CLP—Country Liberal Party
- Ind.—Independent
- LP—Liberal Party of Australia
- NP—National Party of Australia
- PHON—Pauline Hanson’s One Nation

### Heads of Parliamentary Departments

Clerk of the Senate—H. Evans
Clerk of the House of Representatives—I. C. Harris
Departmental Secretary, Parliamentary Library—J. W. Templeton
Departmental Secretary, Parliamentary Reporting Staff—J. W. Templeton
Departmental Secretary, Joint House Department—M. W. Bolton
HOWARD MINISTRY

Prime Minister
The Hon. John Winston Howard MP

Minister for Transport and Regional Services and
Deputy Prime Minister
The Hon. John Duncan Anderson MP

Treasurer
The Hon. Peter Howard Costello MP

Minister for Trade
The Hon. Mark Anthony James Vaile MP

Minister for Defence and Leader of the
Government in the Senate
Senator the Hon. Robert Murray Hill

Minister for Communications, Information
Technology and the Arts and Deputy Leader of
the Government in the Senate
Senator the Hon. Richard Kenneth Robert Alston

Minister for Foreign Affairs
The Hon. Alexander John Gosse Downer MP

Minister for Employment and Workplace
Relations, Minister Assisting the Prime
Minister for the Public Service and Leader of
the House
The Hon. Anthony John Abbott MP

Minister for Immigration and Multicultural and
Indigenous Affairs and Minister Assisting the
Prime Minister for Reconciliation
The Hon. Philip Maxwell Ruddock MP

Minister for the Environment and Heritage and
Vice-President of the Executive Council
The Hon. Dr David Alistair Kemp MP

Attorney-General
The Hon. Daryl Robert Williams AM, QC, MP

Minister for Finance and Administration
Senator the Hon. Nicholas Hugh Minchin

Minister for Agriculture, Fisheries and Forestry
The Hon. Warren Errol Truss MP

Minister for Family and Community Services and
Minister Assisting the Prime Minister for the
Status of Women
Senator the Hon. Amanda Eloise Vanstone

Minister for Education, Science and Training
The Hon. Dr Brendan John Nelson MP

Minister for Health and Ageing
Senator the Hon. Kay Christine Lesley Patterson

Minister for Industry, Tourism and Resources
The Hon. Ian Elgin Macfarlane MP

(The above ministers constitute the cabinet)
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<tr>
<td>Minister for Justice and Customs</td>
<td>Senator the Hon. Christopher Martin Ellison</td>
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<td>Minister for Forestry and Conservation</td>
<td>Senator the Hon. Ian Douglas Macdonald</td>
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<tr>
<td>Minister for the Arts and Sport</td>
<td>Senator the Hon. Rod Kemp</td>
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<tr>
<td>Minister for Small Business and Tourism</td>
<td>The Hon. Joseph Benedict Hockey MP</td>
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<tr>
<td>Minister for Science and Deputy Leader of the House</td>
<td>The Hon. Peter John McGauran MP</td>
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<tr>
<td>Minister for Regional Services, Territories and Local Government</td>
<td>The Hon. Charles Wilson Tuckey MP</td>
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<tr>
<td>Minister for Children and Youth Affairs</td>
<td>The Hon. Lawrence James Anthony MP</td>
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<tr>
<td>Minister for Employment Services</td>
<td>The Hon. Malcolm Thomas Brough MP</td>
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<tr>
<td>Special Minister of State</td>
<td>Senator the Hon. Eric Abetz</td>
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<tr>
<td>Minister for Veterans’ Affairs and Minister</td>
<td>The Hon. Danna Sue Vale MP</td>
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<tr>
<td>Assisting the Minister for Defence</td>
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<tr>
<td>Minister for Revenue and Assistant Treasurer</td>
<td>Senator the Hon. Helen Coonan</td>
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<tr>
<td>Minister for Ageing</td>
<td>The Hon. Kevin James Andrews MP</td>
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<tr>
<td>Minister for Citizenship and Multicultural Affairs</td>
<td>The Hon. Gary Douglas Hardgrave MP</td>
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<tr>
<td>Parliamentary Secretary to the Prime Minister</td>
<td>The Hon. Jacqueline Marie Kelly MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for</td>
<td>Senator the Hon. Ronald Leslie Doyle Boswell</td>
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<td>Transport and Regional Services</td>
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<td>Parliamentary Secretary to the Treasurer and Manager of Government Business in the Senate</td>
<td>Senator the Hon. Ian Gordon Campbell</td>
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<tr>
<td>Parliamentary Secretary to the Minister for</td>
<td>The Hon. Christine Ann Gallus MP</td>
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<td>Foreign Affairs</td>
<td>The Hon. Frances Esther Bailey MP</td>
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<td>The Hon. Dr Sharman Nancy Stone MP</td>
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<td>The Hon. Peter Neil Slipper MP</td>
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<td>Shadow Minister for Foreign Affairs</td>
<td>Kevin Rudd MP</td>
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 12.30 p.m., and read prayers.

REPRESENTATION OF QUEENSLAND

The PRESIDENT (12.30 p.m.)—I inform the Senate that Senator Herron resigned his place as a senator for the state of Queensland on 5 September 2002. Pursuant to the provisions of section 21 of the Constitution, the Governor-General notified the Governor of Queensland of the vacancy in the representation of that state caused by the resignation. I table the letter of resignation and a copy of the letter to the Governor of Queensland.

TEMPORARY CHAIRMEN OF COMMITTEES

The PRESIDENT—Pursuant to standing order 12, I lay on the table a warrant nominating Senator Bolkus as an additional Temporary Chair of Committees when the Deputy President and Chairman of Committees is absent.

HEALTH INSURANCE: ANTICOMPETITIVE PRACTICES

Senator ABETZ (Tasmania—Special Minister of State) (12.32 p.m.)—At the request of Senator Ian Campbell, I move:

That the order of the Senate of 25 March 1999, relating to an order for the production of periodic reports by the Australian Competition and Consumer Commission on private health insurance, be amended as follows:

Omit “6 months, commencing with the 6 months ending on 31 December 1999”, substitute “12 months ending on or after 30 June 2003”.

Senator BROWN (Tasmania) (12.32 p.m.)—I would have preferred a little more explanation from the government about this varying of the order. I understand that this reduces the requirement for periodic reports from the ACCC. As a matter of form, I am not a supporter of that. I think we need to have a very clear reason brought to us by the government on that matter if it is going to get support from the Greens.

Senator ABETZ (Tasmania—Special Minister of State) (12.32 p.m.)—by leave—My advice is that Senator Brown was written to in relation to this matter about three weeks ago. From that point of view, some notice has been provided. As I understand it, the point of this matter is to vary reporting conditions on health insurance by the ACCC. If there is some difficulty with the Australian Greens coming to grips with this issue or indicating what their position is, I do not think it would matter if it were to be deferred for a day or two. We were of the view that it had been agreed but, if that is not the case, let us defer it; let the discussions take place and then let us come back into the chamber tomorrow or the next day.

Senator Brown—I just thought you might give an outline of it now.

Senator ABETZ—Do you have a difficulty with it, Senator? Yes or no?

Senator Brown—Yes, I do.

Senator ABETZ—in that case, I move:

That government business notice of motion No.1 be deferred until the next day of sitting.

Question agreed to.

COMMONWEALTH ELECTORAL AMENDMENT BILL (No. 1) 2002

In Committee

Consideration resumed from 27 August.

The CHAIRMAN—The committee is considering the Commonwealth Electoral Amendment Bill (No. 1) 2002, as amended, and Senator Brown’s amendment on sheet 2593 to insert new section 306B with the word ‘gifts’ substituting for ‘donations’ throughout. The question is that Senator Brown’s amendment be agreed to.

Senator Faulkner—Mr Chairman, I rise on a point of order and seek your guidance. Perhaps Senator Murray or Senator Brown could assist us with this, but I think it is appropriately raised as a question of procedure with you, at least in the first instance. When the committee was last deliberating this matter, a decision was made that we would have the two amendments before the chair—the substantive amendment standing in the name of Senator Brown and a further amendment to that amendment moved by Senator Murray. We had some discussion about the possibility of these being moved
separately. I think that was accepted, but I seek your advice as to whether we have put in place the appropriate procedural arrangements that will allow the question by Senator Brown to be put to the committee first, followed by the amendment that stands in the name of Senator Murray. I thought it might be useful for the committee if you could clarify that at this point.

The CHAIRMAN—Senator Brown’s amendment has, of course, been moved and Senator Murray’s amendment will be moved at a later stage in the debate.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.37 p.m.)—I will briefly speak to Senator Brown’s amendment to the Commonwealth Electoral Amendment Bill (No. 1) 2002, which is before the chair. In a sense, the amendments that stand in the names of Senator Brown and Senator Murray deal with relatively straightforward principles, but the amendments themselves are complex in terms of their effect. We have said that, in the view of the opposition, these amendments should be thoroughly examined by the relevant committee, which is the Joint Standing Committee on Electoral Matters. We have not been able to get the agreement of the Senate to do this and unfortunately neither these amendments nor this legislation will be examined by the joint standing committee.

The amendment that stands in the name of Senator Murray, and that will be put to the committee, will insert a new section into the Commonwealth Electoral Act to the effect that the provisions of section 588FE of the Corporations Law apply to all donations made by a company to a political party or candidate. I have indicated to this committee before that the question of importing concepts from the Corporations Law to the Commonwealth Electoral Act is problematic. In many ways it is like trying to put a square peg in a round hole. For example, the Democrat amendment means that a liquidator will have to determine if a donation by a company to a political party is an uncommercial transaction under the Corporations Law. If a company, as defined in the Corporations Law, is insolvent, then the insolvency provisions, including section 588FE, apply. Section 588FE(3) of the Corporations Law states that a transaction is voidable, provided it is an uncommercial transaction. And the term ‘uncommercial transaction’ is defined in section 588FB:

(1) A transaction of a company is an uncommercial transaction of the company if, and only if, it may be expected that a reasonable person in the company’s circumstances would not have entered into the transaction, having regard to:
(a) the benefits (if any) to the company of entering into the transaction; and
(b) the detriment to the company of entering into the transaction; and
(c) the respective benefits to other parties to the transaction of entering into it; and
(d) any other relevant matter.

The section of the Corporations Law that the Democrats, through Senator Murray, are asking to be applied to political parties may not deliver what is required here. Benefits in a commercial context are very different to those provided from donations or gifts. I would be interested if Senator Murray would care to address that issue. The other issue it is important to keep in mind is that these sections apply specifically to registered companies, which I know Senator Murray acknowledges. Not only do I query whether the companies donating money to political parties are always registered companies—I also query whether the obligations of political parties should be equated directly with the obligations of those companies.

These are the sorts of important issues that, in a perfect world, would have been better examined in more detail and at some length in the Joint Standing Committee on Electoral Matters. Not only are political par-
ties regulated differently to companies; they have different obligations that flow from their vastly different role in society. Companies are generally focused on profit, and we hope that political parties are not-for-profit organisations. Companies are responsible to shareholders and their customers, while political parties ought to be accountable to their members, to the public, to their supporters, to the parliament—to the wider body politic, if you like. Quite rightly, donations to political parties from companies that later go belly up have received considerable attention over recent times. HIH’s massive $800,000 donations to the Liberal Party, and Enron’s donations to the US Republican Party have caught the public eye, as have a range of other donations. The chief executives of those companies, as we all appreciate, should have been more responsible. Businesses in trouble ought to consider very carefully the extent of donations to anyone, let alone massive donations to political parties in those sorts of circumstances. Those company directors have responsibilities to their employees, to their shareholders and to communities as well.

It is worth having a look at who gets the money when a company goes belly up. When a company becomes insolvent, secured creditors have first claim to a company’s assets and have a right to sell a specific asset in the event that a company cannot meet its obligations. A bank with a mortgage over the plant of a company would be an example of a secured creditor. They get in first. Employees and trade creditors will generally be unsecured creditors. They get in after the banks have taken their cut, and they are generally fighting over the crumbs. That is the experience that we have seen. Unfortunately, employees being unsecured creditors, there are usually insufficient funds to protect employee entitlements because company funds are exhausted in satisfying secured creditors. The whole issue of how parties are regulated—especially those in receipt of public moneys and public funding—and the whole issue of structure and accountability to members and the taxpayers are matters that should be examined by the relevant parliamentary committee, in this case the Joint Standing Committee on Electoral Matters.

What is the purpose of the Democrats amendment and, more generally, the Australian Greens amendment before this committee? Are we trying to regulate companies? Are we trying to regulate other entities? Are we trying to regulate political parties? Again, those questions are probably best considered by a parliamentary committee which would be able to call on the advice of the AEC, ASIC and other experts if they need it. I think we are weighing into an area of sensitive public policy without availing ourselves of an important source of advice. In my view, all of these amendments would have warranted closer examination by JSCEM, but I am concerned about the transfer of concepts directly from the Corporations Law relating to the nature of transactions into the Commonwealth Electoral Act. It is not as straightforward as it might seem. I am concerned—and I am sure other senators would be—about any possible unintended consequences. That is why it is better looked at in more detail. I understand the spirit in which these amendments come before the chamber; I accept it absolutely, and I understand that the Democrats supported the parliament looking into how the Electoral Act could be amended to properly deal with how parties are regulated. But if the committee would prefer to deal with this matter by amendments that are not subject to that level of examination perhaps a broader opportunity is being missed here.

I think that Senator Brown’s amendment is superior to Senator Murray’s in one crucial respect—that is, it places the relevant rules squarely in the Commonwealth Electoral Act and, of course, it attempts to regulate political parties. In considering these amendments, we must be conscious of the purpose of the Democrats amendment and, more generally, the Greens amendment. To cut to the chase: are we trying to regulate companies or other entities or political parties? What are we trying to achieve here? The opposition are not without some concerns in relation to Senator Brown’s amendment. We are not sure that a period of 12 months for the clawback of donations is the appropriate period, though I think it is better than Senator Brown’s original proposition. The amendment uses the term ‘donation’ rather than the
term ‘gift’, which is in the Electoral Act, and there is a concern there. We are not sure—and without closer examination I do not know whether the parliament can be sure—that $1,000 is the right threshold; perhaps a higher threshold is appropriate. As I have said, these are the sorts of matters that should be looked at by JSCEM.

On the face of it, of the two options that are before the chamber, at this stage the opposition prefers the approach that Senator Brown has proposed in the name of the Australian Greens to that which is suggested by Senator Murray. It is possible that the amendment that stands in Senator Brown’s name will not be carried. It is the preferred approach as far as the opposition is concerned to the one proposed by Senator Murray, though I accept the spirit in which both of these amendments are put before this committee. I am pleased that the Senate committee will have an opportunity to determine a position on Senator Brown’s amendment before it determines a position on the amendment that stands in the name of Senator Murray. I commend the constructive and sensible approach that the opposition has taken in relation to these amendments to this bill—one which ought not to be being debated in this chamber and which is a transparent effort on the part of one political party in this parliament to try and fix its own internal problems.

Senator HARRIS (Queensland) (12.51 p.m.)—I reiterate that One Nation will be supporting the government’s position on the Commonwealth Electoral Amendment Bill (No. 1) 2002. I believe it is the right of political parties to administer their processes in whatever manner they so desire. In that it may seem something of a contradiction, I indicate to Senator Brown, as I did earlier on, that I cannot support his amendment, not because I do not believe that the amendment has merit but because I do not believe this place has the right to place conditions on other political parties and, reiterating what I opened by saying, that it is the right of the individual party to do that. If Senator Brown wishes to amend his amendment so that, intrinsically, it applies only to the Greens, then I would support his amendment. It would then be up to each and every other party in this place to make a similar amendment for their own political party, if that is their will.

Before going on, Mr Temporary Chairman, I would like to draw your attention to Senator Brown’s amendment to proposed subsection 306B(b). I am seeking clarification whether running sheet 2593 revised 2 carries a typo. It reads:

(b) the corporation within a period concluding on year after...

Is that supposed to say ‘concluding one year after’?

Senator Brown—Yes.

Senator HARRIS—I seek clarification from the Temporary Chairman.

The TEMPORARY CHAIRMAN (Senator Ferguson)—I think revised 2 of running sheet 2593 already has that change.

Senator HARRIS—It actually carries the inaccuracy that I am speaking of.

The TEMPORARY CHAIRMAN—It has been replaced.

Senator HARRIS—Thank you. Further to the issue Senator Faulkner raised in relation to the essence of this amendment going to the requirement under the Bankruptcy Act of a political party that has received a donation from a corporation and within one year that corporation is wound up or placed in receivership to return that amount based on the fact that it would be seen as a preferential payment, I believe that the Bankruptcy Act itself sufficiently covers that. On that point, if we look at the Australian Electoral Commission’s returns for the financial year 2000-01, we will see they clearly indicate that the Liberal Party received in excess of $21 million in donations, the National Party in excess of $6 million and the Labor Party in excess of $31 million. Amongst those, there was also a $100,000 donation from HIH to the New South Wales Liberal Party in 1999 and a $181,00 gift from the Froggy business of the entrepreneur Karl Suleman to the New South Wales division of the Labor Party. While investors in Sydney alone face losses of up to $65 million from Mr Suleman’s Froggy business failure, I do not believe that anyone in Australia at this point in time has a complete understanding of the ramifications
of the HIH crash. The media reports from News Ltd indicate that, so far, only the Western Australian Labor Party have agreed to repay a $10,000 donation which was received from the Suleman business. I commend the Western Australian Labor Party for their integrity in doing that. So far, neither the Liberal Party nor the Labor Party federally have returned to either of those two entities the donations that they have received.

In concluding my remarks, I would like to indicate that I believe there is a moral requirement on any political party that does receive what is seen by the public to be a preferential payment from an entity that has either gone into receivership or has been bankrupted within 12 months to return that payment. I believe the Bankruptcy Act already carries the requirement for the liquidator to return either that gift or that donation.

**Senator Brown** (Tasmania) (12.58 p.m.)—I have given a fairly detailed outline of why this is an important amendment. As previous speakers have said, it is to ensure that, where a company gives more than $1,000 to a political party and within a year that company then becomes insolvent, the donation is given back to the liquidator so that it can be disbursed to the creditors. It is, in effect, saying that political parties can take a lead here. There are other entities involved in dealing with companies before insolvency which might be looked at under the Corporations Law at another time. It is saying, effectively, that people who lose out when companies go bust should be the primary consideration.

I take into account the point put very strongly by Senator Faulkner earlier that one of the difficulties with the Greens’ amendment is that it does not ensure that the money would necessarily go to the little person who has lost their money—it could mean that the banks and other prior creditors get the money—but we are doing our best under the circumstances, and to make that sort of change does require looking at the Corporations Law. However, we are looking here at the Commonwealth Electoral Amendment Bill which deals with the receipt of donations from various sources, so it is appropriate that we deal with this particular factor involving donations—that is, the subsequent going broke of the donor—under this piece of legislation. That is one of the reasons I agree with Senator Faulkner that this is a better amendment than that proposed by Senator Murray on behalf of the Australian Democrats.

In response to the submission we have just heard from Senator Harris, I think it is very important that the whole of the act should be non-party specific. It should be fearless in being fair and should apply to everybody. That is why the amendment is in this form: it does not name the Greens, One Nation or any of the other parties but is fair to all. It is a very important step towards an ongoing and wider look by the body politic at the whole matter of donations to parties and politicians in our democratic system. I will not go back into that territory, as I have covered it before—it concerns me greatly—but I congratulate the Labor Party in supporting this. I know it has been a difficult amendment and, because it is covering new territory, it does not have everything in it that could be desired. I do not know how to get around that problem. I know the Labor Party has been tackling that problem and Senator Faulkner has been involved. Considering that, it has been very generous of the Labor Party to be supporting this because it is ethically a good move despite its shortcomings, and I hope that the Democrats will be able to support it as well so that it does pass into law.

**Senator Murray** (Western Australia) (1.02 p.m.)—The Greens’ amendment has presented some difficulties because the intent is a good one. I think everyone has said that, and I have put a fair bit on the record previously. The key thing about the amendment is that it relates only to corporations; it does not attempt to pick up all donations from any other entities. Because of that, it alerted me to the nature of insolvency law as already established under the Corporations Act. There are provisions in the Corporations Act which could allow a company’s liquidator to seek to recover donations made to a political party by a company if the company subsequently becomes insolvent. The political
party, under current law, may therefore be required to repay money to the donating company. The insolvency provisions in the Corporations Act aim to achieve a balance between payment of company debts and protecting parties that have received money from the insolvent company.

It seems to me that Senator Brown's amendment would still require the liquidator to make the same judgment they currently make under the Corporations Act. It is for that reason I simply designed an amendment that I think achieves what Senator Brown's amendment is trying to achieve, and that is to act as a signpost and say, 'Look, the Corporations Act provisions cover this area. If you are dealing with these matters you should refer to section 588FE of the Corporations Act.' That signposting style has many precedents in law. Often laws will say, 'With regard to this, look at the definition or provisions in such another act.' I am not certain we need to do what Senator Brown is saying we should do, but I like the intent. Obviously, if there is any doubt, you want to do just this. So it does land us in some difficulty. If it were the wish of the committee—and that really requires the major parties to take a view on it—I personally have no objection to both these amendments, but not the bill, being sent off to the JSCEM, or maybe even to the Joint Standing Committee on Corporations and Financial Services, if it wants to explore it within a reasonable time frame.

Senator Faulkner—Only if the whole bill goes!

Senator Murray—I know that is your intent—even I have gathered that over time!

Senator Faulkner—I thought you would have worked it out by now!

Senator Murray—I have. The reason I do not feel any sense of urgency or immediacy about this is that I have come to the view that the law actually applies in this way. Corporations Law specifically allows what Senator Brown intends to happen. I think this amendment is making specific what is a general provision in Corporations Law covering all debts. So, in that sense, I do not want to oppose this, but I do think it is unnecessary. All I will say is that, if we are forced to a vote today, I think my amendment achieves the same result with less likelihood of confusion over the application of insolvency law. If, however, the committee were inclined to send those two amendments off and not the bill, I would not object to that.

Senator Brown (Tasmania) (1.07 p.m.)—The point that Senator Murray has perhaps not picked up on in what he has just been saying is that the Greens amendment says:

... an amount equal to the amount of the donation is payable by the political party to the liquidator and may be recovered by the liquidator ...

It makes very clear that the amount is payable. That is not the case in Senator Murray's amendment, which still leaves it to the liquidator that it may take action to recover that amount. In that sense, it makes it clear to all of us when we receive a donation that it is recoverable under those circumstances. I think that is why it is important that it is in the Commonwealth Electoral Amendment Bill (No. 1) 2002. It clears the air on the matter and is therefore a stronger and clearer statement of the situation for the political parties, as well as for any donor, than the current law which Senator Murray wants to signpost through his amendment. I hope he will take that into account and will support the Greens amendment.

Senator Murray (Western Australia) (1.08 p.m.)—I am going to do something which will make the government feel a bit anxious. I will signal that, if this amendment were to pass, I would not insist on it when it came back and I would expect the government to amend this amendment to reflect both the proposals I have made and the point that Senator Brown has just made. Perhaps it should take cognisance of that.

Senator Abetz (Tasmania—Special Minister of State) (1.09 p.m.)—It is quite clear that all that has been said this morning, other than Senator Murray's latest intervention, has basically been a repeat of what was said on the previous occasion. I think that there is very strong merit in the suggestion that the two amendments before us—one moved by Senator Brown and the other moved by Senator Murray—ought to go to a
committee for detailed consideration. With respect, it is clear that the bill itself—which has been around for 12 months and has been to a Senate committee, which has reported—is different from the amendments that are now being thrown on the table, for a number of reasons that I will not go into. The Greens amendment started off with a three-year period and changed to an ‘on year’ period and then a one-year period. We have had other words being changed, quite appropriately, to try to make them more in tune with the legislation. I do not think that making these sorts of changes on the run does credit to the Commonwealth Electoral Act, and there is no real—

A disturbance having occurred in the chamber—

Senator ABETZ—We do not need chuckles from the side from unelected individuals. I suggest that the committee ought to—

Senator Faulkner—Well, it’s pretty funny.

Senator ABETZ—Just remember your reaction to a public servant who accidentally tried to assist at a Senate estimates hearing one day, Senator Faulkner, and you will then understand how very restrained I have been in that comment. I suggest to the committee that we need to put this to the Joint Standing Committee on Electoral Matters for proper and detailed consideration. If we are to have the principle of universality which seems to have been embraced by Senator Brown in his submission in rejecting what Senator Harris said, the question has to be asked—using, let us say, the HIH example or the Froggy example—whether, next time there is a piece of tertiary education legislation before the Senate, Senator Brown will jump up to move amendments to it to ensure that, if HIH had made a donation, as it has—or, indeed, if any other corporation had made a donation—to a university in the previous 12 months, it can be clawed back, as Senator Brown is suggesting in relation to political parties—or if HIH made a substantial donation to the Collingwood Football Club, as I understand it did.

Honourable senators interjecting—

Senator ABETZ—Now I agree with the laughter. Why anybody would want to do that, I do not know—I would have thought Geelong would have been a much worthier cause—but HIH made that determination. Does that mean that the next time some legislation comes up in relation to, let us say, the Australian Sports Commission, Senator Brown will jump up and move an amendment that any sporting body in receipt of sponsorship or donations in the previous 12 months from a corporation that then goes belly up should repay that money, irrespective of the circumstances under which it was received by that sporting body? We need careful consideration of the precedent that would be set here, and also of the very real possibility that the gift is completely unrelated to the bankruptcy and people have acted in good faith, received the money and spent it for the purpose for which it was designed. I think it is important that these suggested legislative changes be considered in a more rigorous manner, not on the run with amendments flying around and one amendment that has already changed three or more times—

Senator Faulkner—That’s just the way it works.

Senator ABETZ—We hear from Senator Faulkner that this is the way it works. Yes, it can work that way, but I thought part of the committee system of the parliament was for legislation to be considered in detail through the committee system.

Senator Faulkner—All right—refer the bill to JSCEM.

Senator ABETZ—The bill that is before us has already been before a Senate committee—

Senator Faulkner interjecting—

Senator ABETZ—I do not think you had a good weekend, Senator Faulkner. I am disappointed—it is so early in the sitting. We are hardly half an hour into them and we are getting so many interjections. The simple fact is that the bill proper has been before a Senate committee and it was considered. I can understand that Senator Faulkner, for his own political reasons, does not like the outcome of that committee report. But the sim-
ple fact is that it has now been on the table for 12 months or more. The bill has been considered by a committee. The throwing of ill-considered amendments on the table one after the other is simply an attempt to delay what is otherwise a very straightforward piece of legislation.

If I take a deep swallow, I am willing to accept the possibility that Senator Murray and Senator Brown are genuinely motivated in the issues raised in their amendments. On that basis, let us explore them in the parliament’s committee system. But at this stage, as Senator Murray has indicated, the law already provides the liquidator with sufficient powers to deal with clawing back money. I might add that the one-year period that Senator Brown now talks about would limit the liquidator’s powers in relation to the other matters that I outlined on the last occasion. Section 588FE of the Corporations Act mentions certain timetables of two years, four years and even 10 years.

My view is that the legislation that Senator Brown is proposing would in fact prevent the liquidator from going back 10 years, or even four years or two years in certain circumstances. Quite frankly, I have no idea how that can be in any way good for the little investor in a company. If a transaction that is not kosher has been entered into but is not discovered for more than 365 days, under Senator Brown’s suggestions it would not be recoverable once you tick past that one year. Yet, under the Corporations Law, it would be recoverable in certain circumstances.

This is a clear case of amendments being thrown on the table without due consideration. But I am willing to accept that there is a genuine issue at stake here and that is what is motivating these amendments. That is why they ought to go to a committee of the Senate, the Joint Standing Committee on Electoral Matters or a standing or legislative committee of the Senate, so that the committee can deal with those issues and also come up with a policy as to whether the law that would apply to gifts to political parties should also apply to gifts to universities, hospitals, Rotary clubs and sporting clubs. A whole host of nonprofit and volunteer organisations all around country are the beneficiaries of corporate support, and so why single out political parties? It has been suggested that we ought to do it because the Commonwealth Electoral Act is before us at the moment. If that is the case, I would be interested to see whether, each time we deal with nonprofit organisations—sporting clubs, hospitals, health and tertiary education institutions—Senator Brown jumps up with a similar amendment. I am sure that he will not. The government will be opposing both of the amendments.

Senator Murray—Is the minister intending to send these amendments to a committee or not?

Senator Faulkner—As per your note?

Senator Murray—Yes. But you do know that I put that proposition on the record earlier.

Senator Faulkner—I didn’t expect you to respond!

Question put:

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

The committee divided. [1.24 p.m.]

(The Chairman—Senator J.J. Hogg)

<table>
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<th>Ayes</th>
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AYES

Allison, L.F.
Bishop, T.M.
Brown, B.J.
Campbell, G.
Collins, J.M.A.
Crossin, P.M.
Faulkner, J.P.
Greig, B.
Hogg, J.J.
Lees, M.H.
Lundy, K.A.
Marshall, G.
Moore, C.
Murray, A.J.M.
O’Brien, K.W.K.
Ridgeway, A.D.
Stephens, U.
Webber, R.

Bartlett, A.J.J.
Bolkus, N.
Buckland, G.*
Carr, K.J.
Conroy, S.M.
Denman, K.J.
Forshaw, M.G.
Harradine, B.
Kirk, L.
Ludwig, J.W.
Mackay, S.M.
McLucas, J.E.
Murphy, S.M.
Nettle, K.
Ray, R.F.
Sherry, N.J.
Stott Despoja, N.
Wong, P.
Monday, 16 September 2002

SENATE

4101

NOES

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

PAIRS

Cook, P.F.S. Kemp, C.R.
Evans, C.V. Lightfoot, P.R.
Hutchins, S.P. Reid, M.E.

* denotes teller

Question agreed to.

Senator MURRAY (Western Australia) (1.28 p.m.)—In view of the division we have just had, I will withdraw my amendment (1) on sheet 2605.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (1.29 p.m.)—by leave—I move opposition amendments (1) to (5) on sheet 2604 revised:

(1) Schedule 1, item 2, page 3 (lines 28 to 30), omit paragraph (b).

(2) Schedule 1, item 3, page 4 (lines 18 to 23), omit paragraph (aa).

(3) Schedule 1, item 3, page 5 (lines 20 to 37), omit paragraph (ad).

(4) Schedule 1, item 6, page 6 (line 7) after “Liberal Party“, insert “and the agent of the relevant State Branch of the Liberal Party”.

(5) Schedule 1, item 6, page 6 (line 21) after “A notice under subsection (5E)“, insert “must be signed by the agent of each party specified in the notice and”.

These opposition amendments do take away the possibility of the Liberal Party’s central office unilaterally and oppressively lodging a notice to say where the funds due to a state division should go. I am sure that Senator Murray would agree with me that this agreement is absolutely essential for the process to work. Of course, we have a situation where state branches or state divisions nominate candidates who are members of state branches or state divisions. The fact that national offices of some political parties currently pay a very substantial percentage of campaign costs has of course been a more recent political phenomenon. Who is to say what the situation might be in years to come?

It is true to say in relation to the major political parties that, a decade ago, the state branches or state divisions paid a much larger percentage than national offices. Around 20 years ago you would probably find the situation where those branches were probably bearing the overwhelming majority of costs from campaigns.

But the factors determining who pays for an election campaign are of course quite varied. There is the issue of who actually buys the media placements—the advertising space—particularly the television advertising space. There is the issue, as you would appreciate, Madam Temporary Chairman Collins, of the actual geographic structure of the television and advertising markets that are relevant—and not only relevant but relative to electorates. There is the issue of the internal organisation of political parties and who produces election material. There is the issue of who has the responsibility for managing and organising policy launches, and who pays for and organises the equipping and staffing of campaign offices. Of course, in the case of the Liberal Party it is generally best left, in their view, to the Commonwealth taxpayer to fund most of their arrangements. But there is no particular reason why those costs have to be borne by either a state branch or state division of a political party or the national office of a political party. That is a matter, we believe—and I think any reasonable person would say this—for those political parties to consider and determine.

It is quite clear that not only do national organisations or federal organisations in political parties have an interest in federal election campaigns; so do the state organisations, the state divisions and the state branches. Most state branches of political parties are registered at both state and federal level; most state branches of political parties operate at state and federal level. Under the
Electoral Act, state branches have the same rights as other branches in the party grouping; that is, the Electoral Act does not discriminate in favour of one party structure over another party structure—and quite rightly. These are matters—the structuring of parties and the organisation of parties—best left to the individual parties themselves to determine. It is up to the members of the relevant party to decide how these matters ought to be finalised.

I have said for some considerable time in relation to the parliament’s consideration of this legislation that the fact that some people in the Liberal Party of Australia actually want to centralise funding is not a good enough reason to amend the Commonwealth Electoral Act and set up a potentially oppressive mechanism in the Commonwealth Electoral Act. The purpose of these amendments is to ensure that no-one will be forced to do anything against their will. The great benefit of them—and I want to say this, through you, Chair, particularly to Senator Murray, who I know is closely following this debate, because he seems to me to need more convincing than most on these matters—

Senator Brown—That is because he is so well read on them.

Senator Faulkner—He is. Senator Brown, I have acknowledged that Senator Murray is very expert, very knowledgeable, on electoral matters. But sometimes he needs a little convincing; in fact, I would have to say that sometimes he seems to need a lot of convincing.

Senator Murray—Baseball bats work well.

Senator Faulkner—Senator Murray, we are happy to do whatever is required. I do think this point needs to be made, and I commend it particularly to the Australian Democrats who need some convincing on some of these issues. The amendments that are before the chair ensure that no-one—no state division or branch of a political party—is forced into a course of action which they are uncomfortable with. The amendments keep the element of choice that Senator Murray has extolled before this chamber on a number of occasions in relation to this legislation. They keep the element of choice as an important principle in these matters. Of course, there is legislation before the committee which aims to dictate an approach, dictate a structure and dictate a course of action for political parties. What these amendments provide is that we will be able to keep the flexibility for parties to register agreements with percentage allocations of public funding due to their party grouping in a manner that suits all of the party’s needs. This seems to be a very sensible approach.

Amendments (1) to (5) before the chair will keep flexibility for political parties. The amendments will keep the element of choice, which I know Senator Murray and the Australian Democrats are so wedded to and consider such an important principle in the debate on these important issues. Here is an opportunity to do just that. I commend these amendments to the committee.

Senator Harris (Queensland) (1.41 p.m.)—Through you, Madam Chair, I will be seeking some quite in-depth confirmation not only from Senator Faulkner but also from the government in relation to the Commonwealth Electoral Amendment Bill (No. 1) 2002. Senator Faulkner’s proposed amendments (1) to (5) actually remove certain sections from the bill that refer to the Liberal Party. My concern is whether an in-depth study and thorough understanding of the consequences of these proposed amendments have taken place. Let me give you an example. For the benefit of members in the chamber, page 3, line 33 of the Commonwealth Electoral Amendment Bill (No. 1) 2002 states:

—pay the amount to the principal agent; or
(d) in any other case—pay the amount to the agent of the State branch of the party that is organised on the basis of the State or Territory in which the candidate or candidates stood for election.

In removing lines 28 to 30 of the bill, Senator Faulkner is specifically removing a reference to the Liberal Party. But what about the rest of us? On page 3, subsection 287(1) of the bill inserts a clear definition of the Liberal Party. In essence, the bill is speaking to the Liberal Party. Do Senator Faulkner’s proposed amendments, which remove the
reference to the Liberal Party in subsection (b) of section 299, have an implication for any other party based on subsection (c)? Subsection (c) states:

(c) if the party is the Australian Democrats and there is a principal agent appointed under section 288A—pay the amount to the principal agent—

or

(d) in any other case—pay the amount to the agent of the State branch of the party that is organised on the basis of the State or Territory in which the candidate or candidates stood for election.

Are we altering the bill in such a way that it will have an implication for every political party other than the Liberal Party?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (1.45 p.m.)—I accept that Senator Harris has probably been closely engaged in the debate. I am sure I do not have to explain either to Senator Harris or to the committee that the Commonwealth Electoral Amendment Bill (No. 1) 2002 is about the Liberal Party. That was the intention of the government when it brought this particular legislation before the chamber. The Liberal Party was unable to get agreement around its state divisions—state branches by another name—to organise the distribution of public funding at the national level. Because of that, the government thought the only way that this issue could be addressed was to solve those internal political problems that the Liberal Party has by legislation. That is why, if you go to subsection 287(1)—as you have mentioned—you see that ‘Liberal Party’ is defined. It states:

Liberal Party means the political party that, at the commencement of this definition, was registered under Part XI as the Liberal Party of Australia.

That is what this bill is all about. Senator Harris, if you are making the point that this bill is not necessary you are absolutely right. I agree with you completely. This could be fixed by the state and territory divisions of the Liberal Party of Australia signing a document that indicates an agreed distribution of public funding. It is as simple as that. Even though the minister will not admit this, that particular document cannot be produced by the National Secretary of the Liberal Party of Australia, Mr Crosby, because they cannot get agreement around the state divisions. The Commonwealth parliament is being asked to legislate to solve this problem. That is the thrust of this legislation. It is absolutely unprecedented in the Commonwealth parliament to have that sort of legislation come before it.

Senator Murray can explain to you in graphic detail the different way in which the membership base of the Australian Democrats works. It is an important point, isn’t it, Senator Murray, in relation to a national membership base, as opposed to a state or territory membership base for a political party? That is a matter that has been discussed in this chamber on a number of occasions. But what is open for debate and what is being considered here is simply the issue of how the Liberal Party regulates and organises its own internal affairs—how it deals with the question of the receipt of public moneys. Those matters are obviously best dealt with by political parties themselves.

This bill is about the Liberal Party. Senator Murray has tried to broaden it and see it have application to—he is always trying, and I commend him for it, to help out Senator Abetz. He always tries to do the right thing and see if he can make the way a little easier for the minister. But every now and again I think you would have to acknowledge, Senator Murray, that, even with your best efforts, not all your assistance has been gratefully accepted. Once or twice you have offered from ‘Community Chest’—as they call it on the Monopoly board—the ‘Get out of jail free’ card, and what happens? You hand the card to the minister but he is not bright enough to even play it. But, there you are.

This particular bill is about the Liberal Party’s internal organisation. As far as I am concerned, these amendments are certainly not intended to have any effect in relation to any other political party and, as far as I understand the bill, will have no effect in relation to any other political party. So if Senator Harris has any concerns about that, I think his mind can be put at rest. This is legislation about the Liberal Party. This is a misuse and
abuse of the parliament to achieve an outcome that ought to be able to be achieved by a simple letter being placed before the Australian Electoral Commissioner, and then we just get on with the rest of our lives. But because the Liberal Party is apparently incapable of doing that, this parliament has been left with the responsibility of sorting out the Liberal Party’s own internal shenanigans.

My approach to it is quite simple: we should not be involved in that. They should sort it out themselves. But we have before us amendments that keep a level of flexibility in the way that might work, in the unfortunate circumstance that this particular legislation is agreed to by the Senate.

The TEMPORARY CHAIRMAN (Senator Collins)—The question is that opposition amendments (1) to (5) on sheet 2604 revised be agreed to.

Senator HARRIS (Queensland) (1.52 p.m.)—Madam Chair, I know you have put the amendments to the chamber, but I have one further question that I am trying to get clarification on in relation to Senator Faulkner’s amendments. I seek leave to put a question to the minister.

Leave granted.

Senator HARRIS—I draw the minister’s attention to lines 33 and 34 on page 4 of the bill where it says:

(ac) if the members of the group were endorsed by 2 registered political parties, one of those parties is the Liberal Party or a State branch of the Liberal Party ...

The section continues. Then lines 6, 7 and 8 on page 5 of the bill read:

... or, in the absence of agreement, into such shares as the Electoral Commission determines.

Does the first reference refer to any political party other than the Liberal Party and the party with which they are associated? For clarity, could the minister advise the committee whether it is in any way the intention of the Electoral Commission, in the absence of an agreement, to be able to determine the share of any electoral funding coming from the Electoral Commission. I thank the chamber for its indulgence.

Senator ABETZ (Tasmania—Special Minister of State) (1.55 p.m.)—The circumstances in which it would apply are those where there is a joint Senate ticket—for example, in New South Wales, where the Liberal Party and National Party run a joint Senate ticket. My advice is that the legislation would only apply in those circumstances. I trust that clarifies the matter for you.

The TEMPORARY CHAIRMAN (Senator Collins)—The question is that opposition amendments (1) to (5) be agreed to.

Senator Faulkner—A division would be required but given that it is four minutes to two—I do not know what the minister’s view is—I think it might be better to hold the division at a later stage. Could I respectively suggest to you, Madam Chair, that it would be better not to have the division just now. We usually try to be sensible about these things. It would significantly eat into question time.

Senator Abetz—Is this some kind of filibuster?

Senator Faulkner—There has been no filibuster. I point out to you, Minister, that the sensible way of dealing with the next item of business in the committee’s consideration would be the division in relation to these provisions. I think it is generally agreed. We will press for this division but we will do it when government business comes back for consideration at a later stage.

Progress reported.

Sitting suspended from 1.57 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

Foreign Affairs: Iraq

Senator FAULKNER (2.00 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Does the minister recall his comments, reported on 30 August this year, that Australia possesses its own information on Iraq’s weapon capabilities? Given the proposal by the United Kingdom government to present a dossier of evidence to a recalled parliament, and while acknowledging the need to protect the source of such information, will the government be presenting its own evidence to the Australian public specifically on Iraq’s weapon capabilities?
Senator HILL—In part, the statement to be made tomorrow will allow for debate on the subject of Iraq’s program of weapons of mass destruction and provide at least a reminder of the actual extensive public information on that program that already exists.

Senator Carr—Just read the newspaper, is that right?

Senator HILL—Some people, Senator, are not listening to or observing the large amount of evidence already on the public record in regard to that weapons program and its evolution since before the time of the Gulf War—what was discovered during the Gulf War and afterwards through the weapons inspectors; the state of the program at the time the weapons inspectors were expelled; and other information that has been put on the public record since. That is all out there for public debate at the moment, and Senator Faulkner is asking whether the government is planning to provide additional information to that. In that regard, it would have been better had he waited until he received the statement which we will put before the parliament tomorrow.

[Senator Bolkus interjecting—]

Senator HILL—That is not the sole purpose of tomorrow’s statement. The primary purpose of tomorrow’s statement is so the parliament can debate the breach by Iraq of a range of United Nations Security Council resolutions over a long period of time and what might, in the view of this parliament, be the appropriate way in which those breaches should be dealt with. In the time ahead, it is my view, as is going to be the case in Britain and the United States, that further information about the weapons program will be put on the public record. I have no doubt that there will be further debates upon that information being released. I respectfully suggest to Senator Faulkner that he wait until tomorrow’s statement, which I am confident will give him at least the opportunity to review and debate a significant part of the evidence available in relation to that weapons program.

Senator FAULKNER—Mr President, I ask a supplementary question. Minister, have Australia’s intelligence assessments on Iraq been conveyed to the US? Were Australia’s intelligence assessments on Iraq’s weapons cited by the Prime Minister in his statement on 11 September regarding Iraq’s chemical, biological and nuclear capabilities? If it is okay for the Prime Minister, the Minister for Foreign Affairs and you, the Minister for Defence, to so freely cite Australian intelligence reports on Iraq, why won’t the government now take the Australian people into its confidence by putting the cited evidence before the parliament?

Senator HILL—As Senator Faulkner knows, we are unable to put a lot of that evidence on the public record because of its classification, which is sourced through international agreements. It would be a gross breach of our responsibility under those agreements to do so without the agreement of other parties. As I understand it, Mr Crean, the Leader of the Opposition, has been briefed on this matter as much as is able. In relation to a more fulsome briefing than what we have been able to put on the public record, members of the government parties in this place have been briefed and similar opportunities have been given to the Labor Party but, so far, the Labor Party has declined them. Having declined such briefs, it seems a little odd that Senator Faulkner would come in here today demanding that we offer them. There will be the opportunity to debate this issue tomorrow. (Time expired)

Economy: Management

Senator CHAPMAN (2.06 p.m.)—My question is directed to the Leader of the Government in the Senate. Will the minister inform the Senate how the Howard government’s responsible economic leadership is benefiting Australian workers and families?

Senator HILL—I thank Senator Chapman for that important question. It is true that the Australian economy continues to go from strength to strength. Recent figures emphasise how the Howard government’s strong and responsible economic management is underpinning this outstanding performance.

The Australian economy continued to show solid gains in the June quarter. Despite the weak global environment, Australia’s
GDP grew by 0.6 per cent in that quarter. That is 3.8 per cent through the year—twice the rate of growth of the developed world. Household consumption increased by 1.5 per cent in the June quarter. Dwelling investment grew by 4.8 per cent in that quarter. Business investment increased by 8.1 per cent. Construction recorded a 5.8 per cent increase. The list goes on and on. What they all show is the terrific performance of the Australian economy under the Howard government’s strong economic leadership. All the signs are there that Australia will continue to be one of the strongest growing economies in the developed world in the year 2002-03. That of course is great news for Australian workers and their families. More than one million jobs—or more than 400 jobs a day—have now been created since the government came to office, and total employment is now at a record high of almost 9.4 million. These results confirm the continuing strength in the labour market. The trend unemployment rate has declined steadily during the year. Trend employment has risen for the 20th consecutive month and the participation rate is holding up well.

What a contrast to Labor’s claim of one million during its term in office. In Labor’s case, of course, it was one million unemployed—an unemployment rate peaking at 10.9 per cent, job queues longer than since the Great Depression. That was another sad statistic in a litany of Labor failures. What of the comparison with the Howard government? Under the Howard government we have enjoyed, as I said, historically low interest rates, falling unemployment rates, four consecutive budget surpluses, a repayment of $61 billion of Labor’s debt, $12 billion in personal income tax cuts from the introduction of the GST, and growth of the economy more than twice that of the developed world. That is good news for Australia and good news for Australian families. If the Labor Party wants to contrast its record, we will remind it of a record of high taxation, high spending, big deficit governments—nine budgets with deficit, average budget deficits of $12.2 billion, a $10 billion black hole when it left office—tax increases when it promised tax cuts, interest rates at records of 17 per cent, small business interest rates over 20 per cent, unemployment at its highest level since the Great Depression—

Senator Sherry—This is the highest taxing government since the Great Depression!

The PRESIDENT—Senator Nick Sherry, come to order!

Senator HILL—and $96 billion of government debt run up between 1990 and 1996. What a comparison with the present days of good strong economic growth, high employment growth, Australians prospering under sound economic management. Compare that with the litany of depression and the sad record of a government that hopefully will not get another chance for a long time.

Foreign Affairs: Iraq

Senator HOGG (2.10 p.m.)—My question is to Senator Hill, the Minister for Defence. Does the minister recall his comment yesterday that the public had a right to demand more evidence before supporting an attack against Iraq? Didn’t the minister also claim that further evidence could not be released because Australia is not the source to ‘a lot of this material’, and there was a need to get the agreement of those countries before releasing it? What action has the Australian government taken to seek agreement from those countries to allow the release of this information?

Senator HILL—I have certainly said that these matters should be debated, and we will be very pleased to facilitate a debate in the parliament tomorrow. In relation to the program of weapons of mass destruction, as I have said, there is a great deal of information on the public record now which can be debated. Further information can be put on the record as we are able to release it. I do not shy away from the fact that I think the Australian community will want to be satisfied that the weapons of mass destruction program is continuing and that it amounts to a threat. That seems to me to be a reasonable thing and it seems to me to be therefore reasonable that the Australian government should facilitate that debate and provide the necessary information for it to take place.

Senator HOGG—Mr President, I ask a supplementary question. I thank the minister
for the answer, but the last part of the question was: what action has the Australian government taken to seek agreement from those countries to allow the release of this information? I think that is the important thing that he missed. What action has the government undertaken to fully and independently assess all recent information regarding the capacity of Iraq to make weapons of mass destruction available to any terrorist organisation? Will the government provide all the results of this assessment to the parliament and the Australian people?

Senator HILL—There are a number of questions there. Our intelligence authorities obviously assess the information that is available, whether we are the primary source or whether it is provided to us. That information is clearly to the effect that the weapons of mass destruction program is continuing, particularly for chemical weapons, secondly for biological, and with the future capability of nuclear. In relation to the issue of releasing the information, there has been an ongoing dialogue with other parties to ensure that the public is provided with as much of that information as can reasonably be the case, in order, as I said, for the public to be fully informed and to participate in the debate.

Agriculture: Sugar Industry

Senator BRANDIS (2.13 p.m.)—My question is to the minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Ian Macdonald. Will the minister outline the assistance package developed by the Howard government to help Australia’s sugar industry? Is the minister aware of any alternative policy approaches?

Senator IAN MACDONALD—I thank Senator Brandis for his question. He, like me, representing Queensland, has a real concern for the sugar industry. I know Senator Brandis has visited those areas on a number of occasions to talk to people involved. The government is concerned about the low world prices for sugar, the difficult climatic conditions that have occurred in the state of Queensland and of course the impact that that has on communities along the coast of Queensland. Last week, Mr Truss, the minister, announced a package of $150 million to support the sugar industry. At this stage I want to congratulate Mr Truss on the work that he has done to bring this package to fruition and also the Prime Minister, who has played a very important part and has a personal interest in it. I should also mention the Hon. Tom Barton, the Queensland minister, who has been very cooperative in dealing with the Commonwealth in getting this package together.

The centrepiece of this package is a $60 million program to enable regional bodies to drive the local adjustment of the industry which is necessary. This package will provide an opportunity for local mill areas to diversify and look at their new potential in various areas. It will assist farmers facing adjustment pressures so that they can become more efficient and effective and better able to compete in the difficult international environment. As well, there will be an overarching industry group to guide the reform within the sugar industry. A part of the program will be a tax-free payment of $45,000 for those wishing to exit the industry, so that they can do that with some dignity. Welfare assistance and replanting subsidies will be provided by the Queensland and Commonwealth governments. These will be funded by a levy on sugar sales and the federal government and the Queensland government will also contribute.

Senator Brandis asked me whether I was aware of any alternative approaches. I am aware that there has been a bit of rhetoric about alternative approaches. Senator O’Brien, the opposition spokesman, said that he had a blueprint or a plan for the sugar industry. I have looked on the Internet, I have inquired around, I have sought information from everywhere; nowhere can I find a plan or a blueprint from the Labor Party. What I can find, as I say, is a lot of rhetoric and a couple of media releases—and I have some words from the shadow Treasurer. He said, in a doorstep interview one morning, that there is no need for a levy to support the sugar industry.

Senator Sherry—Surcharge!

Senator IAN MACDONALD—Well, he said a levy. Mr McMullan said that in the morning; a couple of hours later he was
saying, ‘Don’t take what I said as having implied that Labor has made any decision to oppose the levy or that I would be making any such recommendation to shadow cabinet.’ At one stage he is saying that you don’t need a levy; a couple of hours later he is back-pedalling as quickly as he can. I have not heard Senator O’Brien’s view on the levy; in fact I really have not heard anything at all of Senator O’Brien in relation to this. There we have it: a positive program by the coalition government to assist an industry that has been so important to Australia and to Queensland, and from the Labor Party absolutely nothing—absolute silence, except for some contradictory statements that are only meant to—(Time expired)

Foreign Affairs: Iraq

Senator CONROY (2.18 p.m.)—My question is to Senator Hill, the Minister for Defence and Minister representing the Prime Minister and Minister for Foreign Affairs. Does the government agree that the United Nations Security Council needs to act urgently and strongly on the question of Iraq’s weapons of mass destruction capability, by adopting a fresh resolution stipulating a firm timetable for readmission of weapons inspectors from UNMOVIC?

Senator HILL—Yes.

Senator CONROY—Mr President, I ask a supplementary question. Does the government also agree with Labor’s position that, should Iraq fail to readmit weapons inspectors within the stipulated time frame, the United Nations Security Council should adopt a further resolution outlining the necessary action to be taken against Iraq under chapter 7 of the United Nations Charter?

Senator HILL—I do not know what Labor’s position is, but certainly we believe that the Security Council, now that it is addressing the issue, should adopt a firm resolution with strict timetables. Of course, a debate continues as to whether there should be one resolution, including the consequences of a continuing breach of the Security Council resolutions, or whether there should be a secondary resolution—one that would follow a breach of the resolution that we expect to be passed in the next week or so. That is still being debated by members of the Security Council, and we think it would be better for that to take place.

Foreign Affairs: Iraq

Senator BARTLETT (2.20 p.m.)—My question is to Senator Hill, the Minister for Defence and Minister representing the Prime Minister. It relates to the government’s commitment to support the United States in military action against Iraq. Does the government acknowledge recent opinion polls over the weekend which show that up to 75 per cent of Australians are opposed to an attack against Iraq without United Nations approval? Is the government willing to commit Australia to support in any way a war against Iraq without UN approval in the face of such significant public opposition from the Australian people?

Senator HILL—As you know, Mr President, Australia has not been asked to participate in a war against Iraq, and in fact no other party has made a decision to engage in a war against Iraq. What has happened, and I am pleased to see it, is that the Security Council has finally taken up the issue—in particular the many previous resolutions of which Iraq remains in breach—and, we believe, to set a timetable within which Iraq will have to allow the return of inspectors unconditionally and unfettered. We think that is a good thing. We much prefer a collective response to these things if it is possible. As I said, we are pleased that the Security Council has finally again taken up the issue.

The logical sequence now, of course, is to await the outcome of that Security Council resolution and then the ensuing response of Iraq. Whilst, on the basis of the record of Iraq, one would not be confident that it would comply with the resolution, nevertheless it should be given the opportunity to, and we would certainly urge that it comply. If it does not have weapons of mass destruction, as it claims, it would have no reason at all not to allow in international inspectors unconditionally and unfettered. We urge the Iraqi regime to illustrate its claim that this program is no longer continuing and to give the international community confidence of that fact by allowing the inspectors of the
international community back in to verify the situation.

Senator BARTLETT—Mr President, I ask a supplementary question. Can the government give a simple commitment not to have Australia support any military action against Iraq unless it is authorised by the United Nations, or is this government willing to leave open the option of involving Australian troops in a war that is not supported by the Australian people?

Senator HILL—Actions are sometimes legitimate without the authority of the Security Council. I suggest that the honourable senator refers back to his charter of the UN and he will read the circumstances in which it is legitimate. The important thing now is to urge Iraq to allow back the inspectors in order that it can demonstrate its claim that the weapons of mass destruction program has ended and to avoid the possibility of a conflict. Nobody wants armed conflict, but we do want to see an end to that weapons program, and we cannot simply rely upon the word of Saddam Hussein as to that fact. We can very reasonably expect that international observers should be allowed in, as I said, unconditionally and unfettered to give us and the rest of the international community that confidence. That is where the concentration of effort should be at this time.

Health Insurance: Premiums

Senator FORSHAW (2.24 p.m.)—My question is directed to Senator Patterson, the Minister for Health and Ageing. Can the minister confirm that private health insurance funds will no longer require government approval for automatic annual CPI premium increases? I ask whether the minister recalls the Prime Minister saying on 29 August 1996:

What I can give is an absolute guarantee that any change in future will be as a result of a decision taken at a political level in a way and in circumstances where we are satisfied that the rise is completely justified.

Senator Patterson interjecting—

Senator FORSHAW—Minister, you might actually care to listen. Does that mean that the Prime Minister’s so-called absolute guarantee was a non-core promise or was it a promise that was rotten to the core?

Senator PATTERSON—One of the goals of this government is to keep private health insurance affordable. Labor, when it was in government, had private health insurance at a rate that was unsustainable. Senator Richardson, when he was Minister for Health, said that it was not sustainable. We saw private health insurance struggling. We saw private hospitals not investing in new beds. We saw a decline and the possible failure of private health insurance.

This government has been committed to a strong private health sector and a strong public health sector. In order to actually keep private health insurance premiums down, one of the things we have asked the private health insurance providers—and let me just remind honourable senators that 38 out of 44 of those providers are not-for-profit—is to ensure that their management and administrative costs are as low as possible. Let me say that most reasonable Australians—and I would not call people on the other side reasonable Australians—understand that their house insurance will go up and their car insurance will go up and it is reasonable to expect, given that health costs go up double the CPI, an increase in private health insurance. When they present on an annual basis in January and February asking for an increase, quite a significant amount of work is required, including huge administrative and management costs. In consultation with the private health insurance industry, one of the suggestions put forward was to seek ways in which we could reduce the administrative costs. I believed it was reasonable. I put it to cabinet that, if their increase was at CPI or below, they should be able to have that increase without having to come formally to government to seek that approval and, if it is above CPI, they should have to go through the normal process of presenting the case to the prudential regulator and the prudential regulator would assess whether in fact they require that increase to meet the claims of their members; and, if they say that it is a requirement to meet the claims of their members, they present it to me as health
minister and I can either approve or veto that increase.

We are aiming to keep downward pressure on private health insurance. I want Labor to come out and tell us if they are actually going to keep the 30 per cent rebate. Mr Smith says on the one hand that he is and then last week he intimated that it was not a good idea. The Australian public want to know whether private health insurance under Labor—and God forbid if they ever got into government—would still be on average $750 cheaper for a family because of the 30 per cent rebate.

Senator FORSHAW—Mr President, I ask a supplementary question. I note in your answer, Minister, that you referred to the government endeavouring to keep premiums affordable and to keep them down. Does the minister recall the Prime Minister promising the Australian people before the election last year that private health insurance would be ‘more affordable and attractive to consumers and that this government’s policies would lead to reduced premiums’? Can the minister confirm that already this year the government has approved increases that will force Australian families to pay between $150 and $200 more each year for their private health insurance? Further, isn’t it the case that, now that health funds will be entitled to automatic annual CPI premium increases, Australian families will have to pay up to even $100 further for their private health insurance next year?

Senator PATTERSON—If the honourable senator looked carefully, it is not an automatic CPI increase. They can increase up to CPI. When the health funds had the opportunity of increasing their funds to any amount, some of them increased them to less than CPI over the last three years and some of them had no increase at all. To presume that they will automatically have CPI increases is a nonsense. Also, I would not trust the estimate that Mr Smith gave.

Australians can be guaranteed that, under us, health insurance premiums will be 30 per cent cheaper because we have the rebate. Mr Smith said on radio the other day that the rebate was a public policy crime and a felony. If that is someone who is going to continue to support the rebate, I will eat my hat. He said before that it was an entrenched part of health policy and then the other day he said it was a public policy crime. It will be 30 per cent cheaper under us. (Time expired)

Business: Corporate Governance

Senator MURPHY (2.30 p.m.)—My question is addressed to the Minister for Revenue and Assistant Treasurer, Senator Coonan. The minister will be aware of the recent High Court decision in Macleod v. ASIC which prevents the Commonwealth from bringing an appeal against certain state jurisdictional decisions. Given the potential seriousness of this decision, can the minister inform the Senate how many other cases of this nature might exist? Can the minister also inform the Senate whether or not the Corporations Act 2001 addresses these problems for such cases in the future? Would the government, if necessary, seek to introduce retrospective legislation to ensure the Commonwealth’s capacity to prosecute such illegal activity?

Senator COONAN—The answer to Senator Murphy’s question is yes, the government will consider whether it is necessary to make any amendments. Of course, the particular case that Senator Murphy refers to does not raise fairly and squarely the same kinds of problems that have previously arisen in relation to the coarrangements that impacted on the Corporations Law. Obviously, it has impacted on whether or not ASIC is able to bring an appeal, and that is a matter of serious concern. It is a matter that is under consideration because the case is only a couple of days old, and whether or not it impacts on any other case is not an issue at the moment. It is important that we have an opportunity to consider the case, consider the implications and consider whether or not it has such a significant impact that any amendment would be necessary.

Health Insurance: Premiums

Senator McLUCAS (2.32 p.m.)—My question is to Senator Patterson, the Minister for Health and Ageing. Can the minister inform the Senate why the announcement that private health insurance funds will no longer require approval for CPI premium rises was
made late in the afternoon of 11 September 2002? If indeed this was a decision that was good for Australians and their families, why was it slipped out quietly when everyone was looking at ground zero and thinking about September 11?

Government senators interjecting—

The President—Order! Before the minister answers, could we please have some order on my right.

Senator Patterson—I think the opposition need a new questions committee if that is all they can ask. They ask nothing about policy, nothing about health, nothing about the PBS—nothing about the things that really matter. I will tell honourable senators why. We had a cabinet meeting on Tuesday, a decision was made and I announced it the next day—I think I had something on in the morning. Had I kept it for a couple of days I would have been hiding something from the Australian public. I said to Jon Faine on the ABC, ‘You can’t win: if you announce it the day after cabinet, you’ve done the wrong thing; if you keep it for a couple of days, you’re hiding something.’ Really, if that is the only question they can ask!

Senator Sherry—You were trying to hide it!

Senator Patterson—While I am on my feet, let me talk about some of the things that were in the announcement. Why would I be hiding this, if that is what they are accusing me of? I announced that the powers of the private health insurance ombudsman will be enhanced by giving the ombudsman the authority to resolve disputes, and they will be able to issue an annual report on the state of funds. So the ombudsman will have on the Web the state of each fund—their increases, their various products, the number of justifiable complaints to the ombudsman—and there will be a ‘state of the fund’ report.

I was also concerned about people who turned 30 under Lifetime Health Cover: because they turned 30 all through the year, it would be difficult for the funds to advertise and ensure that as many people were aware that they needed to join up before their 30th birthday or they would suffer a penalty each year as they got older. We had what I called the ‘horses’ birthday’ and I asked the insurance funds if we could have one day which would make it easier for us to advertise and tell people, and they agreed. They are the sorts of things I announced. Why would I have wanted to hide those sorts of important consumer issues in private health insurance?

Every time the Labor Party want to have a conspiracy: I was hiding the private health insurance or the bulk-billing figures in my office. Now I am hiding a press release. Really, do you think I spend my time hiding things in my office? If there is not a conspiracy, they will invent one. I wanted to tell people about the fact that we were having reforms that would actually mean more information for the consumer so that they could make informed decisions. Unlike under Labor, when you want to shift from one fund to another we enable competition, we enable people to either shift from one fund to another without losing their benefits or rights in terms of their waiting periods and we want people to know more about the funds so they can either join a fund with more information or move from one fund to another. That is not something I would want to hide.

Senator McLucas—Mr President, I ask a supplementary question. Minister, why was the decision announced late in the afternoon of the anniversary of September 11 and not on the afternoon of 10 September? Given that the government is walking away from its absolute guarantee that future premium increases will require the approval of the federal government, didn’t this cynical government need any distraction it could find? Didn’t you want people to know that the decision will slug those Australian families with private health insurance with additional costs of up to $100 a year?

Senator Patterson—I think Senator McLucas ought to write her own questions or at least not ask a supplementary question and embarrass herself. Cabinet did not finish meeting until after five o’clock. If I had released it after five o’clock, I would have been accused of hiding it before September 11 and getting it out after the news cycle. Get real! Cabinet did not finish until five o’clock. I do not think the Prime Minister would be very happy if I ran out of a cabinet meeting
to issue a press release. I issued it the next
day as soon as I possibly could, when I could
actually deal with press questions about it.
The next day, when I had time—

Senator McLucas interjecting—

Senator Patterson—We actually have appointments and things to do, Senator
McLucas, if you really want to know. I issued it in time for that next news cycle. Had
I issued it on the day before, they would have accused me of burying it with Septem-
ber 11 coming up. You cannot win: that is what I have argued.

Telstra: Services

Senator Ferguson (2.37 p.m.)—My question is to the Minister for Communica-
tions, Information Technology and the Arts, Senator Alston. Minister, has the government
made a commitment to ensure that phone services are adequate before any further sale
of Telstra is considered? What other safeguards has the government committed to in
relation to Telstra? Why is it important that any surveys about Telstra accurately repre-
sent these government commitments?

Senator Alston—That is a very im-
portant question, Senator Ferguson, and I am
indebted to you for asking it. It is only a pity
that Senator Mackay is not able to have the
same frank discussion with her colleagues
when they come to debating their break-up
strategy for Telstra. Our strategy is actually
to keep Telstra together and to make sure it
continues to deliver the services that all
Australians expect from it. As I am sure eve-
ryone knows, we have an inquiry under way
that will tell us whether services are up
to scratch and, if necessary, what more needs
to be done. At the same time, we have given
commitments that, irrespective of any change
in ownership, we will adhere to
things like the universal service obligation,
the customer service guarantee—which, of
course, we initiated and which has been
working so well—price caps, untimed local
calls, the Telecommunications Industry Om-
budsman, network framework reliability, the
national relay service and the digital data
service obligation, which is of particular in-
terest to people in regional and rural Austra-
lia. So there is a great deal which Australians
not only expect but also can have absolute
confidence will be kept in place if there is
any change in ownership.

The other area where you often get a bit of
scaremongering is foreign ownership. That is
why the Telstra Corporation Act already pro-
vides for a maximum 35 per cent foreign
ownership and imposes a limit on any indi-
vidual foreigner of five per cent ownership.
The Telstra act goes on to require that the
head office remain in Australia and that a
majority of the board—and, indeed, the
chairman—must also be Australian citizens.
We have been very careful to ensure that we
address all of the relevant issues, and anyone
who wants to go out and put survey ques-
tions to the Australian public should do
likewise. In other words, it is not good
enough to get out there and ask, ‘Are you in
favour of privatisation? I am not, and I am
only interested in hearing from you if you
are not, but are you in favour of privatisa-
tion?’ That is what the three Independents
who are busy running around the country-
side, desperately trying to find a reason to
justify their existence, are now proposing. As
Senator Boswell quite rightly said at the
weekend—I see this statesman on television
most Saturday nights, and there he was
again—Independents cannot deliver. It is a
fraud; it is a trick on the public. All they can
do is whinge, and whingeing does not get
you anywhere.

Opposition senators interjecting—

Senator Alston—Look at this lot!
They have been at it for 6½ years—it gets
them nowhere. What they have to do is come
up with constructive ideas; that is what the
game is all about. They have given us a fair
start, I admit, and it is never too late, but the
signs are not very promising. You would
have thought that an Independent who had a
constructive view of the world might be
making a contribution, but that is not what
we look like getting from the three Inde-
pendents who are out there trying to scare
the pants off ordinary citizens in regional and
rural Australia and saying that they are going
to stop the full sale. When I said to them that
they ought to put the question in context and
make sure people understood all of these
safeguards that would be in place, what response did I get? Mr Andren said, ‘Of course we are confident that our survey questions will be balanced and objective.’ It is just a nonsense; it is a charade. They cannot possibly be doing anything other than running a low-grade fear campaign. The only thing you can say about them, I suppose, is that they are a little above the Labor Party when it comes to honesty on this issue. At least they seem to have a glimmer of understanding and are not being as utterly cynical as the Labor Party, which in private, of course, support the full privatisation of Telstra and are always running around asking merchant banks to give them the latest model for breaking it up and flogging off the pieces. That is structural separation is all about. That is what keeping the network in government ownership is all about—so you can flog the rest. (Time expired)

**Health Insurance: Premiums**

**Senator STEPHENS** (2.41 p.m.)—My question is to Senator Patterson, the Minister for Health and Ageing. Can the minister confirm that, if private health premiums automatically rise by the CPI of around 2.8 per cent next year, this not only will result in premium increases for Australian families of between $50 and $100 but also will cost taxpayers around an additional quarter of a billion dollars through the 30 per cent private health insurance rebate? By walking away from approving increases in private health insurance premiums once a year, you can go back and look at Labor’s record when the ramshackle system occurred. We have a system that funds apply for an increase once a year. I made the decision, and cabinet supported me in that, that it was burdensome and an administrative cost for them to apply for an increase which was less than, or up to, CPI. Most reasonable people understand that insurance goes up—car insurance and house insurance go up—and we know that health costs go up by double the CPI. If a fund wishes for an increase beyond CPI, they will have to come to the Australian health insurance prudential regulator, who will examine the cost to determine whether it is in the public interest and whether it is required to pay members’ claims. They will then make that application to me and I will have the power to veto that increase if I believe it is not in the public interest. We have a system which is reducing onerous administrative costs on health funds to enable them to spend their money on delivering the best services to their members and ensuring that health insurance remains viable and a strong part of our health system in enabling people to use the private hospital system and other services that private health insurance offers them.

**Women: Government Policies**

**Senator STOTT DESPOJA** (2.44 p.m.)—My question is addressed to the Minister for Finance and Administration. Given that it is possible to provide a national, government funded, paid maternity leave scheme for all Australian working women for 14 weeks for $475 million or less, why does this government prefer to spend an additional $35 million on the government’s inequitable baby bonus scheme, a scheme which advantages women in the higher income brackets? Why does the government insist on spending money on a scheme that advantages wealthy women, instead of providing a paid maternity leave scheme for all working women at a rate of around $475 million per annum?

**Senator MINCHIN**—I thank Senator Stott Despoja for her question on the subject of paid maternity leave. I take this opportunity to clarify my position and that of the government on this matter. What I was intending to do last week—and it is a most
important contribution to the debate—was to point out to Australia that we do have an ageing population. We have to accept that demographic fact of life and not waste time, energy and taxpayers’ money seeking to defy the reality of an ageing population. If those who advocate paid maternity leave rely on the argument that it would somehow reverse Australia’s ageing population and declining fertility rate then they are wasting time and energy on that proposition. It will do no such thing. I have put on the record my strong view, one that is echoed by the evidence, that paid maternity leave will do nothing for Australia’s declining fertility rate. It will cost at least $475 million and possibly as much as $780 million. Nevertheless, the government is interested in propositions advancing the cause of paid maternity leave. If there are other reasons why paid maternity leave is such a very important thing for taxpayers to support, we will listen to those arguments and consider them in our very sensible and timely review of our quite generous family support programs, which currently amount to about $19 billion and which are ably administered by my colleague Senator Vanstone. Our programs are generous, but we will look at the question of adding to them with paid maternity leave in the context of that review—albeit that it is very important for Australians to understand that it would cost taxpayers $475 million at the minimum and that it would do nothing to increase fertility.

I must say that Ms Goward’s unfortunate remarks about the baby bonus disappoint me. The scheme is one of this government’s more enlightened and significant contributions to public policy and to programs for the support of families in this country. We took this program to the Australian people at the last election and, by their re-election of our government, the Australian people overwhelmingly endorsed it—not that there was all that much competition for the election on the last occasion.

The baby bonus is something that we fundamentally believe in. As my colleague Senator Vanstone has argued, it is something like tax averaging. It is very much linked to the taxes paid by working women prior to giving birth. It is directly linked to the taxes they pay in the 12 months prior to having the baby. In that sense, it is a return to them of taxes that they have paid in the lead-up to the birth of their child. Therefore, I think that it is an equitable, sensible and appropriate policy, one to which this government is totally committed and one we will not be reversing in the face of the argument in favour of paid maternity leave.

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I thank the Minister for Finance and Administration for what sounds like a change of position. Firstly, will the minister table in the Senate the costings to which he referred and those that have been released to the media in recent days? Secondly, will the minister acknowledge that the baby bonus scheme—an ill-targeted, inequitable scheme that targets the highest income brackets in Australia when it comes to women having children—is actually $35 million more expensive than a national paid maternity leave scheme that would provide women with 14 weeks of paid maternity leave? Minister, isn’t that an example of ‘middle-class welfare’, which is the terminology that the minister has used to describe paid maternity leave?

Senator MINCHIN—I am more than happy to table the figures, which I have released publicly, at the earliest opportunity. But I repeat my comments about paid maternity leave. If you want to argue for paid maternity leave on the basis that it will raise fertility, you are not going to be successful. It will cost an additional $475 million. The baby bonus proposition was not put forward on the basis that it would raise fertility, nor do we argue that it will. We want to help mothers who are having their first child, through the baby bonus—a popular scheme that has the support of Australian working mothers, because it returns to them some of the taxes that they paid in the year leading up to the birth of their child. It is a very good government policy.

Medicare: Bulk-Billing

Senator FORSHAW (2.50 p.m.)—My question is directed to Senator Patterson, the Minister for Health and Ageing. Does the minister recall telling the Senate on Tuesday, 27 August and again on Wednesday, 28
August that she had not seen and would not approve the June quarter bulk-billing figures prior to their release on Friday 30 August? Why then was her junior minister, Mr Kevin Andrews, in a position to tell the House of Representatives the day before the June quarter figures were released that only some 73 per cent of GP services were bulk-billed? Why was the minister’s junior minister able to reveal the June quarter figure in the House at the same time that the minister in this chamber was saying in the Senate that she had not seen the figures?

Senator PATTERSON—Let me reiterate that I had not seen the figures and I did not have the minute in my office. I will need to look at the minister’s answer—he may have been using figures from the previous quarter; I do not know. I will look at that. But I had not seen the figures and my briefing did not include figures from that. As I said to honourable senators, the HIC reports the bulk billing figures six weeks after the end of the quarter. It reports them eight weeks after the end of a quarter that falls at the end of the financial year, because it is reporting on all of the figures. The HIC sends the minute over to my office and it releases the figures irrespective of whether I have signed off or not. I had not signed off on that minute when it released the figures. As I said to honourable senators, the HIC releases those figures and it sends me a minute to note. That minute had not come across to me when I gave that information to the Senate. I will look at Minister Andrews’s answer and see whether it included data from the previous HIC quarter. I presume that that is most probably the case. But I reiterate that that minute had not come across to my office when I was here answering those questions.

This is a conspiracy theory. If you cannot get the minister, make up something: make up the fact that I had that minute in my office in my in-tray—as I said, Senator Forshaw must have been creeping around my office in a dream, because it was not there—or make up the fact that I released a press release on 11 September to hide information, a lot of which was very positive information for consumers of private health insurance. So if you cannot get the person on an issue, besmirch their character and say there is an ulterior motive and use a conspiracy theory—let me tell you, it will fail every time.

Senator FORSHAW—Mr President, I have a supplementary question. Can the minister confirm that the June quarter Medicare statistics, released the day after parliament last rose, revealed a dramatic decline in bulk-billing, showing that since the election of the Howard government the rate of bulk-billing by GPs has dropped from 80.6 per cent to 73.9 per cent? Can the minister confirm that these statistics also show that the average cost for a patient to see a GP has gone up by 44 per cent, from $8.32 in 1996 to $12 today? Doesn’t this show that under the Howard government, Minister, it is harder and harder to see a bulk-billing doctor and that it is more and more expensive to see a doctor who does not bulk-bill?

Senator PATTERSON—Overall bulk-billing rates are still higher than they were in the last year under Labor. Let me get the overall bulk-billing rates. With GP bulk-billing, seven out of 10 visits to doctors are bulk-billed and, very importantly, eight out of 10 visits for people aged over 65 are bulk-billed. I want to say that one of the factors that influence bulk-billing—not the only factor—is competition. Under Labor, when we came into government, there was a dearth of doctors in rural areas, and that is where bulk-billing is lowest. We are paying now, after a history of neglect by the Labor Party, to get doctors into rural areas, to get doctors into outer metropolitan areas, and over the last four years we have seen an 11 per cent increase in the number of doctors in rural areas and a 4.3 per cent increase in estimated full-time doctors in rural areas; we are turning that around. Those work force issues do not get turned around overnight, and it was from 13 years of neglect from Labor that we saw doctors maldistributed in inner city areas and not in outer metropolitan and rural areas.

Trade: Firearms

Senator MASON (2.55 p.m.)—My question is to the Minister for Justice and Customs, Senator Ellison. Will the minister inform the Senate of any new Commonwealth initiatives to strengthen community protection against the illegal trade in firearms. Are
there any actions that states and territories can take to prevent the theft of firearms?

Senator ELLISON—I thank Senator Mason, who has a strong commitment to matters dealing with law and order and law enforcement. Before I touch on the announcement I am making today on a very important initiative in relation to the illicit trade in guns, I want to point to the achievement of the Howard government in this area. In recent years we have seen that the Howard government has been the driving force behind the national firearms agreement of 1996, which tightened gun regulations across the country. As well as that, we saw in 2000 increased penalties relating to the smuggling or importation of prohibited firearms, making that punishable on conviction with a penalty of up to $250,000 or 10 years jail or both. As well as that, we have tightened import restrictions on hand guns—we did that in April last year—and we required that imports and most sales of imported hand guns needed permission from state and territory authorities. We promoted the national firearms trafficking policy agreement at the Australian Police Ministers Council this year, and that was duly endorsed. As well as that, we have supported, with the commencement of the Australian Crime Commission, the first reference of that very important body being the investigation of illegal dealing in hand guns.

This issue, make no mistake about it, is a very important issue for all Australians. Today I am announcing that, as part of the Commonwealth’s continued fight against illegal firearms, we will introduce into parliament amendments to the Criminal Code Act 1995 to target the illegal interstate trade in firearms. This is a very important issue in the fight against illegal firearms. These amendments will create new offences, enabling the prosecution of people engaged in illegal interstate trade in firearms under Commonwealth law. These Commonwealth offences will carry a more substantial penalty than if prosecuted under existing state or territory legislation.

The proposed new offences make it a criminal offence for unlicensed persons to engage in the interstate sale or purchase of a firearm or the transportation of a firearm across a state or territory border with the intention of trading that firearm. This penalty is consistent with the existing penalties for the illegal importation of a firearm under the Customs Act and reflects the serious nature of illegal firearms trafficking, particularly where it is engaged in by business enterprises for profit. The trafficking of illegal firearms across state and territory borders is an issue which law enforcement across the country has found to be on the increase, and this Commonwealth government is acting to counter that.

The Commonwealth government has taken a strong stand in relation to the firearms issue and, in particular, the illegal trading and illegal use of firearms. I call upon the Labor governments in the states and territories to look to the question of increasing theft of firearms—theft of firearms which then find their way into the commission of criminal offences. In fact, the Australian Institute of Criminology found that the theft of 4,000 firearms a year means that, on average, 12 firearms are reported stolen across Australia every day. This is a state and territory responsibility, and they should live up to that responsibility. This Commonwealth government is doing its bit; we want to see the state and territory Labor governments do their bit in the fight against illegal firearms.

Insurance: Medical Indemnity

Senator MOORE (2.59 p.m.)—Mr President, my question is to Senator Patterson, the Minister for Health and Ageing. Does the minister recall saying on 28 April, on the eve of a forum on medical indemnity insurance that was held before UMP was placed into the hands of a liquidator:

... no doctors’ services will be disrupted as a result of the medical indemnity issue.

With doctors and hospitals unable to obtain affordable cover, some obstetricians no longer delivering babies and other doctors charging patients extra to cover their insurance costs, hasn’t this turned out to be rather a hollow and meaningless promise to the Australian people?

Senator PATTERSON—We have moved through uncharted waters on this issue of
medical indemnity. It is an issue not of the government’s making—let me just point that out. The Prime Minister has said that as well. I am not sure about the dates that have just been given, because the medical indemnity forum was on 23 April and I think the date of UMP was before that. I am not sure, and I will not take the dates that the Labor Party have given. We had a forum on 23 April with all the health ministers—and I was very appreciative of their support—and all of the relevant players in the area of medical indemnity. The government gave a guarantee, and I think I can say that it is probably unprecedented in the history of Australia for a professional group to have been indemnified in that way. When we realised that it needed to be extended after June, it was extended to actually address a concern, because we were concerned about what had happened.

Those medical defence organisations had resisted being subjected to prudential regulation; they had said that they were looking after themselves. It was basically a guild formed for doctors to support each other. When UMP hit the wall, the doctors came to the government for assistance, and we responded. On Easter Thursday, the Prime Minister met with representatives of the AMA and other professional groups, particularly those affected by high indemnity costs. The issue of indemnity had arisen for a number of reasons: there was tort law reform required in the states; we had become much more litigious, especially in New South Wales but less so in Victoria and the other states; there were high payouts; and there were enormous pressures just in general insurance, with people now expecting perfect outcomes from medical treatments—they have part of their brain taken out in left-hemisphere surgery and expect no residual deficit on the right side of their body. People now expect and demand outcomes that I think are very difficult. So there have been a number of pressures on medical indemnity.

Senator Coonan and I have been working on this—as has the Prime Minister’s department—with the states, to address the whole range of issues. We had to wait until we knew the status and financial situation of UMP, and that is still being negotiated. It is a very difficult issue. We have asked the doctors to continue practising—because we have given them a guarantee such as, as I said, probably no other professional group has ever had in terms of their insurance, to ensure that as little disruption as possible occurred. We are still working through that. We are still negotiating issues, and I will again ask this of doctors, who maybe should have been keeping a better eye on their own insurance—and I understand most of them are working incredibly hard. But this was not of the government’s making. We have been in there, attempting to actually address the issue. I would say that some of the states have been less than speedy in undertaking tort law reform. There are a few states that still could do a lot more to keep the downward pressure on insurance premiums for doctors.

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

PERSONAL EXPLANATIONS

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.03 p.m.)—Mr President, I seek leave to make a brief personal explanation.

Senator Faulkner—Mr President, I raise a point of order. The normal procedure is to certainly give leave to any senator—I think Senator Vanstone is aware of this—after the taking note of answers. That has been the consistent approach. While leave is not granted at this point, it certainly will be at the appropriate time, when senators have traditionally given their personal explanations. I can assure Senator Vanstone that at that time leave will be granted by the opposition.

Senator VANSTONE—Mr President, on the point of order: I do not want to delay the Senate but I am seeking a very brief period of time. I have heard the Labor Party raise this argument before. I am not aware of the fact that it is a matter of standing orders. It may be Labor Party practice not to grant leave until after that debate, but that is certainly not my view. My strong preference would be to make it now, but if leave is not
granted then I will have to come back. It is as simple as that.

Senator Faulkner—Mr President, on the point of order: it is true that it is not a standing order—

Government senators—It is very churlish.

Senator Faulkner—It is not churlish at all; it is the practice of the chamber. I think all senators are aware of it: your leader, your manager, your whips—everyone is aware of it. There will be no problem with leave being granted to Senator Vanstone later. The same demands are placed upon all opposition senators who want to make a personal explanation, and on government, minor party and Independent senators. I say to government senators, through you, Mr President—and I know that you are aware of it—that it is a consistent practice that has now been applied for some years. I can assure the Senate and Senator Vanstone that leave will be granted at the appropriate time, which is after taking note of answers or at any other stage in the break of proceedings, but traditionally it is not granted before the taking note of answers after question time.

Leave not granted.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Women: Maternity Leave

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.05 p.m.)—As requested by Senator Stott Despoja during question time, I table the costings by the Department of Finance and Administration of the Sex Discrimination Commissioner’s discussion paper options for paid maternity leave.

Education: University Funding

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (3.06 p.m.)—On 27 August, Senator Carr asked me a question without notice regarding indexation arrangements for the education sector. I undertook to provide additional information. I seek leave to incorporate the response in Hansard.

Leave granted.

The answer read as follows—

The Minister for Education, Science and Training has provided the following additional information in relation to the question asked by Senator Carr. Since 1993 supplementation for Commonwealth schools funding under the States Grants (Primary and Secondary Education Assistance) Acts has been provided in accordance with movements in the Average Government School Recurrent Costs (AGSRC) and the Building Price Index (BPI). The same supplementation arrangements apply to funding for both government and non-government schools.

In 2003, the Commonwealth will provide a total of $6.5 billion to Australian schools, consisting of $2.4 billion for government schools and $4.1 billion for non-government schools, including supplementation of $120 million and $235 million, respectively.

The Commonwealth is leading the way in financial support for government schools. Commonwealth spending on government schools is at the highest level ever. Total funding for government schools over the four years to 2004 is $9.3 billion. In 2003, the Howard Government will spend an estimated $811 million more on government schools than Labor did in its last year of office, an increase of 52 per cent.

The supplementation to the schools sector for both government and non-government schools recognises increases in the costs of schooling as identified by MCEETYA, and on average has been in the order of 6% over the past five years.

With regard to the Higher Education Sector, in 2003 the Education, Science and Training Portfolio will provide total funding of around $6.3 billion, including supplementation of $127 million. Over the next three years supplementary funding (indexation) to the Higher Education sector is expected to total around $380 million.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Health Insurance: Premiums

Senator FORSHAW (New South Wales) (3.06 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Health and Ageing (Senator Patterson) to questions without notice asked by Senators Forshaw, McLucas and Stephens today relating to increases in private health insurance premiums.

Last Wednesday, 11 September, the Minister for Health and Ageing announced in her press release that, in future, private health funds would be given the right to automati-
ally increase their premiums on an annual basis to reflect cost of living adjustments. The minister said:

The Federal Government will introduce measures to make private health funds more efficient and competitive, with the aim to deliver better value for money to fund members ...

During question time today, the minister said that it was the objective of her government—indeed, it had been the objective of the government since they came to office in 1996—to make private health insurance more affordable. She went further to say that they were endeavouring to ensure that premiums would be reduced. Of course, that was a promise made by the Prime Minister prior to the election: their policies would lead to downward pressure—to use that term—on private health insurance premiums. We all recall this Prime Minister’s core promises back in 1996. One of the core promises was:

What I can give is an absolute guarantee that any change in future will be as a result of a decision taken at a political level in circumstances where we are satisfied that the rise is completely justified.

That was the Prime Minister’s so-called core promise on that occasion in respect of private health insurance premiums. He used the term ‘an absolute guarantee’. We know that since then the Prime Minister has come to find different definitions of words such as ‘never ever’, ‘absolute’ or ‘core promise’. The words mean whatever he wants them to mean at the particular time.

I also quote again from that statement by the Prime Minister, that the government would only approve increases in circumstances where they were satisfied that the rises were ‘completely justified’. They were the words of the Prime Minister—‘completely justified’. We have now a situation where the Minister for Health and Ageing, Senator Patterson, is unable to manage her portfolio and her department. That has become obvious since she was appointed to this ministerial position. We all know that the previous minister, Dr Wooldridge, was able to manage the department pretty much to help his own personal interests, but this minister cannot manage the department at all.

On the question of bulk-billing—which was another issue raised during question time—the minister does not know whether or not she even has the information in her office. What she has now announced on private health insurance, because she is incapable of managing this very important area, is that, in future, private health insurance funds will be able to automatically increase their own premiums up to the CPI figure each year. The private health funds have been given the absolute guarantee that they can raise their premiums without having to go to the government or to their members to justify the increase. They can do it each year. This was the government that promised that health insurance premiums would not rise. Yet, since the last election, 31 out of the 44 funds have increased their premiums by an average of 6.9 per cent. In some cases, the increases were up to 16 per cent or more.

I contrast the decision by this minister to give private health insurance funds the right to have automatic adjustments by CPI based increases for private health insurance with the attitude of the Liberal Party, the coalition government, when they were previously in office under Malcolm Fraser and also when they were in opposition during those years when we were in government. On every single occasion they opposed national wage increases for workers based upon CPI increases. They never thought workers were good enough to get a wage increase based upon cost of living increases but now they give that right, that absolute guarantee, to the private health insurance funds. You can see where the government’s priorities are, and they are not with the families of Australia. (Time expired)

Senator McGauran (Victoria) (3.11 p.m.)—I rise to take note of answers given today by the Minister for Health and Ageing, Senator Patterson, about health insurance premiums. The government welcomes any discussion on the area of private health. Our record over the last six years is quite simply—

Senator Forshaw—It is abysmal.

Senator McGauran—It is not abysmal, Senator Forshaw. It is quite simply explained in just one statistic: the increase in
the take-up of private health insurance by the Australian public. There it is before you, Senator Forshaw.

*Senator Forshaw interjecting—*

*Senator McGauran—I take that interjection. That interjection is a joke. I see that Senator Forshaw is packing up to leave; it would be wise if he did. He says that we are taxing them. Was it not this government against all the opposition—*

*Senator Forshaw interjecting—*

*Senator McGauran—I have looked, Senator Forshaw. Stop interjecting. I have enough notes here to keep me going, but your interjections alone are keeping me going.

The DEPUTY PRESIDENT—Address your remarks to the chair, Senator McGauran.

*Senator McGauran—Through you, Mr Deputy President, to Senator Forshaw, the joke is—*

The DEPUTY PRESIDENT—No, just to me.

*Senator McGauran—Through the whole of question time I have been taking down copious notes to speak on this subject. There is so much for the government to speak on. I have not even attended to my notes yet because of two idiotic interjections from across the chamber. They are enough for me to fill my five minutes. One was that the government are taxing private health insurance. Senator Forshaw has given me so much material, Mr Deputy President, that I am tripping over it. The point is that we have a 30 per cent rebate. Against the opposition’s will, the government introduced a 30 per cent rebate on private health insurance. That was the single point on which a collapsing private health insurance industry turned around. You know that, Senator Forshaw. Just nod your head. Give some concessions on that point. This is a reformist government and that is one reform we will point to with a great deal of pride. The tax rebate is given right across the board, to all sectors of the community. In fact, it has saved the Medicare system. When Labor left office, the private health system had collapsed to the low 20s and the financial burden of the health system had shifted onto the Medicare system. The Medicare system could not sustain a collapsing private health insurance system. That in itself says it all with regard to private health insurance.

I do not know why you would single out private health insurance as an issue in question time when there are so many others that you may. In this chamber we should be debating the lead questions of the opposition on Iraq. They are worthy questions to be answered. We are happy to debate that issue. It is a grave issue before the chamber. But what has the opposition tactics committee come up with? The government’s failure with regard to private health insurance. That is simply answered by asking: why is the private health insurance take-up by the public increasing?

Turning to the new policy introduced by the minister and the questions that were adequately answered by her during question time—which is what makes me think that this take note of answers is such a waste of time—she said that the annual premium process will be changed so as to encourage funds to limit their increases to the CPI and to become more efficient and concentrate on delivering better products to members, rather than submitting on each occasion for a rise which is always over and above the CPI anyway. As long as the rises are at the CPI or below, they can be automatic. Therefore, it maintains the affordability for the public, it maintains the profitability of health insurance funds, which are under pressure at the moment, and it reduces the red tape and paperwork; it is in fact a system worthy of introduction.

If the funds claim rises over the CPI, then, of course, the minister still has powers and they still come under the scrutiny of the Pri-
vate Health Insurance Administration Council to justify that increase. So what we will now get is that most private health insurance funds will increase to the CPI or below. Watch it! You are usually wrong on the other side. You think that rises will increase above the CPI and come under scrutiny. They will not.

Senator Ludwig—You’re never right.

Senator McGauran—You were wrong on the 30 per cent rebate and you will be wrong on this. Most health insurance companies will now simply take up the policy and not have to come before— (Time expired)

Senator McLucas (Queensland) (3.17 p.m.)—I also rise to take note of answers given today by the Minister for Health and Ageing, Senator Patterson, about private health insurance. I refer to the government’s announcement last week when, at 4 o’clock in the afternoon of September 11, Senator Patterson announced that automatic CPI related increases would occur in private health insurance premiums. I acknowledge that Senator Patterson advised us today in question time that cabinet had met until 5 p.m. on the day before. I accept that as a legitimate reason, that there was no announcement on September 10. And can I say that it was one of the very first times that someone has actually given us some information that was relevant. So I acknowledge and thank the minister for that.

However, on the following day, September 11, at 4 o’clock in the afternoon when everyone was focused on the issues of the previous year, when everyone was watching television and looking at the horrific events of the year before, Senator Patterson decided it was an important time to make a major announcement, an announcement about a prime ministerial backflip, so that the community could understand that we will be moving away from political involvement in the setting of private health insurance premiums to a system in which we will get automatic increases.

Senator Patterson said that she had appointments on the morning of September 11. I have to say that either it was very poor planning on behalf of the minister’s office not to arrange for such a significant announcement to be held in the morning, when major announcements are usually made, or, to my mind, it was a deliberate attempt to hide the bad news from Australian families. The hiding of the announcement continues to undermine any trust that Australians can have in this government to deliver a fair and equitable health system that is accessible to all, irrespective of their financial status.

Since 1996, there has been a consistent undermining by the Howard government of this fundamental value that I believe all Australians cherish—that is, the notion that all of us, wherever we live and whatever our financial position, should have access to a decent health system. Let us remember the comments of the Prime Minister, Mr Howard, in 1996. He made an absolutely unequivocal commitment that we would have an absolute guarantee that the government, not the bureaucracy, would have involvement in the management of increases in private health insurance. He said that there would be a continual involvement by the political arm so that there would be surety for Australians that private health insurance premiums would not be able to rise without political intervention. This was essentially consumer protection, so that private health insurance premiums could not be increased without the involvement of the political arm.

Last Thursday’s announcement is a back-down on that safeguard that the Prime Minister gave in 1996. Senator Patterson advised the Senate today of the rationale for removing the responsibility for applying and, as part of that application process, the justification that increases were to keep private health insurance affordable. I have to say that that has been spectacularly unsuccessful to this point in time where we have seen continual and regular increases in the past few years. I also suggest that this is, essentially, cost-shifting from the private health insurance companies to the government. Senator Patterson told us that there will still be scrutiny and review of any application, even for CPI increases. But now the government will have to work from a position of little knowledge. (Time expired).
Senator EGGLESTON (Western Australia) (3.22 p.m.)—I rise to take note of answers given today by the Minister for Health and Ageing, Senator Patterson, about health insurance premiums. I must say that Senator McLucas is struggling to make any substantial points at all in this argument. She was forced to revisit the debate we had on the last day of the last sitting period over whether or not the government is committed to the preservation of a universal health system in this country. This government, without any doubt, is. As we went through at length on the last Thursday of the last sitting period, the Howard government has not only committed itself to the preservation of Medicare but improved and enhanced the health services provided to the Australian community. For you, Senator McLucas, to argue otherwise is nonsense. It is just not the case at all. I do not propose to revisit the arguments which were put that day but, nevertheless, I think the case was made very strongly that the Howard government’s commitment to the preservation of Medicare is very strong and that health services have without any doubt been improved under this government.

One of the most important platforms of the improvement of health services has been the redressing of the imbalance which occurred under the Labor government between the public and the private sector. Under the last Labor government, the number of people who held private health insurance dropped dramatically. As a result of the government offering free services in public hospitals to all comers, the public hospitals in this country became very overcrowded. There were long waiting lists and it was very difficult to get treatment in a public hospital because a lot of people were going to public hospitals who really could afford not to. They did not need the free treatment available in a public hospital and could have used the private sector. They did not because they had dropped their private health insurance as a result of policies followed by the last Labor government.

As a result of the 30 per cent rebate on private health insurance premiums—Senator McLucas obviously knows all these details because she is leaving the chamber and hurrying out before her position is totally demolished—the number of people with private health insurance in this country increased substantially. As a result, for the first time in many years we saw a drop in the number of persons attending public hospitals and the reinvigoration of the private sector, which had been lying idle beside the public hospitals. So now we have people who can afford to take up private health insurance doing so and using the private hospital sector. That in turn has taken pressure off the public hospitals and meant that they are able to perform the function they are designed to perform in the community far more effectively. That means that people who need to have operations in public hospitals can have them more quickly because the long waiting lists have been reduced.

The argument today seems to be that in some mysterious way allowing an automatic increase in private health insurance premiums for CPI will in some way mean that the private health insurance companies will be acting unethically and that the public will be disadvantaged. That, of course, is absolute nonsense. The private health insurance companies, like everybody else in this country, are subject to rises in costs according to the consumer price index. Just like any other organisation, private health insurance companies have to meet those costs. I do not think it is unreasonable that the minister should have arranged for them to be able to automatically increase their premiums up to the CPI, if they found that was necessary, without going through a long bureaucratic process. In the interests of good government, the minister is reducing red tape and simplifying the operation of government. It has been said that the government is not abrogating its responsibility to monitor the performance of the private health insurance companies, and that is very much the case. The government will be continuing to do that to ensure that the services provided by private health insurance companies are maintained at the very high standards which are traditional in Australia. There is nothing wrong with the policy announced by the minister. It is a matter of very good public policy. (Time expired)
Senator MOORE (Queensland) (3.27 p.m.)—I also rise to take note of answers given by Senator Patterson, the Minister for Health and Ageing, about health insurance premiums. During the numerous questions asked this afternoon on the issue to do with private health insurance, the minister gave quite clear answers. The answers that she gave focused on two major points: first, that the government had a goal of keeping private health insurance affordable and low and, second, that the focus of the change to administrative cost was to cut down on the administrative burden and make it easier.

Senator McGauran—Thank you very much. You can sit down now!

The DEPUTY PRESIDENT—Senator McGauran!

Senator MOORE—I have concerns related to both of those issues and I have some worries about always reducing these arguments just to issues of statistics. Because just as during the last week when we were worried about the issues of bulk-billing and how we could quote figures—everybody in this house quoted many figures around that—every figure was related to a person. Indeed every figure was related to a person who had health issues and conditions that needed immediate care. Around the issue of private health insurance this is indeed very true.

All the private health insurance funds are gloating about the rises in their numbers. Everybody in this house received a notice only last week about the rise in the number of people claiming private health insurance. But the people who have taken out private health insurance have not only taken individual choices. There was massive pressure on Australians to avail themselves of private health insurance. There were amazing amounts of media coverage encouraging people to take up private health insurance, advertising the benefits and calling for civic responsibility. Linked to that was a direct taxation threat—unless citizens took up private health insurance they were going to be harming our health system and they were then going to be penalised in that way.

Subsequently the figures have been released to show that a number of Australians have responded to that encouragement—and I used the word ‘encouragement’ quite lightly in this case. People have taken out private health insurance, but the same people who have taken out private health insurance are now going to be faced with automatic increases in that private health insurance, not justified directly to them because of the advantages that their fund will give them, not justified to them because of the amazing advantages to the overall health scheme but simply because of a CPI increase.

Naturally, anything which is above the CPI will have to go through a rigorous and quite appropriate justification process. We support rigorous and detailed investigation of cost rises, but we support that investigation for all cost rises so there is not just an availability of rubber-stamping for private health insurance. I choose to take out private health insurance and any increase in my private insurance must be justified to me; it must not just be the result of an automatic process of saying, ‘CPI or less, therefore rubber-stamp it.’ I believe that rubber stamp is in the minister’s office.

In our current system, private health insurance is a subsidised industry. It is not just openly competitive; it is clearly subsidised by the Australian taxpayer. As an Australian taxpayer—and we all are—I would expect that we would have quite clear scrutiny of all increases in our private health insurance. I would debate the issue of undue administrative costs or undue bureaucratic focus. If you are going to put costs up and change your service, you must justify those changes. There should be no arbitrary line that says, ‘CPI and below, rubber-stamp it; CPI and above, apply rigorous scrutiny.’ I do not think that is doing justice to the policy changes and to the expectations of the Australian people. I think we need more and we demand more.

I have not heard of any clear link that shows that efficiency and administrative change automatically mean things are going to cost more. If you are going to justify a price increase it should be quite clear: you look at your services and you look at how many people are using your services; it should be a statement of fact. I have not seen
the kinds of justifications that the private health people gave in the last round of increases, but they must have been very good because they received significant increases. I believe there is an expectation that, if you are going to change what you have to pay, everyone who chooses to have private—(Time expired)

Question agreed to.

**Women: Government Policies**

Senator STOTT DESPOJA (South Australia) (3.32 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Finance and Administration (Senator Minchin) to a question without notice asked by Senator Stott Despoja today relating to a national system of paid maternity leave.

My question was about a national, government funded scheme of paid maternity leave in Australia. I was asking the minister why this government insists on maintaining a scheme such as the baby bonus scheme, which has been judged ill-targeted, ill-conceived and—

Senator Vanstone—By who? By you?

Senator STOTT DESPOJA—It has been branded that by a number of groups, and I am quite happy to reveal those names and individuals in the Senate committee report, which comes down on Wednesday; it will be happy reading for this government, I am sure.

Senator Minchin has since tabled figures—and I thank him for doing so at my request in Senate question time today—that demonstrate that it is possible to have a government funded system where you have 14 weeks paid maternity leave at the minimum wage for less than $475 million per annum.

Despite this, the government insists on maintaining a scheme such as the baby bonus scheme, which has been judged ill-targeted, ill-conceived and—

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the Senate show that that is wrong. They show that $475 million or $415 million would be adequate, depending, of course, on how you judge eligibility. For example, in the latter case, that would be assuming 12 months continuous employment with an employer. So it is possible on the grounds of cost—leaving the fertility argument out of it—to ensure that Australian women catch up with the rest of the world.

But there are many other rationales, of which I am sure you are aware, Mr Deputy President. Clearly, the welfare of the mother and child is one rationale. No-one is suggesting that 14 weeks is enough, but it is an ILO standard and one that I think we should adopt. Also, the issue of discrimination against women in the workplace is a very good argument for ensuring that this cost is not met by small business or businesses generally but that they should be able to provide a top-up provision in negotiations on the ground. However, the initiative should be government funded and national. There are other rationales in relation to employer benefits, including productivity of workers and ensuring that you keep your best workers—many of whom, increasingly in business these days, are women.

The issue of equity among workplaces is another reason to support this initiative, especially when, as I noted, some of those high-income professions do provide some form of maternity leave but many of the lower income professions do not. Of course, there is also the issue of the international standards to which I referred—that is, the fact that we are one of two OECD countries that do not offer this and we are lagging behind the rest of the world. I welcome the comments made by Senator Minchin today. I will review those figures that he tabled to see whether we need further information. (Time expired)

Question agreed to.

PERSONAL EXPLANATIONS

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.37 p.m.)—I seek leave to make a very brief personal explanation.

Leave granted.

Senator VANSTONE—On 5 August I put out a press release headed ‘ACOSS inadvertently misleads’, which in substance is correct—ACOSS did make some statements that were not correct. They did not appreciate that at the time and they certainly were not trying to be difficult. It is true that the breach penalties from year to year are falling, which was not what ACOSS was in fact suggesting. However, in the third to last paragraph of this release, I made mention of two figures which related to two quarters within the years that were being compared. The information that relates to those two quarters is not correct. I regret this error.

Centrelink and the Department of Family and Community Services have been trying to make some changes to improve the breach reporting. As I understand it, some elements of the breaches need to be dealt with differently from the rest. Centrelink and the Department of Family and Community Services have also been trying to isolate both the activity and the breach falling in the same period. Their efforts to produce better figures, combined with a couple of people being away and, as I understand it, the new people not necessarily being aware of the changes, occasioned a run not being done in the fashion that it should have, and the figures being provided to me. The figures were also provided—I am not sure if it was just in the quarterly form or as part of an annual form—by officers to Senate committees. If they have not written already, the officers will be writing very soon to those committees to explain how the misreporting came about and explain what steps are being taken to make sure that that does not happen again. In substance, the press release stands, except for the comments in relation to two quarters, which, as I say, are incorrect. When you take them out, they leave the rest of the press release standing as valid. I do not believe this release got much, if any, coverage. I may have done one interview on it.
PETITIONS
The Clerk—Petitions have been lodged for presentation as follows:

Science: Stem Cell Research
To the Honourable the President and members of the Senate assembled in Parliament:
The petition of certain citizens of Australia draws to the attention of the House that we are concerned at the destruction of human embryos by scientists extracting embryonic stem cells and concerned at proposals by scientists to clone human embryos for the purpose of extracting embryonic stem cells.
Your petitioners therefore pray that the Senate will:
(1) Oppose the creation of embryos for the purpose of extracting stem cells and any other scientific purpose (therapeutic cloning);
(2) Oppose the use of already existing embryos for the purpose of extracting stem cells and any other scientific purpose;
(3) Support, encourage and fund scientific research using adult stem cells from all sources including umbilical cord blood.
by Senator Boswell (from 511 citizens).

Immigration: Asylum Seekers
To the Honourable the President and Members of the Senate in Parliament assembled:
Whereas the 1998 Synod of the Anglican Diocese of Melbourne carried without dissent the following Motion:
That this Synod regrets the Government’s adoption of procedures for certain people seeking political asylum in Australia which exclude them from all public income support while withholding permission to work, thereby creating a group of beggars dependent on the Churches and charities for food and the necessities of life;
and calls upon the Federal government to review such procedures immediately and remove all practices which are manifestly inhumane and in some cases in contravention of our national obligations as a signatory of the UN Covenant on Civil and Political Rights.
We, therefore, the individual, undersigned attendees at St Georges Anglican Church, Monbulk, Victoria 3793, petition the Senate in support of the abovementioned motion.
And we, as in duty bound will every pray.
by Senator Carr (from 50 citizens).

Workplace Relations: Paid Maternity Leave
To the Honourable the President and Members of the Senate in Parliament assembled. The Petition of the undersigned shows:
• Our concern that Australia is now one of only two OECD countries without a national scheme of paid maternity leave;
• Our concern about the two-thirds of Australian working women who currently lack any paid support on the birth of a child;
• Our strong support for the adoption of a national scheme of paid maternity leave for Australian working women at the earliest opportunity;
• Our belief that paid maternity leave is an employment-related measure that recognises, first and foremost, the benefits of at least 14 weeks paid leave for working mothers, their children and their families, along with its contribution to equal opportunity at work, productivity, and women’s employment security and attachment.
Your Petitioners request that the Senate should at the earliest opportunity pass legislation to provide a national system of paid maternity leave which recognises the principles of ILO Convention 183, and provides at least a 14 week payment for working women at the level of their normal earnings (or at least at the minimum wage), with minimal exclusions of any class of women, and a significant contribution from Government.
by Senator Stott Despoja (from 548 citizens).

Foreign Affairs: Iraq
To the Honourable the President and Members of the Senate in Parliament assembled. The Petition of the undersigned calls on the members of the Senate to support the Australian Democrats’ motion opposing Australia’s involvement in preemptive military action or a first strike, against Iraq.
We believe a first strike would undermine international law and create further regional and global insecurity.
We also call on the Government to pursue diplomatic initiatives towards disarmament in Iraq and worldwide.
by Senator Stott Despoja (from 20 citizens).

Petitions received.
NOTICES

Presentation

Senator Bolkus to move on the next day of sitting:

That the Legal and Constitutional References Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 17 September 2002, from 6.30 pm, to take evidence for the committee’s inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 and related issues.

Senator Heffernan to move on the next day of sitting:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 19 September 2002, from 4 pm to 10 pm, to take evidence for the committee’s inquiry into the administration of AusSAR in relation to the search for the Margaret J.

Senator Watson to move on the next day of sitting:

That the Select Committee on Superannuation be authorised to hold a public meeting during the sitting of the Senate on Thursday, 19 September 2002, from 3.30 pm to 5.30 pm, to take evidence for the committee’s inquiry into the provisions of the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002.

Senator Ridgeway to move on the next day of sitting:

That the Senate—

(a) notes, with sadness, the passing on 1 September 2002 of Mr Ginger Riley Munduwalawala, a traditional ‘saltwater’ man from southeast Arnhem Land, and thanks his family for their permission to refer to him by name in recognition of his outstanding achievements as an artist;

(b) remembers Mr Munduwalawala as ‘the boss of colour’ who was inspired by the great Albert Namatjira to paint his ‘colour country’, beginning his painting career in earnest at the age of about 50;

(c) pays tribute to Mr Munduwalawala’s unique ability to draw inspiration from Western landscape art to express his own distinctive vision of his creation stories and ancestral lands, which won him public acclaim in the form of:

(i) the National Aboriginal and Torres Strait Islander Art Award, presented in Darwin in 1987,

(ii) the Northern Territory Alice Prize in 1992,

(iii) the first National Aboriginal and Torres Strait Islander Heritage Commission Award in 1993,

(iv) a fellowship from the Australia Council in 1997; and

(v) a 10-year retrospective of his works at the National Gallery of Victoria in 1997, which was the first time a public institution had ever honoured a living Aboriginal artist in this manner; and

(d) recognises that Mr Munduwalawala’s works are represented in most of the major galleries, museums and private collections in Australia as well as overseas, contributing to his status as one of the nation’s pre-eminent Aboriginal artists and cultural custodians.

Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) the Deaflympic Games will be held in Melbourne in 2005; and

(ii) Deaf Sports Recreation Victoria has set up a Games Organising Committee to begin planning and organising this international event which will see the participation of 4 000 deaf athletes and officials from over 90 countries; and

(b) urges the Prime Minister (Mr Howard) to respond to the correspondence from Deaf Sports Recreation Victoria and to offer support for the Deaflympic Games.

Senator Harradine to move on the next day of sitting:

That the Senate—

(a) having in the past condemned gross violations of human rights presided over by then Chinese Premier Li Peng, including the brutal massacre of thousands of unarmed pro-democracy student demonstrators in Tiananmen Square; and

(b) as a democratically-elected House of Parliament with the special role of the
protection of the rights and liberties of citizens, declares that it would be entirely inappropriate for the executive government to influence the Presiding Officers to fete, by a special function, the perpetrator of these gross violations of human rights.

Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 3 standing in the name of Senator Bartlett for today, relating to the reference of a matter to the Foreign Affairs, Defence and Trade References Committee, postponed till 18 September 2002.

Business of the Senate notice of motion no. 1 standing in the name of Senator Bartlett for 17 September 2002, relating to the reference of matters to the Legal and Constitutional References Committee, postponed till 22 October 2002.

General business notice of motion no. 1, under committee reports and government responses, standing in the name of the Chair of the Standing Committee of Senators’ Interests (Senator Denman) for 19 September 2002, proposing amendments to the resolutions on senators’ interests, postponed till 5 December 2002.

General business notice of motion no. 110 standing in the name of Senator Stott Despoja for today, relating to Australia’s involvement in any pre-emptive military action, postponed till 23 September 2002.

LEAVE OF ABSENCE

Senator MACKAY (Tasmania) (3.42 p.m.)—by leave—I move:

That leave of absence be granted to Senator Cook for the period 16 September 2002 to 19 September 2002, on account of parliamentary business overseas.

Question agreed to.

SPECIFIC LEARNING DIFFICULTIES ASSOCIATION OF NEW SOUTH WALES

Senator ALLISON (Victoria) (3.42 p.m.)—I move:

That the Senate—

(a) notes that:

(i) the Specific Learning Difficulties Association of New South Wales Inc. (SPELD) may have to close after more than 30 years due to lack of funding,

(ii) SPELD receives only $27 000 of state government funding and receives no federal government funding, despite representations having been made,

(iii) an estimated 7 per cent of children, or one in every classroom, have a specific learning disability,

(iv) this condition can seriously limit life options for people, with significant impacts on emotional health, self esteem, social skills and workforce options, and

(v) the SPELD help line receives over 5 000 calls annually; and

(b) urges the Federal Government to consider providing funding for learning difficulties associations to assist them in their important work, as a matter of urgency.

Question agreed to.

COMMITTEES

Superannuation Committee

Extension of Time

Senator FERRIS (South Australia) (3.43 p.m.)—At the request of the Chair of the Select Committee on Superannuation, Senator Watson, I move:

That the time the Chair of the Select Committee on Superannuation, for the presentation of the report of the Select Committee on Superannuation on its inquiry on tax arrangements for superannuation and related policy be extended to 14 November 2002.

Question agreed to.

DEPARTMENT OF EDUCATION, SCIENCE AND TRAINING:

Return to Order

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.44 p.m.)—by leave—I thank my colleagues for granting leave to make a statement on the Senate’s request for information in relation to financial data for the higher education sector in response to a return to order successfully moved by Senator Carr on 21 August. The Senate was advised on 26 August of the reasons why the government will not provide the documents
for which it was asked. The information in these documents is prepared from information supplied to the department by the universities on the basis that it will be regarded as commercial-in-confidence. The Australian Vice-Chancellors Committee has indicated that it wishes these assurances to be honoured. The Secretary of the Department of Education, Science and Training has written to Senator Carr in these terms. The Commonwealth will not breach the agreement it has with the universities on this matter. However, the minister is prepared to write to all of the vice-chancellors seeking their permission to provide the financial data requested by the Senate.

Senator MACKAY (Tasmania) (3.46 p.m.)—by leave—As Opposition Whip, I make the point that it would be useful if the government were to advise the opposition when these returns to order are happening, particularly if they are not being adhered to. We were not advised, and this has happened several times. The shadow minister is not the chamber, so he is not in a position to respond. I do think it would be appropriate for this to be raised at joint whips.

Senator LUDWIG (Queensland) (3.46 p.m.)—by leave—Following on from Senator Mackay’s statement, it is incumbent on the government not only to notify the opposition when these returns to order are happening, particularly if they are not being adhered to. We were not advised, and this has happened several times. The shadow minister is not the chamber, so he is not in a position to respond. I do think it would be appropriate for this to be raised at joint whips.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.48 p.m.)—by leave—Page 4 of today’s red does refer to this issue in that Senator Carr has, by way of contingent notice, warned all senators that if the government does not comply with this order he may seek to move a reference of the matter to the Employment, Workplace Relations and Education References Committee. So it is clearly notified to all senators. What the government has sought to do, in a timely and appropriate manner, is to alert all senators to the facts around it and to state the reasons why it will not comply in the terms that Senator Carr wants the government to comply. Of course, page 33 of the Notice Paper allows Senator Carr to indeed think about whether he is going to use his contingent notice and then act. We are not precluding Senator Carr’s rights; we are facilitating his taking action. He would, of course, take action as indicated under item 16 on the red at page 4 where it states:

Note that Senator Carr has the opportunity to move his contingent notice of motion, given on 28 August 2002, for the reference of a matter to the Employment, Workplace Relations and Education References Committee (the government’s refusal to respond to an order for production of documents ... The government has in fact sought to facilitate the workings of the Senate in this way, and I am sure that what the government has done is of no surprise whatsoever to Senator Carr.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.50 p.m.)—by leave—I have listened very carefully to the comments that have been made by Senator Mackay and Senator Ludwig and also by Senator Ian Campbell, the Manager of Government Business. As I understand it, we find ourselves in one of those unique points on the agenda in any
day’s sitting somewhere between discovery of formal business, which is item 10 on the red, and item 11, ‘Any proposal pursuant to standing order 75’. I note that today an urgency motion has in fact been submitted and is due to be debated. So it is not correct to say that the red indicates that the manager would be seeking leave to indicate to the Senate some response to a proposal for a return to order.

Of course, these are matters where the normal courtesies need to apply. I do not know—and we can hear about this—whether the Manager of Government Business in the Senate, Senator Campbell, has given Senator Carr in advance a copy of the statement that he has read into the Hansard. It is fair enough to say that he is not necessarily obligated to do so. But I do not know that and I do not think anyone else does. I suspect he has not. I do not know whether anyone advised the Manager of Opposition Business, the Opposition Whip or the responsible senator—in this case Senator Carr—that this matter would be dealt with at this time—Senator Ian Campbell interjecting—

Senator Faulkner—We are not proposing to deal with it.

Senator Faulkner—and that the statement would be made. As Senator Campbell would know, when you seek leave to make a statement about a matter or when a statement is made without leave, it is absolutely competent for a senator in this chamber to seek leave to move a motion in relation to such a statement. I am being very frank with Senator Campbell here. Through you, Mr Deputy President, I do not know what Senator Carr’s intentions are in relation to this. I have not asked him and he has not informed me. But he does have certain entitlements and capacities under the standing orders, as you would appreciate—Senator Ian Campbell interjecting—

Senator Faulkner—I am well aware that there is an indication that he has an opportunity to move his contingent notice of motion. What we are talking about here are simply the courtesies involved in the good management of the chamber. These sorts of statements for the good operation of the chamber are best flagged with those on both sides, whether it be the government or the opposition. It is best if the whips, the managers and those who do that work for the minor parties give advance notice and flag it so that we actually do not go through the sort of interruption to debate that we are having at this time. That is the point I make to Senator Campbell. Whatever the technical situation here—and I do not know whether Senator Carr, the whips or the managers were informed—the point is that it does appear as if those who are responsible for managing the chamber on this side were not aware that this was coming forward. That affects the good conduct and order of the chamber. It may well delay the urgency motion, which is not our intention. We do not want to see that occur. It is not a good way to do business. That is the point I make. I make it in a reasonable spirit, and let us try to ensure that we do not face this again.

Senator Carr (Victoria) (3.54 p.m.)—by leave—I indicate to the Senate that I was not advised that the government was going to make a statement today. I received in question time today a copy of a letter from the Secretary of the Department of Education, Science and Training, Dr Shergold. I was given no indication whatsoever that the government’s intentions were to make a statement today.

Senator Ian Campbell—Is today the 16th?

Senator Carr—I am glad he knows what day it is. I will say to you now, Senator Campbell, that even a stopped clock is able to get it right at least twice a day. You are clearly a stopped clock. I suggest that you have a normal obligation in this chamber to let us know that you intend to make a statement, even if it is as discursive and as contemptuous as this document. It is quite apparent that this government has a great deal to hide on the issue of funding of universities. I can understand that: there is a great deal to hide. The university system in this country is in crisis as a direct result of this government’s policies. You are seeking to have a debate in this country about the future of universities but not provide the basic information to the public about the way in which universities are funded or whether or
not universities have the basic financial wherewithal to weather the current government policies.

At a time when we are looking at the future of universities, a simple question to ask is: what is the financial health of universities? I have sought some information from this government which I do not think is particularly revolutionary. All the information I have in fact sought is published retrospectively. It is published a couple of years after the event. It is a rear-vision view of the financing of our university system. I have asked for the information that the government collects and provides to the universities about the future. That is what this is about: the information that the government actually gives to universities. I am not seeking the secrets that universities tell the government. I want the information the government gives the universities. I want a copy of the minutes for a number of meetings that occurred in November last year. I want a summary sheet from each of the universities which is provided here. I have a couple of four-page examples here. I again seek leave to table these documents. The government in the past has refused leave because it says that this information is so secret and so sensitive that it will bring the education system tumbling. That is a load of nonsense. Again, I ask formally to have those documents tabled.

The DEPUTY PRESIDENT—Is leave granted for the documents to be tabled?

Senator Ian Campbell—I have not seen the documents.

Senator CARR—The documents have been seen. The documents have been seen and examined for a great deal of time.

Senator Ian Campbell—I will need leave to respond to that.

The DEPUTY PRESIDENT—The first issue we have to deal with is the issue before the chair.

Senator Ian Campbell—I am seeking leave to deal with that issue, which is that the chamber has been asked for leave by Senator Carr to table those documents. I am happy, by leave, to respond.

Senator Faulkner—Either you give leave or you do not give leave.

Senator Ian Campbell—I don’t, because he has not shown us the documents.

The DEPUTY PRESIDENT—Leave is not granted.

Senator CARR—It is clear the documents have been seen by the government and studied at length. Last time I sought to have these documents tabled, you had two ministerial advisers sitting here for half an hour going through them. These are not particular difficult things to go through. They go to the financial statements of, in this case, two particular higher education institutions and they show their income and expenditure. They show their income and operating surpluses or deficits. They show their assets in millions and their liabilities. They go to their income from various sources—government fees, charges and investments—and to their expenditure. They go to the sources of their funding with regard to students and their staff ratios. They go to their ratios of salary cost to total expenditure, they go to their ratios of academic to non-academic staff salaries, they go to their trend analysis of their sources of income and they go to their short-term liquidity ratios.

These are not particularly secret matters. They are matters that are tabled by this government retrospectively—and I want to emphasise that point. When I seek to table them in the cases we have here, the government refuses leave now for the third time.

Senator Ian Campbell—You have not shown me the documents.

Senator CARR—You have seen them. Furthermore, the government says this cannot be done because it is commercial-in-confidence. The government is trying to cover up. The government is seeking to hide behind the claim of commercial-in-confidence. We have very strong advice from the Clerk, which I think highlights the issues, that this is a government that is using what is called the LAPD defence. The situation is so serious that the public cannot be informed because they will lose confidence. That seems to be the argument.

I have before me here an opinion from the Australian Solicitor from one of their legal briefings which again goes to this govern-
ment hiding behind commercial-in-confidence to avoid public scrutiny and public accountability. At the same time, this government is launching a major debate about the future of universities in this country but it will not provide the basic information about the financial health of the system.

In terms of the contingent notice that I have before the chamber, I will be dealing with that tomorrow. It has been on the Notice Paper and I understand that the Democrats would like to discuss it in their party room, so we will deal with it tomorrow. But it makes quite clear what we are trying to do here—establish a Senate inquiry to examine this government’s claim. It will call upon expert advice from a range of sources. We will see how this government’s claims stack up in the hard light of day. I do not think they will do very well. I ask, in terms of the procedures before the Senate today, that the government ought be reminded of its obligation to at least let us know what their intentions are in these matters. They will facilitate the work of this chamber a great deal by doing just that.

The DEPUTY PRESIDENT—As I understand it, Senator Carr, your contingent notice of motion can be moved at item 16, Order of Business, Business of the Senate, Notices of Motion, should you desire.

Senator Carr—Mr Deputy President, I rise on a point of order. I have had advice from the clerks that this matter will stay on the Notice Paper. I will be moving that tomorrow, and I do not think that I need to formally seek an adjournment to that effect.

The DEPUTY PRESIDENT—That is fine. It will stay on the Notice Paper.

MATTERS OF URGENCY

Human Rights: China

The DEPUTY PRESIDENT—I inform the Senate that the President has received the following letter, dated 16 September, from Senator Brown:

President of the Senate
I submit the following matter of urgency for consideration by the Senate today:

That, in the opinion of the Senate, the following is a matter of urgency:

The visit to Australia by Li Peng and the need for the Government of China to be aware of the abhorrence to Australians of the massacre in Tiananmen Square and the ongoing abrogation of human rights in China and Tibet

Senator Bob Brown
Is the proposal supported?

More than the number of senators required by the standing orders having risen in their places—

The DEPUTY PRESIDENT—I understand that informal arrangements have been made to allocate specific times to each of the speakers in today’s debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

Senator BROWN (Tasmania) (4.04 p.m.)—I move:

That, in the opinion of the Senate, the following is a matter of urgency:

The visit to Australia by Li Peng and the need for the Government of China to be aware of the abhorrence to Australians of the massacre in Tiananmen Square and the ongoing abrogation of human rights in China and Tibet

While we are debating this matter in the Senate, Li Peng is meeting a number of parliamentarians from both houses in this parliament. The flag of the Chinese government and people of China is flying outside this parliament. When we look at the record of this man, the question I ask is: who is going to eyeball him about the extraordinary history of repression of democracy, of human rights, of civil rights, of political rights, of religious rights, that he is engaged in?

I note that the government has invoked the Vienna Convention in saying that it must not allow protesters with banners outside the Chinese Embassy just down the hill from here because that would be an infringement, under the convention, of Li Peng’s dignity. I ask: when did Li Peng extend dignity to democrats in the People’s Republic of China? How short is the memory of those who are dining with this man in this parliament tonight? I can assure you that I have not got an invitation. He sent the bulldozers into Tiananmen Square in June 1989 and massacred hundreds of his fellow people
who were protesting peacefully for democracy. He, as Premier of China and Chinese Communist boss at the time, used brute violence to kill them, to torture some who were not killed, and to put to death the democracy movement at that time in China.

What about Tibet and his ‘strike hard’ policy there, which has robbed that country of its right to self-determination, to democracy, to freedom and to liberty? What about East Turkestan where the same applies? What about the whole of the people of China who have no right to freedom of speech, to democracy, to practise the open debate that we take for granted but that is essential in our democracy?

Li Peng has his way. He is the butcher of Tiananmen Square. But he is now in Australia as a guest of this country. What a failure it is that our Prime Minister, our political leaders, our business leaders, the premiers of New South Wales and Queensland, are meeting this man, but there is no opportunity for the press to question him because there are no press conferences while he is here. Indeed, the ABC news web site in China has been shut down for this visit so that the Chinese people cannot know about any protest that is occurring in this country.

This is an abhorrent set of circumstances. I am hoping that the government and Labor speakers who are coming after me are going to explain their failure to stand up against this man, to call a spade a spade and to say, ‘Yes, trade with your country is one thing, but selling out on the civil liberties and political rights of the Chinese, Tibetan and East Turkestan people is another.’ We will get the usual mealy-mouthed response to that of, ‘We will raise the topic in discussions between sips of champagne.’ That is not what I am talking about. I am talking about nailing this person for the disgusting abrogation of human rights that he has personally ordered in China and Tibet. To allow that infringement to now trammel the news of his visit here going to China or prevent a protest flag being held outside the Chinese Embassy is a pretty poor state of affairs. I object to that. I believe that the majority of Australians will object to that. This parliament deserves to have better leadership in confronting people like Li Peng when those people come to this country to advance business. Business and trade is one thing, but it should not be at the expense of the fundamental liberties and democracy that we stand for.

**Senator FERGUSON (South Australia)**

(4.09 p.m.)—One thing about Senator Brown is that he is predictable. This is a motion that we would expect from Senator Brown today. I, for one, fully welcome the visit by His Excellency Mr Li Peng, the Chairman of the Standing Committee of the National People’s Congress of the People’s Republic of China. But that does not mean I agree with everything that Li Peng or the Chinese people have done over the past 20 or 30 years. However, it is an important occasion, and it is important because we need to remember that this year is 30 years since this country established diplomatic relations with China.

That is very important and something that we need to remember, because if Senator Brown had his way—and bearing in mind the fact that Senator Brown does not actually like anybody in this world, regardless of their politics; he has criticised plenty of countries, but I have never heard him say a good thing about any other country in the world—and if we were to take his criticism of Li Peng and the events that happened in Tiananmen Square some 14 years ago to its ultimate conclusion, we would no longer be talking to the Japanese, the Germans or any of those countries where we know things have happened that we, as governments, have never approved of, it would be a funny old world, Senator Brown. I think that that is the sort of world you would actually want to live in.

Li Peng met with parliamentarians this morning, and I was one of them. A number of the Australia-China Parliamentary Friendship Group met with Li Peng this morning, and amongst the issues discussed were the
positive things that are happening between our two countries, not the negative things. Senator Brown only refers to the negatives that have happened in the past. Li Peng is one of China’s most senior leaders, and the Australian parliament has invited him to visit this year as part of the high-level exchanges commemorating the 30th anniversary of diplomatic relations. As many of you know, Li Peng visited Australia in 1988, when he laid the foundation stone of the Chinese Embassy. I suppose that you would not have wanted him to do that either, Senator Brown. In recent years he has visited a number of Western countries, not just Australia. He has visited the United States twice since the events that you talk about, as well as France, the Netherlands and Luxembourg. They are hardly people who are likely to be considered among those who support actions such as the events that you talk about. They do not support those actions, but it does not mean that they do not have dialogue. Li Peng is here for dialogue with the Australian government, the Australian people and members of both sides of politics in this place, as was evident this morning when people from both sides of politics met with Li Peng.

The events that happened in 1989, in relation to the Tiananmen Square crackdown, were criticised at that time. They were criticised heavily by the then government, supported by the opposition of the day—which is now the government. Those criticisms were made known and they were made strongly at that point in time. But if you are going to let that event rule the whole of your future political life and if you are going to let a single event determine the whole of your future for centuries to come, you would never speak to anybody, Senator Brown. To deny Li Peng entry to Australia because of his role in the Tiananmen Square crackdown in June 1989 would accomplish absolutely nothing, because in the past 30 years successive governments—and I pay tribute to the former Labor government—have done their best to develop strong relationships with China. The one way that you can deal with human rights and an abuse of human rights is to have dialogue with that country and let your thoughts be known. In all of our discussions over the past number of years with the Chinese, human rights has always been an element. In fact, there has been some success and progress on individual human rights cases, which would not be possible without dialogue. You are not in favour of dialogue, Senator Brown. You are only in favour of stunts. You will try to get any headline that you can by opposing a government or opposition position through a stunt of some sort—and history will show that. If you go through all your previous press releases and the media stunts that you have done, you will understand what people actually think in regard to how genuinely you feel about things. If you cannot do it by way of stunt, then you do not worry about doing it at all.

The discussions with Li Peng and the Chinese delegation—a significant number of people have come here with him—include talks about subjects where our views may differ a lot. That can be demonstrated in the recent very full and frank discussions in the latest round of human rights dialogues which were held here with the Chinese in Canberra in August. My colleague Senator Payne was one of those who attended and she has spoken to me at length of the issues that were raised in those human rights dialogues. If you do not approve of everything a government does, you simply cannot do anything about it if you are not prepared to have some dialogue. In this case, the Australian government supports maintaining dialogue with China and it maintains that we should look at the positive things that have happened in our relationship and not concentrate on those things which we disagree with in that country. I for one, as I said earlier, welcome this visit by Li Peng to Australia because the visit can only serve to improve the relationship between our two countries and give us a chance to talk about those policies that we disagree with in various areas, particularly in human rights.

When the crackdown in Tiananmen Square took place it was a tragedy that shocked many Australians, and it will not be forgotten. It does not take a stunt like this to make us remember—it will not be forgotten. It is partly because of those events that the government, and successive governments, have made human rights an important part of
our approach to our relationship with China. The government is deeply committed to protecting human rights in China—including Tibet. It is ensuring that the values of human dignity and freedom central to Australian society are reflected in our overseas policies and in the things that we talk about with these various countries. You cannot have the most populous nation in the world being locked out of dialogue and not being given the opportunity to discuss or put their own point of view. 

As Australians we welcome all of those people travelling with Li Peng—though you may not welcome them, Senator Brown. There are a large number of members of their congress. Li Peng is the leader of this visit but there are a very big number of people with him who are talking about a range of issues which can only improve our relationship—things like our relationship in regard to business and trade. I did not hear you complain very loudly about the gas deal with China, which is worth about $25 billion to Australia. They are here to talk about tourism, and to get advice on the Olympic Games. We fully supported China’s bid to host the Olympic Games in 2008. I suppose you oppose that, Senator Brown, and I would not be surprised if you opposed it because, as I said before, I have never seen you support anything yet. You are only an opposition. You are only a person who is prepared to oppose things; you are never prepared to do anything positive to put our relationship on a proper footing, which is what this government is doing in its current relationship with China—and that relationship is one which is strong and growing stronger. 

While we will never forget those things that we disagree with, it does not take a motion like this to remind us of it. You are talking about an event that happened 14 years ago and much water has passed under the bridge since that time and our relationship if anything has grown stronger, even under the difficulties of having to reassess at that time what our position was in relation to the things that happened in Tiananmen Square. Senator Brown, this is another stunt, another day, but I can tell you that Li Peng is most welcome in Australia and we look forward to a much stronger relationship with a dynamic China. 

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.19 p.m.)—The Australian Labor Party, and I believe the Australian community, were deeply concerned by the events of 3 and 4 June 1989 when a demonstration of students in Tiananmen Square in Beijing was suppressed by the Chinese government. At that time, the then Hawke Labor government made direct, immediate and strong representations to the Chinese government about those events. Labor’s strong position on upholding international human rights standards was very strongly registered with the Chinese government then. Labor’s consistent position has been that the application of universal human rights standards applies to all countries without exception. These, of course, include the International Covenant on Civil and Political Rights, the UN Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights, known collectively as the UN bill of rights. It is the opposition’s firm view that Australia should continue to make bilateral representations on human rights issues where appropriate, including through our embassy in Beijing, and in support of individual human rights cases that are brought forward by Amnesty International. 

The Opposition—the Labor Party—also acknowledges the strides that have been made by the government in recent years in improving the social conditions of the people who live in China. We remain concerned by reports of continuing human rights abuses in China, including forced labour and, of course, the execution of prisoners. In relation to the Tiananmen Square massacre, I believe all Australians abhorred the Tiananmen Square massacre. I do not think the passage of the years has diminished that abhorrence, but Senator Brown’s motion that is before the Senate today does not say anything of substance about how we can help advance human rights in China today. I do not think it has anything positive to suggest at all. 

For our part, the Labor Party are committed to the further development of a very strong and multifaceted relationship with
China. Later this year, of course, we mark the 30th anniversary of the opening of diplomatic relations with Beijing by the Whitlam Labor government. Three decades on, we do have a very broad based relationship with China. It has extensive commercial ties, extensive cultural ties and extensive people-to-people ties. Many thousands of Australians have deep links with China—their family ties, educational ties and business ties—and it is a very broadly based and successful relationship. We believe that relationship will only get deeper and broader with each passing year. In the context of that relationship, I think Australia should be forthright in speaking about human rights issues. We should stand up for the values that we hold dear. We should express our views in a forthright but mature way.

For a number of years we have had a bilateral dialogue with China on human rights. Labor have been supportive of that dialogue, although we have been concerned about its lack of transparency. Behind closed doors, discussions between officials are no substitute for substantive exchanges at all levels, especially at the highest of political levels. The Leader of the Opposition, Mr Crean, raised the issue of human rights—including human rights in Tibet—on his recent visit to China, which was in April earlier this year. Mr Crean had what he termed a ‘frank discussion’. He said:

... the Chinese indicated the strength of their conviction that they were committed to improvements in Tibet.

Mr Crean also said:

For my part, and I indicated the importance of the issue and the concerns that are raised with us and our ability to in turn raise those with the Chinese ...

Mr Crean has emphasised his view that the relationship we have to build with China is one that recognises their political system as it is and recognises the progress that has been made there. It is one which, importantly, should be able to accommodate our raising of concerns—including our raising of concerns about human rights—with the Chinese government. Mr Crean also indicated that, if the opportunity to meet the Dalai Lama presented itself, he would do just that. Mr Crean was in East Timor during the Dalai Lama’s last visit to Australia but our deputy leader, Ms Jenny Macklin, did meet the Dalai Lama on Mr Crean’s behalf, and our shadow minister for foreign affairs, Mr Rudd, also met the Dalai Lama.

I do think that this approach by the Labor Party stands in stark contrast to that of the government. I think it is relevant to remind the Senate and the parliament today what the opposition had to say to the Australian electorate during the last election about our approach to human rights and Australia’s relationship with China. We said that Labor’s diplomacy would be effective and principled. We said a Labor government would make the advancement of human rights a core foreign policy objective. We have said that human rights have been pushed to the margins of Australia’s foreign relations. We have said that a Labor government would actively pursue wider regional dialogue and cooperation concerning problems of sustainable economic and social development and environmental protection, with the aim of enhancing human security throughout our region.

At the bilateral level, Labor would work with vigour to build productive relationships which advance shared political and economic interests. Labor would support enhancing people-to-people contacts between Australia and our East Asian neighbours and pursue the further development of social, cultural and educational ties. We indicated that we strongly support engaging and integrating China within the emerging Asia-Pacific security community. The rise of China will inevitably transform our region. Australia’s interests are best served by China’s positive involvement in the international political and economic community. We have said that a Labor government would seek to work cooperatively with China—bilaterally, regionally and in global forums.

The issue that we are debating here today is a motion that stands in Senator Brown’s name. I believe it is fair to say that that motion ignores the 13 years of human rights dialogue between Australia and China that has taken place since Tiananmen Square. It is in fact an opportunistic motion. I suspect that it is probably designed to produce embar-
rassment on the part of the Australian hosts to the visit by the Chairman of the Chinese National People’s Congress, Li Peng. But, as I have said on a number of occasions in this chamber, as is so often the way, motions on foreign policy matters are blunt instruments which cannot easily express the nuances that are necessarily a part of effective international diplomacy. There are elements of the motion with which we are naturally sympathetic. There are other elements of the motion that simply do not accurately convey our position on these matters.

If Senator Brown wished to make a substantive contribution to the Senate’s consideration of these important issues he would have put forward a motion which combined our longstanding concern about human rights in China with proposals about how those rights might be advanced. A condemnatory motion timed to coincide with the Chinese leader’s visit will not advance one iota the cause of human rights in China. I suspect that Senator Brown knows that that is the case. I acknowledge that Senator Brown has been to China. Senator Brown has been to Tibet. I accept that he would know the scale of the human rights problems in China. I would hope—and I am happy to accept it—that he would know the scale of the challenges to be met, ranging from reform of the judiciary and the prison system in China to the development of structures for democratic participation in government. These are all important issues. I am sorry that the motion before the chamber today does not get that balance right.

Senator Brown—Where’s yours?

Senator FAULKNER—There is no opportunity, as Senator Brown knows, because there has been no engagement of other parties in the chamber. There are elements of your motion, Senator Brown, with which I and the Labor Party are absolutely sympathetic. As I have indicated to you in this debate, there are other elements which are simply not adequate and do not accurately convey our position on these matters. It is a pity that we do not have before us a motion which advocates substantive measures designed to achieve real human rights benefits for the Chinese people. I am sorry that the motion does not do that. If it had done so, it would have been supported by the opposition. But the motion does not do that. It is a blunt instrument and it misses the important nuances I have spoken about. The choice for the opposition is to vote in favour of or against the motion—it is as simple and as stark as that—and the opposition has determined to vote against it.

Senator RIDGEWAY (New South Wales) (4.34 p.m.)—I rise this afternoon to speak on behalf of the Australian Democrats, as spokesperson for international human rights, in support of the motion moved by Senator Brown. While the Democrats welcome Mr Li Peng to our country and hope that his visit is a successful and educative one, we feel that there is a need to draw his attention to the ongoing human rights issues associated with China, with which many Australians remain very disturbed and which the past 13 years have not diminished.

I would like to remind the chamber of the Australian Democrats’ long record of outspoken support of the Tibetan people’s struggle. There have been many times when the Democrats have drawn the Senate’s attention to the situation in Tibet, including expressing our concern about ongoing human rights abuses in that country by the Chinese government. The Democrats have moved motions urging the Australian government to encourage China to commence open discussions with the Dalai Lama, to release all political prisoners of conscience in Tibet, to restore full religious freedom in Tibet, to cease cultural genocide and government-encouraged population transfers, and of course to cease environmental exploitation and the dumping of nuclear waste.

The Senate has been clear in its support for the plight of the Tibetan people. Earlier this year we had a situation where the Tibetan spiritual leader and head of the Tibetan government in exile, the Dalai Lama, was not given permission to deliver a televised address in the Great Hall here in Parliament House. The Dalai Lama, as everyone knows, is one of the world’s most respected spiritual leaders and an advocate of peace and non-violence. The Dalai Lama does not call for full independence but is seeking a dialogue
with the Chinese government. Last year the Dalai Lama was invited to address the European parliament. He has previously addressed members of the United States Congress, yet our government would not extend to him similar hospitality. Tonight Mr Li Peng will dine at a formal dinner in the same Great Hall here in Parliament House.

I want to assure Mr Li that the Australian Democrats and the Australian people have not forgotten the role he played in quashing the student-led actions for democracy in Tiananmen Square 13 years ago. We know that, as then Premier, he ordered the army into the square, which resulted in the deaths of hundreds of unarmed citizens. We also know that there are many people in Australia who fled here as refugees after those events. The suffering of the victims’ families continues, as at every anniversary they are reminded of that fateful day, 4 June 1989, when their children, husbands, wives and other relatives were killed. I hope that this debate will provide enormous food for thought in the Great Hall tonight.

**Senator SANDY MACDONALD (New South Wales) (4.37 p.m.)—**We are debating a typical hollow motion of the Greens which is just another stunt in the pursuit of a headline. It is another example of where their actions do absolutely nothing for the people they are purportedly trying to assist—in this case, some of the residents of the People’s Republic of China. They do considerable collateral damage to Australia and Australian interests. I think you can always trust Senator Brown to do something that will hurt Australia and offend our friends. I cannot remember Senator Brown, either at home or abroad, doing something that uplifts Australia—

**Senator Brown—**Mr Acting Deputy President, I raise a point of order. I would like you to look at what the honourable senator has just said and to see if that is within standing orders.

**The ACTING DEPUTY PRESIDENT (Senator Ferguson)—**I will do as you request but there is no point of order.

**Senator Brown—**I would point out to you that you cannot seek to look at the matter and say there is no point of order. However, I will leave that to you and await your further consideration of my point of order.

**Senator SANDY MACDONALD—I cannot remember—and I do not think many people in the chamber can—when Senator Brown either at home or abroad has done something that uplifts Australia or our history or our record. According to the Greens, Australia is not a country of which we can be proud. What sort of gratuitous offence would this motion, if carried, give to our third-largest trading partner at the time that one of their most senior leaders is visiting Australia? What would we feel if our Prime Minister or foreign minister were extended the same courtesy by a foreign parliament? We would be justifiably horrified and I suspect that the Chinese government would feel the same. Li Peng is the current chairman of the Chinese National People’s Congress and has ranked second in the Communist Party hierarchy since 1987. The Presiding Officers have invited Li Peng to visit Australia as guest of the parliament and he will receive guest of government status.

I think it was you, Mr Acting Deputy President Ferguson, who pointed out that he has visited Australia before, in 1988, and in recent years has visited a whole range of Western countries. For Australia to deny Li Peng because of his role in the Tiananmen Square crackdown in June 1987 would accomplish absolutely nothing. By visiting he will be exposed to a range of Australian politicians, businesspeople and a number of community groups and he will be made aware of their opinions on this matter and on other matters that are relevant to him and relevant to the Australian-Chinese relationship. I point out that, during the past 50 years, Australia has developed very strong relations with China on a commercial and cultural basis and there are also many family ties. It is a broad and successful relationship. The best way to continue building this relationship is to keep talking in a constructive way on all levels. This includes talking about subjects where our views may differ, as demonstrated by the full and frank discussions in the latest round of the human rights dialogue that the Australian government held with the Chinese in Canberra in August. We
have consistently made known our views on Tiananmen Square 14 years ago, but Senator Brown’s motion will do nothing to further that dialogue.

Our government is on record over a number of years as raising legitimate areas of human rights concerns not only with China but also, as you mentioned, Mr Acting Deputy President, with Chile and a number of other countries around the world. Countries have also raised areas of human rights concerns with us and, in fact, have done so quite recently with regard to our policy on detention centres. We are in the business of pursuing cordial diplomatic relations with countries—particularly with China—and not the opposite. As has been said on a number of occasions in diplomacy, ‘words are bullets’, and these words are not appropriate, particularly at this time. It is not often that I agree with almost everything that Senator Faulkner says in this place, but I do agree with the main thrust of his speech today because he said this motion is a very blunt instrument to approach a very delicate problem.

The Australian-Chinese relationship grows stronger every year. This year is the 30th anniversary of formal diplomatic relations but many Australian companies have traded with China for much longer. The Australian Wheat Board, one of our large international trading corporations, has always considered China to be one of its most consistent and reliable markets. Since 1949 the Australian Wheat Board has sold Australian wheat to China, which is a terrific record. I think it is the oldest market that we have—it is certainly the most consistent—and that relationship has been very beneficial to Australian wheat growers. They not only buy wheat; they buy other grains as well. It is a very important market and it has been a very strong relationship. This year, given the potential scope for progress, Australia has increased its efforts to improve market access in a whole range of things, and a new framework with China to enhance trade investment and economic cooperation will be a major priority in 2002. This will establish strategic relations with China in a number of key sectors: for example, financial, legal, education and social welfare services, agriculture—which, of course, has always been strong—the environment and the Beijing Olympics. It will also complement Australia’s negotiations for improved access to China in the new multilateral trade round under the ongoing arrangements for the accession of China to the WTO.

A most exciting announcement was made of Australia’s biggest ever trade deal with China last month. China’s first LNG scheme will provide gas for electricity generation and town use in Guangdong Province. China wants the project to be running by 2005 and Australia LNG was one of the three companies short-listed in January 2001 to supply the project. It might interest the Senate that there were other possible short-listed suppliers. There was Exxon Mobil from Qatar and BP from Indonesia; they were the other possible suppliers and so the competition was intense. The first supply contract was signed and announced on 8 August 2002. (Time expired)

Senator NETTLE (New South Wales) (4.45 p.m.)—I rise to speak in favour of the Greens’ motion that we are currently debating. The Greens believe that it is important that people are aware of the presence in Australia today of Li Peng, the second highest official in the largest communist party in the world, to discuss trade issues with the current government. However, the Greens also believe that it is important that people are aware that Li Peng, as my colleague articulated, is the butcher of Tiananmen Square and the person responsible for ordering tanks and guns to be used against innocent civilians and students who were protesting for democratic reform within the People’s Republic of China.

It is important that the Australian public is also aware that Li Peng has ordered the latest crackdown on the Tibetans in their peaceful movement. It is also important that people realise that Li Peng and his government continue to support the crackdown of a range of political movements, particularly Falun Gong practitioners in China. I understand that most recently there have been 467 deaths of Falun Gong practitioners because of torture carried out in China, and hundreds
of thousands of people have been detained and sentenced for their involvement in this peaceful organisation.

The government would have us believe that they raise human rights issues when they meet Chinese delegations. The Greens question the resolve of this government in truly committing to raising human rights issues through genuine dialogue with Chinese delegations. We believe that it is particularly valid to question this government’s resolve on issues of human rights when the government are currently introducing legislation in Australia to increase the power of ASIO and to hold people in detention without charge, thereby undermining civil liberties and the underpinning of Western legal systems.

When this government continue to dismiss human rights by their actions here, how can we believe that they genuinely pursue these issues when they meet Chinese delegations? The great irony is that the government are such vocal cheerleaders on the invasion of Iraq on the basis that there is an undemocratic regime which abuses human rights, uses fatal force against its own population and holds weapons of mass destruction. There is a great irony in this government continuing to pursue these actions against Iraq without recognising that human rights abuses are occurring in a range of other countries that should be dealt with internationally in a non-violent way. This government have failed in relation to Iraq—\( \text{(Time expired)} \)

Senator LUDWIG (Queensland) (4.48 p.m.)—I rise in relation to this matter of urgency moved by Senator Brown. Like Senator Faulkner, I am disappointed that, in a sense, the motion does not go to the position now. It effectively summarises where we were. It lacks a sense of: where to from there? Senator Brown expressed cogently the problems that beset the government of China. However, perhaps we can highlight some of the issues that spawned the events of 4 June 1989. When you go back to Tiananmen Square on 4 June 1989, no doubt many of my contemporaries and those older than me will recollect the television images of the pro-democracy protests of 1989 in the People’s Republic of China. All will no doubt recall the TV images of the youth challenging a tank near Tiananmen Square. It was a student demonstration. However, it became something more. Those images have been reconveyed over the past 13-and-a-bit years, but they have become something more. It is now argued that China’s leadership believes that the protest amounted to a counter-revolutionary rebellion with the purpose of seizing power.

Some in the government of the day say that 331 people, mainly students, lost their lives in the event. That figure is still open to debate. On the other hand, demonstrators said at the time that the aim was to persuade the government to adopt reform. Even with the benefit of hindsight, it is difficult to come to a conclusion about that position. However, we can come to a clear understanding of the issue of where we go from there. There is no doubt that it remains a tragic event which should not be forgotten, glossed over or left out. Zhao Ziyang favoured a less confrontational approach at the time, but that was not taken. In fact, he was purged. I am sure that Australians were shocked and appalled by those events. For its part, Australia allowed many Chinese people who were students in Australia to remain and, as I understand it, 30,000 took up that offer. Many of them have returned home, many have formed bonds and friendships with Australians and many continue to stay in Australia and participate in a vibrant democracy.

However, when we look at those issues we should also bear in mind that Australians cherish their democracy and cherish the ability to have free speech and to engage in the political debates that we so often have here. We can see that, for its part, China has been going through economic reform. Under Deng, a reform program and an open-door policy have been at the forefront of their push. However, can it be said that China’s position on human rights has improved? Is it now appropriate to have a debate in respect of that here? Perhaps the best that can be said is yes, but it has not been a steady or gradual process in terms of improvements clearly articulated by this government or by the Chinese government itself.
Many problems remain and many setbacks have occurred. Critical law reform and the establishment of a more accountable and effective administration system are still a long way off. Australia, though, can play a constructive role. It can play a much more constructive role than, I suggest, Senator Brown’s motion does. It can do so by criticism, by bringing the debate to China, by dissuading China, by jawboning. Whilst the debate continues, the issues are put forward at least and, notwithstanding the sentiment, they do not go off the table. They are not matters that are removed.

However, we also have to look at this: it is no answer to China’s human rights position to argue that the Chinese people now enjoy significant improvements. It is no answer to say that their daily lives may have improved over the last 14 years. There have been setbacks, as we fully know and appreciate. They have manifested themselves in issues such as religious minorities being persecuted and the banning of publications about those religious sects. But some of the important things that should not be forgotten are the entry of China into the World Trade Organisation and China’s signature to the International Covenant on Economic, Social and Cultural Rights—and, with our encouragement, they may sign the International Covenant on Civil and Political Rights. Those issues must remain on the table. They need to be spoken about. They need to be continually jawboned to ensure that issues such as the ratification of the ICCPR can proceed. Australia has actively encouraged China to ratify the ICCPR. Those are the issues that I would have preferred to have seen in Senator Brown’s motion, in a positive motion about where to go from here.

Senator HARRADINE (Tasmania) (4.54 p.m.)—I thank Senator Ludwig for giving me some of his time in this debate on Li Peng’s visit to Australia. Let me be perfectly clear: those who support this motion are not anti-Chinese or anti-Chinese people. I personally am a great supporter of helping, both officially and through private arrangements, the areas that are flooded. It is very important that we have dialogue with the Chinese people and make that effective dialogue—that is, action, not just words. But here we have a person who presided over the massacre in Tiananmen Square. He not only presided over that; on the anniversary of that massacre, he introduced stricter security measures. Li Peng’s statements about human rights are very revealing. For example, on 30 January this year he wrote to the China Society for Human Rights Studies on the launch of their human rights magazine. This is what he said about universality:
While universal, human rights have their peculiarities. Owing to differences in historical background, social system, cultural tradition and the level of economic development, different countries and peoples have different understandings of human rights.
That opens the door to almost anything. Right now there are people languishing in jail because of the gross violation of their human rights. Li Peng has been implicated in violations of religious freedom and in brutal population control programs involving forced abortions, sterilisations, fines and other punishments in the PRC and in Tibet. As a parliament—at least as a parliament—which is a democratically elected parliament and has a special role in the protection of the rights and liberties of citizens, we should not be feting, at the behest of the executive government, this person. I appeal to the Senate: listen to this and see whether or not the action that is taken by Senator Brown is more likely to be brought to the attention of the visitor than doing nothing. I support the motion.

Senator PAYNE (New South Wales) (4.58 p.m.)—I have listened with interest to a great deal of the discussion and debate this afternoon on this urgency motion relating to Li Peng. My interest is made more acute in many ways by the fact that in recent times I have been honoured to chair the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade—as you would know, Mr Acting Deputy President Ferguson, being the chair of the joint committee. In that role, in August I had the opportunity to participate in the last round of the Australia-China human rights dialogue held here in Canberra with Chinese Vice-Minister of Foreign Affairs, Mr Wang Guangya. That has in many ways refined, if
you like, my attention to some of these matters. I think it is imperative that a discussion of genuinely held human rights concerns be held in this chamber, in the other place and in the Australian community in general. There are issues that I suspect we pay inadequate attention to at the best of times. I know that Senator Harradine, as a regular and fervent supporter of the work of the subcommittee, would possibly agree with that.

In this debate, though, I do see a very important difference between some of the discussions that have been held and my own view. In some ways I think it is very important to take an approach of positive engagement as a way of going about business in this area. Since 1997 we have engaged in a constructive human rights dialogue that has shown manifest and palpable progress in how we are dealing with the issue and how the Chinese government is responding to that. I took part in the human rights dialogue this year, and that was the first opportunity I have had to do that. Many senators would know that my predecessor, Peter Nugent, who was the Chair of the Human Rights Subcommittee, was a Sinophile of no small order and a person with a great commitment to human rights who has participated in the dialogue on previous occasions.

These are not easy programs to put together and they are not easy to construct so that they do make a real impact. I was very interested to see how the Department of Foreign Affairs and Trade went about doing that. Through the Deputy Secretary, Alan Thomas, through Murray McLean, Kyle Wilson and their teams, I think it is important to acknowledge the effort that they put into making those programs work. When we sat down to discuss these matters across the table, there were a number of issues in the back of my mind. In fact, 4 June 1989 is one of those dates which one remembers in life. It is one of those dates when you remember where you were when you heard about the events of Tiananmen Square—I certainly do. I know exactly where I was and I know exactly the response that was felt in my heart and my mind to those appalling events.

I think that Senator Ludwig made some very valuable points in his remarks. Through some of the processes that we have undertaken, there have been changes and genuine advances on the Chinese side—many of which many members of this parliament may say are inadequate and many of which many members of this parliament say do not even come close, but they are changes and they are positive ones. They have made some constructive differences to the lives of hundreds of millions of Chinese people.

At the same time in the human rights dialogue we discussed at length the treatment of women and children. For example, it came to my attention for the first time in that dialogue that the suicide rate of women in China is one of the highest, if not the highest, in the world. It involves hundreds and hundreds of women taking their lives each day. It occurs for reasons I have not yet had an opportunity to explore in any meaningful way, but I hope I will have a chance to—reasons which are not explained to us and which are not apparent to me. Those sorts of issues were raised and discussed.

I think the minister acknowledged in his press statement after those discussions that for the first time, in response to Australia raising individual cases with China, the Chinese provided a detailed account of each of the cases. But of the 25 cases raised on that day, six people involved had already been released from prison and one had had her sentence remitted. There is much further to go—even that leaves 19 more people. That is still not enough but it is some change. The activities that are pursued under the human rights technical program—and we have announced a new set of activities for 2002-03—are very important to the people of China in being able to progress this process. I think the discussion this afternoon has been a constructive one and I am glad to have had the opportunity to participate. (Time expired)

Senator BROWN (Tasmania) (5.03 p.m.)—I thank all members for their participation. I have to say that, where words may be diplomatic bullets, silence is consent. Where there were real tears even by the Prime Minister of this country at the time of Tiananmen Square, if there are tears now they are in silence. There is a balm of silence being offered to Li Peng in this place to-
night—as he is feted here—in the absence of members of the crossbench. I will be moving to ask why it is, when Presiding Officers have a leading representative of a government like China in this place, there was no invitation to the Greens or to the Democrats to be at that function. I do not accept that there should be a political line-up of invitees when the President of this chamber and the Speaker in the other place invite a member of the world political community to a dinner in this place. It compounds the problem that we have heard manifest in this debate that the best Australian leaders on both sides can do at this time is stay silent. It is an obsequious silence which sends the message to Li Peng: ‘It’s okay. We won’t raise the problems of the people in prison, the people who are being shot or the people who are being tortured.’ I am not talking about a few people or hundreds; I am talking about thousands and thousands of people.

Senator Nettle spoke about more than 400 Falun Gong people who have been killed in prisons in the last couple of years because they practised a different religion to that allowed by the state. How can we remain silent about that? Of course this man is in the country to discuss trade but why should that be the be-all and end-all? Why should human rights be sacrificed on the altar of discussion on trade?

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—Order! The time for this debate has expired.

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

The Senate divided. [5.10 p.m.]
(The President—Senator the Hon. Paul Calvert)

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AYES
Allison, L.F. *  Barton, A.J.J.
Brown, B.J.  Greig, B.
Harradine, B.  Lees, M.H.
Murray, A.J.M.  Nettle, K.
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.  Colbeck, R.
Collins, J.M.A.  Conroy, S.M.
Crossin, P.M.  Demm, K.J.
Ferguson, A.B.  Ferris, J.M. *
Forshaw, M.G.  Heffernan, W.
Hogg, J.J.  Johnston, D.
Kirk, L.  Knowles, S.C.
Ludwig, J.W.  Lundy, K.A.
Mackay, S.M.  Marshall, G.
Mason, B.J.  McLucas, J.E.
Moore, C.  Murphy, S.M.
O’Brien, K.W.K.  Payne, M.A.
Ray, R.F.  Reid, M.E.
Scullion, N.G.  Sherry, N.J.
Stephens, U.  Tchen, T.
Tierney, J.W.  Troeth, J.M.
Vanstone, A.E.  Watson, J.O.W.
Webber, R.  * denotes teller

Question negatived.

DOCUMENTS
Auditor-General’s Reports
Report No. 7 of 2002-03

The ACTING DEPUTY PRESIDENT (Senator Bartlett) (5.14 p.m.)—In accordance with the provisions of the Auditor-General’s Act 1997, I present the following report of the Auditor-General: Report No. 7 of 2002-03—Performance Audit—Client service in the Child Support Agency: Follow-up audit: Department of Family and Community Services.

AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY AGENCY

Return to Order

The ACTING DEPUTY PRESIDENT (Senator Bartlett) (5.14 p.m.)—I present a response from the Group Executive Director, Australian National Audit Office, to a resolution of the Senate of 29 August 2002 in relation to the Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Bill 2002.

Senator LUDWIG (Queensland) (5.15 p.m.)—I move:
That the Senate take note of the document.
I seek leave to continue my remarks later.
Leave granted; debate adjourned.

**AVIATION: DISABILITY SERVICES**

The ACTING DEPUTY PRESIDENT (Senator Bartlett) (5.15 p.m.)—I present a response from the Executive General Manager, Qantas, to a resolution of the Senate of 21 August 2002 concerning the carriage of wheelchairs on Qantas flights.

**PARLIAMENTARY ZONE**

Proposal for Works

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (5.15 p.m.)—In accordance with the provisions of the Parliament Act 1974, I present a proposal for works within the Parliamentary Zone, together with supporting documentation, relating to the construction of external waste enclosures in Commonwealth Place. I seek leave to give a notice of motion in relation to the proposal.

Leave granted.

Senator IAN CAMPBELL—I give notice that, on Thursday, 19 September 2002, I shall move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposals of the National Capital Authority for capital works within the Parliamentary Zone, being the construction of external waste enclosures in Commonwealth Place.

**BUSINESS**

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (5.16 p.m.)—I table replacement explanatory memoranda relating to the Customs Legislation Amendment Bill (No. 1) 2002 and the Import Processing Charges (Amendment and Repeal) Bill 2002. The memoranda were circulated in this chamber on 29 August.

**COMMITTEES**

Membership

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

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (5.17 p.m.)—by leave—I move:

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

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

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

Foreign Affairs, Defence and Trade Legislation and References Committees—

Participating member: Senator Mackay.

Question agreed to.

**ASSENT**

Messages from His Excellency the Governor-General were reported, informing the Senate that he had assented to the following laws:

Jurisdiction of Courts Legislation Amendment Act 2002 (Act No. 70, 2002)

**CRIMINAL CODE AMENDMENT (ESPIONAGE AND RELATED MATTERS) BILL 2002**

**NEW BUSINESS TAX SYSTEM (CONSOLIDATION, VALUE SHIFTING, DEMERGERS AND OTHER MEASURES) BILL 2002**

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (5.19 p.m.)—I indicate to the Senate that the bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I shall be mov-
ing a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.19 p.m.)—I table revised explanatory memoranda relating to the bills and I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

CRIMINAL CODE AMENDMENT (ESPIONAGE AND RELATED MATTERS) BILL 2002

In May 1999 an Australian citizen, Mr Jean-Philippe Wispelaere, was arrested in the United States and charged with a range of offences associated with the unauthorised disclosure of US intelligence material.

At that time the Government affirmed its commitment to protecting Australia’s national security.

It announced a range of initiatives designed to further protect sensitive information held by Government agencies.

The Inspector-General of Intelligence and Security, Mr Bill Blick, was commissioned by the Prime Minister to undertake a review of security procedures.

In 2000 the Inspector-General provided a comprehensive report to Government in which he made more than 50 recommendations.

The recommendations were designed to enhance security arrangements on a public service-wide basis and improve security practice in intelligence and security agencies. The Government adopted these measures in principle, and then proceeded to give them effect.

The review of Australia’s espionage laws had, in fact, begun before the Inspector-General made his recommendations.

In 1991, the Committee to Review Commonwealth Criminal Law, headed by the Right Honourable Sir Harry Gibbs, recommended that espionage offences be rewritten in a simpler form using modern language.

Since then, the Inspector-General’s report has confirmed the need for this Government to strengthen Australia’s espionage laws and impose tougher penalties on those who choose to break these laws.

This bill evolved as a result of both the Gibbs and Blick reviews.

The Government has also conducted a separate review, and extensive consultation, to ensure that the offences in the bill establish an effective legal framework that both deters, and punishes, people who intend to betray Australia’s security interests.

As part of our review we have considered such things as technological advances in information management and communication as well as international standards.

As a result, the proposed offences are consistent with equivalent provisions in the United States, the United Kingdom, New Zealand and Canada.

This bill will strengthen Australia’s espionage laws in a number of ways.

By referring to conduct that may prejudice Australia’s security and defence, rather than safety and defence, and explicitly defining this term, we are affording protection to a range of material that may not be protected under the current laws.

In particular, the term will include the operations, capabilities and technologies of, and methods and sources used by, our intelligence and security agencies.

The type of activity that may constitute espionage has also been expanded.

A person may be guilty of an espionage offence if they disclose information concerning the Commonwealth’s security or defence intending to prejudice the Commonwealth’s security or defence.

They may also be guilty of an offence if they disclose information concerning the Commonwealth’s security or defence, without authorisation, to advantage the security or defence of another country.

The latter will capture Wispelaere-type situations where the information that is compromised does not necessarily prejudice Australia’s security or defence.

Instead, the compromise is designed to advantage the security or defence interests of another country.

The new offences will also protect foreign sourced information belonging to Australia. As a result, Australia can offer greater assurances to our
information exchange partners that, when they provide information to us in confidence, we will protect that information in the same way that we protect our own sensitive information.

The maximum penalty for the most serious cases of espionage will be 25 years imprisonment, a significant increase from the current 7 year penalty.

This Government considers 7 years imprisonment to be a grossly inadequate punishment for the more serious acts of espionage during peace.

Penalties in comparable countries for equivalent offences range from the death penalty in the United States to 14 years imprisonment in the UK, Canada and New Zealand. We should regard espionage as seriously as these countries.

In addition to strengthening the offence provisions, the bill will also further support the process of bringing cases of espionage to trial.

The most important measure in this regard is to guarantee that only a judge of a State or Territory Supreme Court decides the question of bail.

In addition, the Australian Federal Police Commissioner will issue an order to all members of the AFP that, as a general policy, bail should be opposed in espionage cases.

The bill also covers a range of matters including initiation of prosecutions, holding hearings in camera and forfeiture of articles.

These provisions were originally enacted in the Crimes Act. They have been substantially replicated in this bill except to the extent that the provisions have been modernised and re-packaged for the purposes of moving them to the Criminal Code.

Unlike the bill the Attorney-General introduced in September last year, this bill does not amend the official secrets provisions currently contained in section 79 of the Crimes Act.

I say ‘amend’, but of course the original bill did not actually change the substantive elements of the official secrets offences.

It simply modernised the language and lay out of the offences so that the offences were suitable for inclusion in the Criminal Code.

Recent inaccurate media reporting on the issue of the official secrets provisions has meant that, in the interests of progressing our primary purpose for the bill—strengthening Australia’s espionage laws—we have had to excise those provisions from the bill.

Excising the provisions will not actually change the law in relation to unauthorised disclosures as the bill did not change the substance of the offences as currently contained in section 79 of the Crimes Act.

What it does mean is that we are missing an opportunity to modernise the language of our criminal law.

The public has been very badly served by a media that has generated a frenzy of opposition that has no basis in fact.

But the Government is mindful of the concerns of the public.

And so, in this case, the Government has no objection to removing the offending provisions from the bill because the law in relation to official secrets remains unchanged whether or not the amendments are retained in the bill.

I am not prepared to jeopardise the opportunity to make important amendments to Australia’s espionage laws.

It is those provisions that send a clear message to those who choose to betray this country’s security that this Government regards espionage very seriously.

NEW BUSINESS TAX SYSTEM (CONSOLIDATION, VALUE SHIFTING, DEMERGERS AND OTHER MEASURES) BILL 2002

This bill reflects a continuation of the Government’s initiatives to reform business taxation by amending the income tax law and other laws to give effect to the following measures.

Consolidation regime

The basic foundations of the consolidation regime were contained in the initial measures introduced on May 16, 2002.

The measures contained in this bill will deal with outstanding matters necessary for the further implementation of the consolidation regime from 1 July 2002. Further legislation is scheduled to be introduced later this year.

This bill introduces the cost setting rules for the formation of a consolidated group. These rules modify the basic case rules of a single entity joining an existing consolidated group.

The bill also contains transitional measures aimed primarily at reducing the compliance costs associated with forming a consolidated group. The key transitional measure provides that in certain circumstances, and where a consolidated group is formed before 1 July 2004, the head company may choose that assets of subsidiary members retain their existing tax cost. This transitional option removes the need for consolidated groups
to re-value assets as required under the ongoing tax cost setting rules.

Further, this bill includes certain measures that deal with international aspects of consolidation. The measures in the bill ensure that the foreign tax credit provisions work appropriately for a consolidated group, including allowing the head company to use excess foreign tax credits available to a subsidiary member at the time of joining a group. The removal of the existing foreign tax credit grouping rules has also resulted in the re-writing of the provisions applying to all taxpayers that allow excess foreign tax credits to be carried forward for 5 years.

The bill also deals with account balances that are maintained to avoid double Australian taxation of the income of a controlled foreign company or foreign investment fund. The measures in the bill transfer those balances to the head company of a group when a subsidiary company becomes a member of a consolidated group. Balances are transferred from the head company to a subsidiary company that leaves the group with some or all of the controlled foreign company or foreign investment fund interests held by the group.

These measures are considered to be the most important in terms of the immediate application of international tax provisions to consolidated groups but they will be followed by further legislation and may be subject to fine tuning for more complex arrangements.

This bill also contains additional rules and amendments of a minor or technical nature. These consist of modifications to various consolidation rules in the income tax legislation in relation to membership rules, utilisation of losses, cost setting, imputation and removal of grouping.

**Simplified imputation system**

This bill makes consequential amendments to the provisions currently referred to in the tax laws as the ‘exempting and former exempting company provisions’. These provisions are concerned with limiting the source of franking credits available for franking credit trading. The simplified imputation system measures introduced into Parliament on 30 May 2002 contained core rules for the new simplified imputation system. As a result of the introduction of those measures, certain consequential amendments are now required to other areas of the imputation system not covered by those rules including the exempting and former exempting company provisions. The consequential amendments include moving the existing provisions from the Income Tax Assessment Act 1936 to the Income Tax Assessment Act 1997. The simplified imputation system, including these consequential amendments, applies from 1 July 2002.

**Value shifting and loss integrity**

The bill will also introduce a general value shifting regime applying mainly to interests in controlled companies and trusts that are not consolidated. The regime is expected to achieve similar value shifting integrity to that achieved within consolidation. The new regime, which will generally apply to value shifts from 1 July 2002, will also strengthen the integrity of the existing capital gains tax rules.

The bill will also make amendments to the current loss integrity provisions to allow assets to be valued globally in calculating unrealised losses. This will reduce the compliance costs of these measures.

**Demerger relief**

Finally, the bill will introduce provisions to provide tax relief for a demerger. A demerger involves restructuring a corporate or trust group by splitting it into two or more entities or groups, with the underlying owners of the head entity holding the demerged entities or groups directly.

The tax relief for demergers will increase efficiency by allowing greater flexibility in restructuring a business and ensuring that tax considerations are not an impediment to such restructuring. The proposed demerger amendments will apply to demergers happening on or after 1 July 2002.

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

I commend this bill.

Debate (on motion by Senator Buckland) adjourned.

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

**CORPORATIONS AMENDMENT REGULATIONS 2001 (No. 4)**

**Motion for Disallowance**

Senator CONROY (Victoria) (5.20 p.m.)—I move:

(1) That regulations 7.9.10 and 7.9.11 of the Corporations Amendment Regulations 2001 (No. 4), as contained in Statutory Rules 2001 No. 319 and made under the Corporations Act 2001, be disallowed.

(2) That regulations 7.9.10, 7.9.11(1), 7.9.11(1)(a), 7.9.11(1)(b) and 7.9.11(2) of the Corporations Amendment Regulations 2002 (No. 2), as contained in Statutory Rules 2002 No. 16 and made under the Corporations Act 2001, be disallowed.

Unfortunately the government has not sought to seriously negotiate with us on this issue, which is a great disappointment to me. I believe it was possible and it is still possible to find a resolution of this matter that would be a reasonable compromise. The regulations which we are seeking to disallow and which are the subject of my motion cover two substantive areas: the disclosure of fees in product disclosure statements and the hours for making unsolicited phone calls to market financial products. As I said, I am disappointed that the government cannot support my intention to improve fee disclosure and to promote the interests of consumers. I am dismayed at the way the Parliamentary Secretary to the Treasurer has handled this matter. He has shown that he is willing to misrepresent Labor’s position consistently and that, once again, he is beholden to the interests of big business and, in this case in particular, Australia’s large financial institutions represented by IFSA.

The Financial Services Reform Act promised some good reforms in the area of disclosure of fees and charges. There was bipartisan support for the legislation. In fact there was complete support, with the Democrats and the minor parties, from recollection, also supporting this legislation. The support was there because it was perceived to make significant improvements in ensuring that investors could make informed financial decisions. However, because of the complexity of many of the fees charged on financial products, it is not enough just to disclose: the fees must be disclosed in a way that is meaningful to consumers.

I have maintained for a long time that that would require dollar disclosure of costs, fees and charges—whenever possible—and the inclusion in the PDS of a single figure as indicative of the impact of all fees and charges on a product. There have been a sufficient number of cases of consumers paying way too much in fees or being inadequately informed about the level of fees to show the need for these initiatives. However, the regulations tabled earlier this year are inadequate. It was unfortunate that the FSR Bill was passed before the regulations were finalised, especially when so much of the detail was left to be dealt with by the regulations. But Labor, the Democrats and others combined to pass them in good faith. The result has been that parliamentary scrutiny of the regulations has not been possible until this late stage. Moreover, Labor was not consulted before the regulations were introduced into parliament.

The parliamentary secretary will say that these regulations were subject to extensive consultation and that it was just that nobody bothered to hold any discussions with the Democrats, nobody bothered to hold discussions with the minor parties and the Independents, and nobody bothered to have any discussions with the Labor Party prior to the tabling of these regulations. You will hear much about the extensive consultations and Senator Campbell will be right in every respect, except when it comes to this final set of regulations. The FSR was discussed extensively. Senator Murray, others and I have been on many committees looking at this legislation and these regulations—except for this final set of regulations.

Evidence obtained by the Joint Parliamentary Committee on Corporations and Securities shows that, in relation to regulation 7.9.11, the effectiveness of that consultation must be questioned. ASFA, the peak superannuation body, spoke of patchy expertise and difficulties in getting people in Treasury up to speed on the details of superannuation during the consultation period. ASFA also indicated that, despite their urgings that the disclosure regulations be subject to consumer comprehension testing, this was not done. As ASFA explained to the committee, the regulations were not just about the law but about how effectively they communicated the information to consumers. That made testing essential. Testing now completed by ASFA has confirmed very poor results for the OMC and its ability to provide a useful tool for consumers.

The only organisation that has taken the time to go out there and see whether these
Monday, 16 September 2002

regulations are worth while or not has come back and said: ‘It is a disaster. It misleads consumers.’ In fact, so incredible were the results ASFA have indicated that, in the absence of a sunset clause of an appropriate length, they would prefer no regulation at all—no 7.9.11. That is an extraordinary position to take—the results are so damning. For the government to want to press ahead with this just shows you how in the pocket of IFSA they are. This evidence supports the need for the government to act now to improve the regulations. I again extend the offer to Senator Campbell to engage in some discussions within the chamber in the next 30 or 40 minutes to try and resolve this.

The regulations are flawed and must be improved if the objectives of the FSRA are to be met. But, no, the government’s response is to ask me and others in the chamber to wait until 2006 before the regulations are re-examined. That was the last written offer the government made: four years of confusion and misleading information for consumers—and then no promise to fix it; just a review. That is the part I find most distressing: no commitment on behalf of the government whatsoever to accept that their model is flawed, other than to say, ‘We’ll review it in 2006, but we already think it is good enough and we’re going to support it again.’

Labor says this is simply unacceptable. Among other things, regulation 7.9.11 prescribes the inclusion of an ongoing management charge, or OMC, in the product disclosure statements of superannuation products. ASFA had the following to say about regulation 7.9.11 and the OMC:

The ongoing management charge, the OMC, is of particular concern to us. It is significantly flawed as a measure. Notably, it does not include entry and exit fees that may dramatically affect a member’s benefit. It fails to demonstrate the actual impact of fees and charges on a member’s benefit.

It fails to demonstrate the very thing that the FSR actually wants it to demonstrate. ASFA went on:

ASFA strongly recommends that Treasury replace this OMC requirement in the superannuation PDS requirements with an expense measure and examples that will better enable comparability.

Similarly, the Australian Consumers Association have said:

The explanatory memorandum with regard to the FSR stated that the aim of such new measures as the product disclosure statement will be to provide customers with sufficient information to make informed decisions in relation to the acquisition of financial products including the ability to compare a range of products.

That is the key here: how can consumers make an informed decision when they are not able to compare like products? In the view of the ACA, this means an advance on the current position and a lot of the confusion which many consumers report to that organisation when they negotiate the financial services market, but unfortunately it does not appear that this has been met with some of the measures that have been introduced post FSR—in particular, the ongoing management charge. It is clear that the OMC is flawed and must be improved. It is not the only measure, and work that is being done elsewhere can be used to improve the disclosure in the PDS.

In June 2001, Rainmaker Information Services released a fee calculator which calculates a total expense ratio. This is not rocket science. The Australian Consumers Association themselves have released a choice fee disclosure model which calculates a total fee impact and which was presented at the most recent IFSA conference.

The financial services association in the UK has a fee calculator on its web site. This is achievable—if the industry wants it to be achievable. ASFA has been in discussions with the academic Hazel Bateman of the University of New South Wales, who is also working on a more comprehensive expense metric. Clearly, there is a base of work that can be used to improve the FSR regulations—only this government does not want that. It does not want consumers understanding the level of fees they are paying.

The other failure in this regulation is also the result of the parliamentary secretary succumbing to the pressure of the big financial institutions. Regulation 7.9.11 only applies to superannuation products. What is the difference between disclosure to a customer of a super product and disclosure to a customer of
a managed investment? There is none. Investors in managed funds will not obtain any additional disclosure which may assist their understanding of fees. This is contrary to the very objectives of the FSR. That is why it is important that this regulation be disallowed: to encourage this government and to encourage an industry that does not want to come clean, that does not want to front up and tell its customers what it is actually charging them. It must be consistent. It must be on both managed investments and superannuation.

Everyone must understand that the purpose of the act was to consistently and comprehensively protect consumers irrespective of the type of financial product or advice. That was the stated objective. That was what Minister Hockey fought for. That was what Minister Hockey had the guts to stand up to people on. To his credit, he delivered a pretty good piece of legislation. Since the election we have seen backsliding after Minister Hockey was summarily dismissed by the Prime Minister. That is the tragedy here: the government have backslidden on their own commitments.

Before I move on to the regulations dealing with hours for making prescribed hours, the parliamentary secretary will no doubt protest that if the regulations are changed there will be uncertainty for those who have already opted into the FSR regime. This is utter rubbish. We now have the provisions to manage the transition to the FSR and there is no problem finding those transitions and using those transitional arrangements to work our way through this issue as well. We could have provisions to manage the transition to any changed regulatory regime. Do not be frightened by the scare campaign of IFSA. Do not be frightened by the scare campaign of the parliamentary secretary.

Turning to regulation 7.8.22, which deals with the hours for making unsolicited telephone calls to market financial products, I have the following comments. Labor moved the amendment to the FSRA limiting the hours for making unsolicited telephone calls, but had hoped and had believed that the regulations would be more responsible. Instead, the regulations allow cold-calling between 8 a.m. and 9 p.m. and on any day other than Christmas Day, Easter Sunday and Good Friday. I understand that the hours have been chosen to be identical to the hours permitted for the unsolicited sale of any other type of product. There are significant differences between a financial product and a set of steak knives. Such differences support having different hours. I believe that most in the financial services industry do not cold-call on a Sunday, so why does this government want to let every spiv out there get on the phone and annoy people on a Sunday when they should be with their families? This minister and parliamentary secretary want the spivs to be loose, annoying people on Anzac Day and on a Sunday.

**Senator Sherry**—On Anzac Day?

**Senator CONROY**—On Anzac Day. Can you believe that, Senator Sherry?

**Senator Ian Campbell**—You should not, because he is wrong. He is misleading the Senate again. He is a serial offender.

**Senator CONROY**—I look forward to your contribution, Senator Campbell. Once again, the parliamentary secretary would rather not protect the interests of the consumers but would prefer to obey the wishes of the Australian Direct Marketing Association. Disallowance of the regulation will not prevent the parliamentary secretary tabling immediately after its disallowance—

**Senator Ian Campbell interjecting**—

**Senator CONROY**—If you do not know the difference between a set of steak knives and selling life insurance on the phone, Senator Campbell, then you have just proven to be the real estate agent you have always been.

**Senator Ian Campbell**—At least I have had a real job.

**Senator CONROY**—A real job—a real estate agent. There is a real job; I would be proud of that one. No wonder real estate agents are not roped in by this bill either. I would like now to detail the negotiations that have occurred between me and the parliamentary secretary, because I am afraid the parliamentary secretary has regularly misrepresented me to other senators.
I first wrote to the parliamentary secretary on 27 February seeking information on the regulations. There was no reply from the parliamentary secretary. I wrote again on 18 March 2002 seeking a briefing on the matters raised in my February letter. Once again there was no written reply. In late March I initiated an inquiry by the Joint Parliamentary Committee on Corporations and Financial Services into the FSR regulations and related ASIC policy statements. On 4 April, after persistent requests by phone, I was finally given a briefing by Treasury officers. At the time I confirmed I still had concerns but once again there was no follow-up from the parliamentary secretary. On 23 May 2002 the Joint Parliamentary Committee on Corporations and Financial Services held its first public hearing and obtained the evidence I have referred to earlier—still no comment from the parliamentary secretary. I have also used Senate estimates to explore the FSR regulations. My concerns were well known to the parliamentary secretary because the parliamentary secretary was chairing the Senate estimates in which I raised these concerns.

Senator Ian Campbell—I was chairing that one, was I?

Senator CONROY—You were sitting there. My apologies; not chairing, Senator Campbell, you are right on that one. You were representing the government on the other side of the table. For the parliamentary secretary to maintain that I have not made known as early as possible my concerns recalling that Labor was not consulted on the regulations is wrong. Labor has not entered at the eleventh hour, as the parliamentary secretary continues to try to represent publicly, and continues to try to misrepresent, but did so on 27 February, six months ago, within a week—probably less than a week—of the regulations being actually promulgated and tabled.

When I gave notice of my motion to disallow the regulations, I immediately wrote to the parliamentary secretary seeking to commence negotiations. This was before the winter recess when time may have permitted some comprehensive discussions. But the parliamentary secretary did not reply. Accordingly, I wrote again on 3 July 2002. Finally, on 20 August I received a reply from the parliamentary secretary and we met on the following day. On 26 August I wrote again to the parliamentary secretary proposing that sunset clauses apply to the regulations. A period of 12 months was suggested. On 27 August the parliamentary secretary replied:

I am happy to progress the suggestion of a sunset clause and have asked the CEOs of ASFA and IFSA to suggest a reasonable timetable for the testing of the existing provisions and formulating any improved provisions. I believe that a sunset date of no earlier than 11 March 2004 would be reasonable but I will be guided by key stakeholders including investors and shareholders. Once I have agreed to a timeline I will instruct Treasury to draft an appropriate regulation for circulation.

So Senator Campbell wrote to me and suggested 11 March 2004. I happily accept that. Once he had agreed to a time line, as he said, he would instruct Treasury. Upon receipt of that letter of 27 August, my office clarified to what regulations that sunset period would apply, and indicated that I would wait to hear from the parliamentary secretary regarding his discussions with ASFA and IFSA.

ASFA replied to the parliamentary secretary on 29 August that they supported a sunset clause of 12-months duration. I have not been advised of the content of discussions with IFSA. Accordingly, on 12 September I wrote to the parliamentary secretary seeking advice on the progress on determining the length of a sunset clause and proposing arrangements for today assuming that the sunset clauses were to be proceeded with. Instead, between faxing the letter to the parliamentary secretary’s Canberra office and his Perth office, his Canberra office faxed me a copy of a letter he had sent to Senator Murray—not to me but to Senator Murray. Those faxes literally passed in the fax ether, and his letter stated:

In good faith I pursued the sunset clause proposal including approaches to the CEOs of ASFA and IFSA for suggested timetables. Unfortunately, Senator Conroy has not withdrawn the motion and the uncertainty created by the disallowance continues. In any event agreement to a sunset clause for the superannuation disclosure regula-
tions would have only served to perpetuate the industry and consumer uncertainty that Senator Conroy’s motion introduced to the FSRA transitional process. I am still open to the application of a sunset clause but only in relation to allowable hawking hours.

A week or two before, he thought it was reasonable to have a two-year sunset clause for the OMC, but, once the industry had told him that he could not have it, he folded. As Senator Murray points out in his reply to the parliamentary secretary on 13 September:

My understanding when parliament last rose was that this matter would be resolved by the government tabling proposed sunset clause provisions of, say, between 12 and 18 months for the two provisions within these regulations that are the subject of the Labor disallowance motion. Labor would then withdraw their disallowance motion. While Senator Conroy’s letter conforms with this understanding, your letter alters the situation.

The parliamentary secretary clearly misrepresented me to Senator Murray and the independent senators who are copied into his letter to Senator Murray. Since then, we have got to this current ridiculous situation, where the parliamentary secretary now proposes in writing a sunset clause expiring on 11 March 2006 in relation to the fee disclosure regulation. He would prefer to have everyone transit to a flawed regime rather than try to fix it before everyone has to transit. The parliamentary secretary has shown himself willing to misrepresent me to my fellow senators. He would not respond to my much earlier request for discussions and now, at literally seconds to midnight, he will blame me for creating uncertainty.

Labor wants certainty and wants to protect the interests of investors. The parliamentary secretary is beholden to the big players in the financial services industry, and IFSA in particular. As people have recently noted, the funds management industry is now 55 per cent controlled by the banks. IFSA is now starting to behave like the banks, and IFSA is going to get the reputation for the greed and excess of the banks if it continues down this path. This issue will not go away. This is not an issue that is a one-day wonder, Senator Campbell. You can protect this industry as long as you want, but disclosure will come to this industry whether they want it or not, and they are clearly demonstrating that they do not want it today. I can now only reflect on how accurate an indication of the parliamentary secretary’s behaviour an article which appeared in the Australian Financial Review on 2 August 2002 is. The article says:

The Investment and Financial Services Association appears to have established a close and influential relationship with the Howard Government, with its views embodied in regulations for disclosure of fees on managed investments.

IFSA is so influential that one government adviser referred The Australian Financial Review to the lobby group this week when asked for a detailed explanation of the new disclosure regulations that will put the Financial Services Reform Bill into effect.

That is right—when a journalist phoned Senator Campbell’s office and asked why the regulations were in the form that they were in, the government adviser referred them to IFSA for an explanation. It says it all.

Senator Ian Campbell—That is not true.

Senator CONROY—I have not seen an apology, a retraction or a letter from you, Senator Campbell, or from anyone in your office.

Senator Ian Campbell—They can do the retraction.

Senator CONROY—This is the same man who initially opposed Labor’s amendments to the Corporations Act to require the disclosure of executive remuneration. This is an important issue, Senator Campbell. Your office referred queries on these regulations to IFSA. You stand condemned in the newspapers. You have not issued a press statement denying it. You have not written a letter to the Financial Review that has been published; you may have, but I have not seen it. (Time expired)

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.40 p.m.)—For the benefit of the Senate, could I describe the importance of the debate that we are having here today. The Financial Services Reform Act is regarded in Australia and around the world as being the pre-eminent piece of consumer protection legislation in financial services. It is renowned in London, Europe, Washington,
New York and most parts of Asia as being a world leading piece of legislation and a regulatory framework enforced by a well resourced and very effective regulator in the Australian Securities and Investments Commission. It imposes a raft of new regulatory requirements on financial services providers, including a licensing regime which ASIC are now charged with implementing. It will ensure that many thousands of people who have been offering financial services previously and have not had to be licensed will have to go through what, for many of them, will be the tortuous, expensive and time consuming process of being licensed.

At the moment much of the time of the very busy and dedicated staff within my office, the Treasury and, very importantly, the regulator—that is, ASIC—is spent on dealing with people seeking financial services licences. Most of the priority of my work at the moment is to ensure that the transition to this new regime is a success. I cannot guarantee that it will be at the moment. We have massively increased the resources of ASIC to ensure that it has the people required with the skills and processes required to ensure that the licensing, surveillance and compliance testing takes place. I am ensuring, as the government and my officers within my office, the Treasury and ASIC are ensuring, that the introduction of this massive new arrangement takes place in a way that protects consumers. That is what we are trying to achieve at the moment.

We set out on the path of achieving this new regime when I first came into the Treasury portfolio in late 1996 and received a report called Good advice prepared by Lynn Ralph, then a Deputy Chairman of ASIC, and subsequently a report by Stan Wallis’s financial services inquiry. Both those reports homed in on two key features. The first was that we needed a legislative regime that treated the regulations and disclosure for all financial products in a similar way. For example, CLERP 6, as it was called then, sought to regulate the stock exchange and the futures exchange in a similar way. We also sought to ensure that all other financial products were regulated and licensed, and the licences were complied with, in a similar way. Not a single person has had anything but massive respect for the process.

I wrote the CLERP 6 policy between 1997 and 1998 but I pay tribute to my successor in the portfolio, and now my predecessor in the portfolio, the then Minister for Financial Services and Regulation, Joe Hockey, who had to do a lot of the detailed work between 1998 and 2001 to get FSRA into final legislative shape and, of course, he worked with Treasury, industry and all stakeholders, including consumers and shareholders, to get the regulations in shape. The consultations were lengthy, detailed, genuine and have produced an outstanding regime.

Anyone who comes into the Senate and claims that either the law or the regulation, and particularly this regulation that we are focusing on now, is anything but world’s best practice does not know what they are talking about. They do not understand it. For a senator to say that the OMC is somehow misleading and to have the Senate believe that the OMC is the only part of this regulation and to ignore all of the other legal requirements in both the law and the regulation is indeed to deliberately seek to mislead this chamber, because it is not the truth. I ask any senator who seeks to vote on this to do one thing: read the regulation that Labor is seeking to disallow and read the law. The law says that financial product issuers have to produce a product disclosure statement—a PDS—which must provide information in a clear, concise and effective manner on matters that might reasonably be expected to have a material influence on a retail client’s decision to acquire the product. Those are all very special words—words that we have derived through a dedication to corporate law reform within this government because of the massive failure of the law during the 1980s and parts of the 1990s because things like prospectuses and disclosures to consumers and potential investors were not clear and were not concise. They were huge documents that no retail investor would bother reading, and most of them did not—the comprehension testing showed that. So this government came up with the idea of creating a legal requirement to have clear and
concise and, most importantly, effective disclosure.

The act, the law of the land which came into force on 11 March, also specifies, quite clearly—and the regulation cannot take away from this requirement; the regulation we are talking about can only add to it—that a PDS must include but not be limited to information on: the issuer-seller contact details; the significant benefits and entitlements and provisions; significant risks; costs, amounts payable, direct and/or indirect; commissions and payments affecting returns; significant characteristics; rights, terms, conditions, obligations; dispute resolution mechanisms; significant tax implications, which will be something I know Senator Murphy would want to hear about; an applicable cooling off regime; access to further information; and any ethical investment considerations.

What does this regulation do to go further? It does not just include on OMC. It includes an OMC—a model that was put in place by Labor and it is a model that stands by itself. After all these months Senator Conroy came in here and said, ‘I’ve written to the parliamentary secretary and I’ve phoned him and I’ve been to estimates and asked questions.’ He never raised the questions about the hawking hours, which I have already addressed in good faith. I have made it quite clear to senators that I want to reflect community standards in the regulation about hours. I make a commitment here and now—which involves basically the process of gazetting a regulation; I have to get it out to Government House and go through the procedures and let the other attorneys-general have notice of it and so forth—get rid of the regulation that allows people to call on Sunday and I will immediately have a consultation, which should and will take only a couple of weeks to ensure that the regulation about the hours of contact reflects community standards. I have indicated to all senators who have been involved in these discussions, including Senator Conroy, I believe, that things like Anzac Day, Christmas Day and Easter are days that I do not believe the community would regard as reasonable to receive a phone call from someone selling a financial service. I think the regulations should reflect those community standards, and I commit the government to ensure that as soon as practicably possible the regulation does reflect that community standard and days like Christmas Day, Easter, Anzac Day and any other days will be prohibited. Sunday will be prohibited as soon as I can do it now without any further consultation. We have the message on that.

Labor seek to sweep this regulation away and offer no replacement, no alternative model. They have had months and months and have left the industry in uncertainty. The industry will not produce a product disclosure statement while the law is in a vacuum, and it has been in a vacuum since about May when Senator Conroy made a throwaway line at an estimates committee—which was the very first time we knew that he was talking about getting rid of a regulation. It was the first time he had talked about it. I said, ‘Senator, you can’t be serious; you are going to disallow the reg, are you?’ and he said, ‘We’re thinking about it.’ That was in May—three months ago. Talk about five minutes to midnight; I have never called it that—I have called it five minutes after midnight. Midnight was midnight on 11 March, Senator, and we are now here in September. The industry has been uncertain about what law it is going to have issue PDSs under since the day you raised and created that uncertainty.

I have worked very hard to find a way to get rid of that uncertainty to the extent of saying: if you want to have a review, let us have a sunset clause. But let us not negotiate about it or have so many months or have a Labor deal of splitting the difference on votes or whatever, let us consult with ASFA, IFSA and industry and find a sensible time line. I have always said to anyone who has asked that we will review this regime after a reasonable period. It is quite clear to me after consulting with both ASFA and IFSA that ASFA’s preference was for a very short sunset clause and to try to find some comprehension testing to find potentially a new model—but they did not know what the model might be—within six months. That was their first preference.
AFSA said that they did not want the uncertainty to continue through the transition period. They agree with IFSA that you have got to get a regulatory regime in place and allow people to get on with business, allow people to create financial products and attract investment. So, in a way, AFSA fully support IFSA. IFSA said, ‘No. If you are going to have a sunset period, it needs to be well after the transition because otherwise people will not issue products; they will not know what the law is.’ So even though AFSA and IFSA disagree on the dates, in a way, they had the same philosophy, which is that we have got to allow industry to get on with business.

After that consultation it has become quite clear to me that you have two choices. One choice would be for you to knock off the regulation today and go back and rely on the law. I make it quite clear to the Senate that to ensure that the industry has certainty, to ensure that consumers have certainty, the government will not introduce another regulation in relation to this throughout the transition period if this goes down today. It would be absurd to continue the uncertainty that Senator Conroy’s disallowance has created.

What I have agreed to do, through consultations and discussions with various Independent senators and the Democrats, is to have a review commencing on 1 March 2005. I will introduce a regulation to this effect in the first possible practical time frame—and I am happy to table a draft today—and the sunset clause applying to the regulation in relation to disclosure will apply at 30 September 2005. The government is committed to a review but it will allow the industry certainty to go forward to issue PDSs, to create new financial products, to allow Australians to invest—to invest in enterprises, to grow people’s wealth, to grow a better country and to give consumers better quality information.

So what does this regulation that we are talking about today do, over and above the law? It ensures that the details of contributions need to be disclosed. It requires that a statement of the method of calculation of any significant benefits to which a holder of the product will or may become entitled on acquiring the product be disclosed. In relation to death and/or disability insurance, it requires a statement about (a) whether the fund provides death insurance, disability insurance or both, (b) whether those benefits are compulsory or voluntary, (c) whether a person must give information about the person’s health before being eligible for insurance cover and (d) the time from which a person would be covered by the insurance and when the cover would cease.

It also requires that the details of the investor’s investment options and their risk profiles be disclosed or, if no choice of investment strategy is offered, the investment strategy of the fund and its risk profile be disclosed. It requires the disclosure of investment returns in recent years. It requires disclosure of the charges of the fund for any contribution charge, direct account charge, investment management charge, exit charge or switching charge of the fund. It requires a description of the charge, the amount of the charge expressed as a fixed amount or, if it is not practical to express the fixed amount, it requires that the amount be expressed as a percentage of the contributions. It also requires disclosure of the member’s benefits or the assets of the fund, the ongoing management charge and so on.

So on top of the law that says you have to disclose every charge, every cost, every commission and all of those other details that I have enumerated, the regulation requires further disclosure of that. Labor have said, ‘Chuck it out. We don’t want it. Let’s have a sunset clause for 12 or 18 months, or let’s split the difference.’ That is very clever and sensible policy on the run! It is a dilettante’s approach to very important policy that affects the lives of hundreds upon thousands of Australians for which decent law-abiding citizens—people who care about policy, people who care about building Australia—have put in thousands of hours of work. For a desperate grab for relevance in the area of economic policy, a senator comes in and says, ‘Let’s have a fight over this.’ It is a desperate grab for relevance at a time when they have become irrelevant. They cannot differentiate the product, so they say, ‘Let’s differentiate on this.’ What a performance!
No cohesive, coherent policy approach; no alternative policy.

You have got Senator Conroy saying, ‘Let’s apply the requirements of superannuation across to the managed investments schemes’, when in fact the law already applies to both, and Senator Sherry saying, ‘No, that is inappropriate; super should have special and different legal disclosure requirements.’ And Senator Sherry is quite right; Senator Conroy is wrong. There are significant differences in the policies and the products. It is like saying you should require the same disclosure statement for a standard passport bank account as should be provided for a managed investment.

I have made it quite clear that the government has always said we are happy to review this—we are always happy to see improvement. After the work and the effort that has gone into putting the FSRA into place—a history-making legislative achievement, which will massively improve consumer confidence in this country, and which I believe is one of the reasons why Australia has been able to withstand the corporate governance problems that have occurred on the other side of the Pacific—we have a regulatory regime that looks at all facets of the investment community and the FSRA puts in place a very effective regime at the cliff face. But we will allow it to be reviewed after reasonable time—and a reasonable time will be once we get to the end of the transition. We want to encourage people to transition; do not discourage them. Labor seeks to discourage people from transitioning to the new regime, Mr Acting Deputy President Bartlett, as you know better than most in this place.

We say we want people to transition smoothly and effectively. We want ASIC to license people effectively. We want to get it all done by 11 March 2004 and then set a review date to commence on 1 March 2005. This regulation will have a sunset clause that will take effect on 30 September that year. If, after the experience of the transition and one year’s operation, we do develop a better model and a better regulation, it will have effect on 1 October. That is a very sensible and diligent process—not one in which we argue about 12 months, 18 months or two years and let’s split the difference. It is a diligent, sensible and reasonable process. I commend it to the Senate.

Senator SHERRY (Tasmania) (6.00 p.m.)—I can agree with Senator Ian Campbell on one point that he made: the disallowance of the regulations that we are considering in this debate is of massive importance. It has massive implications in respect of the effective disclosure of financial products in this country. The particular aspect that I want to focus on is the disclosure of superannuation and the way in which fees and charges are laid out for the consumer when it comes to choosing a superannuation fund. This relates to the government’s proposal to introduce so-called choice of superannuation. I will come to that in a short while.

The parliamentary secretary has claimed that the regulations in the bill that has already passed the chamber are a pre-eminent piece of legislation renowned in London, Europe, Washington and parts of Asia. I do not know how he can claim that when the regulations to put into effect the legislation have not yet passed the chamber. I do not know how the legislation can be renowned throughout the places he claims when the regulations have not yet been implemented. We do not yet know, although we have some serious concerns, how the regulations will impact in their disclosure of financial products to consumers. He cannot yet make that claim. I do not criticise the length of time and the dedication of the public servants and the thousands of hours that they have put into consultation in respect of the legislation and the regulations that we are considering. I do not question their bona fides and I do not criticise them for the work and effort they have put in, but the simple fact is that from the Labor opposition’s point of view the outcome is less than satisfactory.

In respect of the superannuation areas that I have some responsibility for, let me explain why the outcome is less than satisfactory and why the outcome, as reflected in these regulations, if allowed to pass by the Senate, will significantly disadvantage some eight million superannuation consumers. We should not look at this legislation in isolation; we
should look at it in the context of legislation that the government is proposing and is currently being examined by the Senate Select Committee on Superannuation. The regulations we are considering, if passed, will form a vital element in the way in which superannuation products and their fees and charges are disclosed to some eight million Australians.

As most senators are aware, superannuation for employees in this country is compulsory. Some eight million Australians have superannuation contributions equivalent to nine per cent of their wages and salaries paid by their employers. Indeed, many employees contribute additional amounts to their superannuation. We know that approximately one-third of the self-employed are contributing to superannuation. Superannuation is interesting because it is a compulsory financial product. It is very different from other forms of insurance and from other financial products. It is compulsory. It also has significant tax concessions. The last time I looked, the general taxpayer was contributing between $9 billion and $10 billion in tax concessionality to superannuation. Compulsory superannuation is to underwrite and ensure a decent retirement income for Australians, particularly in the context of an ageing population, and it is a policy of which we are very proud and which was introduced by a Labor government.

The government has a proposal to implement what it calls the membership choice of a superannuation fund. I call it deregulation. At least the theory is that eight million Australians will be required individually to select a superannuation fund of which they intend to become members. This government argues that there are two essential preconditions for so-called choice of superannuation fund to be successful in this country: firstly, that you need effective disclosure; and, secondly, that you need an effective education campaign to educate the eight million Australian consumers who will be required to make a choice of superannuation fund.

Even if the disclosure were adequate—what we are considering is not adequate—whether or not the government’s so-called choice regime or deregulation of superannuation goes ahead, I am sceptical that full and meaningful disclosure, which we do not have in these regulations, and the education of eight million Australians will suffice to ensure that we have informed choice of superannuation fund membership in this country. I am sceptical. On behalf of the Labor Party I have put forward some alternative policies which I believe are necessary to fundamentally protect the eight million Australians and the superannuation that they have. Those policies include a range of proposals such as the banning of entry and exit fees, the separate charging of what are called commissions and the charging of commissions against the superannuation contribution, and the capping of fees and charges in the superannuation area.

We argue that it is good public policy to consider these sorts of options in an area which is extraordinarily complex and where a financial product is compulsory and substantial tax concessions are involved. If you go out into the community and ask anyone in the street whether they understand superannuation—and I often do this—unfortunately a significant number of them will come back with the response, ‘Super is just too complex; I don’t understand it.’ So if we were to proceed with the government’s so-called choice deregulation we would need to have what the Labor Party has put forward—a range of fundamental protections in respect of fees and charges—because we believe it is good public policy to protect against the erosion of superannuation retirement savings by excessive fees and charges.

At the very least you have to get your disclosure correct and you obviously have to get your education campaign correct. I am sceptical about any education campaign this government launches; I suspect it will be more of a propaganda campaign than an education campaign. I submit to the Senate: how do we successfully educate eight million Australians to the desired level of financial literacy, the level where they can make an informed choice? For a start, 15 per cent of Australians are functionally illiterate. How are we going to educate 15 per cent of the eight million Australians to make an informed choice when they cannot read, let alone understand,
the sorts of product disclosure documents that we are going to see as a result of the legislation and regulations we are considering?

I will hold up a copy of a typical key feature statement. This key feature statement has been released but superannuation disclosure will be in a similar format. What I know from the discussions I have had with industry is that eight million Australians will be required to read a document like this and understand it. The documents I have sighted have some 36 pages of extraordinarily comprehensive information in them as well as the disclosure of all the relevant fees and charges. So I do not doubt that everything will be disclosed, although the format of the disclosure, which is at the heart of the regulations in dispute here, is critical. I do not doubt that these documents will disclose everything but how many of the eight million Australians, when it comes to superannuation, will actually understand this document, understand the information provided and be able to make an informed choice? I challenge any senator to read this key feature statement or a document of this type—and the product disclosure document will be of a similar format—and comprehend it. This is what this government proposes to ask eight million Australians to do in relation to superannuation.

I will just deal with the disclosure of fees and charges in relation to the proposed regulations and the issues that eight million Australian consumers will have to understand, based on what the government is proposing in respect of superannuation. We do know that the product disclosure statement of the fund will disclose the ongoing management charge. That has been commonly known as an OMC for the last five years. The OMC would be expressed as a percentage of fund assets in addition to the total OMC. The OMC relating to the management of investments and the OMC not related to the management of expenses shall be disclosed in a similar manner. The total OMC shall also be expressed in dollars for a hypothetical account balance of $10,000. The OMC should be disclosed for each investment option. The OMC explicitly excludes—and this is really important when it comes to superannuation—contribution charges, death and disability insurance charges, exit charges and switching charges. The OMC should be accompanied by the following statement:

The level of costs incurred by an individual member will depend on individual circumstances as a percentage of value of the fund assets of the individual and may be more or less than the ongoing management charge. The ongoing management charge should not be taken to be representative of the actual fee and charges and expenses that will be borne by an individual. So the OMC, as required in the regulations, does not give an adequate explanation to the Australian consumer when it comes to superannuation, because it excludes contribution charges, death and disability insurance charges, exit charges and switching charges. When it comes to superannuation, disclosure and the way in which those excluded fees and charges are illustrated, it is absolutely critical for consumers at the very least to be able to understand the impact of those charges that are excluded from the OMC by these regulations.

This is where the main criticism of these regulations and their impact lies. This is the main criticism that has been made by the Association of Superannuation Funds and the Australian Consumers Association. They are not unimportant bodies when it comes to the issue of how Australians may be required to choose a superannuation fund of which they want to become a member. One of the leading research institutions in this area is an organisation called Rainmaker. Rainmaker is certainly one of the pre-eminent researchers in the area of the general fees and charges relating to financial products, particularly in relation to superannuation. Its criticisms broadly relate to the fact that the regulations fail to provide an accurate representation of the total fees a fund member will actually face, because of the exclusion of contribution and exit charges.

At this point, let me present to the Senate some real life case studies of people who have complained to me about the impact of exit fees and insurance fees that apply to their superannuation. These are real life examples that deregulation in this legislation
fails to deal with effectively. One case was brought to my attention on the John Laws show. It involved a Mrs Teague, who left her employer of many years. She was convinced to put her SG only superannuation, on which she had already paid fees and charges as it accumulated in her employer sponsored super fund, into a personal superannuation product offered by the same company. She was charged a five per cent entry fee, which amounted to $1,716. Mrs Teague did not understand the impact of the entry fee. The regulations we are considering do not provide for people like Mrs Teague to adequately understand the impact of an entry fee. I can tell you that there are plenty of entry and exit fees in superannuation products in this country.

Let me give an example of another exit fee on a superannuation product. This came before the Senate Select Committee on Superannuation. It is the case of a holder of a superannuation plan who, after 12 years, had built up savings of $65,500. He attempted to transfer his money to another fund and was told that $11,500—let me emphasise that: $11,500—some 18 per cent, would be deducted as an exit fee. This was not explained to him, certainly not in a way he could understand it, when he joined the fund.

There is the case of another investor facing an exit penalty of $4,000 on an account balance of $33,000 if he rolled it out of the superannuation product. Another case which was drawn to my attention is perhaps the most disturbing. In that case a person who had $3,324 in superannuation savings faced an exit fee of $3,300. If he had rolled his money out he would have ended up owing the provider $24. Let me give you another real life case of an insurance premium and this involves a current superannuation product. In this case, an employee of an IT company received $1,600 in superannuation contributions, deducted from which was an insurance premium of $1,300 leaving a balance of $250—the difference was tax—when he attempted to roll it out of the fund.

I give those examples to the Senate because they involve entry and exit fees and insurance premiums which, while they will be required to be disclosed, will not be disclosed in a way in which the consumer will understand their impact. Certainly the consumers who brought these issues to my attention did not understand and they will not be protected in terms of the regulations we are considering. What amazes me about this legislation and particularly about the regulations when they apply to superannuation is that there has not been any consumer product testing. If we were going to try to identify the way in which consumers would or would not understand the impact of the regulations we are considering, surely when it comes to superannuation, which is the area I have responsibility for, there would have been some product testing to determine whether the consumer could understand the fees and charges being laid out as a consequence of these regulations. That product testing has not occurred. I challenge members of the Senate to take these documents back to their electorates and product test them. I suspect most of the response will indicate that, from their product testing, consumers will not understand the true impact of the total fees and charges that would flow as a consequence of this legislation.

Rainmaker research, to which I referred earlier, has suggested a total expenses ratio. It is possible for a fee calculator to group all the fees together for a given fund option that apply to contributions and to the account balance, and to show their immediate and long-term impacts not just in terms of a percentage but also in terms of flat dollar fees. It is quite possible to do that and the regulations do not provide for that.

I was shown a consumer survey about the level of financial literacy in this country. What really shocked me was that 50 per cent of consumers in Australia do not know what 50 per cent is. Half of Australian consumers do not know what a percentage is. If we are considering product disclosure and regulations, we really have to make—

**Senator Ian Campbell**—They have heard a lot about 60-40 though.

**Senator SHERRY**—We really have to make a better attempt, Senator Campbell, than the attempt made in these regulations, not just because of the financial products that will be covered by these regulations if passed
but in terms of what may come in respect of superannuation disclosure if the government's choice of superannuation fund passes the Senate.

For the reasons I have outlined and because of my concerns in the particular area for which I have responsibility—superannuation—I believe that these regulations should not be approved by the Senate. We should send the hardworking parliamentary secretary and the hardworking advisers back to the industry because the industry is not united on these regulations. Let us not give the Senate the impression that the industry agrees unanimously on this; it does not. There is a significant split among the industry. However, I am here to represent consumers and to get the best deal for them. (Time expired)

Senator MURRAY (Western Australia) (6.20 p.m.)—I rise to speak on the disallowance motion moved by Senator Conroy. The Financial Services Reform Act 2001 was one of the more gutsy pieces of legislation produced by the Senate. I call it that because it was produced after the intense scrutiny and furore which surrounded the new tax system. Frankly, here was a government which had been burnt—and so had the Democrats, to some extent—by the downsides of some of the effects of the new tax system, BAS and so on, and it imposed a fairly costly and fairly rigorous disclosure regime on constituencies which mattered enormously to the coalition, to Labor and to us, so I describe it as 'gutsy' deliberately. Proper recognition should be given to the role that the Labor Party, and particularly Senator Conroy, played in the process of developing, progressing and passing that legislation. Senator Conroy worked very hard, very diligently and very effectively to ensure that the legislation came through in a form that was as good, as practical and as effective as possible. When I hear Senator Conroy and Senator Ian Campbell, the Parliamentary Secretary to the Treasurer, slagging each other off, I think that they do not give each other the credit that they should for the application that they have both shown in this area.

If we move on from that and take regard of what Senator Sherry has just said—and indeed Senator Campbell himself made the admission—we will also recognise that this is new legislation and that it has holes and flaws which will only be established and exposed over time; it is not perfect. In that regard, I think that Senator Conroy has done the Senate a great service by bringing this disallowance motion to the floor. What he has done is focus a light and some very specific and detailed attention on not only the issues at hand but the consequences of those issues not being addressed. A peculiar aspect of the debate from those two sides is a failure to recognise that in fact there is blazing agreement on a number of issues, and both Senator Campbell and Senator Conroy should take credit for that blazing agreement. Both sides agree that it is necessary to review the matters at hand and to resolve the issues over time. I am using the word 'both' but I join myself to these things. Both sides agree that there need to be probably some changes and some new regulations resulting from the practical exposition of these matters. The only real issue at hand, frankly, is the question of timing: when it should occur.

Both sides are quite happy to accept a sunset clause provision as a deadline mechanism to ensure that change comes through. If we step back a little from some of the aggression and some of the rhetoric and recognise how much agreement we have, we should be trying to search for a final step to resolve the issues in a manageable way. Parliamentary Secretary and Senator Conroy, I suggest that the first step in that approach would be to separate the motion before us into two parts and that items 1 and 2 be dealt with and voted on separately from item 3.

Starting with item 3, it seems to me that what Senator Conroy has done—and I must, for the record, acknowledge the input of Senator Murphy here as well—is say to Senator Campbell, 'Look, here's a problem.' To his credit, Senator Campbell has accepted that there is a problem, and he is going to change the regulations accordingly. So Senator Campbell has said, 'Yes, as early as possible,' given the formalities that he has to go through with the states and getting the thing drafted. With regard to regulations on the prescribed hours of calling when a financial institution offers to issue or sells a finan-
cial product on an unsolicited basis, Senator Campbell will improve the hours. He will ban such action on Sundays, and it is my understanding that he will ban it on public holidays such as Anzac Day. That is a terrific outcome. So I would simply say to both of you: well done. If that is the consequence, this entire debate has been well worth while. I can see no reason why item 3 should not be disposed of with a firm, public and sincere commitment from Senator Campbell on behalf of the government to introduce new regulations to have that effect.

We then move to the issue of the PDS regulations. What is in agreement there is that there should be a sunset clause and there should be a review period. All right, so we are in blazing agreement on that. The only disagreement is on the date. The difficulty for you, Senator Campbell, is that you actually make a very good case but your case is a little undercut by what I understand to be happening—namely, the transitional period is being disregarded by industry. In other words, industry regards the regulations and the law as applying right now. That means that it is not necessary to wait until 11 March 2004, when the transitional period notionally ends, before you commence a review. In fact, you could commence a review probably within six months of 11 March 2002, because I think things will be in train. That means to me that probably you could bring forward your review. You wanted to commence your review on 11 March 2005. I do not think that that is necessary. I would think that you could bring forward the date from which you would apply a sunset clause. That is all we are discussing now.

Senator Conroy has delivered a mechanism, and the government has recognised the need—and I personally am very appreciative of it—for a review and for a sunset clause, so we need to resolve the date. I would urge the two of you to find a way during the dinner break to resolve that. If I understood Senator Conroy correctly, he would prefer that the whole process ended in 2004. To me, that goes all the way up to 31 December 2004, so there is a fair bit of latitude there. As I understood Senator Campbell, he was not overly hung up on the particular time as long as industry had enough time to establish the practical operation of these matters. I think that what you have to do between you, since you have agreed on a review and a sunset clause, is work out the final time. To me, that is affected most of all by when businesses are enacting the regulations. As I understand it, they are doing it right now; therefore, the thing is in operation.

Sitting suspended from 6.30 p.m. to 7.30 p.m.

(Quorum formed)

Senator MURPHY (Tasmania) (7.33 p.m.)—In addressing the disallowance motion moved by Senator Conroy, I have had some discussion with the minister and I think the changes the government has made through the financial services reform legislation have been very good. They are changes that, in many instances, were long overdue. Like Senator Murray, I have no qualms in congratulating the government on that. But what we are dealing with here is a set of regulations that are necessary in some form—there is no question about that. Having some regulations is better than having no regulations. But if there are problems with the regulations, which there clearly are, then there should not be any reticence on the part of the government to step up to the mark and set down a process through which they can be reviewed and, if it is demonstrated that there is a need for change, then those changes can be made.

I think it is an insufficient argument on the part of the government to say, ‘We have a set of regulations. There is an implementation phase and that phase will be concluded by March 2004. We then want a period of time for the industry to settle into the regulations that they will find themselves operating under before we have any review and proceed to implement any change.’ The fundamental basis upon which that argument is based is the costs the industry might incur and/or the fact that if the industry has a feeling of uncertainty—which it should not have—it will not proceed to operate and put new products into the marketplace. I think that argument is flawed in the sense that the government would say, ‘We will never make any change regardless of whether the regulations we
have in place are satisfactory or whether they provide for the sort of disclosure that consumers require.' I do not think the industry thinks like that. At some point in time, if there is a change that is needed then I suspect that change could be implemented so as to minimise the cost to the industry per se.

I listened to Senator Sherry give some examples with respect to superannuation products. Some years ago I had a very similar personal experience with regard to entry and exit fees of a superannuation scheme, so I do understand fully what he was talking about, and it is a problem. I also raised with the parliamentary secretary, and officers from his office and the department, some of the problems that I see with the scope of coverage of these regulations. And I thank them for the briefing that they provided to me at very short notice. It was very helpful and useful.

But, insofar as dealing with this particular issue, I do not think I can accept the argument that is being put up by the government at this point in time as to why we cannot have a sunset clause that would allow for a review to be conducted in a reasonably short period of time after the conclusion of the implementation phase—that is, the review could even begin prior to the end of the implementation phase. It could certainly begin in, say, April 2004 and be concluded by September or October 2004. The parliamentary secretary has said, 'Our position is that we will have a review conducted during the course of 2005 and, if there are to be any changes, they will be made some time after March 2006.' I think that is correct, if I understand your position as put earlier. I know I should not be asking questions of the parliamentary secretary.

Senator Ian Campbell—The latest is 30 September 2005.

Senator MURPHY—But that is for the conclusion of the review.

Senator Ian Campbell—No, that is for the sunset clause—30 September 2005.

Senator MURPHY—It does not matter anyway. The fact remains that it does not matter when you put it in—if change is required, it will affect the industry. If you take the parliamentary secretary’s argument, there will be a cost. I would have thought that when you are talking about change, as is the case with any financial services reform, somebody has to bear a cost. But I think you could actually introduce the change such that you would minimise that cost and not impact significantly on products which already exist in the market. I think that can be done. I am sure the government would be able to come up with some proposals to do that.

I acknowledge that, with regard to the hours that relate to people being able to hawk things, the parliamentary secretary has given a commitment in respect of Sundays and some public holidays and has committed to a very short review to look at an industry standard for hours. With regard to public holidays, I would have thought it would have been pretty easy, frankly, to designate public holidays per se. I know that states and territories have different days for various other things, but if the Commonwealth legislation was to talk about ‘designated public holidays relevant to the state or territory’ then I would have thought that would cover it. I do not think you would have to specify the particular days. I might be wrong on that, but I would have thought you would not have to do it. That therefore adds greater clarity in terms of dealing with the hours that are allowed for the purposes of selling.

The parliamentary secretary raised this new cost of a licensing regime. Of course there is going to be cost with a licensing regime—and why shouldn’t there be? I have limited experience, but I have participated in a couple of inquiries. In one of the most recent ones, which related to managed investment schemes that are mass marketed, there were huge problems. It is a very good move to require licensing—as I said, it is long overdue—and the government is to be congratulated for it. If there is a cost, so what? There is often a cost associated with a whole range of changes at law, and I do not see any problem with the fact that people will have to bear some cost in that respect, because at the end of the day this is all about delivering a better outcome for consumers. With regard to the costs, those people who actually meet the standard and pay the costs really have a marketable tool in their hands. I suppose the
process is not just about protecting consumers but also about providing competency within the industry. You can look at any area of accreditation and see that there is a cost associated with it, no matter what business you are in. If you go through an accredited course then you will have some cost associated with it.

Yes, the new law does say certain things, but it is not necessarily always the case that the law cannot be gotten around. The laws before the Financial Services Reform Act came into being also said certain things, but there were many occasions when those laws were flouted and gotten around through loopholes et cetera. So I do not have a problem with suggesting that we ought to have an ongoing process of review, and I do not think the government does either. I just cannot quite see why the government has a hard and fast position with regard to when a review ought to be conducted and concluded and when you might move to suggest changes be made, if changes are seen to be necessary. I cannot see the soundness in that argument, particularly on the basis that there might be some cost to the industry that already has products in the market, because products will come into the market year in, year out. If you are going to make a unilateral change, of course there will be a cost to somebody, but I suspect that the department and the relevant officers could work out a program of change, as they have here, with a phase-in period, an implementation phase, that would have a minimal impact on the industry.

But what we should be about is ensuring that the consumers have the best protection and the best information available to them so that they are able to make the decisions they need to make. I listened with interest to what Senator Sherry was saying with regard to the documentation. I agree with him. You only have to pick up any prospectus from a prospectus based company endeavouring to mass-market an investment proposal. You would have to be Einstein to understand some of the things that they put in them. Indeed, even to read through one and find the relevant information that is supposed to be in there in accordance with the previous laws is very difficult. So I have no doubt that there will be people who will look at what is proposed under the new legislation and in the regulations for ways and means of getting around that.

I fully support any effort to bring greater clarity to these issues, because I think that is something that the parliament should do. It is our obligation to ensure that the people that are seeking to invest have the best means available to them to make their decisions and have the best protection available to them. So I would urge the parliamentary secretary to seriously consider, on behalf of the government, what is being put on the table here. This is not opposition to regulations. This is just an argument about a process of review and when you would then proceed to enact that review if changes were to be recommended out of a review of the process. I think that makes total commonsense. I do not accept the arguments that you are putting in respect of the industry and the costs that they might have to bear, because I think they can also be dealt with through a means of implementation. I would urge Senator Campbell to seriously consider that, because we can actually get these regulations implemented. It is important that we have some regulation. If we end up with no regulation there will be sectors of the industry that will seek to exploit that. There is no question about that, and that would be bad for consumers. If only there were a really strong soundly based argument as to why you would not proceed to have a review in the format that has been discussed privately and an implementation program in the form that has been discussed privately. I really do question just how seriously the government wants to push this issue.

Senator CONROY (Victoria) (7.46 p.m.)—I thank Senator Murphy for that contribution to the debate on my disallowance motion. I think he made a number of very valid points, particularly his last one. Unfortunately I do not share your faith in the government’s or the industry’s bona fides on this, Senator Murphy. I hope to be proved wrong; I hope that we can still reach an agreement with the government on this.

I think it is important to go through some more of the issues on this. Recently IFSA
commissioned some work on the level of fees and charges, particularly those for managed investments in this country. At the time they also said they were going to commission an international comparison, because they wanted to show that, following the introduction of the Managed Investments Act, there had been a fall in fees and charges both here and, comparatively, across the world. When they tendered their evidence to the Senate inquiry in this area, in actual fact they supplied the Australian data, which showed a small fall following the introduction of the Managed Investments Act—and Senator Ian Campbell played an important part in introducing that act. One of the reasons why we all supported MIA was that that had been held out to us.

Interestingly, despite promising to deliver an international comparison, it may come as a surprise to you that IFSA did not supply any information. When IFSA were questioned about this, they said, ‘Look, it’s very hard to organise this and to compare apples with apples. It’s a tricky area. It’s very complex and very complicated.’ They could do it for Australian products, funnily enough, but when trying to look at products issued in the US and products issued here in Australia they suddenly lost all their expertise. That is interesting because they did not have to go too far to get some evidence and some expertise on the US figures, because the SEC, the premier regulator in the United States, had recently done some work on the level of fees for managed investments in the US. Despite the efforts to pretend that you could not compare the US figures with the Australian figures, in actual fact you could: they were very comparable figures. In actual fact what IFSA’s Australian figures and the United States regulator’s figures and calculations showed was that for virtually identical products with the same features—the same apples with apples, the same pears with pears, the same oranges with oranges—Australians were paying twice the level of fees compared to US consumers. You have to ask yourself: why is that? Why is it that Australians have to pay twice as much as an American consumer for a managed investment? Why does an American consumer pay half? That is the valid question. You have to say that at the end of the day it is because we do not have enough information for Australian consumers.

The bill is well intentioned, and Senator Murray and you have argued that this was designed to protect consumers. I never lose sight of the fact that this bill was initiated with the purpose of being beneficial to consumers. We are seeing here an attempt by the industry to run away from disclosing to Australian investors the true level of fees they are being charged. That is what this debate is about. Senator Sherry spoke for 20 minutes and outlined case after case under the OMC regime, which is what we have now—the so-called international best practice championed by those on the other side of the chamber. These atrocities, these outrages, these rip-offs are taking place under the regime that Senator Campbell wants to put into legislation. They are happening now. This legislation will not change that. Senator Campbell wants to see some cover for IFSA, the fund managers and the people who own them now—the banks—and we are seeing here an attempt to give some protection, via a dodgy OMC, to the big end of town to protect it against those battling consumers. When those consumers that Senator Sherry is talking about try to seek redress in a court—if we agree to this regulation today—the big institutions will be able to stand up in court and say, ‘But we haven’t done anything wrong.’ The act in the opening statements says:

The main object of this Chapter—that is, chapter 7—is to promote:

(a) confident and informed decision making by consumers of financial products and services while facilitating efficiency, flexibility and innovation in the provision of those products and services; and

(b) fairness, honesty and professionalism by those who provide financial services; and

(c) fair, orderly and transparent markets ...

The OMC meets none of these. The OMC is something put in place to protect financial institutions against consumers. They will be able to stand up in court, wave it and say, ‘The government said that we could do this.’ That is what is at stake here. What is at stake
is whether or not consumers are going to continue to be ripped off, overcharged and misled about the fees they are charged by this government’s complicity. That is why the Labor Party is fighting so hard on this. That is why the Australian Consumers Association is saying, ‘This is not good enough.’ That is why ASFA have said, ‘We have actually gone and tested this. This is something the Treasury did not do, something the government did not do. We have actually tested this and it is a disaster. People are confused, they are worse off and we would rather see the status quo continue than put this in place.’

I go back to the offer that was made by Senator Campbell in his letter to me when he said that he was happy to progress the suggestion of a sunset clause and had asked the CEOs of ASFA and IFSA to suggest a reasonable timetable for testing of the existing provisions and formulating any improved position. He said:

I believe that a sunset date of no earlier than 11 March 2004 would be reasonable but I will be guided by key stakeholders including investors and shareholders.

So he has gone away and he has consulted and, as Senator Sherry has made the point and Senator Murray and Senator Murphy acknowledge, there was a division. ASFA would have preferred six months to 12 months and they have written to everybody outlining their position: having an implementation phase and outlining the way to handle the transition and the costs that Senator Murphy has talked about. There is a way to handle all of that. But Senator Campbell has fallen into line with the other industry body. He is saying that he wants to give life to the IFSA position; namely, those with the single strongest vested interest, owned by banks now, who want to continue to mislead their customers about how much they are being charged.

At the end of the day is it so much to ask, from one of the richest industries in the world, that they tell the truth to their customers about what they are being charged? Is it so much to ask? Is it so much to ask why Australians are paying twice what Americans pay for virtually identical products? It is not so much to ask, but this is an industry that is going to resist this every single step of the way. It is the same as accountants resisting change to their auditing practices. As Senator Murray and Senator Bartlett would know, it is the same as this government and this very same parliamentary secretary, who resisted disclosure of executive remuneration—they wanted another review, another postponement of the inevitable. Four years down the track they are clutching to their bosom the fact that those changes were made to the Corporations Law, changes that were moved by the Labor Party and the Democrats. Now they want to claim them as their own.

Senator Ian Campbell—It was Senator Chapman actually.

Senator CONROY—Senator Campbell, I can actually give you the page of Hansard where Senator Cook, on behalf of the Labor Party, moved the changes and they were supported by Senator Murray. I do not know what you think I am talking about, but when it comes to executive remuneration you were on the Hansard record opposing it and then accepting it as inevitable because the numbers in the chamber were going to make that disclosure and transparency happen. Four years down the track after resisting disclosure and transparency, this government now wraps itself in the very amendments that it rejected and resisted. Down the track that will be the same again, because you cannot beat transparency and disclosure. It is what makes a market function, Senator Campbell. It is the basis of the capitalist society and, as Maurice Newman, Chairman of the Australian Stock Exchange—and someone who is known to you and me—often says, ‘Sunlight is the best disinfectant.’ I say, ‘Hear, hear,’ to Maurice Newman. What we want to see in this industry is a bit more sunlight for consumers. We want them to stop losing thousands and thousands of dollars they do not know they are losing. We want them to know that their final benefits at the beginning of their retirement have not been significantly reduced.

To allow the richest industry in this country to continue to deceive and mislead their customers should not be allowed by this Senate. There are some I know who have
been frightened by the statements by the industry and frightened by some of Senator Campbell’s commentary that if you knock this regulation out things will be worse. All of the atrocities, all of the rip-offs that are taking place now are taking place under this regime. The OMC is something Senator Campbell continues to say—and I am still scratching my head about this—was introduced by the Labor Party. I am fascinated by how the Labor Party has introduced this. It is in no piece of regulation and we do not control both chambers, so I do not know how the Labor Party introduced the OMC at any stage—eight years, I think you said, that it has been around. It has been industry best practice for eight years, and all of the consumers who have been ripped off have been ripped off under this industry best practice for the last eight years.

Do not fall for the scare campaign that there is going to somehow be nothing more. You will be sanctioning big companies to be able to go into court, hold up the Corporations Law and the regulations and say, ‘But the government said we could mislead these consumers. The government said that, as long as we put the OMC in place, it was okay.’ The fact is consumers cannot understand it—and I invite Senator Harradine, Senator Harris and Senator Bartlett to have a look at the OMC and try to understand it. The OMC misleads consumers about what they are paying. It is dangerous and more costly than it should be if we do not make this government and this industry come to the table and do something right by their customers.

Do not be fooled by a scare campaign. All the rip-offs that have taken place are happening now under this very regime, and they just want to give the government a bit of practice. How on earth can the OMC pass a fairness and honesty test; a fairness, orderliness and transparency test. The OMC will protect the business community and the financial service providers, and this government wants us to vote to let them do it. I say let us not. Let us try to find a compromise, Senator Campbell. The Labor Party is still willing to work with you on a compromise on this. We do not trust industry self-regulation on this one, I am afraid. The industry are the ones that are resisting this. We believe we need strong regulation. All we are doing is mandating disclosure. We are not mandating any other behaviour. We are trying to mandate disclosure. What is at stake today is whether or not we can get disclosure.

Senator Ian Campbell—You are trying to knock it out; you are not trying to fix it. Where is your replacement?

Senator CONROY—Unfortunately, Senator Campbell, as you well know, the agreement with this bill was for the legislation to come first and the regulations to come six months later. The trick with regulations is of course that we do not have the capacity to amend on the floor. We can only reject or accept. A government acting in good faith would have sat down with us when it first received my February letter, not wait until a few weeks ago to seriously engage. It is very hard to take you in good faith when you will not talk to us.

Senator Ian Campbell—Where is your alternative?

Senator CONROY—We do not seek to impose an alternative, unlike you, Senator Campbell.

Senator McGauran interjecting—

Senator CONROY—That is right, Senator McGauran. We are not seeking to say that we know better than the collective interests of all the industry and consumer groups. We are not actually doing what Treasury has done—put something down and say, ‘That is it; that is the final outcome.’ We are actually saying let us work together to improve what is there. I am not being critical of Treasury. There was an impressively tight deadline imposed for the implementation phase and Treasury worked as hard as it could to get a regulation in place so it was ready by the implementation date. That is the truth of what happened here. We should not suddenly say that the OMC is some sort of sacred tablet. What happened here was that the Treasury got jammed. It had a start-up date of 11 March. There was an election. It desperately needed to put something down. It was not trying to pretend it was the world’s best
piece of disclosure—it was a starting point. It was a challenge to the parliament to say, ‘Here is the best we can do in a very short time.’

Senator Ian Campbell—You are having delusions.

Senator CONROY—Tragically, Senator Campbell, I know your involvement because you were banished by the Prime Minister once before. I know you go to bed each night thinking only 284 days to go until the Prime Minister’s 64th birthday, thank God. I know you go to sleep each night saying that. Minister Hockey put the time line down—I am not blaming you for the time line. But it is because it was rushed that the obligation is on the parliament to try to rectify any deficiencies—and deficiencies have been identified.

Senator Ian Campbell—Five years is not a rush.

Senator CONROY—Five years is certainly not a rush, and that is what you are trying to do. You are trying to make sure customers are ripped off for another five years. You are trying to ensure that customers are not able to find the truth about how much they are paying for another four to five years. I repeat to you, Senator Campbell, the Labor Party is prepared to work with you. We do not believe that you have offered so far in terms of the hours goes far enough, and I know Senator Harris shares some of my concerns. I share Senator Murphy’s concerns that we know it is possible for you to just designate the public holidays as well. Senator Harris would like to see the hours narrowed, and I am very sympathetic to Senator Harris’s position. We are prepared to withdraw part 3 on the understandings and commitments you have given on the floor of the chamber.

We are also prepared to accept your proposition, which you were going away to investigate, of a review beginning on 11 March 2004 for six months. Many products will be out by then—you know that to be the case. Many products will be rolled out. Are you suggesting there will be no new products for the next two years? We are prepared to accept that.

Senator Ian Campbell—I did not offer that. You know that.

Senator CONROY—You wrote to me. You said that you believed that a sunset date no earlier than 11 March would be reasonable. I am offering you a sunset after that. I am saying that the review starts in March 2004 with the sunset a little bit further down the track, and I am offering six months—even nine months if you want to drag it out until the end of the year. But the sunset clause needs to come in to help drive the change. We are prepared to offer that: a sunset clause on 31 December 2004. Labor is prepared to do that against its will, can I say. We do not believe that this is an optimal outcome for consumers but, as a gesture to try and resolve this issue tonight to the satisfaction of everybody, we are prepared to offer that. (Time expired)

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.06 p.m.)—I seek leave to incorporate Senator Watson’s speech in relation to the financial services reform disallowance motion. Leave granted.

The speech read as follows—

FSR Regulations .... don’t throw out the baby with the bathwater.

An issue that is doing the rounds of the Senate corridors concerns the disallowance of the FSR regulations. This issue is a vital one for Australian consumers of superannuation products—do we throw out these regulations, which represent some of the fruits of the 5 years’ labour we put in on FSR/CLERP 6, or do we give the regime a fair go and see how well it works over the coming years?

FSRA was a bold initiative, intended to result in a financial services regulatory regime which could adapt, seamlessly and quickly, to a fast changing financial services environment. In replacing all the clunky old regulatory ‘silos’ that grew up, uncoordinated, around the product and institutional boundaries of old, FSRA represents a significant step forward and is the result of much productive compromise—a willingness on the part of many to give up long held positions and comfortable practices.

As always, though, there is a fly in the ointment—someone who says, after the event, ‘... I
don’t like it—it’s not fair—I wanted something different but forgot to tell anyone about it at the time... etc

Well, it’s not good enough—we must have these regulations because they are the ‘icing on the superannuation disclosure cake’, the last piece of the FSR jigsaw, designed to maximise the degree of comparability facilitated by FSR, subject to the dictates of what is commercially and practically reasonable in a market economy where consumers exercise sovereignty.

The range and choice of superannuation products and services available to consumers in this country, today, is second to none.

This diversity of choice reflects the character of Australian society today
—a society which is diverse in terms of age, individual employment patterns and preferences, cultural background and family circumstances
—a society which can only be properly served by by-product offerings catering to this diversity
—needing a disclosure regime for financial products which drives the provision of quality information to consumers, to enable them to evaluate, to compare and to choose
—but does not discourage innovation in communication by prescribing a ‘one size fits all’ methodology for such disclosure.

The present FSR Regulations recognise the special nature of superannuation, providing minimum disclosure obligations and a sound basis for product comparability. This is particularly so in relation to disclosure of fees and charges, which must be described in full in the PDS. In addition, the requirements with regard to commission disclosure in the Statement of Advice (SoA) and ongoing reporting requirements for superannuation leave no room for consumers to be left in the dark.

What is wrong with these regulations? Who opposes them? Very little is wrong with them and, as far as I’m aware, there is no support for disallowance from any sector of the super industry—I challenge honourable Senators to cite the support he has for this move.

What criticism there is seems to be directed mainly at the OMC itself.

Such criticism is, in my view, totally misconceived. The FSRA OMC is, as it should be in today’s fast globalising world, closely aligned with international best practice for the disclosure of ongoing charges for members of superannuation schemes—including as it does, all those costs which can reasonably and practically be included in such a calculation. In particular, super contributors will, under this regime, have access to the same OMC information with respect to ALL funds, not just those that choose to reveal their investment management costs.

Any OMC which fails to mandate disclosure of underlying investment management charges, however, would certainly be a fraud in terms of providing consumer with the information they need.

The OMC has been criticized on the basis that it is expressed as a percentage based formula. Such criticism overlooks the fact that it must, initially, always be expressed in such terms. Investment management fees are universally levied on a percentage basis, so that must always be the starting point for disclosing underlying investment management charges.

In prescribing that OMC’s be illustrated by reference to an account balance of $10,000, the FSR Regulations require that all funds provide examples that can be easily compared by consumers.

This particular innovation is in the regulations at the specific request of Senator Conroy—one of his better ideas, recognised as such by the Government and enshrined in the regime.

In short, therefore, the FSR OMC represents a significant advance on the former SIS version, which did not require disclosure of all underlying investment management costs. The $10,000 example, provided for comparative purposes, improves the old model still further.

**Entry Fees**

The OMC does not, and cannot, include entry fees for the simple reason that such fees are not ‘ongoing’ fees that are charged to a fund. Entry fees are not levied on funds or individual account balances but, rather, on individual contributions or withdrawals. In addition, entry fees are not always known in advance, for they are often rebated by intermediaries to their clients.

The fact that such fees are not included with ongoing charges in a single number does not imply that they can be hidden from consumers. FSRA (Regulation 7.9.11, Schedule 10B) specifically requires disclosure of entry and exit fees in a superannuation PDS, in the following words:

“For any contribution charge, direct account charge, investment management charge, exit charge or switching, charge of the fund, a description of:

(a) the charge; and
(b) the amount of the charge

(i) expressed as a fixed amount; or
(ii) if it is not practicable to express a fixed amount, expressed as a percentage of:
(A) the contributions made in respect of a member; or
(B) the product holder’s benefit in the fund; or
(C) the assets of the fund; and against what, or to whom, the amount or percentage will be charged.”

For those who maintain that the super disclosure regulations do not provide adequately for the disclosure of entry fees, I hope you were reading my lips—this is pretty unequivocal stuff, leaving no doubt as to the fact that issuers must disclose these charges in the most effective manner that is practicable for any given super product.

For those who complain that the regulations do not provide a standard format for all super disclosure, I suggest to you that it is neither reasonable nor practical to impose a single format in a market that offers such a wide range of products, services and distribution methods.

This may have been possible once upon a time, when virtually all superannuation was provided on the basis of simple, one or two investment strategy funds, all structured in the same way and all operating on the basis of monopoly style access to captive contributors.

In a world of ‘standard’ product, it might have been appropriate to mandate ‘standard presentation of information’; but the Australian market for superannuation products has long since outgrown susceptibility to such ‘one size fits all’ solutions.

The Government has, rightly, stuck by its guns on the issue of these regulations—to do otherwise would be to betray those product issuers who, in good faith, embraced FSR and issued PDSs—not to mention those whose plans to do so will be thrown into chaos if these regulations are defeated.

I strongly recommend that the Senate vote in support of the FSR disclosure regulations when that vote is taken.

The ACTING DEPUTY PRESIDENT (Senator McLucas)—Senator Conroy, I believe you wish to amend your motion.

Senator CONROY (Victoria) (8.07 p.m.)—by leave—I move:
That the motion be amended to omit paragraph (3).

Question agreed to.

Question put:
That the motion (Senator Conroy’s), as amended, be agreed to.
ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT REGULATIONS 2001 (No. 3)

Motion for Disallowance

Senator BARTLETT (Queensland) (8.16 p.m.)—as amended, by leave—I move the motion as amended:


The disallowance motion has been on the Notice Paper for a full 15 sitting days of the Senate, and indeed the regulations themselves were originally gazetted back in December last year and have been in operation since 11 January this year. They have been in place and in operation for a long period of time—about eight months. The Democrats signalled their concerns with a range of aspects of the regulations to the government back in the first half of the year and had this as a protective disallowance for the full 15 sitting days, seeking to get some form of recognition from the Minister for the Environment and Heritage, Dr Kemp, about the various concerns we had with the regulations. Similarly, we sought to engender support from the opposition in relation to our concerns.

A very detailed range of concerns were put forward by a number of environment groups with a special interest in the trade in Australia’s native wildlife. The legislation that these regulations attach to, particularly the Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act that was passed last year, was a significant advance in providing mechanisms for the better protection of Australia’s native wildlife with regard to trade. It is a great disappointment to the Democrats that the regulations that have been put forward consequential to that act being passed are so deficient. They do not, in a sense, weaken or negate what is in the act but it really is a missed opportunity to enable the provisions that are in the act to be enforced effectively in a number of cases.

I have amended the disallowance motion so it applies only to one regulation rather than to the entire package of regulations as tabled. This certainly does not represent the full scope of the concerns that the Democrats have regarding these regulations but it does represent our judgment of what can be disallowed without causing harm to the native species that the act and these regulations are supposed to protect. It is a bit similar to the debate that we have just had—a new act is passed, regulations that will provide strong mechanisms for enforcing that act are promised down the track but those commitments are not met. If we disallow the whole lot we are left with nothing. The regulations are a fresh bunch of regulations; they are not replacing or weakening existing ones. The dilemma there is that if you negate the whole package of regulations you are left with no regulations at all. That does not negate the fact that the regulations taken as a whole are not adequate, but being left with no regulations at all would also not be adequate. I have amended the motion to specifically target one area. The Democrats believe that we would be better off with no regulation than with those that are in place in that area. I will get to the detail of that shortly.

The regulations as a whole do not live up to the commitments made by the then environment minister, Senator Hill, before the last election when the original wildlife act was introduced and passed through this place. Senators may recall that again, in another less than ideal legislative process of the government, the government brought on the bill and then required it to be debated very quickly. The Democrats were successful in getting a very large number of amendments through this chamber but when the legislation went down to the House of Representatives a number of those were knocked back by the government even though the government accepted them originally in the Senate, and we had to make do with a less perfect act than we would have had if all the Democrat
amendments had been accepted. Nonetheless, there were still some significant amendments left in that did provide an enhanced state for the protection of wildlife under the new EPBC Act.

The regulations nonetheless do not live up to the standard of impact assessment that the Environment Protection and Biodiversity Conservation Act requires of all other activities. In fact, because of these regulations wildlife trade can be assessed through a permitting process which will be neither as rigorous or accountable as an assessment process—it will be less transparent and less rigorous. The government can rely on codes of practice to set out the standards for wildlife practices, while at the same time those codes of practice are often neither mandatory nor enforceable. There is no public process or consultation in developing codes of practice but they are at the heart of many of the trade provisions, most notably in relation to those applying to the killing of kangaroos.

The regulations do not live up to the standards of accountability that currently operate in the rest of the Environment Protection and Biodiversity Conservation Act. The register of applications and decisions does not include basic information, such as the source and origin of the relevant native specimens. It provides far fewer opportunities for public input and comment. The processes for approved commercial import programs under the regulations are not as open and accountable as they are under the EPBC Act more broadly. The same is true for captive breeding programs and conservation programs under the regulations.

Part of the reason for the amendments that were made last year to bring the wildlife act under the ambit of the EPBC was so that a single standardised system of assessment and accountability would apply. That is beneficial not just for environment protection but for those businesses or citizens who engage in, in whatever way, any obligations under that act to have a standard set of assessment and accountability processes. As a result of these regulations, however, that will not be the case. There will be a separate and weaker set of standards for many aspects of wildlife trade. Finally, these regulations do not live up to any best practice standards for humane treatment of native animals. We have an unfortunate situation where native animals and those animals used in trade are, once again, being assessed as a commodity rather than as sentient species. The welfare provisions set out in these regulations are vague, cursory and very difficult to enforce. They do not provide the degree of detail and certainty that must accompany welfare provisions if they are to be enforceable. The regulations do not ensure that the minister receives the best advice from the best experts. A Democrat proposal to create an animal welfare advisory committee put to the Senate when the act was originally put forward was eventually rejected by the government.

I will provide some examples. One of the provisions relating to persons receiving native animals is that they be suitably equipped to manage, confine and care for the animal, including meeting the behavioural and biological needs of the animal. It does not specify what the word ‘equipped’ means—whether it applies to the actual conduct of the persons receiving the animal or whether it applies to the capacity to care for the animal. It does not require the person to be adequately trained and experienced in their activity and it only addresses the capacity of the receiving person. It should also address the actual activities that the receiving person engages in.

Similarly, there is a requirement that animals be prepared and transported in a way that is known to result in minimal stress on the animal. This is an area where there is often a lack of scientific knowledge and, if nothing or little is known of what the animal’s response to stress is, what standard is there to enforce in such circumstances? Let us not forget that in many of these cases, obviously, there are circumstances where there is recognised substantial trade in native wildlife—and the kangaroo, again, is a key example. But there are also one-off provisions with animals or species for specific purposes that can be granted under the provisions of the act with far less knowledge or, quite possibly, with no codes of practice at all in relation to that particular species.
The provisions relating to research are extremely poor, especially considering the history of some research institutions with totally unnecessary experimentation that causes pain and suffering to thousands of animals. Section 9A.09 of the regulations only requires that research be conducted by a person or institution that has sufficient resources and qualifications. There is no requirement that they are actually suitably equipped or that they have a code of practice relating to animal welfare, or that the researcher has an appropriate history or that the ethics committee of the institution does more than rubber-stamp applications. Even a general provision that said research should not be cruel unnecessarily would be an improvement.

Some of the regulations contained overall here are positive and the Democrats are supportive of some of those provisions; we do not want to give the impression that it is completely negative. The provisions relating to captive breeding programs under 9A.16 and 9A.17—artificial propagation programs and provisions relating to citations—are positive. But in a general sense they do not live up to promise of the act and the promises made by Senator Hill, as minister when the act was tabled and passed through this place. In general, they do not live up to the act itself, which is one of the strongest wildlife trade acts in the world. The government would deserve credit for that if they were not undermining it with these inadequate regulations. Senator Hill said that a transparent and user-friendly system was to be established, but many of the transparency provisions that are in the EPBC Act more generally do not apply to this part of the EPBC because of these flawed regulations. The government also said that they would ensure that any use of our native species is ecologically sustainable. However, there is no provision for an impact assessment of any proposed native species trade. Even with existing trade there is a reliance on codes of practice that are neither mandatory nor necessarily as rigorous or as thorough as they should be.

I will give an example in one of the best known areas of wildlife trade—the kangaroo slaughter industry. The recent RSPCA report on kangaroo hunting came out a week or two ago. It pointed to a major failing of the kangaroo-killing code of practice, which stated that there was a substantial slaughter of kangaroos occurring for non-commercial purposes and frequently in the most inhumane fashion imaginable. How can the government guarantee that the kangaroo industry is sustainable when totally unregulated practices that would affect any sustainability assessment is going on all around them? Let us not forget that the numbers of kangaroos that are being slaughtered, even under the legal quota, is enormous and yet this RSPCA report found a huge amount of killing in very cruel fashion occurring outside the commercial regulatory framework. In 2001 the government said:

Inclusion in the EPBC Act framework means the wildlife trade provisions are more effectively integrated with formal environmental impact assessment processes ... reflecting best environmental practice, incorporate strict timeframes to ensure efficient consideration by Government.

Again, come the regulation, that turns out not to be the case. In fact, permits can be assessed without the triggering and public input mechanisms that characterise the rest of the EPBC.

All these comments relate to provisions that we are not seeking to disallow, for the reasons that I outlined earlier—as I said, to do so would be likely to harm the native wildlife more than the government. The one section that I am moving to disallow is section 9A.20 relating to wildlife trade operations and management plans. This section
sets out the criteria for ascertaining whether a practice is a wildlife trade operation. If it is not a wildlife trade operation it cannot be approved under the act as such. It sets out provisions for wildlife trade operations that are being market tested—not a full-blown commercial enterprise but an attempt to measure the viability of the market. That may be fair enough to some extent, but good commercial practice could be that if you are going to allow trade in wildlife you want to test the viability first rather than open up a potentially damaging trade that may not even be viable.

However, the provisions in the regulations do not set any limits on such market testing. There are no limits on how long a market test can proceed, no limit on the number of times you can market test the same species in the same market, no limit on the number of times you can renew such an operation, and no requirement to ascertain the impacts that commercialising that particular trade might have in terms of the sustainability or conservation status of the animal. The standard is that it is reasonably likely that the market could be supplied without affecting the conservation status of the taxon. ‘Reasonably likely’ is not an adequate criterion; it falls way short of the precautionary principle which this government has said is part of the act. It is part of the objects of the act, yet the regulation sets a limit of only needing to be assured that it is reasonably likely that the conservation status of the species would not be affected.

Market testing operations should have specific time frames in which to assess a market, and once the test is completed proponents should either apply for a commercial operation or let the idea lapse. They should be prevented from trying to resurrect the tests through other names or modified terms, because the concern—it is a reality that we have seen occur already with aquaculture ventures, for instance—is that the test becomes a de facto commercial operation without proper assessments. We have seen similar problems elsewhere in the relevant regulation we are seeking to disallow, relating to developmental operations. It outlines the nature of small operations for the purposes of wildlife trade and sets out criteria that cannot be justified for defining a small-scale operation. The section sets out the circumstances that will constitute small-scale operations: the harvest area is small, the number of participants is small or the number of specimens is small. As worded, the section appears not to recognise the possibility that a species may be in a limited range in limited numbers in a limited ecosystem.

We also have a situation where the regulations allow a small-scale operation to be declared a wildlife trade operation on the basis of criteria that are insufficient under the act for approval of that operation. These regulations allow a low-impact standard, whereas the act sets out a more stringent standard of ‘not detrimental’—again, a pretty clear distinction. In other words, a trader could have a trade operation recognised under the regulations whilst the standards under the act would prevent approval of that operation. It creates a level of uncertainty, which is not good for the potential commercial operator and it is not good for the potential wellbeing of the relevant species.

The Democrats have sought legal advice on many of these provisions and we have no doubt that they are neither strong enough nor specific enough to be enforceable. That, I think, is due to poor drafting or poor assessment by the government that again undermines some of the strength in the parent act. The government has made it clear, despite our continued attempts to negotiate some improvements, that it is not interested in improving the regulations or in enhancing the provisions in relation to animal welfare or cruelty or the manner in which a native wildlife trade may have an impact on the environmental wellbeing of particular species. The government’s claim that these regulations are best practice does not hold water. We are disappointed that the government appears to have failed to look at ways to make them best practice. We certainly hope that the ALP will support the Democrats’ very limited but important attempt to ensure some improvement in the situation.

The animal welfare provisions in the overall act were weak but they had an opportunity to be strengthened by these regula-
tions. The impact of trade in native wildlife in terms of animal welfare issues is not adequately recognised. The live animal trade in many areas is unnecessarily cruel. We have heard again from the RSPCA about the cruel aspects of the kangaroo slaughter; the illegal trade in exotic birds; the appalling puppy farms that occur in Australia, in which dogs are bred like caged chickens; the export of dogs to countries that convert dogs into food and fur; and the massive slaughter of unwanted greyhounds in furtherance of a nationwide gambling addiction. There are plenty of areas where animal welfare provisions are shown to be inadequate. This act could have provided an opportunity to enhance that. It is most unfortunate that the government has missed that opportunity. The Democrats hope that, with regard to this provision that we are seeking to disallow, the Senate will support our move and provide a mechanism for increased protection at least in relation to wildlife management plans under trade operations.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.36 p.m.)—I will say at the outset, and I will keep my remarks brief, that disallowance of any of the regulations would have a significant detrimental effect on the integrity of Australia’s wildlife protection regime and on important domestic industry sectors. All of the regulations currently in place are necessary for the effective operation of Australia’s wildlife trade regime. It would be counterproductive to disallow any of the regulations and would compromise the operation of wildlife trade controls. From the government’s perspective it would be preferable to leave the existing regulations in place until there has been sufficient time to determine whether any deficiencies are evident.

I understand there have been a number of discussions between the government, the Democrats and key NGO stakeholders in relation to these regulations. Those discussions have resulted in a far better understanding of concerns on both sides and have set a positive foundation for future engagement. While unfortunately those discussions have been unable to resolve the specific issue, I note for the record that Environment Australia is continuing to engage with NGOs on the implementation of the regime contained in these regulations. Suffice to say, the government will be voting against this motion of disallowance.

Question negatived.

Senator Brown—I would like to record my vote in favour of the motion.

BUSINESS Rearrangement

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.39 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day No. 4, the Proceeds of Crime Bill 2002 and a related bill.

Senator BROWN (Tasmania) (8.39 p.m.)—An explanation is warranted on this matter. That is the first I have heard that we need a change to the legislation as listed. We have not yet finished the debate on the Commonwealth Electoral Amendment Bill (No. 1) 2002 or indeed the committee stage on the electoral bill. If we are to change the order of government business at this hour of the night, I would like to have an explanation.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.40 p.m.)—I do not have advice as to the reason for that but I can say the Proceeds of Crime Bill 2002 has been around for a long time. In fact, it has its genesis in some two to three years’ work and I think it is now imperative that this bill proceed as soon as possible. This is an essential bill for the Australian community. It has waited patiently in line to come before the Senate and I think the sooner we get onto it the better. I can think of no better reason to alter business in the Senate other than to enable early debate on the Proceeds of Crime Bill.

Senator BARTLETT (Queensland) (8.40 p.m.)—As I understand it, this is just to move the Proceeds of Crime Bill 2002 on the agenda so that it jumps ahead of the Commonwealth Electoral Amendment Bill (No. 1) 2002, the Higher Education Funding Amendment Bill 2002 and the Marriage Amendment Bill 2002. I guess it is the gov-
ernment’s right to reorganise things if it wishes. If you just look at the extent of the debate we had on the disallowance motion about wildlife regulations you have to wonder how serious the government is about considering anything very much. The relevant minister did not bother to turn up and there was no contribution whatsoever from the ALP on a significant issue, showing a complete lack of interest in an important area. There was seemingly more interest in the potential effect on trade than the potential effect on Australia’s wildlife.

I think it is worth noting that, each time we get regulations that are brought down after a bill is passed that do not meet the commitments given by ministers at the time the bill is passed, it is more likely that all of us are going to be twice shy and not fall for that sort of thing again. In relation to the motion before us, the Democrats would be willing to support moving the bill up the agenda. I do wonder whether this is more to do with people wanting to spend their time having dinner with certain heads of state, whose record some of us in this chamber criticised quite substantially. Obviously, it is a free choice for some people to engage with people like that. I would hope that with this being given priority the level of engagement with the debate is greater than that which was given to the disallowance motion.

Question put:

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

The Senate divided. [8.47 p.m.]

(The Acting Deputy President—Senator J.O.W. Watson)

Ayes…………… 44
Noes…………… 2
Majority……… 42

AYES

Allison, L.F. Barnett, G. Greig, B. Harris, L.
Bartlett, A.J.J. Buckland, G. Hogg, J.J. Johnston, D.
Cherry, J.C. Colbeck, R. Lees, M.H. Ludwig, J.W.
Crossin, P.M. Denman, K.J. Mason, B.J. McLucas, J.E.
Eggleston, A. * Ellison, C.M. Payne, M.A. Murray, A.J.M.
Ferguson, A.B. Ferris, J.M. Scullion, N.G. Radgeway, A.D.
Greig, B. Harris, L. Knowles, S.C.
Hogg, J.J. Johnston, D.
Kirk, L. Knowles, S.C.
Lees, M.H. Ludwig, J.W.
Lundy, K.A. Macdonald, J.A.L. Marshall, G.
Mackay, S.M. McLucas, J.E.
Mason, B.J. Murray, A.J.M.
Moore, C. Mulvihill, C.J. Radgeway, A.D.
Payne, M.A. Scullion, N.G.
Scullion, N.G. Sherry, N.J.
Stephens, U. Stott Despoja, N.
Tchen, T. Tierney, J.W.
Troeth, J.M. Watson, J.O.W.
Webber, R. Wong, P.

NOES

Brown, B.J. Nettle, K. *
Nettle, K. *
* denotes teller

Question agreed to.

PROCEEDS OF CRIME BILL 2002
PROCEEDS OF CRIME
(CONSEQUENTIAL AMENDMENTS
AND TRANSITIONAL PROVISIONS)
BILL 2002
Second Reading

Debate resumed from 20 August, on motion by Senator Coonan:

That these bills be now read a second time.

Senator LUDWIG (Queensland) (8.51 p.m.)—The genesis of the Proceeds of Crime Bill 2002 and the Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002 rests in the 1999 report from the Australian Law Reform Commission entitled Confiscation that counts. Recommendation 2 of that report stated that the principal objectives of a civil forfeiture scheme should be as follows:

- to deprive persons of the proceeds of, and the benefits derived from, unlawful conduct
- to provide for forfeiture of property used in or in connection with the commission of offences against the laws of the Commonwealth or the Territories.

This report underpins the legislation currently before the Senate. The supplementary explanatory memorandum to the Proceeds of Crime Bill 2002 states in its general outline:

The Bill as introduced contains a refined conviction based confiscation regime which will ultimately replace that in the Proceeds of Crime Act 1987. In addition, the Bill establishes a comple-
mentary system of non-conviction based or ‘civil’ forfeiture, as well as a regime to confiscate ‘liter-
ary profits’.

The opposition has always been ready to support reasonable legislation that will dis-
courage and deter crime by reducing the profits from it. Indeed, the concept of a civil forfei-
ture scheme was first introduced into the parliament by the member for Denison as a private member’s bill on 2 April 2001.

The intent of the Proceeds of Crime Bill 2002 is to prevent criminals from benefiting from their crimes. It further aims to prevent the reinvestment of those proceeds and ben-
fits in further criminal activities. The bill provides for the restraint and confiscation, on the civil standard of proof, of property and assets which are the proceeds of crime. It provides for civil forfeiture to allow the con-
fiscation of unlawfully acquired property without first requiring a conviction.

The concept of civil forfeiture has long been a matter of debate across Australian jurisdic-
tions and internationally. There is a school of thought that says we do not need a civil forfeiture scheme. After much consid-
eration, I believe there is today such a need, to meet changed circumstances of organised crime. We cannot fight crime with dated weapons. Today’s criminals operate in a global and technological environment which allows them to stand at arm’s length from their crimes and the profits of those crimes. This legislation allows us to get closer and to ensure that those people are not given the opportunity to continue to benefit at the community’s expense.

Criminals do not recognise state or even national borders. Multinational crime re-
quires a multifaceted approach. We must ensure that our law enforcement agencies have the appropriate tools to disadvantage those in our community who would be ad-
vantaged by the proceeds of their crimes. We must ensure that the criminals in our com-
community do not continue to benefit from their activities, activities which are based on the suffering and misery of others. At the same time, it is important that we do not overreact and introduce legislation which may be viewed as infringing community rights. The bills as they are tabled today are the result of

a considerable amount of work to ensure that that balance is right. It is important to note that the opposition has actively sought to use the parliamentary processes to ensure that this is now the case. The report from the Senate committee reviewing the legislation noted a number of issues in relation to possible infringements of our civil rights, as we in the opposition also noted in our additional comments to the Senate committee report. The legislation before us today has been con-
siderably refined to resolve those issues.

I turn now to the reversal of the onus of proof, one of the issues that arose in the in-
quiry. Once a court has ordered forfeiture, the onus is on the individual concerned to show that the property was acquired legiti-
mately. There was concern that this reversal, by removing the presumption of innocence, was contrary to the essential principles of Australian law. From the Senate committee’s hearings, it became obvious that the reversal provisions are very narrowly circumscribed in the bill. A person will be required to show the lawful origin of property only after the Director of Public Prosecutions has estab-
lished, according to the civil standard, that there is a nexus between the property in question and serious criminal activity.

Another of the issues that arose was der-
vative use immunity. ‘Immunity’ is the term used within the law to describe the protection in the law against self-
incrimination. ‘Derivative use immunity’ describes the level of immunity whereby a person who provides information during an examination, or who produces documents, cannot have that information used later against him or her. These bills remove der-
vative use immunity but retain use-
immunity. Use-immunity is that level of immunity where a person is afforded immunity in subsequent proceedings, for the specific answer to a question provided under compul-
sory examination. This also applies to the content of a specific document produced in response to a production order. The essence of this is that information obtained in this way can be used in further investigations, and, should these further investigations pro-
duce incriminating material, this material will be available as evidence. This change is
considered and is appropriate to the intent of the bills.

I now turn to another matter that gave concern to the Senate committee: the issue of legal assistance. Under the original provisions of the bill, people facing restraint or forfeiture of their assets would be able to seek legal assistance by applying for legal aid. Restrained property would be excluded from the means test, and the application for legal assistance would be considered against the usual legal aid criteria. Where restrained property was subsequently forfeited, some could be used to meet the costs of legal aid. Where costs exceeded the amount of restrained property, the balance would be paid from the confiscated assets account. The whole committee determined that it would be unreasonable for a person who is ultimately found to have acquired their property lawfully to be required to bear the costs of proving their innocence. The opposition concurred with this finding of the committee. This aspect of the legislation has since been clarified by the Attorney-General, and it is worth taking the Senate to that clarification:

Under Clause 21, the court may refuse to make a restraining order unless the Commonwealth—in practice this means the DPP—provides the court with an undertaking as to payment of damages or costs arising from the operation and making such an order. Therefore a person who successfully defends a confiscation action would be able to claim against such an undertaking. In addition, Clause 323 of the bill empowers a court to award costs to successful parties not involved in the relevant criminal conduct. These costs are not limited to those normally recoverable in criminal proceedings but are full indemnity costs which can cover all expenses incurred by the person in connection with the proceedings, including those associated with legal aid.

The matter of forfeiture orders was also raised by the Senate committee. Section 47 of the original bill provided for the making of forfeiture orders in relation to property that has been the subject of a restraining order under section 18 of the bill, for a period of six months. Property is restrained under that clause where the DPP satisfies the court that there are reasonable grounds to suspect that a person has committed a serious offence within the six years prior to the application. The original legislation did not provide for a nexus to be shown between the property to be restrained and the offence that is suspected, where the property is that person’s property.

The opposition proposed that the words ‘there are reasonable grounds to suspect’ be replaced with the words ‘it is more probable than not’ for the making of forfeiture orders where property has been the subject of a restraining order for a period of at least six months. After consultation, the wording of that section of the legislation now reflects the concept of ‘on the balance of probabilities’, which is acceptable to the opposition.

Another issue raised during the Senate committee inquiry was that of restraining orders. Labor was concerned by the ability of defendants to dispute a continuation of a restraining order within a limited time frame of 28 days. Where a person is charged, and perhaps bail refused, one would expect the person would be preoccupied with finding legal representation and dealing with the practicalities of their changed circumstances. That is, where assets have been restrained, ensuring that the day-to-day expenses are met, will necessarily be uppermost in the mind of the person charged. It is likely that shortly after being charged they would be served with the restraining order. To expect that, in those circumstances either the individual or their lawyers are likely to consider the making of an application under section 42, is unrealistic. A 28-day period is a much too limited period of time for such an application to be made. The opposition indicated that a court should be allowed a level of discretion in determining extensions of time for the continuation of a restraining order. As a result, the wording has now been changed so that a person who was not notified of the application for a restraining order may, within 28 days after being notified of the order, apply to the court to revoke the order unless granted an extension by the court on grounds being shown.

The matter of literary proceeds also arose during the Senate committee inquiry. This matter deals with the making of a literary proceeds order against a person who may benefit from the proceeds of a crime through
a literary endeavour. While this part of the legislation attempts to deal with the issue of chequebook journalism, the converse is that it may also restrict freedom of speech by imposing unreasonable limits on a person’s ability to speak out. There can be a public interest benefit derived from such a product depending on the nature and purpose of the publication, including its use for research, educational or rehabilitation purposes. While this may be unusual, again, the opposition believes that the courts should have the ability to make such a determination having regard to certain criteria. Some of those criteria include: whether it is in the public interest to confiscate the profits; whether there is any general, social or educational value associated with, for example, a movie or a book; and the nature or purpose of the product—for example, if its use is for research, education, rehabilitation or deterrence. The government agreed to the proposal that the wording be changed from ‘In deciding whether to make a literary proceeds order, the court may take into account such matters as it thinks fit,’ to the words ‘should have regard to such matters as it thinks fit’. They are small changes but they are important changes.

In dealing with the issue of review, this legislation has significant short and long-term ramifications—increasing the powers of law enforcement agencies and the potential impact on the privacy of Australian citizens. Its powers must be closely monitored and scrutinised. In their additional comments, the Labor senators raised matters of the removal of derivative use immunity, the guidelines relating to legal assistance and examination by the DPP. The Attorney-General responded to this concern after it was raised by the member for Banks in his speech on the second reading in the House of Representatives. The Attorney-General responded:
The review is set out in broad terms and would encompass the issues of derivative use immunity, legal assistance and the DPP guidelines as well as other issues which may emerge in the course of the operation of the act.

Another issue that was raised a number of times—and I think I can say was of concern to the Senate committee of inquiry as a whole—was that of telecommunications interception. That matter still seems to be alive today. Both the full Senate committee and the Labor senators separately raised concerns in relation to the matter of telephone intercepts. The AFP, the NCA and the DPP argued for an extension of existing law in relation to the use of intercepts in matters of civil recovery. The initial bill proposed no changes to the existing law. The Labor Party does not wish to restrict the legitimate investigations of the law enforcement agencies. At the same time, we do not wish to restrict the liberties of individuals in our community.

The government proposed an amendment to the consequential bill which clarifies the circumstances under which evidence obtained by what are commonly called TI warrants can be used. This amendment means that the issue is basically evidentiary. There is no expansion of the powers under which TI warrants can be obtained. Evidence from telecommunications interception will be able to be used only in relation to the same offences and to gather evidence about unlawful assets or the activity which gave rise to them solely for the purposes of civil forfeiture proceedings.

The government proposed several additional amendments and we have no dispute with those. The definition of ‘financial institution’ in clause 338 of the bill will be amended to include casinos and Totalisator Agency Boards, or TABs. This amendment would enable law enforcement agencies to seek monitoring orders and notices to financial institutions in relation to accounts held by those institutions. A similar amendment would be made in the consequential bill, which would require TABs and casinos to comply with the document retention provisions to be inserted into the Financial Transaction Reports Act 1988. The amendments will provide that property which is the subject of a property order or financial agreement under the Family Law Act 1975 will cease to be the proceeds or instrument of crime six years after the distribution of the property under such an order. However, should the distribution be a sham, this exception will not apply and the money will continue to be proceeds or instruments of crime and thus confiscable. The definition
provisions in the bill will be amended to include a definition of ‘TAB’ in the bill and to include a reference to the existing money laundering offence in the definition of ‘serious offences’.

The amendments would also amend one of the money laundering offences which the bill is inserting into the Criminal Code to align the range of state offences covered by the offence with the other money laundering offences also being inserted into the Criminal Code. The amendment will increase the range of state offences which can give rise to Commonwealth money laundering offences. The family law amendments would incorporate a number of recommendations from the Family Court and the Federal Magistrates Service which have both reviewed the amendments made by the consequentials bill to the Family Law Act 1975. The recommendations are mainly procedural and will significantly improve the running of the scheme established by the Family Law Act amendments.

All these amendments ensure the bills deserve support. Unfortunately, the government has not completed its task in drafting this legislation. While the opposition will not decline to give the bills a second reading, it should be placed on record that the government has failed to ensure that these bills will not entirely discourage and deter crime by reducing the profits from these crimes. The opposition has consistently drawn the government’s attention to an anomaly in the taxation laws which was recently reinforced by a decision of the Federal Court in the matter of Commissioner of Taxation v. La Rosa. The court found that a person had profited from drug dealing and that the profits of this drug dealing should be treated as assessable income. In this particular case, the person was able to claim a $220,000 tax deduction for money which was stolen from him. This money, by the way, was buried in the person’s backyard and dug up to be used for a drug deal in May 1995. In the course of preparing for a drug deal, the money was dug up, counted and subsequently reburied. The person claimed that this money was subsequently stolen and could not be included as part of his income for that period. The Administrative Appeals Tribunal found that there should be a deduction for that year in the person’s taxable income. This case was heard on appeal by the Federal Court, and unfortunately the decision was upheld.

This matter was raised by the opposition. To that end, we urge the government to correct this anomaly and not wait for an appeal as foreshadowed by the Treasurer. He indicated that the government had encouraged the Australian Taxation Office to appeal the Federal Court’s decision. We strongly recommend that the government act now to correct the legislation and not wait, which is why we are moving the amendment circulated. I move:

At the end of the motion, add:

“but the Senate:

(a) notes that the Courts have recently affirmed the principle that a drug dealer may be allowed a tax deduction where the proceeds from illegal drug dealing are stolen;

(b) further notes that this treatment effectively frees from tax the proceeds of illegal drug dealing;

(c) confirms that this grave matter was brought to the attention of the Parliament more than two years ago by Labor;

(d) condemns the Treasurer for his inaction in attacking drug dealing by allowing this anomaly to stand for years; and

(e) calls on the Government to amend the taxation law to ensure criminals and drug dealers are no longer able to claim a tax deduction where the proceeds of drug deals are stolen”.

(Time expired)

Senator GREIG (Western Australia) (9.11 p.m.)—The Proceeds of Crime Bill 2002 and the Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002 bring into effect an expanded civil forfeiture regime at a Commonwealth level. The underlying principle offered by the government in relation to these bills is that they remedy the unjust enrichment of individuals who profit at society’s expense. It is also said that they will deter crime by reducing profits and prevent
crime by diminishing the capacity of offenders to finance future criminal activities.

The civil forfeiture regime allows the Commonwealth to confiscate assets, on the basis that they are proceeds of crime, without the need to obtain a criminal conviction. The confiscation of an individual's assets is a significant penalty. At its heart, these bills are about enabling the Commonwealth to impose sanctions on people for alleged criminal behaviour in circumstances where it cannot prove its case beyond a reasonable doubt in a court of law through the criminal justice system. That is a profound departure from important principles of law and warrants close consideration.

There are a few vital elements of this legislation that need to be outlined. The first is that the civil forfeiture provisions will permit the confiscation of assets on the basis of civil proceedings. The standard of proof to be met by the state is the civil standard—that is, the balance of probabilities—rather than the more onerous criminal standard, which is 'beyond reasonable doubt'. This means that a person's assets can be confiscated on the basis that they are proceeds of crime even where the tribunal of fact has reasonable doubt as to the person's guilt. Furthermore, there is no requirement that the allegation of criminality be particularised. For the purposes of ordering forfeiture of assets, the court need only be satisfied that some criminal offence or other has occurred, not that a particular offence has occurred. Indeed, as I mentioned earlier, the fact that there is reasonable doubt as to whether a person has been involved in any wrongdoing at all is not sufficient to prevent the forfeiture of assets. There does not even have to be a proposal to charge the person with an offence. Indeed, under clause 51, the fact that the person has been acquitted of the alleged wrongdoing in a criminal trial does not prevent their assets from being forfeited as proceeds of crime. It is a highly contentious proposal that a person who is acquitted of a particular crime can have a substantial penalty imposed upon him or her by the state for the same alleged activity by confiscating their assets under this legislation.

Once assets are restrained under this legislation, the individual concerned will not have access to his or her assets for the purpose of funding his or her defence to the forfeiture proceedings. This means that people who may have significant legitimately acquired assets may not be able to fund the sort of defence they would like. Under the legislation, such people will be given access to legal aid where appropriate. They will be assessed for eligibility for legal aid on the same basis as other individuals, although restrained assets will not be included in the means test. It is not clear that the legal aid system will in all cases provide people with the standard of representation to which they would otherwise be entitled.

One issue that has arisen in relation to legal aid is juniorisation. The pay scales are such that some senior lawyers do not make their services available to legal aid clients. This is not to cast aspersions upon the many talented people who represent legal aid clients: some of them are very experienced and very dedicated. However, I do note that the pay scales for legal aid are currently under review, partly as a result of concerns about the juniorisation of the representation of legal aid clients. In this context it is worth remarking that people who require legal aid only because the state has restrained their assets may be denied experienced representation for which they would be happy to pay. The rationale for this approach in this bill is that, if defendants have access to their assets to fund their legal defence, many of those who know that their assets will be forfeited will use up those assets on frivolous legal challenges. No doubt this will often be true, and there are two important implications of this. Firstly, the Commonwealth can be denied access to the proceeds of crime. This first consideration should not be pivotal. The underlying rationale of the bill relates to preventing unjust enrichment and removing assets that may be put towards future criminal activity. Where those assets are exhausted on legal challenges rather than confiscated, these outcomes are still achieved. This is not and should not be a revenue-raising exercise. One criticism of some of the legislative regimes applying in the United States is that the revenue implications have had an inap-
propriate impact on the manner in which criminals are pursued.

The second implication of the deliberate expenditure on legal challenges of funds that are likely to be forfeited is a more important one. Where legal challenges are mounted in this way, they use up important resources. The DPP must respond to them. The courts must hear them. They are an unwelcome strain on a legal system already under pressure. We Democrats believe that the legal aid provisions of this bill must be closely monitored. I hope that, when this act is reviewed in three years time, this matter will be carefully analysed. While there are legitimate reasons to restrain assets that are the subject of a forfeiture dispute, care must be taken to ensure that the ability of defendants to defend themselves is not compromised.

Another issue arising from this bill is retrospectivity. The legislation is retrospective in that assets can be confiscated on the basis of criminal activity undertaken prior to the enactment of the bill. Section 14 provides that the bill will apply even when the relevant offence or conviction occurred before the bill came into force. In part, this is necessary to ensure that any property that might be confiscated under the current act can still be confiscated under the new act. However, the proposed legislation is much broader than the existing legislation. The result is that new penalties will apply retrospectively to activities that took place prior to the commencement of the legislation. We Democrats are very wary of legislation that retrospectively imposes significant penalties. Of course, it is only imposing those penalties on activities that were already unlawful at the time they were committed. However, it does change somewhat the penalties and consequences associated with those activities, and does so retrospectively.

A further problem with this legislation relates to the information-gathering powers. The provisions of this bill dealing with examination and production orders abrogate the privilege against self-incrimination. While use immunity continues to apply, derivative use immunity will be removed. The important point to make in this context is that civil forfeiture proceedings under this legislation can take place even where no criminal charge has yet been laid and they may occur concurrently with the conduct of a criminal investigation. In the civil proceedings, the Commonwealth can require the defendant to answer questions and provide documents. There is of course no such power in relation to a criminal investigation or a criminal trial, where a suspect or accused generally has the right to remain silent.

The concern that has been raised is that the Commonwealth could use its compulsory examination powers under this legislation to force individuals to answer questions and provide documents that the Commonwealth could never force them to answer or provide under the criminal justice system because of the privilege against self-incrimination. If the Commonwealth can then use information derived from those documents or answers in a criminal investigation and trial, it is as though the privilege never existed. While the testimony and documents provided cannot be used against the individual, anything derived from them can be. In practical terms, there is the potential for this to be used to largely defeat the privilege against self-incrimination. In the High Court case of Environment Protection Authority v. Caltex, Chief Justice Mason and Justice Toohey considered the nature of the privilege in great detail. They observed that historically the privilege developed to protect individual humans from being compelled to testify, on pain of excommunication or physical punishment, to their own guilt. They went on to say:

In one important sense, the modern rationale for the privilege against self-incrimination is substantially the same as the historical justification-protection of the individual from being confronted by the “cruel trilemma” of punishment for refusal to testify, punishment for truthful testimony or perjury (and the consequential possibility of punishment).

They noted that the privilege is now an internationally recognised human right. As Justice Murphy commented in Rochfort v. Trade Practices Commission:

The privilege against self-incrimination is a human right, based on the desire to protect personal freedom and human dignity.
The issue of self-incrimination and derivative use immunity has arisen previously in the Senate in its consideration of the National Crime Authority Legislation Amendment Bill 2001. The Law Council of Australia said in relation to that bill:

... the Law Council does not accept that because a person is suspected of sophisticated criminal activity means that his or her basic rights should be lost—that he or she must answer questions that may lead to incriminating evidence being derived against them or face prison. When this happens, people are being compelled to establish innocence ...

It also said:

... the amendments in relation to self-incrimination may be contrary to Australia’s international legal obligations under the International Covenant on Civil and Political Rights ...

The ICCPR states that no person may be compelled to testify against himself or herself in the determination of any criminal charge against himself or herself. The Law Council drew attention to a recent decision of the European Court of Human Rights considering article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the ECHR. The Law Council said:

Article 6 of the ECHR guarantees a "fair hearing" in the determination of a criminal charge. In the Saunders case, the Court held that it was a violation of Article 6 of the ECHR to admit as evidence in a criminal trial evidence that had been obtained in earlier investigations under the UK Companies Act in which the defendant had been required to answer questions and provide evidence that was self-incriminatory, or risk being treated as being in contempt of court (which carried a maximum penalty of a fine or imprisonment for two years).

The courts take Australia’s international human rights obligations into account when making their decisions. So too should we as legislators give considerable weight to these obligations in making judgments about the appropriateness of legislation placed before us by the government. If the bill violates the ICCPR then it is contrary to international law. We have circulated amendments that address the issue of self-incrimination. We are mindful of the fact that removing derivative use immunity, which applies in the current Proceeds of Crime Act, is supported by the major parties. What we have suggested is essentially a compromise.

The draft guidelines for the conduct of compulsory examinations under the Proceeds of Crime Bill 2002 emphasise that it is impermissible to use an examination for the purpose of obtaining information to advance a criminal investigation. Our amendment seeks to establish a legislative scheme to ensure that these information-gathering powers are not abused in this fashion. Under the draft guidelines it is permissible for any material obtained from an examination to be used to assist in a criminal investigation. In commenting on the draft guidelines the New South Wales Bar Association said:

... the draft guidelines, in terms of the use that may be made of such material, amount to an invitation to use the examination power to further the investigation of criminal offences, which is not the statutory purpose behind the reason for the examination.

They went on to comment:

The guidelines as currently drafted simply highlight the complete artificiality associated with the notion that in some way a Proceeds of Crime inquiry under the Bill can be conducted separately from any related criminal investigation or prosecution. The tension between the preservation of accused persons’ rights and legitimate investigation of their financial affairs has been a part of all Proceeds of Crime statutory schemes.

What the Democrats amendment proposes is that no examination or production order may be used for the purposes of obtaining information advanced in a criminal prosecution. I think all parties would agree that the use of examination and production orders in this fashion would be highly improper. The amendment further provides that where information is improperly obtained in this way it is inadmissible in evidence in a criminal trial against the person. The integrity of the system requires that improperly obtained evidence not be used against an individual. The only remaining issue arising in cases where the DPP wants to use, in a criminal trial, evidence derived from an examination or production order is who should bear onus of establishing that the evidence does not arise out of any misuse of the information-gathering powers in the civil proceedings.
addressing this, we should start from the position that the very use, in a criminal trial, of information derived from evidence obtained under compulsion in violation of the privilege against self-incrimination is itself a departure from important legal principles.

We should also take into account the growing tendency of the government to reverse the onus of proof and place it on the defendant where the information relevant to the issue is likely to be possessed by the defendant. In this case we are dealing with evidence that is obtained in controversial circumstances. The Commonwealth is the party in a position to establish what the purpose of seeking the information under the examination or production order was. We believe it is appropriate that the Commonwealth bear the onus of establishing that the relevant information was not acquired under a production or examination order for the purposes of advancing a criminal investigation, and our amendment reflects this. In practical terms, all this would require is for the Commonwealth to show that the information it was seeking was sought for the purposes of the civil forfeiture proceedings.

The Democrats have circulated a second amendment which addresses the issue of double jeopardy. The US Bill of Rights contains a prohibition on double jeopardy. In Australia there is no such prohibition. According to US Supreme Court Justice Hugo Black, the underlying idea of the double jeopardy clause in the US Constitution is as follows:

... is that the state with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.

The US has used civil forfeiture laws to a much greater extent than Australia. This has attracted considerable discussion on the consistency of civil forfeiture with the double jeopardy prohibition. The state of the law in the US at the moment appears to be that civil forfeiture is not normally considered to be punishment for the purposes of double jeopardy. However, attention has been given to the question of whether, as a matter of substance, civil forfeiture laws offend the prohibition on double jeopardy. Civil forfeiture laws do allow people to be tried and acquitted, tried again in civil court and potentially have a substantial penalty imposed upon them.

Returning to Justice Black’s rationale for the double jeopardy clause, civil forfeiture does allow repeated legal action against an individual. It does expose the individual to repeated embarrassment, expense and ordeal and it does compel him or her to live in a continuing state of anxiety and insecurity. Repeated trials of the same matter do enhance the possibility that, even though innocent, an individual may be found guilty. Obviously, if the Commonwealth could take action against individuals in respect of the same matter 10 or 20 times, there is a much better chance that it would eventually be successful even where the person is innocent. To put it another way, either the procedural law on the criminal side will more and more resemble the procedural law on the civil side, or the substantive sanctions on the civil side will more and more resemble criminal penalties.

The Democrats are not convinced that where an individual has been acquitted of an offence it should be possible for the state to further pursue him or her for that offence. The point made by Professor Dribbs is that, as the level of dissatisfaction with the criminal justice system rises, the state will slowly turn to the civil law as a vehicle for pursing its criminal justice agenda and that, more and more, the civil system will take the place of the criminal system. It may be that, given the changing nature of organised crime, reform of the criminal justice system is necessary to restore the confidence of all concerned. However, we do not believe that the repeated pursuit of individuals over the same matter is appropriate. Our amendment seeks to prevent a forfeiture order being made against a person in relation to an offence for which they have been acquitted.

To conclude, the Democrats are mindful of the need to ensure that where confiscation has taken place there are proven proceeds of
crime. We support the principle that criminals should be then denied unjust enrichment from their criminal activities. We have a number of reservations about the operation of this legislation and its impact on civil liberties. We will move a number of amendments to address those and I understand they have now been circulated and we commend them to the Senate.

Senator PAYNE (New South Wales) (9.30 p.m.)—One of the reasons I want to speak briefly this evening is a comment the minister made in the earlier procedural debate before we moved onto the Proceeds of Crime Bill 2002—that this is a piece of legislation that certainly seems to have been a long time coming. I think it is an important part of the approach to dealing with crime that the government has been looking at for some time now. The length of the procedure has meant that the bill before the Senate is in fact the product of very long consultation. The second report of the Senate Legal and Constitutional Legislation Committee on the bill says in the concluding paragraphs:

The committee notes the lengthy process involved in this legislation but congratulates all participants for their contribution to the refinement of the bills as introduced. The Committee considers that the Government amendments constitute a marked improvement on the original bills and is satisfied that the Committee's earlier concerns have been addressed.

The Committee also notes the significant consultation process that has been undertaken in relation to many aspects of the bills and has involved relevant industry bodies, stakeholders, law enforcement agencies, the Family Court and Federal Magistrates Service, the Department and the DPP.

I think those remarks are well made in relation to this legislation, not just the consultation process that should go with the legislative process but in addition to that the committee consultation, as I am sure other members of the committee who are here will agree. The committee held several hearings over two reports, in fact, on this legislation, and the key witnesses who assisted the committee in that process also made a very constructive contribution to our understanding of the finer points of civil forfeiture regimes and this proposal in particular. Those witnesses include the DPP, the Attorney-General’s Department, of course, the Australian Federal Police, the NCA, the WA police, the New South Wales bar and also the Australian Federal Police Association, who, I think it is fair to say, made a very constructive contribution to the committee’s processes in relation to this bill.

One of the reasons the committee ended up examining the bill twice was that it was originally introduced in September 2001 and the Proceeds of Crime Bill 2002 was introduced in March of this year. The committee had two opportunities to work with those pieces of legislation. Its principal purpose is obviously to strengthen and improve Commonwealth laws for the confiscation of the proceeds of crime. Both the Commonwealth and the states for a number of years have had laws enabling the proceeds of crime to be confiscated after a conviction has been obtained. But I think most people who practise in the area would observe that the laws have not necessarily been fully effective. They have not really impacted at the top of the larger criminal organisations that operate in this particular way, and technology and globalisation in particular have rendered it even more difficult to reach those individuals. I think the Australian Law Reform Commission report handed down in 1999, entitled Confiscation that counts, was a very telling report on the inadequacy of the then Commonwealth conviction based laws.

Coming from New South Wales I was interested to note that the bill is based primarily on the regime that was set up in 1997 in that state. It will enable confiscation by a simpler civil process and at the end of that process a person will have the opportunity to show the court that his or her assets were lawfully derived. If that evidence is provided, those assets will not be forfeited. So, at the end of the day, the provisions are in fact accounting for criminally derived enrichment in civil proceedings, not imposing criminal sanctions as such.

The bill that is before the Senate at the moment includes improvements on the bill that was introduced in 2001, as I have indicated, including increasing the provisions that are particularly relevant to the financing of terrorism—another issue that the Senate
Legal and Constitutional Legislation Committee has spent much time considering—and refinements which simplify aspects of the procedures in the bill including that for providing legal assistance. It is fair to say there have been nine key changes made to the bills since September 2001, and I only want to refer briefly to a couple of those this evening—and other contributors to the debate have also done that.

One concerns the measures which enhance the capacity of law enforcement agencies to restrain and confiscate the assets of terrorists. There is an extension in the bill to terrorism offences by defining those as ‘serious offences’ under the bill. In general, on restraining and forfeiture orders, the bill places a six-year time limit on applications for those, but there is no such time limit included for terrorism offences. In that regard I think the bill is supported very broadly. There is also a proposal in the legislation which effects the government’s election commitment to enable the confiscated proceeds of crime to be directed in a particular manner, not just to consolidated revenue, that is, but to support national and community programs in the fight against crime and also to provide additional drug treatment and diversionary programs—and I think they are very important aspects of this legislation.

Other senators have already commented on matters concerning the provision of legal assistance and also the restriction of derivative-use immunity, which was in the bill in relation to production. Derivative-use immunity was an issue which gained some focus in the consideration of the legislation by the committee and by commentators. In this case the amendment extends the use of derivative-use immunity to production orders, which was not the case in the first bill.

Senator Ludwig referred to the operation of the Telecommunications Interception Act 1979 in this regard, and the committee in particular—and I think this is an important part of the committee process in bringing the legislation to the chamber—spent some extended period of time contemplating this issue. The committee heard from the Commissioner of the Australian Federal Police in particular on a number of occasions, and we were grateful for the commissioner’s assistance with that. The bill now comes to the chamber with an amendment which proposes the use of intercept material, subject to particular safeguards, in restraining order proceedings for civil based proceedings under this particular bill.

I want to note the expansion of the class of accounts in respect of which a monitoring order can be made—that has also been commented on this evening. In clause 338 of the bill there is a proposal in relation to the definition of the term ‘financial institution’, which means that casinos and TABs would be in a position where law enforcement agencies could seek monitoring orders and notices to financial institutions in relation to accounts held by those institutions. It is important to note that, as I understand it, the extension of the definition in this regard is limited to this particular piece of legislation and is not intended to have a broad application.

Finally, the government is obviously of the view—and has received broad support in that regard—that the introduction of a civil forfeiture regime is a critical component to a tough on crime approach to law enforcement. This is about depriving criminals and terrorists of their profits. It is a tool that enables the government to fight drug traffickers, people-smugglers, terrorists and other serious criminals which, up until now, the regime which has operated at Commonwealth level has not been able to target at the right level. As I said in my earlier remarks, it is a bill that will also ensure that the confiscated proceeds of crime will be used to support national and community programs in their efforts to combat crime and also additional drug treatment and diversionary programs, and I think that is a very important aspect of legislation.

Senator WEBBER (Western Australia) (9.39 p.m.)—The Proceeds of Crime Bill 2002 and the Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002 are, in my view, excellent examples of what the parliamentary process must be about. In their original form, these bills—as we have heard from previous speakers—presented a possible attack on the
civil liberties that Australians have struggled for over many years. The objective of these bills is of course one that the ALP supports. To ensure that the proceeds of crime are not enjoyed by the perpetrators is an aim that all members of a just society must agree with. In fact, these bills will aim to replace legislation originally introduced in 1987 by the then Labor government.

As outlined by previous speakers, there are two key elements that fall under the provisions of these bills: firstly, the issue of restraining orders preventing the disposal of assets that may have been acquired from the proceeds of crime prior to a conviction being achieved and, secondly, the confiscation of assets that have been acquired from the proceeds of crime once a criminal conviction is actually secured. This fundamental change requires deep thought and consideration before it becomes law. That is why I said at the start of my contribution that these amended bills are a good example of the parliamentary process.

These bills were referred to the Senate Legal and Constitutional Committee, as has been outlined by Senator Payne, and a thorough and detailed examination then took place. I would like to here acknowledge the work of my predecessor, Senator Jim McKiernan, and other members of the committee in that review. The referral to the committee and the subsequent negotiations between the government and the opposition now mean that these are bills that amend the shortcomings contained in the original version—although, as was outlined by Senator Ludwig, we still have some way to go before we come up with complete legislation.

Let us consider some of the amendments and how, without amendment, the original bills raised concerns about an erosion of civil liberties. The Senate committee—and I would like to emphasise that it was in fact the whole committee—determined that it would be unreasonable for a person who is ultimately found to have acquired their property lawfully to be required to bear the cost of proving their innocence. These concerns are now addressed in clauses 12 and 323. Clause 12, as it is now, requires the Commonwealth to provide an undertaking as to damages or costs in the event that a person successfully defends a confiscation action. In the original bill, we could have seen a situation where a person facing a confiscation action would still be liable for any costs arising even where they successfully defended that action. The amended bill now means that a person would be able to claim against the government’s undertaking. This ensures that a person is not unduly disadvantaged in the event that the action to confiscate or restrain fails. Clause 323 now empowers a court to award costs to successful parties not involved in the relevant criminal conduct. This of course means that, where assets are subject to a confiscation action and where it is proved that the successful parties were not involved in criminal conduct, costs may be awarded to those parties. These two clauses now ensure that successful parties are able to petition the courts in relation to costs and damages.

The new proposals to be contained in the Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill mean that the telecommunications intercepts cannot be used solely for the purposes of civil forfeiture proceedings. Again, this ensures that telecommunications intercepts are still sought for the purpose of identifying criminal activity and are not for use in a civil forfeiture action. In the event that the intercept identifies assets that may be the proceeds of crime, that is allowed.

Without the changes that have been made to the original bill, we could have seen the expansion of intercepts into civil matters. It is fundamentally important that intercepts cannot be sought for providing evidence for civil matters. Limiting the situations where intercepts can be used ensures that the civil liberties of Australians are not being infringed solely on the suspicion that an asset has been acquired as a result of criminal activities. However, the changes that have been proposed by the government and supported by the opposition now mean that a person who was not notified of the restraining order has the capacity to apply to the court to revoke the order. This will allow the person up to 28 days to lodge such an application once they are notified of the restraining order.
This approach means that, although the restraining order is in place, the person so concerned has a right to seek that that order be revoked. It also allows a person sufficient time, and the bill in this case allows the courts to grant an extension of up to three months, to seek that the order be revoked. This approach ensures that the person has sufficient time to get their house in order to contest a forfeiture order. Without this time being granted a person may be severely disadvantaged under the operation of these bills.

For many people one of the chief concerns with these bills is the implied change of the onus of proof, as has been outlined earlier. Once the courts have ordered forfeiture then the onus of proof rests with the individual to demonstrate that the assets were acquired legitimately. This removal of the presumption of innocence concerns me and many other Australians as being a fundamental change to the principles of Australian law. However, and again I note the success of parliamentary process, it is now clear that this process operates in very narrow terms. A person will be required to show the lawful origin of property only after the DPP has established, according to the civil standard, that there is a nexus between the property in question and serious criminal activity, and we think that is appropriate.

These bills, as I said earlier, demonstrate the effectiveness of the parliamentary process. We have here very complex pieces of legislation, but legislation nonetheless that is vital in the fight against crime. Rather than adopt a crash through approach, it is pleasing to see that the government has taken the concerns of the Senate Legal and Constitutional Committee as expressed in its recommendations into account. This agreed approach will ensure that the bills now offer sufficient surety for the civil liberties of our fellow Australians. This surety does not, however, reduce the effectiveness of the bills in combating criminals. Their ill-gotten gains are no longer of benefit to them and this of course is the bill’s intent.

Before concluding my brief remarks on these bills, I would like to canvass the issue of corporate or white-collar crime. In the *Sydney Morning Herald* of 26 August, Ross Gittens wrote an article titled ‘Yes, you can legislate for morality’. I found that Gittens’s argument is one that should be tested against this new legislation. If you look at the reported behaviours of some of the executives caught up in the corporate scandals of recent times, the HIH, One-Tel or any of the others that we have seen, one wonders if this new legislation would result in the restraining orders being sought over their assets. We have to ask ourselves: will the full force of this legislation be applied to white-collar crime? Will the government seek orders to restrain assets prior to a conviction being achieved? Will we deny a white-collar criminal the proceeds of crime the same as we would a drug dealer?

It is often said that proving white-collar crime is more difficult because of the complexity of financial transactions and the use of holding companies and all the rest of their complex arrangements. Gittens put it more succinctly: Apparently, if the crim’s wearing a suit at the time it makes all the difference.

For myself, I will monitor the operation of this legislation to ensure that justice is blind to the apparel of the criminal. It would be disturbing in the extreme if, when the legislation is reviewed in the future, we were to find that its application was distorted. I seek leave to continue my remarks at a later date.

Leave granted; debate adjourned.

**COMMITTEES**

**Membership**

The ACTING DEPUTY PRESIDENT (Senator McLucas)—The President has received letters from party leaders requesting changes in the membership of the Community Affairs Legislation Committee.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.48 p.m.)—by leave—I move:

That—

(a) Senator Mason replace Senator Heffernan on the Community Affairs Legislation Committee for the committee’s inquiry into the provisions of the Research Involving Embryos and Prohibition of Human Cloning Bill 2002 on Tuesday, 17 September 2002 from
4.45 pm until the committee concludes its business on that day;
(b) Senator McLucas replace Senator Denman on the Community Affairs Legislation Committee for the committee’s inquiry into the provisions of the Research Involving Embryos and Prohibition of Human Cloning Bill 2002; and
(c) Senator Denman be appointed a participating member of the Community Affairs Legislation Committee for the committee’s inquiry into the provisions of the Research Involving Embryos and Prohibition of Human Cloning Bill 2002.

Question agreed to.

CONDOLENCES
Brownlie, Ms Rhonda

The PRESIDENT (9.50 p.m.)—It is with deep regret that I draw the attention of honourable senators to the death of Rhonda Brownlie, an officer of the Department of the Senate, who was killed tragically in a car accident on Saturday, 31 August 2002. Rhonda commenced with the department in 1994 as a temporary employee in the Table Office. She worked in a number of roles in the Table Office, becoming permanent in 1995. In later years, Rhonda was in charge of the Table Office document store in the basement, where she organised the thousands of reports and other documents presented to the Senate every year and provided a highly efficient service to ensure that senators received whatever documents they requested as soon after tabling as possible. She will be missed by her many friends in Parliament House. On behalf of honourable senators and Senate staff, I convey our very sincere sympathy to Rhonda’s family and friends.

Honourable senators—Hear, hear!

ADJOURNMENT

The PRESIDENT—Order! It being 9.51 p.m., I propose the question:

That the Senate do now adjourn.

Military Detention: Australian Citizens

Senator MARSHALL (Victoria) (9.51 p.m.)—I rise this evening to speak about two Australians who have been caught in legal limbo for nine and six months respectively—two Australians who have not had their rights recognised under international law and who have been treated with total disregard by the Australian government.

Mr David Hicks and Mr Mamdouh Habib are currently being detained in a US military base in Guantanamo Bay, Cuba, in a cell five by four metres, in solitary confinement, without sunlight and without regular exercise in Camp Delta. Mr Hicks has been held in detention in Guantanamo Bay for over nine months. It is reported that he was captured at a non-alliance road block on 9 December 2001. From there he was flown to Guantanamo Bay, Cuba, where he was imprisoned in a cage six by eight metres until 25 May, when he was placed and remains in Camp Delta prison in solitary confinement. Mr Habib was arrested in Pakistan last year after leaving Australia in late July to early August. The US has alleged that Mr Habib trained with Al-Qaeda in Afghanistan. Mr Habib has been in Guantanamo Bay since May.

To date, neither of these two Australians have been charged with any offence under international law, Australian law or US law, yet they remain in detention indefinitely. Since being held in detention, neither Mr Hicks nor Mr Habib have had access to legal counsel or family members. This is due to the legal limbo which they have been placed in—an ambiguous position which the Commonwealth government is content to do nothing about, a circumstance which has stripped two of our citizens of all their rights recognised under international law.

The legal limbo that Mr Hicks and Mr Habib are in has recently been consolidated with the ruling handed down by a US district court. It ruled that Mr Hicks has no right to trial before a US court, therefore ruling out the possibility for Mr Hicks to have access to a legal counsel which he would have otherwise received if he was charged with a crime. Whilst Judge Colleen Kollar-Kotelly said the US courts had no jurisdiction to hear Mr Hicks’s case, Australia could pursue rights Mr Hicks would have under international law if it chose to. That is, the Commonwealth government of Australia could pursue Mr Hicks’s and Mr Habib’s legal rights recognised under international law and through international organisations should it...
have the concern to assist our citizens caught in such an ambiguous position.

However, the government views the detention of Mr Hicks and Mr Habib as satisfactory. The Attorney-General has stated: They—the Americans—have told us their intention is to detain all of residents of Guantanamo Bay until hostilities cease. When hostilities will cease I’m not even able to speculate on.

The questions that must be raised following such a vague statement are: who will determine when hostilities cease and under what criteria will it be judged—by the end of hostilities in Afghanistan, the end of hostilities in other parts of the world or the end of the war on terror? The statement demonstrates that the Commonwealth government has no clear and coherent response to the situation and quite clearly does not want to deal with the issue. Rather, it prefers leaving it to another nation to determine what will happen to our citizens.

While it is not my intention this evening to persuade this place as to the innocence or otherwise of Mr Hicks and Mr Habib, it is worth noting that the Attorney-General’s Department has spent $750,000 to date investigating Mr Hicks’s and Mr Habib’s potential links to terrorist organisations and to terrorism yet has not been able to identify any single offence with which they could potentially charge them—not one single offence. The US Ambassador to Australia has stated that Hicks and Habib could be jailed in Cuba until the end of the war on terror, likening their detention to that of Germans during World War II. There is a major difference in the circumstances in which Nazi POWs were held and the circumstances under which Mr Hicks and Mr Habib are currently held—and that is that Nazi POWs were recognised as prisoners of war and were attributed rights recognised under the Geneva Convention. Mr Hicks and Mr Habib receive no such recognition.

Amnesty International has stated that it feels the US has violated many international laws in its treatment of those captured during the war in Afghanistan. In a report published in April this year, Amnesty International stated that, despite repeated statements that it is committed to international law and standards, the US government is failing to meet its obligations to apply such law and standards to those in its custody in Afghanistan and in Guantanamo Bay. The human rights organisation went on to state that, in doing so, the US has not only violated the rights of those individuals but threatens to undermine the rule of law everywhere. In the violations it claims the US was committing, it included the violation of the right to be informed of the reason for detention, the right to prompt and confidential access to counsel of one’s choice and the right to the presumption of innocence. The Center for Constitutional Rights in New York has described as ‘quite incredible’ the indefinite detention of detainees without any judicial review of an executive decision, such as the decision not to recognise the Camp Delta prisoners as POWs but as ‘unlawful combatants’ by the US administration.

Whilst international organisations have raised concerns over the treatment of those held prisoner in Camp Delta, the Commonwealth Minister for Foreign Affairs has demonstrated the government’s lack of concern about the fate of two of our citizens held in detention. The minister stated:

People who muck about with organisations like Al Qaeda are bound to get themselves into a great deal of trouble.

What the minister has demonstrated is that the government is satisfied to have the internationally recognised right to a presumption of innocence denied. The minister’s comments effectively brand Mr Hicks and Mr Habib guilty of an offence, despite the lack of charges and despite the uncertainties surrounding Mr Hicks as to whether he was allegedly fighting for the Taliban or Al-Qaeda.

This government went to the last election with all the rhetoric of protecting Australia, its borders and its people, yet is clearly acting in contradiction to this rhetoric by not pursuing the rights of our citizens more proactively. This government has stood by as it watches the sovereignty of Australia being questioned and flaunted whilst another nation holds our citizens in indefinite detention.
without being charged with an offence—again, not one single offence. Further, this government aims to present itself as family-friendly, yet it has done nothing to assist the families of Mr Hicks and Mr Habib in gaining access to them. Nor has the government assisted in allowing any form of communication between the prisoners and their family members. Mr Hicks and Mr Habib are effectively shut off from the world and have no time line as to when they will be offered the right to a fair trial.

It is of great concern to me and many Australians that the Commonwealth government is content to sit by and watch a fundamental right that judicial systems in Western democracies are based around—the right to the presumption of innocence—being denied. Further, it is also a concern that the government has allowed the right to legal counsel to be denied. The Australian Bar Association has accused the federal government of failing the two Australians held captive by the American military in Guantanamo Bay; with the association’s president stating that it was ‘entirely unsatisfactory’ that Mr Hicks and Mr Habib had been held for months without charge or access to lawyers.

If democracies allow the erosion of fundamental rights that have been accepted as just and fair for many decades by our citizens and for our citizens, then we are allowing the tragic events of terrorism to be victorious. Rather than erode rights that have formed the moral bedrock of our society, governments must act in a manner that reflects fairness and leadership and ensure that our citizens do not live in fear and their fundamental democratic rights are protected at all costs.

Environment: Kyoto Protocol

Senator ALLISON (Victoria) (10.00 p.m.)—I rise to speak tonight about Australia’s ratification of the Kyoto protocol—or its non-ratification of the Kyoto protocol. The Democrats obviously support ratification, as we supported the signing of the protocol, and we certainly hope that it is not too far off. But for some completely unaccountable reason, this government has refused to ratify the Kyoto protocol and it keeps claiming that to do so would hurt Australian industry and cost jobs. But in almost the same breath Dr Kemp says that we are working towards and will most likely meet our Kyoto target. So on the one hand it is going to cost us jobs, but on the other hand we are doing it anyway.

The Democrats have argued for some time that climate change has the potential to seriously damage our economy. It is also the case that, if we do not ratify the Kyoto protocol, our exporters will remain outside a global emissions trading system and our economy will suffer from that as well. To give an example, it is estimated that Australia stands to lose up to $2 billion by not being part of Kyoto, simply through the recently signed agreement with China on liquefied natural gas. This evening I went to a dinner organised by the All Party Parliamentary Group on Population and Development, at which Dr Batterham spoke. He, of course, is the Chief Scientist and adviser to CRA. Dr Batterham told the group at the dinner that it was time for us to see coal as merely a transition fossil fuel and that we must move well beyond coal in the not too distant future.

The question remains: why has the Australian government taken that view? Are we so stupid as to want to protect the handful of jobs in the aluminium industry, the coal industry or the oil industry and not care about clean industries in this country or about the future of our economy? Or are we blindly following America in the hope that we will be taken seriously by George Bush as a player on the world stage? Is our decision to hang out with America on Kyoto, like our enthusiasm for the so-called war on terrorism and the war on Iraq, a sign of our insecurity and inadequacy on the world stage? I think they probably are, but let us go back to Kyoto.

To support its arguments that Kyoto is bad for us, the government has relied for some time on the modelling that has been done by ABARE, amongst others. On Friday last, the Minister for the Environment and Heritage, Dr Kemp, tried to distance himself from ABARE’s most recent modelling because he did not like what he was told. To put it
bluntly, it made the government look pretty silly, because it blows the government's Kyoto lie clean out of the water. The ABARE report found that Australia would be worse off in 2010 if it did not ratify the Kyoto protocol than if it did. Specifically, the modelling indicates that gross national product would be reduced by 0.15 per cent if Australia ratified Kyoto, compared with 0.17 per cent if it did not. The modelling work of ANU economist Warwick McKibbin told a similar story. In an attempt to distance himself from the commissioned work, Dr Kemp explained that the modelling that had been done was 'not useful for informing the longer term picture beyond 2010', which is what purportedly motivates the government. In his press release Dr Kemp argued:

It is the long-term impacts beyond 2012 that are important to the overall assessment of the Kyoto Protocol. It is this longer term perspective that has been important in the Government's decision not to ratify the Kyoto Protocol because at present it is not in the national interest to do so.

It becomes a rather circular argument, and it would appear to be more self-evident to Dr Kemp than it is to most people who read what he says.

But while it is certainly true that there are a large number of uncertainties, one thing which is not uncertain is that the global community will have to do much more in future years to reduce greenhouse gas emissions in order even to stabilise the concentration of greenhouse gases in the atmosphere and, to the greatest extent possible, mitigate the adverse effects of climate change. That became very obvious two years ago when the Senate Environment, Communications, Information Technology and the Arts Committee conducted its inquiry into greenhouse emissions. It is very clear that Kyoto is only a very small step in a far greater change that is going to be imposed not just on Australia but on the rest of the world into the future.

We live in a carbon-constrained era, and this is one factor which will not change. If we do not get with the international greenhouse program, Australia will be left behind and, more than that, new green industries will not develop to anywhere near the extent they could, will not employ more people in regional Australia and will not create a more healthy environment for all Australians, and greenhouse emission reductions will not be inevitable. To some degree, because of the policy vacuum that the government has created on greenhouse issues, a couple of weeks ago the Democrats decided to explore the question of a climate change levy, otherwise known as a carbon tax.

Senator McGauran—Or your leadership change!

Senator ALLISON—Senator McGauran thinks that this is a very silly idea, but the rest of the world is beginning to look at the kind of mechanisms which could move countries closer to both Kyoto and beyond.

I convened a forum on the question of whether or not Australia should develop a climate change levy as one of the mechanisms used to reduce our greenhouse gas emissions, and I invited senior representatives from industry, business, environment groups, welfare groups and other groups who were interested in energy and in our economy. That was a very successful forum and a lot of ideas were worked through. The Democrats support putting a price on carbon because we share the increasingly widespread view that to achieve a substantial reduction in Australia's greenhouse gas emissions we need to go beyond voluntary and no-regrets measures and use broad based economic instruments. The argument is that, unless these externalities are internalised, coal will continue to have a significant advantage over alternative fuels, meaning that these sectors will not be able to achieve the maximum level of market penetration possible. Structural change simply will not occur to the extent that it is needed and the status quo will continue.

At this forum a range of questions were posed about a climate change levy: whether or not we should have one; how you deal with distributional impacts, including the impacts on low-income households; and how revenue from the introduction of a climate change levy could be used. For instance, could revenue be recycled by lowering income or consumption taxes, as happens in the UK? Could it be transferred to individu-
als through the welfare system; added to general revenue or made available to industry in return for energy efficiency improvements? Perhaps it could be reinvested in companies paying the levy, provided they continue to reduce their greenhouse emissions, or perhaps it could be hypothecated for environmental projects such as salinity prevention, reafforestation or public transport infrastructure, to name just a small number.

Whilst there were, of course, different perspectives on whether or not Australia should introduce such a levy, some of the key messages that I took away from the forum were that if Australia were to develop a levy of this sort it must be designed specifically for Australian conditions and it must protect low-income people and small business—and do so in a way that still encourages people to change their energy behaviour. It should not simply be the only response to climate change, but rather one of a raft of measures.

Our next step is to develop a position paper from this forum. When it is completed I hope to present it to the Senate. I encourage any honourable senator who is listening here today to join with us in developing the ideas towards a solution. Then I hope to present the paper to the government and persuade them that this is a good idea, as well.

Veterans: Vietnam

Senator BUCKLAND (South Australia) (10.10 p.m.)—Tonight I would like to speak on an issue that is of great concern, particularly to those who have had children after serving in the Vietnam War. The issue I want to speak on tonight is youth suicide. Before I speak specifically about the current youth suicide trends and the particular relationship they have with families of Vietnam War veterans, I would like to say that in the current climate of the Iraqi debate it is imperative that we do not act with a gung-ho attitude and assign our troops to this war. The Iraqi debate requires the government to fully support the efforts of the United Nations Security Council in resolving the Iraqi problems. That is in contrast to Prime Minister John Howard’s and Foreign Minister Alexander Downer’s consistent disparaging of the United Nations.

War is not something to be flippant about, and it is one of the far-reaching consequences of war that I would like to speak about tonight. I refer to the issue of youth suicide. In 1998 it was reported that children of Vietnam veterans had a significantly higher rate of suicide than that experienced by the general community. This was based on statements made in a self-reported survey of almost 50,000 male veterans about their own and their families’ health. In 1999, a validation study conducted by the Australian Institute of Health and Welfare substantiated this. This validation study estimated that the number of suicides of veterans’ children was more than three times the number of suicides expected if veterans’ children had experienced the same suicide rates as the general Australian community.

Deaths of veterans’ children from illness and accident were also higher than expected. The number of suicides of veterans’ children increased slightly between 1986 and 1990, and sharply from 1990 to 1991. Suicides peaked in the 1992-93 period, with the number in the 1990s being substantially higher than in the 1980s. This is consistent with the national pattern, which is also increasing with time, from 1,982 suicides in 1986 to 2,723 in 1997. The major factor in this increase in the annual number of suicides of veterans’ children in the 1990s is that most reached at-risk ages of adulthood during that decade. Australia’s involvement in the Vietnam War occurred during the period from May 1962 to July 1973. The great majority of veterans’ children who committed suicide were born during or shortly after this period. The few who were born before the war were all over the age of 25 when they died whereas the children born during or immediately after the war who have suicided had, to date, mostly not reached that age.

Most suicides of veterans’ children to date have occurred between the ages of 15 and 29. As a parent with one child in that age group, not a child of a Vietnam veteran, let me say that it is a frightening thing. The peak of a human’s life occurs during that time. When life should be enjoyed, these young
people are taking their own lives for reasons that, unfortunately, I have no answer for, but I believe that study could assist us in reducing those suicides. It has a very clear message for the future. Veterans’ children have three times the suicide rate of the general community.

Age-standardised suicide rates for the years 1988 to 1997 show no evidence of change in the pattern over this period. The state and territory distribution of veterans’ children suicides largely reflects the distribution of veterans throughout Australia. There is a higher percentage of suicide of veterans’ children in Queensland and the Australian Capital Territory and a lower percentage in New South Wales and Victoria compared with the distribution of all suicides in Australia. There is a higher proportion of veterans in Queensland and the ACT than for the total population. Correspondingly, there are higher proportions of suicides of veterans’ children in Queensland and the ACT than for all suicides. The reverse is true in New South Wales and Victoria. Those born since 1973 are particularly at risk as they move into the high-risk ages. Consequently, there is a large group of veterans’ children now moving into the 20 to 29 age group, which has a higher suicide risk in the community than younger age groups.

These children are unfortunately the unspoken victims of war. These children were not sent to war and they did not ask for the war, but they are the results of the war. I note that the minister will be making a statement tomorrow, but the clear point we must have in our minds is the consequence of a war we may enter without thoroughly and properly examining the facts. Australia did not know the facts relating to the Vietnam War. We went there blindly, as did other nations, on a supposed crusade to rid the world of tyranny. When the opportunity becomes available to us to debate the war relating to Iraq, I just trust that the debate will be transparent in the true sense and that we will consider the long-term effect on the young people of this nation.

Indigenous Affairs: Kurtijar People

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (10.19 p.m.)—In this adjournment debate, I want to mention a good news story involving the Aboriginal people in the northwest area of my state and their success in looking after their own future in a commercial development which I think can act as a beacon and a way forward for Aboriginal people generally.

I was very honoured to be invited, as a Queensland senator and a minister in the Howard government and also representing the Hon. Philip Ruddock, the Minister for Immigration and Multicultural and Indigenous Affairs, to the handover of Morr Morr Station to the local Kurtijar people near Karumba. Morr Morr Station has been known for many years as Delta Downs and it is a property adjoining the seaside town of Karumba up in the Gulf. In 1982, using $2 million provided by a Liberal government when Mr Fraser was the Prime Minister, the Aboriginal Development Corporation bought the property. It was purchased by the Aboriginal Development Corporation and it was operated by the ADC and subsequently by ATSIC with the local people. At the time it was purchased, the station was reasonably run-down. It was carrying about 10,000 head of cattle and, to put it mildly, the cattle were not in particularly good shape.

I know the property reasonably well. Not long after it was acquired by the Aboriginal Development Corporation, I went fishing on the property at Duck Creek on the coast with a group of my friends. I did not catch any fish, but it was my first involvement with this station. Over the years, the local Kurtijar people have run the property with ATSIC and they have substantially improved it to the extent that it now carries 35,000 head of cattle and is a leading station. It has been rated as one of the top 20 cattle properties in Australia by those who know something about the beef cattle industry. It is now a leader in Australian live beef exports, especially to Asia and the Asia-Pacific region.

In the years since 1982, the station has been improved by the local people and the managers. The cattle, as I said, are now of a very high quality. The corporation acquired the station between what was then Delta Downs and the town of Karumba, and they
now have about 400,000 hectares. I am told that the property is now worth about $20 million; you might recall that it was purchased back in 1982 for about $2 million.

Several years ago, ATSIC made a decision to transfer the property to the local people in two stages. First of all, they decided to transfer 49 per cent of the shares in the operating company to the Kurtijar people. What happened on Saturday was that the remaining 51 per cent of the shares were handed over. At the same time, on behalf of the government and ATSIC, I was also able to hand over transfers of the freehold title deeds and the Crown leasehold title deeds that constitute the ownership deeds of the property. The day was a fairly emotional one for those involved. To the Kurtijar people, it was returning the property to people who have lived in that area for many years.

The transfer has been a fairly difficult process. There were a number of legal and financial issues to work through. Those involved will understand just how difficult those issues have been. The new arrangement on Morr Morr station is a partnership between the Kurtijar land trust—made up of the elders of the tribe—which will own the land; the Kurtijar Aboriginal Corporation, which will own the shares in the company; and the Morr Morr Pastoral Co., which operates the station. Each of those organisations is like a strand in a rope. They must lock together to give the rope greater strength than any of the strands standing by themselves. I know that all of those various elements of the partnership will work together to benefit the whole community, and I know that the people there will care for the country to provide a better future for the generations to follow.

As I mentioned in my speech on Saturday, it is a very significant thing that the Aboriginal people do not want to be imprisoned in a life of welfare payments. They are very keen to make their own way in the world, and this business venture is a significant step in that direction. I hope that they will make a lot of money out of it; I am sure they will, because they have improved it and they are operating it as a business. I know that they will go from strength to strength and that the income they earn, the profits they make on this property, will be used to provide a better future for their young people and the generations to follow. The profits from the station can be used for other investments in the area, investments which will provide a financial return and be a great step forward for the Kurtijar people.

It is also very pleasing to see that Aboriginal people are now taking an interest in the cattle industry again. A century ago, Aboriginal people had a real reputation as horsemen, as stockmen. For some reason, they bonded with the horses and seemed to have a natural talent for this. Unfortunately, with the coming of equal wages, a lot of the Aboriginal stockmen no longer had a job, but it is great to see them back in the saddle, so to speak, and doing such a tremendous job on Morr Morr station. They are good horsemen, they are good stockmen and they are good cattle managers, and that can only work to the benefit of the people as a whole.

A number of notable people attended Saturday’s ceremony. Many of them had a hand in the very significant transaction that took place on that day. Two of those attending were Mr Noel Samardin, the chairperson of the Aboriginal and Torres Strait Islander Commission’s regional council in the Gulf and West Queensland, and Mr Terry O’Shane, the chairman of the Cairns ATSIC regional council. Also present was Mr Fred Pascoe, the very impressive young man who is chairman of the Morr Morr Pastoral Co. and in charge of operating the station. Also there were Mr John Gilbo, the chair of the Kurtijar Aboriginal Corporation, and Mr Joseph Rainbow, the chair of the Kurtijar land trust, representing the elders. They and many other people worked tirelessly to make sure that this event happened, and it was a very happy, very successful and very emotional time for the Kurtijar people. I was delighted and honoured to be there representing the government and Philip Ruddock. As I did on Saturday, I again congratulate the Kurtijar people and all those involved on the tremendous work they have done. I wish them all the very best, and I know that all senators would also wish the venture all the very best and the greatest success in the years to come.
Senate adjourned at 10.29 p.m.

DOCUMENTS
Tabling

The following documents were tabled by the Clerk:

- Australian Communications Authority Act and Radiocommunications Act—Radiocommunications (Interpretation) Amendment Determination 2002 (No. 1).
- Civil Aviation Act—Civil Aviation Regulations—Airworthiness Directives—Part—
- Civil Aviation Amendment Order (No. 13) 2002.
- Civil Aviation Amendment Order (No. 4) 2002.
- Instrument No. CASA S01/2002.
- Statutory Rules 2002 No. 221.
- Class Rulings—
  CR 2001/42 (Addendum).
- Customs Act—
  CEO Directions No. 1 of 2000.
  CEO Direction No. 2 of 2002.


Financial Management and Accountability Act—
- Financial Management and Accountability (Establishment of Special Account) Determination 2002/06.
- Regulations—Statutory Rules 2002 No. 211.


Great Barrier Reef Marine Park Act—


Indexed Lists of Files

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended 3 on December 1998:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2002—Statements of compliance—

Attorney-General’s Department and Attorney-General’s portfolio agencies—

Administrative Appeals Tribunal.
Australian Customs Service.
Australian Federal Police.
Australian Institute of Criminology and the Criminology Research Council.
Australian Law Reform Commission.
Australian Transaction Reports and Analysis Centre.


Taxation Ruling (Old Series) IT 2328 (Notice of Partial Withdrawal).


Textile, Clothing and Footwear Strategic Investment Program Act—Textile, Clothing and Footwear Strategic Investment Program Scheme Amendment 2002 (No. 1).


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Australian Law Reform Commission.
Australian Transaction Reports and Analysis Centre.
Department of Transport and Regional Services.
Environment and Heritage portfolio.
Office of the Official Secretary to the Governor-General.

**Departmental and Agency Contracts**

The following documents were tabled pursuant to the order of the Senate of 20 June 2001, as amended on 27 September 2001:

Departmental and agency contracts—Letters of advice—
Department of Defence.

Department of Foreign Affairs and Trade and Foreign Affairs and Trade portfolio agencies—

Australian Agency for International Development (AusAID).
Australia Japan Foundation.
Australian Centre for International Agricultural Research.

Department of Industry, Tourism and Resources and Industry, Tourism and Resources portfolio agencies—
Geoscience Australia.
Industrial Property Australia.
Health and Ageing portfolio.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Immigration: Asylum Seekers

(Question No. 381)

Senator Allison asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 18 June 2002:

1. (a) How many detainees has Australia sent back; and (b) to where.

2. With which countries does Australia have arrangements, in regard to accepting deported asylum seekers.

3. With which countries is Australia still negotiating for deportation.

4. Which countries have refused to accept deported asylum seekers.

5. Is it the intention of the department that the Maribyrnong detainee who was recently convicted of people-smuggling, but given a suspended sentence which he is appealing, will remain at Maribyrnong; if not: (a) where will he be transferred to; and (b) when.

6. Why is it that ‘Mr Y’ was deported earlier this month when he was a key witness in the trial of ‘Mr Z’ on 27 May 2002 and is required to appear in the appeal Mr Z instigated on 30 May 2002 against his sentence in the county court.

7. Does not this action prejudice Mr Z’s right to a fair trial.

8. What, in the view of the department, are the risks faced by Mr Y in returning to Iran as a result of the testimony he gave of his political activities in opposition to the Iranian regime, which was widely reported, including on television.

9. Why did the prosecution, in calling Mr Y, not seek a suppression order on his evidence, given the risk that such reporting would entail.

10. Why was Mr Y not allowed the opportunity to seek an application of ministerial guidelines concerning sure place claims, pursuant to sections 48B and 417 of the Migration Act 1958.

11. What assurances does the department have from Iran that Mr Y will be safe on the return voyage aboard the Iran Mazandaran and when he arrives in Iran.

12. Can a copy of the documentation relating to those assurances be provided.

13. (a) On what basis did the Australian Government obtain the consent of the Iranian Government and/or the Iranian national line to repatriate Mr Y without his consent; and (b) can all documentation and all and any records be provided of communications between the department and its officers and any other Australian Government entity, including the Australasian Correctional Management (ACM), with the Iranian Government and Iranian national line in respect of obtaining the consent of the Iranian Government.

14. Does the department intend to continue to deport Iranian nationals who have been refused protection visas aboard Iranian state cargo ships.

15. (a) Did the department consider the accentuated risk to Mr Y in repatriating him aboard a shipping line owned and controlled by the state authorities he had fled from, particularly as there is always at least one intelligence agent of the PRS aboard Iranian national line ships; and (b) can any and all documentation and correspondence between: (i) any officer of the department, (ii) any employee of ACM, (iii) any employee of the Iranian state line, and (iv) any person aboard the Iran Mazandaran, between 29 May 2002 and 2 June 2002, concerning the removal of Mr Y be provided, including all incident reports and records of medical treatment, if any.

16. Can all or any medical and or psychological records, statements or assessments, and incident reports, concerning Mr Y between 1 April 2002 and 29 May 2002 be provided, including any records concerning his attempted suicides, and any sedation to which he was exposed when placed upon the Iran Mazandaran.

Senator Ellison—The Minister for Immigration and Multicultural and Indigenous Affairs has provided the following answer to the honourable senator’s question:
Firstly, I note that this question is not related to any specific time period, so I will answer for the year 2001/2002. Secondly, it is assumed that the question refers to those removed detainees who were unauthorised air and boat arrivals, most of whom unsuccessfully applied for asylum.

(a) Australia removed 360 unauthorised air arrivals, 191 unauthorised boat arrivals and 117 off-shore boat arrivals in the financial year 2001/2002.

(b) The table below states the numbers of persons removed, their mode of entry to Australia and their countries of origin, noting that while most returnees return to their country of origin, a small proportion of removees went to third countries.

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<thead>
<tr>
<th>Nationality</th>
<th>Offshore Boat Arrival</th>
<th>Unauthorised Air</th>
<th>Unauthorised Boat</th>
<th>Total Unauthorised Arrivals Removed</th>
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</table>
The 668 cases listed above were part of a total of 4174 removed from Australia during the year. The other removees were mainly overstayers or people who breached other visa conditions. In addition there were 34 criminal deportations in 2001-2002.

Unsuccessful asylum seekers are subject to removal under Section 198 of the Migration Act 1958, not “deportation”. Most countries are willing to accept return of their own nationals and bilateral agreements are generally unnecessary. In a small number of cases the Department has agreements with countries regarding specific removal issues and continues to negotiate with countries where there are practical difficulties.

There are Memorandums of Understanding (MOUs) in place with:

Memorandums of Understanding (MOUs) containing clauses covering returns, are at an advanced stage with:
- South Africa – covering readmission of 3rd country nationals.
- Yugoslavia – covering people who have been smuggled.

Negotiations are in progress with: Iran, Jordan, PNG, New Zealand and Sri Lanka.

At this time Iran requires that its own nationals who are subject to removal return voluntarily.

At present it is the intention of the Department that the Maribyrnong detainee recently convicted of people smuggling will remain at that centre.

<table>
<thead>
<tr>
<th>Nationality</th>
<th>Offshore Boat Arrival</th>
<th>Unauthorised Air</th>
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<th>Total Unauthorised Arrivals Removed</th>
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<td>Vietnam</td>
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<td><strong>Total</strong></td>
<td>117</td>
<td>360</td>
<td>191</td>
<td>668</td>
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</table>

*UNKNOWN* - refers to people who did not state their nationality when they arrived in Australia. They were removed to countries where their entitlement to residence was later established.
(6) Immigration officers have an obligation to effect removal as soon as reasonably practicable and can only suspend removal action if there is a visa application on foot, an injunction or court order specifically preventing removal, or if the Attorney General issues a criminal justice stay certificate. None of these factors applied in this case.

(7) This is a matter for the Courts.

Any risks to Mr Y were considered during his refugee processing.

Mr Y’s application for a protection visa was refused on 14 November 2000. He appealed to the Refugee Review Tribunal (RRT) on 16 November 2000. The RRT affirmed the delegate’s primary decision on 2 January 2001.

The case was assessed under the Guidelines for stay in Australia on humanitarian grounds (section 417) on 22 January 2001. Mr Y’s case was found not to satisfy the requirements for consideration under section 417 or section 48B of the Migration Act. On 22 January 2001 Mr Y lodged an appeal to the Federal Court, his appeal was dismissed on 4 July 2001.

(9) Suppression was not requested by Mr Y and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) staff involved with the hearing did not consider requesting a Suppression Order because the hearing was not in relation to a protection visa application.

(10) On 13 May 2002 Ms Jaye Radisch MLA submitted a section 417 request on behalf of Mr Y. This was assessed and Ms Radisch was informed of the outcome of that assessment.

(11) The safety of those on board is the responsibility of the Master of the ship.

(12) Approval to return Mr Y to Iran was a matter left to the responsible agent, Inchcape Shipping Services.

(13) As stated in 12 above, the Australian government did not require or obtain consent from the Iranian government. He was removed from Australia on 1 June 2002 in accordance with s198 of the Migration Act. The removal was effected following the earlier serving of section 213 / 217 notices on the carrier company responsible for bringing Mr Y to Australia as a stowaway on 7 September 2000.

(14) The usual mode of effecting return is by commercial air services. However, the Department has a legal obligation to effect removal from Australia and if travel by commercial air services is not feasible, other options will be pursued. From time to time, and particularly when the mode of arrival has been as a stowaway, the company responsible for the removal may arrange removal by ship, as happened in this case. All other 174 Iranian removals between June 2000 and end July 2002 have been by means of air travel.

(15) Mr Y was returned to Iran on the same ship on which he had chosen to make his way unlawfully to Australia, following an unsuccessful attempt by the shipping agent to arrange his return by air. There was no correspondence between DIMIA or ACM and the Iranian national shipping line. The return arrangements were made by the shipping line’s agent, Inchcape Shipping Services mentioned in (12) above, after the Perth office of the Department served section 213 / 217 notices on that company. Details of the timing of Mr Y’s transfer to the ship were discussed by phone between DIMIA Perth and Inchcape Shipping Services.

(16) Mr Y’s personal medical records are subject to privacy considerations, as are related incident reports.

Mr Y was not sedated when placed aboard the ship. DIMIA does not use sedation as a means of restraint.

An officer of the West Australian Police boarded the *Iran Mazandaran* shortly before its departure from Esperance, in response to allegations that he had been assaulted, to assess Mr Y’s condition and advised my Department that Mr Y was in good health.

**Wide Bay Electorate: Program Funding**

(Question Nos 430 and 449)

Senator O’Brien asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, and the Minister representing the Minister for Citizenship and Multicultural Affairs, upon notice, on 10 July 2002:
(1) What programs and/or grants administered by the department provide assistance to people living in the federal electorate of Wide Bay.

(2) What was the level of funding provided through these programs and/or grants for the 1999-2000, 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 Ellison—The Minister for Immigration and Multicultural and Indigenous Affairs has provided the following answer to the honourable senator’s question:

(1) The programs and/or grants administered by the department providing assistance to people living in the federal electorate of Wide Bay include:

   Citizenship and Multicultural Affairs
   (i) Community Settlement Services Scheme
   (ii) Living in Harmony Initiative Community Grants program

   Aboriginal Hostels Limited
   (iii) Community Hostel Grants

   Indigenous Land Corporation
   (iv) Land Acquisition Program

   Aboriginal and Torres Strait Islander Commission programs operating in the Roma and Rockhampton regions
   (v) Partnership and Development
   (vi) Public Information
   (vii) Community Development Employment Project Scheme
   (viii) Community Housing and Infrastructure
   (ix) Preservation and Promotion of Indigenous Culture
   (x) Sporting Opportunities for Indigenous People
   (xi) Legal Aid
   (xii) Law and Justice Advocacy
   (xiii) Family Violence Prevention
   (xiv) Municipal Services
   (xv) Broadcasting Services
   (xvi) Art and Culture
   (xvii) Land Acquisition
   (xviii) Business Development and Assistance
   (xix) Home Loans
   (xx) Preservation and Protection of Indigenous Heritage
   (xxi) Preservation of Indigenous Languages and Recording

(2) The total level of funding provided through these programs and/or grants for each financial year is:

<table>
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<tr>
<th>Financial Year</th>
<th>Total Funding</th>
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<tr>
<td>1999-2000</td>
<td>$9,336,318</td>
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<td>2000-2001</td>
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<td>2001-2002</td>
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</table>

(3) The details in relation to each specific project are as follows:

- Citizenship and Multicultural Affairs
  (i) Community Settlement Services Scheme
  (a) Wide Bay Region.
(b) In 1999-2000 and 2000-2001 financial years the grants provided support and referral services to new arrivals and established migrants from diverse cultures, including persons from Filipino, Thai, Indonesian, Italian, Hungarian, Turkish and Spanish-speaking backgrounds.

In 2001-2002 the grant facilitated access to mainstream services by people of diverse linguistic and cultural backgrounds living in Hervey Bay and to some extent those living in the Bundaberg and Maryborough local government areas.

These services were provided by a case worker employed by the Hervey Bay Neighbourhood Centre Association Inc.

(c) The level of funding provided was
1999-2000 $49,161
2000-2001 $43,002
2001-2002 $60,000.

(ii) Living in Harmony Initiative Community Grants program
(a) Maryborough.

(b) Funded the conduct of a multicultural festival ‘Creating Harmony in Maryborough’ by the Rotary Club of Maryborough North. The festival celebrated the social and economic strength of the region arising from cultural diversity. It involved schools, ethnic communities and mainstream organisations in a demonstration of cultural exchange and appreciation.

(c) The level of funding provided was
1999-2000 $9,828
2000-2001 $0
2001-2002 $0.

• Aboriginal Hostels Limited

(iii) Community Hostel Grants
Ny-Ku-Byun Hostel
(a) Fisher Street, Cherbourg.

(b) The project was an aged care hostel.

(c) The level of funding provided was
1999-2000 $68,289
2000-2001 $74,303
2001-2002 $74,304.

Wunjuada Hostel
(a) 15 Brambah Avenue, Cherbourg.

(b) The project was a substance use rehabilitation hostel.

(c) The level of funding provided was
1999-2000 $66,580
2000-2001 $66,411
2001-2002 $78,012.

• Indigenous Land Corporation

(iv) Land Acquisition Program
(a) Mimosa Station.

(b) The project funded land acquisition and landholding expenses.

(c) The level of funding provided was
1999-2000 $30,167
2000-2001 $13,986
Aboriginal and Torres Strait Islander Commission programs operating in the Roma and Rockhampton regions.

(v) Partnership and Development

Roma
(a) Murgon.
(b) Regional planning.
(c) The level of funding provided was
   1999-2000  $15,080
   2000-2001  $0
   2001-2002  $0.

Rockhampton
(a) Hervey Bay and Fraser Island.
(b) Evaluation of policies Korrawinga Aboriginal Corporation, and K’gari feasibility study for the development of the lease on Fraser Island
(c) The level of funding provided was
   1999-2000  $5,000
   2000-2001  $0
   2001-2002  $7,000.

(vi) Public Information

Roma
(a) Murgon.
(b) Cherbourg Community Council Naidoc celebrations
(c) The level of funding provided was
   1999-2000  $15,000
   2000-2001  $18,000
   2001-2002  $10,000.

Rockhampton
(a) Mundubbera, Hervey Bay, Maryborough, Gayndah.
(b) Naidoc celebrations.
(c) The level of funding provided was
   1999-2000  $6,000
   2000-2001  $8,000
   2001-2002  $5,000.

(vii) Community Development Employment Project Scheme

Roma
(a) Murgon.
(b) Cherbourg Community Council wages and operating expenses.
(c) The level of funding provided was
   1999-2000  $4,166,549
   2000-2001  $4,051,159

Rockhampton
(a) Hervey Bay.
(b) Korrawinga/Dhugamin wages and oncosts.
(c) The level of funding provided was
1999-2000 $929,544
2000-2001 $1,188,253
2001-2002 $1,690,685.

(viii) Community Housing and Infrastructure

Roma
(a) Murgon.
(b) Cherbourg Community Council; construction of houses, repairs to office building, housing repairs and maintenance.
(c) The level of funding provided was
1999-2000 $706,384
2000-2001 $560,000

Rockhampton
(a) Mundubbera, Hervey Bay, Maryborough.
(b) Construction of housing, purchase of housing, housing repairs and maintenance.
(c) The level of funding provided was
1999-2000 $323,099
2000-2001 $376,832

(ix) Preservation and Promotion of Indigenous Culture

Roma
(a) Murgon.
(b) Cherbourg Community Council Dudley Collins Centre operational expenses, and Golden Oldies celebrations.
(c) The level of funding provided was
1999-2000 $15,000
2000-2001 $15,000
2001-2002 $50,520.

Rockhampton
(a) Hervey Bay and Fraser Island.
(b) Arts and crafts activities; and rates, repairs and maintenance of leased property on Fraser Island.
(c) The level of funding provided was
1999-2000 $13,000
2000-2001 $89,240

(x) Sporting Opportunities for Indigenous People

Roma
(a) Murgon and Gayndah.
(b) Employment of a sports coordinator, sporting subsidies, establishment of a pony club, operational costs of a boxing club, Lawondale facilities upgrade, operating rodeo schools and rodeo.
(c) The level of funding provided was
1999-2000 $116,000
2000-2001 $106,080

Rockhampton
(a) Hervey Bay.
(b) Sports development grants, and contribution to multi purpose sport and recreation facility.
(c) The level of funding provided was
1999-2000 $10,000
2001-2002 $0.

(x) Legal Aid
Roma
(a) Murgon.
(b) Wakka Wakka Legal Aboriginal Corporation operating costs.
(c) The level of funding provided was
1999-2000 $853,307
2000-2001 $846,773

(xii) Law and Justice Advocacy
Roma
(a) Murgon.
(b) Wakka Wakka Legal Aboriginal Corporation employment of a training officer.
(c) The level of funding provided was
1999-2000 $146,751
2000-2001 $76,104
2001-2002 $0.

(xiii) Family Violence Prevention
Roma
(a) Murgon.
(b) Wakka Wakka Legal Aboriginal Corporation employment of a Domestic Violence Counsellor.
(c) The level of funding provided was
1999-2000 $0
2000-2001 $33,333
2001-2002 $0.

(xiv) Municipal Services
Roma
(a) Murgon.
(b) Cherbourg Community Council operating expenses.
(c) The level of funding provided was
1999-2000 $822,215
2000-2001 $826,035

(xv) Broadcasting Services
Roma
(a) Murgon.
(b) Cherbourg Community Council radio operating expenses and extension to radio station.
(c) The level of funding provided was
1999-2000 $93,720
2000-2001 $129,000
(xvi) *Art and Culture*
Roma
(a) Murgon.
(b) Cherbourg Community Council Olympic Flame celebrations.
(c) The level of funding provided was
1999-2000 $32,100
2000-2001 $0.
2001-2002 $0.

(xvii) *Land Acquisition*
Roma
(a) Murgon.
(b) Purchase property - Lawsondale.
(c) The level of funding provided was
1999-2000 $291,740
2000-2001 $0
2001-2002 $0.

(xviii) *Business Development and Assistance*
Roma
(a) Murgon.
(b) Cherbourg Community Council funding to alleviate abattoir’s debt.
(c) The level of funding provided was
1999-2000 $0
2000-2001 $0
2001-2002 $220,000.

(xix) *Home Loans*
Rockhampton
(a) Maryborough, Hervey Bay, Howard, Gayndah, Mundubbera.
(b) Loans to various individuals to assist towards the purchase of their homes.
(c) The level of funding provided was
1999-2000 $471,804
2000-2001 $462,199

(xx) *Preservation and Protection of Indigenous Heritage*
Rockhampton
(a) Hervey Bay, Fraser Island, and Gayndah.
(b) Transfer of lease on Fraser Island, and contribution to operating costs of Gayndah Aboriginal and Torres Strait Corporation.
(c) The level of funding provided was
1999-2000 $80,000
2000-2001 $2,983
2001-2002 $0.

(xx) *Preservation of Indigenous Languages and Recording*
Rockhampton
(a) Hervey Bay.
(b) Korrawinga Language Access Initiative program.
(c) The level of funding provided was
1999-2000 $0
2000-2001 $84,921

Wide Bay Electorate: Program Funding
(Question Nos 434 and 444)

Senator O’Brien asked the Minister for Family and Community Services and also the Minister representing the Minister for Children and Youth Affairs, upon notice, on 10 July 2002:
(1) What programs and/or grants administered by the department provide assistance to people living in the federal electorate of Wide Bay.
(2) What was the level of funding provided through these programs and/or grants for the 1999-2000, 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 Vanstone—The answer to the honourable senator’s questions is as follows:
(1) & (2) Programs and/or grants administered by the Department of Family and Community Services providing assistance to people living in the electorate of Wide Bay:

<table>
<thead>
<tr>
<th>PROGRAM/GRANTS</th>
<th>1999-00 ($)</th>
<th>2000-01 ($)</th>
<th>2001-02 ($)</th>
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<tr>
<td>Disability Services Program</td>
<td>1 205 418</td>
<td>1 258 411</td>
<td>1 283 417</td>
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<td>Supported Accommodation Assistance Program</td>
<td>896 116</td>
<td>1 413 936</td>
<td>1 366 506</td>
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<td>Emergency Relief Program</td>
<td>256 216</td>
<td>276 831</td>
<td>288 489</td>
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<td>Youth Programs</td>
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<td>475 910</td>
<td>491 966</td>
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<td>Stronger Families and Communities Strategy</td>
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<td>140 628</td>
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<td>International Year of the Volunteer</td>
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<td>Child Care Program</td>
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<td>1 635 904</td>
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<td>Total</td>
<td>4 057 405</td>
<td>5 241 540</td>
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(3) Specific projects funded by the Department of Family and Community Services:

<table>
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<tr>
<th>NAME OF SERVICE</th>
<th>LOCATION</th>
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<th>FUNDING 2000-01 ($)</th>
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<td>SUPPORTED ACCOMMODATION ASSISTANCE PROGRAM</td>
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<td>Eidsvold Christian Centre Support Program</td>
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<td>6 427</td>
<td>6 523</td>
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<td>Bilboa Emergency Accommodation Service</td>
<td>Bilboa</td>
<td>Support for homeless people - multiple target group</td>
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<td>71 202</td>
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<td>Hervey Bay Crisis and Community Housing Association</td>
<td>Hervey Bay</td>
<td>Support for homeless people - families</td>
<td>112 500</td>
<td>137 190</td>
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<td>Housing Action Group Maryborough - Family Accom Service</td>
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<td>Support for homeless people - families</td>
<td>102 124</td>
<td>124 623</td>
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<td>Yoorana Women's Crisis Centre</td>
<td>Maryborough</td>
<td>Support for homeless people - women and women with children escaping domestic violence</td>
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<td>279 512</td>
<td>284 468</td>
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<td>Housing Action Group Maryborough Mens Shelter-Coolooli House</td>
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<td>Support for homeless people - single men</td>
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<td>237 852</td>
<td>243 106</td>
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<td>Jundah Aboriginal Corporation</td>
<td>Murgon</td>
<td>Support for homeless people - women and women with children escaping domestic violence</td>
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<td>254 074</td>
<td>183 178</td>
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<td>Youthcare Hervey Bay</td>
<td>Urangan</td>
<td>Support for homeless people - young people</td>
<td>178 423</td>
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**YOUTH PROGRAMS**

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<td>Reconnect Maryborough-Hervey Bay (Hervey Bay)</td>
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<td>Reconnect</td>
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<td>South Burnett Community Training Centre Inc.</td>
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<td>IPET</td>
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**EMERGENCY RELIEF PROGRAM**

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<td>Jena Boran Aboriginal &amp; TSI Co</td>
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<td>Theodore Aboriginal Housing Corp Theodore Emergency Relief 4 503 4 600 Closed Service</td>
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### DISABILITY SERVICES PROGRAM

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<td>South Burnett Jobmatch Kingaroy Open Employment 302 529 341 017 334 057</td>
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<td>Kingaroy Business Service Kingaroy Supported Employment 97 667 99 415 105 770</td>
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<td>Maryborough Personnel Services Maryborough Open Employment 277 774 281 124 291 721</td>
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<td>Endeavour Industries Maryborough Supported Employment 156 979 158 890 168 270</td>
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<td>The Gumnut Place Murgon Supported Employment 90 357 91 974 97 853</td>
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### STRONGER FAMILIES AND COMMUNITIES STRATEGY

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<tbody>
<tr>
<td>Positive Net-Fx Maryborough To fund a Youth Network Officer to create a positive net effect in the Maryborough community by maximising the skill positive energy resources and commitment of individuals living in the local community. 105 500 100 000 109 500</td>
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### INTERNATIONAL YEAR OF THE VOLUNTEER

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<td>Aldridge State School Maryborough Contribution towards training for volunteers N/A 5 000 N/A</td>
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<td>Barambah Aboriginal Community Care Agency Murgon Awards Dinner with Commemorative Booklet to Celebrate Volunteers N/A 1 620 N/A</td>
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<tr>
<td>Blue Care Maryborough Respite Services</td>
<td>Maryborough</td>
<td>Production of booklet to be presented with an award to Volunteers</td>
<td>N/A</td>
<td>1 000</td>
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<tr>
<td>Gin Gin and District Alliance Inc</td>
<td>Gin Gin</td>
<td>Contribution towards OHS training for volunteers</td>
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<td>Hervey Bay 60 Plus Better Healthy Ageing Program</td>
<td>Hervey Bay</td>
<td>Production of Volunteer resource manual and Volunteer handbook</td>
<td>N/A</td>
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<td>Hervey Bay IYV Organising Group</td>
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<td>Contribution to Promotion of Volunteers</td>
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<tr>
<td>Maryborough City Council</td>
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<td>Public Display of Stories pictures &amp; photographs of Volunteers</td>
<td>N/A</td>
<td>5 000</td>
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<td>Murgon Shire Council</td>
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<td>Primary Industries Exhibition Inc</td>
<td>Biloela</td>
<td>Contribution towards training for volunteers</td>
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<td>Queensland Police Citizens Youth Welfare Association – Biloela Branch</td>
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## CHILD CARE PROGRAM

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<td></td>
<td></td>
<td>Disk Incentive Payment N/A</td>
<td>N/A</td>
<td>1 000</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Establishment Grant N/A</td>
<td>6 204</td>
<td>N/A</td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Setup Grant N/A</td>
<td>1 467</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Equipment Grant N/A</td>
<td>N/A</td>
<td>1 210</td>
<td></td>
</tr>
<tr>
<td>Eidsvold Vacation Care</td>
<td>Eidsvold</td>
<td>Vacation Care</td>
<td>Establishment Grant N/A</td>
<td>N/A</td>
<td>6 480</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Equipment Grant N/A</td>
<td>N/A</td>
<td>2 096</td>
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</table>
### Child Care Program

<table>
<thead>
<tr>
<th>Name of Service</th>
<th>Location</th>
<th>Service Type</th>
<th>Funding Details</th>
<th>Funding 1999-2000</th>
<th>Funding 2000-2001</th>
<th>Funding 2001-2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maryborough Child Care Centre Vacation Care</td>
<td>Maryborough</td>
<td>Vacation Care</td>
<td>Disadvantaged Area Subsidy</td>
<td>1,086</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>CCB Implementation Grant</td>
<td>350</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Disk Incentive Payment</td>
<td>N/A</td>
<td>1,500</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Establishment Grant</td>
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<td>490</td>
<td>N/A</td>
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<td></td>
<td>Special Needs Subsidy Scheme</td>
<td>N/A</td>
<td>1,169</td>
<td>4,290</td>
</tr>
<tr>
<td>Hervey Bay Uniting Church Vacation Care</td>
<td>Torquay</td>
<td>Vacation Care</td>
<td>Disadvantaged Area Subsidy</td>
<td>1,953</td>
<td>6,203</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>Establishment Grant</td>
<td>N/A</td>
<td>3,304</td>
<td>N/A</td>
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<td>YMCA Of Gayndah Vacation Care</td>
<td>Gayndah</td>
<td>Vacation Care</td>
<td>Disadvantaged Area Subsidy</td>
<td>3,259</td>
<td>1,530</td>
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</tr>
<tr>
<td></td>
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<td>CCB Implementation Grant</td>
<td>350</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td></td>
<td></td>
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<td>Establishment Grant</td>
<td>N/A</td>
<td>3,908</td>
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<td>QPCYWA Biloela Vacation Care</td>
<td>Biloela</td>
<td>Vacation Care</td>
<td>Disadvantaged Area Subsidy</td>
<td>1,155</td>
<td>1,830</td>
<td>6,940</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>Establishment Grant</td>
<td>N/A</td>
<td>2,960</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Disk Incentive Payment</td>
<td>N/A</td>
<td>N/A</td>
<td>1,500</td>
</tr>
<tr>
<td>Monto Vacation Care Program</td>
<td>Monto</td>
<td>Vacation Care</td>
<td>Disadvantaged Area Subsidy</td>
<td>N/A</td>
<td>915</td>
<td>3,462</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>CCB Implementation Grant</td>
<td>350</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Establishment Grant</td>
<td>7,400</td>
<td>3,110</td>
<td>N/A</td>
</tr>
<tr>
<td>Korrawinga Aboriginal Vacation Care</td>
<td>Nikenbah</td>
<td>Vacation Care</td>
<td>Operational Subsidy</td>
<td>N/A</td>
<td>11,372</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Establishment Grant</td>
<td>2,327</td>
<td>N/A</td>
<td>5,760</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Disadvantaged Area Subsidy</td>
<td>N/A</td>
<td>N/A</td>
<td>940</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Setup Grant</td>
<td>562</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Equipment Grant</td>
<td>1,700</td>
<td>N/A</td>
<td>N/A</td>
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<td></td>
<td></td>
<td></td>
<td>CCB Block Grant</td>
<td>N/A</td>
<td>23,160</td>
<td>34,221</td>
</tr>
<tr>
<td>Child Care Access and Equity Resource Service - Maryborough</td>
<td>Maryborough</td>
<td>Supplementary Grants</td>
<td>Operational Subsidy</td>
<td>55,274</td>
<td>56,301</td>
<td>49,496</td>
</tr>
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<td></td>
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<td></td>
<td>Special Needs Subsidy Scheme</td>
<td>5,575</td>
<td>N/A</td>
<td>18,632</td>
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<td>Eidsvold Aboriginal Enrichment Program</td>
<td>Eidsvold</td>
<td>Special Services</td>
<td>Operational Subsidy</td>
<td>4,017</td>
<td>14,567</td>
<td>16,173</td>
</tr>
<tr>
<td>Korrawinga Aboriginal Playgroup</td>
<td>Nikenbah</td>
<td>Special Services</td>
<td>Operational Subsidy</td>
<td>33,035</td>
<td>43,002</td>
<td>37,371</td>
</tr>
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<td>--------------------</td>
</tr>
<tr>
<td>Anglicare Safe Kids (Playgroup)</td>
<td>Maryborough</td>
<td>Special Services</td>
<td>Operational Subsidy</td>
<td>18 623</td>
<td>24 244</td>
<td>21 069</td>
</tr>
<tr>
<td>Eidsvold Aboriginal Vacation Care</td>
<td>Eidsvold</td>
<td>Special Services</td>
<td>Operational Subsidy</td>
<td>4 112</td>
<td>16 391</td>
<td>16 554</td>
</tr>
<tr>
<td>Eidsvold Aboriginal Playgroup</td>
<td>Nkenbah</td>
<td>Special Services</td>
<td>Operational Subsidy</td>
<td>4 549</td>
<td>21 076</td>
<td>18 316</td>
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</table>
Veterans: Doctors’ Fees
(Question No. 463)

Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 18 July 2002:

(1) Has the department reimbursed veterans for doctors’ fees where doctors have refused to accept veterans treatment cards; if so: (a) in how many cases has the department done this, on a monthly basis, over the past 12 months; and (b) (i) which offices of the department have performed such reimbursements, and (ii) how many of these reimbursements have been undertaken for each of those offices each month for the past 3 months.

(2) Is it a fact that Gold Cardholders do not have Medicare cards; if so, does that mean that they have to pay the full doctor’s fee up-front if the doctor will not accept the Gold Card.

(3) What authority does the department have to pay doctors’ fees where doctors charge above the scheduled fee.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:

(1) Yes. (a) and (b) The Department of Veterans’ Affairs is unable to advise accurately on the number of reimbursements where doctors have refused to accept veterans treatment cards over the past 12 months as the reason for reimbursement of doctor’s fees is not recorded in many cases. There are a number of other reasons for reimbursements to be made, including:

• where veterans do not present their treatment card (ie. where it was forgotten or temporarily lost);
• for medical services provided in the period between the effective date of eligibility to that treatment and the date on which the person was notified of his or her entitlement; or
• various other medical services requiring reimbursement.

The table below shows the total number of medical service reimbursements undertaken by the Department of Veterans’ Affairs for the period 17 April 2002 to 17 July 2002.

<table>
<thead>
<tr>
<th>State</th>
<th>18 April to 17 May</th>
<th>18 May to 17 June</th>
<th>18 June to 17 July</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>34</td>
<td>26</td>
<td>29</td>
<td>89</td>
</tr>
<tr>
<td>QLD</td>
<td>60</td>
<td>71</td>
<td>68</td>
<td>199</td>
</tr>
<tr>
<td>VIC</td>
<td>17</td>
<td>41</td>
<td>25</td>
<td>83</td>
</tr>
<tr>
<td>SA</td>
<td>7</td>
<td>11</td>
<td>12</td>
<td>30</td>
</tr>
<tr>
<td>WA</td>
<td>15</td>
<td>21</td>
<td>28</td>
<td>64</td>
</tr>
<tr>
<td>TAS</td>
<td>5</td>
<td>5</td>
<td>2</td>
<td>12</td>
</tr>
<tr>
<td>Total</td>
<td>138</td>
<td>175</td>
<td>164</td>
<td>477</td>
</tr>
</tbody>
</table>

Note: The Department of Veterans’ Affairs database does not enable ready identification of the reason for reimbursement.

(2) Some Gold Cardholders choose not to have a Medicare Card. Where a doctor will not accept the Gold Card, and the veteran does not have a Medicare card, the Department of Veterans’ Affairs will assist the veteran to locate a doctor who will accept the Gold Card if they wish.

(3) Paragraph 3.5.1 of the Treatment Principles, under the Veterans’ Entitlements Act 1986, authorises the Repatriation Commission to accept financial responsibility up to the Medical Benefits Schedule fee, except where the Repatriation Commission is satisfied that there are exceptional circumstances justifying the payment of a higher fee.

Trade: Live Animal Exports
(Question No. 496)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 29 July 2002:

(1) Can the Minister confirm that the entity that owns the MV Becrux is Wellard Rural Exports.

(2) Is this an Australian-owned and operated company.

(3) How many Australians does Wellard Rural Exports employ directly in relation to live exports of Australian livestock.
(4) Has Wellard Rural Exports (or its predecessors) been involved in any incident in the past 10 financial years where mortality rates of Australian-sourced animals during live export have exceeded the acceptable level set by Commonwealth regulation, industry codes of conduct or any other regulation which may apply; if so: (a) when did these incidents occur; (b) what type and breed of animals perished; and (c) in what numbers.

(5) From which areas of Australia were the deceased animals sourced for each voyage undertaken by Wellard Rural Exports where the maximum acceptable mortality rate as determined by Commonwealth regulation, industry codes of conduct or any other regulation which may apply, was exceeded in the past 10 financial years.

(6) What investigations were undertaken by the Commonwealth into these incidents.

(7) What steps were taken by the Commonwealth to ensure the welfare of animals after investigations into these incidents had been concluded.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) No. The owner is Sussex Shipping.

(2) No.

(3) Whilst this information is not collected by my portfolio, Wellards have advised that employment levels vary and are linked to seasonal variations in the live export trade. As at 30 June 2002 there were 52 employees on the payroll.

(4) Yes. The table below shows details of incidents known to AQIS including (a) the date of voyages when incidents occurred, (b) what type of breed of animal perished and (c) in what numbers. AQIS has no collated data on individual exporters prior to March 2000 although it is aware of a further incident in June 1998 which is covered in the table:

<table>
<thead>
<tr>
<th>When Voyage Occurred</th>
<th>Type of Animal</th>
<th>Mortality Number</th>
<th>Mortality Rate %</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1998</td>
<td>Cattle</td>
<td>346</td>
<td>27.59</td>
</tr>
<tr>
<td>April 2000</td>
<td>Cattle</td>
<td>36</td>
<td>1.85</td>
</tr>
<tr>
<td>July 2000</td>
<td>Sheep</td>
<td>3,150</td>
<td>4.92</td>
</tr>
<tr>
<td>June 2001</td>
<td>Sheep</td>
<td>1,421</td>
<td>2.97</td>
</tr>
<tr>
<td>March 2002</td>
<td>Cattle</td>
<td>33</td>
<td>1.46</td>
</tr>
<tr>
<td>June 2002</td>
<td>Cattle/Sheep</td>
<td>614/1,418</td>
<td>30.77/2.24</td>
</tr>
</tbody>
</table>

(5) The deceased animals for the voyages outlined above were loaded out of Victoria and Western Australia.

(6) An investigation is currently underway into the Becrux incident. The Commonwealth also conducts an investigation into any ship safety and ship operation issues pursuant to the Navigation Act 1912 when animal mortality rates exceed those specified under the Act. The portfolio was also involved in an investigation of the voyage in 1998.

(7) An order under the Australian Meat and Livestock Industry Act 1997 was put in place after the 1998 incident. This order, which has subsequently been amended, outlines requirements for the export of cattle from south of the 26th parallel during the northern hemisphere summer and winter. In addition separate action was also taken against the exporter in the form of a direction on his license. The direction was removed on 20 September 1999.

Enhanced Printing Industries Competitiveness Scheme
(Question No. 502)

Senator George Campbell asked the Minister representing the Minister for Industry, Tourism and Resources, upon notice, on 22 July 2002:

(1) Has the Federal Government decided to reverse its decision to prematurely terminate the Enhanced Printing Industries Competitiveness Scheme; if so: (a) on what date was this decision made; (b) when was this decision announced; and (c) how was the decision announced.

(2) What is the planned date for the recommencement of the scheme.

(3) Will any companies be disadvantaged by the gap in the operation of the scheme.

(4) Has there been any effort made to inform the printing industry of the resumption of the scheme; if so, in what form were these efforts.
(5) How many applications for the scheme have been received since 14 May 2002.
(6) Have there been any changes made to the scheme itself or the administration of the scheme; if so, what are the changes and the reasons for the changes.
(7) What is the intended end date of the scheme.
(8) How will the scheme be funded.
(9) What are the annual budget allocations to the scheme.
(10) Why does the AusIndustry website not announce that the scheme has recommenced.

Senator Minchin—The Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator’s question:

(2) The scheme has been re-opened.
(3) No.
(4) see (1) above
(5) Since 14 May 2002 twenty applications have been received from one firm.
(6) EPICS will continue as previously, but with modifications to clarify some minor technical matters. These will be reflected in new ministerial guidelines and customer guidelines and the modifications were the subject of consultations with the Printing Industries Association of Australia.
(7) The scheme will expire on 30 June 2004 consistent with the Appropriation (Supplementary Measures) Act (No. 1) 1999.
(8) The scheme is funded from the Appropriation (Supplementary Measures) Act (No. 1) 1999.
(9) The budget allocations are as follows:

<table>
<thead>
<tr>
<th>00-01 ($m)</th>
<th>01-02 ($m)</th>
<th>02-03 ($m)</th>
<th>03-04 ($m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.2</td>
<td>13.1</td>
<td>17.7</td>
<td>9.0</td>
</tr>
</tbody>
</table>
(10) The AusIndustry website has been amended to announce the reopening of the program.

Rural and Regional Australia: Farm Crime Survey
(Question No. 538)

Senator O’Brien asked the Minister for Justice and Customs, upon notice, on 15 August 2002:

(1) Is the Minister aware of the farm crime survey released by the Australian Institute of Criminology (AIC) on 13 August 2002, which found that 27 per cent of farms surveyed were victims of property crime.
(2) What action has the Minister taken to develop crime prevention strategies that address the alarming incidence of property crime against farm businesses.
(3) Will any action be taken before the completion of the AIC’s 3-year project on crimes against farms.

Senator Ellison—The answer to the honourable senator’s question is as follows:

(1) Yes.
(2) The survey is the first part of a three-year project on farm crime being conducted by the Australian Institute of Criminology and funded through the Government’s National Crime Prevention Program. The Government funded this study of property crime against farms as a first step in the process of gaining knowledge and understanding about the extent and magnitude of this form of crime and its impact on the economic and social well being of rural Australia. Over a three-year period, this study will identify specific patterns of vulnerability of rural crime and will inform the development of future specific crime prevention strategies.
(3) The Commonwealth has supported this research as part of its national leadership role. Through the Australasian Police Ministers’ Council process, the Commonwealth will advise all States and Ter-
ritories of the findings of the first part of the three year project with a view to encouraging the con-
sideration of policing issues associated with the research findings.

Foot and Mouth Disease Steering Committee
(Question No. 541)

Senator O’Brien asked the Minister representing the Minister for Immigration and Multi-
cultural and Indigenous Affairs, upon notice, on 15 August 2002:

(1) Is the department currently represented on the Commonwealth Foot and Mouth Disease Steering Committee; if so, when did the department’s representation on the committee begin; if not: (a) has the department previously been represented on the steering committee; (b) when did the representation begin and end; (c) why did the representation end; (d) who made the decision to end the representation; and (e) how and when was the decision communicated to the department.

(2) If the department is currently represented, what is the purpose of its representation.

(3) If the department was previously represented, what was the purpose of its representation.

Senator Ellison—The Minister for Immigration and Multicultural and Indigenous Affairs has provided the following answer to the honourable senator’s question:

(1) The department is not currently represented on the Commonwealth Foot and Mouth Disease Steering Committee.

(a) The department was previously represented on the Steering Committee.

(b) The representation began on 05 September 2001 and ended on 08 July 2002.

(c) The department had fulfilled its role in providing advice on visa requirements for overseas experts should they need to travel to Australia at short notice.

(d) The decision to end the representation was made jointly with the department and Agriculture, Fisheries & Forestry – Australia (AFFA).

(e) Officers of the department and AFFA discussed the matter by telephone on 08 July 2002.

(2) See (1)

(3) The purpose of the department’s representation was to advise the Steering Committee on the visa arrangements for overseas experts, particularly veterinarians, who may need to travel to Australia at short notice to assist with any outbreaks of Foot and Mouth Disease.

Trade: Genetically Modified Food
(Question No. 543)

Senator O’Brien asked the Minister representing the Minister for Trade, upon notice, on 15 August 2002:

(1) Did the Minister, or the department, make high-level representations to the Sri Lankan Government in 2001 concerning Sri Lanka’s proposed ban on the importation of genetically-modified agricultural and food exports from Australia; if so, what was the outcome of those representations.

(2) Has the Minister, or the department, made equivalent high-level representations to the European Union or any other country on restrictions in the trade in genetically-modified agricultural and food exports from Australia; if so, what has been the outcome of those representations.

Senator Hill—The following answer has been provided by the Minister for Trade:

(1) Yes. In August 2001, I wrote to my Sri Lankan counterpart concerning the damage that the new regulations governing Sri Lanka’s food import and labelling laws could do to Australia’s food trade with Sri Lanka. I assured my Sri Lankan counterpart that Australia adopted the highest standards for food available in Australia and that the same standards applied to Australian food exported to Sri Lanka. The Australian High Commission in Colombo also made representations in similar terms to the Sri Lankan Government on this issue. To date, the regulations have not come into force.

(2) Yes. During 2000 and 2001, the Australian Embassy in Riyadh made a number of representations to the Saudi Arabian Government on the proposed Genetically Modified Food Import Regulations. These representations contributed to the Saudi Arabian Government imposing a one year moratorium on the new regulations, and moving from an outright ban on imports of genetically modified
organisms towards an approach based on certification that products are licensed for consumption in their country of origin, combined with labelling provisions. DFAT, in consultation with other relevant Commonwealth agencies, has made written comments on the European Commission’s proposed regulations entitled ‘Proposal for a Regulation of the European Parliament and of the Council on Genetically Modified Food and Feed’ and ‘Proposal for a Regulation of the European Parliament and of the Council concerning Traceability and Labelling of Genetically Modified Organisms and Amending Directive’ through the WTO Committee on Technical Barriers to Trade, and the WTO Committee on Sanitary and Phytosanitary Measures. The submission urged the EU to ensure its regulations take account of relevant international rules, including those under the WTO Agreements. The EU regulations are still under negotiation within the EU.

**Trade: Genetically Modified Food**

(Question No. 544)

**Senator O’Brien** asked the Minister representing the Minister for Foreign Affairs, upon notice, on 15 August 2002:

1. Did the Minister, or the department, make high-level representations to the Sri Lankan Government in 2001 concerning Sri Lanka’s proposed ban on the importation of genetically-modified agricultural and food exports from Australia; if so, what was the outcome of those representations.

2. Has the Minister, or the department, made equivalent high-level representations to the European Union or any other country on restrictions in the trade in genetically-modified agricultural and food exports from Australia; if so, what has been the outcome of those representations.

**Senator Hill**—The following answer has been provided by the Minister for Foreign Affairs:

1. Please see the response to Question on Notice No. 543.

**Indigenous Affairs: Royalties**

(Question No. 567)

**Senator Harris** asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 20 August 2002:

1. Does the Federal Government tax royalties paid to Northern Territory Aboriginal groups.
2. Does the Federal Government have a record of the amounts received from these royalties.
3. Is the Aboriginal and Torres Strait Islander Commission’s annual budget reduced by the amount received as royalties or compensation paid to the Northern Territory Aboriginals.
4. Does the Federal Government have a record of the payments received, on an annual basis, by the Northern Territory Aboriginal and Torres Strait Islander Commission.

**Senator Ellison**—The Aboriginal and Torres Strait Islander Commission has provided the following information in response to the honourable senator’s question:

**Question 1**

Answer: Yes. There are two distinct categories under which this occurs:

(a) Royalties are paid to Northern Territory Aboriginal groups under negotiated agreements between mining companies and Aboriginal associations.

(b) Royalty equivalents, as distinct from royalties, are credited to the Aboriginals Benefit Account (ABA), which is administered by the Aboriginal and Torres Strait Islander Commission (ATSIC) in Darwin. Royalty equivalents are drawn from the Consolidated Revenue Fund in accordance with section 63 of the Aboriginal Land Rights (Northern Territory) Act 1976.

The funds credited to the ABA are distributed as follows:

1. under subsection 64(1) of the Aboriginal Land Rights (Northern Territory) Act 1976 (the Act), 40% of royalty equivalent moneys are paid to the four Northern Territory land councils to meet their administrative costs;

2. under subsection 64(3) of the Act, 30% of royalty equivalent moneys are directed to land councils for distribution to Aboriginal organisations in areas affected by mining; and
The remaining 30% of royalty equivalent moneys are retained in the ABA to cover expenses under subsections 64(4), 64(5) and 64(7) of the Act.

- Subsection 64(4) covers payments to or for the benefit of Aboriginals living in the Northern Territory;
- Subsection 64(5) covers administrative costs of the ABA; and
- Subsection 64(7) covers administrative costs of land councils where the Minister is satisfied that subsection 64(1) payments are insufficient to meet their administrative expenses.

Under the Income Tax Assessment Act 1936, payments made from royalty equivalents credited to the ABA are subject to Mining Withholding Tax (MWT) at a rate specified in the Income Tax (Mining Withholding Tax) Act 1979, currently at 4%. MWT is payable on the payment of royalty equivalent moneys from the ABA, not on royalty equivalent income. MWT is withheld by the ABA and remitted to the Australian Taxation Office (ATO).

Negotiated agreements between mining companies and Aboriginal Associations provide for royalties to be paid to Aboriginal associations affected by the mining. Such payments are also subject to MWT to the extent that they are “mining payments” for the purposes of the Income Tax Assessment Act 1936 at a rate specified in the Income Tax (Mining Withholding Tax) Act 1979.

**Question 2**

Answer: It is not clear if the Senator is asking for the amount of royalty equivalents received or the Mining Withholding Tax paid. However, to assist the Senator the following table lists the last 5 years of total royalty equivalents received by the ABA and the total MWT paid (amounts are cash based):

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Royalty Equivalents Received $</th>
<th>Total MWT Paid $</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996-1997</td>
<td>34,671,518</td>
<td>1,187,066</td>
</tr>
<tr>
<td>1997-1998</td>
<td>31,513,887</td>
<td>1,032,094</td>
</tr>
<tr>
<td>1998-1999</td>
<td>30,541,830</td>
<td>1,072,019</td>
</tr>
<tr>
<td>1999-2000</td>
<td>31,609,952</td>
<td>1,114,296</td>
</tr>
<tr>
<td>2000-2001</td>
<td>33,751,021</td>
<td>1,146,441</td>
</tr>
</tbody>
</table>

With respect to negotiated agreements, ATSIC does not have information on MWT withheld by mining companies.

**Question 3**

Answer: No. The ABA is a Special Account under the Financial Management and Accountability Act 1997 (FMA Act). The ABA is an Administered Item of ATSIC and its assets, liabilities revenues and expenses are controlled by the Government and managed by ATSIC on behalf of the Government.

ABA operations are not governed by the Aboriginal and Torres Strait Islander Commission Act 1989 (the ATSIC Act) and ATSIC is not able to make decisions on the distribution of ABA funds other than in accordance with the provisions of the Aboriginal Land Rights (Northern Territory) Act 1976 (the NT Land Rights Act).

Although ATSIC manages ABA operations, ABA financial operations are discrete from ATSIC’s. ABA maintains its own bank account and financial management system. The royalty equivalents that are paid into the ABA are used specifically for the purposes of funding the four Northern Territory Land Councils in respect of their statutory functions, duties and responsibilities as provided for under the NT Land Rights Act. This is entirely separate from grants and other funding provided by ATSIC under the ATSIC Act and the ABA Section in ATSIC’s Native Title and Land Rights Centre is charged with the responsibility of administering the relevant provisions of the NT Land Rights Act that govern the terms and conditions under which funding is provided to the Land Councils under the ABA regime that is provided for under the NT Land Rights Act.

**Question 4**

Answer: Yes.

The ABA is established by the Aboriginal Land Rights (Northern Territory) Act 1976, which requires ATSIC provide an annual report including financial statements to Parliament. ATSIC is also required to provide these details pursuant to the annual reporting requirements set out in the Financial Management and Accountability Act 1997.