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Monday, 23 September 2002

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

MARRIAGE AMENDMENT BILL 2002
In Committee

Consideration resumed from 19 August.

The CHAIRMAN—The committee is considering the Marriage Amendment Bill 2002 and amendments (1) to (3) on sheet 2583 moved by Senator Greig. The question is that the amendments be agreed to.

Senator LUDWIG (Queensland) (12.31 p.m.)—Consideration during the committee stage of this bill, the Marriage Amendment Bill 2002, has stretched over a couple of days. As I understand it, we are now dealing with Senator Greig’s amendments. Are we dealing with them all together? Perhaps I could ask that question through you, Chair.

Senator Ellison—Yes.

Senator LUDWIG—It would be helpful to at least put our position to the Senate so that Senator Greig will understand where we stand on these amendments. I think it would be fair to say that Senator Greig might already understand in part the difficulties that we have in dealing with the celebrants reform program and then attaching other amendments, but it is acknowledged that Senator Greig is passionate about the Marriage Amendment Bill. I listened carefully to Senator Greig’s references in his speech to marriage celebrancy reforms. I also had an opportunity to sit through the speech that he made on the amendments themselves. Senator Greig raised the issue of changes to the marriage celebrants program for only a short while during his speech, and that is not to imply any criticism. The majority of his speech was dedicated to the challenges that same sex, intersex and transgender couples faced in getting recognition from this government, particularly in relation to gaining the same rights as legally married couples.

The amendments before the committee today going to same sex couples were only circulated during my speech in the second reading debate. Labor have had a little bit more time since then to look at those amendments and consider them. The amendments, however, are what I might refer to—not disingenuously—as tacking amendments. They do not go to what the reforms before the Senate are directed at. Therefore in our view they do not have the benefit of the comprehensive consultative process that you would expect to precede these types of amendments, in contradistinction to the Marriage Amendment Bill, which did go through a lengthy and comprehensive consultative process. The difficulties are always the unintended consequences that may flow from such amendments. Legislation of this nature should therefore be subject to comprehensive examination and extensive public consultation before legislative scrutiny. Such issues as the property rights of same sex couples if separation occurs and adoption laws are but some of the matters that may need consideration, together with, as Senator Greig would be aware, ensuring that the states do have legislation dealing with the areas that the Commonwealth cannot.

Senator Greig understands, and I am being careful with my choice of words, that there is a piecemeal approach by the states and the Commonwealth because of the Constitution. There are some matters that the states need to deal with in relation to marriage more generally, such as adoption laws, which are the consequences of a union of two people, and other areas which the Commonwealth has direct responsibility for. So much of this requires not only comprehensive Commonwealth action but also comprehensive action by the states as well. In addition, it is not always in the hands of the federal parliament to legislate in this area: many laws are in the hands of the states.

Some states have moved some way towards eliminating discrimination in this area and, as I understand it, Senator Greig moved a motion in relation to Western Australia’s position. Given the time shortage this morning, I have not followed this up to find out whether that was enacted on Friday. Senator Greig has just indicated it was. I congratulate the WA government for moving quickly in response to those issues. Not all states have moved in such a unified way. There is no
consistency across states on all these issues. What is lacking is a federal Attorney-General who is willing to play a constructive role in coordinating a comprehensive response to the issues that need to be addressed.

As I have said, the bill before the parliament has been through a reasonably comprehensive consultative process on the reforms that are contained within it. However, Senator Greig’s amendments, as I understand them, do not directly address the celebrants reform program. What they seek to do is to amend the marriage bill, but in a piecemeal fashion. Therefore Labor has consistently not supported that type of amendment. Having said that, let me be very clear about Labor’s position. It was Labor who introduced the Superannuation (Entitlements of Same Sex Couples) Bill 1998. It was Labor who wrote this bill to give same sex couples the same rights in relation to superannuation payments that a traditional married couple has. It is Labor who supports equal rights. It is Labor who strongly opposes discrimination against gay and lesbian couples—as it opposes discrimination in any form and against any person, as I expect you would as well.

Our record on this is very clear. Labor supports legislative and administrative action by all Australian governments to eliminate discrimination on the grounds of race, colour, sex, religion, sexuality, disability, genetic make-up, political or other opinions, national or social origin, property, birth or other status. We recognise the right of all Australians to be free of discrimination on the grounds of a person’s sexuality. The Labor Party believes that a whole of government approach should be developed to address systematic discrimination on the basis of a person’s sexuality.

This is no reflection on Senator Greig’s motives, but I am a little disappointed that he has continued to address this matter in a piecemeal fashion. The bill is designed to address a completely different thing from what Senator Greig wishes to tack on to it. Neither the bill nor its amendments are designed to address the discrimination that exists in a comprehensive way but, rather, to address some of the problems found in the marriage celebrants program—not the problems per se but other matters subsidiary to that issue. It is fair to say that that is something which both our parties wish to address in a comprehensive way.

As I have said earlier, Labor raised the issue of equal rights in relation to superannuation for same sex couples; but, in contradistinction to this, that issue was surrounded by a groundswell of community interest and law reform. The New South Wales Legislative Assembly carried, without dissent, support for same sex rights in the Property (Relationships) Legislation Amendment Bill. I am sure Senator Greig would agree that this was a step in the right direction towards the eventual elimination of discrimination against non-traditional couples as described in the act.

The issues that I have raised so far are not the only difficulties that confront us in Senator Greig’s amendments. Another matter, whilst not directly related to the amendments themselves, presents us with some fundamental problems. This difficulty is that the authority for the Commonwealth to legislate with respect to the subject matter is contained in the Constitution in section 51(xxi). I am sure Senator Greig is familiar with that section. This does not prevent the amendments proposed by Senator Greig being considered. The chamber may proceed with the proposal and await any consideration of the matter by the courts. However, it would seem prudent in our view to ensure that, if you are serious about progressing these amendments, you undertake to advise people and that you look at a better process than tacking things on to an existing bill. In some respects, it is almost the duty of the proponent of the proposed amendments to ensure that people know that there is some controversy over whether those amendments are constitutionally sound.

This issue of whether or not those amendments are constitutionally sound is not new. I imagine Senator Greig would be aware of the line of authorities in the High Court stretching back as early as 1908. More recently, Justice Brennan in The Queen v. L was of the opinion:
In *Hyde v. Hyde* and *Woodmansee*, Lord Penzance defined marriage as ‘the voluntary union for life of one man and one woman, to the exclusion of all others’.

That definition has been followed in this country and by the courts as reported in Research Note No. 17, 2001-02. The Research Note provides a cogent history of this provision and it also allows debate about that subject matter. It also should inform Senator Greig of the controversy on the issues that surround it. It is not so much the case that we cannot move this; at least the Senate does not preclude it. If an amendment such as that were to be passed, the consequences may be that people might then act on that without the benefit of our knowledge of the history of the provision and without understanding its constitutionality and where it might be challenged. They might then find that they end up in controversy over a constitutional issue without that knowledge.

In this instance, I did listen carefully to your speech on the amendment, where nothing about this issue was mentioned. In part, it is a little disappointing that you could not take us through the issues surrounding the constitutionality of these provisions. Be that as it may, that time has marched on. Clearly, there remains at this point one major limitation, namely that the High Court still considers prohibition of marriage between persons of the same sex to be the case. However, time does march on and perhaps, on a reconsideration of that, the High Court might come to a different view. But that is a matter for the High Court, not for the Senate. Same sex couples are recognised in the Netherlands, as I understand it. I am not sure about other countries, but it may be the case.

**Senator Greig interjecting—**

**Senator LUDWIG**—Senator Greig has nodded, and so I assume there are a number of other countries where it is recognised. They may not have the same constitutional limitations that seem to be imposed upon us. When I say ‘seem to’, it is not clear whether or not the High Court would consider it in the same way; but there is the issue of placing people in jeopardy of again being in the High Court, if an amendment such as this were to be passed and they acted upon it in good faith—without the proponent of the amendment having carried out the duty of ensuring that they understood where it sat.

The Research Note itself comments that, in respect of the constitutional underpinning that is needed, the High Court consideration of section 51(xxi) of the Constitution leaves open whether parliament can determine the meaning of marriage or whether the form has a fixed and intrinsic meaning. It may be that section 51(xxi) of the Constitution dealing with the external affairs power may be utilised to support the matter. It could look at international treaties as a way of supporting the ability of parliament to legislate for same sex marriages. To use a terrible phrase, the jury could still be well out on this as to whether it is an intrinsic meaning which is fixed and so extremely difficult in terms of trying to amend it, or whether it may be that parliament can determine the meaning. But at this point in time, as I said earlier, I think that it is not the right way to proceed with it.

The other issue of course is whether a private member’s bill may be a more appropriate vehicle, but it is not my position to advance your arguments on this matter. In this regard then, Labor cannot support your amendments. I am concerned that the raising of the issue without clear focus will lessen the ability of the issue to be progressed, though, I must say. However, I cannot help but provide you with some gratuitous advice—and I shall probably regret it in any event—that it may be worth while having these issues examined more from the whole of government perspective. In reality, the task is to convince the government, not Labor. *(Time expired)*

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) *(12.46 p.m.)*—The government does not support these amendments. The *Marriage Amendment Bill 2002* is dealing with marriage celebrants, and the marriage celebrants program is what we are looking at. The government does not believe that amendments of this magnitude should be canvassed here. In any event, the government would oppose such amendments, and I suppose that does not offer much solace to Senator Greig.
For the record, the government is of a view that marriage, as far as the Australian community is concerned, has been historically a union between a male and a female, and marriage has also historically occurred for having a family in relation to that male and female. It is clearly in the child’s interests, the government believes, for that child to have, in the normal course of events, the care and affection of both a mother and a father. The Family Law Act says that, unless it is contrary to the best interests of children, they have a right to know and be cared for by both parents. The government is firmly of this view and believes therefore that same sex partnerships cannot be given the same status as a marriage between a man and a woman or the same status as de facto relationships involving a man and a woman.

It has been mentioned in debate that some countries have allowed same sex relationships to be equated with marriage. The government is not persuaded by that and believes that the Australian community is very much of a view that the historical understanding of a marriage should continue. Therefore it opposes these amendments. This is a bill which is related to the marriage celebrants program, while this is a fundamental change to how we look at a family and its structure and it does not have a place in this bill. But, if it were to be raised in any other forum, I must be frank that the government would certainly oppose it.

Senator GREIG (Western Australia) (12.49 p.m.)—I thank the opposition and government for their contributions and I would say the following things in reply. Firstly, this is not entitled the ‘civil celebrants bill’; this is the Marriage Amendment Bill 2002. It is entirely appropriate to raise and all issues dealing with marriage and the Marriage Act and to debate them—and that is what I am on about today.

From the crossbenches we have only three ways of effecting change as we would like to see change. We can do that through a private member’s bill—and I will talk about that in a moment. We can do that with a successful amendment, or we can do that by precipitating and engaging in the necessary debate. Fundamentally, that is what I am on about today.

From previous discussions I have had here on superannuation for same sex couples, two people spring to mind. The Prime Minister, in relation to a discussion he had with Mr Kerry O’Brien on the 7.30 Report, and Senator Harradine, on a previous occasion, have expressed their resistance to superannuation for same sex couples, saying that it could lead to same sex marriages. Part of the reason for me engaging in this discussion today is to prove that to be wrong by demonstrating that neither the government nor the opposition support same sex marriages and that the two issues of superannuation and marriage—the Superannuation Act and the Marriage Act—are separate and not linked and one does not affect the other.

I would also make the point that the issue of same sex relationships within the broader compass of issues surrounding civil celebrants is pertinent. Without exception, every civil celebrant I have had discussions with over the last six months on this issue has acknowledged that many times they are asked to engage in civil ceremonies for same sex partners. To each person they have expressed regret that it does not have any legal impact—ceremonial, but not legitimate—and this brings me to my other key point.

Senator Ludwig has said, amongst other things—and I am not trying to paraphrase—that this is really an issue more for the states. Marriage is entirely governed by the Commonwealth. The states have no effect and no impact and no jurisdiction in terms of marriage. The states can and have for the most part—including my home state, where legislation was proclaimed last Friday, thankfully—legally recognised and protected relationships including de facto and same sex relationships for things like property settlement, wills and estates and, in some cases, parenting and children issues. But they can only do that at a state level jurisdiction. That means that with the fundamental issues, which I have touched on before—things like social security, immigration, taxation, Commonwealth superannuation, veterans’ affairs, Federal Police, defence forces—any area of Commonwealth legislation that deals with
relationships discriminates against same sex partners and gay and lesbian people, and that cannot be addressed at a state level.

Senator Ludwig has said that Labor’s position is that it needs a more comprehensive, whole of government approach. I would endorse that; I am not opposed to that. But this is a very mixed and confused message I hear from the opposition, for two reasons. Firstly, seven years ago we Democrats introduced a comprehensive sexuality antidiscrimination bill. Your party does not support it, nor will you allow us time to even debate it. There it stands on the shelves, gathering dust along with all the other private members’ bills. So for me it is a question of advocacy if I cannot produce legislative reform. However, I sense that the community is ahead of both the government and opposition on this, illustrated by virtue of the fact that every state and territory has moved on this issue and the Commonwealth lags behind.

Secondly, the strong mixed message that I get from the opposition is that while it argues that it wants a comprehensive, whole of government approach, it contradicts itself by virtue of the fact that it has two private members’ bills, which are very discrete pieces of legislation, that aim to address tiny aspects of this broader discussion. They include Mr Albanese’s private member’s bill on superannuation which is quarantined only to superannuation in the private sector. It does not cover Commonwealth employees and it only relates to superannuation. It does not touch on that great plethora of issues that I talked on a moment ago. That bill has also been mirrored and it has been introduced into the Senate through Senator Conroy, but it has not progressed. There is also the Australian Citizenship for Eligible De facto Spouses Bill 2002, recently introduced by Ms Tanya Plibersek. It is another very discrete piece of legislation which touches on same sex couples, but only for that very narrow piece of reform. So while, through Senator Ludwig, the ALP is saying that it wants comprehensive reform, it contradicts itself with two very narrow pieces of reform in this area which go no way towards addressing the much broader issues.

Senator Ellison has argued that marriage is fundamentally an institution for the family. I do not have a great argument with that, but I think that we must acknowledge and recognise that many same sex couples have children, and they too are family. In many cases, they are children from previous heterosexual relationships, but lesbians are increasingly having children through either artificial insemination programs or IVF. They are accessible around the states to varying degrees. They are certainly fully accessible now in my home state. As I mentioned when I last spoke on this, the recent census showed that 11 per cent of same sex couples are raising children, and roughly 19,500 same sex couples registered in the last census. You are dealing with many same sex couples raising children, and it is often the children who suffer the discrimination through the lack of Commonwealth recognition.

While the government can present the argument that it is denying particular relationships a status for legislative purposes, the end result is that that status results in those families being discriminated against financially. Amongst other things, I understand that child-care rebates are a difficulty for lesbian couples raising children and that there is discrimination in taxation, where couples cannot split their income unless they are heterosexual. It is the kids who suffer from that discrimination. I believe that the community has moved on. I believe that discussion around this is really important and that comprehensive reform is needed. But it is always important for both the government and the opposition to show their hands on these things. Senator Ellison, you have made your position very clear on behalf of the government: there will be no change for now. I accept that. Senator Ludwig, in speaking on behalf of the opposition you are indicating change, but through other processes. I have to repeat that the only processes open to me are private members’ bills, which you have not supported; amendments, which you have not supported; and debate, which you are engaging in—but I find it, at best, duplicitous.

It is critical to acknowledge again that, when events surrounding Senator Heffernan
and his then condemnation of Justice Kirby occurred, both the government and the opposition were very quick, through their various spokespeople, to denounce discrimination against lesbian and gay people and to argue very loudly—briefly—that neither party was homophobic. I am sorry, but you cannot have it both ways. You cannot say that you are opposed to discrimination against gay and lesbian people and that you are not homophobic, and then allow discrimination in Commonwealth Public Service areas like Veterans’ Affairs, Taxation, Immigration, the Federal Police and the defence forces.

We have the extraordinary situation in the defence forces—and, in my experience and observation, the defence forces and Immigration are the areas of the most acute discrimination for same sex couples—where, if a male or female Defence Force member is serving overseas and they are killed or injured, their partner is not only not notified, but they are not even provided with counseling. Worse still, they are denied any death benefit or superannuation compensation payment. This is not acceptable. It can only be reformed here in this chamber. Fundamentally, the two ways that that can be done are either through the passage of the Democrats’ sexuality discrimination bill or similar, or by amending the Marriage Act so that we recognise same sex relationships.

Senator LUDWIG (Queensland) (12.58 p.m.)—I wanted to clarify a couple of points in relation to Senator Greig’s speech. In relation to state and federal governments, as I have said, marriage is clearly a federal matter. There are subsidiary issues—in fact, some people may not regard them as subsidiary, but they are certainly interrelated issues—that have to be dealt with comprehensively to ensure that, if there are changes to the marriage legislation, the states can adequately address it and deal with it where they have their areas of responsibility. That is why we have always argued for a comprehensive, whole of government solution—not necessarily only the federal government but including all the states. We have an opportunity as all the states and territories have Labor governments; we do not have the federal government as yet. I am sure that it will be one of the first things put on the agenda should Labor gain office.

Similarly, we have the problem that you have, Senator Greig, in that we can only look for change where change presents itself to eliminate discrimination. We do not have the ability to form executive government to deal with this. Senator Greig knows that, I am sure. The chair knows that as well, clearly. I did not hear Senator Greig on the constitutional issues that surround marriage and the difficulties that may present themselves regarding how you would progress this amendment during and in a debate which is effectively about the Marriage Amendment Bill, dealing with celebrants and the importance of reform in that area. The importance of that reform in the area takes precedence during this debate, but only during this debate; therefore the Marriage Amendment Bill, although so named—it is not uncommon to name it after the act—is ostensibly about celebrant reform.

Senator Greig does know Labor’s position in relation to discrimination. I think it is worth reiterating that the Labor Party platform on this matter is unambiguous: Labor does support legislative and administrative action by all Australian governments to eliminate discrimination, including systematic discrimination on grounds of race, colour, sex, religion, sexuality, disability, genetic make-up, political or other opinion, national or social origins, property, birth or other status. That is clear; it goes without saying. That has been reiterated in a number of debates on these issues. We recognise the right of all Australians to live and work in an environment free from vilification or harassment and we will provide an accessible and effective means for all Australians to protect themselves from such behaviour. Labor clearly supports those matters. Specifically, Labor supports the enactment of legislation prohibiting discrimination on the grounds of a person’s sexuality. As I have said, a comprehensive whole-of-government solution is necessary. It does not only mean a legislative solution; it also means a community interest to ensure that all of those issues are dealt with in a comprehensive way and that clearly you have the states on board in a
comprehensive way. But I will not take it further.

Senator GREIG (Western Australia) (1.02 p.m.)—I have a question for the minister, Senator Ellison. Minister, I understand the Marriage Act 1961 as presently drafted will recognise marriages which are valid at local law overseas. Section 88 of the act provides that its object is to give effect to chapter 12 of the Convention on the Celebration and Recognition of the Validity of Marriages signed at The Hague on 14 March 1978. Further, it provides for the recognition of a marriage which was, at the time it was solemnised, recognised as valid. This is the point on which I am not clear. If a same sex marriage was valid at local law overseas or in another jurisdiction—and Senator Ludwig is correct in saying that same sex marriages are valid at local law in the Netherlands—would part 5A of the Marriage Act permit recognition of that marriage under the act here in Australia? It is an interesting question. I know that in arguments from the High Court, section 51(21) may not provide legislative authority for the Commonwealth to provide for the recognition of same sex marriages. The question to the minister is this: if and by what authority would Australian law recognise as valid a same sex marriage solemnised in another jurisdiction, and if Australian law would not recognise such a jurisdiction, what would need to be done to achieve recognition?

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Minister, I think Senator Greig is asking for a legal opinion. Do you wish to answer that?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.04 p.m.)—I will take that on notice and take it up with the Attorney-General. There are a number of complexities as to exactly what the foreign legislation says—whether it merely equates a same sex relationship with marriage or whether it is a duly constituted marriage under the convention. There are other aspects too which we will need to look at. I will take that on notice.

Question put:

That the amendments (Senator Greig’s) be agreed to.

The committee divided. [1.09 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes…………… 9
Noes…………… 40
Majority……… 31

AYES
Allison, L.F. *  Brown, B.J.
Greig, B.  Murray, A.J.M.
Ridgway, A.D.

NOES
Barnett, G.  Brandis, G.H.
Calvert, P.H.  Carr, K.J.
Collins, J.M.A.  Crossin, P.M.
Eggleston, A.  Forshaw, M.G.
Harris, L.  Johnston, D.
Lightfoot, P.R.  Marshall, G.
McGauran, J.J.J.  McGauran, J.J.J.
Moore, C.  Payne, M.A.
Scullion, N.G.  Tchen, T.
Troeth, J.M.  Watson, J.O.W.

* denotes teller

Question negatived.
Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.15 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
PROCEEDS OF CRIME BILL 2002
PROCEEDS OF CRIME
(CONSEQUENTIAL AMENDMENTS
AND TRANSITIONAL PROVISIONS)
BILL 2002

Second Reading

Debate resumed from 19 September, on motion by Senator Coonan:

That these bills be now read a second time.

upon which Senator Ludwig had moved by way of an amendment in respect of the Proceeds of Crime Bill 2002:

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 2 years ago by Labor;

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

(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 dealing are stolen”

Senator HARRIS (Queensland) (1.15 p.m.)—I rise to continue my remarks on the Proceeds of Crime Bill 2002 and to reiterate the issue of the bill having the power to seize a person’s assets and those people not being able to access their own assets in their defence. An agreement among legal aid commissions is yet to be reached in relation to the bill. It is unknown whether a person’s access to legal aid will be capped or what other constraints may be made in relation to accessing legal assistance. For example, what entitlement is there to be adequately defended commensurate with the kind of offence? It is a damning indictment of our common-law tradition that a person does not have the right to access their frozen assets in order to mount a legal defence. Remember that we are talking about a person who may have been declared innocent in a criminal court, and now they do not have the right to use their own assets to defend a civil forfeiture order. Instead, they will have to apply to the relevant legal aid commission in their state, which will assess how much legal assistance they are entitled to. Chances are that it will be far less than their assets are worth.

One of the worrying aspects of the bill is the provision under clause 202 for information-gathering. The bill outlines a number of different methods for gathering information, including notices to financial institutions, monitoring orders, and search and seizure. The bill also makes provision for production orders requiring documents to be produced even though they might incriminate the person. It also encompasses examination orders, which can be made by a court once a restraining order is in place, requiring the suspect and owner of a restrained property, or a spouse of any such person, to answer the questions of an approved examiner and the DPP about the affairs of any person. The Attorney-General’s rationale for this measure is that it provides ‘law enforcement with a real-time window into accounts suspected of being used for money-laundering’. These provisions would be open to significant abuse and could lead to the erosion of a principle of fairness underpinning Australia’s justice system.

Clause 47 of the bill provides that property may be forfeited six months after a restraining order is made, provided the court is satisfied that there are reasonable grounds to suspect the person’s engagement in one or more serious offences. The bill makes it clear that it is not necessary for the court to be satisfied that a particular offence was committed. Such reasonable grounds will apply where a person can be shown, under the civil standard, to have engaged in a serious offence such as drug offences, money-laundering, people-smuggling and property offences involving more than $10,000. Civil forfeiture will also apply to several offences against the Financial Transaction Reports Act 1988 involving at least $50,000.

Civil assets forfeiture punishes the legally innocent because it does not require the
proof of criminal guilt beyond the balance of probabilities. Acquittal on a criminal charge to which the property relates will not necessarily immunise an individual against a forfeiture proceedings. What we are seeing is the lowering of the standard of proof. The high standard of proof in criminal proceedings supports a policy which seeks to prevent the innocent from being punished. This concern for the innocent is noticeably lacking in forfeiture proceedings, despite the fact that the loss of the property punishes the individual. ‘Guilty on the balance of probabilities’ sweeps up many individuals, and it cannot even be connected to illegal activity under criminal standards. They may well be truly innocent, and the government should be required to show proof that the disputed property is connected to illegal activity before it can be forfeited. Citizens must be protected from unjust and arbitrary forfeiture of their personal possessions.

In relation to the matter, the New South Wales Bar Association considers that to forfeit a property on the basis of mere suspicion, although said to be on reasonable grounds, is far too low a threshold for forfeiture. Our courts are a safeguard for citizens wrongly accused of criminal activity; that is why we have courts. Under this legislation, the government gets all the breaks. The lower standard of proof means that the government can take a home, without any more evidence than it normally needs to have a look inside. People who have their assets frozen or forfeited and who want to challenge the government have the choice of fighting the full resources of the Australian Treasury or of caving in.

The bill also reverses the onus of proof, in that the accused has to prove their innocence. The Australian Civil Liberties Union stated in its submission to the Senate committee investigating the bill:

... the format of the bill allows confiscation of assets from persons without first establishing in a court of law that they are guilty of the crimes of which they are accused. If seizure of assets is to take place, it should first be established in a court of law that the accused are guilty as charged, and the tradition of “innocent until proven guilty” must be preserved.

International experiences demonstrate that forfeiture laws are usually implemented during a crisis, when the public can be easily persuaded of the need for drastic measures to combat an enemy that is real or imaginary. The Australian Civil Liberties Union has forewarned of a situation in which terrorism will be added to the list of serious crimes identified in this bill. The serious offence of terrorism must be criminally established, otherwise we run the risk of exercising arbitrary powers that should not and cannot be justified. Civil liberties must not be swept up in the fervour of the war against terrorism, or the war against crime or drugs, waged by a burdensome regulatory apparatus that seeks to manage every part of society. Civil forfeiture unleashed under the banner of law and order will come at the expense of the innocents.

As I have previously noted, several other Western democracies have adopted civil assets forfeiture in line with the UN conventions. I would now like to give an example from the USA—one of many examples of how civil forfeiture laws can and have been abused. Shortly before 9 a.m. on 2 October 1992, Donald Scott, a 61-year-old millionaire, was shot dead by federal agents in his Malibu, California, home. Thirty law enforcement officers from the Los Angeles sheriff’s department, the Los Angeles Police Department, the US Drug Enforcement Administration, the National Park Service and the California National Guard stormed Scott’s 200-acre ranch. They burst into the home to serve a search warrant and to seize marijuana plants said to be growing there.

Awakened by the noise, Scott came downstairs, gun in hand, only to be shot dead by a sheriff’s deputy. A search of the ranch found no marijuana and no contraband. The warrant was issued on the statement of a federal agent who claimed that while flying 1,000 feet above the ranch he saw marijuana growing below. Unfortunately, the real motive was much more sinister. The raiders saw the federal forfeiture laws as a convenient means of seizing a piece of property they desired. The warrant was based on statements and admissions that were later deemed invalid. The intruders were hoping they
might find something in the house that would allow the federal government to bag the $5 million ranch. The real motive was to increase the size of the Santa Monica Mountains National Recreation Area, a national park adjacent to Scott’s ranch. Scott had repeatedly refused to sell the ranch. The Ventura District Attorney, in his investigation, said:

We can find no reason why law enforcement officers who were investigating suspected narcotics violations would have any interest in the value of the Trail’s End Ranch or the value of property sold in the same area other than if they had a motive to forfeit that property.

They had the value of the property at their briefings before they carried out the raid. That is an absolutely gross abuse of civil forfeiture and it is only one of many that are available and real. One Nation opposes this legislation.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.25 p.m.)—Today we are dealing with the Proceeds of Crime Bill 2002 and the Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002. These are a significant step forward in the fight against organised crime and crime in this country. The Proceeds of Crime Bill 2002 will greatly strengthen and improve Commonwealth laws for the confiscation of the proceeds of crime. In addition to the current regime that we have, which is based on conviction only, we will now have a scheme which allows for confiscation on a civil based standard. This introduction of civil forfeiture at the Commonwealth level is an important step in the fight against crime and is consistent with both national and international trends. We have seen such systems in place in New South Wales and Western Australia, where examples have worked very well.

I take note of what Senator Harris said in relation to the United States. The government relies rather on domestic experience in this country and we believe those regimes in New South Wales and Western Australia are working well. Of course, in addition to that, other states in Australia are considering similar legislation. The passage of this bill will allow law enforcement agencies an effective tool to confiscate the proceeds of crime and it represents a concrete demonstration of this government’s tough stance on organised crime. In addition, the bill forms an important part of the government’s anti-terrorist response. The bill introduces measures to enhance the capacity of law enforcement agencies to restrain and confiscate property relating to terrorist offences, which are a form of organised crime of particular focus since the tragic events in the United States last year.

The Proceeds of Crime Bill 2002 also implements the government’s election commitment which will enable proceeds to be allocated to specific law enforcement and drug rehabilitation initiatives rather than just placed into consolidated revenue. What that means is that the proceeds of crime will go back into fighting crime and, importantly, dealing with the rehabilitation of drug addicts. Of course, it is anticipated that a good proportion of the proceeds of crime will come from drug related offences and the government believes that it is only appropriate that the money and assets seized from criminals who are engaged in trafficking should go not only into crime fighting but also into the rehabilitation of those people who have a drug problem.

This bill has had an exposure draft. It has had a lengthy time during which it has been the subject of inquiry both by parliament and elsewhere. During that time it has enjoyed support. I believe, across the spectrum of political thought and also from various law enforcement agencies. Importantly, there has been little criticism from law societies or any of those bodies which are always vigilant in relation to any transgression against the rights of the individual. So I would say to the Senate that I think that this bill would be in a category of bills where there has been extensive consultation. An exposure draft has been available for public comment and as well as that there has been parliamentary scrutiny.

The opposition is moving a second reading amendment which the government would oppose, and I think there are some points which need to be placed on the record. Firstly, the government takes the firm stance that no-one should benefit from criminal ac-
tivity. The opposition is saying that there has been a recent case where a drug dealer was allowed a tax deduction where proceeds from illegal drug dealing were stolen. The opposition goes on to say that this sort of treatment effectively frees from tax the proceeds of illegal drug dealing.

There are some points which should be noted. In the Proceeds of Crime Bill 2002, we are definitely taking the stance of elimination of any profit from crime. In the case that is mentioned by the opposition, Mr La Rosa had already forfeited a very substantial amount of property under the Proceeds of Crime Act 1987, which does not allow expenses incurred in earning the illegal income to be deducted. Let us make that very clear: the Proceeds of Crime Act, as it stands at the moment, does not allow any deduction to come from any proceeds of crime.

The Federal Court, when considering Mr La Rosa’s tax assessment, held that the value of the forfeited property could not be deducted from the taxable income derived from Mr La Rosa’s drug dealing. The amount that was held to be deductible was an amount allegedly stolen during a drug deal that went wrong. The federal government does not believe that deductions should be allowed for illegal activity. On that basis, the Australian Taxation Office is appealing that decision by the Federal Court, and for that reason the government believes that the first avenue of action is to appeal that decision. If, however, at the end of the day the government is not successful, then an amendment to the legislation could be looked at. But we do believe that the matter should be appealed, and it is being appealed by the Australian Taxation Office.

The pecuniary penalty order provisions of the Proceeds of Crime Bill 2002 specifically prohibit expenses or outgoings being taken into account by a court when determining the amount to be paid by the suspect. The bill does enable tax actually paid on the proceeds of crime to be taken into account. Thus, where tax is paid and a pecuniary penalty order is subsequently made, the offender stands to lose the entire amount of proceeds, whether or not a deduction would be available under the tax law. So, quite clearly, in this bill there is no such tax deduction available.

There are a number of aspects of this bill which I commend to the Senate. I simply say that, in relation to organised crime and indeed terrorism, if you follow the money trail you will get very close to the Mr Bigs. This is really attacking crime at the other end. That is where the profit is and that is where you will find the Mr Bigs. More and more, we are uncovering organised criminal activity because of what has been revealed by way of looking at money laundering and financial transactions. There have been a number of successful operations in relation to drug trafficking, where we have busted syndicates as a result of uncovering transacted moneys or unexplained wealth. This is the way of modern crime fighting and that is why the Proceeds of Crime Bill 2002 is so very important.

Recently, I went to the United States. I report to the Senate that unfortunately there is a growing link between terrorism and transnational crime. We see it in Latin America with the cocaine trade and various terrorist groups; it is well documented in relation to Afghanistan, with the production of heroin with the Taliban and others close to the Taliban, such as Al-Qaeda; and in the South-East Asian region there are major manufacturers of amphetamines and heroin, as well as subversive elements. This bill attacks both organised crime and terrorism. To that extent, it is also to be commended.

There is another aspect to the bill which is rather unique. It looks at the literary proceeds which are gained by criminals writing about their criminal exploits. A number of people from time to time have benefited either from books they have written or from films that they have been party to the production of, in relation to their criminal exploits. We do not believe that that is appropriate. The government believe that those proceeds should also be the subject of confiscation. I understand there are some Democrat amendments, and we will be dealing with those in the committee stage. I thank senators for their contribution to the debate on this bill, which I believe is one of the
most significant crime fighting initiatives that this country has seen in a very long time.

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

The Senate divided. [1.39 p.m.]
(The President—Senator the Hon. Paul Calvert)

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Ludwig, J.W. Landy, K.A.
Mackay, S.M. Moore, C.
Nettle, K. O’Brien, K.W.K.
Ray, R.F. Sherry, N.J.
Stephens, U. Webber, R.
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Abetz, E. Allison, L.F.
Alston, R.K.R. Barnett, G.
Bartlett, A.J.J. Boswell, R.L.D.
Brandis, G.H. Calvert, P.H.
Campbell, I.G. Cherry, J.C.
Colbeck, R. Coonan, H.L.
Eggleston, A. * Ellison, C.M.
Ferguson, A.B. Ferris, J.M.
Greig, B. Harris, L.
Hill, R.M. Johnston, D.
Kemp, C.R. Knowles, S.C.
Lees, M.H. Lightfoot, P.R.
Macdonald, I. Mason, B.J.
Minchin, N.H. Murray, A.J.M.
Patterson, K.C. Payne, M.A.
Reid, M.E. Ridgeway, A.D.
Scullion, N.G. Tchen, T.
Troeth, J.M. Vanstone, A.E.
Watson, J.O.W. |

PAIRS
Kirk, L. Heffernan, W.
Marshall, G. Chapman, H.G.P.
McLucas, J.E. Macdonald, J.A.L.
* denotes teller

Question negatived.

Senator Hutchins did not vote, to compensate for the vacancy caused by the resignation of Senator Herron.

Original question agreed to.

Bills read a second time.

In Committee

PROCEDURES OF CRIME BILL 2002

Bill—by leave—taken as a whole.

Senator GREIG (Western Australia)

(1.44 p.m.)—I move Democrats amendment (1) on sheet 2625:

(1) Clause 80, page 59 (lines 4 to 11), omit the clause, substitute:

80 No double jeopardy

No *forfeiture order may be made under section 47 or 49 against a person in relation to an offence for which they have been acquitted.

This amendment addresses the issue of double jeopardy. I spoke about the amendment in the second reading debate, and so I will briefly reiterate some of the key points. During my contribution in the second reading debate I made reference to US Supreme Court Justice Hugo Black’s description of the rationale for the double jeopardy clause in the US constitution. His Honour said that the underlying idea was:

... 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 we do in Australia. This has attracted considerable discussion on the consistency of civil forfeiture within 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 as to 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, to be tried again in a civil court and, potentially, to 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. And repeated trials of the same matter do enhance the possibility that, even though innocent, an individual may be found guilty. Professor of Law at the University of Illinois Donald A. Dribbs, in an article entitled The continuing decline of finality in criminal law stated:

Running through all these developments is skepticism about the innocence of people found not guilty by juries. Sometimes this skepticism reflects the fact that the acquitted defendant had the benefit of first rate lawyers. The forfeiture laws provide a check on jury acquittals in drug cases, and civil damages actions provide a check on jury acquittals of wealthy defendants charged with violent crimes.

The 'underlying idea' of the Double Jeopardy Clause presupposes a criminal trial process that deserves respect. The real message behind the assault on finality in criminal cases is disjunctive. Either the system will restore confidence—not just public confidence but professional confidence as well—in the criminal trial process, or the system eventually will countenance the functional equivalent of reprosecution following acquittal.

Put 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.

We 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. And the point made by Professor Dribbs is that, as that level of dissatisfaction with the criminal justice system rises, the state will slowly turn to the civil law as a vehicle for pursuing 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 in it. 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. I commend our amendment to the chamber.

Senator HARRIS (Queensland) (1.48 p.m.)—Speaking in support of the Democrats amendment to this bill, I know that many aspects of this bill have raised such enormous concern among the public that it is difficult to know which sections of the bill to focus on. Let me put clearly on the record that One Nation is of the opinion that this bill is so badly flawed that its intent is un-Australian in the extreme, in that there is no way under this bill that a person who has been wrongfully deprived of their assets has a process of redress. This is actually an indictment upon this place. Nobody—myself included—supports the proposal that a person can have a beneficial gain from crime. We do not oppose the government on that issue.

If the government were to amend this bill in such a way that any person who was a non-Australian citizen had the particular implications of this legislation brought upon them because that person had carried out an illegal activity within Australia or upon an Australian citizen, we would support the bill with some reservation. But the bill in its present form has implications for the Australian people that I do not believe I have seen the equivalent of in the three years that I have been in this place.

We only have to look at the list of submissions and concerns that have been brought before the committee in relation to this bill to understand the public concern. These submissions come from eminent judicial people. There is one from the Rt Hon. Sir Harry Gibbs, who raises enormous concerns—particularly in relation to clause 17 of the bill, which requires a restraining order to be made in respect of the property of a person proposed to be charged with an indictable of-
fence. This is not restricted to the serious offences with which, one assumes, the bill is primarily concerned. To prevent the section applying to indictable offences which it would not be appropriate for it to apply to, it might be suggested that the section should give the court discretion to make an order rather than impose a duty on it to do so.

There we have a second issue in relation to the bill. The bill itself largely gives the judiciary no room whatsoever to move. It prescribes what the judiciary will do, and it is my belief that it is inappropriate for this place, because our entire democracy is based upon the separation of powers—the ability of the parliament to make laws and then the ability of the judiciary to administer them without any impedient whatsoever. But this piece of legislation is mandating what the judiciary must do. It takes away the discretion of the judiciary.

Coming back to the Democrats’ amendment, I say that there should not be double jeopardy in relation to this legislation. If a person is brought before a court in a criminal matter and they subsequently prove themselves innocent, the government ought not have any right to then use the civil forfeiture procedures to asset-strip that person without either appealing the decision of the court and providing the court with further evidence that proves there is a connection between that person and the actual crime that they are being charged with or, in relation to the property, showing that there is clear linkage between that person, the property and a criminal activity.

If the government is going to have the audacity to stand in this place and tell us today that there are people who have the ability to purchase a property in Australia without the government being able to trace where those funds come from then the government itself is indicating to the Australian people that there is a flaw—a monumental failure—in the government’s own procedures. We have the ability today to digitise a person’s voice. I might remind honourable senators that every one of their voices in this place is digitised. So whether they pick up their mobile phone, the phone in their office, a friend’s phone or a public phone, the computer system that analyses the telephone can immediately identify that person—just like that! Is the government going to have the audacity to tell us that it cannot track where the funds to buy a property in this country are coming from? It is defeating its own argument, or it is clearly saying to the Australian people, ‘We have no way of proving what is happening.’ I do not believe that is the case.

It is absolutely preposterous for the government to say, ‘We will take you to court and if you prove your innocence then we will use civil forfeiture to asset-strip you.’ In my speech in the second reading debate, I raised the fact that in the United States it was proven beyond doubt that the authorities blatantly and grossly exceeded the abilities and the powers that they had there. We have reports from the United States that people have been pulled over on the side of the road and had their vehicles confiscated and seized under the American asset forfeiture laws. I say to everybody in this place: God help us if that happens here in Australia. It is unacceptable that in any society for any reason whatsoever it could even be implied that our right of innocence until we are proven guilty should be reversed. That is one of the major issues in relation to this legislation. As the Democrats have so succinctly put it, not only is the government going to be able to double-dip but this legislation is actually going to reverse the onus of proof. Under our democracy, irrespective of what the charge is, I believe that we have the right to remain innocent until proven guilty. It is a basic right in this country. It is the government who should have to prove otherwise.

Progress reported.

QUESTIONS WITHOUT NOTICE

Telstra: Service Charges

Senator LUNDY (2.00 p.m.)—My question is to Senator Alston, the Minister for Communications, Information Technology and the Arts. Given the minister’s statements that if Labor is successful in disallowing the government’s unfair price control regime for Telstra the government will abandon price controls altogether from 2003, can he confirm that it is now the government’s policy to
privatise Telstra with absolutely no controls over the prices it charges consumers? Does the minister’s statement in the Senate last week that ‘no-one is forcing you to be on the line’ now reflect government policy with regard to the provision of affordable telecommunications services? Finally, why is the government telling Australian consumers that, if Telstra does not get approval for its massive line rental fee increases, it will let Telstra off the leash completely and allow it to charge whatever it likes?

Senator ALSTON—It just shows how dangerous a little knowledge can be, because what we found was Mr Crean going down to the Cunningham by-election—he had not been to caucus—and announcing on the run that Labor was going to take a decision in relation to a disallowance motion. The way Mr Crean expressed it was this:
Next week, the Government has to get formal approval to enable Telstra to put up the charges that actually came into place on June of this year. Fundamentally wrong! Labor will vote against those charges, meaning they won’t go up.
Fundamentally wrong! I am surprised that Senator Lundy does not know how the system works. The fact is that some months ago there were negotiations based on, I might say, recommendations from the ACCC and the Productivity Commission that the access deficit was a very serious problem because it was inhibiting competition, and they recommended that we allow line rebalancing. As a result Telstra spent many months conferring with welfare organisations and together with them designed a comprehensive package of protections for low-income earners, costing Telstra an estimated $150 million a year. The package has the full backing of ACOS, the Australian Federation of Homelessness Organisations, the Salvation Army, Anglicare, the Council on the Ageing, Jobs Australia and the Smith Family—not a bad line-up.

The fact is that once that determination was issued there was a capacity to disallow, and that is presumably what Senator Lundy is talking about: that Labor has a capacity to disallow. That is not retrospective, so the line rental increase that has already occurred stays in place. So the suggestion that Senator Lundy just made that we will abandon price caps is preposterous, because we have a fair and reasonable price cap regime in place and we want it to continue. We want to put reasonable restraints on Telstra; Labor wants to disallow it and therefore rip up those price constraints. In other words, if Labor has its way, for the first time ever Telstra will have the capacity to automatically put up directory assistance on residential calls. Is that a sensible restraint on Telstra? What Labor would do is revert to an old system until July next year, when there would be no restraints at all.

So let us be clear: we have a proposal that is fair and reasonable—one accepted and supported by the welfare organisations of Australia on the one hand and by the ACCC and the Productivity Commission on the other—to have a balanced and sensible increase in line rentals commensurate with the reductions in call prices over a period of some four years. Labor wants to rip that up and is proposing to put nothing in its place. So from 1 July next year the only way in which there will be no price controls on Telstra is if Labor succeeds in what it has foreseen. It is a tragic blunder. I know Mr Tanner does not like Mr Crean very much, but he has really set him up big time here, because Mr Crean clearly has no idea what the implications are. Mr Crean goes out there and thinks that this will somehow disallow the line rental increase—and it will not. It is not retrospective; it cannot be retrospective. That remains in place and Telstra has no proposal to increase it over the balance of this year, so therefore come next year we will have a price cap regime in place if the determination stands. If Labor succeeds, there will not be any determination in place: it will be a black hole, it will be open slather and it will be all your own work. That is the answer to the question. You asked me if we will abandon it. We will not; you will. (Time expired)

Senator LUNDY—Mr President, I ask a supplementary question. Does the minister recall saying in this chamber last Thursday: ... it is quite incorrect to imply that ... Telstra is forcing some people to pay 30c for a local call, because the price cap ensures that ordinary local calls cannot exceed 25c.
Has the minister since had a chance to reacquaint himself with Telstra’s August price hikes and can he now confirm that Telstra is charging 30c per local call on its budget package, supposedly for low-income earners, up from 15c and 22c? Minister, how can you attack Labor for trying to make your price controls fairer when you do not even understand the fine detail of Telstra’s pricing arrangements?

Senator Conroy interjecting—

Senator ALSTON—I am appalled to think—

Senator Conroy interjecting—

The PRESIDENT—Order! Senator Conroy, we are only a few moments into question time and I would ask you to allow the minister to answer the question.

Senator ALSTON—After all, they did win; you should be a bit more relaxed and comfortable than usual, Senator Conroy. Mr President, the fact is Senator Lundy has no idea about the fine detail. The fine detail is that the standard call charge is now 22c. It is set; it is fixed under the price cap regime. What the price cap regime does is allow more flexibility into the system, so if that is what you want that is what you get. However, if you want a line rental that is about $4 less than the average, then you pay a bit more on local calls; that is your choice. That is what I explained on Thursday: that no-one is forcing you to do this. If you want a cheaper line rental and you want to pay a bit more on local calls, that is your choice. It ought to be pretty obvious. You cannot somehow pretend that we are forcing Telstra: I have told you they cannot increase the standard rate beyond 22c. That price is fixed by the price cap regime. (Time expired)

Telstra: Service Charges

Senator TCHEN (2.07 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston, and it deals with a more positive and truer picture of the situation. What evidence is there that phone prices are continuing to fall and that Telstra’s quality of service is at historically high levels? Is the minister aware of any recent attempts to do away with the current price controls on Telstra and what would be the impact on phone users if these attempts were successful?

Senator ALSTON—The short answer to the last part of the question is that it would be very bad news for consumers. That is, of course, why all the welfare organisations signed on to the package and why the ACCC and the Productivity Commission have consistently said, for years, that this line deficit is a problem around the world. Forty-five per cent of the interconnect charges are accounted for by the access deficit—$1.2 billion, I think it is. If you can gradually rebalance over a period of four years, you get interconnect charges down quite considerably and, as a result, the prices that are charged by the competitors are much more attractive to consumers. That is what we are interested in—consumer benefit. Senator Tchen quite rightly asked me about some of the other impacts on phone prices and what assessments had been made. In its latest report the ACCC found that—

Senator Lundy—You do not understand.

Senator ALSTON—I would go away and study this issue. You just cannot get through by asking someone else’s questions. The ACCC found that the price of a basket of telecommunication services fell by 21.4 per cent between 1997-98 and 2000-01. In its report it found that the price decrease during 2000-01 was 8.9 per cent. We know that A.T. Kearney said recently that Australia’s broadband prices were amongst the lowest in the world. The main driver has been competition, as Mr McMullan now concedes, and of course Mr Tanner as well. They now say that ownership of Telstra is not the real issue. The real issue is competition and here we have a proposal for line rebalancing which is all about promoting competition. I know the Left hates competition, Senator Lundy, so we understand where you are coming from, but the rest of the parliament actually understands the critical importance of competition in driving prices down.

PriceWaterhouse found recently that Telstra’s performance in installing and fixing phones is at historically high levels. One of the reasons for this is the customer service guarantee which we introduced. Labor had nothing of the sort. Telstra fixed your phone
when they were good and ready under Labor. If they didn’t, too bad; and if it wasn’t installed when you wanted it, too bad. Now we have a very tight system of rebates which they have to pay by way of a refund on your phone bill. PriceWaterhouse found that Telstra are meeting the CSG time frames 96 per cent of the time in relation to installations and just under 90 per cent of the time in relation to fault repairs.

That is a very major step forward and it has all happened on our watch. It has all happened in spite the opposition not having the slightest interest in quality of service outcomes and it is all to do with putting consumers first. That is what we are on about—not putting the unions first, not putting your preselectors first—putting customers first. That is what this is all about. Mr Crean seeks to go out there and tell the poor unsuspecting voters in Cunningham—he probably thinks it is pretty safe and he can get away with blue murder—’We will give relief to struggling Australian families who currently have to bear the increased costs of line rental.’ He cannot do that because it is not retrospective. He ought to know that. If Mr Tanner didn’t tell him, Mr Tanner has a lot of explaining to do.

I suspect Senator Lundy has not turned her mind to any of this. They thought it was a good idea at the time and that if they gave it a run in Cunningham, hopefully most people would fall for the fact that somehow Labor were interested in prices. They never have been in the past and they clearly are not now. They do not understand the mechanics of how this works. We have a price regime in place. Labor want to rip it up and they will put nothing in its place. That is a shocking outcome for consumers. I think Senator Tchen and the Senate understand the issue. It is just a shame that Labor do not go back to the drawing board and do some homework first.

Fuel: Ethanol

Senator O’BRIEN (2.12 p.m.)—My question is to Senator Coonan, representing the Treasurer. Can the minister confirm that the reason two Australian companies—Neumann Petroleum and Trafigura Fuels Australia—sought a shipment of ethanol from Brazil is that the major Australian producer of ethanol, Manildra Park Petroleum, had refused to supply ethanol to them? Why did the government suddenly impose an ethanol excise and subsidy regime which had the effect of imposing a crippling $5 million excise bill on Manildra’s competitors? Why is the government so keen to help Manildra?

Senator COONAN—I thank Senator O’Brien for the question, which is misconceived as usual. It relates to the fact that the government has announced a levy and an arrangement for ethanol in relation to the imports that are currently coming from Brazil. The answer to the question is that there has been no excise imposed yet. The ethanol has not even arrived yet. In the circumstances, it would be entirely premature for Senator O’Brien to be supposing that there was any advantage whatsoever to Manildra over any other individual company. The Prime Minister said last week, and indeed it is the case, that there is absolutely no benefit to any particular individual and that includes Manildra. In the circumstances, the government is very interested in looking at other forms of energy and other forms of biofuel.

We have consulted widely on the matter. The Prime Minister has said that the whole arrangement is to encourage different and alternative forms of fuel. The sugar levy and the arrangements for the sugar industry were extensively debated and considered by cabinet; it is a cabinet decision. The suggestion that the Prime Minister is in some way benefiting Manildra is entirely false.

It really underscores the fact that the opposition is seeking to cast slurs on a policy that is well thought out and on arrangements that are well founded to encourage the introduction of biofuels. Indeed, that matter was thoroughly canvassed by cabinet and the decision is one that the Prime Minister stands by. He said that last week in question time. The really important issue is Environment Australia’s response, which will look at whether the content of ethanol in petrol needs to be mandated to some particular percentage. That is the issue that I think the opposition should be concentrating on, not trying to cast some slur on the Prime Minister.
Senator O’BRIEN—Mr President, I ask a supplementary question. Is the minister seriously suggesting that the government has not announced an ethanol excise regime and a subsidy for producers, the major beneficiary of which is Manildra Park Petroleum? Can the minister clarify which is the lead government department in relation to the development and implementation of the ethanol excise and subsidy regime, given that I believe that one has been announced? Can the minister explain the nature of the Department of the Prime Minister and Cabinet’s involvement in this issue?

Senator COONAN—I thank Senator O’Brien for the supplementary question. It is appropriate, Senator O’Brien, that ethanol is taxed on the same basis as petrol. If it were a non-excisable fuel used to replace an excisable fuel, it simply opens up the opportunity for ethanol importers to take advantage of the disparity. The Prime Minister said in his announcement that there is a very strong view that Australia should move towards increased biofuel use to encourage sustainable energy sources for fuel for the future. The petrol market is very price competitive and of course parties in the market will not use imports to make fuel unless these imports lead to a price competitive market. The current law allows ethanol to be imported free of customs duty for blending with petrol in Australia, although I am advised that very little has been imported for that purpose. Plenty of pure petrol is imported into Australia—it is one of the drivers of competition—but not petrol blended with ethanol. It is very difficult to see how this would affect the price of supply in any petrol outlets that rely on imported ethanol. (Time expired)

Commonwealth Government: Leases

Senator MASON (2.17 p.m.)—My question is to the Special Minister of State, Senator Abetz. Given the Howard government’s proven commitment to the prudent expenditure of taxpayers’ money, are there any Commonwealth leases which do not represent value for money?

Senator ABETZ—I thank Senator Mason for his interest in this matter and, yes, Senator Mason would be interested to know that there is one lease in particular which does not represent value for the taxpayers’ dollar. Today marks the ninth anniversary of Labor’s infamous Centenary House lease. I commend Senator Ian Campbell and Senator Brandis for their longstanding interest in this matter and in particular I commend Senator Brandis for his sterling performance on the Insiders program yesterday.

Senators will remember that, in 1993, the then Labor government arranged for the lease to the Audit Office of a Canberra property called Century House, owned by Labor. The lease was for 15 years, considerably longer than the usual Commonwealth lease of around five years. To make matters worse, Labor claimed a rental increase of nine per cent per annum or the increase in market rents, whichever was the greater. Today that ratchet kicks in again. The annual rent will rise by $439,536 to an obscene level of $5,323,269.50, more than $5 million for one year ripped out of the pockets of hardworking Australians and stuffed into Labor coffers. Hardworking Australians will be paying $845.36 per square metre for its office space at Labor headquarters. Just down the road there is A-grade office space available for $320 per square metre, or less than half. Over the life of the lease, Australian taxpayers will have been ripped off to the tune of $36 million. That is the amount above market rates that taxpayers will have to pay over the 15 years of the lease.

I note that Mr McMullan, Mr McClelland and Senator Conroy were all reported in the papers as supporting the return of unreasonable payments when it came to companies and their bosses. Mr McMullan and Mr McClelland went even further by saying that the laws should be retrospective. I ask the Senate and the people of Australia: is there anything more unreasonable than using your power as the government of the day to provide your party’s company with a $36 million windfall at taxpayers’ expense? Who are the bosses that get the benefit of this deal? None other than Mr Crean, Mr McMullan, Mr McClelland, Senator Conroy and all the Labor parliamentarians. If Labor were serious about fixing rorts retrospectively, they would be cleaning up their own house. They would not only renegotiate the lease, but also
return the excess money they have already gouged out of the pockets of Australian taxpayers. Mr Crean could earn credibility by saying that he repudiates the Keating era’s sleazy dealmaking and by telling Labor to stop the rort and renegotiate the shameful lease. All it would take—

Senator Ferguson interjecting—

Senator ABETZ—You are quite right, Senator Ferguson, all it would take is one simple phone call—and I still have that 50c piece that I offered one year ago. But Mr Crean will not show any leadership, as his predecessor would not. Mr Crean will not do what he knows is right and proper, because he does not have the ticker to stand-up to the Labor Party bosses. Mr Crean is unfit to run his own party, let alone the country.

Taxation: Collection

Senator COOK (2.22 p.m.)—My question is to the Assistant Treasurer, Senator Coonan. I refer to the Assistant Treasurer’s press release issued this morning claiming that:

The responsibility for pursuing matters of moneys which are already collected by tobacco companies lies with the states and territories.

Given that the High Court has held that the states and territories do not have the constitutional power to levy these taxes, how can the states and territories now recover these moneys?

Senator COONAN—Thank you, Senator Cook, for the question, which misconstrues and misconceives what was said in the press release, which was that the states and territories agreed to recover moneys that related to funds or moneys that were owing prior to the High Court case. Let us be clear about this: what is really being suggested by the opposition is that we should be undoing events that happened some five years ago, and it appears that what the Labor Party is running up and down about is wanting to do something which the states and territories specifically agreed that they would do themselves. In fact, prior to releasing my press release, I checked with the agreement, and clause 8 of the agreement between the Commonwealth and states at the time says:

Because of constitutional constraints, the Commonwealth would not be able to legislate to force taxpayers to pay BFFs which became due prior to 5 August but were not paid. The recovery of such amounts, where possible, would be the sole responsibility of the States and Territories.

I am not aware whether the states or territories have made any attempt at all to recover those funds. But, given the terms of the 1997 agreement, it is difficult to see why they should automatically be expecting the Commonwealth to try to collect money which they themselves did not try to collect. If the states, and in particular the New South Wales Premier, claim to have some advice that they can recover funds, to my knowledge this certainly has not been made available to us.

For the Commonwealth to take action it would require laws to be retrospective back to 1997. Whilst sometimes there can be a good case for retrospectivity, it is certainly not very often the case. In effect, it would require moneys to be confiscated that are held by retailers and wholesalers—moneys collected, as they properly thought, under the existing state law. While Senator Cook is correct that the situation arose because of a 1997 High Court case—that is, Ha and Anor, which concluded that the state and territory franchise fees were unconstitutional—it was only at the request of the states that the Commonwealth entered into an agreement to help them protect state revenue for business franchise fees, because it had contributed to over $5 billion in state revenue.

The 1997 safety net agreement between the Commonwealth and the states, as most senators would know, provided for the Commonwealth to collect an equivalent to the business franchise fees for the states on an ongoing basis and included provisions to protect the revenues that the states had. It certainly did not include any agreement to collect franchise fees that had previously been incurred and that were the subject of a specific agreement. It is not much good popping up five years later and trying to pop the Commonwealth and suggest that the Commonwealth should be taking retrospective action to collect something that it has no basis to collect.
Senator COOK—Mr President, I ask a supplementary question. I remind the Assistant Treasurer that she said in her press release today that the states could collect it, and in her answer now she said that they could not, with reference to the High Court. Will the minister now give a guarantee that, if the states and territories cannot recover these moneys, the government will legislate so that the Commonwealth can? Or does the government want to leave a $250 million windfall in the hands of tobacco wholesalers and retailers?

Senator COONAN—I do not know whether Senator Cook was listening to my answer, but what in fact I said was that the uncollected franchise fees related to a short period before the Commonwealth agreement. The agreement said that the states undertook to do whatever they could to collect it. There was never any guarantee by the Commonwealth that those particular business fees would be collected. Five years later, the Commonwealth is not about to impose on people who obviously thought that they were collecting the franchise there according to the law. The Commonwealth is not about to pop them five years later, when it is in fact the states’ responsibility. It should have been raised at the time.

United States: Security Policy

Senator BARTLETT (2.27 p.m.)—My question is to Senator Hill as Minister for Defence and Minister representing the Prime Minister. I refer him to the National Security Strategy of the United States, which was published by President George W. Bush on 20 September and is about to be presented to Congress as an expression of the administration’s new security policy. It expressly states that the US will adapt the longstanding concept of an imminent threat and:

... as a matter of commonsense and self-defence, will act against ... emerging threats before they are fully formed.

I ask the minister: does the government acknowledge that this new policy of the Bush administration is moving towards a direct contravention of the United Nations Charter which restricts the unilateral use of force to self-defence against armed attack? Will the government utilise Australia’s close relation-ship with the United States to persuade it to ensure that its new security strategy fully commits to addressing threats to international security through multilateral frameworks and well established principles of international law?

The PRESIDENT—Order! That was a very long question, Senator Bartlett.

Senator HILL—I have not read the statement as yet; I only got it this morning. I saw some press reports of it. On the basis of the press reports, it did not seem to me to be significantly different from what Senator Bartlett describes as the ‘longstanding principles of self-defence’ that are recognised within the charter. As I said in answer to a previous question from Senator Bartlett, the interpretation of ‘self-defence’ has varied according to changing circumstances. The changed circumstances that now need to be taken into account are, firstly, the operation of terrorists and, secondly, the use of weapons of mass destruction. Both of those new factors will significantly affect the way in which self-determination is to be reasonably interpreted in the future. If I am right, and the United States is simply reiterating that fact, then that does not seem to me to be unreasonable.

Senator BARTLETT—Mr President, I ask a supplementary question. I thank the minister for his answer. Minister, given that the US Congress is likely shortly to debate, and potentially adopt, proposals put forward by the Bush administration empowering it to conduct military action against Iraq, will Australia ensure that it uses its close relationship with the US to make sure that the proposal that might be adopted by Congress fully follows the international rule of law and does not move the United States—and, therefore, all of its allies—potentially outside the longstanding rule of law under the UN Charter?

Senator HILL—What is being sought of the Congress is simply the authority for President Bush to take military action if he determines that it is desirable. The United States regards itself as threatened by this program of weapons of mass destruction and it wants to see an end to that program. It does not wish to do that through the use of milit-
tary force but, as I have said on a previous occasion, if all other options have been exhausted and the threat still remains then there may be no other alternative. In such circumstance it may become reasonable. Therefore, it seems to me that what is being sought by President Bush from the congress is within the well-established principles of international law.

**Business: Corporate Governance**

Senator LUDWIG (2.31 p.m.)—My question is to Senator Coonan, representing the Treasurer. I refer to the restatement of existing law, described incorrectly as a proposal in CLERP 9, that licensees should disclose any financial interest that they or a related party have in the subject of their advice or recommendation. Can the minister confirm that most research reports issued by analysts would be considered general advice so that a statement of advice setting out conflicts of interest would not be required? Further, can the minister confirm that, even if a financial service guide must be provided, the disclosure obligations in that document do not—and I quote from CLERP 9—‘extend to a wider range of potential conflicts of interest’. That is on page 123. What then is the government proposing to do to improve analyst independence?

Senator COONAN—Thank you, Senator Ludwig, for the question. As most senators would know, the release of the CLERP 9 proposals contained some 41 recommendations and a comprehensive analysis of the issue relating to auditor and analyst independence. The CLERP 9 proposal specifically in relation to analyst independence will require ASIC to provide guidance via a policy statement on both the level and manner of disclosure of analysts’ potential conflicts of interest, as required under the general duty that financial services are provided efficiently, honestly and fairly.

These proposals go a significant way towards the very important issue of ensuring analyst independence. Further to providing these proposals in CLERP 9, it is then proposed that there will be an extensive period of exposure and consultation until November so that the views of industry, which have already been fairly widely canvassed, can be taken into account in relation to looking right across the spectrum, including at the very important issue of analyst independence. There is a range of views as to the appropriate response in relation to both auditor independence and analyst independence. The CLERP 9 proposals pick up on the recommendations of the Ramsay report, and it is certainly one of the proposals that has pretty much been broadly supported.

Senator LUDWIG—Mr President, I ask a supplementary question. Can the minister explain how the only other proposal in CLERP 9 to improve analyst independence will be effective? In the absence of any specific law requiring the disclosure of interests that might influence an analyst, how does ASIC’s policy statement differ from the current best practice guidelines for research integrity issued by the Securities Institute of Australia and the Security and Derivatives Industry Association?

Senator COONAN—Thank you for the supplementary question, Senator Ludwig. Those institutions are in fact going to develop the guidelines. There seems to be some misunderstanding here. What CLERP 9 does is to issue some 41 proposals—including one specifically related to analyst independence—so that these matters can be appropriately consulted on. The proposal that is put forward is that this will be adequately provided for in the law and will be enforced by ASIC, which will provide guidance via a policy statement on the level and manner of disclosure. It is obviously an issue which I would have thought those on the other side would be very glad to support. It is certainly a welcome development in looking across the spectrum of corporate disclosure generally. (Time expired)

**Health: Hepatitis C**

Senator HARRADINE (2.36 p.m.)—My question is to the Minister for Health and Ageing. I refer to the government inquiry into the deliberate use of potentially contaminated blood to make medical products which may have infected up to 20,000 Australians with hepatitis C virus. Minister, can the victims of contaminated blood be assured that the terms of reference for this inquiry are broad enough to include many vital
questions to the government, to CSL and to Red Cross around the use of blood plasma from donors suspected of having hepatitis C?
Will such an inquiry cover such questions as: how many people have in fact been infected with hepatitis C as a result of receiving blood transfusions and blood products in Australia? Why, after the state of Queensland implemented surrogate testing for hepatitis C in 1988, did the other states not follow suit? When blood donors found to be hepatitis C positive were asked to keep donating blood plasma in 1990, were there any checks conducted to determine whether they had donated blood in the past? (Time expired)

Senator PATTERSON—As Senator Harradine will be aware, I was not minister for health in 1990 but I take very seriously the issues that have been raised. I asked Professor Barraclough, who is the chairman of the quality and safety council, to look into the claims that plasma testing positive to the hepatitis C antibody was used in the manufacture of plasma products in 1990. The criticisms of Professor Barraclough’s work published by the Sydney Morning Herald are both unwarranted and unfair and these are important questions about the events that occurred 12 years ago.

I know Senator Harradine has a particular interest and it is essential for Professor Barraclough to be given sufficient time to examine these issues properly. The facts need to be established, including the question of what was the climate of scientific opinion at the time. When the claims were first raised, I immediately asked my department to look into the facts and provide me with some advice, and it did so. It was only last month, on 6 August, that I appointed Professor Barraclough as Chairman of the Australian Council for Safety and Quality in Health Care to provide me with an expert opinion on these matters. He has an impeccable reputation. I have every confidence that he will look at this issue in a fair and reasonable way. For some groups to claim that they have not heard from him is quite unfair.

The PRESIDENT—Order! Senator Patterson, your colleagues on your left are chattering and I am afraid I cannot hear your answer. Senator Vanstone!

Senator PATTERSON—He has called for more information and research before he starts consulting with key players and I believe this is a fair and reasonable approach. There are various groups that Professor Barraclough intends to speak to. It is also essential that he speak to agencies like the Red Cross Blood Service, CSL Ltd and other key players. As I said, I also think it is important for the community to understand that the claims relate to a period in 1990 and not to today. I would reiterate that we have one of the safest blood supplies in the world. I know Senator Harradine has a particular interest in this area and I am happy to discuss with him in more detail the terms of reference. Professor Barraclough did ask if he could delay commencing the inquiry, I believe, for a short time, because of his commitments. It is an issue that happened 12 years ago. I acceded to that and also to including some other people with expertise in the area to assist him in his inquiry.

Senator Harradine—Mr President, this is not really a supplementary question but I would like to say, with your indulgence, that I was not reflecting on the minister or on Professor Barraclough at all. I was asking a question on behalf of those people who, through the use of contaminated blood at that time, are still suffering quite seriously.

The PRESIDENT—I do not think it was a question but, Senator Patterson, do you wish to answer?

Senator PATTERSON—Yes, I would like to reply to Senator Harradine’s statement. I did not indicate that Senator Harradine was reflecting but there have been some reports in the paper that have reflected on it. I just wanted to say that I have every confidence that Professor Barraclough will investigate it as fully as possible, given the scientific knowledge at the time.

Business: Corporate Governance

Senator CONROY (2.41 p.m.)—My question is to Senator Coonan, the Assistant Treasurer. I refer to the draft bill to permit liquidators to reclaim unreasonable payments which are made to directors. Is the minister aware that the circumstances in which a payment to a director may be considered
‘unreasonable’ are identical to the circumstances which a court currently considers in determining whether a transaction of an insolvent company is an ‘uncommercial transaction’? Can the minister confirm that the courts have held that a transaction will not be uncommercial if the benefit to the party is explicable by normal commercial practice? If excessive remuneration packages are now normal, what does the draft bill achieve?

Senator COONAN—Thank you, Senator Conroy, for the question. I would not for one moment accept that Senator Conroy’s interpretation of the law is correct, but he does raise a question which is in fact an important issue—that is, the significance and the impact of the clawback of directors’ bonuses; at least, I think that is what Senator Conroy was asking. The government has announced that it will be amending the corporations legislation to permit liquidators to reclaim unreasonable payments made by a company to directors in the lead-up to insolvency. This is a very significant and necessary measure. A draft amendment has been prepared and it is in accordance with the corporations agreement. It has been provided to state attorneys-general of the Ministerial Council for Corporations for their approval.

The draft amendment covers a wide range of matters. Under the present Corporations Law, it will enable some recoveries; it simply broadens it. The government will move to introduce the amendment as soon as possible after the required number of approvals have been obtained. The intent is that it will cover a wide range of payments and make it much easier to recover payments made to directors, close associates or relatives, and it is entirely appropriate that it should do so. It also covers payments made to anyone on behalf of or for the benefit of directors, which no doubt would also include other entities. At the moment, of course, there can be recoveries, either under the fraudulent provisions or preference provisions under the existing law, but this government has seen the need to go even further. It is a measure that I think will receive a lot of community support so that there can be a clawback of inappropriate payments made in the lead-up to an insolvency.

Senator CONROY—Mr President, I ask a supplementary question. Can the minister answer the question asked by Mr Ted Rofe, the Chairman of the Australian Shareholders Association, as to whether a bonus payment of $1 million would be unreasonable? Further, would the payment made to the Prime Minister’s brother before National Textiles collapsed be an ‘unreasonable director related transaction’?

Senator COONAN—I thank the senator for his supplementary question. Senator Conroy, what is an unreasonable payment and what is not obviously is a matter that has to be regarded on a case by case basis. How could you possibly prescribe $5 million, $1 million, $500,000 or indeed any other figure?

Senator Abetz—$36 million!

Senator COONAN—that sounds like a pretty good figure! It sounds extremely unreasonable, and $35 million should be paid back. There is no doubt about that being an unreasonable benefit to the Labor Party, one that has not been paid back and one that really should be. Senator Conroy raises the issue of what is reasonable; it is going to be a matter for each case to be judged at the time.

Rural and Regional Australia: Drought Assistance

Senator SANDY MACDONALD (2.45 p.m.)—My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Ian Macdonald. Minister, will you outline what measures the government is taking to assist farmers who are facing hardship in drought-stricken parts of Australia? Will you also detail the role of state governments in dealing with the issue of drought assistance?

Senator IAN MACDONALD—Senator Sandy Macdonald well appreciates the problems that drought causes, and I know that he has taken a particular interest in the devastating drought around Bourke and Brewarrina in the state that he represents. As all senators well know, drought is one of the most pernicious events which confront Australian farmers. Of course, Australian farmers meet a great deal of challenges every day of their working lives. The states and territo-
ries have an obligation to provide genuine assistance in times of drought. If the states agree that there is an exceptional event, a once in a lifetime type of event, and it otherwise meets EC criteria, the states can apply to the Commonwealth for exceptional circumstances assistance. This is an arrangement that was agreed to by the Commonwealth and all states. The arrangement is that the Commonwealth government provides targeted assistance to viable farmers as a last resort through the exceptional circumstances provision.

The Minister for Agriculture, Fisheries and Forestry, Mr Truss, has been attempting to get the states to work with him on a fairer approach to the ravages that droughts can cause. Regrettably, the states have not contributed to this discussion and have withdrawn from some of the more sensible approaches that have been put to them. Farmers have been left in a very difficult situation, and that is why the federal government has, as of last week, introduced significant new measures for exceptional circumstances drought relief, to make the assistance more readily accessible to areas facing climatic disasters.

The federal government has decided to provide welfare assistance for six months under its EC program, as soon as the National Rural Advisory Council is asked to examine the applications that the states put in. After a fully completed application has been received by the department and it has been shown to be a prima facie case for exceptional circumstances, the federal government will refer the application to the NRAC and immediately grant welfare assistance to the community concerned. If the National Rural Advisory Council decides that the application meets EC requirements, the welfare payments will continue for two years. If the application is rejected by the NRAC, the welfare payments will end after six months.

To enable these applications to be considered sooner, the government will adopt the use of predictive modelling, where appropriate, to trigger the exceptional circumstances eligibility. The EC criteria stipulate that farmers are required to have weathered more than 12 months of income loss support; this new modelling will enable that to be determined at an earlier date.

I am very pleased that the government has been able to grant this additional assistance to Australian farmers facing drought. I do wish that the Labor governments in all the states would join with the Commonwealth in a more coordinated approach to some real solutions to the problems caused by the drought, and I call upon Labor senators opposite to use their influence with the state Labor governments to get a better approach to drought exceptional circumstances in the future.

**Business: Corporate Governance**

*Senator WONG* (2.50 p.m.)—My question is to the Assistant Treasurer, Senator Coonan. Can the minister confirm that submissions have already been obtained from the public on the report on auditor independence provided to the government by Professor Ramsay in October 2001? Further, can the minister confirm that, of the 11 proposals in CLERP 9 dealing with auditor independence, all of them are substantially the same as that proposed by Professor Ramsay? Why, then, are further comments being sought on these proposals, instead of legislative action being taken?

*Senator COONAN*—Thank you, Senator Wong, for your question. Yes, it is the case that the proposals in CLERP 9 on auditor independence pick up all of the recommendations of Professor Ramsay and in fact go even further. Rather than simply rest on our oars and our laurels, the government believe in consultation. We think that it is appropriate—

*Senator Conroy interjecting—*

*Senator Kemp interjecting—*

The PRESIDENT—Order. Senator Kemp and Senator Conroy! The opposition asked a question; I think you should give the Assistant Treasurer the opportunity to answer it.

*Senator COONAN*—that we put out a detailed paper containing a number of recommendations relating to auditors’ independence—which is one of the key planks of the government’s response on corporate governance—and that we have careful regard to
the very sound recommendations of Professor Ramsay. But there is no reason just to rest there. It is important that the government go and consult. We have said that we would consult extensively on this exposure draft on CLERP 9 before we committed any view to a legislative response.

I do not know whether they have Senator Wong working at all on corporate governance on the Labor side. Of course, she would not have been able to do it in the past 13 years. But Labor’s paper on corporate governance was a slipshod policy attempt which really did not address this issue in any significant way. It was nothing more than a cobbled together of existing laws—what the government had foreshadowed. It pinched stuff from Ramsay and from Senator Campbell. In fact, this paper fails to say how Labor will address many of the issues it lists, including auditor independence. It is littered with words like ‘ensure’ and ‘examine’ and it is a sure sign that Labor, as usual, has taken the easy way out of framing thorough, well-reasoned, constructive policy. CLERP 9 is a well thought out proposal. It is well thought out in relation to auditor independence, and it is certainly one that will allow both the business community and all other entities having an interest in this matter to have a view and to bring their views to the government so that we can have a legislative response in place and a draft bill by 22 November.

Senator Wong—Mr President, I ask a supplementary question. Is the minister aware of the proposal in CLERP 9 to facilitate improved shareholder participation by electronic means and in particular the proposal to request that the ASX’s Corporate Governance Council prepare guidelines for their use? Can the minister confirm that in August 2001 the former minister for financial services appointed Professor Elizabeth Boros to investigate ways companies can use technology to improve investor relations? What did Professor Boros recommend and why haven’t guidelines already been developed?

Senator Coonan—To start with, thank you very much for the supplementary question, Senator Wong. Obviously you have to change the law to be able to facilitate electronic assistance in this kind of way for auditor independence. That is precisely what is being done in CLERP 9. Senator Wong must have realised that in fact CLERP 9 and the proposals that have been put out will give opportunity for further consultation. It is very important that both the response to CLERP 9 and any draft legislation be consulted upon. It is important that all advantages can be taken of modern and more effective ways of ensuring auditor independence, including by electronic means. That is precisely what this government is doing. It is doing it within a time frame that will enable a response by early next year.

Science: Funding

Senator Stott Despoja (2.55 p.m.)—My question is addressed to the Minister representing the Minister for Science. Is the minister aware of comments made by Minister McGauran this morning at the launch of the FASTS, the Federation of Australian Scientific and Technological Societies, policy document? Minister McGauran stated that the government was looking at ’culling’ some of the programs under Backing Australia’s Ability. Can the minister inform the chamber about what programs the government is looking at culling, what criteria they used to determine these cuts, why they are being cut and when this culling of programs is due to take place?

Senator Alston—I am afraid I am not aware of anything. I was not at the press conference. I did not hear the proposition and it does not intuitively ring any bells for me. I will make some inquiries about that and get back to you.

Senator Forshaw—Another Quasimodo.

Senator Hill—For whom the bell tolls!

Senator Alston—I tell you: it is one bell that did not ring for you lot. The Labor Party had about 10 months for the bell to ring on Backing Australia’s Ability. We went out there in January of last year and we announced a comprehensive $2.9 billion package over five years. What happened? What did they do? They sat there with their spaghetti and pasta bowls—
Senator Stott Despoja—Mr President, I rise on a point of order. It was a very specific question. The minister has admitted he does not know the answer. He should sit down unless he wants a supplementary question.

The PRESIDENT—I call the minister.

Senator ALSTON—Is this on the point of order?

The PRESIDENT—are you going to answer the question?

Senator ALSTON—Certainly, Mr President. The question related to several matters. You cannot raise Backing Australia’s Ability and then ask me not to talk about it. I have already answered the first part, I did not hear what Mr McGauran said and I will find out what, if anything, he was referring to that might be of relevance. I do think one should pay particular attention to all those very important initiatives contained in Backing Australia’s Ability. What it really did was get the country back on track in terms of not just innovation but commercialisation of a lot of very good ideas. It has changed the mindset.

I know the Labor Party hate all this because it might actually encourage people in the scientific community to have a more entrepreneurial approach. Of course, that does not square with their mindset. They would much rather control them, tell them what to do, presumably pinch the proceeds, try and flog it off and come an absolute gutser. A sensible innovation approach will mean that you will not only be able to generate a lot more good ideas but be able to take them to market. We have world leading edges in areas like wireless chip technology, in quantum computing, photonics.

Senator Lundy—Why did you freeze R&D Start?

Senator ALSTON—Senator Lundy knows all of this. The tragedy is of course that you did nothing about it. You had 10 months. You sat there, reading the document saying, ‘This is terrific.’ I remember Dr Lawrence being asked about it and she ticked off on a couple of issues. She was not sure whether she should concede the whole document was terrific, so she said nothing. For about nine months they basically sat there. Then they came up with that noodle nonsense and as a result they had to concede that Backing Australia’s Ability was terrific and they might be able to build on that. It might take them 10 years to get there, because there was no money available. The end result was you had no alternative. The sooner you get on board—even 12 months later—the better.

Senator Faulkner—You must have had a very good footy celebration at the weekend.

Senator ALSTON—It was a pretty good game and you should have been there, Senator Faulkner. This is competition at its best.

Senator Conroy interjecting—

Senator ALSTON—Well, we did and there was a lot of innovation, particularly in the third quarter, Senator Conroy.

The PRESIDENT—Can we have comments on the football later in the week? Today it is supposed to be question time and I would ask the minister to return to the question.

Senator ALSTON—I think I will retire to the change room, now that I am that far in front. The game is over.
should not go to cabinet meetings and I should hang about the gallery just in case someone says something that might be of interest to the Australian Democrats, it would be a very different approach—very innovative. If I were you, I would try and commercialise that because you could do very well. I do not know that it has much to do with practical outcomes. Nonetheless, the fact is you ask: is the game over for Backing Australia’s Ability? The game has not started. Just get on board and you will find that we will really go places on this front. In fact, R&D Start has been so successful that we got about twice the number of applications than we expected. You cannot get much better policy than that. The punters were queuing up three times around the ground to get a look at this one, and what they saw was world’s best practice. We very much hope that we will have the capacity to continue that program and to accommodate a lot more of the demand that is obviously out there.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Transport: Australian Transport Safety Bureau

Senator IAN MACDONALD (3.01 p.m.)—On 17 September, Senator O’Brien asked me a question in relation to criticism of the ATSB by the WA coroner in its investigation into the ghost flight that tragically crashed at Burketown. I have an answer for Senator O’Brien and I seek leave for it to be incorporated in Hansard.

Leave granted.

The answer read as follows—

On 17 September, Senator O’Brien asked a question in relation to criticism of the Australian Transport Safety Bureau by the WA Coroner in its investigation into the VH-SKC (Burketown) accident. In Senator O’Brien’s supplementary question, he asked for additional information on the review that the Minister for Transport and Regional Services has initiated of the Coroner’s report.

Senator O’Brien asked when the review was initiated by the Minister, who is conducting the review and will the findings be made public.

The Minister for Transport and Regional Services has provided the following advice:

- The review was initiated shortly after the WA Coroner’s report was made public.
- The Minister has asked the ATSB to carefully examine the Coroner’s report. The ATSB has provided a copy of its detailed responses to the Minister’s office and the Minister will be considering them shortly.
- A senior lawyer from the Australian Government Solicitor is also reviewing the Coroner’s report.
- The Minister will consider the possible release of this material after the reviews are concluded and the Minister has had a chance to examine their findings.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Fuel: Ethanol

Senator O’BRIEN (3.02 p.m.)—I thank Senator Ian Macdonald for providing a copy of the incorporated answer. I move:

That the Senate take note of the answer given by the Minister for Revenue and Assistant Treasurer (Senator Coonan) to a question without notice asked by Senator O’Brien today relating to the use of ethanol in automotive fuel.

I must admit that I am still scratching my head as to the answer to the question proper. I thought that Senator Coonan was saying that the government had not actually announced a decision to impose an excise on ethanol and then to provide subsidies to the Australian companies who manufacture ethanol, which of course principally favours one particular company: the company that has been the subject of my question.

I think we have ascertained that we do have a situation where the government has applied an excise and has given the subsidy that I have just discussed. The answer, as is the issue, was a complete shambles. What we have seen through question time this week and last week is the Senate becoming aware that we have potentially thousands of motorists with vehicles being damaged by the use of fuel containing high levels of ethanol because this government will not impose a restriction on the quantity of ethanol that can be sold in fuel. This matter was highlighted in a media release by Mr Truss and Dr Kemp in May this year, which said:
While blends containing up to 10 per cent ethanol are regarded as acceptable, concerns have been expressed by some vehicle manufacturers and other stakeholders that higher blends may risk operational or mechanical problems.

We have a sugar industry seeking help from the government to enable it to rebuild from difficult times, including help to diversify its business through increased ethanol production, and it is getting no more than a one-page press release. That is despite the fact that the responsible minister has been in the cabinet room on this matter on at least three occasions in the last few weeks. Of course, he obviously did not have Manildra in his corner at that time.

I understand that the shambles that is the government’s policy on ethanol has turned into a farce. It did that when Mr Dick Honan sent two faxes: one to the Secretary of the Department of the Prime Minister and Cabinet, Mr Max Moore-Wilton, and the other directly to the Prime Minister. I understand that those faxes were triggered by Mr Honan’s discovery that there was a shipload of ethanol booked from Brazil to Australia. Those faxes caused the government to collapse a process designed to report on issues surrounding the ethanol debate by the end of the year, and led to a crisis that saw bureaucrats being instructed to find a way of stopping a vessel loaded with ethanol from Brazil from arriving in Australia. I do not know what the government thought that might do to its trade credentials, but it was certainly quite harmful. I am also told that the discussion ranged so widely that the instruction was to consider any option short of using the SAS—an instruction, I might say, that appears to have come out of the Prime Minister’s office, which was the reason that I asked the question of Senator Coonan, which of course she ducked, assuming she knew the answer to any of the questions which were asked today.

This new plan, with its central aim of stopping the ship, resulted, amongst other things, in a screaming match between Mr Moore-Wilton and the Secretary of Treasury, Dr Ken Henry. As you would be aware, Mr Deputy President, since 1996, any decision that has an impact on revenue must be signed off by the sponsoring department and Treasury. Given the manner in which the Prime Minister and his secretary have dealt with this matter, I am not at all surprised by Dr Henry’s reluctance to sign off. I understand that he did sign off in the end but on the condition that the arrangement would be in place for only 12 months. Indeed, what a shambles of a policy! It has nothing to do with the interests of Australian motorists and nothing to do with the sugar industry. It has all to do with Mr Honan’s company, Manildra, and its advantage over other Australian companies which have a right to be in the business, in this case, of seeking to import a shipload of ethanol to sell in businesses which limit the content of ethanol to 10 per cent. That is the limit that this government should have imposed. (Time expired)

**Senator LIGHTFOOT** (Western Australia) (3.07 p.m.)—I may be wrong but, from what Senator Kerry O’Brien has said, I gather that no consideration is being given to the sugar growers of Queensland and Northern Australia. If that is the case, obviously I am very disappointed, because I look after the people of my state insofar as I can in this chamber. If Senator O’Brien is saying that there should not be an excise placed on ethanol, or any other product for that matter, that comes into Australia—where it is virtually dumped—I will be equally disappointed. Perhaps a senator on the opposite side will enlighten me with respect to that. But what I know is this: the government, as recently as last week, announced that, under a scheme to be administered by Industry, Tourism and Resources, for domestically produced ethanol that can be blended with petrol and diesel, a subsidy will be paid for one year from midnight on 17 September. The other side would have to agree that some pretty quick thinking was needed to protect Australian industries and jobs from imported product.

The excise rate that has been struck—that is, 38.143c per litre—will apply to all ethanol fuel sold in Australia. A sugar refinery in Northern Australia, in the northern part of my state of Western Australia, can take up to 490,000-odd tonnes of sugar cane a year. Under the present world-priced sugar regime of about US6c per pound that the Australian
producers are subject to—including Queensland, of course—there is insufficient margin for growers in the state of Western Australia to survive. If it means that those people then can sell sugar cane for the production of ethanol fuel, that is a good thing, because they cannot survive on US6c or US6½c per pound when the cane is used for sugar production. If, on the other hand, no excise is paid, how do we then combat the introduction of any fuel from countries of cheap production, like Brazil? Brazil does not have wage or salary rates like Australia has. Brazil pays its workers something like $US10 a week. In this country, as we are aware, it is illegal to pay anyone aged 21 or over less than $A400 per week. In effect, if we import fuel that is produced with cheap labour—and sugar cane is the raw material for the production of ethanol—in my view that is dumping.

I admire the government for taking the stand that it has taken. On the other hand, how can the fuel that is produced in Australia from what we consider normal resources survive, if ethanol is produced in any quantity and that ethanol does not attract an excise of some kind or another? I know that my view with respect to this was that Australian jobs must be protected. Australian jobs must be protected from the importation of anything that is produced cheaply and that usurps or displaces workers in Australia. I am surprised that Senator Kerry O'Brien, who comes from the state of Tasmania which has high unemployment, did not take up that issue. How could we possibly stand aside and let cheap fuel of any kind, whether produced by ethanol or normal resources, come into Australia and then ruin industries in Australia? I do not believe that it should. I believe that the government has done the right thing. I believe that it needs to attract an excise. I also believe that the government needs to protect Australian jobs. (Time expired)

Senator COOK (Western Australia) (3.12 p.m.)—Before I turn to my substantive remarks, I invite the Leader of the Government in the Senate, Senator Hill, to speak next in this debate and to say whether he endorses as government policy exactly what Senator Lightfoot has said. I bet he will not speak next, and I bet he does not endorse it, because what Senator Lightfoot has said is not government policy; it is private opinion. My God, if it were government policy, this would be the most protected country in the world and our credentials about opening up markets overseas for our exports would be down the drain—absolutely lost.

There are some fig leaves in this debate about ethanol that the government has used. Let me remove some of them. As to the first fig leaf, ethanol is not a green fuel. The greenhouse gas benefits of ethanol are mixed; they cannot be substantiated as greenhouse gas positive. Therefore on environmental grounds the government's argument fails. Let me remove another fig leaf: that this will help the sugar industry. That was the nub of Senator Lightfoot's remarks. It will not help the sugar industry. Because of the government's decision, 90 per cent of the excise on ethanol and a subsidy for domestic producers goes to wheat growers, not to sugar growers. Therefore it does not help the sugar industry; it helps the wheat industry. Let us be clear about that.

Let me remove a third fig leaf in this argument: that prices will be contained for fuel at the bowser. Prices will not be contained for fuel at the bowser. Fuel for the family car will go up, and go up unnecessarily. The government subsidy that we are talking about expires in 12 months and then ethanol blended fuels will rise in price. For those who have up to or more than 10 per cent blends with petrol, the price rise will be at least 4c a litre. Prices will rise.

Let me take away from the government in this argument a fourth fig leaf that the government is using to protect itself in this ethanol debate: that it will be a costless additive to petrol—it won't be. The ACCC, the government-independent body to protect consumers, states that blends that exceed 10 per cent of ethanol will cost motorists, and it will cost them in fuel efficiency—because the efficiency of the fuel will be less than petrol blends. It will cost them in damage to the fuel lines in their motor vehicles—Holden have already said they will void warranties for motor cars made by them—and it will
damage fuel lines and carburettors in cars. So it will not have a costless impact on consumers either.

They are the four fig leaves that the government have used. Firstly, they argue that it is a greenhouse abatement fuel—and that is a very contestable proposition and one that is not established. Secondly, they say that it will help the sugar industry—but it won’t; it will help the wheat industry. Thirdly, they argue that prices will be contained—but prices will rise and, fourthly, it will damage the family car for Australian motorists. With those four fig leaves removed, what have we exposed to see? A quite shocking sight, I might say. The beneficiary of this switch in excise to subsidy will be the Manildra Group, which is run by a Mr Dick Honan, a private mate of the Prime Minister. What we have seen here is what we have seen before—

Senator McGauran—This is outrageous!

Senator COOK—The Manildra Group is responsible for 90 per cent production of petrol-ethanol production in this country. They are the direct beneficiary. We know that there is an importation of a shipment of ethanol on the water. By introducing an excise you increase that price; while by giving a subsidy you reduce the price to Manildra—a group run by a personal mate of the Prime Minister. That is a piece of the sort of shonkiness that is going on here. That is the sort of thing for which Australia will be taken to the World Trade Organisation and blasted out of court because we are manipulating excise and manipulating a market to suit domestic consumption, and not playing by fair rules. If anyone anywhere in the world had done that to us, we would rightly complain. What makes this worse is that it is for a mate of the Prime Minister. The question hanging over this debate is: how much more money do the Liberal Party get out of this by way of a party political donation because of the excise concessions of the government? (Time expired)

Senator BOSWELL (Queensland)—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (3.17 p.m.)—If there was ever any-one who was successful in rural Australia, whether it be in sugar, wheat or any other industry, you can bet your life that the Labor Party will attack them. Dick Honan is a great Australian. He provides a lot—

Senator Hutchins—And a coalition supporter.

Senator BOSWELL—I don’t know who Mr Honan votes for, but I would be very surprised if he voted for the Labor Party. Very few people in rural Australia will vote for the Labor Party. That is why their vote out there has absolutely collapsed and they now have to go back to the fall-back position of prop- ping up Independents and passing their preferences on to the Independents because they acknowledge that they are just not in the race in rural Australia. Some of the votes out there, that are as low as 18 per cent or 19 per cent, indicate and confirm that. But if there is anyone that ever sticks their head up as being a success in rural Australia you can bet the Labor Party will put the boot in. Dick Honan has a sugar plant and a refinery. He has very many industries in rural Australia that support rural production, farming and farmers—whether it be through sugar, starch or other commodities that he buys from farmers. So he should be congratulated on what he does for rural Australia.

I am not sure that Honan is the leader in ethanol production. I would have thought Power Alcohol was. Power Alcohol in Sarina has been there for 40 years and has huge productions of ethanol. Rocky Point also has an ethanol mill. The owner of that mill is not a mate of Mr Howard’s, I can assure you; he is a mate of the National Party and been a member all of his life—and most people are.

Senator Forshaw—If you are a National, you are not a mate of the Prime Minister!

Senator BOSWELL—Most successful people in rural Australia have an association with a political party.

Senator Forshaw—You’re smart!

Senator BOSWELL—But you guys just seem to think that, if someone supports the party, the coalition will bend around them. That is wrong. Of course, now there are a number of sugar mills that are putting ethanol plants in—and they have to be mates of
the Prime Minister, too! There is no doubt about it, if there is a factual or conspiracy theory, then the Labor Party will always back the conspiracy theory. There are five or six ethanol plants that I just mentioned; there could be more around Australia. I think there is one going up in Dalby at the moment. I do not know whether the owner of that plant is a mate of Mr Howard’s, too. But according to you guys, anyone that has an ethanol plant has to be a mate of the Prime Minister—that is absolute nonsense.

You can also bet on one thing in the Labor Party: if an industry is down on its knees, the Labor Party will come in and kick it hard. The government is trying to put together a proposition, a plan, a package to try to save the hard-pressed sugar industry that is down—not because of its own fault but because of high subsidies in America, the EC and Japan, where they are paying 21c to a farmer to produce sugar; whereas our farmers are getting 6c a pound on the world market—and the government is trying to support them. But you can bet your life that the opposition will come in and try and garrotte the plan that the government is putting forward.

There is $350 million going into the sugar industry. What does your spokesman for primary industry do? The same week that we put the plan in he gets up and says that the coalition has abandoned the sugar industry. That is an absolute nonsense. It shows that you do not understand rural industries; you do not understand how the bush works. The bush understands that you do not understand. You only have the old guys, the old battlers out there, who have always stuck to the Labor Party through loyalty; but they are a dying race out there. Your vote will be 18 per cent next year. You then fall back on the Independents and prop them up, because you cannot get a sufficient vote. It is really sad, because when the industry—

Senator Hutchins—What about Farrer?

Senator BOSWELL—In Maranoa, the Labor Party gets something like 20 per cent and the coalition gets about 80 per cent. It is really sad that, when a government tries to bend its back to try and help not only the farmers—(Time expired)
Group of companies, which is the only one which can supply this ethanol, refused to supply it to the other two companies? When Manildra found out that those companies were getting it from somewhere else, the group chopped it off through their mates in the Liberal Party. What Senator Coonan said is of course untrue. She also said that it would be ‘of no benefit to any individual’. In fact, it may not benefit one individual but it certainly will affect the business prospects of Manildra Park Petroleum.

Senator Coonan also said today that Environment Australia’s response is the issue in terms of the acceptable amount of ethanol in the fuel. In November 2000, Environment Australia proposed a limit of 10 per cent on the ethanol level in petrol. Environment Australia made its point nearly two years ago, and yet the government has still failed to act. Now Senator Coonan says that the government is waiting for the same advice before it makes the same decision. We have had to listen to these arguments this afternoon about the retrospective tax that this government has placed on the honourable companies in this country which are seeking to develop and conduct research that will no doubt benefit them and their shareholders. However, they have been ambushed by the partisan actions of the government. As Senator Cook has said, we should be making sure that we are not jeopardising our obligations to the WTO and not putting in harm’s way the agricultural products that we wish to export.

Question agreed to.

Science: Funding

Senator STOTT DESPOJA (South Australia) (3.27 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to a question without notice asked by Senator Stott Despoja today relating to the culling of science programs.

I asked the minister in his capacity as the minister representing Minister McGauran whether it was true that this government was contemplating ‘culling’ programs—that is the word I understand Peter McGauran used this morning at the launch of the FASTS statement of principles and policy document. FASTS is of course the Federation of Australian Scientific and Technological Societies. I wanted to get from the minister an assurance that there were some criteria in place and some openness from the government as to what the plan was. Given that Senator Alston gave a robust and strong defence of Backing Australia’s Ability in his response to me today, it was quite surprising that he professed no knowledge and no understanding of any comments made by Minister McGauran in the other place or at the policy document launch this morning—and yet this is one of the most significant contributions we have seen in recent years to Australia’s research and development capacity and the promotion of innovation in Australia.

Having said that, I should acknowledge that the announcement, the innovation statement, made in January last year by this government really only restated some of the cuts that this government has made in the areas of education, science and technology. Nonetheless, it was a significant first step, a step that the Australian Democrats supported. Thus we worked with the government in order to implement the changes and the recommendations in that statement. So it is quite surprising to the sector today to hear from the Minister for Science the plan from this government to cull aspects of Backing Australia’s Ability. It was somewhat more surprising to me to ask the minister representing the minister about that and have him declare no knowledge of this proposed culling.

The Australian Democrats recognise that it is appropriate to assess programs. We are not suggesting they should not be examined or analysed from time to time; of course they should be evaluated, especially when we are talking about Australian taxpayer dollars. However, what surprises me is that there has been no comment by Minister McGauran—and certainly not by Minister Alston in the chamber today—and no explanation as to what criteria there could possibly be, what time line there could possibly be, why these programs are being contemplated for culling and certainly not even a hint of recognition from Minister Alston in the chamber today.
that the freezing or culling of programs may not be the most innovative and promising message to be sending to our scientific and research community.

The FASTS document which is being promoted was launched today by the minister. It is a welcome contribution but once again it is a contribution to the debate that highlights how far behind Australia is lagging when it comes to R&D, particularly our investment in science. Australia spent less on gross expenditure on research and development—GERD—in 2000-01 as a percentage of GDP than it did back in 1996-97. We have dropped from 1.66 per cent of GDP in 1996-97 to 1.53 per cent in 2000-01. So the last thing I would imagine this government should be contemplating is cutting, in any financial or other sense, the programs that have been put forward as part of Backing Australia’s Ability or the innovation statement. That is the precursor document if you like.

The other thing I asked the minister today, in an attempt to get some response to any questions asked, was whether or not the minister could confirm other comments made by Minister McGauran this morning in relation to the R&D Start program. As I hope many honourable senators would be aware, that has been a highly successful program for Australia, yet this government made a somewhat extraordinary decision to freeze the R&D Start program. So the Democrats have been asking this for a long time: when does the government plan to unfreeze the R&D Start program? Once again, I was not able to get an answer from Minister Alston, which suggests that he has to do a lot more work as Minister representing the Minister for Science because clearly he had no clue.

I will leave out the next couple of sentences. Then it says:

His latest adventure was at the Canberra watering-hole The Holy Grail, where he found himself in dispute with Labor Senator Michael Forshaw. One observer had a glass of wine knocked out of their hand, prompting—and then another member of parliament is named—to step in to break it up. Things didn’t get any better after that and it wasn’t long before there was another near-brawl, this time with—and then it mentions another member of parliament. The concluding sentence reads:

The member for Solomon was reluctant to comment to our operative about the events of the said night.

This article has been picked up on the crikey.com site and repeated but with some embellishments. Firstly, the caption reads: ‘Biffo, Canberra style’ and I quote it in part:

If even the Rear Window column of the august Fin Review is—as it did last Friday—reporting biffo, Canberra style, then Crikey can only follow the trend. Here is the full story about what happened with Dave Tollner—then it mentions another member of parliament, not me. It continues:
Tollner was enjoying a drink at the Grail with, of all people—
and it mentions another MP—

Senator Conroy—Name, names—come on!

Senator FORSHAW—I do not intend to name names. I do not want to be repeating an allegation which may or may not be true about other members of parliament. It is certainly not true about me. I will read that again:

Tollner was enjoying a drink at the Grail ... when he got into a spot of pushing and shoving with New South Wales Labor Senator Michael Forshaw that saw a drink belonging to the Member for—

and then it mentions another member of parliament. This is totally untrue as far as it involves me. I do not know when this incident is alleged to have occurred, but I was not there. I can make it very clear that I have not been to the Holy Grail bar for quite a long time. I certainly was not there on the night that this alleged incident occurred and I certainly was not involved. It is grossly untrue. This was drawn to my attention by a business colleague of mine last Saturday when my wife and I were attending a community function with the Premier of New South Wales. I have to say that I was rather astonished to be told that there had been an article in the paper alleging that I had been involved in some fight at a tavern here in Canberra.

Senator Faulkner—I did not think for one minute that it would be you.

Senator FORSHAW—Definitely! The article said:
The member for Solomon was reluctant to comment to our operative about the events of the said night.

At no stage did the editor Jane Boyle or anyone else contact me to try to verify the story before it was printed. I must say that since then I have had a number of people raise the issue with me and also inquiries from the media. I was not involved; it did not occur.

SUPERANNUATION: COMMERCIAL NOMINEES OF AUSTRALIA LTD

Return to Order

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.37 p.m.)—by leave—On 29 August 2002 Senator Coonan made a statement in response to return to order No. 126. The order proposed the production of certain documents relating to applications for financial assistance for superannuation funds where Commercial Nominees of Australia Ltd was trustee. Senator Coonan has now had an opportunity to consider the documents requested and I now table those as per the orders of the Senate. However, as indicated on 29 August last, the documents contain some information that relates to the circumstances of individuals. I consider that the benefits of making this information available in the public interest do not, on this occasion, outweigh the rights of the individuals concerned to personal privacy. Accordingly, a section of the documents relating to specific individuals has been blanked out.

PETITIONS

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

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)

Petition received.

NOTICES

Presentation

Senator Allison to move on the next day of sitting:
That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts References Committee on urban water management be extended to 24 October 2002.

Senator Ferguson to move on the next day of sitting:
That the Joint Standing Committee on Foreign Affairs, Defence and Trade be authorised to hold a public meeting during the sitting of the Senate on Thursday, 26 September 2002, from 11.45 am to 1 pm, to take evidence for the committee’s inquiry into aspects of the 2000-01 annual report of the Human Rights and Equal Opportunity Commission relating to conditions at immigration detention centres and the treatment of detainees.

Senator Conroy to move on the next day of sitting:
That the Telstra Carrier Charges—Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2002, made under subsections 154(1), 155(1) and 157(1) of the Telecommunications (Consumer Protection and Service Standards) Act 1999, be disallowed.

Senator Forshaw to move on 22 October 2002:
That Standard 9: Employment conditions, in item 9 of Schedule 1 of the Disability Services (Disability Employment and Rehabilitation Program) Standards 2002, made under paragraphs 5A (1)(b) and (c) and subsection 5A (2) of the Disability Services Act 1986, be disallowed.

Senator Allison to move on the next day of sitting:
That the Senate—
(a) notes that the National Council of Women of Victoria has expressed great concern at the threatened invasion of Iraq without United Nations sanction and without measuring the incalculable costs to the countless innocents who would suffer as a result of this violence; and
(b) reminds the Government that countless women and children will suffer as a result of any military action against Iraq.

Senator Ridgeway to move on the next day of sitting:
That the Senate—
(a) notes that: (i) in September 2001, the United Nations (UN) General Assembly unanimously adopted Resolution 55/282, establishing the United Nations International Day of Peace as an annual day of global cease-fire and non-violence, now fixed in the calendar as 21 September from 2002, (ii) the UN General Assembly has invited the people of the world to honour and celebrate the day on 21 September, with the vision of the day extending far beyond the cessation of violent conflict and representing an opportunity for the people of the world to create a moment of global unity, and
(iii) individuals, governments, regional and non-government organisations, educational establishments and religious/spiritual organisations all over the world, including Australia, have responded to the invitation from the UN General Assembly, by organising events and actions designed to improve public awareness and strengthen the ideals of peace both within and amongst all nations and peoples;
(b) congratulates Mr Jeremy Gilley and all those individuals and organisations whose voluntary efforts and vision have driven the initiative to establish and observe the United Nations International Day of Peace as a day of global cease-fire and non-violence; and
(c) welcomes the international observance of the International Day of Peace as an important means of strengthening the ideals of peace and alleviating the tensions and causes of conflict that exist around the world.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.39 p.m.)—I give notice that, on the next day of sitting, I shall move:
That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the ACIS Administration Amendment Bill 2002, allowing it to be considered during this period of sittings.
I also table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—
STATEMENT OF REASONS FOR INTRODUCTION AND PASSAGE IN THE 2002 SPRING SITTINGS

ACIS ADMINISTRATION AMENDMENT BILL 2002

Purpose of the Bill

The purpose of the Bill is to amend the ACIS Administration Act 1999 to allow eligible motor vehicle producers to claim Automotive Competitiveness and Investment Scheme (ACIS) uncapped production credits for the production of derivatives of passenger motor vehicles such as utilities, panel vans and pick-ups, with effect from the commencement date of ACIS, which was 1 January 2001.

Prior to the introduction of ACIS, the automotive industry received production incentives from the Duty Free Allowance (DFA). In June 1997, the Government announced that the DFA would continue and that a structural adjustment scheme would be introduced.

ACIS was announced in April 1998. The scheme has two parts—an uncapped part (unlimited) and a capped part (limited to $2 billion through the process of modulation). The uncapped part of ACIS is the continuation of the DFA.

Under ACIS, motor vehicle producers (MVPs) earn two types of incentives for the production of their vehicles:

Uncapped incentives of 15 per cent of the value of production of passenger motor vehicles sold in Australia and New Zealand, multiplied by the current PMV tariff rate; plus

Capped incentives of:

- 10 per cent of the value of production of passenger motor vehicles (PMVs) sold in Australian and New Zealand, multiplied by the current PMV tariff; and
- 25 per cent of the value of all other motor vehicle production (other than PMVs sold in Australia and New Zealand), multiplied by the current PMV tariff rate;

Under the DFA, utilities, panel vans and pick-ups were included in the classification of specified passenger motor vehicles, therefore attracted uncapped credits.

If this treatment of utilities, panel vans and pick-ups had continued under ACIS, as had been intended, the production of these vehicles would today attract uncapped as well as capped ACIS credits. However, the current ACIS definition of passenger motor vehicles excludes utilities, panel vans and pick-ups from uncapped ACIS credits. This means that MVPs are only eligible to claim capped ACIS credits for the production of these vehicles. Because the current modulation rate on capped benefits is 0.71, the production of utilities and similar vehicles attracts significantly less benefits under ACIS than it did under the DFA. This is clearly inconsistent with the Government’s intention to continue the DFA.

Reasons for Urgency

Not dealing with this Bill promptly, in one sitting period, will adversely impact upon two major participants of ACIS and will have broader adverse consequences for approximately 195 other ACIS participants.

Additionally, not dealing with this Bill promptly, in one sitting period, will affect the setting of the appropriate modulation rate of ACIS capped benefits, which is made each quarter. The next modulation decision is to be made by 30 September 2002.

(Circulated by authority of the Minister for Industry, Tourism and Resources)

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes the demonstration of 4 000 people on the weekend of 21 and 22 September 2002 to protest against the development of the proposed charcoal plant in Mogo, near Batemans Bay, New South Wales; and

(b) expresses its objection to this polluting and unsustainable development, which is based on massive new logging operations that will adversely impact upon the local environment, and the local community’s lifestyle and economic security.

Senator Greig to move on Thursday, 24 October 2002:

That the Therapeutic Goods (Charges) Amendment Regulations 2002 (No. 1), as contained in Statutory Rules 2002 No. 144 and made under the Therapeutic Goods (Charges) Act 1989, be disallowed.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.41 p.m.)—by leave—I move:

That the following government business orders of the day may be taken together for their remaining stages:
No. 3 Workplace Relations Amendment (Genuine Bargaining) Bill 2002, and
No. 4 Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002.
Question agreed to.

NOTICES
Postponement
Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Murray for 25 September 2002, relating to the reference of matters to the Community Affairs References Committee, postponed till 23 October 2002.

Business of the Senate notice of motion no. 2 standing in the name of Senator Murray for 25 September 2002, relating to the reference of matters to the Economics References Committee, postponed till 13 November 2002.

General business notice of motion no. 110 standing in the name of Senator Stott Despoja for today, relating to any pre-emptive military action, postponed till 14 October 2002.

General business notice of motion no. 162 standing in the name of Senator Stott Despoja for today, relating to the meeting of Commonwealth leaders on Zimbabwe, postponed till 24 September 2002.

LEAVE OF ABSENCE
Senator FERRIS (South Australia) (3.42 p.m.)—by leave—I move:
That leave of absence be granted to Senator Chapman for the period 23 September to 17 October 2002, inclusive, on account of parliamentary business overseas.
Question agreed to.

DRUGS: EDUCATION PROGRAMS
Senator ALLISON (Victoria) (3.43 p.m.)—I move:
That the Senate—
(a) notes:
(i) the efforts by Philip Morris Ltd to sponsor so-called drug education programs in Asia and, most recently, in the Lao People’s Democratic Republic (Lao PDR),
(ii) previous moves in Australia by Philip Morris to sponsor school-based

programs, such as the ‘I’ve got the power’ program, received such strong criticism from health and educational professionals that most school education authorities rejected or abandoned the programs,
(iii) the cynicism of the major tobacco companies in sponsoring education ‘events’, when around 370 million cigarettes are illegally sold to children in Australia each year; and

(b) urges the Federal Government to:
(i) advise the Lao PDR that tobacco companies in Australia have consistently opposed genuine measures to reduce youth smoking rates and that their offers to sponsor education activities should not be countenanced, and
(ii) assist countries in the region by supporting a strong framework convention for tobacco control to reduce the global tobacco epidemic and to help reduce the estimated 40 000 to 50 000 Asian teenagers taking up smoking every day.

Question agreed to.

ENVIRONMENT: MINING WASTE DISPOSAL
Senator ALLISON (Victoria) (3.43 p.m.)—I move:
That there be laid on the table by the Minister representing the Minister for the Environment and Heritage, no later than 5 pm on Wednesday, 25 September 2002, the following:

(a) the further studies, ordered by Senator Hill on 1 February 2001 to be conducted by the proponent of the Honeymoon trial mine, on ground water and waste disposal issues;

(b) the independent reviews of these further studies ordered by Environment Australia;

(c) the Honeymoon trial mine reports for 1998 to 2000, as reported to the South Australian Government by the proponent;

(d) the evidence of ground water monitoring and waste disposal records from the trial mine; and

(e) any South Australian Government reporting to the Federal Government on the trial mine.
Question agreed to.

**TRADE PRACTICES AMENDMENT (PUBLIC LIABILITY INSURANCE) BILL 2002**

**CORPORATIONS AMENDMENT (IMPROVING CORPORATE GOVERNANCE) BILL 2002**

**TRADE PRACTICES AMENDMENT (CREDIT CARD REFORM) BILL 2002**

First Reading

Senator CONROY (Victoria) (3.45 p.m.)—I indicate to the Senate that the following bills will be introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

That the following bills be introduced:

A Bill for an Act to amend the Trade Practices Act 1974 to give the Australian Competition and Consumer Commission power to deal with any price exploitation arising from changes in the law in relation to public liability, and for related purposes;

A Bill for an Act to amend the Corporations Act 2001 to improve corporate governance, and for related purposes; and

A Bill for an Act to amend the Trade Practices Act 1974 to give the Australian Competition and Consumer Commission power to deal with any price exploitation arising from changes in the regulation of credit card fees, and for related purposes.

Question agreed to.

Senator CONROY (Victoria) (3.45 p.m.)—I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator CONROY (Victoria) (3.45 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

*The speeches read as follows—*

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**TRADE PRACTICES AMENDMENT (PUBLIC LIABILITY INSURANCE ) BILL 2002**

Over the last 12 months there has been a crisis in public liability insurance. What was once a routine procedure for most groups in the community has literally become a nightmare.

Insurance cover has become much more difficult to obtain, and the price has jumped dramatically. The effect of September 11 on the insurance market and the collapse of HIH are significant factors in the crisis, but so is the increasingly litigious trend in our society and the growing culture of finding someone with deep pockets to blame even in unreasonable circumstances.

The crisis in public liability insurance has impacted most severely on the community sector and some areas of small business. Those groups are struggling to obtain public liability insurance at affordable prices, and it is threatening the continuation of the activities Australians have traditionally enjoyed.

The Howard Government has failed to show leadership on this issue.

Fortunately, the state Governments have taken steps to reform the common law.

The main focus of those reforms is to rebalance the law so that personal responsibility is restored.

Labor believes that appropriate rights for the victims of negligence are essential in our society. The community has an expectation that those who suffer an injury as a result of someone else’s culpability will be compensated for that injury—but there must be balance in any system.

The law must also appropriately reflect the community’s expectations regarding realistic standards of responsibility, culpability and informed voluntary assumption of risk.

The objective of the reforms being put in place by state Labor governments is to ensure that our volunteer community groups can continue to function to enhance the quality of Australian life to provide the many essential services that they provide to the Australian community.

These reforms will lead to lower insurance premiums.

PriceWaterhouseCoopers estimated that the first stage of reforms introduced by Premier Carr would reduce the cost of public liability claims by 17.5 per cent and personal injury cases by 14 per cent. If the cost of the claims decrease, so too must the premiums.

But we can only ensure that the benefits of these reforms are delivered if we provide a mechanism to ensure the savings are passed on.
The insurance industry has warned that reform of public liability may not lead to cheaper premiums.

This means that without proper supervision the benefits of the well-considered law reforms will end up in the pockets of the insurance companies and the public liability insurance crisis will continue unabated.

The Howard Government has consistently refused to act on this issue even though it is their constitutional responsibility.

Further, the Australian Competition and Consumer Commission has said on the public record that it does not have the power to ensure that savings from the law reforms are passed on by the insurance companies to the consumers.

To ensure that it is the case requires legislation by the Commonwealth.

This legislation grants the ACCC the necessary powers to protect consumers and ensure savings are passed on. It allows the ACCC to take action against insurance companies who exploit the savings from the law reforms and do not charge premiums for public liability insurance which reflect the effects of the law reform.

This legislation is necessary to realise the benefits of the law reforms undertaken by the States.

I commend the bill to the Senate.

———

CORPORATIONS AMENDMENT (IMPROVING CORPORATE GOVERNANCE) BILL 2002

There is no greater threat to world finance markets than if investors lose faith in the integrity of company accounts.

With over 90 percent of people now in super funds, just about every employee owns shares indirectly.

Labor is determined to ensure that people’s investments are safe.

By contrast the government continues to do nothing. We call for action—they wait for months then issue a discussion paper.

HIH collapsed with Minister Hockey knowing about the situation—but the Government did nothing.

The Treasurer wants to wait for the Royal Commission—another excuse to do nothing.

The time for action is here.

Labor is prepared to legislate to improve corporate governance standards now.

People who breach corporate laws should be penalised, and the penalties must reflect the serious damage that can be done to companies, shareholders, super funds and the economy as a whole.

This bill doubles the current penalties for serious breaches of the Corporations Act from five years to ten years and increases to five years many offences that now only carry two year penalties.

At the same time the bill protects whistleblowers providing information about corporate malpractice in good faith to the industry regulator, ASIC. This ground-breaking legislation will improve the culture of honesty inside our listed corporations.

Shareholders and the public have the right to know how much executives are paying themselves. In 1998 Labor, without the support of the government, forced an amendment to the Corporations Act to have details of executive remuneration revealed in company annual reports.

Half of all companies have flouted this law, with the tacit approval of the Howard Government. This bill will make them comply.

The bill also implements major recommendations of the Ramsey Report into auditor independence.

But we go further than Professor Ramsey.

The bill follows the United States reforms and prohibits auditors providing non-audit services to their audit clients in a range of inappropriate areas.

It also requires auditors to specifically report on instances of aggressive accounting and to disclose the implications if an alternative treatment were used. This will clean up many shonky accounting practices.

The bill also assists investors by attempting to ensure that financial analysts always act in the interests of the users of their reports, not in the interests of their firm. Disclosure standards will be introduced covering all research reports.

Ordinary investors will also gain a statutory right of access to the information provided during briefings to analysts by listed companies. Some firms already provide this information on their websites and they are to be commended. This standard needs to be available generally.

Similarly, the bill proposes a revolutionary reform of election processes for directors. Shareholders who elect directors will have a right to know what the relationships are between the candidates and the company, the candidates and the existing directors, and the other directorships held by the candidate.

A mandatory disclosure will need to be made by all candidates to ensure shareholders can make informed decisions on these questions.

These are sensible reforms. They respond to the inadequacies of the system and protect the in-
vestments of all Australians. They build trust in the market. If we do these things we will increase the level of national investment, boost industry, increase returns for shareholders and create more jobs. I commend the bill to the Senate.

TRADE PRACTICES AMENDMENT (CREDIT CARD REFORM) BILL 2002
Labor is introducing this bill to protect the interests of consumers and small business. The Reserve Bank of Australia (RBA) announced reforms to the operation of credit card schemes on 27 August 2002.

The reforms include the following aspects:

- Interchange fees will be reduced, which has the potential to generate cost savings of up to $400 million per year.
- Consumers who choose not to use their credit card will no longer have to subsidise those who do.
- Companies who meet strict prudential standards will be able to issue their own credit cards.

If properly implemented, the reforms will create a competitive credit card market and deliver substantial cost savings to small business and consumers.

Labor has been pursuing this issue for years and strongly supports the RBA’s reforms.

There is, however, a very real prospect that the cost savings resulting from the reduction in interchange fees will never reach customers. This is because no agency has the power to ensure that the savings are passed on to consumers and small business.

This bill gives the ACCC the power to deal with any price exploitation arising from reforms to the operation of credit card schemes.

Small business involved in credit card schemes pay a merchant service fee to the financial institution that provides them with the credit card service. Part of this merchant service fee is the interchange fee.

The interchange fee is the fee financial institutions charge each other for providing credit card services. The RBA reforms relate to this fee.

However, despite the RBA reforms reducing the interchange fees, there is nothing to stop the banks increasing the cost of other components of the merchant service fee to protect their profits. This means that no savings are guaranteed to consumers from the RBA reforms.

Further, there is nothing to stop banks from seeking to recoup the revenue loss resulting from the cuts in the interchange fee by increasing other fees and charges.

One bank has already publicly acknowledged that its customers will only ever see one-third of the savings. It has openly admitted that it will increase other fees and charges and cut services to make up for the loss in revenue as a result of the RBA reforms.

The Treasurer claims that it is the responsibility of the Reserve Bank to ensure that cost savings reach customers. If the Treasurer has read as far as page 2 of the Reserve Bank’s report, he would know that is not true.

The Reserve Bank states explicitly that:

“The measures do not deal with the relationships between individual scheme members and their customers, which are not covered by scheme regulations. Hence they do not cover the setting of credit card fees and charges to cardholders and their merchants.”

The government has ignored Labor’s call to give the ACCC price exploitation powers to ensure that the savings are passed onto customers.

The Treasurer has accepted bank assurances that they will be despite one bank already saying they will not and the banks’ track record on hiking fees.

The government has demonstrated that it will not act to protect the interests of small business and consumers. This bill shows that Labor will.

Small business and consumer groups have also publicly stated their support for ACCC involvement. These groups include the Motor Trades Association of Australia, the Council of Small Business Organisations of Australia, the Australian Consumers Association and the Financial Services Consumer Policy Centre.

I commend this bill to the Senate.

Senator CONROY—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

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

FOREIGN AFFAIRS: INDONESIA

Senator BROWN (Tasmania) (3.46 p.m.)—as amended, by leave—I move the motion as amended:
That the Senate calls on the Government of Indonesia to ensure that Ms Lesley McCulloch is given full and immediate consular access and that she and her colleagues are treated fairly and in accordance with international human rights standards and released from custody as early as possible.

Question, as amended, agreed to.

ABORIGINALS AND TORRES STRAIT ISLANDERS: 2001 CENSUS

Return to Order

The DEPUTY PRESIDENT—I present a response from the Minister for Education, Science and Training, Dr Nelson, to a resolution of the Senate of 25 June 2002 concerning Indigenous peoples and the national census.

COMMITTEES

Foreign Affairs, Defence and Trade Committee: Joint Report

Senator FERGUSON (South Australia) (3.48 p.m.)—I present the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade entitled Review of Foreign Affairs, Trade and Defence Annual Reports, 2000-2001, together with the Hansard record of proceedings and submissions received by the committee.

Ordered that the report be printed.

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

Leave granted.

Senator FERGUSON—I move:

That the Senate take note of the report.

I am pleased to present this report on behalf of the Joint Standing Committee on Foreign Affairs, Defence and Trade. Not only is it our first report in this parliament; it is the result of the first general review by the committee of annual reports from the government agencies within its area of interest. Traditionally, Senate committees, not joint committees, have conducted general annual report reviews. We decided to review the annual reports from the Department of Foreign Affairs and Trade, AusAID, Austrade and the Department of Defence for two main reasons: firstly, to make an active contribution to the processes by which the parliament holds the executive and its agencies to account; and, secondly, to seek status reports on various policy and operational issues outlined in the annual reports. At a practical level, it has allowed committee members from the House of Representatives to participate in an activity similar to that routinely available to senators.

The review involved two public hearings: one conducted by our Foreign Affairs Subcommittee, the other by our Defence Subcommittee. Many of the issues raised at these hearings were also of interest to our Trade Subcommittee and Human Rights Subcommittee. This report contains a summary of the key issues discussed at the hearings. The foreign affairs and trade chapter of the report focuses on three themes: events in the Middle East and South America following the committee’s reports on these regions in the last parliament; Australia’s relations with some of the countries in north and south Asia; and Australia’s relations with our near neighbours including Burma, Cambodia, Vietnam, Indonesia, East Timor, Papua New Guinea and the developing nations of the south-west Pacific.

The scope of the defence chapter of the report is similarly broad. As well as commenting generally on Defence’s performance in resourcing, management and acquisition, we consider, in some detail, the provision of support to Defence Force personnel and their families following operational deployment and in preparation for the transition from military service to civilian life. These issues are especially relevant given the high level of operational tempo currently being experienced and the importance of retaining experienced and skilled personnel. Considerable effort is devoted to the provision of these services in the Defence Force and, over time, their breadth and quality has improved. There is scope, however, for further improvements to be made in the availability and effectiveness of transition services.

We have made a series of recommendations to this end. For example, we have called on Defence to ensure that all Defence Force personnel returning from operational deployments are required to complete two-week adjustment or ‘decompression’ periods
at work before undertaking recreational leave and to make job placement services available to all Defence Force moving from military service to civilian life. With the exception of our recommendations on transitional management, the one-off nature of the hearings and the general absence of supporting written evidence means that we have not sought to undertake a full analysis of every issue raised at the hearings and mentioned in the report. Nonetheless, from our perspective, the review has been very useful and I expect that annual report reviews will become a regular part of the committee’s work program.

Question agreed to.

Membership

The DEPUTY PRESIDENT—The President has received letters from a party leader seeking variations to the membership of committees.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.52 p.m.)—by leave—I move:

That senators be appointed to committees as follows:

Appropriations and Staffing—Standing Committee—
   Appointed: Senator Ferris
Library—Standing Committee—
   Appointed: Senator Tchen.

Question agreed to.

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (DISABILITY REFORM) BILL (No. 2) 2002 First Reading

Bill received from the House of Representatives.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.53 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.54 p.m.)—I move:

That this bill be now read a second time.
I seek leave to have the second reading speech incorporated in Hansard.

Leave granted.

The speech read as follows—

This bill delivers on the Government’s commitment for real change that will see more people with disabilities move from the prospect of lifelong dependence on income support to work and the many benefits this brings.

Recent events have shown that introducing change in this area is not easy. But we can’t shy away from this—the Disability Support Pension as it currently exists is not sustainable. Without action now the number of people receiving DSP will approach 870,000 within the next ten years. The cost of the payment will increase by $1 billion over the next two years to reach $7.4 billion by 2003-04.

And this is just the cost to taxpayers. We also need to look at the cost to individuals and the community. Without preventative action now, increasing numbers of older people will have fewer resources as they reach retirement age. In addition, the social and economic costs associated with people prematurely withdrawing from the labour force are significant. Boosting labour force participation will also lessen the potentially adverse impacts of an ageing population on prospects for future economic growth.

Notwithstanding this need for change, we have heard the concerns of the community about the likely impact of the changes we announced on people who are currently receiving DSP. We identified particular groups, such as those on DSP who are already working to the best of their ability, for special consideration.

It is heartening to hear from so many groups and individuals including people with disabilities and their representatives that changes to the DSP criteria are necessary if we are to make sure that the payment continues to support those who need it.

The Government made it clear at every stage that we were prepared to sit down with Labor and the Democrats to come up with a fair compromise that takes into account these community concerns. But we have been met by an unwillingness of both Labor and the Democrats to consider our generous compromise options to smooth the tran-
sition for current DSP customers who might be affected by changes.

Today the Government is introducing a new bill that will guarantee much needed reform to DSP. This bill recognises the need to address the flow of people onto DSP by taking early steps to keep people with disabilities who can work in a more active system that supports and encourages them to achieve their best. This builds on our Australians Working Together initiative ‘Better Assessment and Early Intervention for people with disabilities’ in last year’s Budget. This initiative will see much needed improvements in assessing the ability and needs of people with disabilities.

The bill being introduced today will put in place a new system of income support rules for people applying for DSP from 1 July 2003. At the same time it will protect people receiving DSP prior to 1 July 2003 from the operation of the new rules. This means there will be no change for people who are currently receiving DSP, who will continue to need to meet existing criteria. No change to the 30 hour rule; no change to the services Centrelink can consider in thinking about whether someone could move into work within the next two years; and no change to the special provision that means local labour market prospects can be taken into account when assessing the eligibility of people aged 55 and over.

Those people who are protected will still have incentives to have a go at working full-time if they think they are able. We will continue with current provisions that allow people to have their payments suspended in these circumstances. The arrangements in this bill will mean that someone who does try out work of 30 hours or more a week, but finds they cannot maintain this, will be able to move back onto DSP under the current rules within a two year period.

And finally, let me make it very clear—as we did with the original bill—there will be no change to current provisions for people who claim or receive DSP who are permanently blind.

Schedule 1 of this bill makes changes to the legislative framework governing qualification for disability support pension for people who apply for DSP on or after 1 July 2003. This will ensure that the qualification criteria are changed so that disability support pension is only payable to people with very restricted work capacity (less than 15 hours at award wages a week). The amendments also extend the range of interventions and activities that Centrelink will be able to consider in determining whether a person has a continuing inability to work. Those aged 55 and over will no longer have their local labour market conditions taken into account in determining their eligibility for the disability support pension. Most of those people affected by the new rules will receive an alternative income support payment such as newstart allowance.

DSP will remain a safety net for people who cannot support themselves. People claiming DSP after 1 July 2003 who are not able to work for full award wages will not be affected by the changes. This means people working in Business Services (ie sheltered workshops) or at less than the full award wage will still clearly continue to qualify for DSP. People who could not work independently, such as those with high personal care needs, will also still clearly continue to qualify for DSP.

At the same time, the Government will maintain its commitment to provide up to 73,000 new places in services such as employment assistance, rehabilitation to help people with disabilities to realise their assessed work potential. It builds on increased funding for services for people with disabilities announced last Budget in the Australians Working Together package.

Grandfathering existing recipients means that no existing DSP recipients will be shifted on to other payments like Newstart, nonetheless we will still offer up to 73,000 extra places for disability support services. They will be progressively made available as required for example by existing DSP recipients wanting to improve their job opportunities and to people who, whilst they would not get DSP under the new rules, may nonetheless still need assistance.

Debate (on motion by Senator Ludwig) adjourned.

EGG INDUSTRY SERVICE PROVISION BILL 2002

EGG INDUSTRY SERVICE PROVISION (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2002

DAIRY INDUSTRY LEGISLATION AMENDMENT BILL 2002

ACIS ADMINISTRATION AMENDMENT BILL 2002

STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) AMENDMENT BILL (No. 2) 2002

First Reading

Bills received from the House of Representatives.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.55 p.m.)—I indicate to the Senate that those bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have three of the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.55 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

EGG INDUSTRY SERVICE PROVISION BILL 2002

The Egg Industry Service Provision Bill 2002 provides for the establishment of an egg industry company limited by guarantee under the Corporations Act. The company, to be called Australian Egg Corporation Limited or AECL, will be responsible for providing services to the industry. These services will include generic promotion and the R&D functions that are currently provided by a sub-programme of the Rural Industries Research and Development Corporation (RIRDC).

These new arrangements will allow a more coordinated and commercial approach to the delivery of services to the egg industry. Importantly it will ensure that for the first time, all egg producers can be directly involved in the application of their levies to best effect.

The egg industry has experienced a difficult period since deregulation of State marketing arrangements in the late 1980s. Further pressures have resulted in recent years from Newcastle Disease outbreaks and changes to layer hen housing to meet animal welfare requirements.

Through a period of declining fortunes, egg producers have suffered from a limited ability to adopt a whole-of-industry approach to crucial issues. They have been unable to communicate to consumers about the health benefits of egg consumption and to benefit substantially from industry R&D.

Between 1989 and 1999 Australia’s annual average egg consumption decreased from 146 to 137 eggs per person. The industry argues that this decline is due to a market failure in egg promotion. Whilst there are some producers large enough to carry out marketing and create brand recognition, this alone has not been enough to redress declining per capita consumption.

In 2001, the industry came to Government with a proposal to establish a new promotional levy, and to use the money generated to fund generic promotion. In addition, they wanted to establish a single industry owned company to manage promotion and industry R&D. The industry strongly argued that a national generic promotion program was needed toboost flagging egg consumption.

After an extensive consultation process, the Australian Egg Industry Association demonstrated that such a company was required, and that a majority of the industry supported the proposal. Having secured Government agreement for the proposal during June this year, the industry are now preparing themselves for a transition date of 1 January 2003.

Under the arrangements, all egg producers who pay the statutory promotional levy will be eligible to become registered members of AECL, and therefore will be able to have a direct input into the management and application of their statutory levies. Registered levy payers will be able to exert their influence through voting rights, appointment of board members, and input to the company’s policy development and planning activities.

Integration of R&D, promotion and other industry services will enable the egg industry to be more responsive to the challenges it faces. The new company will also improve communication within the industry, with consumers and with government. This will especially be the case on issues such as food safety, animal welfare and disease management.

In terms of R&D, the new arrangements will see the existing egg sub-programme transferred from the Rural Industries Research and Development Corporation to the new company. The arrangements for this transfer are dealt with in a cognate bill, the Egg Industry Service Provision (Transitional and Consequential Provisions) Bill 2002.

The Bill

The Egg Industry Service Provision Bill 2002 provides for the new industry structure by enabling the Minister for Agriculture, Fisheries and
Forestry to declare a company limited by guarantee as the industry services body.

Before the declaration can be made, the Minister must have entered into a contract with the industry services body detailing the arrangements under which the company will manage and administer industry levies collected by the Commonwealth and Commonwealth matching R&D payments. The contract can only be entered into if the Minister is satisfied that there are satisfactory accountability measures in place, including in the company’s constitution.

Once the declaration has been made, the Commonwealth can make promotion and R&D payments to the company, as well as matching Commonwealth contributions for eligible R&D expenditure.

**Accountability**

There are a number of benefits associated with the new arrangements. More than ever before, levy payers will have a direct influence on the way in which their industry levies are utilised. Through their voting rights, members will hold the company’s board accountable to the way in which they deliver industry service arrangements. In addition, the new structure and levy will enable the egg industry to address the market failure which currently hinders egg promotion. By improving communication with consumers and boosting egg consumption, the company will promote the development and profitability of the egg industry.

While the model allows the industry to have a greater say in the management of its affairs, there will also be increased responsibilities. The distancing of government means the industry accepting responsibility for its activities and appreciating that there is no automatic recourse to government assistance when the going gets tough. In short, the industry will be responsible for planning its own future, strategically seeking priority outcomes, and managing for risk.

In terms of accountability to the Commonwealth, the new company will be bound by a number of measures. These measures will be outlined in the funding contract with the Commonwealth, and in the company’s constitution. They include:

- comprehensive planning and reporting requirements, with copies of plans and reports to be made available to the Minister for Agriculture, Fisheries and Forestry;
- regular performance reviews to assess the company’s efficiency and effectiveness in meeting planned priorities;
- regular meetings between the Chair of the industry company and the Minister for Agriculture, Fisheries and Forestry to discuss industry issues and to ensure that the Government’s priorities for R&D are being addressed;
- a requirement for a mix of producer and specialist skills based directors on the board of the company including a specialist in corporate governance; and
- a requirement that the company remain separate from any industry agri-political activities. These sorts of activities should be conducted by the peak industry body, which is has not been included as part of the new company.

Should the company change its constitution in an unacceptable way, become insolvent, or fail to comply with the legislation or funding contract, the Minister for Agriculture, Fisheries and Forestry will have the ability to temporarily suspend or terminate the payment of statutory levies. Alternatively, the Minister will have the option to rescind the declaration of AECL as the industry services body.

Not only will these requirements ensure that the company is using statutory levies for their intended purpose, they will also help to secure a successful future for the new company.

**Conclusion**

This Egg Industry Service Provision Bill paves the way for the industry to look to the future with a more commercially driven and consumer responsive approach. With this new company, the industry will have the capability to respond more effectively and efficiently to current and emerging industry challenges. Ultimately this will mean increased egg consumption and improved industry profitability.

I commend the industry on its unity in bringing this proposal to Government. Their initiative is another example of a maturing agricultural and food industry looking to secure its future. It provides me with great pleasure to be working with the egg industry in implementing the arrangements and I am particularly impressed with the extensive levels of consultation both throughout the industry, with stakeholders, and with government.

This bill, and the accompanying transitional bill, creates a turning point for the management of industry affairs, and for the potential for industry growth and development. It will establish a solid foundation for the industry to improve its position in terms of egg consumption and overall profitability.
EGG INDUSTRY SERVICE PROVISION (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2002

This bill accompanies the Egg Industry Service Provision Bill 2002, which provides for the establishment of an egg industry company limited by guarantee under the Corporations Act. The company will be responsible for service provision, including research and development (R&D).

Under the existing arrangements, egg R&D services are provided to the industry by the Rural Industries Research and Development Corporation (RIRDC). The egg sub-programme is funded through a statutory industry levy, and matching Commonwealth funding for eligible R&D expenditure. Under the new arrangements, provision of R&D services will be transferred to the new company, along with the assets and liabilities associated with the RIRDC egg sub-programme.

The Egg Industry Service Provision (Transitional and Consequential Provisions) Bill 2002 provides for the transfer, and for the Minister for Agriculture, Fisheries and Forestry to declare the time at which it is to occur. In order to prevent any financial disadvantage to the industry, the bill provides for the transfer of assets and liabilities to be exempt from stamp duty. For the purposes of GST law, the transfer of assets is taken to be consideration provided by the Commonwealth to the successor body for entering into obligations under the funding contract. As a result, the Commonwealth will be able to claim a refund on any GST imposed.

Once the assets and liabilities have been transferred to the company, their use will be governed by obligations and accountability requirements outlined in a funding contract with the Commonwealth. In addition, details of the new industry services body’s accountability arrangements to its members and to the Commonwealth will be included in its constitution.

DAIRY INDUSTRY LEGISLATION AMENDMENT BILL 2002

The purpose of this bill is to provide for an additional function of the Australian Dairy Corporation (ADC) to allow for:

- the planning, facilitation and participation in the reform of the dairy industry statutory service provider bodies, the Australian Dairy Corporation and the Dairy Research and Development Corporation;
- the funding of these processes; and
- the Minister to issue directions to the ADC in specific relation to this additional function.

The bill also provides for farmers with entitlements under the Dairy Structural Adjustment Program or Supplementary Dairy Assistance schemes to access exit assistance through the Farm Help Re-establishment Grant scheme, following the ending of the Dairy Exit Program on 30 June 2002.

In relation to the provision for an additional function for the ADC, it is clear that significant changes over recent years in the market situation and corporate structure of the Australian dairy industry, particularly since deregulation in July 2000, have prompted the dairy industry to seek a rationalisation of industry statutory service delivery arrangements to better meet industry priorities and to improve service delivery functions.

To move forward this reform agenda, the dairy industry has approached the Government with a proposal for reform, which would see the two statutory service providers merge and become one Corporations Act company, directly accountable to levy payer members. As with the wool, red meat and horticulture industries that have undertaken similar reforms, a particular focus of the dairy industry proposal is on providing the industry with greater ownership of R&D and market development priorities, as well as enabling levy payers to have a greater direct input into the nature and direction of these key service delivery activities.

Of course, as with any reform of this magnitude, investigations must be made into the viability, suitability and efficiency of what is being proposed and it is clearly important that, within these reforms, industry services are tailored to the new industry environment. This bill provides the funding mechanism for this process to take place by enabling the Australian Dairy Corporation to fund an investigation of the best options for reform, and thereby allowing Government and industry to work together to develop a proposal that meets all these requirements.

Additionally, the amendments provide for the ADC to fund the Commonwealth, the DRDC and industry’s involvement in the reform processes to ensure a full consultative process takes place, along with the provision of advisers to assist in the investigation of the best options for reform.

While the Government has yet to consider a detailed reform proposal, it is clearly in the industry’s interests to ensure that any proposal that comes forward has been fully analysed and rigorously examined by expert business and legal advisers. With the passage of this bill the work can begin in earnest, so that the Government can work towards industry’s desired start date for the reformed bodies of 1 July 2003.
The Australian dairy industry continues to be an innovative, progressive and highly successful rural industry and its ongoing program of reform is to be admired. This bill will ensure that Government and the statutory authorities can assist the industry in meeting the challenges of the future and ensure the industry continues to grow and prosper—from the Australian farm gate to supermarket shelves throughout the world.

The bill also provides for farmers with DSAP and SDA entitlements to access exit assistance under the FHRG scheme. This is necessary following the cessation of the Dairy Exit Program on 30 June 2002. Currently only those farmers who are not holders of DSAP and SDA entitlements are able to apply for exit grants under the FHRG scheme. These amendments will enable this inequitable situation to be corrected by removing the impediments to holders of DSAP/SDA entitlement to access the Farm Help Re-establishment Grant scheme.

Importantly, the amendments provide the same level of access to the FHRG scheme as was available to DSAP/SDA entitlement holders under the Dairy Exit Program. The FHRG provides eligible entitlement holders with payments of up to $45,000 tax-free and access to a retraining grant of $3,500. The total amount of the exit payment will be based on an assets test and eligibility requirements applied under the FHRG scheme.

As was the case under the Dairy Exit Program, DSAP and SDA entitlement holders who are eligible for an exit grant will have this grant reduced by the amount of DSAP and SDA payments received, as well as having all future entitlements under the DSAP and SDA schemes cancelled. This is necessary to ensure that all farmers are treated equitably and that those with DSAP and SDA entitlements do not receive any unfair financial advantage.

The bill provides for the cost of these changes to the eligibility for the FHRG scheme to be funded out of the Dairy Structural Adjustment Fund from which the Commonwealth’s dairy industry restructuring measures are funded. It is expected that there will be little or no impact on the Fund given the requirement that all future DSAP and SDA entitlements be cancelled as part of the grant of exit payments under the FHRG scheme.

The Government is conscious that those farmers with DSAP or SDA entitlements may have to confront more general circumstances outside industry deregulation that will require Government assistance to exit agriculture with dignity and with realistic choices for their futures. For this reason, the Government takes the view that these farmers should be provided with access, on an equitable basis, to the current exit grant arrangements available under the FHRG scheme.

In conclusion, the Government believes that it is important to continue to support efforts aimed at ensuring the continued profitability and expansion of the dairy industry in Australia. These efforts not only relate to the possible reform of the dairy statutory bodies, but also extend to supporting those who, for a variety of reasons are unable to continue in the industry. These amendments signify the Government’s continuing commitment to the dairy industry as a whole, to individual farmers and to their future.

ACIS ADMINISTRATION AMENDMENT BILL 2002

The purpose of the Automotive Competitiveness and Investment Scheme (ACIS) Administration Amendment Bill 2002 is to make a number of minor amendments to the ACIS Administration Act 1999. These amendments are intended to allow eligible motor vehicle producers to claim ACIS uncapped production credits for the production of derivatives of passenger motor vehicles such as utilities, panel vans and pick-ups with effect from the date of commencement date of ACIS.

ACIS commenced on 1 January 2001 and is scheduled to end on 31 December 2005. The scheme encourages the development of internationally competitive firms in the Australian automotive industry by rewarding eligible production, strategic investment and research and development. ACIS participants earn incentives in the form of duty credits which can be used to offset customs duty on eligible automotive imports, or can be sold for use by another party.

Prior to the introduction of ACIS, the automotive industry received uncapped benefits for the production of passenger motor vehicles, utilities and panel vans through the Duty Free Allowance (DFA). In June 1997, when announcing future assistance arrangements for the automotive industry, the Government stated that the DFA would continue and that a new transitional assistance program would be introduced.

ACIS was announced as the new transitional assistance program in April 1998. ACIS was subsequently modified to embody two elements—an uncapped element, and a capped element. The uncapped element was meant to be equivalent to the DFA, and is equal to 15 per cent of the value of production of passenger motor vehicles (PMVs) sold in Australia and New Zealand, multiplied by the current PMV tariff rate.
The current ACIS definition of passenger motor vehicles unintentionally excludes utilities, panel vans and pick-ups. As a result, motor vehicles producers are only eligible to claim capped payments for the production of these vehicles. Modulation means that the production of these derivative vehicles receives a lower rate of payment than if they were paid from the uncapped element. This is clearly inconsistent with the Government’s 1997 stated intention to continue the DFA.

This Bill corrects an oversight in the original legislation and makes specific provision in the ACIS Act for the production of utilities, panel vans and pick-ups to attract uncapped incentives, from the scheme commencement date, in line with the Government’s original intention.

STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) AMENDMENT BILL (No. 2) 2002

This bill confirms the Government’s commitment to school education and improving the outcomes for all students. On 7 December 2000 this Parliament passed the States Grants (Primary and Secondary Education Assistance) Act 2000 (the Act), the principal Act for Commonwealth funding for schools for the 2001-2004 quadrennium, which included provision for capital funding of government and non-government schools.

This amendment is to provide capital grant funding amounts for government and non-government schools for the years 2005 to 2007.

Specifically, the bill amends Schedule 3 and Schedule 5 to the Act to insert maximum capital grant funding amounts for government and non-government schools for the calendar years 2005, 2006 and 2007.

Schedules 3 and 5 to the Act set out funding amounts for the capital grants program, for government and non-government schools respectively, for the period 2001 to 2004.

This amendment is foreshadowed in the Act in Note 1 to Schedule 3 and Schedule 5, which states “Amounts for 2005, 2006 and 2007 will be inserted by an amending Act.” The bill will permit approval of capital grant funding amounts for future program years beyond the four year funding period 2001-2004, extending to the years 2005, 2006 and 2007, in keeping with long-standing program administrative arrangements.

The bill inserts funding figures for the years 2005, 2006 and 2007 for the capital funding of government and non-government schools, thereby providing authority under which I can approve capital projects in government and non-government schools in the out years.

In both the government and non-government sectors planning is now taking place for capital projects in schools in 2005. State Governments and non-government block grant authorities which administer the capital grants program in each of the sectors make recommendations on capital grants. When approved by me or my delegate these could commit Commonwealth funding up to two years in advance of the current program year.

As the planning and approval process for capital projects and capital grants requires long lead times and payment for individual projects can run over a number of years, it is necessary for program administration to provide, in 2002, authority for approval of projects into the 2005 calendar year. In 2003 it will be necessary to approve projects into the 2006 calendar year and in 2004 it will be necessary to provide authority for 2007 projects. I cannot approve projects until the figures for the out years are included in the Act.

In 2002, a number of capital projects, that include 2005 funding will be due to commence during the end of year school break. In line with long-standing administrative arrangements in October this year my Department will provide me with a Schedule of capital projects for non-government schools. Government school capital project approvals will also require this forward commitment of Commonwealth capital funding.

All individual project assessments and funding recommendations are made by State education departments for government schools and by non-government block grant authorities for non-government schools according to criteria set by the Commonwealth. I then approve recommendations from these bodies.

Over 250 major capital works are funded annually in each of the two sectors as well as more than one thousand minor works projects.

The bill will appropriate approximately $898 million for capital funding over the 3 years, 2005, 2006 and 2007. Of this, $667 million is for government school capital works and $231 million is for non-government school capital funding. These amounts are subject to supplementation as prescribed in the Act.

In the 2001-04 quadrennium, schools will receive almost $1.3 billion in Commonwealth funding under the Capital Grants Program. Of this funding, $936 million will go to government schools and $357 million to non-government schools. This effectively means that over 72% of capital funding...
funding will go to government schools, a sector
with 69% of enrolments.

Any delay in funding approval through the non-
passage of this bill will cause disruption to the
building plans for schools in all States and Terri-
tories.

Speedy passage of the bill is necessary to ensure
that these important projects for schools are not
delayed.

I commend the bill to the Senate.

Ordered that further consideration of these
bills be adjourned to the first day of the next
period of sittings, in accordance with stand-
ing order 111.

Ordered that the Dairy Industry Legislatsion
Amendment Bill 2002, the ACIS Ad-
mistration Amendment Bill 2002 and the
States Grants (Primary and Secondary Edu-
cation Assistance) Amendment Bill (No. 2)
2002 be listed on the Notice Paper as sepa-
rate orders of the day.

BILLS RETURNED FROM THE
HOUSE OF REPRESENTATIVES

Message received from the House of Rep-
resentatives agreeing to the amendments
made by the Senate to the following bill:

Commonwealth Electoral Amendment Bill
(No. 1) 2002

PROCEEDS OF CRIME BILL 2002

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

In Committee

Consideration resumed.

PROCEEDS OF CRIME BILL 2002

Senator LUDWIG (Queensland) (3.57
p.m.)—Perhaps we can deal with a couple of
issues in relation to the committee stage of
this bill now. There was an amendment
moved by Senator Greig in relation to no
double jeopardy. I will deal with that in a
moment. It is worth mentioning that the op-
position did not decline to give this bill a
second reading. However, it should be placed
on record that the government has failed to
ensure that the bills will not entirely discour-
age and deter crime by reducing the profits
from those crimes.

Senator Ellison mentioned, in his sum-
ming up speech in relation to the second
reading debate, the Commissioner of Taxa-
tion v. La Rosa 2002 FCA, which is still a
matter before the courts, intending to be ap-
pealed. The opposition has consistently
drawn the government’s attention to an
anomaly in the taxation law which was re-
cently reinforced by the decision of the Fed-
eral Court in the matter that I just mentioned.
In that matter, the court found that a person
had profited from drug dealing and that the
profits of his drug dealing should be treated
as assessable income. In this particular case,
the person was able to claim a tax deduction
in the order of $220,000 for money which
was stolen from him. That is an extraordi-
nary amount to be able to claim as a tax de-
duction. 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, as I under-
stand it. In the course of preparing for the
drug deal, the money was dug up, counted
and subsequently reburied. The person
claimed that the money was subsequently
stolen and could not be included as part of
his income for that period.

The Administrative Appeals Tribunal
found that that person could claim a tax de-
duction for that year. The tribunal considered
that it was not the point that the drug-dealing
business was illegal. Rather, it considered
that what mattered was the connection of the
robbery with the drug purchase operation
and hence the direct connection with the tax-
payer’s assessable income. I find it extraor-
dinary that this matter has not been consid-
ered in the context of this legislation. The
opposition drew the government’s attention
to its concerns as long ago as 17 August
2000 in a debate in the other place on the
Taxation Laws Amendment Bill (No. 7)
2000, in which the member for Wills unam-
biguously stated:

... I draw the attention of people to an extraordi-
nary case ... where a drug dealer managed to get a
$220,000 deduction on the basis that it was
money stolen from him during a drug deal. The
Administrative Appeals Tribunal in Perth ruled
that that $220,000 was an allowable deduction for
the dealer as a cost of doing business.

It was this case that was heard on appeal by
the Federal Court and the decision was up-
held. The Leader of the Opposition also raised this matter with the Treasurer as a question without notice on Thursday, 22 August 2002. The government quite clearly failed to act in this matter. The decision rewards those who profit from the proceeds of crime. It is no use for this government to say that it is an anomaly and can never happen—it did happen and it can obviously happen again. The government knew that something was in the wind and were warned by the Labor Party over two years ago. But they did not act to change the law at that time and have consistently remained silent in respect of the matter. We urge the government to correct this anomaly and not wait for an appeal, as foreshadowed by the Treasurer. As I recall, the government encouraged the Australian Taxation Office to appeal the Federal Court decision, and I understand from Senator Ellison’s summation that that is now the case. We strongly recommend that the government act now to correct the legislation and not wait.

That matter is important and should be dealt with, and I thought it was important to raise this issue in committee. But I do not want to detract from the importance of this particular bill, so I come back to Senator Greig’s amendment. The import of section 80 and this amendment provides the opposition with some concern. The concern is enough that I foreshadow that we will not be supporting the amendment.

The difficulty we have is twofold. Firstly, there is the issue of whether double jeopardy does in fact exist in this instance. That is a matter that remains in my mind, although it is a legal question. I am sure that Senator Ellison—coming from a better legal background than I—may be able to shed some light on it. It seems to be stretching it to call it double jeopardy, but that is the heading rather than the import of the amendment. The concern is enough that I foreshadow that we will not be supporting the amendment.

The difficulty we have is twofold. Firstly, there is the issue of whether double jeopardy does in fact exist in this instance. That is a matter that remains in my mind, although it is a legal question. I am sure that Senator Ellison—coming from a better legal background than I—may be able to shed some light on it. It seems to be stretching it to call it double jeopardy, but that is the heading rather than the import of the amendment. The concern is enough that I foreshadow that we will not be supporting the amendment.

This covers the situation where that order is made before the acquittal or quashing, but the amendment begs the question of what happens when a forfeiture order is made afterwards. In other words, when you look at the amendment, you then ask: what if the forfeiture order has already been made when the acquittal or quashing comes through? It seems that the amendment is not designed to deal with that. To use a terrible analogy, it seems to put the cart before the horse, because you have certainly dealt with the issue where the order is made before the acquittal or quashing, but what happens if the order is made afterwards? The amendment is silent on that issue. It reads:

No *forfeiture order may be made under section 47 or 49 against a person in relation to an offence for which they have been acquitted.

But what if the forfeiture order has already been made when the acquittal or quashing comes through? The amendment does not help me on that issue, so I think it is unfortunately technically deficient in that respect and could lead to circumstances which are not helpful.

Secondly—and this is not so much a technical issue—where section 47 or section 49 orders are made by a court, they are made on the balance of probabilities; that is, it is not really necessary for them to charge and then convict someone in order to make the section 47 or section 49 order. For those following this committee, section 47 provides for forfeiture orders to be made for conduct constituting serious offences and section 49, which is under the general part 2.2, entitled ‘Forfeiture Orders’, provides for forfeiture orders to be made for conduct constituting indictable offences. Section 49 reads:

A court with *proceeds jurisdiction must make an order that property specified in the order is forfeited to the Commonwealth if ...

And it then goes through a series of provisions. So you would go to those sections dealing with forfeiture orders first and then section 80 deals with the situation where you have an acquittal or a quashing. Section 80 is headed ‘Forfeiture order made under section 47 or 49 unaffected by acquittal or quashing of conviction’. But if, for whatever reason—and Senator Ellison may be able to assist on
this—the authorities decided to charge a person, in order to get a conviction they would have to prove the charge to the highest standard of proof, and that means beyond reasonable doubt.

So when the authorities are deciding whether to pursue a forfeiture order in relation to property, they have a choice as to whether to pursue balance of probabilities or seek a conviction. In seeking a conviction, the standard of proof that they have to meet is ‘beyond reasonable doubt’—the highest standard of proof. You might say that the DPP would choose a conviction based route and take the highest standard of proof in its stride. On the other hand, it could in effect discourage authorities—and the authority may be not the DPP; it may be the AFP, and that is no reflection on the AFP because I use them just as an example—from charging persons with offences where clause 47 or 49 orders have been applied for. This is, I suspect, because of the risk that, while they could confidently satisfy the ‘balance of probabilities’ requirement, they may not be able to satisfy—or do not want to be put to the test of satisfying—the highest standard of proof. What you then have is a disadvantage in charging someone with a criminal offence, which might, in this instance, be a better way to go. In other words, it provides for an outcome such as a successful prosecution and means that a person receives prison time and not just a financial penalty. But, if the amendment is successful, the authorities will say, ‘We might be better off not pursuing that and simply keep to the civil forfeiture regime.’

It would be helpful if we could clarify what happens under the proposed amendment if the forfeiture order has already been made when an acquittal or a quashing comes through—and Senator Greig might be able to help. That is in respect of the technical matter I mentioned earlier. The amendment is silent on that issue, and the discouragement of authorities from charging persons with offences where section 47 or 49 orders have been applied for is a valid argument. It seems to me it could be applied, but I would like to hear from Senator Greig about whether that was the intent. What concerns me sometimes in relation to these matters is the unintended consequences that can flow from such amendments. The design is for no double jeopardy, as I understand Senator Greig to mean. But if amendments have not been fully considered at the time or have not even been seen, there can be unintended consequences. Since I have highlighted this matter, perhaps Senator Greig could provide some view about it.

Senator HARRIS (Queensland) (4.11 p.m.)—In speaking in support of the Democrats amendment that is before the chamber relating to double jeopardy, I would like to present some comments on some of the submissions made to the Senate committee on this matter. In one of those submissions, a comment was made that one of the major hurdles in what is often described as an ‘unconstitutional’ bill is that it seeks to reverse the onus of proof. That is an issue that we have to take into account in relation to the Democrats amendment, because we are clearly saying that the government has already reversed the onus of proof on this person that finds themselves before the court. If they go through that process and provide the information to prove their innocence then, under the government’s legislation, they still have the ability to access the civil forfeiture process set out in the bill.

The submissions go to a lot of issues. The Australian Civil Liberties Union of Melbourne submission put an issue very succinctly. It says:

The bill eliminates ‘innocent until proven guilty’ and the onus is on the person accused to establish that he or she got his property or assets legally.

The research officer of the union, Geoff Muirden, continues:

Even if no prosecution is brought, persons can be liable to a forfeiture order as a result of a civil forfeiture proceedings.

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Even if no prosecution is brought, persons can be liable to a forfeiture order as a result of a civil forfeiture proceedings.

That is one of the issues in relation to the bill that we have enormous problems with. If you follow the actual process that is set out in the government’s bill and look at the initiation of a restraining order under sections 17, 18, 19 or 20, where an application is made for an order pertaining to all or specified properties, then flowing from that, under section 312, the applicant bears the onus of proving the
matters necessary for the making of the order. But once that order is put in place, one of two things can happen: a prosecution can proceed—and that is where the onus of proof has been reversed and the person has to prove their innocence—or, if no prosecution or action is taken in relation to the proposed offence, a forfeiture order can be carried out, under section 47 and section 49. This is the fundamental problem we have with the process that the government is putting forward.

During one of the committee hearings I asked one of the agencies—it would have been either the Australian Federal Police or the National Crime Authority—that, if a person was required to prove to a court how they obtained the particular property that was the subject of a forfeiture notice and the court set a period of time for that person to be able to provide the documentation to prove that they did purchase that property or that asset legally and prior to them being able to do that the time set by the court expired, what would then be the process? The answer was that the forfeiture would proceed. I then put the question: what right of appeal would the person have if they subsequently obtained the information that they needed to prove that they had purchased that property legally? Could they then approach the court and have the issue re-examined? The answer was no, because under this bill there is no process for a person to be able to do that.

For the benefit of the senators who are here, I will give an example of how such a situation could arise. To see this, we only have to look at the division of Berlin after the Second World War. As a result of the building of the Berlin Wall, people found that they had no access to property that they had previously owned. As we all know now, that wall has been removed. I personally know one person who has spent over 17 years getting the documentation for her parents’ home. She has been successful, she did get that documentation and ultimately has been paid compensation from the government for the seizure of that property. The question I put to Senator Ellison is: under your legislation, where does the innocent person who cannot get the information that they require within the period that the court determines but who subsequently can get that information go with it? I believe the answer that I have been given is correct: they have got nowhere to go; there is no right of appeal. For that reason alone, this bill should be voted down.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.19 p.m.)—The government will be opposing this amendment put forward by the Democrats. A number of issues have been raised, and I will deal with each in turn. Senator Ludwig mentioned the issue of no double jeopardy and, quite rightly, said that that term was in the heading. But the Democrats’ argument has been along the lines of double jeopardy. Of course, in this case, instituting civil forfeiture proceedings against a person who has been acquitted of an offence to which the proceedings relate does not constitute double jeopardy. Double jeopardy relates to conviction—that is, where you have someone convicted and convicted again. That would offend the rule against double jeopardy. Double jeopardy relates to conviction—that is, where you have someone convicted and convicted again. That would offend the rule against double jeopardy. Double jeopardy does not prevent civil proceedings being brought against a person in relation to the same matter. So, for instance, you could have someone convicted of assault but then sued in tort for assault, and double jeopardy would not exclude that. I appreciate that that term is in the heading of the amendment but, as I understand it, the argument in this debate from the Democrats is along the lines of double jeopardy. So the government would make that distinction.

The government does not believe that civil forfeiture is a penalty in the sense that a term of imprisonment or a fine are. A civil forfeiture order requires the person to forfeit those assets that he or she cannot prove were lawfully obtained. This amendment would prevent forfeiture proceedings being brought against a person where the prosecution of that person failed for technical reasons unrelated to the guilt or innocence of that person. Of course, the presumption is there that a person is innocent until proven guilty, but we have seen situations where a case has been ruled out or where a person has been acquitted on a technicality. This scheme is designed to not wait for that conviction,
where whilst waiting for it you could have the dissipation of assets, but also not preclude the forfeiture of assets where by some technicality someone has been acquitted and thereby they can still enjoy the fruits of their ill gotten gains. I also point out that New South Wales and Western Australia have similar forfeiture schemes and they do not provide for this aspect which the Democrats seek to provide by way of their amendment. I think the same applies to all those other states which are in the process of implementing similar schemes for civil forfeiture.

Senator Harris has just raised an issue dealing with the question of finding proof. Certainly, when you look at it, the onus of proof and the standard of proof is a civil issue. The onus of proof is on the DPP, which is bringing the action, to show that in the last six years a person has committed a serious offence which has resulted in a property which is under application or is the subject of application. Senator Harris says that somebody has to find that evidence of their ownership and that that can take some time. I point out to the Senate that there is a time provision of six months between the restraining of the property and the forfeiture. That in itself allows an individual time to get their case together. I submit that a court could simply adjourn its proceedings if someone says, ‘I need to get verification of this ownership,’ or ‘There is a person I did business with overseas. I can’t find them at the moment, but I need to find this person because they can swear an affidavit to say that they paid me this money for work I have done, and I just need time to get that.’ In addition to that six-month period, I envisage that a court would be quite entitled to adjourn proceedings, allowing the respondent the ability to seek that evidence.

In relation to forfeiture and the question that Senator Ludwig raised with the Democrats—and it is a reasonable point—the bill provides that an acquittal is of no relevance to those forfeiture proceedings unless the forfeiture is as a result of a conviction. That is quite a different scenario. The government opposes this amendment on the basis that it would simply prevent forfeiture proceedings being brought against a person whose prosecution failed for a technical reason, and therefore someone who may have substantial assets as a result of criminal activity will escape forfeiture.

Senator GREIG (Western Australia) (4.25 p.m.)—Senator Ludwig posed some questions on the operation of the amendment that I have moved on behalf of the Democrats. I can advise as follows: the principal purpose of the amendment is to ensure finality in criminal law. It would not change the situation when civil proceedings came first—that is, when they came beforehand. The amendment would ensure that once a person was acquitted that would be it: there could be no further state action. Civil proceedings could be followed by criminal proceedings, but after that there could be no further action.

Senator HARRIS (Queensland) (4.26 p.m.)—The minister has responded to some of the questions by saying that civil forfeiture would follow only when conviction had failed due to a technical reason relating to the charge. One question I would appreciate being answered by the minister is: where does the bill in its present form actually set that out? My understanding of the bill is that is not the case.

The minister went on to set out the period in which the court can allow a person to provide information. I remind the minister that in the particular example that I gave it actually took the person 17 years to get the details that they needed. It is a long time and way beyond anything that the court would have the ability to address under this legislation. I believe it would be far better if this legislation allowed a person to have a right of appeal against a decision that is brought against them, based on the clear indication that they were unable to provide the court with the documents in the period that was given to them or in any subsequent extension of time. What is the problem for the government if a person can clearly indicate that they received or purchased a property in a lawful manner? There is no mischief in that. The onus of proof is still on the person to prove that they have legally obtained the property, the money, the shares or whatever. It does not place a burden on the Crown. The
Crown only has to sanctimoniously stand up and say, ‘At the time I believed ...’

Also, I would like to put to the minister a question relating to literary proceeds. I have no problem with the government’s proposal that it should have the ability to take away any financial gain that a person does receive from committing a criminal offence. But I seek a very clear indication from the minister that no person who has received literary proceeds as a result of being a victim of a crime could have this legislation enacted against them.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.30 p.m.)—There are a number of aspects to Senator Harris’s question. On the first one, I apologise if I have not been clear, but I was saying that the rationale for the Proceeds of Crime Bill 2002 was to allow forfeiture proceedings to proceed without the necessity for a conviction. I have provided a scenario as an example of where someone had been acquitted on technical grounds and would be allowed to escape forfeiture. This bill is designed to avoid situations like that, and others. I was not saying that there is a specific provision in the bill that says that this bill is designed to grab the property of people who manage to be acquitted on a technicality. I was saying simply that the rationale for this bill is that there are cases where people are acquitted on a technicality and their ill-gotten gains then escape any application by law enforcement to have that property confiscated.

There are a number of other policy reasons for the bill. In the past the conviction process was unwieldy and complicated, and you had to wait for a period of time because you had a conviction, by which time the assets from the crime could have been dissipated. That was the experience of the government. That is what has brought about this civil process for the forfeiture of criminal assets. Nowhere in the bill does it say that this is designed to catch those people who get off on a technicality. But it is, if you like, a background theme.

The other aspect that Senator Harris raised was whether, with the literary proceeds provision, we are barring a victim of crime from receiving proceeds from telling his or her story about that matter. We certainly are intending to allow for forfeiture of assets which have arisen from someone who might make a story out of their criminal exploits. We have seen a few examples of that, especially in Tasmania. The advice that I have is that the literary proceeds provision applies only to persons who are suspected of committing indictable offences. So the clear answer to Senator Harris’s question is no, a victim of crime is not restrained in any way by this bill.

Senator LUDWIG (Queensland) (4.33 p.m.)—To summarise where the Labor Party is on the Democrat amendment, it is worth while going back to the report of the inquiry of the Senate Legal and Constitutional Legislation Committee into the Provisions of the Proceeds of Crime Bill 2002 and the Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002. The Labor Party proposed a number of amendments as a result of recommendations in that report, but by and large we supported the thrust of the bill and the committee deliberations. Perhaps the amendment is misguided, in that paragraph 2.3 of the report quotes the Attorney-General from his second reading speech:

The principal Bill deals not only with a new civil forfeiture regime (broadly similar to that which has been operating in New South Wales since 1997), but includes improved provisions for conviction-based confiscation.

We are talking about a civil forfeiture regime. It is not a position of either choosing a civil forfeiture or a conviction. What the suite will have for the AFP is a civil based forfeiture regime similar to that operating in New South Wales but less close to that operating in Western Australia and that proposed for the Northern Territory. In distinction, it will also strengthen the conviction based regime. They are not two sides of the same coin; they are distinct elements. The authorities will have the civil forfeiture regime at their disposal, and the objects of the bill itself provide some explanation of that. To quote from the member for Banks, Mr Mel- ham, in the second reading debate:
One of the principal objects of the Proceeds of Crime Bill 2002 is to deprive persons of the proceeds of offences, the instrument of offences and benefits derived from offences against the laws of the Commonwealth or the non-governing territories.

And it will deprive persons of literary proceeds. It provides a scheme to confiscate the proceeds of crime, and the bill sets out the manner in which that will be done. In part, that explains why we will not be supporting the amendment. The amendment does not involve, notwithstanding the issues I raised with it, a double jeopardy situation and it does not clearly address the objects and the direction of this bill. For those reasons, we will not be supporting the amendment.

Question negatived.

Senator GREIG (Western Australia) (4.37 p.m.)—by leave—I move Democrat amendments (2) to (4) on sheet 2625:

(2) Page 122 (after line 12), at the end of Division 1, add:

182A Limitations of examination order
No examination authorised in accordance with this Act may be used for the purpose of obtaining information to advance a criminal prosecution.

(3) Page 141 (after line 27), at the end of Part 3-2, add:

212A Limitations of production order
No production order authorised in accordance with this Act may be used for the purpose of producing a document to advance a criminal prosecution.

(4) Page 133 (after line 11), after clause 198, insert:

198A Immunity of certain answers
(1) Any information, document or thing obtained as a direct or indirect consequence of a statement or disclosure made in the course of an examination, the Crown bears the onus of establishing that the information, document or thing was not obtained in contravention of sections 182A or 212A.

These amendments relate to the proposed information-gathering powers in the Proceeds of Crime Bill 2002. The provisions in 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, under this legislation, civil forfeiture proceedings can take place even where no criminal charge has yet been laid and 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 has been raised that the Commonwealth could use its compulsory examination powers under this legislation to force individuals to answer questions that they could never force them to answer and to provide documents they could never force them to 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 or trial, it is as though the privilege does not exist. While the testimony and documents provided cannot themselves 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. 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 International Covenant on Civil and Political Rights states that no person may be compelled to testify against himself or her-
self in the determination of any criminal charge against him or her. In my speech at the second reading stage, I drew attention to the 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 of Australia said of that decision:

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).

We Democrats have circulated amendments that address this 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 amendments seek 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.

Given the wider scope for operation of the Proceeds of Crime Bill and its further erosion of relevant privileges, the lack of derivative use protection in the act and the clear approval given in the draft guidelines for such information to be used to assist investigation and prosecution of criminal offences, the chances of a misuse of the substantial powers granted in the bill are significant. The draft guidelines issued by the Attorney-General provide no comfort in that regard and simply highlight significant difficulties in the practical application of the legislation. The Democrat amendments propose that no examination or production order may be used for the purpose of obtaining information to advance 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 amendments further provide that, where information is improperly obtained in this way, it would be inadmissible 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 the onus of establishing that the evidence does not arise out of any misuse of the information-gathering powers in the civil proceedings. In addressing this, we should start from the proposition 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 purpose of advancing a criminal investigation, and our amendments reflect 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. I commend these amendments to the committee.

Senator LUDWIG (Queensland) (4.44 p.m.)—I indicate to the Democrats that Labor will not be supporting their proposed amendments. Firstly, as I understand Senator Greig’s explanation, the general thrust of the amendments proposed by the Democrats is to prevent investigative tools such as examinations and production orders from being used to advance a criminal prosecution—at least, that is my understanding in shorthand. A couple of difficulties arise from that. I do not know what ‘advance a criminal prosecution’ actually means. I presume that there is a meaning to be distilled from it, but that meaning escapes me.

But that is not the major difficulty that the opposition has with the amendments proposed by Senator Greig. In essence, the amendments would prevent the police, the Australian Federal Police or another body charged with that function from using the civil forfeiture regime to avoid the greater obstacles that lie along the path of the criminal investigation. In fact, that is in part the reasoning behind the bill. The scenario that is proposed by Senator Greig is probably already dealt with in the bill itself. I think it is worth reflecting briefly on clause 198 of the bill, which is headed ‘Admissibility of answers and documents’. It is in part designed to do exactly what Senator Greig is trying to fix—in other words, fix through these amendments what he sees as a mischief in the provision. I think that, when you take the bill as a whole, clause 198 is designed to alleviate concerns about possible fishing expeditions, even though I am sure the authorities would not do this. That appears to be the mischief that Senator Greig is trying to defeat through this proposal. Clause 198 places limitations on the sorts of proceedings in which answers or a document produced during an examination under the civil forfeiture scheme may be admissible in evidence. It provides:

An answer given or document produced in an examination is not admissible in evidence in civil or criminal proceedings against the person who gave the answer or produced the document ...

It then provides a number of exceptions to that, but I will not go into those. The bill itself says one can only go so far in stopping fishing expeditions. Clause 198 limits the possibility that examinations can be used as fishing expeditions for crime related information. The clause does provide that an answer given or documents produced in an examination cannot be used in civil or criminal proceedings against the person who gave the answer or produced the document, except—and I think these are fair exceptions— where they relate to, amongst other things, proceedings ancillary to an application under the act. This seems to deal with the area that Senator Greig is referring to. I will leave any further comment to the minister rather than take up any more time.

Senator HARRIS (Queensland) (4.49 p.m.)—Probably the most severe critique of the entire Proceeds of Crime Bill 2002 comes from the New South Wales Bar Association in their submission to one of the Senate committees, in which they set out to a large degree their reasons for opposing the legislation. The areas that they are concerned with go from the actual definitions right through to the examination provisions—for example, the definition of ‘approved examiner’ and the issue of the obligation to produce documents and answer questions. For clarity, I will read from the New South Wales Criminal Bar Association submission:

From the definition of “suspect” it is clear that persons who may at the relevant time be the subject of investigation for criminal offences, although not charged, can be the focus of litigation conducted under the Bill. This is fundamentally different from the current Act where, before any restraining order can be obtained against a person who was not charged at the time of the application, the Court had to be satisfied that the person would be charged within 48 hours. Similarly, a
person is required to be convicted of a relevant Commonwealth offence before any of their property is forfeited or a Pecuniary Penalty Order is made against them. No such conditions apply under the Bill; indeed it is clear that the Bill intends to include in its net persons who are not charged and may currently be the subject of a criminal investigation. The Draft Guidelines issued by the Attorney concerning examinations to be conducted under the Bill’s provisions recognise this.

Under the examination provisions—and this is exactly the area that the Democrats amendments refer to—the submission says:

An examination order under the Bill, therefore, permits any person to be examined about the affairs of “suspects”, which clearly includes persons not yet charged with any relevant offence. “Affairs” is not defined in the Bill, but in the past has been given a wide interpretation by Courts in this statutory context. Clearly the scope of the examination of “suspects” is wide and their “affairs” may, in certain circumstances, include incriminating conduct.

They go on further to say:

Under the existing Proceeds of Crime Act 1987, examinations in NSW are conducted before Supreme Court Registrars ...

I will briefly stop quoting from their submission to highlight the differences. When we actually go to the legislation and look at clause 183, under division 2, an approved examiner is defined as:

... a person who:

(a) holds an office, or is included in a class of people, specified in the regulations; or

(b) is appointed by the Minister under this section.

So under the New South Wales civil forfeiture legislation an examination has to be conducted before a Supreme Court registrar, but this legislation leaves it wide open in that the minister can appoint a person. There is no definition and there are no criteria. It says under proposed subsection 4(a) ‘holds an office’. It does not set out what the office is; it does not clarify it at all. The proposed subsection goes on to say ‘or is included in a class of people specified in the regulations’. I will look forward to the minister’s clarification of the scope of the minister’s power to appoint an examiner and the ‘class of people’ that will be specified in the regulations. I quote again from the New South Wales Bar Association submission, where they have clearly set out the criteria under which the New South Wales civil forfeiture process is actually carried out:

That approach ensures—that is, the New South Wales approach—that an impartial judicial officer controls the conduct of the examination. Registrars on occasions refer questions of law to the duty judge for resolution if needed. The creation of someone called an “approved examiner” to in effect oversee the examination, given the provisions in the Bill, takes away the Court’s control of the examination which it has ordered. It also, given the power given to the approved examiner to examine the examinee, clearly reduces the independence from the investigation and prosecution of the person overseeing the examination. When regard is had to the use that can be made of material provided at an examination, it is not appropriate that control of that process be vested in someone who is not an officer of the Court that ordered the examination.

A flow chart was provided to us in one of the committee hearings. It shows the sections dealing with the process of a criminal investigation. They start, under ‘Restraining Orders’, with sections 17, 18, 19 and 20. Section 174 shows:

Examination orders to facilitate the enforcement of the PoC Act.

Then we have:

Examination conducted about the affairs (including location and nature of property) of the person.

That is not restricted to the person who is under investigation. It could be a person who is part owner of a strata title property. I am not referring to an adjacent property; I am referring to a person who is part owner of a strata title property that the suspect may also have an interest in. Under this legislation I believe that person can be brought in for an examination. They lose their right to remain silent. Under the government’s proposed legislation, they have to answer. On the flow chart, we then move on to the use of the material. According to the flow chart:

Subject to any court ruling or direction to the contrary—under section 192—
Answers given, or documents provided, are not admissible in evidence except in the following:

- Proceedings for giving false/misleading information
- Proceedings on application under the Act ...

I put a question to the minister: what areas under the act does that refer to? That is an extremely wide statement that has been made in relation to the examination flow chart. We go back again to the New South Wales Bar Association submission and look further at the issues that they are raising:

The attempt in the Bill to set out the rights of lawyers appearing for examinees is welcome as the current position is rather uncertain. However, the Bill does not specifically provide for the lawyer to take objection to questions asked on the basis that they are beyond the scope of the examination order, or unfair, or misleading or to raise any other proper basis for the examinee not being required to answer the question. If there is to be a provision defining the role of an examinee’s lawyer at an examination it should comprehensively address the issue so that there is no argument concerning what can and can’t be done during the hearing.

They continue under the heading ‘Obligations to produce documents and answer questions’:

Clause 188(1) of the Bill provides that it is a criminal offence for the examinee, inter alia, to:

- refuse or fail to answer a question that the *approved examiner requires the person to answer; or
- refuse or fail to produce at the examination a document specified in the *examination notice that required the person’s attendance

The role of Legal Professional Privilege and the Privilege Against Self Incrimination are substantially eroded under the Bill. This occurs by virtue of clauses 189 and 190 which are set out in full below.

So we have the New South Wales Bar Association very clearly saying that this legislation is lacking in its clarity as to the duties of the lawyer who can be in attendance during the examination. They go on to very clearly say that a person’s privilege against self-incrimination is eroded by the bill. Subsequently, they also raise issues relating to the government’s ability under section 51, subsection 31—that is, for the Commonwealth to acquire property otherwise on just terms. They further comment insofar as the bill provides for confiscation of property without a criminal conviction, and this is visiting a penalty even greater than most criminal provisions apply in their monetary penalty. This also seems to run counter to both the spirit and the letter of section 80 of the Constitution—providing the right for a jury trial in respect of offences against the Commonwealth.

So our Australian Constitution sets out very clearly in section 80 that, as an Australian citizen, we have the right to request a trial by jury, yet here we have a piece of Commonwealth legislation that in its intent clearly appears to take away that constitutional right. It is going to be quite interesting to see the challenges facing the government and the appeals that the government are going to find themselves embroiled in as a result of taking away these rights from the Australian people.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.04 p.m.)—A number of matters have been raised by senators in the debate on these three Democrat amendments. The government opposes these amendments and does so for the following reasons. Firstly, in regard to the second amendment by the Democrats, headed ‘Limitations of examination order’—which provides, ‘No examination authorised in accordance with this act may be used for the purpose of obtaining information to advance a criminal prosecution’—the government would argue that, as matters already stand, it will not be possible to conduct the examination provisions for the purpose of advancing a prosecution. The examination is solely for the purpose of confiscation of proceeds of crime—and that alone.

So if you conduct an examination for any other reason then that is an inappropriate reason. It will only be possible to conduct these examinations for the purpose for which they are enacted, which is to advance confiscation action. I repeat that because, in light of that and the concern expressed earlier, the government agreed that there would be guidelines to deal with the DPP and how it went about these examinations. The guide-
lines make it quite clear that the DPP can only use the examination power for the purpose of obtaining information that is relevant to confiscation action under the Proceeds of Crime Act. The examination cannot be used to make general inquiries about the background or general activities of the person being examined. That is quite clear.

The examination will be under the control of an approved examiner who will be independent of the DPP, and the person who is being examined will be entitled to legal representation. The approved examiner and the person being examined will be given a copy of the DPP guidelines prior to examination. Where information that is derived from information obtained over the course of examination is relevant to a prosecution then it may be used—and this is right and proper. Otherwise a criminal could then make himself or herself conviction-proof by deliberately providing incriminating evidence over the course of the examination, thus tainting any subsequent prosecution. In short, the person brings in everything, including the kitchen sink, and puts it into the examination and the evidence. Thereby, if the immunity provisions were to apply, they would then render themselves conviction-proof, because all that evidence would be privileged and protected, and immune from being used in a prosecution against that person. That is the reason for that policy in this bill, and the government believes that the Democrat amendment is in any event dealt with by this bill.

Whilst I am on examiners, I might just touch on the question that Senator Harris mentioned. He said: ‘It’s not good that only the minister appoints, and who would be an examiner?’ Proposed section 183(4) of the bill provides for the appointment of examiners. It states:

An approved examiner is a person who:

(a) holds an office, or is included in a class of people, specified in the regulations ...

In the regulations, we would envisage people such as members of the Administrative Appeals Tribunal of a certain rank with, say, five years experience. That five-year admission rule could relate to legal practitioners such as lawyers and former magistrates.

There are a number of people whom you could use as an examiner, and there would be regulations to define the classes of people who could be used as an examiner. Also, 183(4)(b) states:

An approved examiner is a person who:

(b) is appointed by the Minister under this section.

Of course, you would have that class and you would still have an ability for the minister to appoint an examiner. There are many occasions where ministers appoint: the Commissioner of the Federal Police is appointed by the Attorney-General; judges are appointed by the government. There are a number of people in high office or an office of trust who are appointed by the government, and the government would suggest that there is nothing untoward in that.

I think Senator Harris also asked why we do not have the examinations conducted by judicial officers. That is prohibited by chapter III of the Constitution. These approved examiners would be carrying out an administrative function and not a judicial function, and the Constitution is quite clear in that regard. That is the rationale for that. Those were the issues on the second amendment by the Democrats. The third amendment was the ‘Limitations of production order’, which states:

No production order authorised in accordance with this Act may be used for the purpose of producing a document to advance a criminal prosecution.

Again, this amendment is similar to the second amendment. The government would say that this is unnecessary. The inclusion of this amendment would generate a large degree of uncertainty about its possible effect on any subsequent prosecution. That uncertainty would result, I am sure, in an action which perhaps the Democrats would rather not have happen—that is, if you had uncertainty in relation to production of orders then law enforcement would simply go to a search warrant, and the information could be gained in that way. This is, I would submit, undesirable, as an effective production order regime is beneficial to law enforcement officers and the recipient of the production order alike. It
is less time consuming, costly and intrusive than search warrants.

In addition, the class of documents that can be obtained under a production order has been limited under the bill to documents held by a corporation or business. Under common law, those entities are not entitled to the privilege against self-incrimination. Confer- ring derivative use immunity upon those bodies would be to place them in a more privileged position than they occupy at common law. Again, the government would oppose Democrat amendment (3).

In relation to Democrat amendment (4) dealing with proposed section 198A headed ‘Immunity of certain answers’, the government would again say that, by making certain types of information inadmissible in a criminal prosecution, proposed section 198A purports to clarify in the face of the legislation that an examination or production order cannot be used by the DPP to advance a criminal prosecution. As with related amendments, however, it is unclear how this proposed section would work in practice. I would point out that derivative use immunity has not been conferred in examination orders so that a person cannot deliberately provide incriminating information under compulsion and where the use of both that material and material derived from that material in criminal proceedings is prohibited. That is where use and derivative use immunity are conferred.

The government opposes this amendment, proposed section 198A(2), and says that it would distort the trial process by putting an onus on the prosecution that may be impossible to discharge. If there have been examinations or production orders in a matter, the prosecution would have to show one of two things—either that none of the prosecution evidence was derived directly or indirectly from the examinations and production orders, which would be a formidable task, or that every examination order and every production order were validly issued and validly executed. At the end of a long and complex criminal investigation, it would be very difficult to determine where all the prosecution evidence was derived from. If you cannot show where all the prosecution evidence came from, it follows that you cannot show that none of it was derived directly or indirectly from an examination or the use of a production order. The effect of this amendment cannot be quarantined to information derived from an examination or production order, hence the problems that I mentioned. The practical effect of the proposed change would be to taint all prosecution evidence and make it easier for criminals to escape conviction.

What is relevant to the argument that I have been putting is Senator Harris’s question in relation to proposed section 198, which deals with the admissibility of certain answers and documents. It states:

An answer given or document produced in an examination is not admissible in evidence in civil or criminal proceedings against the person who gave the answer or produced the document except...

for the following provisions, and they are listed in paragraphs (a) through to (e). Paragraph (a) is fairly clear; it states:

(a) in criminal proceedings for giving false or misleading information...

Paragraphs (b) and (c) state:

(b) in proceedings on an application under this Act; or

(c) in proceedings ancillary to an application under this Act...

Obviously if you made a confession or an admission that is self-incriminating and it relates to the proceedings at hand that would be relevant. Paragraph (d) states:

(d) in proceedings for enforcement of a confiscation order;

Where there is enforcement, obviously the information you have given which can lead to the enforcement of that order—because it is an order of the court—we believe it would be appropriate. Finally, paragraph (e) states:

(e) in the case of a document—in civil proceedings for or in respect of a right or liability it confers or imposes.
The reason that exception is made is that you could have a contract produced in the course of an examination, there is some evidence given on the contract and, in the course of that examination, an admission is made by the respondent. While we are saying that, generally, answers given or documents produced are not admissible, what we do not want to see is a situation where someone might use a document that could perhaps be barred from being produced in civil proceedings when an innocent third party might be taking action against them but cannot use that document because it has been the subject of an admission during the examination. We want to see the document allowed to be used in other proceedings such as civil proceedings, as stated there, because that document might confer a liability on the person who is being questioned. It might be a contract in which that person has agreed to pay an innocent third party some money and that third party wants to rely on that document to sue them. They are quite entitled to do so, and we do not want to see that document excluded from any extraneous proceedings.

I think that covers those exceptions. Senator Harris asked where else they are dealt with in the bill. They are dealt with under proposed section 198. They are the exceptions that were thought appropriate in relation to answers and documents in the course of an examination. I think what I just said covers the government’s position in relation to the amendments proposed by the Democrats, the questions posed by Senator Harris and the government’s rationale for this bill.

Senator HARRIS (Queensland) (5.18 p.m.)—Referring again to the submission from the New South Wales Bar Association, on page 9 they state:

The Draft Guidelines provide that the information so obtained may only be provided to an investigation agency where there is no current investigation if the use is approved by a senior member of the DPP’s staff. A similar condition is imposed on disseminating the information to a professional association.

Minister, who actually decides that the information that has been made available in an examination relates to a civil forfeiture action? My understanding is that it is related only to those issues under which the material can be handed on. One of the uses for the material is that it ‘can be provided to professional associations if the material shows serious professional misconduct’. Minister, what redress is there for a person who has lost their ability to remain silent, who has a legal obligation to bring to an examination a document nominated in the examination notice and where the use of that material has been handed on to a professional association, or to any other entity under the bill, and it is subsequently proven that it was either inappropriate or improper to hand it on, or, in the worst-case scenario, that it was maliciously handed on? Where is that person’s right of redress when it is this legislation that is (1) forcing them under law to be at the examination (2) forcing them to answer and (3) forcing them to provide the documentation?

If the government genuinely requires this type of process to encapsulate criminal activity where the person has kept themselves once removed from a certain action—a criminal activity, the purchase of goods or a monetary benefit—it is the responsibility of the government to provide a right of redress to the person who is innocently caught up in this. These are the issues that are being raised in relation to this legislation. Nobody is saying that the criminal who carries out these activities should benefit from their crime—we are not saying that at all—but I believe the submissions and correspondence that I have received all relate to the lack of process and redress for a person who is innocent. Put aside the fact that the government is reversing the onus of proof. Put aside the fact that you can no longer stay silent. There is nothing in this legislation that gives a person a right of appeal. A letter from the New South Wales Council for Civil Liberties says:

First, there appears to be no general need for this legislation as there is already existing State legislation dealing with proceeds of crime. Crime policy has generally been considered a State matter and there is no general plenary power in
the Constitution for the Federal parliament to deal with criminal matters. The legislation seems to be simply a duplication then of existing State structures, having little purpose.

The Bill also seems to be inconsistent, both with the letter and the spirit of some very important provisions of the Federal Constitution. Insofar as the Bill allows the confiscation of proceeds of crime without a conviction, the Bill seems to be in clear contravention of the limit provided in s.51(31)—

for the Commonwealth Government to acquire property otherwise than on just terms.

Also, insofar as the Bill provides for confiscation of property without a criminal conviction this is visiting a penalty which is even greater than most criminal provisions apply in their monetary penalty. This seems to run counter both to spirit and letter of s.80 of the Constitution providing for the right of jury trial in respect of offences against the Commonwealth.

The minister has not addressed the issue of a person’s right to trial by a jury of their peers in any way, shape or form. Through the chair I ask the minister: who decides that the information pertains to a civil forfeiture action? Who decides that they can pass that information on? When that information is passed on, where that information has been used either improperly—or, in the worst case, as I have said before, maliciously, where is that person’s right of redress under this legislation?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.26 p.m.)—Firstly, I do remember Senator Harris mentioning trial by jury and I am sorry I did not mention it before. This does not take away the constitutional right for trial by jury because the Constitution confers that right only in relation to criminal matters. There are some states that have juries in relation to defamation—my home state is not one of them—but that is a completely separate matter. It is a matter of state law. As far as the Constitution goes, there is only a right to trial by jury in relation to criminal matters. We do not see this as taking away any right because the right is not there. This is a civil proceeding and in the normal course of events civil proceedings are determined by a court, not a jury. In relation to the provision of information, there are guidelines for the DPP. They deal with the subject that Senator Harris has mentioned. It states in 5.6 of the guidelines:

It follows that, if it is otherwise appropriate in the circumstance of the case and subject to any court ruling or direction to the contrary, material obtained from an examination can be used and/or disclosed for the following purposes.

Offences not currently under investigation
If the material shows that serious criminal conduct has occurred which is not the subject of a current investigation the material can be provided to an appropriate agency for investigation with a view to possible prosecution. However, that should only be done if the director or an officer of the senior executive service who has been authorised by the director considers that it is in the public interest that the conduct be investigated.

Provision to professional associations or regulatory agencies
If the material shows that serious professional misconduct has occurred, the material can be provided to an appropriate professional association or regulatory agency. However, that should only be done if the director or an officer of the senior executive service who has been authorised by the director is satisfied that it is in the public interest that the conduct be examined by the professional association or regulatory agency. It should be explained to the professional association or regulatory agency that the material can be used as a basis for investigation but cannot be used as direct evidence in disciplinary proceedings against the person who provided the material or for any other person.

That shows you the safeguards in relation to the provision of this information to other bodies, particularly to professional or regulatory bodies. Senator Harris also asked what happens if that information is provided inappropriately. Under the Public Service Act there is a provision which makes it a criminal offence to provide such information inappropriately. This is a catch-all provision in the Crimes Act. If it was an Australian Federal Police Officer, they too would be the subject of a criminal charge under the Australian Federal Police Act. When you ask what redress the agreed person has got, they have perhaps got one of the most substantial remedies available: the fact that it is a crimi-
nal offence, would be prosecuted as such and would no doubt end the career of the person who was involved in the inappropriate disclosure. Disclosure in itself does have some safeguards in that regard. I believe that that deals with the issue that Senator Harris has raised.

Senator HARRIS (Queensland) (5.30 p.m.)—I thank the Minister for Justice and Customs for his answer. In that same situation, where it has been inappropriate or improper for that information to have actually been passed on, would a person also have access to bringing an action of maladministration? The minister made reference to the fact that whoever had actually carried out the action could face criminal prosecution. I ask the minister to clarify that, because my understanding is that a civilian cannot initiate an action for a criminal offence against the Commonwealth, so that action of redress would not be available to the individual. But I believe that that person should definitely have a right of redress by way of implementing an action for maladministration against the Commonwealth. I look forward to the minister’s response.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.32 p.m.)—The sorts of actions that I would envisage being available in relation to suing the Commonwealth government would be in tort, negligence, defamation and things of that sort. I am not sure that maladministration is one cause that springs to mind. I will take it on notice and advise Senator Harris of that.

Senator Harris asked what the aggrieved individual could do. The aggrieved individual could lay a complaint, which could then see the person charged. That is perhaps one of the toughest remedies available to an individual in our community—to be able to go to the authorities and lay a complaint and then that person who is guilty of the wrongful action is prosecuted. As for the other actions, I am not aware of an action for maladministration, but I will take that on notice and get back to Senator Harris on that.

The TEMPORARY CHAIRMAN (Senator Cook)—The question is that amendments (2), (3) and (4), moved by Senator Greig on behalf of the Australian Democrats, be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that the bill stand as printed.

Question agreed to.

Bill agreed to.

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

Bill—by leave—taken as a whole.

Senator HARRIS (Queensland) (5.34 p.m.)—I take this opportunity to encapsulate the consequential amendments in this piece of legislation. This Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002 can only be described as another piece of draconian legislation where the executive is again attempting to usurp hundreds of years of defined legal authority in English statutes and Australian precedent. The executive is attempting to disingenuously transfer property rights to the state without the right of recourse for those affected.

It has to be asked: how ethical is it for the Commonwealth to assume rights to possible proceeds of crime other than those proceeds which go to the person who committed the crime in the first place? So now the Commonwealth will be benefiting from the proceeds of crime. There seems no doubt that the bill contravenes sections of the Australian Constitution and, if enacted, there should and probably will be challenges to it. There have been many detailed responses received from competent authorities, and these objections should be taken seriously by the Attorney-General’s Department.

Ideally, the original bill and the related bill should be abandoned and the jurisdiction for recovering proceeds of crime should be left to the states, as that is what we have now. At present we have civil forfeiture legislation at a state level, and we now have the situation that where this federal legislation is in conflict with the present state legislation the federal legislation will prevail. I believe that that will lead to some interesting challenges.
I also believe that the Commonwealth government have been late getting out of the starting blocks in realising the immense financial benefits to be gained from the implication of civil forfeiture. They are saying, 'We have been slow in starting this. Let's catch up in a hurry, because there is a fair slice that the states have got already. Where can the Commonwealth get their cut?' I believe it will be a very difficult argument for the Commonwealth to sustain that they could not, through consensus with the states, have had the states alter their legislation to cover any inadequacies and that this is anything other than the Commonwealth government getting their slice of the pie.

Question agreed to.

Bill agreed to.


Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.39 p.m.)—I thank the opposition for its support and I move:

That these bills be now read a third time.

Question put.

The Senate divided. [5.43 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes........... 51
Noes........... 10
Majority....... 41

AYES

Abetz, E. Barnett, G.
Bishop, T.M. Bolkus, N.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Carr, K.J.
Colbeck, R. Collins, J.M.A.
Cook, P.F.S. Coonan, H.L.
Crossin, P.M. Denman, K.J.
Eggleston, A. Ellisson, C.M.
Evans, C.V. Ferguson, A.B.
Ferris, J.M. * Forshaw, M.G.
Hogg, J.J. Hutchins, S.P.
Johnston, D. Kirk, L.

Knowles, S.C. Ludwig, J.W.
Lundy, K.A. Macdonald, J.A.L.
Mackay, S.M. Marshall, G.
Mason, B.J. McGauran, J.J.
McLucas, J.E. Moore, C.
Murphy, S.M. O'Brien, K.W.K.
Patterson, K.C. 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.
Watson, J.O.W. Webber, R.
Wong, P.

NOES

Allison, L.F. * Bartlett, A.J.J.
Brown, B.J. Cherry, J.C.
Greig, B. Harris, L.
Murray, A.J.M. Nettle, K.
Ridgeway, A.D. Stott Despoja, N.

* denotes teller

Question agreed to.

Bills read a third time.

WORKPLACE RELATIONS AMENDMENT (GENUINE BARGAINING) BILL 2002

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

Second Reading

Debate on Workplace Relations Amendment (Genuine Bargaining) Bill 2002 resumed from 20 August, and debate on Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 resumed from 24 June, on motions by Senator Coonan and Senator Ellison:

That these bills be now read a second time.

Senator SHERRY (Tasmania) (5.48 p.m.)—The Workplace Relations Amendment (Genuine Bargaining) Bill 2002 recycles in modified form several proposals rejected by the Senate first in 1999 and again in 2000. Unfortunately, most of the criticisms made of the previous measures apply yet again. This bill will do nothing to facilitate genuine bargaining. Instead, it remains narrowly focused on reducing the right to take protected industrial action and on suspending or terminating the bargaining process. The Labor Party strongly supports enterprise bargaining, which remains at the heart
of our industrial relations policy. The difference between the Labor Party and the Liberal government is that we take a broader view of what is needed to improve the enterprise bargaining process.

A whole range of activities take place before anyone contemplates taking industrial action. Correspondence is exchanged and meetings are arranged, the parties set out their claims, consider those claims, make compromise proposals and seek to reach agreement. When negotiations get stuck, the parties can use the conciliation process of the Industrial Relations Commission, as we saw during the recent BHP WesternPort and Stegbar disputes. These activities are the most critical to agreement making, yet the government’s so-called genuine bargaining bill says nothing about them. If parties refuse to meet or fail to adhere to commitments or follow agreed procedures or fail to respond to proposals or fail to disclose relevant information or capriciously add or withdraw items for negotiation, then an agreement is unlikely.

Instead, agreements are more likely and will be reached more quickly if the parties are bargaining in good faith. Accordingly, the Labor Party has moved in the House, and will be moving in this chamber in the committee stage, amendments to give the Industrial Relations Commission back its powers to make orders that will ensure that the parties bargain in good faith. These amendments are designed to bring together the parties under the auspices of the commission and hold them equally responsible for conducting cordial and efficient negotiations. As I will expand on later, this fair and equitable approach stands in sharp contrast with the Liberal government bill, which effectively places the responsibility to bargain in good faith disproportionately on unions. I add that the Liberal government took the short-sighted decision to remove this power in 1996. It is time for the Liberal government to acknowledge that this has only had the effect of prolonging difficult industrial disputes. It is time for the Liberal government to support good faith bargaining.

The first aspect of this bill I want to talk about is proposed section 170MW(2A), which purports to provide guidance to the Industrial Relations Commission on matters that would tend to indicate whether a party to enterprise bargaining negotiations is genuinely seeking to reach agreement. The Liberal government claims that this provision draws on the decision of Justice Munro in the metals case in 2000 and is necessary to ensure genuine enterprise bargaining, yet Justice Munro’s decision demonstrates that the commission is in no need of this government’s guidance. In the metals case, Justice Munro used section 170MW(1) to terminate bargaining periods against 33 employers because he was satisfied that the respondent unions were not genuinely trying to reach an agreement with them in taking industrial action. The key statement of Justice Munro was:

Does it follow that, if in truth the respondent negotiator is trying to secure agreement with all, or an entire class of negotiating parties in an industry—all or none—the respondent negotiating party is not genuinely trying to reach agreement with any individual negotiating party in the industry or class? In my view, it does. But in a particular case, a finding to that effect is dependent upon matters of fact and degree.

Justice Munro went on to say:

Such questions of fact and degree obviously need to be answered by reference to evidence and details of particular facts. The more the negotiation conduct can be categorised as evidencing a refusal to allow agreement other than on an all or none basis, the greater the likelihood that it should be found to fail the genuinely try to reach agreement with the other negotiator test. However, there are variations and permutations of demands, conduct, and character of negotiating parties that must be assessed.

These comments demonstrate the commission is well aware of the requirement in the Workplace Relations Act that there be genuine bargaining at the enterprise level and of the powers available to it to ensure that this occurs. It does not need an ideological assumption imposed on it by this government.

Justice Munro’s decision had a fairness and balance that is wholly absent from the Liberal government’s bill. It is appropriate and sufficient in the opposition’s view for a reference to the decision of Justice Munro to be inserted in section 170MW.
The government has removed from this bill any reference to pattern bargaining, it has continued to use that expression in debate to refer to the pursuit of a common set of demands across an industry. It is worth recalling what Justice Munro said about this because the Liberal government has certainly forgotten. The judge said:

A common set of demands for conditions of employment, or for timing of negotiating rounds and outcomes is not sufficient in itself to establish that a negotiating party is not genuinely trying to reach agreement with the counterpart party. I do not use the expression ‘pattern’ to describe such demands. The notion of pattern demands or pattern bargaining lacks precision. It also has a partisan pejorative content.

Justice Munro also noted that the industrial strategy of pursuing common outcomes across workplaces is practised as much by employer interests as employee interests. He said:

It is not unusual for major corporate employers to attempt to achieve a consistency and sometimes a relative uniformity of outcomes in negotiations affecting workers. For that purpose, benchmark common outcomes, wage increase levels, flexibilities, and freedom from award restrictions may be energetically pursued against union and employee negotiating parties.

It is interesting to note that a number of factors in proposed section 170MW(2A) of the bill are actually principles of good faith bargaining. I refer in particular to paragraphs (d) and (e). Paragraph (d) refers to a circumstance where:

the first party’s conduct shows a refusal to meet or confer with other negotiating parties ...

Paragraph (e) contemplates a situation where:

the first party’s conduct shows a refusal to consider or respond to proposals made by other negotiating parties ...

They are sensible principles. Yet under this bill they only apply if and when an application has been made to the commission to suspend a bargaining period in order to curtail or prevent protected industrial action. The result would be that, in practice, the requirement for good faith bargaining would apply only to unions and only in cases where the union is considering or undertaking protected action. If the government genuinely wished to promote good faith bargaining, a more even-handed and effective approach would be to restore the commission’s power to order all parties—whether they be employer, union or employee—to bargain in good faith. As it stands, under the existing act and the government’s bill, employers who refuse to bargain in good faith would face no effective sanctions, except in the relatively rare instances where they wish to undertake protected industrial action. This is not fair, and this is why a fair bill, a balanced bill, would be one that adopts Labor’s amendments.

The second aspect of this bill is proposed section 170MWA, which confers a power on the commission to order that a party may not initiate a new bargaining period. This measure is apparently aimed at situations where a party peremptorily terminates a bargaining period in order to deprive the commission of jurisdiction to hear an application under section 170MW. Again, this is the wrong approach. Instead of enabling the commission to bring the parties to an agreement, this bill simply encourages the commission to wash its hands of a dispute. This measure also manifests the false assumption that the commission is unable to deal with such a tactic.

If a party has terminated a bargaining period to avoid an application under section 170MW, then it is no longer open to them to take protected action. If the party then initiates a new bargaining period, they must meet the requirements of the act in order to take protected action again. One of those requirements is that the party has genuinely sought to reach an agreement before taking protected action. It is not open to a party to initiate and terminate bargaining periods and go out on strike willy-nilly. When they are doing so, it is presently open to the commission to impose a cooling-off period, if that is the most appropriate action in the circumstances.

Justice Munro’s decision in the metals case demonstrates that. In that case His Honour used the power in section 170MW(10) to prevent the AMWU from initiating a new bargaining period for two months. In other words, His Honour imposed a cooling-off
period using a power the commission already possesses under the act. His Honour’s decision shows the commission is alive to tactics which do not constitute genuine bargaining and is well prepared to deal with them. His Honour said:

The AMWU’s conduct of collective bargaining toward the achievement of Campaign 2000 core demands has become infected and confused. The evidence in total disclosed several tactical retreats, re-assertions of industrial action, and probable confusions about the respective scope of the authority of valid majorities in workplaces, of delegate and organised structures and resources, and of branch officials.

Another instance where the commission has exercised this power was in a 2001 dispute between Caltex and the AWU.

The third aspect of this bill is proposed section 170MWB, which provides for cooling-off periods. This provision is very much a wolf in sheep’s clothing. It is common-sense that damaging strikes should be avoided, and where they occur all efforts should be directed towards bringing the parties to an agreement. But, once again, instead of encouraging the commission to get among the action, bring the parties to the bargaining table and force a resolution, the Liberal government is encouraging the commission to wash its hands of difficult disputes. In the most difficult disputes, it is clear that the commission already has the power to order a cooling-off period. As Justice Munro said in the metals case:

Having regard to all the circumstances, I am satisfied that it is appropriate to exercise the power to order the termination of respective bargaining periods ... Thereby, the order will allow an effective and unequivocal cooling-off period, free of bargaining periods until the end of November. That will not preclude negotiation or agreement. It should preclude continuance of industrial action during the period.

The government’s provision is most notable for the fact that it resurrects the voluntary conciliation model rejected by the Senate as part of the government’s 1999 More Jobs Better Pay, or mojo, bill. The government is still trying to recover its mojo! That bill sought to abolish compulsory conciliation except on allowable award matters, to introduce user pays voluntary conciliation and to give legislative recognition to private mediation. Similarly, this bill allows only for voluntary conciliation during a cooling-off period. The Liberal government clearly hopes that measures such as this will continue to erode the role of the commission as an independent umpire. This can only hinder the fair and efficient settlement of industrial disputes.

You would think that, for all his rhetoric about genuine bargaining, the Minister for Employment and Workplace Relations would ensure his own department practises what it preaches. Yet public sector employees have good reason to think that the term ‘ultramilitant’ is better applied to this government than the unions the minister constantly seeks to demonise. Take current negotiations—if indeed that word can be stretched so far—for an enterprise agreement with the Department of Employment and Workplace Relations. The department relentlessly pursued a section 170LK agreement, which does not have the union as a party. Initially, the department encountered one small problem: 90 per cent of its staff wanted the union to negotiate an agreement on their behalf. Unfortunately for the department, the stand-off over the form of the agreement attracted unwelcome scrutiny from the media. The department’s strategy unravelled even further when it was hauled before the Australian Industrial Relations Commission to explain its reluctance to bargain with the union as its staff had requested. Before the Industrial Relations Commission had a chance to make unwelcome recommendations such as that the department conduct a ballot of its staff about the form of agreement they wanted, the department backed down and agreed to a two-week bargaining period with the union.

It would be difficult to convey in words everyone’s astonishment that those two weeks of negotiations did not produce an agreement. The department proceeded to put its non-union agreement to a vote on 1 July. Despite the frantic efforts of the department, fewer than 10 per cent of its staff voted yes to the agreement. Even today there is still no enterprise agreement in the department. Indeed, in late August staff in the department went out on strike over this good example of
bad bargaining. It was disturbing to hear on the PM program on ABC radio and to read in the Canberra Times that the secretary of the department—that well-known militant, Dr Boxall—had been promised a bottle of champagne by his predecessor, Dr Shergold, if Dr Boxall could get a non-union agreement in the department. These reports simply reinforce the need to discover the cost to the taxpayer of Dr Boxall’s disastrous bargaining strategy. In summary, if this sorry episode represents the Howard government’s view of genuine bargaining, Australian businesses and workers have good reason to be suspicious of any government bill bearing that name.

I turn to the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. This bill represents a new era in Australian industrial relations. For example, for the first time it will introduce into the Workplace Relations Act provisions with five letters after the number. No longer will Collins Street and Phillip Street lawyers have to make do with wimpy sections like section 170VPK or section 170WHD. Imagine their ecstasy as they get to tell employers and employees that they must comply with section 170NBCQ and—wait for it—section 170NBGBC.

Senator George Campbell—You’ll need WD40 to grease the wheels!

Senator SHERRY—That’s right. For a minister who recently told the H.R. Nicholls Society that he was ‘fully post-Marxist’, this bill reveals an astonishing fondness for bureaucracy. This is a bill so complex it would have made Yuri Andropov blush.

Senator Patterson—Is this all in your copious notes?

Senator SHERRY—We all suffer from that syndrome, Minister, as you well know. Before addressing the provisions of the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002, it is important to see how it fits into the landscape of enterprise bargaining and protected action. The regime governing protected industrial action was produced by the Keating government in 1993 as part of its far-sighted enterprise bargaining reforms. Those reforms were about encouraging employers and employees to bargain in good faith and to reach agreements in the workplace which dealt appropriately with their needs. The reforms brought about a dramatic growth in productive and cooperative workplaces and a dramatic fall in industrial disputation.

Labor recognised that, as part of the bargaining process, employees and employers should be able to take industrial action in accordance with the law without being exposed to financially ruinous and traumatic court proceedings for industrial torts. Accordingly, employees and employers were granted a limited immunity from industrial tort action taken to advance claims during a bargaining period. To ensure that such industrial action occurred in an orderly and civilised way, a number of conditions had to be satisfied before the immunity was conferred: firstly, a bargaining period had to be validly initiated; secondly, employers or employees were required to give at least three days written notice of the nature of the proposed action; thirdly, the industrial action had to be preceded by an attempt to reach agreement; fourthly, industrial action by an organisation of employees had to be duly authorised by the organisation’s committee of management; fifthly, the industrial action could not involve personal injury, wilful or reckless damage to property or the unlawful taking or use of property; sixthly, if the Industrial Relations Commission had seen value in ordering a secret ballot of employees, such industrial action had to be approved by a majority in the ballot.

The Liberal government predicted that conferring a right to precede protected action would lead to an explosion in strike activity—much as they claim that anything but the most miserly increase in the minimum wage will destroy thousands of jobs. Not surprisingly, they got it wrong. Under the Fraser government, a yearly average of 590 days were lost per 1,000 employees to industrial disputes. This steadily declined as the Labor government pursued economic reforms through an inclusive and cooperative industrial relations framework. Until the year to January 1993, only 148 days were lost per 1,000 employees. By January 1996, barely
two years later, it was down to 80 days. This fall in disputation, which was accompanied by a growth in productivity and better wages and conditions, proved that Labor got the balance right. For many years the Liberal government have been saying that what is needed is deregulation of the labour market—and what an excellent piece of deregulation this bill is. It will add around 40 pages to the Workplace Relations Act and it will add a degree of complexity to the bargaining process that not even the former Soviet Union politburo could have dreamt up.

The bill will require the following steps to be followed before employees can take protected industrial action. Firstly, an employee or union must apply to the Industrial Relations Commission for an order that a secret ballot be held. If no union is present, then the employees cannot even make an application unless doing so has the support of the prescribed number of employees. If there are fewer than 80 relevant employees, the prescribed number is four. If there are between 80 and 5,000 employees, then the prescribed number is five per cent. If there are more than 5,000 employees, then the prescribed number is 250. The bill does not make clear what constitutes support for an application. Is it moral support—some words of encouragement and a pat on the back—or perhaps a secret ballot about whether an application should be made for a secret ballot? Not to worry—that point can always be resolved by litigation. The application must set out the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action, details of the type of employees who are to be balloted and any details required by the rules, which have not yet been made. The application must be accompanied by a copy of the notice initiating the bargaining period, particulars accompanying that notice and a declaration that the proposed industrial action does not relate to an objectionable provision. If you can get all that paperwork in order, then you might just have a valid application for a secret ballot. Then the commission must give the parties opportunities to make submissions.

We are now up to clause 170NBCB. We have some ground to cover until we reach clause 170NBDE, which is when the results of the ballot are known. The commission must satisfy itself that the applicant for the ballot has genuinely tried, and is genuinely trying, to reach agreement with the employer. It must also consider whether or not the proposed ballot is inconsistent with the objective of establishing a transparent process which allows employees directly concerned to choose, by means of a fair and democratic secret ballot, whether to authorise industrial action supporting or advancing claims by employees or organisations of employees. It must also be satisfied that the applicant has not at any time contravened the secret ballot provisions of the act. If the commission has satisfied itself of all these things, then it must frame an order for the ballot specifying the name of the applicant or agenda and a range of other bureaucratic requirements. At this point, I observe that a well-worn mantra of this Liberal government is to remove unwanted third parties from the employment relationship; yet, with this bill, the government proposes to involve not only a third party in the form of the commission—which did not necessarily have a role before—but also a fourth party and a fifth party in the form of the person conducting the ballot and the independent adviser for the ballot. I believe we are seeing the birth of a new industrial relations club.

The ACTING DEPUTY PRESIDENT (Senator Knowles)—Senator Sherry, your time has expired, but you may care to move your second reading amendment.

Senator SHERRY—Thank you. I move:

At the end of the motion, add:

"But the Senate condemns the Government for:

(a) unreasonably emasculating the powers of the AIRC to resolve industrial disputes in the interests of the parties;

(b) interfering with the AIRC’s discretion to deal with industrial disputes in the most appropriate way; and

(c) failing to put forward constructive proposals to enable the Commission to direct parties to bargain in good faith."
Senator TIERNEY (New South Wales) (6.08 p.m.)—I rise to speak on the Workplace Relations Amendment (Genuine Bargaining) Bill 2002 and the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. As Chair of the Senate Employment, Workplace Relations and Education Legislation Committee, I would first like to observe that there was considerable support for these bills at the committee hearings from a very wide range of groups and sectors, including small business, agriculture, manufacturing, service and construction. Not surprisingly, the fundamental opposition came from the union movement. This is disappointing. Despite the fact that Senator Sherry says that these bills are 'recycled bills', there are quite a number of significant changes from the last round in 2000. 

Senator Sherry interjecting—

Senator TIERNEY—Later on, Senator Sherry, I will mention what some of these are. I think the changes are quite reasonable. It is a great pity, given that we have had an evolution of the workplace relations framework under both Labor and Liberal governments over the last 10 years, that some of the very reasonable measures in this latest round of reforms are not accepted by the Labor Party—or the opening speech from Senator Sherry seems to indicate that they will not be accepted. With all the changes over the last 10 years there have been dramatic improvements in productivity in Australia, and these changes offer a chance for this process to continue. On our side, the whole process was of course started by former Minister Reith, who will go down in history as a hero of labour market reform because he was the first minister to really achieve any meaningful gains in the area of reform of the workplace. Senators will recall the major obstacles the ALP placed in his way at that time. When he brought in the reforms initially, Minister Reith said:

The reason the Labor Party does not like it is that they hate the idea of people having agreements which do not allow the unions to tell them what to do.

With the Workplace Relations Amendment (Genuine Bargaining) Bill 2002, we are setting the parameters for bargaining. Enterprise bargaining benefits the Australian economy, improves productivity, improves efficiency in the workplace and also benefits workplace relations by improving the relationship between employers and employees. We must protect enterprise bargaining from union attempts to return bargaining to an industry level. We need further legislative guidance amendments to prevent unions from adopting industry-wide pattern bargaining. Industry-wide pattern bargaining is the antithesis of enterprise bargaining and it subverts the intention of the original act. During our inquiry into these bills, the Ai Group explained the union strategy in 1999-2000 to undertake industry-wide bargaining. They told the committee:

... the CFMEU sent out 3,000 identical bargaining notices and organised industrial action across the industry at a common time in pursuit of a 36-hour week and a 24 per cent wage increase. In manufacturing, the AMWU and the other unions sent out some 1,500 bargaining notices on the same day, and then they sent out notices of protected action in identical terms to hundreds of companies and organised an industry strike.

A number of organisations and individuals have recognised from situations like this that the spirit of the Workplace Relations and Other Legislation Amendment Act 1996 is being subverted by the unions. This is surprising, given that the unions claim to support the move to enterprise agreements. The Department of Employment and Workplace Relations submission underlined this point. It stated:

... the need to make enterprise agreement-making part of the system was endorsed by both major political parties, all major employer associations, the ACTU and the majority of individual unions.

We are now faced with the third attempt at getting this type of bill approved since 1997, yet this is what a number of industry groups and others, including the ALP opposition, have asked for. This rather anomalous situation was summed up by Tony Abbott, the current Minister for Employment and Workplace Relations, in the following terms:

... we are doing precisely that for which the opposition have been calling for several years ... they really do support these provisions, but ... they cannot afford to say so ... to say that they support these provisions would be to concede some rea-
son, some balance and some rationality to a government which on this particular issue they are all too keen to demonise.

This bill is designed to ensure that workplace bargaining is genuine and that pattern bargaining is stopped. If we allow pattern bargaining to continue, the bad old days of extensive strike action could return. Parameters must be set. This bill will provide guidance to the Australian Industrial Relations Commission when it is considering whether or not a party is genuinely trying to reach an agreement with other negotiating parties, particularly in the case of so-called pattern bargaining. This bill will require the commission to satisfy itself as to which bargaining periods are relevant for a particular application to suspend or terminate a bargaining period.

This bill will require the commission to satisfy itself as to which bargaining periods are relevant for a particular application to suspend or terminate a bargaining period. It will allow the commission to declare, when it suspends a bargaining period, that a specified negotiating party is not allowed to initiate a new bargaining period in relation to the specified matters that are to be dealt with by the proposed agreement following the suspension. This bill will empower the commission to order cooling-off periods in respect of protected industrial action in order to facilitate the resolution of the issue in dispute. Cooling-off periods play a vital role in negotiations and they allow negotiations to continue without industrial action.

Senator Sherry was a little disingenuous on this matter when he said we have all of this at the moment. But, of course, it is only under certain conditions. This bill actually liberalises this to make it more workable. At this time the commission can only establish cooling-off periods under restricted circumstances. Currently, there are no direct provisions for cooling-off periods to address cases of stalemate or prolonged industrial action. If direct provisions are not created, we are likely to experience situations where continued industrial action may make negotiations extremely difficult.

Through this legislation we are trying to give the Australian Industrial Relations Commission more authority to stop these industry-wide bargaining attempts so that they can ensure that bargaining is genuine at the workplace level. The bill will stop uncertainty amongst organisations by providing more legislative guidance to the courts. The Workplace Relations Amendment (Genuine Bargaining) Bill 2002 will allow the commission to suspend a bargaining period to allow for a cooling-off period in certain circumstances. By giving the AIRC more power in this way, we are encouraging and assisting negotiations without industrial action. Such a suspension would be beneficial to the negotiations by allowing time to resolve the issues.

Secondly, I would like to speak on the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. Support is strong for this amendment because it will encourage the Australian workforce to increase its involvement in the running of the workplace and will decrease the domination by workplace bullies that occurs sometimes when there is an open ballot. We must allow important workplace decisions to be made by all people in the workplace. Freedom of association is one of the underlying tenets of our democracy. In bringing through the changes in this bill, this underlying parameter of Australian society will be supported.

It was made clear at the inquiries that the most important question in relation to this bill was whether it is an unreasonable obstacle to protected industrial action. The answer to that is no. Let me begin by pointing out that other countries, such as the United Kingdom, Ireland, Germany, Japan and Canada, have secret ballot arrangements. Many union bodies in these countries, despite initial resistance, now support secret ballots as a fair and simple process. Secret ballots, under the support of the Industrial Relations Commission, will protect workers and their jobs and prevent unnecessary strikes by enhancing freedom of choice for workers. The Hon. Tony Abbott summed up the government’s position on this bill in the other place on 19 August this year when he said:

... this government believes that there should be no strikes without secret ballots first.

Minister Abbott also said:
Strikes cost jobs, they damage companies, they can damage the reputation of Australia overseas and, most of all, a prolonged strike can take hundreds and hundreds of dollars out of the pay packets, out of the pockets, of vulnerable workers. That is why the people who will be most affected by any strike action should be given the chance to have a fair, free and secret ballot before any strike action takes place. This bill is about freedom.

Such a measure will not create a financial burden because the Commonwealth will cover 80 per cent of the ballot costs. How can the opposition oppose this?

Secret ballots will provide a fair way for workers to express whether they want to take industrial action and they will give workers a genuine chance to put their opinions across. Before any agreement is certified, it must be agreed upon by the majority of employees involved in a secret ballot. At least 40 per cent of eligible voters must participate in the secret ballot and more than 50 per cent of those must be in favour of the proposed industrial action. This bill will stop union officials pushing agendas onto workers that do not concern them and it will stop intimidation by union bullies.

During the inquiry, the Ai Group, as an employer representative, acknowledged the risk of intimidation and peer pressure by unions when it stated:

In the context of a mass meeting it is a fairly intimidatory thing for any individual to stand up at a mass meeting considering a strike and put forward a different point of view to the one that is running that mass meeting.

This bill will ensure that this type of intimidation is stopped. It will provide fairer workplaces and unions by ensuring that only union members who are directly involved in the proposed agreement will be entitled to vote, requiring that union officials be elected through secret ballot and giving the Industrial Relations Commission the power to order a secret ballot as a means of assisting the settlement of an ongoing dispute.

The bill takes into account concerns raised during the previous inquiries; thus it improves on the 2000 bill. The 2000 bill required workplaces to announce the date that industrial action would commence. This bill allows a 30-day period before the commencement of industrial action. It allows applicants to conduct their own ballots, it allows attendance ballots in place of postal ballots and it simplifies the ballot question. By giving the Industrial Relations Commission more power in this way, we are creating a fairer and freer workplace.

Finally, it must be remembered that the key element of this bill is that it ensures that there is no interference with employees’ capacity to access industrial action when there is genuine support coming from employees. Both the Workplace Relations Amendment (Genuine Bargaining) Bill 2002 and the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 must be passed in order to give the Industrial Relations Commission more power, which in turn will give Australian workers more power. We must stop uncertainty amongst organisations by providing the legislative guidance stated in both of these bills.

Senator GEORGE CAMPBELL (New South Wales) (6.22 p.m.)—I must say I was terribly disappointed in Senator Tierney’s contribution. Senator Tierney, it is not going to do anything to contribute to your holding your position in the Senate. Malcolm would have been very content indeed to have heard that contribution this evening. The Workplace Relations Amendment (Genuine Bargaining) Bill 2002 is no more than a re-run of the Workplace Relations Amendment Bill 2000, which proposed a prohibition on pattern bargaining and other restrictions on the taking of lawful industrial action. It is nothing but another hypocritical attack by this government on the working men and women of Australia. It is a clear violation of international conventions and merely reveals the depths to which this government will sink to attack the ordinary working people of this nation. The 2000 bill was introduced as the government’s response to what was claimed would be an industrial Armageddon in Victoria resulting from enterprise bargaining claims being pursued against a large number of manufacturing companies. The reality was quite different. There was no significant industry-wide industrial action, in spite of agitated predictions to the contrary, and agreements were concluded on an enterprise by
enterprise basis, with most industrial action occurring at the enterprise level.

Recent cases have shown that the Australian Industrial Relations Commission is capable of dealing with any instances where unions fail to genuinely try to reach agreement. In the metals case that I just referred to, the commission terminated a number of bargaining periods. In his decision, Justice Munro outlined the current powers of the commission and the issues at the core of this debate. The three key points of Justice Munro’s decision were: (1) the commission has the authority to terminate a bargaining period even where the union had terminated that bargaining period and another period had been initiated; (2) a party who is trying to secure agreement with an entire industry or sector cannot take industrial action against negotiating parties that accept their claims to force parties that accept the claims to accept the claims; and (3), as Senator Sherry pointed out, a common set of demands for conditions of employment, or for timing negotiation rounds and outcomes, is not sufficient in itself to establish that a negotiating party is not genuinely trying to reach agreement with the counterpart party. Justice Munro also made it clear that common claims and outcomes have a place in the industrial relations system, are not outside the scheme of the act and may be pursued by employers as well as unions. It is interesting to quote a passage from his decision. He said:

It appears that some of the more loudly voiced and caustic criticisms of ‘pattern bargaining’, as practised by unions, are muted or tolerant of corporate practices intended to achieve similar uniformities of negotiating outcomes across different workplaces.

One has to look no further than what has been occurring in the APS in pattern bargaining over the past three or four years—particularly when Mr Reith was the minister. The minister was promoting it and his department were promoting it. Not one agreement throughout the whole of the APS was allowed to pass that was not scrutinised and passed by the department of workplace relations and the minister himself. That is the ultimate form of pattern bargaining that has been practised over the past four or five years. The clear conclusion to be drawn from the decision of Justice Munro is that the commission has the power to exercise this discretion in relation to whether or not a particular set of facts and circumstances in a particular case meets the test of whether a party is genuinely trying to negotiate an agreement. It is simply false to say, as the minister has, that the need for the content of the 2002 bill is supported by the metals case decision. In fact, as I discussed earlier, Justice Munro found the opposite, holding that pursuing an industry-wide campaign was not evidence of a failure to try to reach agreement at the enterprise level, so long as the union was prepared to negotiate with individual employers.

This bill sets out obligations on the first party—usually a union—to meet, confer and respond to proposals made by the other parties. On the surface, these clauses do no more than specify behaviour consistent with negotiating in good faith. However, it needs to be understood that, in the usual situation where it is the union which initiates a bargaining period, there is no obligation on the employer to meet and confer with the union or to consider or respond to proposals made by the union, although the union must be able to demonstrate that it has genuinely tried to reach agreement. As the BHP case of 10 January 2001 showed, an employer is quite free to refuse to negotiate a certified agreement with a union that has initiated a bargaining period. Although the union would be required to meet with the employer and to consider and respond to any of the employer’s proposals, there is still no obligation on the employer to consider any proposals from the union.

The amendments concerning the conduct of negotiations ignore the reality that the taking of industrial action is in itself evidence that a union and its members are genuinely trying to reach an agreement. Workers do not lightly take action by which they forfeit their wages. In many cases, such as the BHP case, it is the union which wants an agreement and the employer who does not. This is typical of this government. It demonstrates again its lack of understanding of the nature of the industrial relations sys-
Neither unions nor employers approach enterprise bargaining with blank minds and empty pieces of paper. Neither group has the resources to do so. The enterprise bargaining process is based on sharing collective knowledge and experience and using this in a cumulative way rather than inventing the wheel on each occasion. Many unions provide model agreements to assist delegates. While these will generally be varied as a result of enterprise negotiations, the model or template provides a useful basis and a starting point for the union and the employer. Employer organisations, of course, use similar measures to assist their members. Meetings to plan and adopt enterprise bargaining strategies are common, as is the production of model agreements and draft clauses. In his contribution, Senator Tierney referred to the Ai Group. The Ai Group has a plethora of model agreements out for employers to follow when they engage in enterprise bargaining.

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

Senator GEORGE CAMPBELL—Before the suspension of the sitting for dinner, I was discussing the issue of the way in which both unions and employer organisations prepare model agreements, enterprise bargaining strategies and all sorts of material for their members which in the context could be argued to carry common claims, but it is actually material that is produced to assist the players out in the marketplace to facilitate their negotiations to achieve genuine enterprise agreements at the enterprise level. It is also true that employers, like unions, adopt and campaign around issues of concern and attempt to pursue these through bargaining—for example, in the introduction of performance pay in the mining industry, the abolition of penalty rates in the finance industry and the reductions of pay in the meat industry. It is pure hypocrisy for the Minister for Employment and Workplace Relations and others to support pattern bargaining by employers but to try and outlaw it for employees—to try and swing the pendulum or tip the scales in favour of the employer.

One other area that needs mentioning in regard to pattern bargaining is that of Australian workplace agreements—AWAs—which are another classic example of pattern bargaining and in fact are encouraged by the Employment Advocate, with his promotion of an AWA template. He is so wedded to this process that he would qualify to join the AMWU as a pattern maker! The general practice of employers offering identical AWAs on a take it or leave it basis has been well established and is well known to players in the industry. And it is well known that this approach is facilitated by the Employment Advocate. Genuine negotiations of AWAs with individual workers are in fact a rarity—something that occurs in very rare circumstances these days. It is very much a pattern approach that is undertaken in this particular field.

I want to move on and make some comment about the issue of international conventions. This is a government that is arguing very strongly that others globally should take note of international conventions and international decisions—for example, the Iraqi government in respect of the decisions of the United Nations—but it totally ignores what has been happening internationally in respect of industrial relations. Prohibiting pattern bargaining has not been an issue internationally simply because no other comparable country imposes the types of restrictions on industry-wide and multi-employer bargaining and agreement making that apply in Australia. These restrictions have been the subject of ILO criticism on a number of occasions. The government has ignored these observations as it ignores nearly every other report by international labour organisations. This government must be one of the most isolationist and parochial in Australia's history.

In March 1999, the ILO committee of experts published an observation in response to an ACTU complaint about Australia's breaches of Convention 87 regarding freedom of association and protection of the right to organise. The committee finding, in relation to multi-employer agreements, was as follows:

The Committee notes that by linking the concept of protected industrial action to the bargaining period in the negotiation of single-business
certified agreements, the Act effectively denies the right to strike in the case of negotiation of multi-employer, industry-wide or national-level agreements, which excessively inhibits the right of workers and their organizations to promote and protect their economic and social interests.

The effect of prohibiting the pursuit of common claims, as provided for in the bill, would be to reduce enterprise bargaining to a series of completely isolated negotiations, where workers would be unable to use the collectively gained knowledge and experience which comes with participation in their union. Employers would of course not be so inhibited and would be free to pursue approaches in common with other employers in their industry.

In his submission to the inquiry into the 1999 bill, Professor Joe Isaac, a very respected former member of the industrial relations bench, submitted that multi-employer bargaining not only was fairer and more efficient but did not necessarily result in higher outcomes. In his evidence to that hearing he said:

"It is difficult to understand the in-principle objection to multi-employer agreements. There may be situations where a number of employers in the same industry prefer to deal collectively with the union and to have, as far as possible, uniform wages and conditions within the industry, while allowing certain variations to meet the circumstances of particular firms. Competition and profitability would then be based on managerial performance."

I might add that one of the most outspoken advocates against pattern bargaining has been the Australian Industry Group. Yet the Australian Industry Group has admitted, in hearings before the committee on several occasions, that it actively pursues pattern bargaining agreements in the building and construction industry. The group’s view is that, where it suits it, it will engage in the process and, where it does not suit it, it will not. You cannot have the best of both worlds; you cannot have your cake and eat it too. If you are going to give certain rights and you are going to take advantage of certain rights in one area then you have got to expect others to be able to take advantage of those rights in other areas. The reality is that, if employers are forced to compete on labour costs, the effect is simply to keep driving these down until they reach a floor below which people will not work. The effect of labour cost competition is also to put stress on safety—something of key importance in both building and transport. Recent cases of accidents involving long-distance drivers working for excessive hours demonstrate the result of downward pressure on labour costs.

Over the past decade, the making and pursuit of common claims by unions on employers, including wage claims, have been a general feature of enterprise bargaining in Australia, as it has long been in most industrial economies. The argument that pattern bargaining is a threat to productivity growth is unsustainable, and no evidence has been produced to sustain that argument. There is no evidence to suggest any concordance between the presence of pattern bargaining and the level of unemployment or the productivity growth rate across OECD countries.

I want to briefly mention the question that has been raised about cooling-off periods. We only have to look at the inconsistency of the arguments of the government in a number of these areas. The government is obsessed with industrial action in a period when it is totally unwarranted. The necessity to restrict it is not borne out by the facts. Most strikes in Australia are of short duration these days. In 2001, for example, there were 665 industrial disputes involving 225,700 employees. Of these, 512 disputes involving 86 per cent of employees were for two days or fewer. Only 72 disputes involving 12,100 or 5.5 per cent of the employees lasted for five or more days. The decline in working days lost from industrial disputes has continued, with 16 per cent fewer days lost in 2001 compared to the previous years. These figures clearly demonstrate the worthlessness of this bill. A much more important reform would be to grant the commission the power to order parties to negotiate in good faith. That is embodied in the amendment moved by the Labor Party that calls upon the government to put forward constructive proposals to direct the parties to negotiate in good faith. Our amendment also calls upon the Senate to condemn the gov-
ernment for emasculating the powers of the Australian Industrial Relations Commission and for interfering with its discretion.

I want to briefly talk about the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000 before I make some concluding remarks about the Workplace Relations Amendment (Genuine Bargaining) Bill 2002. The issue of promoting secret ballots in industrial disputes is not a new one. I think it was first introduced when Tony Street was a minister for industrial relations in the Fraser government back in about 1975-76. It was heralded then as the answer to all the problems in the industrial relations environment. The truth of the matter is that over 25 years it was a provision in the act that was used very rarely and very sparingly, because neither the employers nor the unions, or the workers for that matter, saw any relevance in it in terms of it making a major contribution to the promotion of good industrial relations. You do not solve or create good industrial relations through that process.

The real answer to what the secret ballot bill is about is the response you get when you say, 'If it is good enough to have a secret ballot, to turn it on'—to use that expression: to turn on industrial action—'why isn’t it good enough to have a secret ballot to turn it off?' The argument is consistently used by the government, by the minister and by people like Senator Tierney that people will be intimidated if you do not have a secret ballot. On the other side of the spectrum, you are quite happy to have workers intimidated when you want to turn industrial action off. Why doesn’t that argument hold true in respect of turning off the industrial action? If you are saying that workers will be intimidated when you want to turn industrial action off, why doesn’t that argument hold true in respect of turning off the industrial action? If you are saying that workers will be intimidated by turning it on, by not having a secret ballot, doesn’t that equally apply in terms of the arguments of turning it off? The reality is that there are no circumstances in industrial relations that warrant nor justify these two bills. These two bills are not about good industrial relations. They have got nothing to do with improving our industrial relations environment. This bill—the same as every other industrial relations bill that has been brought into this chamber by the government over the past couple years—is about creating a double dissolution trigger so that the government can call an early election when it suits it. (Time expired)

Senator MURRAY (Western Australia) (7.42 p.m.)—I rise to speak on the two bills which are being debated cognately—the Workplace Relations Amendment (Genuine Bargaining) Bill 2002 and the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. The genuine bargaining bill follows in the footsteps of proposals dealing with these issues in what was known as the Mojo bill—the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999—and the Workplace Relations Amendment Bill 2000, but there are significant modifications. This now short bill provides for additional requirements for genuine bargaining and for the provision of cooling-off periods in certain circumstances. The bill adds to the existing powers to suspend the bargaining period and seeks to make it harder to obtain access to protected bargaining periods in specified circumstances. Not many people actually look at the detail of section 170MW, which already makes provision for cooling-off periods. The detailed circumstances there are quite considerable and yet have not been used to any great degree.

Collective enterprise agreements cover about one-third of all employees; the rest are on individual contracts and awards. A bargaining period provides statutory protection to persons engaged in industrial action as part of the effort to achieve a new workplace agreement. The fear of manipulated enterprise bargaining, primarily in manufacturing—manipulated so that as a pattern it would revert to industry-wide bargaining—really emerged in the year 2000. The predictions made at the time the 2000 bill was brought before parliament—namely, that the pattern approach of Campaign 2000, as it was known, would result in widespread disruptive and economically destructive industrial action across manufacturing—thankfully, largely proved unfounded.

However, those fears are out and about again. In early 2003, it is expected by some that there will be a further concerted attempt
by the AMWU and other unions to replace genuine enterprise bargaining with pattern bargaining in the manufacturing industry. The unions have already succeeded in lining up the expiry dates of a very large number of agreements for 31 March 2003 and 30 June 2003. Therefore, in all, about 1,000 manufacturing industry agreements will expire in the first half of 2003. Manufacturers and the government believe this national union campaign has the potential to cause considerable damage to the manufacturing industry, including the automotive sector. The current turmoil within the AMWU and the likelihood of an election for the Victorian state secretary of the union in March-April 2003 may increase the risk.

Overall, however, we must acknowledge and recognise—and it is something of which the government is rightly proud—that the level of industrial disputation has been at a historical low. Nevertheless, manufacturing is a hot spot within the areas of disputation and it is a hot spot particularly in Victoria. There are relatively few prolonged enterprise bargaining disputes—a point made by Senator George Campbell. Contrary to popular belief, some of the most protracted bargaining disputes have been caused by employers, not unions, through lockouts. Strikes and lockouts as a part of the bargaining process are not legal unless under protected action circumstances. There have been incidences of unprotected industrial action, some of them very damaging to Australian employers and employees, such as the recent dispute in the vehicle industry in relation to employee entitlements. Once again, that is an issue that many people do not recognise—the distinction between action that takes place that is unprotected and can be damaging, and that which is protected.

It is important to note that strong criticism concerning industrial disputation often relates to unprotected action disputation rather than to protected action disputation, which is what this bill deals with. It is possible that, of days lost in disputation, a significant but to date unknown—the department told us that it is unknown—proportion of days lost are actually lost in unprotected industrial action. Very heavy penalties are already in the law to address unprotected action; if they are not used, it is hardly the fault of the law.

This bill addresses protected action processes and one must ask whether the genuine bargaining changes proposed are necessary. One way of looking at the bill might be that it proposes nothing new. There are already genuine bargaining provisions and there are already cooling-off provisions. So the bill seeks to improve the powers and intent that already exist within the act. On the issue of the termination of bargaining periods, it is important that unions and employers do not manipulate bargaining periods to prevent effective bargaining. Bargaining in good faith—in other words, genuine bargaining—is essential, and the Workplace Relations Act may need some further emphasis here. One of the difficulties we see with the act, and I have been interested by the Labor Party amendment, is that the issue of genuine bargaining is not properly defined. The attempt to reintroduce good faith definitions may in fact address that issue and improve the capacity of the act to put some emphasis to both employers and employees as to the nature of genuine bargaining they should undertake.

On the issue of cooling-off periods, as I said earlier, workplace relations sections 170MW and 170MV do provide such a mechanism at present, and the Australian Industrial Relations Commission can suspend a bargaining period where parties are not genuinely negotiating, are causing significant damage to the economy or have failed to comply with directions. The latter two of those areas are quite easy to address in a policy sense, because submissions can be made in terms of substantial damage to the economy and, obviously, failure to comply with directions is a straightforward issue. But the issue of not genuinely negotiating has been an area of some greyness and, once again, I return to the need for greater definition and guidance from the Industrial Relations Commission.

It is important that the parties continue to feel pressure to genuinely bargain in good faith at the enterprise level and to ensure that coercive or mischievous manipulation of bargaining periods, as Munro J. felt moved
to restrain, do not occur. You will hear a bit about Munro J. during this debate, because his judgment has an important contribution to the matters at hand. He felt no limitation on the ability or the capacity of the Industrial Relations Commission to effectively deal with the matters in this bill under current law. It is important to note that. I refer senators who would like a full exposition of some of my views on this matter to the May 2002 Senate Employment, Workplace Relations and Education Legislation Committee report into five bills.

The second bill that I wish to deal with in this contribution to the second reading debate is the secret ballots bill, as it is known—the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. I emphasise that, when I heard the earlier exchange in which there were some rather low voiced interjections from the coalition side about intimidation, the difficulty we all have is that allegations of intimidation are, by and large, anecdotal.

Senator Ian Macdonald—That’s what intimidation’s about.

Senator MURRAY—you sound like you are an expert, and I am sure you do not mean that, Senator Ian Macdonald.

Senator Ian Macdonald—if you are being intimidated, you are not likely to get direct evidence of it, are you?

Senator MURRAY—I will take that interjection. One of the reasons I draw the attention of the other side to this is that the department actually made some precise remarks in the Hansard—and I refer the minister to those remarks by the department—which clearly indicate that they were not suggesting that there was intimidation; they merely thought that protective devices were necessary in the act in case there might be instances of intimidation. So I must stress that intimidation is not something on which there is a great deal of obvious evidence. But I bow to the minister’s experience in these matters and my own, and I know the point he is making.

This bill is the coalition’s third attempt to make access to protected industrial action for enterprise bargaining under the Workplace Relations Act contingent on there being a ballot of the employees involved. The Commonwealth would pay 80 per cent of the ballot costs—obviously those would be the applicant’s ballot costs. Longstanding coalition policy is to require secret ballots for industrial action, particularly for strike action. This bill is a much less aggressive version of its two predecessors: the 1999 Mojo bill, to which I referred earlier, and its softer successor in 2000. However, this bill’s technical requirements are overly complex, prescriptive and onerous. There is also no general evidence of intimidation in union meetings called to initiate protected industrial action that would justify such a sweeping change across all unions. However, there have been strong allegations that in particular industries and particular unions there is evidence of intimidation. A more targeted or selective approach to secret ballots with Industrial Relations Commission attention to unions or industries where intimidation is more likely would be less onerous, less costly, more effective and would be relevant in the areas where it is truly needed, but this is not the government’s approach. The government has taken a broad-brush approach. Sections 135 and 136 of the WRA respectively already have provisions that allow the commission to order a secret ballot or for union members to make an application for the Industrial Relations Commission to conduct a ballot. And, of course, elections for union officials are by secret ballot. The startling statistics in this area, though, are that despite the IRC having this power only 12 orders have been made in a period—that is since 1997—when over 30,000 applications were made for a bargaining period, so it is very, very seldom employed.

At the hearing into this bill I discovered to my great surprise—and I suppose I should be a little concerned that after so many years at this game I did not know it, but I did not—that most unions do not have secret ballot provisions for industrial action in their own rules. Missing, therefore, from the industrial relations scene is a means for union members to ask for a secret ballot to be conducted by the union at their members’ request. Unions at the hearing, including the AMWU, said they had absolutely no objection to secret
ballot processes by a union for their union members. The law provides that a union member can go to the Industrial Relations Commission and ask for a secret ballot but they cannot ask their own union under the union rules for a secret ballot. That seems to me to be a real omission and a real problem.

The Australian Democrats' policy is that we believe there is a legitimate role for unions in protecting the interests of workers who wish to be represented by them and in moving to improve the internal democracy and accountability of unions. We have always supported the democratic protections afforded by secret ballot processes. If we take the view—which we do—that secret ballots should not be generally or universally mandated, we certainly would also take the view that secret ballot provisions should be within union rules.

Protected action provisions apply when an enterprise agreement is being negotiated or renegotiated. The date of expiry of existing enterprise agreements is known long in advance. Therefore, secret ballots for protected industrial action can be planned and executed by the union in a known and manageable time frame. Secret ballots are an important protection for democratic decision making. That is as true of union ballots in relation to industrial action as it is of ballots for the election of union officers. However, when it comes to decision making about industrial action it is important to balance the need for democratic decision making against the undesirability of complex procedures that may limit or delay access to protected industrial action and that may be costly. It seems to me that it is desirable for the law to encourage voluntary secret ballots being available to union members. Such an approach would achieve a better balance. Such an approach would enhance internal union democracy and decision making processes and, rather than imposing additional external hurdles, would allow members to voluntarily access such processes where they wish to. Union rules would be able to provide for a secret ballot of eligible members as part of the process for authorising protected industrial action, but the members themselves would only activate the secret ballot on request and it would not be mandated.

Aside from the very minimal requirements necessary to ensure fairness and accountability to the ballot, unions should be free to determine the sorts of secret ballot rules that best suit their circumstances. If the law simply required unions to have secret ballot rules, you would find that those members who wished to access secret ballots would simply be able to ask their union for that process to occur. When that process occurred, a union would obviously need to advise members before the ballot as to the matters proposed to be dealt with and the general nature of the proposed industrial action—for example, whether there are to be strikes or bans or both. They would also need to notify members and the employer that a ballot had been conducted along with the result of the ballot. Those kinds of simple procedural requirements would be intended to ensure that members have a reasonable opportunity to participate in a vote, to understand the industrial action they are being asked to endorse, and would be informed of the result of the ballot. These requirements could easily be integrated into unions' existing practices for approving industrial action. For example, I understand most unions currently provide some notice to members of any meeting that may consider industrial action. I think there should be no prescribed quorum through the law, although unions could choose to set a quorum through their rules. Each secret ballot should be able to authorise protected industrial action for a reasonable period. I also think that any union which failed to introduce rules should be obliged to adopt Industrial Relations Commission model rules. Those rules would be developed as an alternative for those unions who did not want to develop their own rules. There is also the issue of whether secret ballots should be selectively mandated in certain circumstances, and that is already in place through sections 135 and 136, but I wish to give some further thought to that and I will not address that issue right now.

I want to warn my Labor colleagues that I am concluding my remarks—as I think I might be followed by one of their speakers.
In closing I want to attend to the second reading amendment that Labor has put out. It asks the Senate to condemn the government for:

(a) unreasonably emasculating the powers of the AIRC to resolve industrial disputes in the interests of the parties ... The fact is that the government has been complaining vigorously and vehemently that they have not been able to get through legislation which does such a thing, so Labor is claiming that they have actually achieved what they have not been able to achieve, because of the Senate. Paragraph (b) asks the Senate to condemn the government for

(b) interfering with the AIRC’s discretion to deal with industrial disputes in the most appropriate way; and ...

Once again, I do not think that is true. In 1996 the Democrats supported the Workplace Relations Act. The consequence of that act has been a rise in real wages, a fall in disputation and no real sign that the claim that Labor has made there can be warranted in terms of the performance of the act. Paragraph (c) says that the government should be condemned for:

(c) failing to put forward constructive proposals to enable the Commission to direct parties to bargain in good faith”.

I think Labor has a point there, and I will be interested to debate the Labor amendment when it comes up. From my coverage of their second reading amendment, my Labor colleagues will have learned that I will not be proposing that we support it.

Senator BARNETT (Tasmania) (8.01 p.m.)—I rise to speak on both the Workplace Relations Amendment (Genuine Bargaining) Bill 2002 and the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. At the start, I would like to acknowledge the contribution of Senator Andrew Murray, my colleague on the Senate Employment, Workplace Relations and Education Legislation Committee.

Senator McGauran—He is a Rhodes scholar.

Senator BARNETT—He is, and he has made a valuable contribution to that committee. No doubt, some of his contribution will be noted by the government, in particular his comments regarding the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002.

Firstly, I want to address my comments to the Workplace Relations Amendment (Genuine Bargaining) Bill 2002, and then I will address my comments to the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. This is the government’s third attempt to address these long-held concerns that we have had about the threats caused to jobs by pattern bargaining campaigns, primarily by the unions.

Senator McGauran—It is intimidation.

Senator BARNETT—Intimidation is part of what the government is trying to address in this legislation.

The bill amends the Workplace Relations Act in three main areas: firstly, to give guidance to the Australian Industrial Relations Commission when it is considering whether a party is not genuinely trying to reach agreement with other negotiating parties, particularly in cases of so-called pattern bargaining; secondly, to empower the commission to make orders preventing the initiation of a new bargaining period or attaching conditions to any such bargaining period where a bargaining period has been withdrawn; and thirdly, to empower the commission to order cooling-off periods in respect of protected industrial action to facilitate resolution of the issues in dispute. The government believes that the Workplace Relations Act should explicitly provide for a cooling-off period by amending the current provisions for the suspension of bargaining periods. Explicit provision for cooling-off periods will allow the opportunity for parties to resolve issues directly or with the assistance of voluntary conciliation and/or mediation and will have particular value in cases of protracted action or where a stalemate has arisen.

The main parts of the bill are designed to force the unions to try to reach genuine agreement with an employer before they can strike, particularly in cases of pattern bargaining, as I have said, and to help the AIRC to order cooling-off periods where there is a protracted dispute. In the report of the Em-
ployment, Workplace Relations and Education Legislation Committee, of which I was a member, we made it clear that the bill is designed to reinforce the emphasis on enterprise bargaining in the act. We noted that since the 1990s there has been general support for a move towards decentralised enterprise level bargaining, and that shift has happened at both a state and federal level and has been endorsed by all political parties in the past. In its submission, the Department of Employment and Workplace Relations wrote:

Whilst differing approaches were advocated, the need to make enterprise agreement-making part of the system was endorsed by both major political parties, all major employer associations, the ACTU and the majority of individual unions. The widespread acceptance of this need for change reflected the fact that in the more competitive and open international economy that emerged in the 1980s, the capacity for Australia to maximise its economic growth, employment opportunities and living standards required a more flexible labour market.

That is what we are looking at here—a more flexible labour market.

So those 1996 workplace relations reforms broadened the range of agreements available, including agreements for both union and non-union collective agreement making at the enterprise level as well as individual Australian workplace agreements. I note warmly that the Democrats supported that legislation in 1996, and Senator Murray indicated that it resulted in a rise in real wages and a fall in disputations. Isn’t that the sort of outcome that we are looking for in this parliament and in this country? That is what we are trying to do and that is the intent behind this legislation. They are very good outcomes to achieve and we are determined as a government to achieve those outcomes. We will not be swayed by distractions from the opposition parties or elsewhere—in particular, from the union movement.

There are more than 41,000 collective agreements formalised in the federal system, and over 1.3 million employees covered by the federal wage agreements. The government has expressed concern that the gains associated with enterprise bargaining are being placed at risk as a result of attempts by some elements within the union movement to return to industry level bargaining through a process known as pattern bargaining. Pattern bargaining is the process whereby a negotiating party attempts to negotiate across a range of workplaces but does not genuinely bargain at the enterprise level.

I am not going to go through and cite all the different examples we have had with the AMWU and Mr Doug Cameron, because my colleague Senator John Tierney has done that very well earlier in this debate. He has outlined the examples where this is happening throughout Australia, including examples of the loss of productivity and the downward pressure on real wages as a result of that unfortunate behaviour. In the committee that I was involved with, the majority argued that those reports provide further support for the bills in order to protect and preserve the benefits of enterprise bargaining, including higher productivity and improved wages and conditions, because that is a result that we are all seeking. I hope that this parliament and this Senate do in fact support that outcome.

A major difference between the Workplace Relations Amendment (Genuine Bargaining) Bill 2002 and its predecessors is that, in this bill, the emphasis is on the conduct of the negotiating parties in the workplace. The commission will retain its discretion to suspend or terminate the bargaining period where it concludes that the negotiating party is engaging in non-genuine bargaining. What could be more simple and fair than that? Why would members of parliament wish to oppose such a proposal? The bill draws on a commission ruling in October 2000 in which Justice Munro set down some clear and practical rules for differentiating between legitimate common claims that unions are entitled to pursue and unlawful industrial action in pursuit of industry outcomes. The bill preserves the right of unions to make common claims across an industry, but requires those claims to be genuinely negotiated at the enterprise level. The bill also provides the commission with the power to order a cooling-off period in the case of a protracted dispute.
It is quite clear what we are trying to achieve in this bill. I would hope that those objectives, of increasing real wages and having fewer disputations as a result, can be supported by the entire Senate. Unlike the situation with the 2000 bill, the commission would have the discretion to order a cooling-off period. What is wrong with that? That is a very sensible proposal. Finally, the bill would also prevent unions from withdrawing from a bargaining period and then commencing a new bargaining period in pursuit of the same claims as a tactic to escape the jurisdiction of the commission.

It is intended to address the misuse of bargaining periods that occurred during Campaign 2000, an industry-wide campaign conducted by elements of the manufacturing unions. Our committee had a lot of very cogent and persuasive evidence against those campaigns, particularly from the Australian Industry Group and the Australian Chamber of Commerce and Industry. They provided the background to Campaign 2000 and Campaign 2003 and the inappropriate action of the AMWU and Mr Doug Cameron and Mr Craig Johnston, who have made it clear that their intent is to use pattern bargaining to end enterprise bargaining within the manufacturing industry. In fact, that was reported in the Australian Financial Review on 17 June 2000.

It is interesting, isn’t it? The ALP cannot deny that when they were last in government they actually limited the right to strike. Strikes were intended as a means of last resort to reinforce a genuine claim for wages and working conditions. It is disappointing that in recent times they have gone against that previously held view. In the past six years, I note, based on research undertaken, that the AMWU has donated over $3 million to the ALP. What an incredibly large amount of money! What is the AMWU’s response to that? Of course they want something in return. This is where we get to the union movement taking complete control of the ALP and the ALP machinery—the organisation itself. That is a sad indictment of those representatives in this Senate.

I come now to the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. I would like to make a few comments about this and some of the views that I have researched of members of the Labor Party and what they say about secret ballots and the role of the union movement in this country. Let me start by saying that this bill is designed to protect jobs by ensuring democracy. That is what it is all about: democracy and having a secret ballot. Who could be opposed to that? I came into this parliament after having been an advocate for small business for a long time and, when I became a member of this committee and got involved with it, I became very concerned. I thought, ‘Why would people want to oppose a secret ballot for such action?’ Senator Murray in his comments has noted that the union movements themselves have secret ballots for delegates to certain positions, yet they are not supporting secret ballots in this legislation. The bill requires a secret ballot to be held prior to the taking or organising of protected industrial action. The commission must oversee the ballot process. That sounds fair and reasonable. The introduction of secret ballots as a precondition for protected industrial action is designed to ensure that employees who will be affected by protected industrial action are fully consulted in the decision and that the decision is based on a democratic process. Why would you want to oppose this?

In outlining the value of the secret ballot process, the Department of Employment and Workplace Relations quotes Professor Niland. He says:

Concerns are frequently expressed regarding the need for secret ballots, before industrial action is taken to ensure that members can exercise a democratic right.

That is what we are talking about: democracy. He goes on:

The view is often expressed that the silent and timid majority are outvoted by the industrially militant where open or no votes are taken before industrial action.

I had some interjections earlier tonight that we are talking about intimidation here by those in the union movement. We are trying to protect the views of the silent majority so that they are entitled to put their points of view. Secret ballots are designed to support,
encourage, help and protect the workers’ rights. Those who would be most affected by going on strike will have an unfettered say about whether they want to do so. Again, what is wrong with that? The problem is that unions have put jobs second; they have put unions first. They have put the unions in front of Australian jobs and Australian workers. They are shunning democracy, because the unions have got a total stranglehold over the ALP and its internal processes. They are denying a fair say to ALP members and giving an unfair say to the unions. Let us just have a look at some quotes from some of the ALP representatives in this parliament. Robert McClelland—obviously, he had a previous career as a union advocate and that may have clouded his judgment—was quoted in the Sydney Morning Herald on 30 November 2001 as saying:

I made a lot of money appearing in trade union election inquiries. It’s easy to challenge a ballot ... it would open our industrial relations system to this sort of attack. It would neuter the ability of unions to engage in collective bargaining ... because unions can no longer seek an arbitration of their claims ...

What a great quote! Thank you very much to Robert McClelland. The Labour movement in Britain has actually had the courage to implement secret ballots, so why would they be opposing it here in Australia? In the UK, Tony Blair had the courage to stand up to the unions, and he introduced one vote, one value within his own party. He introduced democratic principles in the workplace. He told the Trade Union Congress back on 9 September 1997:

Better to let a ballot decide the issue rather than an industrial dispute which is the present law ...

We are not going to go back to the days of industrial warfare, strikes without ballots, mass and flying pickets and secondary action. You do not want it, and I will not let it happen.

The opposition leader, Simon Crean, does not appear to be interested in standing up to the unions. Let us compare Mr Blair’s courage in standing up to the unions, which previously controlled his party, to that of the Leader of the Opposition. On 25 November 2001, Simon Crean confidently predicted in the Australian Financial Review:

The influence of the trade unions necessarily has to wane.

Two days later, he attended a closed door meeting at the ACTU headquarters, and I wonder what happened behind those closed doors! My word, if only we were flies on the wall, then we could really see the ins and outs of exactly what happened at the ACTU headquarters. Sharan Burrow could tell all. After that meeting, Simon Crean emerged to declare:

I’m not Tony Blair, and I won’t forget where I come from ... I’m not interested in the Third Way.

Simon Crean says this because influence in the Labor Party is bought and controlled by union money. As I have said, $3 million from the AMWU has been donated to the ALP in the past six years. That is a lot of money. Australian workers would be shocked to hear that sort of information. And there is more. Simon Crean should consider Tony Blair’s advice given in a speech on 9 September 1997:

Modernise your political structures as we have done in the Labour Party. The country actually knows that influence with this Government and with me is not determined by anything other than the persuasiveness of your argument. That is the right way and it is the truth. The old ways of the Labour Party were the resolutionists, the committee rooms, the fixing and the small groups trying to run the show. That has no future.

Goodness me! Surely that is good medicine, a good lesson and good advice to the Labor Party of today. What does Mr Crean come up with? He says:

... I believe we need to change from 60:40 to 50:50 because we have got to deal with the perception issue of that.

Perception issue? Is that all that he is wanting to deal with? What about the Australian workers and the Australian people who need jobs? Neville Wran said on 26 May 2002:

Fifty-fifty, sixty-forty ... it doesn’t matter a tinker’s cuss.

That is a symbolic thing. Who is the boss in the Labor Party? Neville Wran was reported in the Sydney Morning Herald on 27 May 2002 as saying:
No perhaps, no maybes, they—
the unions—
are untouchable. As far as some people are con-
cerned, and I am one of them, no trade unions, no
Labor Party.

Goodness me! You cannot get a situation any
more black and white than that. But it seems
to me that Mark Latham has the facts right.
On the Sunday Sunrise program on 25 No-
vember 2001, Mark Latham said:
... we have to face the reality that union coverage
in the workforce has fallen to just 25 per cent.
But unions still have 60 per cent of the delegates
at our conferences, so it’s pretty clear that 60
doesn’t go into 25, 60 doesn’t go into 25, and
there will have to be some adjustment, so we’ll be
making those adjustments.

You can see that this is a real concern, par-
ticularly in Tasmania, where we really are a
small business state. We have over 50 per
cent of the private sector work force now in
the small business sector. They are delivering
the goods for Tasmania. Over 96 per cent of
all businesses in Tasmania are small busi-
nesses. We as a government are trying to
lower interest rates, lower taxes, cut back the
red tape and free up the industrial relations
system. That is what these bills are all about,
and I hope that the Senate supports them.
We have 23,000 small businesses in Tasmania,
employing 36 per cent of all employees.
(Time expired)

Senator HARRIS (Queensland) (8.22
p.m.)—I rise to speak on the two allied
bills—the Workplace Relations Amendment
(Genuine Bargaining) Bill 2002 and the
Workplace Relations Amendment (Secret
Ballots for Protected Action) Bill 2002. I
will preface my remarks with some concerns
I have about globalisation as it relates to
workers and trade unions that will be af-
fected by these bills. With the onslaught of
globalisation, governments are increasingly
under pressure to conduct industrial relations
offensives. Sections of businesses are de-
manding far greater flexibility in job shed-
ding and the restructuring of working condi-
tions. Undoubtedly, globalisation poses criti-
cal problems for Australian workers and
businesses. Capital moving overseas repre-
sents lost output and trade and unemploy-
ment at home. Foreign investment can be
violated and robs Australia of its sovereignty.
A global labour market allows extremely low
paid workers in developing countries to un-
dercut the wages of less skilled workers in
developed countries such as Australia. The
shipping of jobs overseas is already a reality.
For example, offshore data processing is in-
creasing. In fact, a report from the Depart-
ment of Foreign Affairs and Trade has en-
couraged it.

Business is also a victim, caught in a
global competition trap that forces cost cut-
ting and lay-offs. We are told that we have a
low rate of unemployment—that is, around
6.2 per cent or a total number of 609,400. In
a number of regional and rural areas, the of-
official jobless rate is much higher. In Ather-
ton, which is a major rural centre in North
Queensland, the unemployment rate stands at
8.9 per cent. In Mareeba, my home town, the
unemployment rate is nine per cent. The
Australian Bureau of Statistics defines an
employed person as someone who is doing
paid work for at least one hour a week. The
real unemployment figures would be even
higher if the definition of ‘employment’ was
not so narrow.

To address the problem, the government is
turning to trade. Trade between the industrial
countries accounts for the bulk of our export
production. However, as WTO trade liberali-
sation measures are put into effect, coupled
with the elimination of controlling the
movement of capital, the already intense
competition for markets is likely to heat up.
For workers, the phenomenon of globalisa-
tion is changing the whole structure of their
contractual relations with their employers. It
is also changing the role of the government,
and thus the tripartite relationship between
government, employers and unions. As a
result, unions face the challenge of finding
ways to ensure that the protections for work-
ers are upheld. They must bargain with em-
ployers who are less interested in standard-
ised collective agreements that fit into stan-
dardised systems of production. These are
the driving forces behind the bills that are
before us today.

I turn now to the genuine bargaining bill.
This bill represents the third attempt by the
federal government to reinforce the princi-
amples of enterprise bargaining and to ensure that access to protected industrial action—that is, the right to strike—is limited. In certain circumstances, there is genuine bargaining at an enterprise level. The bill attempts to provide guidance to the Australian Industrial Relations Commission when it is considering whether a negotiating party is genuinely trying to reach an agreement with other negotiating parties. It allows the commission to exercise its discretion to suspend or terminate the bargaining period if it concludes that the negotiating party is engaged in non-genuine bargaining. The Australian Industrial Relations Commission will be required to consider a number of matters when determining whether a negotiating party is genuinely trying to reach an agreement. These include whether the conduct of a negotiating party could be described as ‘pattern bargaining’ and whether the party is refusing to meet with other negotiating parties.

What is pattern bargaining? Pattern bargaining occurs when a single union bargains major issues with a single major employer and that agreement becomes a template for negotiations with other employers in the same industry. Pattern bargaining is the primary strategy to maintain generally uniform collective bargaining agreements with groups of employers within an industry and across all industries. Bargaining strategies help to maintain and improve stable employment conditions for working people. In pattern bargaining, union A might compare contracts negotiated with union B and come up with ways to solve particular workplace problems. A few typical ‘pattern’ contractual provisions could be health, safety, protection, grievance and arbitration procedures, retirement benefits, wage rates and other aspects of take-home pay.

The genuine bargaining bill will have the effect of prohibiting common claims which are a normal component of bargaining engaged in by employers as well as unions. Both unions and employers engage in pattern bargaining, including when they seek to introduce industrial best practice. In reality, certified agreements within a particular industry may be very similar, although negotiated individually at the workplace level. This may arise through some employers and employees agreeing to pay and receive an industry standard or the ‘going rate’ with regard to wages and conditions of employment. Even when a union lodges a claim, it can be the case that the employer will point to industrial precedent and practices as a defence or counterposition to what it perceives to be an excessive claim from its employees and their representatives. Concerns regarding the recruitment and retention of employees may inhibit employers from deviating too far from the industry standard.

In his second reading speech, Minister Abbott argued that this legislation is an attempt to enshrine the principles enunciated by Justice Munro in his Campaign 2000 judgment—that is, the metals case. In fact, there appears to be no need to enshrine the powers of the commission. The metals case clearly reinforces the fact that the commission already has the power to exercise its discretion in relation to whether or not a particular set of facts and circumstances in a particular case meets the test of genuinely trying to negotiate an agreement.

I point out that, once certain aspects of the commission’s powers become the subject of legislation, those powers could be slowly whittled away. Of course, this is in line with the government’s instructions from the International Monetary Fund. As I have previously pointed out—and I will continue to point out—the IMF is behind the Liberal-National coalition’s attack on trade union power. The IMF has urged the federal government to address residual inflexibilities in the wage bargaining system which it purports were caused by union power and the award system. A more likely explanation is that these problems have been caused by globalisation, as I pointed out in my introductory remarks. The most recent report of the IMF reinforces its attempts to attack labour relations. The latest articles of agreement, drafted by the IMF and issued last week, recommend the establishment of a single, national labour relations system and a diminution of the award system in setting minimum wages.

Once again, with this bill we see a piece of legislation before us with terms very
broadly defined and with definitions that are open to interpretation. In the proposed new section 170MW(2A), the word 'conduct' is not defined. ‘Conduct’, which indicates an intention to do something, is very broad. As the Australian Education Union and National Tertiary Education Industry Union pointed out in their submission to the Senate Workplace Relations and Education Legislation Committee inquiry into these bills:

There need be no evidence of actual deeds by the union or its members constituting the impugned action—a state of mind is sufficient, hence the use of the word “intention”. “Intention” goes well beyond the actual implementation of a particular strategy or tactic, and would probably include even the verbal promotion of such a strategy or tactic.

As the ACTU has pointed out in its very comprehensive submission to the Senate committee, there are no industrial circumstances to justify the Workplace Relations Amendment (Genuine Bargaining) Bill 2002.

I am sure, if there were such circumstances, we would have heard the minister shouting from the rooftops by now.

I will make some comments on the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. At present, protected industrial action—that is, the right to strike—is available under the Workplace Relations Act to employers, unions and employees, but only where the parties are negotiating an enterprise bargaining agreement, referred to as a certified agreement under the act. The bill seeks to amend the act, adding approximately 35 pages. The bill will establish preconditions for the taking or organising of protected industrial action by employees and their representatives or employers. Under this legislation a secret ballot will have to be held before a union can strike.

The bill restricts the workers allowed to vote in the ballot. Where a union makes an application for a secret ballot, only union members whose employment is covered by the proposed amendment would be entitled to vote in the ballot. Where employees seeking a non-union agreement apply for a secret ballot, all employees are entitled to vote in the ballot. Employees covered by an Australian workplace agreement under which the normal expiry date has not passed would not be entitled to vote. If the union is the applicant for the secret ballot and there are non-unionists present in the work force, then the non-union members are denied a vote. Only those eligible to vote could take industrial action.

The Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 reduces the right of workers to take genuine industrial action. Industrial action would be protected only if at least 40 per cent of the eligible voters participated in the ballot and if more than 50 per cent of the votes cast were in favour of the proposed industrial action. This procedure could result in only a small number of employees in a secret ballot determining whether to take industrial action. The ACTU has provided two examples of how this requirement may disadvantage both union and non-union members. The examples involve workplaces of 100 employees. In the first, 49 employees vote in the ballot—all in favour of the strike action. In the second, 50 employees vote—26 of them in favour of action. In the first example, strike action would not be authorised; in the second, it would, even though it would appear there was substantially more support for the strike in the first example. Another example is again in a workplace with 100 employees. Out of the 100, 70 are union members and 30 are not. The union applies for a secret ballot. Only union members may vote, and 30 members vote in a secret ballot. Of those votes cast, 16 are in favour of industrial action. Under the proposed provision of the bill, strike action would be authorised, even though only a small number of employees affected by the agreement actually determined the outcome.

I point out that secret pre-strike ballots are already available when requested by employees under section 136 of the Workplace Relations Act. It is also possible under section 135 for the commission to order that a secret ballot be conducted if it considers that this would be helpful in resolving a dispute, if the industrial action is pending or to ascertain whether an agreement has been genuinely made. The bill removes the discretion of the commission to order a secret ballot under section 135(2B) in cases of un-
protected industrial action. This would encourage employees to respond to such action in a legalistic manner, thus further promoting the antagonistic, costly and litigious framework, as opposed to encouraging the use of the commission's processes to resolve the dispute that has given rise to the industrial action in the first place.

Another problem with this legislation relates to the cost of secret ballots. New section 170NBF provides that the applicant for a ballot order is liable for the cost of holding the ballot. This seems to be an unfair imposition upon those who want to strike—both those in a union and non-union members. If the government determines that secret ballots are to be conducted without any other allowable options when industrial action is taken, then the government should pay for the secret ballots. There could also be a difficulty where there are many employees represented by different unions. For example, construction sites are multi-employer workplaces and one employer in the construction industry may have employees spread across numerous sites at any given point in time. It would be very difficult to attempt to enforce legislation in the construction industry that has been designed with a fixed, single-employer workplace in mind.

One unintended consequence of the bill, if it is passed, will be that, whenever a strike is called with the support of a government imposed secret ballot, the strike will enjoy greatly enhanced moral force. It will, in a sense, automatically receive the endorsement of Minister Abbott. Does the government wish to establish its own supervised and regulated official union apparatus that will keep the peace and nip any so-called militancy in the bud? The Australian Labor Party have done a deal with the government to support the cognate debate on this bill and the Workplace Relations Amendment (Genuine Bargaining) Bill 2002, effectively stifling full debate on each piece of legislation. Perhaps the ALP would like to consider the fact that similar legislation regarding secret ballots in the United Kingdom proposed at one time to enforce a secret ballot of union membership before unions could make political contributions. I wonder whether the next bill the government puts forward will be called the 'Workplace Relations Amendment (Political Donations) Bill'. There is no evidence of a demand from employers or employees for mandatory pre-strike secret ballots and, considering that the number of industrial disputes has declined significantly since 1996, the bill does not appear to be justified by the level of industrial action or dispute.

One Nation’s policy on this bill is fundamentally different to that of the free-market ideologues. Market based systems of production, exchange and distribution can help to maintain high standards of living for Australia, but only when they operate within a framework of laws and government policies ensuring that society’s goals are not damaged by powerful private interests. Individual workers could be disadvantaged in their relations with an employer unless they are able to call on the collective support of other workers through a trade union. By strengthening the position of employers in disputes with unions and their members, the government is bowing to the pressure of globalisation, the deepening of the global financial crisis and the demands of big business. In the future, world economic conditions may require the removal of all restrictions on companies’ ability to quickly shed labour, cut wages and increase working hours. Australia needs legislation to shield workers from the effects of globalisation and the tumultuous financial markets. Australians need legislation that helps workers and businesses, not legislation that throws them to the wolves. The government, in its industrial relations with people who are employed in the Public Service, insists on being able to do collective bargaining. In other words, in this bill the government is saying to people in private enterprise that employees there will not be able to do collective bargaining, yet at the same time it is saying, ‘We are not willing to negotiate with individual groups of people who are employed in the Public Service.’ I believe that that is the crux of this bill: it is a case of, ‘Do what we say, not what we do.’
place Relations Amendment (Secret Ballots for Protected Action) Bill 2002. I can assure Senator Harris that there was no deal done to stifle debate on this bill or the Workplace Relations Amendment (Genuine Bargaining) Bill 2002. It seemed good common sense to cognate the bills and deal with the second readings and then, when we get to the committee stage, to debate the issues far more fully, as has always been the practice in this place. Of course, one must say that both the bills before the chamber this evening are riddled with the same cynical approach that the government adopts to industrial relations. One can see that its motives are not genuine at all: it is living and acting out its ideological approach to industrial relations. I understand and accept that, and of course the government understands my position. My position is well known. As a former full-time official of the SDA in Queensland for 15 years, as honorary branch president for the last six years and as a delegate to the national council of that union for the last 26 or 27 years, my credentials are well and truly laid before this Senate.

Senator Conroy interjecting—

Senator HOGG—I will not take that interjection from Senator Conroy; it is not a good one at all. If one looks at the second reading speech on the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002, one finds the rhetoric of the spin doctors in the government coming out. In the first paragraph, for example, they say it will:

... enhance freedom of choice for workers and strengthen the accountability of unions to their members.

Of course, that is just nonsense. The operation of this bill will do none of that whatsoever. In the second paragraph they say:

It will ensure that the right to protected industrial action is not abused by union officials pushing agendas unrelated to the workers at the workplace concerned.

If one knows even the slightest bit about industrial relations—the operation of a trade union and going before the people at the workplace and addressing them—one knows that one does not have the option that is outlined in the second reading speech when addressing the people at the workplace in a proper, sensible and reasonable manner. It just does not exist. If you start pushing your own barrow, I have bad news for you as a trade union official: you will not last very long—you will find that you are out of a job.

That is just part of the mythology that seems to pervade this area. We see in the second reading speech the outlandish claim that this bill, if enacted, will stop the abuse by union officials of pushing particular agendas. It will do nothing of the sort. My experience is that union officials do not have that luxury at their disposal. If one looks at the explanatory memorandum, one sees part of the cynicism repeated. The explanatory memorandum says:

The new provisions are intended to ensure that protected industrial action is not used as a substitute for genuine discussions during a bargaining period, and to ensure that the final decision to take industrial action is made by the employees directly concerned.

One might say, just focusing on that, that one can take it out of context, but if one reads the rest of the explanatory memorandum the bias continues against employees and unions. There is a lack of balance in the explanatory memorandum. There is clearly a prejudice against employees and their unions, and the lack of understanding of the bargaining process is clearly shown.

As I said before, I have been a full-time official of the SDA and I am currently an honorary official. My experience in that union, and the experience of the union that has been put to committees of this parliament, has shown that there has been no objection to active participation by workers in the ballot process. As a matter of fact, over a long period of time I have stood before workers and conducted many a ballot myself to ensure that there was proper participation by the workers in the decision making processes. The experience that I have is reflected by submissions that have been put to committees of this parliament by the ACTU. Unions just cannot afford to take industrial action without consultation. The current processes under the act allow this to happen; but, unfortunately, the proposal of the government in this bill loses sight of a balance and it
loses sight of an even-handedness in the process.

If the government were genuine about this piece of legislation, then it would apply this legislation to employers as well. Employers have been prepared over time to take protected industrial action in enterprise bargaining negotiations in the form of lockouts. Lockouts in some cases have had quite an extensive duration indeed. One finds in many of these cases that the employer is a corporation or a partnership. One would think that there should be the same obligation to test, through the democratic processes of those organisations, the views of the constituent stakeholders to find out whether they support the lockout or whether they do not support it. If it is good enough to impose a condition on workers, that same condition should then be imposed equally on the employers. What is good for the goose is good for the gander. If you are going to have a balanced approach to the industrial relations environment, then make it that, but do not pretend it is being balanced by focusing completely and solely on the employees and the trade union movement. It is a misconception that the bad guys are always on the employee side or on the union side. Anyone with any experience over time would find that that just does not hold and is not sustainable. Some of the employers that I have had the misfortune to deal with over time have been inept in their negotiations and have resorted to whatever tactics they could because of the ineptitude they have shown in those negotiations.

Fortunately, the workers that I represented over time in negotiations were never the subject of a lockout. But, if the government were genuine about doing something in this area, it would ensure that the provisions that it is trying to apply to unions and employees would apply to employers. What is to say that the CEO and the boards of major corporations can be laws unto themselves? Why shouldn’t the shareholders of the various companies have a right to a say on whether or not there should be a lockout by way of a secret ballot? Do not purely and simply apply it to the trade union movement or employees; apply it equally to the corporations. If one were to do that, one would see this government run at a rate of knots from the particular piece of legislation that is being put to this chamber this evening.

The bill is basically unnecessary. It serves no genuine purpose and it does not improve the industrial relations environment. It does not enhance the relationship between the employer and the employee. If anything, it tends to focus and make more pointed the differences between the employer and the employee and put pressure on the negotiation and bargaining process—which I say should be avoided at the best of times. There is no doubt that the bill is biased and it fails to promote any real industrial relations. Even with my ideological bent—which is obviously the complete opposite of the government—one cannot in any fair way say that this bill is a reasonable one to be presenting in terms of a lack of bias, a lack of prejudice and, of course, a lack of ideological twist for the sake of the electorate of the government. That is the first bill that is being debated.

The second bill goes to the issue of genuine bargaining. Again, over a long period of time I have run into a number of people acting for and on behalf of major companies in negotiations. I have found that some of them have exhibited not the slightest intention of genuinely bargaining when it has come to the enterprise bargaining process. They have tried to frustrate the negotiations at every turn to ensure that they failed. Some of these people with whom I was negotiating were doing so, I am sure, without the approval of their superiors. Some, obviously, were doing so in concert with their superiors and with their full knowledge. But, having said that, what we have here is a government whose ideological disposition is a complete and utter nonsense. Those are the only words one could use for it.

Take the union that I have been associated with, the SDA. In its submissions to committees of this parliament, on a number of occasions the union has gone through the bargaining processes that it has been involved in. In one case, back in 1998, the SDA served a letter of demand and a log of claims on approximately 35,000 employers. There is nothing strange about that. It is not an everyday occurrence within the SDA, but
it mirrors the type of industry that the SDA operates in: the retail industry. There are literally hundreds of thousands of employers out there, and the process requires that when a log of claims is served it be served on all of those employers. Under the genuine bargaining bill, the mere service of that letter of demand and that log of claims could be construed as pattern bargaining because of the common claims involved in the log of claims. It would make a nonsense of the industrial relations system if a union acting in a responsible manner to represent its members and protect their interests by serving a legitimate log of claims on employers—in an industry which exists across the country—found itself impeded by the claim that this was not genuine bargaining.

The union, of course, can pursue a number of issues in a log of claims. It can pursue legitimately the issue of wages. One finds that even employers keep an eye on each other very closely to ensure that one does not outbid or underbid the other. If anyone is looking for consistency of outcomes across the spectrum in a set of enterprise negotiations, it is the employers who act jealously—one could even say in some instances they collude with each other—to ensure that the outcome does not differ from one employer to the next. A legitimate log of claims served by a union can include things such as parental leave for casuals, maternity leave for people beyond the 12-month period—as my colleagues put in the submission—paid family leave, paid prenatal leave, and rostering provisions regarding employees’ family responsibilities. At the end of the day, issues such as those will be determined on a single enterprise, single business basis.

I know that a number of years ago the SDA pursued the issue of family leave. Whilst it was common to the various logs of claims—and therefore one might say that it was an instance of pattern bargaining—the outcome with the various employers was never one and the same; there were variations. Some employers rejected the claim outright, while others were prepared to accept it. The union was putting forward a legitimate claim and a legitimate issue, but it was up to each single business to agree to the outcome. Of course, the union has also had experience with multiple-employer agreements. That has suited the employers in the industry. It is a diverse industry but nonetheless one where segments of the industry can be prepared to negotiate together. For example, small retail grocers, small shops involved in the fashion industry and small hardware shops find that there is a degree of purpose, a degree of efficiency and a degree of effectiveness in being able to bargain collectively and achieve the same outcome across a sector or part of the industry.

The concept of pattern bargaining that the government is sponsoring on this occasion is undoubtedly an attempt to defeat the possibility of employees engaging in any form of protected action. That is what it is about. We are dealing with people who are not on the highest salary rung in this country by any stretch of the imagination. We are dealing here with reasonably low-paid, low-income people, people who invariably have to make ends meet from week to week; yet the government is putting forward a bill that more or less portrays them as criminals because they are seeking basic rights that have been achieved across an industry or across sectors of the industry which the employer competitors are not prepared to concede as they know that, if they step outside the basic parameters of the negotiations, they will be out of step with the industry, they will be at a competitive disadvantage and they will more than likely go out the back door very quickly.

I note that my time is just about up, so I want to sum up by looking at the SDA national union’s conclusion in their submission on this bill. I think this sums up the position very well indeed. They stated:

It is clear, in the Association’s view, that the “pattern bargaining” proposals are not designed to bring a degree of equity or fairness into the bargaining process. Rather the proposals are designed to skew the bargaining process totally in favour of those employers who do not wish to bargain with unions and to prevent unions from exercising fundamental rights to take protected industrial actions for the purposes of pursuing genuine, collective bargaining arrangements with employers.

That is what it is about. It is not about fairness, equity and balance; it is about bias and
peddling the old prejudices that have harboured this government over a long period of time.

Senator NETTLE (New South Wales) (9.01 p.m.)—I rise to speak against the Workplace Relations Amendment (Genuine Bargaining) Bill 2002 and the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002—bills that the Australian Greens recognise as clearly the latest round of the government’s attacks on unions and working people. I enjoy the opportunity to speak about the role of trade unions and to recognise that they play a vital role in our economy and in our society. I would much rather have different conditions in which I was able to get up and speak about the importance of trade unions, but I fear I will have countless opportunities to do so in similar conditions given this government’s relentless wave of attacks on the rights of ordinary working Australians and their families.

We saw this first wave of attacks on unions and workers when the Howard government came into office in 1996. This was of course in the form of the Workplace Relations Act that passed through this chamber with the support of the Australian Democrats. The Workplace Relations Act has been condemned by the International Labour Organisation as a breach of Australia’s obligations under international law. According to the ILO, the act erodes the right to bargain collectively, provides inadequate protection against unfair dismissal, fails to adequately protect union members when engaging in legal industrial action and undermines the principle of voluntary bargaining by privileging certain types of agreements over others. Again according to the ILO, it is also out of step with the global community—a position that this government has shown it is quite comfortable taking on a range of issues at the moment.

This first wave of attacks on industrial relations reached its peak in the form of a direct assault on the Maritime Union of Australia. The Greens were proud and remain proud to be able to join with working families to support the right of waterside workers to collectively bargain in their workplace. The second wave of industrial relations reforms involved attempts to change unfair dismissal provisions. I think it is clear that this government’s ‘wave’ approach to industrial relations has failed. We are now dealing with a third wave of legislation which also appears doomed to failure. The Greens intend to oppose both these bills, and we hope that the Australian Democrats will support the interests of working Australians and also oppose this legislation.

We must remember that these waves of the government’s so-called reforms of the industrial relations system have also failed to deliver on their own terms. They were meant to be the basis of a comprehensive revolution in industrial relations which would take us back to a situation where workers were completely at the mercy of employers. In fact, what has happened is that employers and employees have largely voted with their feet. Rather than abandoning awards, industry-wide agreements and the role of unions, employers have on the whole stuck with a system that is based on the previous system—a recognition that it continues to provide benefits to working Australian families.

This third wave of legislation is all about trying to force change, and these bills attempt to do so by prohibiting industry-wide bargaining and imposing ridiculous requirements on the democratic decisions of unions. As we all know, both these bills would not be necessary if reality had conformed to the government’s ideological vision. In the case of secret ballots, current legislation provides an avenue to resolve problems, and it has not been used because there simply is not a problem.

In relation to the secret ballots bill, under the existing legislation the Australian Industrial Relations Commission already has the power to order a secret ballot of union members or non-union members to determine whether they want to take industrial action. The power is subject to the discretion of the AIRC and can be triggered whenever the AIRC has a concern about the democratic basis of a decision to take action. That this power has not been relevant reflects the fact that there is no problem in the first place and of course that this bill is unnecessary. There
is not only no evidence that union officials are forcing strikes against the will of the membership but also no evidence that rank and file members have used the channels already in the Workplace Relations Act to complain about industrial action. Instead of addressing a real need, this legislation is a transparent attempt to force unions to waste time and money—to force them to be inefficient, slow and unresponsive—and simply make it impossible for them to take the industrial action required by their members. This is made clear by the ludicrously impractical provisions of this bill. It requires that, for industrial action to be legal, the union must make the decision by conducting a secret ballot of union members or non-union employees.

The bill specifies that this ballot must be conducted by post, unless an exemption is granted. This is obviously a slow and unnecessary process. The reality is that industrial disputes change by the hour, and it is no more in the interests of employers than of employees to hold up negotiations while a long and formal process takes place. A stalled negotiation can only have negative effects for worker morale, including the ability to attract new staff and retain existing staff, and for workplace productivity. This legislation effectively ensures that the scale of any dispute or negotiation must be escalated so that it affects all aspects of an enterprise’s functions.

The time frame set up by this legislation would effectively limit the bargaining period for protected action. This artificial and unconstructive time frame is yet another limitation on unions and employers. For what? To meet a need that does not exist. The impracticality of this legislation does not end there. The application of postal ballots to employees from non-English-speaking backgrounds, to casual employees, to contractors and subcontractors or to employees who regularly work on a range of different sites is simply inconceivable. The question of who may and who may not have voting rights would be a whole new area of conflict. In industries such as education and construction—where it is common for employees to move around different sites with some flexibility—workers would end up voting on industrial action on a site they were no longer working on or arrive at a site to find industrial action under way that had been agreed to without their input weeks before. To add to this outrageous situation, the bill requires the union to meet part of the cost of this procedure. So not only does the government want to take away the ability of unions to respond to their members to engage constructively with employers and to resolve issues quickly but also it wants them to pay for the privilege.

The fact that this bill is driven by ideology rather than by necessity is also made clear by the government’s rationale, which is limited to empty words about the abuse of power by unions. I have already mentioned that the behaviour of employers and unions does not support this theory and that the limited use of existing provisions denies it. It is also worth making the simple commonsense point that workers are not forced to go on strike. If a union does not have democratic support for a strike, that fact will very quickly become clear. The decision to strike and the associated loss of pay and disruption to people’s lives is never taken lightly. The mechanisms that already exist for workers to democratically endorse this decision are more than adequate.

The Greens, unlike the government, are committed to democracy in as inclusive and active form as possible. This means democratic processes that are appropriate, not necessarily ones that are bureaucratic, inflexible and legalistic. The gathering together of affected people, with discussion and a show of hands, is a basic of collectivism. It is a time-honoured process that allows workers to genuinely participate in decision making that relates to their workplace. The Greens support this participatory democracy and reject the government’s self-serving notion that democracy is only limited to paperwork and procedures. The Australian Greens will oppose this legislation.

The Workplace Relations Amendment (Genuine Bargaining) Bill 2002 is another piece of redundant legislation, a futile gesture from a government that was once driven by ideological passion. This bill is the gov-
ernment’s attempt to outlaw industry-wide or pattern bargaining. It would be unnecessary if employers were using the provisions already available to undermine this practice. But they are not, and the reason they are not is that industry-wide bargaining is a practice that works for many employers and employees. This reality does not sit with the government’s ideology. Instead of reconsidering whether its vitriolic hatred of unions has led it down a dead end path, the government attempts to bring in legislation to remake the world. It attempts to force, through legislation, a world where unions are hounded out of existence, despite the fact that they clearly play a vital role in our economy and society.

Under this legislation, unions would be denied legal protection for industrial action where pattern bargaining had been undertaken. Although this is not defined, it is implied that pattern bargaining takes place when the claims made on an employer are deemed to be too similar to the claims made on other employers in the same industry. In effect, this legislation would require unions to put in different claims to different employers. It creates an obligation to claim different conditions for workers doing the same job. The principle of equal pay for equal work has been fundamental to industrial relations in Australia for decades and has been widely accepted. This legislation would arbitrarily undermine that principle by attempting to eliminate consistent claims across different firms in the one industry.

As well as the argument of fairness, there is also the consideration of basic practicality. The fact is that employers often prefer to have uniform conditions. The first and most obvious reason employers prefer this is so that businesses can compete in terms of price, quality and service rather than in terms of their ability to crush workers. Without uniform conditions, individual employers are in a position where they have to fight a competitive battle on two fronts: their competitors in the same industry and their workforce. Not all employers sign on to the government’s cutthroat world where there is no consideration of loyalty, skill development or worker morale. Some recognise that to be in a situation of relative industrial harmony benefits both themselves and their workers.

One industry where the benefits of pattern bargaining are recognised by both employers and employees is the construction industry. On any site there may be only one builder but hundreds of subcontractors doing different parts of the job. At the moment, conditions for workers are pretty much identical, regardless of which subcontractor they are employed by. To introduce this legislation and undermine that uniformity is a recipe for industrial relations chaos. On building sites everywhere, people would be doing the same job on different rates of pay—a situation which Australians are simply not prepared to put up with.

Employers acknowledge this situation by negotiating pattern agreements through the Master Builders Association. This is a form of mutual pattern bargaining—in effect, very similar to the old industrial bargaining system in awards. The government’s legislation has changed the rules but not the practice. Employers and employees have been voting with their feet, because employers want uniformity and workers are prepared to stand up for wage justice.

Another consideration that should have occurred to the government, and which has occurred to many businesses, is that battling out conditions on an enterprise by enterprise basis can be a significant disadvantage to employers. In an industry where customers have a great deal of flexibility, being out of action due to a strike while your competitors carry on as normal has major disadvantages. In this case it makes more sense to carry out negotiations across the sector, either formally or informally. An example of this is the transport industry. If one courier or delivery company is out of action because of a dispute over conditions while their competitors carry on as normal has major disadvantages. Businesses are naturally unwilling to put themselves in this position, yet the government is trying to force them into a situation that does not provide any benefits to them. The approach to industrial relations embodied by
these two bills is fundamentally unfair, unsuited to the Australian industrial situation and unworkable. For these reasons, the Australian Greens will be voting against both of these bills, and we urge other senators to do likewise.

Senator CROSSIN (Northern Territory) (9.16 p.m.)—I rise to provide my contribution to the second reading debate on both the Workplace Relations Amendment (Genuine Bargaining) Bill 2002 and the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. Let me say at the outset that certainly these two bills indicate to me just how inconsistent and hypocritical this government’s policy is in relation to industrial relations. If you study the content of these two bills, you will find that what the government does on the one hand is completely different from what it is proposing on the other, particularly in the genuine bargaining bill. These bills attempt to tip the scales of fairness in this country even further in favour of the employers and the bosses. These bills ignore the rights of workers to be genuinely represented by their unions and ignore the genuine work that trade unions and union officials try to do on behalf of their members and the workers in this country.

Let us go first of all to the Workplace Relations Amendment (Genuine Bargaining) Bill. This bill has two clear objectives. It intends to make it harder to obtain access to protective bargaining and it proposes that measures be put in place to make the current process even more difficult than it is. The major target of this bill is the form of industry-wide bargaining referred to as pattern bargaining. The bill seeks not to limit genuine bargaining to the extent that the previous two bills did but to change the rules slightly to attempt to have this sort of bargaining in workplaces constrained by the actions of the Australian Industrial Relations Commission. The other objective of this bill is to confer on the Industrial Relations Commission new powers to suspend a bargaining period for a specified time.

The government has twice attempted to put both of these bills through this parliament. Some would perhaps suggest that it is the third wave. I would have thought a third wave might somehow indicate that the first two bills had been successful and that this was a third attempt to be successful at changing the industrial relations system, but we keep forgetting that this government has not been successful in its two previous attempts in this area of workplace relations.

The government has tried to prevent pattern bargaining and has tried to introduce a cooling-off period. But what occurred on the previous two occasions has now seen the government change its mind and in some ways rearrange the provisions of the genuine bargaining bill, depending on what evidence has been put before a Senate committee, how it now feels it might be able to pursue these bills through this chamber and how it might see itself getting agreement from the Democrats, which will be crucial in these bills being successful this time. The bills that were previously before this chamber obliged the commission to suspend or terminate a bargaining period if certain conditions existed. This bill changes that somewhat, in that it leaves the discretion of the commission intact but suggests or provides guidance to the commission on how this discretion should be exercised.

The other thing that is different is that the bill directs the attention of the Industrial Relations Commission to what the government sees—it is the government’s view—to be the objectionable features of pattern bargaining. A distinction needs to be drawn between the previous provisions, in that in the 1999 bill it was proposed that pattern bargaining be limited in some way without exactly defining the term ‘pattern bargaining’. The 2000 bill defined ‘pattern bargaining’ but went on to say that common claims could not be made—common claims were in fact prevented—across the work force. Both of those bills were not successful in getting through this chamber. In this bill the government asserts that it would not prevent unions pursuing common claims but it would ensure that the unions bargain genuinely at the workplace. The key essential feature, though, of this particular bill is this government’s failure to understand that commonality across
industries does not always represent a failure to bargain genuinely. We have seen a number of examples highlighting that in the debate this evening.

I turn to what I said at the beginning of my speech about the inconsistency of this government in its policies. We have seen this government push for senior executives in the public service to sign Australian workplace agreements, senior executive contracts, individual contracts or whatever you would like to call them. Not having seen those AWAs, I am sure that each and every one of them would be, if not identical, very similar or have identical provisions. It is interesting that under the legislation that this government introduced after coming into power in 1996 AWAs are in fact secret. They are sent through the Office of the Employment Advocate and they are not publicly exposed or up for public scrutiny. We found in the recent round of estimates this year that employers will now be regulating their own AWAs. So on the one hand we have a bill that seeks to limit genuine bargaining and pattern bargaining and gives the Industrial Relations Commission further powers to explore that, and on the other hand we have a government that is pushing AWAs, which I am absolutely certain would be identical, on its senior executive officers in the public service.

What is crucial to this—and I have not heard any of my colleagues or other senators in this chamber raise this—is that I think a lot of people forget what this government has slowly implemented in relation to higher education over the last couple of years through what has been known as its workplace reform program. I talked about this when the genuine bargaining or pattern bargaining bill was before this parliament two years ago. People should be aware that operational funding was removed from the higher education sector—the 38 universities around this country—back in 1996 when this government came to power. When this government introduced the workplace reform program just under two years ago, that operational funding became available to universities to the tune of about two per cent if universities implemented a workplace reform program. But that meant that the universities in their second round of enterprise bargaining had to commit to at least nine of the 14 criteria that were laid down by this federal government. That is, in order to apply for and be successful in obtaining that two per cent in operational funding, universities had to ensure that at least nine of the 14 criteria that were specified by the government were in any new certified agreements that they were in the process of negotiating. On that happening, the universities then applied for that two per cent. They then had to prove to the Department of Education, Training and Youth Affairs—now DEST, the Department of Education, Science and Training—that they had taken on board nine of the 14 criteria. It did not matter which of the 14, but there was a specification that at least nine of the 14 criteria had to be in that enterprise agreement. If that is not in one form or another pattern bargaining then I fail to be able to say what is.

There is no provision in the bill before us that prevents this federal government from embarking on that process or that empowers the Industrial Relations Commission to examine that sort of requirement by a government such as the federal government. There may well have been a commonality in claims, but there certainly had to be—and it was mandated that there had to be—common outcomes. Every university, if they wanted to get this funding, had to pick up nine of the 14 criteria. In other words, there was a third party intervening in this genuine or pattern bargaining. There is no provision in this bill, though, to disallow that or to ensure that that cannot happen in the future.

The bill before us currently allows the Industrial Relations Commission to suspend or terminate a bargaining period if it is satisfied that the parties are not genuinely trying to reach agreement. The Industrial Relations Commission already has the power to do that. What it must do under this bill, though, is consider whether the conduct of the organisations shows an intention to reach an agreement. As I said, this bill does nothing to improve the current system. This bill changes the situation; it changes the landscape for terminating a bargaining period. It provides the Industrial Relations Commis-
sion with greater powers in order to do that. This bill is misguided and unnecessary. It focuses on limiting and restricting action rather than on facilitating genuine bargaining by, for example, reinstating the need for the Industrial Relations Commission to order the parties to bargain in good faith. There is no suggestion that this bill provides a positive path to resolving any conflict or removing any obstruction to bargaining in good faith on the part of either party. As a trade union official, I have seen many examples where the employer has put obstacles in the way to prevent genuine bargaining from occurring.

Negotiation in genuine or pattern bargaining arrangements in this country is sometimes required. There is a degree of commonality across industries, but that does not mean that there is an absence of genuine bargaining, and that is a key issue that this government fails to understand. Senator Hogg talked about what happens in the retail industry; let us focus on nursing homes around this country. There is an understanding across the industry that what you do in one nursing home would be similar to the requirements you would need in another nursing home, regardless of the state or territory where it is situated. The child-care industry is another similar example, or even the contract cleaning industry, where you would have a union trying to negotiate wage increases and improvements in conditions for these people across a range of industries and a range of different working conditions—casual, part time, contract or even permanent.

Therefore, it does make a lot of sense that there be some form of pattern bargaining—there is a common claim and there would be, to some degree, common outcomes. Again, it does not mean that there would be a lack of intent to genuinely bargain or a lack of goodwill on behalf of the trade union members and officials to ensure that you could get the best possible outcome not only for the people you represent but for that industry. This government continues to confuse the issue of commonality across industries with a lack of genuine will to achieve a good outcome.

These bills refuse to permit or recognise that the Industrial Relations Commission needs to have its powers reinstated to ensure that the parties bargain in good faith, rather than the narrow focus of this bill, which is that of terminating industrial action and the bargaining period when it considers that the actions of the parties may be questionable. It is a requirement in this bill that sees negotiations in this country proceeding in a fairly negative way, rather than providing a positive and broader suggestion that would give the commission powers to instruct that parties bargain in good faith and actually improve the negotiations and outcomes of that workplace.

In the few minutes I have left I want to talk about the bill relating to the conduct of secret ballots. There seems to be a misunderstanding and a genuine intent on the part of the government to perpetuate the myth that somehow industrial action is taken quite easily in workplaces, without much consideration of the impact on either the workers or the workplace, that it is taken without much thought and that somehow it is not taken seriously but at a moment’s notice in order to pursue a claim. It is all bound up in the myth that this government wants to perpetuate about trade unions, their image in society and their role.

In the 10 years or more that I worked for a trade union, I never found that putting to members the suggestion that industrial action be taken was easy. It is not the first course of action that you usually take and, in fact, my experience is that you avoid it at all costs, particularly when we are talking about service industries. I gave the examples before of the child-care industry, education and nursing. Whether it be nursing homes or other services in the private or public sector, they are very good examples of industries where people always put their clients first when having to decide whether to pursue a claim with industrial action. In the education industry, I had at times heated discussions with members at workplace meetings about the fact that members always put their clients first. They always talk about the impact that industrial action would have on the kids in their class and the parents who would need
It is not an easy decision for workers to make that choice, and nor has it been easy under this government. In order to take industrial action under this government you actually have to provide the commission with a notice period. You have to let them know that you are now starting a bargaining period, and that is a process that you must go through. Then, if you want to take industrial action, you need to give the commission notice—I think it is three days notice—that that is the kind of action you are planning to take. So there is already a lot of paperwork bound up in notifying the commission that industrial action will be taking place. This bill requires that somewhere in all of this there will now be a long, convoluted and complicated paperwork process whereby you will now have to make application to the commission to conduct a secret ballot. That ballot would be a prerequisite for gaining authorisation from the commission to take a subsequent protective industrial action.

In finishing, I want to make one comment very quickly. The commission must consider an application for a secret ballot within two days. In the Northern Territory, we do not have a full-time commissioner—that has been taken away under this government. We only have commissioners who fly in and out at request. So the two days for us in the Northern Territory would be totally impractical. But, of course, this is another bill that creates a complicated procedure. This is another bill that is unfair and unnecessary. The commissioner already has the power to suggest that secret ballots occur, if necessary. (Time expired)

Senator MURPHY (Tasmania) (9.36 p.m.)—In speaking in this second reading debate on the Workplace Relations Amendment (Genuine Bargaining) Bill 2002 and the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002, I want to refer to the explanatory memorandum of the main bill, as it was presented in the House of Representatives. Under the heading 'Background', it states:

Under section 170MW of the Workplace Relations Act 1996 (the WR Act), the Australian Industrial Relations Commission is empowered to suspend or terminate a bargaining period (and thus protected industrial action) on a number of grounds, including that a party is not genuinely trying to reach agreement or that industrial action is threatening to endanger the life, personal safety, health or welfare of the population or a part of it, or to cause significant damage to the Australian economy or a significant part of it.

That is in the first paragraph of the explanatory memorandum. Further down the page, under the subheading 'Problem identification and specification of regulatory objectives', it says—and I want to emphasise this, remembering that in the opening paragraph it says that there are a number of grounds on which the Industrial Relations Commission can act:

While section 170MW provides some scope for the Commission to establish cooling-off periods, it generally can only be invoked in defined and limited circumstances, for example when industrial action is threatening the national economy.

This is a contradiction within itself. Either the act caters for certain capacities or it does not. Section 170MW of the act, headed 'Power of the Commission to suspend or terminate bargaining period', says:

(1) Subject to subsection (8), the Commission may, by order, suspend or terminate the bargaining period if, after giving the negotiating parties an opportunity to be heard, it—that is, the commission—is satisfied that any of the circumstances set out in subsections (2) to (7) exists or existed.

When we read those subsections, the act does list—as the explanatory memorandum says—a number of grounds, and it is not limited, indeed it is pretty much unlimited, in respect of how this can be applied. A party to a dispute can make application to the commission and seek the commission to rule as to whether or not the bargaining period should be terminated. The grounds are there. There is not a limit, I would suggest. It is being suggested by the government that, because of the current legislation, there is some restriction; there is no restriction. This is a baseless argument and it is one that this parliament should not be having, because the
current legislation is more than adequate to deal with the problems that may arise in industrial relations.

I will go even further into what this explanatory memorandum says. It sets out ‘Option 1: Status quo’ and ‘Option 2: Provide for cooling-off periods’. In the first paragraph under ‘Option 2’, it says:

In deciding if a suspension of the bargaining period would be appropriate, the Commission would have regard to whether or not suspending the bargaining period would assist the negotiating parties to resolve the matters at issue, the duration of any protected action that is being taken (or has been taken) in respect of the proposed agreement, whether or not suspending the bargaining period would be contrary to the public interest and any other matter the Commission considers relevant.

You could read that to mean anything. In whose eyes is the national interest relevant here? I would suggest that, just with regard to bargaining per se, from an industry point of view there are stronger arguments in support of pattern bargaining than against it.

When I served as a trade union official, it was often put to me by some employers that what I should have been doing was going out there and chasing those employers who were not paying award rates, because that was unfair to those employers who were paying award rates. I would have thought that, in an industry that is national and that may well have manufacturing plants located in various centres or in different states, from an equity point of view it would be appropriate that the costs to those businesses be on an equitable footing. I would suggest that most employers would argue that. In fact I have heard employers in this country argue, from a manufacturing point of view, that one of the difficulties we confront in the global marketplace is the low-cost wages of some economies, and that the reason that a lot of manufacturing has closed down in this country is that we cannot compete with the wage economies that are applicable in some other countries. Why you would want to go about setting up an industrial relations process that could create a similar situation, where some enterprises may have lower wages and lower costs than others, I am not sure. I cannot see that being in the national interest, or in the interest of any national industry. It has certainly never been argued to me by any employer.

This explanatory memorandum, which is really the argument on behalf of the government as to why we need this bill, has no content. It has nothing that would convince any fair-minded person that the amendments proposed here in this legislation are worthwhile. The explanatory memorandum says:

Cooling-off periods can play a valuable role in the negotiation process and would allow the parties, in the specified circumstances, further time to negotiate—

I stop there to say this: workers—and I think this has been highlighted now by a number of speakers in this second reading debate—never, ever take a course of industrial action without very significant cause. Why would they want to take a course of action that denies them and their families their wages, their income—weekly, fortnightly, monthly, whatever the case might be? The explanatory memorandum goes on to say:

Cooling-off periods would also give the parties time to investigate and consider the use of alternative means for resolving a stalemate situation...

I think that is a reflection on both the employers and the employees, frankly. The explanatory memorandum continues:

... for example, with the assistance of voluntary conciliation.

I do not know about ‘voluntary’ conciliation. I would have thought that you either have conciliation or you do not have it; either you get the Industrial Relations Commission to do its job in these circumstances or you do not. If there is a stalemate and if the commission determines that there are problems, as it currently can under the existing legislation, then it can take necessary steps. It can take a course of action. I agree with the ACTU’s view on this, where they have said:

... widening the ability of the IRC to suspend a bargaining period in cases of protracted action ... is an attempt to tilt the balance in negotiations even further towards employers, without giving unions and employees any additional access to arbitration of their claims.

That is true. In reality, that is exactly what this is about. The government sought to introduce this legislation and they have amended it now on a number of occasions.
Despite the fact that industrial relations in this country is working very well, the government see that we still have some powerful unions in place and they need to break that. That is what this is about. There is no reasonable argument to say that we need to finetune the industrial relations legislation to enhance the opportunities for people involved in industrial disputes to conclude those matters in a more amicable and more equitable way. That simply is not the case. There is no argument for that anywhere—not by the existing minister, and certainly not by the former minister. The former minister has developed a bit of a reputation for himself with regard to his capacity to handle the truth in a couple of areas.

I then come to the point about secret ballots. I know this has been said by other senators before, but workers never take lightly the path of industrial action. It is a very difficult issue for workers to deal with, because—as others have said and I will say again—they have to consider themselves and the welfare of their families, because they take a step of denying themselves their normal income. Again, there is the issue of saying that we need to have a secret ballot to bring greater equity; it does not. Any of us who have been involved in industrial relations have been to workplaces and have spoken to workers. I have to say that the only time that some of those on the government benches would have spoken to workers would have been across the industrial relations court benches, and they would have been representing the interests of employers. They have not been out there talking to workers confronted with the dilemma, where they may be being persecuted by their employer, where they may be confronted with an untenable situation, put to them by the employer, and the only course of action available to them is one of an industrial nature—the withdrawal of their labour. It is a difficult decision.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator McLucas)—Order! It being 9.50 p.m., I propose the question:

That the Senate do now adjourn.
tasks the Indonesian officials or others to disrupt people smugglers or their clients? Are Australians involved in disruption activities in Indonesia? What accountability mechanisms are in place in relation to these activities, and what mechanisms ought to be put in place?

The policy of disruption in Indonesia is the untold story of people-smuggling. It is a policy undertaken by the Australian government and funded by the Australian taxpayer, and yet the Howard government and Commonwealth agencies have so far avoided parliamentary scrutiny of this policy. So what is disruption and how does it work? Disruption has been a key element of the government’s strategy to prevent asylum seekers from coming to Australia. Disruption can occur by way of an information campaign, informing people in Indonesia of the dangers or the risks associated with people-smuggling—for example, telling asylum seekers of the dangers of sailing in vessels to Australia or distributing T-shirts to the local Indonesian fishermen that explain why they should not crew people smuggler boats.

Geoff Raby from the Department of Foreign Affairs and Trade told estimates that disruption was:

... collecting information, collecting intelligence, meeting with local police in different areas and local governors, raising the profile of the issue and expressing concerns.

At the CMI committee, representatives from the Department of Immigration and Multicultural and Indigenous Affairs said that the only disruption activity they were involved in was information campaigns—for example, pointing out some of the dangers in travel to potential passengers. And it is unlikely that any reasonable person would have a problem with an information campaign to combat people-smuggling. I certainly do not.

We know that disruption is not only about information campaigns in Indonesia; disruption is also about physically disrupting the people-smuggling syndicates and the asylum seekers who seek their assistance. The AFP have detailed this more active element of disruption. AFP National General Manager, Federal Agent Brendon McDevitt told the CMI committee that, in broad terms, the primary objective of disruption is to:

... prevent the departure of the vessel in the first instance, to deter or dissuade passengers from actually boarding a vessel.

The AFP agreed that there was a whole series of methods that could be used to prevent the departure of the vessel and that it was at the ‘discretion of the liaison officer in Jakarta as to the best method to apply’. There may be disruption of the transport of passengers to the embarkation point, for instance, or the movement of the boat to that embarkation point. AFP Commissioner Keelty confirmed the more active nature of the disruption activities when he said that their purpose is to:

... prevent the departure of a vessel ... either by the arrest or detention of individuals or by ensuring that the individuals do not reach the point of embarkation, if that was known.

It is not clear whether disruption extends to physical interference with vessels. It is not clear what, if any, consideration is given in the planning and implementation of disruption to questions of maritime safety, to the safety of lives at sea.

Channel 9’s Sunday program has recently raised serious questions about the nature of disruption operations in Indonesia. The most concerning of these allegations is that AFP informant Kevin Enniss admitted—indeed boasted—to reporter Ross Coulthart and two colleagues that he had paid Indonesian locals on four or five occasions to scuttle people-smuggling boats with passengers aboard. Enniss claimed that the boats were sunk close to land so that everyone got off safely. But how can we be certain this is true? As a result of the Sunday revelations in February, the AFP have confirmed that Kevin Enniss was paid at least $25,000 by them as an informant. The AFP also admitted that they were aware that Mr Enniss purported to be a people smuggler and on at least one occasion took money from asylum seekers who thought they were buying a passage to Australia. Commissioner Keelty told Senate estimates:

... we knew he was involved in people-smuggling because he was telling us what was going on.
These admissions are not consistent with what the AFP’s Director of International Operations, Mr Dick Moses, said earlier this year. When asked by the *Sunday* program, ‘Has the Federal Police ever authorised any informant to involve themselves in people smuggling?’ he answered, ‘No. That’s categorically no. The Australian Federal Police has not done so.’ This is dancing on the head of a pin. What is the difference between authorising an informant to involve himself in people-smuggling and paying him for intelligence which is known to be gained from his involvement?

The *Sunday* program also put evidence on the record from a number of asylum seekers that Mr Enniss claimed to be an Australian policeman and that he had information about Royal Australian Navy ships which would ensure that their boats would slip the net and reach Australia. Despite the serious allegations made by the *Sunday* program, the AFP is yet to respond. Minister Ellison issued a press release supporting the AFP but not denying the allegations of potentially illegal behaviour by the AFP or its informants in Indonesia. Senator Ellison also rejected Labor’s call for a full, independent judicial inquiry into these serious matters, but he did not indicate whether he proposed to have the issues investigated at all. This is not good enough.

Drought

Senator STEPHENS (New South Wales) (10.00 p.m.)—I would like to begin this evening by congratulating the government on last Thursday’s announcement providing immediate changes to the exceptional circumstances program to assist drought affected farmers. This is a timely breakthrough for rural Australia. However, one announcement is not enough to dismiss months of abandonment—months of politicising the drought in order to attack state governments. I do not seek to detract from the announcement of the Minister for Agriculture, Fisheries and Forestry last Thursday; however, this single announcement is not adequate compensation for the neglect that this government has imposed on rural communities.

On the 14th and 15th of this month, New South Wales Country Labor held its annual conference in Cooma. The conference, which comprises over 200 delegates, provides Country Labor men and women an opportunity to debate current state and federal policy and directions. Without doubt, the most overwhelming condemnation of current government policy was of the Howard government’s total lack of action surrounding the exceptional circumstances claims. Delegates noted the extensive relief packages that the state Labor governments had provided for drought affected communities and yet were baffled at the federal government’s wait-and-see policy on the drought. Thankfully, last week that policy was altered.

Facing drought is an inevitable aspect of a rural Australian existence. A year ago we knew the drought was on its way, and when this drought ends another will, in time, follow it. The key to weathering droughts, as with most instances of hardship in life, is through solidarity: looking past the differences to acknowledge our common threats and goals—in this case, the threat of drought and the goal of assisting our rural communities to survive it. Our state governments acknowledged the drought many months ago and have been working together to combat its devastating effects. Our federal government, sadly, only began to take this course of action last Thursday. This is not a sign of leadership.

Treasurer Costello first played down the issue of drought, claiming that agriculture was only a small part of the nation’s GDP and so any downturn would have a marginal impact on Australia’s economic bottom line. He then changed his mind and went bush, but he avoided visiting any drought affected property, defending his actions by stating, ‘We talked to everyone in all of the towns that we passed.’ He concluded, ‘The areas that we have been through are dry and people are hoping for rain.’ Thank heavens Peter Costello now understands the fundamentals of a drought: it is dry, and people need rain.

It concerns me, however, that the National Party have not been able to convince their Liberal colleagues to deliver for rural Australia. Instead, they were reduced to a media based defence of the federal government, claiming that the reason the federal govern-
ment has done absolutely nothing to assist drought affected communities and farmers in Australia is that the state governments would not help them enough. The Minister for Agriculture, Fisheries and Forestry, Mr Truss, criticised the state Labor governments, claiming that they were playing political games with the drought issue. Curiously, this is the same minister whose media release on 2 September was headed ‘Labor states turn their backs on drought stricken farmers’. That was followed the very next day by another press release headed ‘Farmers scorched by Labor’s media strategy on the drought’. In that particular release, Mr Truss stated:

The new scheme would help to depoliticise the EC process, but Labor agriculture ministers clearly are cruelly set on using farmers as political weapons. They are not interested in good policy.

Of course, Mr Truss’s idea of good policy is to let everyone else do the work. The fact is that it is the state governments that have acted. The state Labor governments put money on the table months ago, and the first sign of action from the federal government came last Thursday.

New South Wales, my home state, is the state worst affected by drought. Thankfully, it has a Labor government focused on helping farmers in drought affected communities. On 18 July in Bourke, the Premier of New South Wales announced a package for farmers in drought for 12 months or more. It included a subsidy for the transport of domestic water, a subsidy for transporting stock to slaughter, the announcement of the drought inquiry hotline, the facilitation of meetings with welfare agencies, a commitment to provide additional funds to rural financial counsellors, the considered deferral of Rural Assistance Authority loan repayments and the announcement that New South Wales Agriculture and the New South Wales Farmers Association would work with the government on exceptional circumstances applications, particularly to gather data.

While this package was being announced to farmers, the federal government sat on its hands and sniped at it. A little over a week later, as the drought worsened, the package was revised: the assistance eligibility rule was revised so that farmers in drought for six months would qualify for assistance, lease payments for farmers on western land leases were waived, Wild Dog Destruction Board fees were waived, $1 million was allocated for an emergency feral pig and fox eradication program in the Western Division, National Parks and Wildlife Service licence requests from drought affected farmers wanting to immediately reduce kangaroos and emus from their properties were fast-tracked, and an investigation into the easing of restrictions applying to B-double trucks on rural council roads in drought affected areas began.

For rural land protection boards that were drought affected for six months, transport subsidies were introduced for the transporting of fodder and water to feed drought affected core breeding stock, for the cost of transporting drought affected core breeding stock to and from agistment and from drought affected properties to slaughter and for the cost of transporting domestic water to assist isolated land holders. These subsidies were then backdated for 11 rural land protection boards. On 26 August, Mal Peters, President of New South Wales Farmers Association, joined the New South Wales government in extending transport, water and fodder subsidies to include core production stock. They broadened the eligibility criteria for the special conservation loans to include dam de-silting, major repairs to stock water systems, piping and storage of stock water and planting of perennial species such as lucerne. This was to help to drought-protect future properties.

On 30 August, in my home town of Goulburn, the package was expanded even further to include 50 per cent transport subsidies for commercial beekeepers. Following this, a drought assistance package to help country businesses through crises was announced. Under this state funded package, country businesses which rely on farm income can apply for payroll tax relief. They can also apply for one-off grants for expert advice on keeping their operations sustainable through the drought.

The list continues: 15,000 copies of the drought booklet ‘Managing Drought’ have
been produced and distributed across New South Wales, drought management field days have been run for farmers in drought affected areas and a fodder database listing supplies of donated fodder or fodder for sale has been launched by New South Wales Agriculture. Last week the Premier announced further concessions, noting that farmers in eastern New South Wales were suffering as a result of a 1,500-kilometre restriction on subsidies for the transportation of fodder. It has now been removed.

Although Victoria is significantly less affected by drought, the Bracks government has also acted to ease the impact of drought on regional Victoria. A seasonal conditions task force has been established to coordinate and communicate the response to dry seasonal conditions facing farmers in the north and north-west. This task force includes representation from drought affected areas, the Victorian Farmers Federation, local governments and state government departments, and acts as a central point of advice for the Victorian government.

In Queensland, the Beattie government has assisted farmers with generous subsidies of up to 50 per cent on the transport of fodder and stock drinking water, the transport of livestock returning from agistment and restocking for producers in drought affected areas. It has provided funding for farm business support for producers in exceptional circumstance areas, while the federal government has provided nothing. In addition, the Queensland government offers interest rate subsidies to non-farm businesses in drought affected areas, recognising the impact drought has on the community at large.

When Simon Crean was the Minister for Primary Industries and Energy, he negotiated the exceptional circumstances drought package framework. He did this when seven of the eight state and territory governments were from the opposing side. He did not play party politics with them and he did not attempt to use the situation for one-upmanship; he sat down at the table and worked out a package for our farmers. It took the Minister for Agriculture, Fisheries and Forestry until last Thursday to do the same.

Recently, Senator Ian Macdonald questioned the veracity of exceptional circumstances assistance claims, asking which claims were questionable and which drought stricken communities begging for Commonwealth support we should question. As a country Labor senator, I am pleased to represent those country areas disillusioned by a National Party unable to stand up to the Liberals and whose impact in the cabinet room is not enough to win support for their constituents. The government are in no position to sit around and congratulate themselves on their recent announcements. They have ignored drought affected areas for so long that they must work extremely hard to reverse the pain. (Time expired)
ing conditions require services to employ qualified children's services professionals to work together with permitted numbers of untrained staff. In the ACT, the minimum qualification is a Diploma in Community Services (Children's Services)—a two-year full-time qualification.

That child-care work is generally so undervalued and held to be low-status work is a sad comment on both government policies and the lack of understanding in the wider community. To avoid closure of centres, and as services find it more and more difficult to attract qualified staff, the ACT Office of Child Care has exempted some services from the qualifications obligations in order for them to continue to operate. But the crisis in attracting and retaining staff does not just apply to qualified staff. Services are reporting increasing difficulties in attracting staff for positions at any level, even when there is no requirement for a qualification. Replacement and relief staff are especially hard to find. The answer is not to lower licensing conditions for qualifications and staff-child ratios. Quality care and education for our preschool children are of paramount importance. The answer is to pay comparative wage rates for professionalism and expertise.

Staff shortages are not the only problem. As well, there is a critical shortage of childcare places. Waiting lists for long day care places, particularly for the care of children under the age of two years, are at crisis point. In the ACT, waiting lists of 12 months or more for a child-care place are common, especially for centres in Gungahlin and in the central parliamentary triangle area. The results of the shortage of child-care places are the inability of services to meet the families' needs for care and lack of flexibility to meet less standard care needs, such as those caused by shift work, rotating rosters and extended hours.

In April 2001, a study of the availability of child care in the central area of Canberra, near Parliament House, was commissioned by the Joint House Department. The consultants, Families at Work, reported that there were no child-care places for children aged under two years in the area close to Parliament House and places for older children were very limited. At that time, the Currawong Child Care Centre, operated by the Department of Foreign Affairs and Trade, DFAT, on the ground floor of its R.G. Casey Building, was accepting enrolments from both officers of the department and members of the public.

Now, however, there is a long waiting list to join the Currawong centre, especially for children in the six-weeks to three-years age group. No new places will be available before January 2003, with 83 DFAT staff and 141 non-DFAT staff—some of them Parliament House workers—on the waiting list. To deal with this demand, waiting list access to the centre will now be restricted to DFAT staff only. Unfortunately, no siblings of children of non-DFAT parents already attending the centre and no children of Austrade staff will now be able to gain access. This further restricts child-care options in the vicinity of Parliament House for those working here. In the past, governments sometimes tried to argue that providing work based child care for public servants would be seen as providing advantages for their own employees that were not generally available in the private sector. Now, with the realisation that work based child care makes good economic sense, government departments are having to play catch-up.

Increasingly, the demand for work based child-care places in the ACT has to be accommodated. The Currawong Child Care Centre, set up by the Department of Foreign Affairs and Trade, is perhaps a good case study of what needs to happen in other Canberra workplaces such as this parliament. With a Canberra based staff of approximately 1,960 located in the R.G. Casey Building, DFAT provided space rent-free on the ground floor of its building with an outside playground attached. The centre is run by Southside Community Service and has space for 65 children ranging in age from six weeks to school age. When the centre was officially opened by the then Deputy Prime Minister and Minister for Trade in October 1997 after a year of operation, the principles expressed could well have been applied to this parliament, which is a workplace of approximately 3,000 workers. Mr Fischer said
at the time that DFAT was an agency committed to assisting staff in balancing work and family responsibilities and to promoting a family-friendly work environment. He said that the provision of work based child care was a practical demonstration of that commitment and indeed that the department recognised that giving priority to the personal and professional needs of its staff was vital in achieving its goal and objectives. Research and experience had shown that the returns to organisations with such initiatives have been worth the investment.

Since then, some new workplace centres have been set up by other departments in the central area of Canberra. The new Abacus Early Childhood Centre opened in the Treasury building in July to cater for the Department of Finance and Treasury employees. It has 79 child-care places and already it has a waiting list, particularly for children under three years of age. Earlier this year, too, the Department of Defence opened its child-care centre at the Russell offices. At last, following another survey of need in March this year, progress appears to have been made in the continuing quest for a Parliament House child-care service—a quest that has been continuing, I would like to point out, since 1981. The final report from Families at Work has been received. The report recommends that the feasibility of various child-care models be developed, with an emphasis on financial modelling, cost to parents and return on investment, to examine the impact of various modes of operation and also that occasional care places should be available in any provision of on-site or near Parliament House child care. I understand from Mr Peter Crowe of the Joint House Department that a consultant will be employed to consider and develop models of possible child care, such as a 42-place early childhood centre within Parliament House or a 90-place early childhood centre within the immediate precincts of Parliament House. I commend this work by the Joint House Department and I urge that the early establishment of a Parliament House child-care facility will assist in easing shortages of places in the ACT generally. It will also particularly assist those with child-care needs in Parliament House.

In an ideal society there would be sufficient child-care places to meet demand. The variety of available services would meet different needs, such as long day care, family day care, occasional care, outside school hours care, holiday care, preschool education and extended hours care. Ideally, too, experienced and qualified staff would enjoy decent comparable wages and conditions, and their work would be recognised by all in society as not only essential but also highly valued. Industry-wide wage increases may finally address inequities in the pay structure of the child-care award, but the real problem is: who will pay? Child-care fees are already so high that, despite the child-care benefit payments, many families, often those most in need of the services, cannot access formal child-care services at all. Without increased government funding or a complete overhaul of government assistance to families, the result will be service closures in areas where families cannot afford fee increases. The remaining services will be accessed only by families willing and able to pay the increased fees.

Parents, families, child-care professionals and the wider community are beginning to come together to lobby federal, state and territory governments on the issue of insufficient and inadequate child-care funding. In addition, a community campaign, which I am proud to be assisting in coordinating, has as its aim the recognition and valuing of the expertise of child-care professionals. The community campaign is made up of parents, child-care professionals, employers in the sector and people in the community who are concerned about the current problems in ACT children’s services. At lunchtime today, parents, children, child-care professionals, employers in the sector and supporters rallied with the aim of pushing child care higher up the agenda in terms of political priorities. (Time expired)

Senate adjourned at 10.20 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:
Indexed Lists of Files

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended on 3 December 1998:

- Indexed lists of departmental and agency files for the period 1 January to 30 June 2002—Statements of compliance—
  - Australian Trade Commission.
  - Commonwealth Ombudsman.


Australian Sports Drug Agency Act—
Australian Sports Drug Agency Regulations—
  - Australian Sports Drug Agency Drug Testing (Scheme A) Amendment Orders 2002 (No. 1).
  - Australian Sports Drug Agency Drug Testing (Scheme B) Amendment Orders 2002 (No. 1).


Telecommunications Act—Determination under subsection 51(1) (No. 1 of 2002).

QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Tasmania: Meander Dam**

(Question No. 230)

**Senator Brown** asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 9 April 2002:

1. (a) How much Federal Funding has been provided, or is proposed, for the Meander Dam; (b) under which programs is it provided; (c) what is its purpose; and (d) what is the breakdown of how it will be spent or has been spent.

2. (a) Who authorised the funding; (b) when; and (c) what information was provided to justify the expenditure.

3. Is it true that on-farm dams are a cheaper option for irrigation than construction of the dam.

4. (a) What analysis supports the economic viability of the dam; and (b) does it involve subsidies to the irrigators; if so, how much.

5. Which federal ministers have visited the dam site and when.

**Senator Ian Macdonald**—The Minister for Agriculture, Fisheries and Forestry has advised that the answer given to Question on Notice 231 on May 15 2002 (*Hansard* page 1679) is also the answer to the honourable senator’s Question on Notice 230.

**Human Rights: Hazaras**

(Question No. 374)

**Senator Brown** asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 13 June 2002:

1. Is the Minister aware that members of the Hazara faith have been subject to persecution and human rights abuses in Afghanistan prior to, as well as during, the rule of the Taliban regime.

2. What steps is the Minister taking to guarantee the safety of members of the Hazara faith who are being repatriated to Afghanistan from Australia.

**Senator Ellison**—The Minister for Immigration and Multicultural and Indigenous Affairs has provided the following answer to the honourable senator’s question:

1. I am aware that people of Hazara background were victimised during the rule of the Taliban and in some cases prior to that rule. This situation has changed under the transitional government in Afghanistan. The new Afghan cabinet that was sworn in on 24 June 2002 is ethnically diverse and includes three Hazaras. The representation of Hazaras in the government includes one of the four Vice Presidents, the Planning Minister, and the Human Rights Commissioner.

2. The UNHCR has stated that it is now safe for people to return to Afghanistan and UNHCR figures show that many thousands of Hazaras have returned. Although people of the Hazara background remain a minority in Afghanistan, non-government organisations have stated that hostilities against Shi’a Muslims have ceased (most Hazara are Shiites).

**Transport: Ocean-Going Vessels**

(Question No. 394)

**Senator O’Brien** asked the Minister for Transport and Regional Services, upon notice, on 25 June 2002:

For each of the past 5 financial years:

1. How many collisions have occurred between ocean going vessels in Australian waters.

2. How many deaths have resulted from collisions which have occurred between ocean going vessels in Australian waters.

3. How many injuries have resulted from collisions which have occurred between ocean vessels in Australian waters.
On how many occasions has rescue of persons on ocean-going vessels within Australian waters occurred as a result of the use of the very high frequency channel 16.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

1. No collisions have occurred between ocean-going vessels in Australian waters in the past five financial years.

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<th>Year</th>
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<td>1998/1999.</td>
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2. No deaths have resulted from collisions between ocean-going vessels in Australian waters in the last 5 financial years.

3. No serious injuries have resulted from collisions between ocean-going vessels in Australian waters in the last 5 financial years.

4. The Australian Transport Safety Bureau and the Australian Maritime Safety Authority do not maintain statistics about the number of rescues resulting from the use of VHF Channel 16. AMSA has reviewed its incident data for 2000 and 2001 and found two records of ocean-going merchant vessels making VHF calls for emergencies at sea that resulted in search and rescue activity.

Agriculture: Animal Health
(Question No. 455)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 11 July 2002:

1. The level of direct funding provided by the Commonwealth Government for each of the past 5 financial years for diagnostic testing of suspected diseased animal samples for the purpose of detecting and preventing the spread of contagious disease in livestock.

2. The level of funding provided by the Commonwealth to each state and territory government for each of the past 5 financial years for diagnostic testing of suspected diseased animal samples for the purpose of detecting and preventing the spread of contagious disease in livestock.

3. The level of funding provided by the Commonwealth to private or listed companies for each of the past 5 financial years for diagnostic testing of suspected diseased animal samples for the purpose of detecting and preventing the spread of contagious disease in livestock.

4. The names of the five companies that have received the most Commonwealth funding over the past 5 financial years, and the quantum of funding each received for each of the past 5 financial years, for the purpose of detecting and preventing the spread of contagious disease in livestock.

5. The level of funding provided by the Commonwealth Government to the Commonwealth Scientific and Industrial Research Organisation Australian Animal Health Laboratory for each of the past 5 financial years for the purpose of detecting and preventing the spread of contagious disease in livestock.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

1. The only direct funding provided by the Commonwealth to maintain a capability for diagnostic testing of suspected diseased animal samples for the purpose of detecting and preventing the spread of contagious disease in livestock is through the funding of the Australian Animal Health Laboratory (AAHL). Commonwealth funding to AAHL includes the development of diagnostic tests and associated research. The level of funding is provided in the answer to Question 5 below. The Commonwealth also funds its share of agreed national surveillance programs, and the Northern Australia Quarantine Strategy (NAQS). However, activities under these programs are broader than simply testing suspected samples for disease. In addition, the Commonwealth contributes
matching funds to the research and development corporations, including towards expenditure on
the development of diagnostic tests.

(2) The Commonwealth does not provide funding directly to the states and territories for diagnostic
testing of suspected diseased animal samples. However, as a participant in cost-sharing arrange-
ments for emergency animal disease responses, the Commonwealth has an obligation to fund 50% of
the government share of agreed eligible costs of certain emergency animal disease responses.
Such eligible costs include laboratory diagnostic tests. In addition, as indicated in the answer to
question one, the Commonwealth funds its share of agreed national surveillance programs and
NAQS. The costs of such programs include laboratory diagnostic costs incurred by relevant state
and territory agencies.

(3) There has been no funding provided by the Commonwealth (through the Agriculture, Fisheries and
Forestry portfolio) to private or listed companies for the past 5 financial years for diagnostic testing
of samples for the purpose of detecting and preventing the spread of contagious disease in live-
stock.

(4) Nil, as indicated in the answer to question three, no funding was provided by the Commonwealth to
private or listed companies.

(5) Total Commonwealth funding (excluding payment on a ‘fee-for-service’ basis) to CSIRO for the
AAHL in the past 5 financial years was as follows: in 1997/98 - $17.227million, in 1998/99 -
$17.708million, in 1999/00 - $18.553million, in 2000/01 - $18.974million, and in 2001/02 -
$14.246million. These amounts include the Agriculture, Fisheries and Forestry portfolio’s contri-
In addition, as part of efforts to enhance Australia’s preparedness for a major foot and mouth dis-
 ease (FMD) outbreak, the following additional funding was provided to AAHL in the 2001/02 fi-
nancial year:

- $0.500million for FMD preparedness, rapid diagnosis and support to zoning.
- $1.026million for the development of a FMD automated sample, tracking, testing and report-
ing system.

Aviation: Arrivals from South Korea
(Question No. 493)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional
Services, upon notice, on 29 July 2002:

(1) How many people travelled from South Korea to Australia between 1 June and 15 July 2002.

(2) Of the people who travelled from South Korea to Australia between 1 June and 15 July 2002:
   (a) how many arrived at the international airport of Sydney;
   (b) how many arrived at the international airport of Brisbane; and
   (c) how many transited to Melbourne airport.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided
the following answer to the honourable senator’s question:

The following figures relate to scheduled international airline operations on direct services between
South Korea and Australia. The passenger numbers refer to those who have been uplifted from
Seoul in South Korea and discharged in either Brisbane or Sydney. They include those whose
travel originated in South Korea and those who used South Korea as a transit point on their way to
Australia.

(1) 20,824
(2) (a) 17,884
(b) 2,940
(c) This information is not available.
Civil Aviation Safety Authority: Listening Devices
(Question No. 524)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:

(1) On how many occasions have the office of the Director of the Civil Aviation Safety Authority, Mr Toller, or areas in the vicinity of Mr Toller’s office, been swept for listening devices.

(2) (a) When did each sweep take place; (b) what was the cost of the work; and (c) what was the outcome of each sweep.

(3) If listening devices were found as a result of the above sweeps; (a) what action or investigations followed the discovery of the devices; and (b) who undertook those investigations.

(4) As a result of the above investigations, were any actions taken against any persons.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

The Civil Aviation Safety Authority has provided the following advice.

(1) One.

(2) (a) September 2001.
   (b) $4,974.
   (c) No listening devices were found.

(3) and (4) Not applicable.

Minister for Agriculture Fisheries and Forestry: Visit to Japan
(Question No. 526)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on August 7 2002:

With reference to the visit by the Minister to Japan in July 2002:

(1) When did the Minister depart Australia.

(2) When did the Minister return to Australia.

(3) Who travelled with the Minister.

(4) Who met the cost of the participants’ travel and other expenses associated with the trip.

(5) If costs were met by the department, can an itemised list of costs be provided.

(6) (a) Who did the Minister meet during his visit; and (b) what were the times and dates of each meeting.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) 11.35 am Wednesday 24 July 2002

(2) 7.05 am Sunday 28 July 2002

(3) Ms Cheryl Cartwright, Chief of Staff, Office of the Minister for Agriculture Fisheries and Forestry
   Mr Michael Taylor, Secretary, Department of Agriculture, Fisheries and Forestry—Australia
   Mr Paul Morris, Executive Manager, Market Access and Biosecurity, Department of Agriculture, Fisheries and Forestry - Australia
   Mr Allan McKinnon, Special Negotiator—Agriculture, Office of Trade Negotiations, Department of Foreign Affairs and Trade

(4) The Department of Finance met the costs associated with my and Ms Cartwright’s travel. The Department of Agriculture Fisheries and Forestry—Australia met the travel costs of Mr Taylor and Mr Morris and the Department of Foreign Affairs and Trade met the travel expenses of Mr McKinnon.

(5) Mr Taylor’s and Mr Morris’s travel expenses in the amount of approximately $19,800 were met by the Department of Agriculture, Fisheries and Forestry—Australia.

(6) The Minister met the following people during his visit
Thursday 25 July 2002
8.00 am Interview with Sankei Shinbun (newspaper)
Mr Nakamura, Staff Writer Economic News Department
8.45 am Interview with Japan Agricultural Press
Mr Hitotsugi, Journalist
9.30 am Interview with ‘The Australian’
Mr Stephen Lunn, Tokyo Correspondent
10.00 am Daiei Sannomiya – store tour to promote Australian beef
Mr Shuji Konishi, Chief Buyer, Meat Division, Foods Line Product Department
Mr Akira Kida, Meat Buyer, Meat Division, Foods Line Product Department
Mr Sawada, Meat Buyer, Meat Division, Foods Line Product Department
11.05 am Ito-Ham/McDonalds Japan – meeting and factory tour
McDonalds Japan
Mr Yasuyuki Yagi, President
Mr Akira Tanaka, Representative Director and Deputy President
Mr Kiyoshi Kaeriyama, Senior Vice President and Chief Purchasing Officer
Mr Jun Onodera, Manager, Purchasing Department
Ito Ham
Mr Masami Ito, Senior Managing Director
Mr Minoru Nose, Director and Executive General Manager
Mr Shozaburo Hirasawa, Executive Officer, General Manager, Foodservice
Mr Takayoshi Yoshida, Plant Manager, Hokushin Plant
Mr Paul Troja, General Manager, Rockdale Beef
1.15 pm Coop Kobe – meeting, promotional store tour/beef tastings and press conference
Mr Shugo Ogura, President and CEO
Mr Katsumi Asada, Managing Director
Mr Takahiko Yamauchi, Director
Mr Yoshiro Hamada, Supervising Manager, Fresh Foods Buying Department
Mr Hideyuki Ikuta, General Manager, Meat and Poultry Products Buying Section
Mr Goro Miyaji, Supervising Senior Manager, Public Relations Office

Press attendance at Coop Kobe Press Conference
Ms Natsumi Suzuki, TV Osaka
Mr Naoki Nishiyama, Kansai TV
Mr Kenji Takeda, Radio Kansai
Mr Katsuo Sugawara, AP
Mr Toru Yamanaka, AFP
Ms Tomoyo Ikeda, Kyodo News
Mr Takashi Soma, Jiji Press
Mr Taku Iwasaki, Yomiuri Shimbun
Mr Eiji Asami, Sankei Shimbun
Mr Akinori Okuda, Mainichi Shimbun
Mr Shohei Hara, Nikkan Kogyo Shimbun
Ms Yoka Fujimoto, Kobe Shimbun
Mr Toshiji Kamioka, Nihon Shokuryo Shimbun
Mr Hironori Takenaga, Shokuhin Shimbun
Mr Katsuaki Suzuki, Shokuryo Gyokai Shimbun
Mr Kenzo Kosugi, Shokuhin Sangyo Shimbun
Mr Naomi Hide, Tei-Inshokuryo Shimbun
Mr Kouya Ishii, Shokuniku Tsushin
Mr Jun-ichi Higuchi, Minato Shinbun
Mr Kazuhiko Taka, Daily Keizai Tsushin
Mr Soji Nishitani, Food Weekly
Mr Isamu Ogasawara, Shogyo Keizai Shimbun
Mr Yasuhiro Watanabe, Ryutsu Voice
Ms Yasuyo Takahashi, Han-gai Shim bun
Mr S Morihata, Station Magazine by Coop Kobe

4.30 pm Meeting with LDP Diet members
Mr Showichi Nakagawa
Mr Norihiko Akagi
Mr Eisuke Hinode

5.30 pm Meeting with Mr Tsutomu Takebe, Japanese Minister of Agriculture, Fisheries and Forestry

6.15 pm Meeting with Ms Ann Veneman, US Secretary of Agriculture

7.00pm – Quint Meeting of Agriculture Ministers from Japan, the US, the EU, Canada and Australia
Mr Tsutomu Takebe
Ms Ann Veneman
Dr Franz Fischler, EU Commissioner for Agriculture and Rural Affairs
The Hon Lyle Vanclief, Canadian Minister for Agriculture and Agri-Food

Friday 26 July 2002

9.00 am Quint meeting continued
1.00 pm Meeting with the Hon Lyle Vanclief,
2.40 pm Interview ‘Australian Financial Review’ (AFR) and ‘The Australian’
Mr Brendan Pearson, Tokyo Correspondent AFR
Mr Steven Lunn, Tokyo Correspondent, The Australian
Quint meeting continued
6.45 pm Meeting with Dr Franz Fischler

Saturday 27 July 2002

9.00 am Quint meeting continued
12 noon Reuters
Mr Tim Large, Correspondent
2.00 pm Post Quint Press Conference
2.30 pm Interview with the ‘Australian Financial Review’
Brendan Pearson, Tokyo Correspondent

Rural and Regional Australia: Farm Crime Survey

(1) Is the Minister aware of the farm crime survey released by the Australian Institute of Criminology on 13 August 2002, which found that 27 percent of farms were surveyed were victims of property crime.
(2) What action has the Minister taken to address the alarming incidence of property crime against farm businesses.

(3) How many cattle producers are registered as users of the National Livestock Identification Scheme (NLIS).

(4) Is the Minister aware of proposals to use the NLIS to discourage livestock theft.

(5) Does the NLIS maintain a register of lost or stolen cattle.

(6) What action, if any, has the department taken to investigate the NLIS as a means of reducing livestock theft, including improvements to existing database management.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) Yes. A copy of the report has been received in my Office.

(2) I am aware that cattle theft has increased during the recent period of high beef commodity prices and appreciate the impact this has had on affected farmers. However, property crime against farm businesses, including livestock theft, is essentially a policing issue and is, therefore, a matter for State/Territory governments.

(3) As of 30 August 2002, there were 6,823 cattle properties registered with the National Livestock Identification Scheme (NLIS).

(4) Yes. Although it is not the primary driver, discouraging livestock theft is recognised as a potential advantage of using NLIS and it is already providing a level of protection for participating cattle producers, particularly in New South Wales, where theft is seen as more of a problem, and in Victoria, where NLIS is mandatory.

(5) Yes. The identification numbers of missing cattle are recorded on the lost or stolen register in the NLIS database. If the cattle are slaughtered at an abattoir which has an NLIS reader or the identification numbers are picked up by readers at saleyards, appropriate action can then be taken. The system will be more effective when all abattoirs and saleyards have readers.

(6) With the agreement of the Red Meat Advisory Council, I endorsed the release of red meat industry funds held over by Agriculture, Fisheries and Forestry—Australia from the initial capitalisation of Meat and Livestock Australia for the purposes of funding enhancements to the NLIS database. These enhancements included the development of the lost or stolen register.

Foot and Mouth Disease Steering Committee
(Question No. 540)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 4 May 2002:

(1) (a) When was the Commonwealth Foot and Mouth Disease Steering Committee formed; (b) why was it formed; (c) who is represented on the committee; (d) on what dates has the committee met; and (e) what activities has the committee undertaken.

(2) Has the representative composition of the committee changed since its formation; if so can details be provided of the changes to the composition of the committee, including relevant dates, and the reason for each change.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) (a) An initial meeting of Commonwealth agencies was held on 6 July 2001 to inform them of the scale and impacts of the foot and mouth disease (FMD) outbreak in the United Kingdom and to raise awareness of the potential impacts for Australia if FMD was to occur here. The Commonwealth FMD Steering Committee was formed in September 2001.

(b) The Committee was formed to prepare a comprehensive whole of government FMD response plan for the Commonwealth. This followed agreement by the Council of Australian Governments in July 2001 to a new national coordination framework that ensures close integration of responsibilities and actions within and across jurisdictions and that builds on existing animal disease and emergency management plans. The Commonwealth plan was to be developed to complement the new national framework.
(c) The following agencies were initially represented on the committee:

Department of Agriculture Fisheries and Forestry
Australian Customs Service
Attorney General’s Department
Department of Communications, Information Technology and the Arts
Department of Defence (through Emergency Management Australia)
Department of Employment, Workplace Relations and Small Business
Department of the Environment and Heritage
Department of Family and Community Services (including Centrelink)
Department of Finance and Administration
Department of Foreign Affairs and Trade
Department of Health and Aged Care
Department of Immigration and Multicultural Affairs
Department of Industry, Science and Resources
Department of Prime Minister and Cabinet
Department of Transport and Regional Services
Department of the Treasury

The following agencies are currently represented on the committee:

Department of Agriculture Fisheries and Forestry
Australian Customs Service
Attorney General’s Department (through Emergency Management Australia)
Department of the Environment and Heritage
Department of Family and Community Services (including Centrelink)
Department of Finance and Administration
Department of Foreign Affairs and Trade
Department of Health and Aged Care
Department of Industry, Tourism and Resources
Department of Prime Minister and Cabinet
Department of Transport and Regional Services
Department of the Treasury

(d) The committee has met on the following occasions:

6 July 2001 (an initial awareness raising meeting)
5 September 2001 (formal establishment)
15 May 2002
9 July 2002

(e) The committee has undertaken the following activities:

• development of the Commonwealth FMD Management Plan; and
• sponsorship of two desktop simulations for Commonwealth officers. The first explored issues that would emerge for Commonwealth agencies in a FMD outbreak. The second validated the operability of the draft plan.

(2) The representative composition of the committee has changed. Through the planning process a group of core agencies has been identified, and listed in the plan, as having the major roles to play if a FMD outbreak were to occur. As roles have been clarified, a small number of agencies have ceased involvement in the committee. However, it should be noted that the plan allows for other Commonwealth agencies, not listed in the plan, to be called in to augment the core group should the prevailing circumstances require such assistance. Listed below are the changes that have occurred, the timing of each change and the reason for each change:
Department of Immigration and Multicultural and Indigenous Affairs’ potential role was in the area of visa processing for emergency assistance staff from countries that are members of the (draft) international animal health assistance agreement. All countries in the agreement are covered by existing immigration and visa arrangements and would not require special assistance. The Department withdrew from the committee on 8 July 2002.

Department of Defence was represented at the commencement of the Commonwealth FMD planning activities by Emergency Management Australia (EMA). EMA is responsible for the maintenance and operation of COMDISPLAN under which States and Territories are able to access Commonwealth (particularly Defence force) assistance in emergency situations. On the formation of the third Howard government, EMA was moved to the Attorney General’s Department. It was considered that the well-practised COMDISPLAN arrangements were fully appropriate and should not be re-invented specifically for an FMD incident. As a result, EMA will continue to be the conduit for interaction with the Department of Defence should that agency be required to assist in any emergency response activity.

The Department of Employment, Workplace Relations and Small Business (now the Department of Employment and Workplace Relations) was initially involved in the committee due to their responsibilities for small business matters. On the formation of the third Howard government, responsibility for small business was transferred to the Department of Industry, Tourism and Resources. As a consequence no further involvement by the Department of Employment and Workplace Relations was considered necessary under the new portfolio responsibilities.

The Department of Communications, Information Technology and the Arts (DCIT A) was initially involved due to possible expertise they would be able to offer in relation to field communications. The States and Territories control on-ground operations. Each jurisdiction has well-established arrangements with telecommunications companies for the supply of field communications. For this reason it is not considered necessary for DCIT A to have ongoing involvement in the Commonwealth FMD Management Plan or the committee. DCIT A withdrew from the committee on 15 July 2002.

Trade: Genetically Modified Food
(Question No. 545)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, 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 Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) During the course of 2001 the department, in cooperation with the Australia and New Zealand Food Authority (now Food Standards Australia New Zealand) and the Department of Foreign Affairs and Trade, contributed to representations by our High Commission in Colombo to the Sri Lankan Ministries of Health and Trade and in the World Trade Organisation concerning Sri Lanka’s Sanitary and Phytosanitary Committee notification of the proposed restrictive measures on the importation of genetically-modified agricultural and food products.

Following representations from a number of countries, including Australia, Sri Lanka’s proposed restrictive measures were suspended indefinitely on 1 September 2001.

(2) Both the Minister and the department have made high level representations to the European Union in response to the European Union’s notifications to the WTO Committees on Technical Barriers to Trade and Sanitary and Phytosanitary matters of proposed revision to regulations affecting trade in genetically-modified agricultural and food products. To draw conclusions on the outcome of these representations would be premature, as the European Union has not yet completed its formal consultation process as part of its consideration of its revised regulations affecting trade in these commodities.
The department, in cooperation with the Department of Foreign Affairs and Trade, made representations to the Kingdom of Saudi Arabia, the Republic of Korea and the Republic of Zambia on proposed regulations affecting imports of genetically-modified agricultural and food products. Those representations included a presentation by a departmental official at a symposium convened by the Saudi Arabian Standard Organisation in October 2001.

Following representations from a number of countries, including Australia, trade with Saudi Arabia and the Republic of Korea has been able to continue. Representations to the Republic of Zambia are continuing.

Quarantine: Container Inspection
(Question No. 548)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 15 August 2002:

(1) What percentage of incoming sea containers were inspected by the Australian Quarantine and Inspection Service (AQIS) in the following financial years: (a) 2000-01; (b) 1999-2000; (c) 1998-99; (d) 1997-98; and (e) 1996-97.

(2) What number of AQIS inspections of sea containers occurred in each of the identified years.

(3) What percentage of these AQIS inspections in each of these years involved opening the sea containers.

(4) What percentage of these AQIS inspections in each of these years involved opening and inspecting the individual cargo items inside the sea containers.

(5) What percentage of incoming air containers were inspected by the AQIS in the following financial years: (a) 2000-01; (b) 1999-2000; (c) 1998-99; (d) 1997-98; and (e) 1996-97.

(6) What number of AQIS inspections of air containers occurred in each of the identified years.

(7) What percentage of these AQIS inspections in each of these years involved opening the air containers.

(8) What percentage of these AQIS inspections in each of these years involved opening and inspecting the individual cargo items inside the air containers.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) The percentage of all incoming sea containers inspected by the Australian Quarantine and Inspection Service (AQIS) in the years 1996-97 to 2000-01 is as follows:

   - 2000-01: 13%
   - 1999-2000: 13%
   - 1998-99: 13%
   - 1997-98: 14%
   - 1996-97: 13%.

(2) The number of AQIS inspections of sea containers in each of the identified years is as follows:

   - 2000-01: 158,621
   - 1998-99: 142,391
   - 1997-98: 138,605
   - 1996-97: 112,744

(3) The percentage of these inspections involving the opening of the sea containers is as follows:

   - 2000-01: 100%
   - 1999-2000: 100%
   - 1998-99: 100%
   - 1997-98: 100%
   - 1996-97: 100%.
(4) The percentage of these inspections involving the opening and inspection of individual cargo items inside the sea containers is as follows:

(a) 2000-01; 72%
(b) 1999-2000; 72%
(c) 1998-99; 72%
(d) 1997-98; 70%
(e) 1996-97; 70%

(5) During this period, AQIS did not collect data relating to the number of imported air cargo containers inspected. However, in relation to the consignments carried within the containers, the percentage of all imported airfreight consignments where AQIS intervened because of quarantine concerns associated with the cargo is as follows:

(a) 2000-01; 7.7%
(b) 1999-2000; 7.1%
(c) 1998-99; 2.7%
(d) 1997-98; 1.9%
(e) 1996-97; 1.6%

(6) During this period, AQIS did not collect data relating to the number of imported air cargo containers inspected. In relation to the consignments carried within the containers, the approximate number of imported airfreight consignments where AQIS intervened because of quarantine concerns associated with the cargo is as follows:

(a) 2000-01; 322,141
(b) 1999-2000; 289,090
(c) 1998-99; 86,841
(d) 1997-98; 75,494
(e) 1996-97; 60,108

(7) During this period, AQIS did not collect data relating to the number of imported air cargo containers inspected. In relation to the consignments carried within the containers, all of the airfreight consignments subject to intervention by AQIS were assessed further to determine whether individual consignments would be opened for quarantine inspection.

(8) During this period, AQIS did not collect data relating to the number of imported air cargo containers inspected. In relation to the consignments carried within the containers, the approximate percentage of the consignments subject to AQIS intervention that were opened for inspection of the contents is as follows:

(a) 2000-01; 60%
(b) 1999-2000; 60%
(c) 1998-99; 53%
(d) 1997-98; 51%
(e) 1996-97; 46%

Trade: United States Beef Quota

(Question No. 549)

Senator O’Brien asked the Minister representing the Prime Minister, upon notice, on 15 August 2002:

(1) What actions, if any, did the Prime Minister take before 9 August 2002 to encourage the United States of America (US) to increase the beef quota allocation available to Australian beef exporters.

(2) What actions, if any, has the Prime Minister taken since 9 August 2002 to encourage the US to increase the beef quota allocation available to Australian beef exporters.

(3) What actions, if any, does the Prime Minister propose to take to encourage the US to increase the beef quota allocation available to Australian beef exporters.
Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:

(1) to (3) I raised the beef quota issue with US Administration officials and Congressmen during my 8-15 June 2002 visit to the United States. On 4 August 2002, I also wrote to Senator Max Baucus, Chairman of the Senate Committee on Finance, on trade issues and sought more open access for Australian beef exports. The government will continue to press for increased access to the US market for Australian beef through greater beef quota allocation and reductions to US tariffs on out of quota beef imports.

Drought: Investment Allowance
(Question No. 552)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 15 August 2002:

(1) Is the Minister aware of the drought investment allowance that encouraged primary producers and lessors of property to primary producers to invest in drought mitigation property between 23 March 1995 and 1 July 2000.

(2) Can the Minister confirm that the drought investment allowance does not provide any benefit for the purchase of drought mitigation property by primary producers and lessors of property to primary producers after 1 July 2000.

(3) How many primary producers and lessors of property to primary producers have taken advantage of the investment allowance.

(4) Has any research been undertaken into the effectiveness of the drought investment allowance in encouraging primary producers and lessors of property to primary producers to invest in drought mitigation property; if so, who conducted the research and what were the results; if not, why not.

(5) Does the Minister recall advising primary producers on 6 December 1999 that the Government is committed to retaining all tax concessions specific to primary producers, including the drought investment allowance.

(6) What are details of any programs that provide taxation or other financial benefits for the purchase of drought mitigation property by primary producers and lessors of property to primary producers after 1 July 2000.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) Yes. The Minister is aware of the drought investment allowance that applied to certain drought related expenditure up to 30 June 2000.

(2) Yes. The Minister can confirm that the drought investment allowance does not apply to expenditure incurred after 30 June 2000 in accordance with legislation enacted by the previous Government.

(3) Responsibility for taxation policy vests with Treasury. I have been informed that the Treasurer will specifically address these issues in responding to a similar question taken on notice on 20 August 2002 by the Minister representing the Treasurer in the Senate.

(4) The Government has not undertaken any research into the effectiveness of the drought investment allowance in encouraging primary producers and lessors of property to primary producers to invest in drought mitigation property as the drought investment allowance was simply intended as an interim measure to assist farmers achieve a higher level of drought preparedness.

(5) Yes. That advice was correct at the time and related to tax concessions operative at that time, including the drought investment allowance. The clause restricting this provision to expenditure incurred, or construction commenced, before 1 July 2000 was part of the original legislation that gave effect to the drought investment allowance. This legislation was enacted in 1995 by the previous Government.

(6) Sections 40-515 to 40-575 of the Income Tax Assessment Act 1997 provide for a three-year write-off for expenditure on water facilities. Primary producers may claim a deduction for capital expenditure on water facilities. The deduction applies to expenditures incurred in the construction, manufacture, acquisition or installation of plant or a structural improvement for the purpose of conserving water. The deduction is allowed over three years. One-third of the expenditure is deductible in
the income year in which it is incurred, one-third in the next year and one-third in the year after
that.

Sections 40-630 to 40-675 of the Income Tax Assessment Act 1997 provide for an outright deduc-
tion for expenditure on landcare operations. Capital expenditure incurred on landcare operations
qualifies for an outright deduction in the year the expenditure is incurred. The deduction applies to,
terms, including:

- preventing or combating land degradation, otherwise than by the erection of fences on that
  land;
- the construction of levee banks or similar improvements (including alterations, extensions and
  additions); and
- the construction of drainage works (including alterations, extensions and additions) for the
  purpose of controlling salinity or assisting in drainage control.

These taxation benefits are mutually exclusive. To qualify for either of these tax benefits, the op-
eration must be carried out primarily and principally for the purpose stated.

Agriculture: Farm Innovation Program

(Question No. 554)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries
and Forestry, upon notice, on August 15 2002:

(1) Has funding for the Agriculture – Advancing Australia (AAA) Farm Innovation Program now
ceased.

(2) Did the Department undertake an evaluation of the program in October 2001; if so: (a) who con-
ducted the evaluation; (b) how was the program evaluated; and (c) what were the results of the
evaluation; if not, why not.

(3) Did the government agree to a framework for evaluation of the AAA Package in April 2001; if so,
what are the details of the agreed framework.

(4) Has the department commenced an evaluation of the AAA package; if so (a) when did the evalua-
tion commence; (b) who is conducting the evaluation; (c) how will the package be evaluated; and
(d) when will the evaluation be completed?

(5) How much has been budgeted for the evaluation.

(6) Will state and territory governments, local governments, other stakeholders and users of AAA
package programs be consulted; if so, which state and territory governments, local governments,
other stakeholders and users will be consulted.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has pro-
vided the following answer to the honourable senator’s question.

(1) Yes.

(2) Yes, the final report was completed in November 2001. (a) An evaluation was conducted by Has-
sall and Associates Pty Ltd. (b) The program was evaluated by interviewing key stakeholders in-
cluding industry, State agencies, Research and Development Corporations, successful and unsuc-
sessful applicants. (c) The main findings of the evaluation were that; there is a continuing need for
innovation in the target industries; the program provides a continuum between R&D, commer-
cialisation and adoption; government and industry investment in R&D and the New Industries
Development Program have filled a niche in the process of research, development, commerciali-
sation and adoption.

As outlined in the May 2001 AFFA Federal Budget Statement, the Government agreed to the
Framework for Evaluation of the Agriculture – Advancing Australia Package in April 2001. The
framework for evaluation of the effectiveness of the AAA package as a whole involves three ele-
ments:

- Baseline and longitudinal sampling of producer attitudes, skills and behaviours against the five key
  indicators for the AAA package as a whole;
- Consideration of the effectiveness of programs in achieving the overarching objectives of the AAA
  package; and
• Routine monitoring and formal review of individual programs within the AAA package, aligned with objectives and performance indicators at the program level.

(3) (a) and (b) Those elements of the evaluation that involve routine monitoring of individual programs are carried out throughout the life of the programs concerned. Formal review of individual programs is normally carried out mid-term in the life of a program, and is conducted by independent consultants. Baseline and longitudinal sampling has been carried out on a two-year cycle, beginning in 1998, by Solutions Research. The 2002 cycle of the Solutions survey commenced field sampling on 19 August 2002.

(c) A Policy and Evaluation unit within AFFA will draw together the results of the three strands of the evaluation framework.

(d) As detailed in the May 2001 AFFA Federal Budget Statement, a report against the evaluation framework will be provided to the Expenditure Review Committee and the Department of Finance and Administration in March 2003.

(4) The budget for the evaluation process has not been finalised.

(5) Consultation with stakeholders about the effectiveness of AAA programs and the package as a whole is an ongoing process. All State and Territory governments, and many stakeholder groups, provide feedback on the effectiveness of AAA programs through a range of mechanisms.

• These include, but are not restricted to, FarmBis State Planning Groups (which include representation from State Government, farmer organisations and other interest groups), regular meetings of State officers responsible for the Rural Financial Counselling Program, and formal meetings of Ministers and CEOs of relevant agencies with respect to programs to support farmers in adverse conditions.

• The National Farmers’ Federation, individual farmer and industry organisations (including the seafood industry) and other groups (including women and young people’s organisations) regularly provide comment on programs and on the package as a whole.

Transport: Bass Strait Vehicle Equalisation Scheme

(Question No. 573)

Senator Brown asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 22 August 2002:

When will the Federal Government facilitate the removal of the $21 to $27 fee charged for bicycles to travel on the Bass Strait ferries?

Senator Ian Macdonald—Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

I have agreed that bicycles should be incorporated in the Bass Strait Passenger Vehicle Equalisation Scheme (BSPVES) from 1 September 2002. The rebate now provides for bicycles, like cars, to travel free during the TT-Line off-peak and shoulder seasons.

Sustainable Environment Committee

(Question No. 577)

Senator O’Brien asked the Minister representing the Prime Minister, upon notice, on 26 August 2002:

(1) On what date was the Sustainable Environment Committee of the Cabinet formed.

(2) When did the committee first meet.

(3) How many times has the committee met since its formation.

(4) Has the Prime Minister personally chaired and been present at all meetings of the committee; if not, at which meetings was the Prime Minister absent from the chair of the committee.

(5) Who chaired each meeting of the committee.

(6) What records are kept of matters discussed at these meetings.

Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:
1. I announced the Cabinet committee structure in my third government, including the formation of the Sustainable Environment Committee, on 13 December 2001. The establishment of the Committee fulfilled a commitment by the Coalition in the 2001 election campaign.

2. The committee has met on five occasions since its formation. Consistent with long-standing practice, I am not prepared to disclose further details of meetings of a committee of Cabinet.

3. Records of meetings of the Sustainable Environment Committee are kept in accordance with the requirements and practices set out in the current edition of the Cabinet Handbook which may be accessed on the internet web-site of the Department of the Prime Minister and Cabinet.

Agriculture: Organic Farming

(Question No. 580)

Senator Brown asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 27 August 2002:

Given that the United Kingdom Government has moved to provide 5 million pounds for research into organic farming and is setting up a committee to advise ministers on the implementation of proposals to support organic farming: What has the Australian Government done to support organic farming in terms of: (a) specific financing; (b) research; (c) consumer promotion; (d) recognition and assessment of this industry sector; and (e) export promotion and assistance.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

Under Australia’s federal system of government, responsibilities for the organic industry are distributed between the Commonwealth government and the state and territory governments. Generally speaking, the Commonwealth has responsibility for the over-arching business environment and international trade while the state and territory governments have more of a “hands on” role in the industry’s development, delivered through their various extension services.

(a) Specific financing

In March 2000 the Commonwealth granted the Organic Federation of Australia $158,900 to assist with the design and implementation of an industry strategic plan.

Since 2000, AFFA has provided grants totalling $1,110,040 to the organics industry to assist with 12 projects under the Farm Innovation Program and New Industries Development Programs.

The Department of Transport and Regional Services provided a grant of $550,000 to assist with an organic processing plant.

(b) Research

The Commonwealth government funds investment in organic research and development through the Rural Industries Research and Development Corporation’s (RIRDC’s) Organic Produce Sub-program, which grew out of the Resilient Agricultural Systems Sub-program created in 1996. Initially, $250,000 was allocated to organic R&D each year. Currently, the R&D allocation is $275,000 each year. These funds are Commonwealth funds rather than the production levies which go to the mainstream industry corporations.

The Organic Produce Sub-program has a five year plan developed in partnership with the industry. This plan superseded an earlier one which commenced in 1998.

Since 2000, Horticulture Australia Limited (HAL) has funded 10 organic farming research projects amounting to $211,000. HAL also funds projects in the related areas of environmental management systems, water and soil management and integrated pest and disease management. The budget for these was over $5,000,000 for 2001-02. The Commonwealth’s contribution to HAL funded projects is 50% on average.

(c) Consumer promotion

Consumer promotion, apart from assistance in export markets, is a role more appropriate for the organic industry.

(d) Recognition and assessment of this industry sector

The Department of Agriculture, Fisheries and Forestry (AFFA) has been involved with the organic industry since the early nineties. Largely through the Australian Quarantine and Inspection Service
AQIS has invested significant resources in the development and maintenance of the National Standard for Organic and Biodynamic Produce. The National Standard was originally introduced in February 1992 and is used as the standard for the export of products derived from agriculture labelled as organic. It lays down the minimum principles that must be complied with before agricultural products and foods can be placed on the market with labelling which states or implies they have been produced by organic farming systems. The National Standard forms the basis for the Export Control (Organic Certification) Orders 1997, administered by AQIS. AQIS consults with the Australian organic industry via the Organic Produce Export Committee (OPEC). OPEC, which AQIS provides secretariat services to, provides a forum whereby operational policy, administrative and market access issues are discussed. A Standards sub-committee (appointed by OPEC) maintains the National Standard. The third version of the Standard is currently being finalised and is expected to be implemented before the end of October 2002. RIRDC has undertaken two studies, in 1990 and 1996, to assess the value and potential of the organic industry. RIRDC also initiated discussions with an interim national organic industry committee regarding market emergence and potential R&D support for industry. (e) Export promotion and assistance Austrade has been encouraging and supporting the efforts of the Australian organic food industry for a number of years. The main target market has been Japan which is the largest market in Asia for organic food. In 1997 Austrade conducted a large seminar in Tokyo to launch Australian organic food into the market. Since then organic food exporters have been assisted in Japan with introductions to buyers, qualified opportunities and participation in food exhibitions such as the annual Foodex promotion. Austrade has also assisted the organic industry with in-market support at the large German organic food exhibition, Biofach. Organic producers also benefit from the other Austrade assistance available to all Australian exporters, such as market research services, new exporter advice and the Export Market Development Grants Scheme. Austrade also assists by introducing overseas buyers involved in incoming missions to organic food suppliers. AQIS assists with the export of Australian organic produce by working towards increased recognition of Australia’s system of organic certification by other countries and gaining access for the organic industry to offshore markets. The Export Control (Organic Certification) Orders 1997 make it illegal to export organic produce without a government-to-government certificate that verifies the nature and trade description of the product. They also allow for the seven AQIS Approved Certifying Organisations to issue Organic Produce Certificates that accompany the produce to its overseas destination. AQIS audits the Approved Certifying Organisations to ensure they comply with the requirements of the Standard, the Export Control (Organic Produce Certification) Orders 1997 as well as importing country requirements. State governments provide export promotion and assistance as well, through trade promotion offices and locally based agricultural extension officers.

Indigenous Affairs: Noongar Land Council
(Question No. 585)

Senator Harris asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 27 August 2002:

(1) On what grounds was the decision made by the Registrar of Aboriginal Corporations, and subsequent court judgment, to dissolve the Noongar Language and Cultural Centre.

(2) (a) Under what legislative head of power can the Regional Manager of the Aboriginal and Torres Strait Islander Commission in Western Australia seize assets of the Noongar Land Council mem-
bership without their permission; and (b) if there is no legislative head of power, will the Minister reverse the decision.

(3) Under the Aboriginal and Torres Strait Islander Commission Act 1989, what grounds of appeal exist for the Noongar Land Council.

Senator Ellison—The Office of the Registrar of Aboriginal Corporations has provided the following information in response to part (1) of the honourable senator’s question and the Aboriginal and Torres Strait Islander Commission have provided the information in response to parts (2) and (3):

(1) The Registrar of Aboriginal Corporations petitioned for the wind up of the Noongar Language and Culture Centre Aboriginal Corporation (NLCCAC) under the grounds set out in Section 62A(a), 62A(b) and Section 63(2)(d) of the Aboriginal Councils and Association Act 1976 (the Act) This action followed the receipt of a report in April 2002 on the affairs of the NLCCAC from the Administrator, who had been appointed by the Registrar on 4 March 2002. This report recommended action because NLCCAC could not pay its debts (ie. it was insolvent).

The Registrar gave this report careful consideration, including the seeking of legal advice from the Australian Government Solicitor (AGS). AGS confirmed that grounds existed under Sections 62A and 63 for a petition to wind up NLCCAC.

Whilst considering the matter, the Federal Court of Australia also took care to ensure that NLCCAC’s financial position was such that it was insolvent by seeking an additional financial report in July 2002 from the Administrator.

On 1 August 2002 the Court ordered that the Corporation be wound up under Section 63 of the Act, on the basis that it was satisfied the Corporation was insolvent. In relation to its findings against Section 62A, the Court commented that it considered this section only provides the grounds for the Registrar to petition the Court, rather than the grounds for a Court to wind up. The Court then went onto to find a number of grounds related to insolvency in section 63 for ordering the winding up of the NLCCAC.

(2) (a) The Aboriginal and Torres Strait Islander Commission is not aware of any assets of the Noongar Land Council being seized by any person. Nor has any Regional Manager of the Commission in Western Australia (or elsewhere) made a decision to seize any assets of the Noongar Land Council.

(b) A decision to seize the assets of the Noongar Land Council has not been made by ATSIC. Accordingly, there is no reason for the Minister to take any action in this matter.

(3) A decision has not been made by the Aboriginal and Torres Strait Islander Commission to seize any assets of the Noongar Land Council. If such a decision was made, the Noongar Land Council could seek a review of that decision under the Administrative Decisions (Judicial Review) Act 1977.

Transport and Regional Services: Superannuation
(Question No. 604)

Senator Sherry asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 30 August 2002:

(1) For each department within the Minister’s portfolio, how is superannuation calculated (ie. is the superannuation entitlement calculated on base salary and other income payments, such as overtime allowance or performance bonuses, or on base salary alone).

(2) If the department calculates superannuation on a broader basis, by incorporating all income payments in the calculation of superannuation entitlements, but allows employees to opt out of this arrangement so as to reduce the base upon which superannuation is calculated, what proportion of employees do this.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) For employees of the Department of Transport and Regional Services (DOTARS) covered by the DOTARS Certified Agreement 2002-2004 superannuation is calculated and contributions paid ac-
cording to the rules and regulations governing the appropriate member’s scheme. Base salary and approved allowances form the basis of these calculations. Further, the Department’s Certified Agreement specifies the following:

- Additional Responsibility Allowance (formerly Higher Duties Allowance) will count as salary for superannuation purposes subject to the relevant superannuation legislation;
- Fire Warden/First Aid Attendant Allowance counts as salary for superannuation purposes; and
- Transport Safety Investigator Restriction Allowance counts as service for superannuation purposes.

Employees who have entered into an Australian Workplace Agreement (AWA) have an agreed dollar amount specified as salary for superannuation purposes. This dollar amount is generally the negotiated base salary amount and does not include any allowances. The salary for superannuation purposes remains static for the life of the AWA.

2) Comsuper allows staff who have entered into an AWA to salary sacrifice and use the reduced base salary as the salary for superannuation purposes. DOTARS does not include this provision in AWAs.