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Wednesday, 25 September 2002

The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 a.m., and read prayers.

BROADCASTING LEGISLATION AMENDMENT BILL (No. 1) 2002

First Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.31 a.m.)—I move:

That the following bill be introduced: A bill for an Act to amend the law relating to broadcasting, and for related purposes.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.31 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.31 a.m.)—I table the explanatory memorandum and 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—

The Broadcasting Legislation Amendment Bill (No.1) 2002 amends the Broadcasting Services Act 1992 to delay the commencement date for obligations on broadcasters in mainland State capitals to provide a minimum amount of High Definition Television programming until 1 July 2003.

Currently, the Broadcasting Services Act requires that regulations be made that require broadcasters to simulcast an amount of HDTV programming during the simulcast period. These regulations have been made. In particular, broadcasters are required to commence transmitting HDTV within two years of the start of the simulcast period in their licence area. Broadcasters are also required to transmit at least 20 hours per week of HDTV from two years after the start of the simulcast period in their licence area.

For broadcasters in mainland State capitals this requirement is scheduled to commence from 1 January 2003. Areas outside the mainland State capitals will commence their simulcast period at a range of dates before 1 January 2004, and will become subject to their HDTV obligations two years after the relevant simulcast commencement date. The bill will not change the commencement of the HDTV obligations in areas outside mainland State capitals.

The Government’s 2001 election policy stated it would consider legislative amendments to annualise the HDTV quota at 1040 hours per year, and to include advertisement time in the quota (in line with Australian content programming standards). The Government is also considering the possibility of broader changes to the digital television regulatory regime to encourage consumer take-up of digital equipment.

It is unlikely that any legislative amendments to provide flexibility in HDTV quota arrangements could be put in place before the HDTV obligation comes into effect for broadcasters in mainland State capitals on 1 January 2003. Therefore, the provisions in the bill are a holding action providing a short delay of six months to the HDTV commencement date to avoid short term compliance problems in the period between 1 January 2003 and the passage and implementation of any legislative changes to the HDTV quota regime.

The Government remains strongly committed to HDTV as an important element of the digital television landscape. HDTV, along with program enhancements (such as multiview programs) and multichanneling by the national broadcasters, are all aspects of the current digital television regime which will, over time, attract consumers.

Both in Australia and internationally there are now increasing signs that HDTV will play a key role in digital television take-up. A significant proportion of the set top boxes sold to date in Australia have been HDTV boxes. In the USA, there is growing support from the production sector to produce digital product in HDTV. In Japan, it is considered that HDTV will be a primary driver of digital television take up.

However, the HDTV obligations on broadcasters in mainland State capitals should be delayed until 1 July 2003 to allow time for the detail of those obligations to be settled.

Ordered that further consideration of the second reading of this bill be adjourned to the first day of the next period of sittings, in accordance with standing order 111.
NATIONAL GALLERY AMENDMENT BILL 2002

First Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.32 a.m.)—I move:

That the following bill be introduced: A Bill for an Act to amend the National Gallery Act 1975, and for related purposes.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.32 a.m.)—I present this most excellent bill and move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.33 a.m.)—I table the explanatory memorandum and 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—

The National Gallery Amendment Bill 2002 amends the National Gallery Act 1975 to enable the National Gallery of Australia to gift a work of art, whether or not that work has a saleable value, subject to approval by the Gallery Council and the Minister.

Section 9 of the Act sets out the process for disposing of works of art from the national collection. Subsection 9(1) provides that where the Gallery Council is satisfied that a work of art is either unfit for the national collection, or is no longer required as part of the national collection, the Council may resolve that the work be disposed of by sale, gift or destruction. However, subsection 9(4) provides that the Council shall not resolve that a work of art be disposed of by way of gift or destruction unless the Council is satisfied that the work has no saleable value.

Subsection 9(5) requires any decision relating to the disposal of a work of art to be put to the Minister for approval.

The bill amends subsection 9(4) to allow the disposal of works with saleable value by gift. However, Council and Ministerial approval are still required.

One example of the difficulties imposed by subsection 9(4) relates to the Arthur Boyd works of art that were formally presented to the British Museum by the Minister in July 2000. Presently, these works of art are on long-term loan to the British Museum, but are unable to be publicly displayed due to an internal policy of the British Museum that prohibits the public display of works which are not in the collection. The Boyd works are therefore only available for scholars wanting to view them.

The amendment is expected to broaden the scope for the gifting of works to other institutions, including regional galleries within Australia. It will enable the National Gallery to have better long-term planning over the management of its collection, and will also assist the regional galleries with their own collection management.

Ordered that further consideration of the second reading of this bill be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.33 a.m.)—At the request of Senator Coonan, I move government business notice of motion No. 3:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings.

States Grants (Primary and Secondary Education Assistance) Amendment Bill (No. 2) 2002
Dairy Industry Legislation Amendment Bill 2002

Senator BROWN (Tasmania) (9.33 a.m.)—Once again we have the government moving to exempt two bills from the provisions of standing order 111, which is the standing order that was devised by, amongst others, former Greens (WA) senator Christabel Chamarette to ensure that the Senate had proper time to consider bills before debating them, amending them, passing them or rejecting them. The two bills that the government now wants exempt from that process are the States Grants (Primary and Secondary Education Assistance) Amendment Bill (No.
2) 2002 and the Dairy Industry Legislation Amendment Bill 2002. Let us look at the second one, which is undoubtedly very important. The Minister for Agriculture, Fisheries and Forestry’s own notes on this bill and given to the Senate point out that the origins of this proposal date back to:

... meetings of a large number of industry leaders, including dairy company CEOs, held in 2000 to discuss possible future industry services, structures and funding mechanisms.

The minister goes on to say:

As a result of these meetings a draft possible structure was outlined at the December 2000 AGM—annual general meeting—of the ADIC. The matter was further developed during 2001 and broad agreement on a proposed set of arrangements to put to Government was reached in December 2001.

It may be that the government is arguing that it has taken 10 months for it to get that bill together. It may be that the minister believes that it was complicated enough for him to spend nine or 10 months before he could get it in here. But suddenly, when it gets into the Senate, it is so urgent that it has to be exempt from the cut-off so that the few weeks that are required by the cut-off for the Senate to consider the matter and for senators to go back to constituents and get their point of view are not to be ensured. I disagree; the Greens disagree.

This is happening more and more. Ministers are being dilatory, lazy and slow and then they come into the Senate, under pressure from constituents, and want the Senate to not have time to properly consider it. That is not good democratic process, Mr President, as I am sure you will agree. We need to be able to go back to our constituent bodies to make sure that the legislation reflects not only our point of view but also the considered point of view of the people affected by it; in this case the dairy industry. In the case of the States Grants (Primary and Secondary Education Assistance) Amendment Bill (No. 2) 2002, which is looking at funding in coming years, we certainly need to be able to adequately consult and get feedback from the people concerned once this legislation comes into the Senate.

The government has to get this right. It is making a habit of proposing exemptions for bills which do not have urgency in the way that they have been prepared and which have involved considerable consultation between the government and the community. In the case of the dairy bill, as you have just heard, two or three years of consultation have occurred. It is brought to the Senate and suddenly the government says, ‘We do not have time to wait for the Senate to do the same.’ One minister says, ‘We do not have time for the 75 other senators to go out and find out what their constituents think.’ I do not agree. It is not that these matters are not important—they are. But it is equally important that, if we are to make the right decisions and come up with amendments, we need to consult. If there are aggrieved people out there or people who can see ways of improving this legislation then it is important that we are able to get that information, draft amendments, and approach the debate fully informed by our constituents.

I, for one, am not accepting the government’s increased tendency to put up bills like these with a cut-off attached to them. There is a requirement in the Senate that you wait until the end of a sitting period if you introduce a bill at the start of it, or you wait until after the next break for the next round of sittings if you introduce the bill in the second half of a group of sittings. That is a sensible move because it gives some weeks for the Senate to be properly informed and to make sure that it makes the right decision. I am going to defend that, so I oppose this motion.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.38 a.m.)—I will be brief. Senator Brown makes some very good points that deserve a response. I was here, as you were, Madam Acting Deputy President Knowles, when our old friend Christabel Chamarette, then Senator Chamarette, moved this motion. In fact, history should record that it was one member of the other place—in the body of the member for O’Connor, Mr Wilson Tuckey, another friend of mine—who came up with this idea and gave it to Christabel. If you had a yarn with Christabel, Senator Brown, she would tell...
you about it. Christabel would also tell you that we envisaged, and the Senate envisaged, at the time that there would be exemptions from the cut-off. The government in these sittings, just to make sure that the record is clear, has sought exemption and received it for only one bill.

These bills, as is normal practice for me as the Manager of Government Business in the Senate, were advised to senators. We distributed a list of legislation that we hoped to have dealt with during the sittings. I wrote to Senator Brown and other leaders and whips with a list on 8 August, some time before the session started, and indicated not only the bills that we wanted to deal with but also those that would require exemption from the cut-off. I think it is fair to say that, although there are a number that may need the cut-off, a much larger number fall within the requirements of standing order 111: the agriculture, fisheries and forestry legislation; the plant breeders rights amendment bill; the plant health Australia funding bill; the Torres Strait fisheries amendment bill; the ASIO legislation; the bankruptcy amendments; the copyright bills; the criminal code legislation; the Customs legislation; the family law amendment bills; the family law legislation; the jurisdiction of courts legislation; the marriage amendment bill; the proceeds of crime package; the sex discrimination package; the broadcasting services bill and so on. Most of the bills that we seek to deal with in this session will not need exemption from the cut-off, but there are some.

The ones that we are debating today are the Dairy Industry Legislation Amendment Bill 2002 and the States Grants (Primary and Secondary Education Assistance) Amendment Bill (No. 2) 2002. The government—as Senator Brown knows, but I think is important for the public at large to know—distributed detailed reasons for the urgency and I think Senator Brown has referred to those. I think it is unfair to characterise the ministers responsible as dilatory or lazy. The ministers involved are neither dilatory nor lazy, and I do not think that is a fair way of describing those ministers. An enormous number of people are involved in the work of bringing forward legislation to this chamber. There are the public servants who are the draftspeople, and the industry groups and the quasi-government organisations who need to be consulted. There is an enormous amount of work that goes into bringing these sorts of bills before this place and, of course, the government is very keen to ensure that the Senate looks at them closely. Only recently the Senate Scrutiny of Bills Committee considered these pieces of legislation and no senator sought to have either of those bills referred to committees for further consideration. That sends a signal to me that, generally speaking, no senator wanted to see those bills get further consideration by a legislation committee. Many bills in this place do go to those committees and get extra consideration.

That is not to say that Senator Brown is not right about the extent that senators may wish to use extra time to have a look at some of these bills. You do not necessarily have to send the bill to a legislation committee or a reference committee to have that extra work done. A senator may wish to do that extra work in their own office and talk with people. That is exactly why standing order 111 is there. Also, the Senate recognises that there will be occasions when you need to exempt bills from standing order 111. Christabel Chamarette envisaged these occasions when she moved the motion with the support of the coalition parties and I think the process has worked successfully. I do not run away from a debate about the issue. It is a sound standing order. It is one that we support but we also support our democratic right from time to time to seek an exemption from it.
to indicate that I hope that the Manager of Government Business does not intend to so stack the program with legislation as to force extraordinary hours of sittings of this chamber as we get towards Christmas. I really hope that the Manager of Government Business would bear in mind—and I am sure he does—the need for us to get over each piece of legislation and allow the time that is needed for that.

Question agreed to.

WORKPLACE RELATIONS AMENDMENT (GENUINE BARGAINING) BILL 2002

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

Second Reading

Debate resumed from 24 September, on motions by Senator Coonan and Senator Ellison:

That these bills be now read a second time.

upon which Senator Sherry had moved by way of an amendment in respect of the Workplace Relations Amendment (Genuine Bargaining) Bill 2002:

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 BUCKLAND (South Australia) (9.45 a.m.)—Of the two bills that we are dealing with here this morning, I will start with the Workplace Relations Amendment (Genuine Bargaining) Bill 2002 and then move on to the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. The Workplace Relations Amendment (Genuine Bargaining) Bill 2002 seeks to foil pattern bargaining by amending the Workplace Relations Act. This bill also aims to bestow on the Australian Industrial Relations Commission new powers to defer a bargaining period for a specified time. During the deferment or cessation of the bargaining period, the commission removes the statutory protection available to persons engaged in industrial action whose sole aim is to achieve a new workplace agreement. I ask: why shouldn’t they seek a new workplace agreement? If indeed the business is progressing, then the work force should progress with the business.

In truth, the only great misdemeanour of pattern bargaining is that it is a logical and effective response to a deregulated wages system. It is commonsense that workers from one industry will have interests in common with other workers from the same industry in another workplace. Consequently, they expect their union to promote their interests. To decline them their rights and to limit their prospects through legislation confined to an individual business is establishing an environment whereby employees will be bargaining at a level where their bargaining power is at its weakest. This legislation is an ideological test that industry and its work force can do without.

Labor has always strongly supported enterprise bargaining. It has always been an integral part of our industrial relations policy, and it is a policy that should be left alone. It is apparent that the Liberal government, rather than taking a progressive attitude to improving enterprise bargaining, has taken an obstructive position. The government’s approach is one that promotes industrial action rather than limits or reduces it. The old adage ‘if it is not broken, don’t touch it’, takes on new meaning with the Howard gov-
ernment. Their view of industrial relations is, ‘if it is fair for the workers, make it unfair.’

To put it clearly, there is a whole sequence of conduct that takes place before anybody considers taking industrial action. This conduct includes: the exchange of correspondence; efforts to arrange meetings and then, consequently, having those meetings; setting out the claims and counter claims, and then due process of consideration of those claims and counter claims. During the progress of negotiations, compromises and proposals are put on the table by both sides in an effort to reach a mutual agreement—‘mutual’ being the operative word. When a situation arises and negotiations hit a deadlock, the parties can use the conciliation process of the Industrial Relations Commission. A prime example of this was during the recent BHP Western Port dispute. There is a certainty when parties bargain in good faith and that certainty is that agreement is more likely to be reached and in a quicker period of time.

What the government recurrently disregards are the remarkable improvements that had been made by pattern bargaining. One of the real improvements is that you do not have what I always referred to, when I was practising in the industrial arena, as ‘leapfrogging’: one factory gets an increase and an improvement in conditions and the factory down the road tries to get just that little bit better than the factory up the road. Pattern bargaining does away with that leapfrogging process. There has been improvement in productivity techniques and generally the development of best practice models which, if not implemented with the consent of the trade union movement, have been implemented as a result of the trade union movement. This has been done through enterprise bargaining. It cannot be denied that the entire process has resulted in a great number of businesses evolving from the system where they were only capable of producing for a domestic, patchy and unreliable market. They are now in a position where they are highly developed and have systems that allow them to lift their production to competitively challenge the rest of the world.

The other important thing about pattern bargaining is that it allows industry to plan. It creates an environment where the employees do not have unrealistic expectations and it removes conflict between the employer, the workers and their unions. Perhaps the greatest thing about the introduction of enterprise bargaining was the fact that workers, unions and management actually spoke to each other, not in a confrontationist way, but in a meaningful way where they were looking to progress the business in the interests of all involved. In the current system there is sufficient scope to allow for adjustments for companies that are struggling and for periods when markets are depressed. There is also the opportunity to make adjustments to wages and conditions where technological change has brought about improved work practices and production methods. It keeps the parties in touch with reality. There are no grandiose claims by the employer or the employees. They get down to the real issues and negotiate in good faith. The unions know the reality of what is happening on a global scale, and the organisations used by the employers—known as the employers’ unions—have a like knowledge. Pattern bargaining has to be seen as the most effective way of keeping a degree of control on employment within industry groups.

I now turn to the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. I will preface this by saying that, in my time with the union movement, I think that I would have been strung up on many occasions had I suggested that there be a secret ballot before people took their action. The purpose of this bill is to amend the Workplace Relations Act to provide for compulsory secret ballots before industrial action is taken. Like the previous bill that I spoke about, the government has twice in the past wanted to introduce compulsory secret ballots: in the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999—that is something that we might want to talk about at some time in a realistic light—and in the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000. Senate committees reported on both these bills.

Essentially, the reintroduction of this bill, albeit with some changes to neutralise sev-
eral criticisms, is another possible double dissolution trigger. That is all that this is about. It is not about improving industrial relations. It is simply about getting the government that trigger for a double dissolution. The veracity of the government’s changes to this bill has done little to address these previous concerns or its critics. Currently, the amendments will require the conduct of a secret ballot by union or non-union members, as the case may be, as a prerequisite for gaining authorisation from the Australian Industrial Relations Commission to take ensuing protected industrial action against the employer during enterprise bargaining negotiations. That would not be such a bad idea, provided that on the way through and at the conclusion there was a secret ballot to see if workers would go back to work or whether they would lift any restrictions that were in place. But the bill does not go that far.

The argument for this is to make certain that those playing a part in industrial action have decided upon the action themselves and have not been misled by union officials. Let me make it very clear that I never misled anyone before action was taken. All votes, for whatever reason, including industrial action such as stoppages, overtime restrictions or whatever, were always done in an open and democratic way. If people want to be a part of a work force and want to achieve something, then they should be prepared to put their hand up and be seen to be promoting an idea, not hiding behind a secret ballot that will not change anything. I can remember one occasion when we were instructed by the commission to conduct a secret ballot because the company was insistent that the count had been misjudged on the first occasion. We conducted the secret ballot, and on this occasion got a unanimous decision to take action against the employer. It proves nothing. It is words and a frustrating way of doing things. If people are confronted with a system where they have to take a secret ballot, they will not wait around to do it; they will walk at the time. This is where this government has got it so wrong.

The government would like you to believe that union members may be misled by union officials. The real question is: how gullible are the workers? I suggest that they are not gullible. The truth of the matter is that the ballot procedure is so complicated and bureaucratic that, if followed through, it will thwart effective industrial action by employees or encourage wildcat strikes. That will be the outcome. People will not tolerate the frustrating processes that are contained within this bill. The bill also robs the Australian Industrial Relations Commission of its present good judgment to direct a pre-strike ballot where it considers that it would facilitate the settling of a dispute. This particular bill is deliberately intended to strengthen the position of employers in industrial disputes. Strengthening the position of one side against the other can only lead to continuing conflict. It will do nothing to resolve the dispute. You build up frustration, you build up anger and the result is that the workers will react. Any good legislation should look at a fair, just and equitable way of managing it.

Such is the case that, if this bill were passed, employers would not be obliged to hold a secret ballot with their shareholders before locking out employees. Where is the fairness in that? It is all one sided. Nor are employees required to take part in a secret ballot to return to work. If you are going to make something fair and equitable, you have to follow it all the way through, and this government does not think that far ahead.

It is evident that the Howard government has tried to exploit this issue on a number of occasions. There has been a small minority of trade unionists who may not have always operated in the best interests of their members or for the national interest. It is, however, incredibly unfair for the Howard government to take advantage of a small number of scallywags on this issue and subsequently respond to an industrial relations framework on the basis of the activities of a minority group of people for the purpose of obstructing rather than nurturing a fair and equitable industrial relations system.

There is no provision in this bill to deal with shonky or unscrupulous employers. While I understand that some people get frustrated and excited about industrial relations when they feel that the workers are
being disadvantaged, there are also many employers that are less than pure in the light of things when it comes to industrial relations. In fact, it is not unlike some employers to promote poor industrial relations for their own advantage. Both these bills are designed to disadvantage decent workers of Australia for the government’s ideological pandering to their big business contributors. I urge the Senate to support the opposition’s amendments.

Senator LUDWIG (Queensland) (10.03 a.m.)—I rise to speak in relation to the Workplace Relations Amendment (Genuine Bargaining) Bill 2002 and the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. The second bill relates to what might be referred to, from the government’s perspective and, I think, half-heartedly, as secret ballots. Before I deal substantially with the matters that I intend to raise this morning, it seems that there is a body of thought that goes something like this. The government introduced both of these bills some time ago in a number of slightly different forms from this—I think it is by now about the third time but I am open to correction. I am sure someone is keeping the statistics in relation to how many times this government has been pursuing this failed agenda. The earlier incarnations of these two bills were, perhaps from my perspective and not the government’s, far harsher and contained, I thought, provisions that were untenable and not likely to work in the real world—certainly not in industrial relations, in any event. It seems that, if you listen to some of the speeches from the government, the bills are now in a much more amenable state—the government has listened and has moved to assist the process and has made some concessions. That seems to be the import of the government’s view. You can see that in the two bills themselves: they are not reincarnations of the earlier bills that were being pushed by this government. They are, albeit slightly, different from the earlier versions and, some might say—certainly not I—in a form that can now be seriously considered and progressed.

However, it really begs a question. It is an old tactic. The government are almost saying, ‘We introduced a very hard version. Here is a very difficult bill; we know the opposition will not be able to support it so they will reject it. We will come back and try again a second time. We will come back a third time with a softer version. By that time we might have demonstrated to them that we have heard their complaints and they should now rise to meet us halfway.’ To the opposition they say, ‘We have come down a little bit and now you should come up a little bit and pass the bills or at least seriously consider them.’ But it is an old tactic. It is really one that the government should not consider and should not really bring back seriously. These bills are, and remain, flawed in my view. They are not about what their titles state. The Workplace Relations Amendment (Genuine Bargaining) Bill is not about genuine bargaining at all. It is far from it. The Workplace Relations Amendment (Secret Ballots for Protected Action) Bill is not about assisting the parties in industrial relations to enterprise bargain at all. It is not about helping the industrial relations system. It is not about helping employees bargain with employers. It is not about assisting unions to help their employees to bargain—not at all.

The government, in my view, seems hell-bent on introducing anti-employer—I cannot see that this legislation will assist employers either—anti-employee and anti-union legislation. It is still flawed not only from the perspective of employees but also from the perspective of employers. It creates unnecessary regulation and rules, and it creates unnecessary provisions for parties to be able to deal with industrial relations. Enterprise bargaining is the path that was set some time ago. It was introduced by Labor. If I recall correctly, Mr Brereton provided for enterprise bargaining in the industrial relations framework and it has continued. Other countries have dealt with enterprise bargaining over a longer period and, for all those detractors of enterprise bargaining, it is a system that allows parties to bargain and produce outcomes.

What this legislation does and what this government seems keen on doing is simply continue to complicate the issues, to make enterprise bargaining harder. You wonder
whether this government is actually for enterprise bargaining at all or whether there is a subplot going on—whether the government, by continuing to introduce this type of legislation in this place, is really trying to say, ‘We are actually not for enterprise bargaining. We would rather go back to a different system.’ I would be only too happy to hear from the government in its summation of the second reading debate about whether it still believes enterprise bargaining is worth it, whether it thinks that enterprise bargaining is still on the table and whether it is serious about enterprise bargaining being the main game.

This next matter is interesting and I did note it. I do not know whether it was a matter that the government had seriously thought about when they sat down to consider this bill, but I will give them the benefit of the doubt. In the reintroduced bill the government recognised that the Australian Industrial Relations Commission has continued with good faith bargaining. The term has reappeared in the amendments to this bill for the first time for some time. As we know, good faith bargaining was introduced by the Labor government, by Mr Brereton, in 1993 in legislation that was passed in 1994. Of course, enterprise bargaining predates that in a form, but I think the final or polished version of enterprise bargaining struck its pinnacle around the 1993-94 period. It was not until 1996 that this government, with its so-called reform agenda, started to pull that apart.

The idea of enterprise bargaining is for the parties to genuinely bargain and, in good faith, reach an agreement. The bill tries to prevent what this government calls ‘pattern bargaining’ and introduces cooling-off periods. This is the government’s third attempt to introduce this type of legislation. They tried in the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999 and again in the Workplace Relations Amendment Bill 2000, which was a response to the AMWU’s Campaign 2000. I think I said at the time that it was a flawed approach, and it continues to be a flawed approach.

The government modified its approach but this bill attempts, at least on the face of it, to be less prescriptive and requires the commission to suspend or terminate a bargaining period if certain conditions occur. This bill does not assist the enterprise bargaining framework, as I have articulated. In fact, the concern is that the continual meddling by this government with the industrial relations framework that was set might encourage those people who abandoned enterprise bargaining to see it in a very negative light, to then say that enterprise bargaining is not a positive and does not produce positive outcomes. Enterprise bargaining in truth is facilitative in the nature. As a framework, I suspect it tries to be unintrusive in the workplace to allow parties the latitude and freedom to enter into agreements. What this government should be doing is reformulating the concept of good faith bargaining to ensure that both sides, employees and employers, can deal with bargaining and include good faith bargaining in a positive framework.

As I said, this was a matter that was introduced in 1993. While this term is no longer in the act, except by way of amendment today—although I do not think the government went as far as perhaps I want it to go—the government has recognised, in part at least, that the term should not be removed entirely from the industrial relations framework. The concept continues to exist, and that is clear from recent decisions of the commission, such as the decision in relation to Joy Manufacturing Company. It also exists in other frameworks: in Queensland, New Zealand and New South Wales. One wonders why this government continues to rail against it. This government, by its continual assault and not having anything positive to say, runs the risk of ruining enterprise bargaining for those people that do benefit, in terms of productivity and wages. There is a duality concerned with enterprise bargaining. It is about promoting productivity improvements and wages outcomes. It is about having a win-win for those in the workplace. Perhaps the government might be able to clarify that in its summation of the second reading debate.
It would be better, in my view, to introduce good faith bargaining rather than pursue these ‘genuine bargaining’ provisions and these provisions dealing with secret ballots. It would be better to look at formulating and complying with bargaining processes. It would be better for the government to introduce legislation—bills or regulations—or a framework, as I have been saying, which talks about how good faith bargaining should be proceeded with for people to be able to attend meetings at reasonable times and places and to consider and respond to proposals by the parties. None of these framework issues are within this legislation, and they are certainly not in the amendments that are being promoted by the government. Clearly, it is commonsense to allow facilitative provisions such as those to be put in. The government is bereft of new ideas, because it keeps coming back with the same matter and keeps pushing the same agenda rather than trying to sit down in a consultative way to look at what the industrial relations framework and enterprise bargaining really require.

What the government have failed to do is look forward into the system and say, ‘This is what the system needs to ensure that it will continue to be effective.’ The government, in this instance, have failed to understand workplace relations and instead they concentrate on strike action, on the negative aspects, and say, ‘We need to stamp out these negative aspects.’ But, by and large, they are also positive outcomes. They allow pressure to be released from the system. That is the nature of industrial relations. I think the government understand that; they are just ideologically driven on some of these matters.

That is not the main issue, in any event. Rather, the focus has been on looking at activities or outcomes and trying to work a way through that. The government really has missed the point. For example, the commission can deal adequately with industrial relations and it has, over the ensuing period, clearly been able to do that. It has, through Justice Munro, been able to articulate a range of outcomes for the parties to meet, to come to concluded agreements and to have successful enterprise bargaining. If the government were serious, it would be best for it to stop meddling, to look seriously at the program, to ask, ‘What does the program require?’ and to talk to the parties. But the government does not seem to appreciate this; it does not really want to talk to the parties in industrial relations. It decides what it thinks is good and progresses it.

It seems to me that there is a whole range of issues that it can successfully deal with. Mr McClelland recently released a press release about foreign backpackers being paid below minimum wages; it could attempt to deal with that issue. It could attempt to deal with the issue of paid maternity leave, which was the subject of a Senate inquiry report dealing with how that matter might be progressed. The government might also deal with the issues of corporate governance, of whistleblower protection for employees to ensure that corporate misdeeds are exposed and of trusts where employees are involved. The government could also deal with an improved framework for good faith bargaining in industrial relations.

Good faith bargaining means that the parties can be compelled to sit down and discuss the issues. It does not go as far as saying, though—and I think this is one of the issues that sometimes the government really confuses—that the parties can be compelled to agree to things against their wishes, nor does it mean that the parties can assist with what is being sought—that is, what the matters are. If the commission did have the power—the subject of an amendment moved by Labor, and it appears that the Democrats’ thinking is in a similar vein—that would allow the parties to structure the process, come to the table and deal with enterprise bargaining in a reasoned and structured sense. This would bring focus. If it had the power, the commission would be able to take the parties, sit them down and work it through—not tell them what the outcomes should be; that is not the commission’s role during the enterprise bargaining process. It is designed to prevent unnecessary industrial action. It is designed to allow a safety valve. I recall that, in bargaining for outcomes, many times one of the difficulties was to get the employer to sit constructively at the table. The em-
ployer’s short answer on many occasions was simply: ‘There’s nothing for me to bargain for. I don’t need to bargain. I don’t want to sit at the table. I don’t see anything constructive in it.’ It was a very negative response. Sometimes, if you can get them to water, they will drink. They will find it valuable and they will usually entertain the process. There are certainly better outcomes that can be obtained through a process that deals with good faith bargaining.

Labor’s proposed amendments, which will be dealt with during the committee stage, provide a basis for the parties to negotiate and to bargain in good faith. They make sure that the parties can abide by that duty and they ensure that the commission has the express power to make necessary orders to ensure that bargaining in good faith occurs. I think that they are good fundamental principles that enterprise bargaining should have. It is, as I have said, a matter that is a feature of most systems that use collective bargaining. It is provided for in the United States, Canada, the United Kingdom, New Zealand and in various states in Australia. It provides a formal, structured way—for parties to deal with the elements of bargaining. In other words, you have to come into a room; you have to have air, light, water and at least a conducive environment in which to sit down to ensure that the parties conduct their negotiations in a reasonable and thoughtful way.

However, as I have said, it should be made plain that good faith bargaining does not mean that the parties can be compelled to agree to things against their wishes. I suspect that is the bogeyman that the government might put up. I certainly hope that they will not hide behind that. It is a process designed to ensure efficiency in the system. It is a process designed to allow the parties to negotiate and at least try to prevent the other party from frustrating matters, attempting to cause delays or using tactics intended to ensure that good faith bargaining does not occur. It is also a power that I think the commission would use fairly and openly. Labor’s amendments are designed to help the parties in a non-partisan manner, unlike the government’s bills, which really are only one side of the equation. They are targeted to the detriment of employees and unions, whereas, clearly, the opposition’s position is equally targeted at all parties in industrial relations and provides a constructive and fair process.

Senator HUTCHINS (New South Wales) (10.23 a.m.)—I rise to speak in opposition to the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002. Like many of the other workplace relations bills the government has brought before the Senate this year, this bill has already been rejected on several occasions. Like the others, this bill will fail to achieve any sort of necessary or productive reform. Like the so-called fair dismissals and non-compulsory union fees bills we have already looked at this year, this bill springs from the government’s own ideological bent. Its aim is to undermine the bargaining position and strength of workers and the unions that represent them. Where the government has in the past used words like ‘fairness’, ‘freedom of association’ and ‘job creation’ to try to cover and hide this agenda, this bill cloaks its real aims in the rhetoric of ‘workplace democracy’.

At the outset, it appears that the government is pursuing its stated aim in legislating to require workers to have a democratic ballot to decide whether or not they want to go on strike. But the reality is that the provisions of this bill are by and large unnecessary. The sole aim of this bill—it’s hidden aim—is to make it almost impossible for workers to take protected action. My concern about this step, about the frustrating role this bill seeks to play, is that it will result in two ultimate outcomes. Contrary to Australia’s international obligations, it will seriously inhibit the rights of workers to take protected industrial action during a bargaining period. Consequently, what you will have is more and more workers resorting to wildcat strike action. This will ultimately undermine the high levels of industrial peace that Australia has achieved in recent years.

In the same way the government falsely claimed that the scrapping of unfair dismissal laws would create 50,000 jobs, it has engaged in a great deal of deception when selling this bill. In his second reading speech
to the current bill, the Minister for Employment and Workplace Relations said:

A secret ballot ... 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.

In saying this, the minister is once again pushing this tired old rhetoric about the unions across this country, many of which represent the least skilled and vulnerable. He is pushing an image of unions and their elected representatives as chewing at the bit to go on strike, doing anything they can to disrupt industrial peace in this country and, in doing so, acting contrary to the will of the workers they represent.

But nothing could be further from the truth. If anything, this sort of rhetoric really goes to show how chronically out of touch the minister is with what is really going on in workplaces across Australia. Most unions have provisions in their own rules that require some sort of vote from their members to take place prior to the union leading the workers out on a strike. Some unions even conduct their own pre-strike secret ballots. If the minister actually got out there and had a look at what goes on in the factories, mines, yards and shop floors where many Australians go to work, he would see that in most cases it is the workers who direct their unions to lead them into industrial action.

As the years go by, levels of this sort of industrial action have been declining quite markedly. There have been unprecedented levels of industrial peace. In 2001 there were just 50 working days lost per 1,000 employees—a historic low. But even if there is a case where a worker feels as though they have been goaded into strike action against their will, they currently have recourse under the Workplace Relations Act to request a pre-strike secret ballot. They can go and see the Industrial Relations Commission, put their case and the commission may then order a pre-strike secret ballot. In addition to this, the commission itself has rights under the Workplace Relations Act to order a pre-strike ballot on its own initiative. By and large, the provisions of this bill are unneeded and unnecessary.

Pre-strike ballots are also unwanted by the workers this bill is supposed to protect. The fact is that there is no real need or desire on the part of workers for pre-strike secret ballots. The government would have this Senate believe that in workplaces across Australia hundreds of thousands of workers, under the weight of oppression from their union representatives, were being forced to go on strike. Despite the fact that the commission has the power to order pre-strike ballots, it has made only 12 such orders since 1996, either following a request to do so or on its own initiative. In the year 2000-01 it made only one order. There is no real demand coming from the workers for the sorts of pre-strike ballots that this bill will make compulsory.

So what is the real agenda? If the government were aware of the facts I have just outlined, as I am sure they are, then why would they put forward a bill like this? This bill is nothing short of an elaborate scheme to further frustrate the abilities of workers to take protected action when bargaining for better pay and conditions. In the labour market a worker’s ability to withdraw his or her labour is the primary means of exerting economic pressure on employers during a bargaining process. Especially in lower paid and lower skilled jobs, industrial action is one of the few means workers have at their disposal to demand better pay and conditions, and the government do not like that at all. People like the Minister for Employment and Workplace Relations hate the fact that workers organise themselves into unions and then use their collective muscle to get decent pay and conditions for their members, and they want to do anything they can to undermine that ability.

That is all this bill is about. It is a scheme designed to make it nearly impossible for workers to go on strike and thus succeed in getting better pay and conditions for themselves. And it does this in a number of ways. By requiring a compulsory ballot to take place prior to any application for protected industrial action the bill will dramatically drag out the time it takes to get an action up and running. Some estimates hold that this could take up to six weeks. In addition, the complexity of the requirements for a valid
application could make it relatively easy for unscrupulous employers to delay the process. They could argue a number of issues before the commission, such as procedural concerns or allegations that the union is engaging in pattern bargaining, which would then require a referral to a President Member. These time restraints can render any potential action ineffective, as industrial action, to be effective, usually requires some degree of spontaneity.

The bill’s provisions also require any application for a secret ballot to contain precise details of the intended action, including the day or days on which it is to take place and its duration. This, combined with the fact that it is the applicants who must bear the overwhelming costs of running the ballot, will lock employees into a certain form of industrial action at a specified time. This could greatly extend the average time involved before reaching agreement. It also inhibits the flexible nature of bargaining, locking in workers to a scheduled timetable of industrial action.

The bill also requires that 40 per cent of affected workers must vote in a secret ballot to make up a quorum. Many workers do not want to become actively involved in workplace issues. They would rather leave those decisions to someone else—they would rather go along. A voluntary vote will result in a low turnout of voters. This will make it even harder to get strike action approved. Finally, in lower paid and low-skilled industries it may be even harder to succeed in having strike action approved due to higher levels of illiteracy and poor English speaking skills amongst workers.

All in all, the provisions of this bill make it incredibly time consuming, costly and difficult to have protected action approved. They do not act to encourage workplace democracy; rather, they merely deter workers from taking protected industrial action. The government would not want any system of protected action to work, because they do not believe in protected action at all. They do not believe in workers being allowed to take industrial action to better their pay and conditions. This bill will make taking protected action so difficult that it will simply be out of reach for most workers.

Inhibiting the right to strike is a serious breach of international labour law. It has also been argued that the provisions of this bill would put Australia further in breach of ILO convention No. 87. It would breach ILO principles that hold that legal procedures for declaring a strike, such as secret ballots, should be reasonable; should not place substantial limitations on the means of action open to trade unions; should not be so complicated as to make it practically impossible to declare a legal strike; and do not violate the principle of freedom of association so long as they promote democratic principles within trade union organisations.

As I mentioned earlier, in most cases a worker’s ability to withdraw his or her labour is the primary means of exerting economic pressure on employers during a bargaining process. Industrial action, and even the threat of industrial action, is in many cases a means of ensuring that workers get decent pay and conditions. In my firm view, it should be taken as a last resort, but the possibility of it occurring ensures, especially in those industries employing low-paid and low-skilled workers, that workers bargain on an equal footing with their employer. It is incredibly naive, however, to think that because protected action is so difficult workers will simply not strike. They will simply take unprotected action. By removing the ability of workers and their representatives to participate in lawful industrial action, the government will be bringing on more wildcat strikes.

In the opinion of Professor Ron McCallum, a widely respected labour law expert and academic—who, I might add, was recently appointed to the position of Dean of the Faculty of Law at the University of Sydney—such wildcat action would inevitably take place, possibly against the advice of union representatives. Professor McCallum, in giving evidence to the Senate committee which reviewed this legislation, said:

Such a bureaucratic system will drop industrial action down from union executives and union secretaries to wildcat action. I think we will see an increase in short-term wildcat action. This has definitely been the experience in Western Australia, where the former Court
Liberal government introduced similar pre-strike secret ballot requirements. Since the introduction of these laws, not one application has been made for protected industrial action. I repeat: not one. But this does not mean that there has been uninterrupted industrial peace in Western Australia. Of course, there has been industrial action over there. And because of the excessive and in most cases unworkable bureaucratic requirements workers are choosing to take unprotected action.

I say in conclusion that this is the sort of industrial anarchy to which this government wants Australia to return. It wants to undermine workers' right to strike and take away their equal means of lifting themselves to an equal bargaining position with their employer. This government hates the idea that workers can be put on an equal footing with employers when they work together for better outcomes. Every piece of industrial legislation that we have seen before us in this chamber this year has been aimed at undermining their ability to do so. This bill is no different and it should be rejected accordingly.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (10.37 a.m.)—It is important to realise that both the Workplace Relations Amendment (Genuine Bargaining) Bill 2002 and the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 will protect and create jobs, because they are important for the future of enterprise bargaining, which is the cornerstone of improvements in workplace relations and the resulting productivity increases. The Workplace Relations Act does need further reform to remove the possibility of misuse of reforms already implemented, particularly in relation to protected industrial action. The genuine bargaining bill will ensure that protected industrial action is only available to a party which is genuinely trying to reach agreement with the other party or parties. It will also help prevent evasion of Australian Industrial Relations Commission orders to suspend or terminate a bargaining period. As well, it will make clear the provision for cooling-off periods.

A number of ALP senators have suggested that the genuine bargaining bill prevents the making of common claims against a range of employers. The genuine bargaining bill does not prevent the making of common claims against a range of employers, so I set that out from the start. But if the party making common claims wants to take protected action, it is an appropriate price for that privilege to require that party to be genuinely trying to reach agreement with each employer rather than holding out for agreement by all the employers in the same terms.

Senators on the other side have also suggested that the bill would prevent multiemployer agreements. Multiemployer agreements will still be able to be certified under the genuine bargaining bill. On the other hand, protected industrial action is not available under the current legislation to support claims for multiemployer agreements. The genuine bargaining bill does not contain any new limitations with regard to multiemployer agreements.

Senators on the other side have also suggested that the commission already has sufficient power to deal with parties not genuinely trying to reach agreement. The decision of Justice Munro in the Campaign 2000 case is a good precedent, but without this bill it is not sufficiently certain and clear to employers and employees what the commission will consider when determining whether to suspend or terminate a bargaining period because a party was not genuinely trying to reach agreement. Some senators simply want to insert a note referring to Justice Munro's decision, but that is not enough. If senators support the decision, they should recognise the value of confirming that it is the correct approach to the commission's exercise of its discretion in this area.

The secret ballots bill provides that industrial action taken by employees will not be protected unless it is approved by a secret ballot. It has been suggested that the procedures for secret ballots are excessively detailed and bureaucratic. In fact, the procedures are lengthy because they provide comprehensive guidance to the commission on its new responsibility of overseeing ballots, not because they dictate all the specific steps
that parties wanting to conduct ballots will have to follow. The ballot process need involve only the following steps: step one, notify a bargaining period; step two, decide to propose protected action and decide on the nature of the proposed action and the ballot question; step three, apply to the commission for a ballot order and notify other parties; step four, the commission makes a ballot order; and step five, the ballot is conducted. These steps can be completed so that protected action can commence as soon as a nominal expiry date has passed.

A number of Labor senators have also claimed that there are inconsistencies in requiring a ballot for employees to commence industrial action but not for an employer to commence a lockout or for employees to cease industrial action. The focus in the bill is on the decision to commence protected action because protected action is a legislative and practical privilege, whereas the act of calling off industrial action does not need or attract any legislative privilege. Again, any employee will be free to stop participating in authorised action at any time. There is no sensible basis for employer ballots, because each employer is a single legal entity. Employers are not democracies. Asking shareholders to vote on a lockout would take decisions on agreement making away from the workplace level and out of the hands of the people directly responsible for agreement negotiation.

Senators also suggested that the bill is not needed because the existing provisions in the act for secret ballots have rarely been used. The existing provisions in the act were not designed to ensure that all relevant employees can participate in a secret ballot as a matter of course, as a precondition to protected industrial action. The commission has generally only used ballots under these provisions to test the views of employees who are already on strike rather than to ensure democratic processes in relation to the original decision to authorise industrial action.

Senator Murray has put forward a proposal for secret ballots to be held in certain circumstances where a member has requested it or where the commission has ordered that a ballot take place. The government welcomes this indication that the Democrats share the government’s recognition of the importance of democracy in decision making about industrial action. The government favours the approach in the bill which would enshrine in the act a right for union members to have a say in authorising industrial action.

The ALP have put forward an amendment to the second reading motion for the Workplace Relations Amendment (Genuine Bargaining) Bill 2002. The first limb of this motion refers to unreasonably emasculating the powers of the AIRC to resolve industrial disputes in the interests of the parties. The bill emphasises the commission’s role under the existing provisions and gives the commission new powers to make its orders for suspension or termination of a bargaining period effective.

The second limb of the motion refers to interfering with the AIRC’s discretion to deal with industrial disputes in the most appropriate way. As noted by Senator Murray, the government’s previous legislation has guided the AIRC’s discretion in a very appropriate way, which has been responsible for the productivity growth and reduction in industrial disputation achieved under the government’s legislation.

The third limb refers to failing to put forward constructive proposals to enable the commission to direct parties to bargain in good faith. The government does not support the commission making orders about how the parties should bargain. The act already provides important protections against illegitimate bargaining actions such as coercion or the dismissal of employees. The government trusts in the capacity of the parties to reach agreement, if and when they want to, with protected action available as a persuasive tool for any party so long as it is genuinely trying to reach agreement with the other party or parties. The ALP’s amendment to the motion should be rejected and the bill should be supported. I commend the bill to the Senate.

Question put:
That the amendment (Senator Sherry’s) be agreed to.
The Senate divided. [10.51 a.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes…………. 27
Noes…………. 36
Majority……… 9

AYES
Bishop, T.M. Bolkus, N.
Brown, B.J. Buckland, G.
Campbell, G. Carr, K.J.
Collins, J.M.A. Cook, P.F.S.
Crossin, P.M. * Denman, K.J.
Forshaw, M.G. Harradine, B.
Harris, L. Hutchins, S.P.
Kirk, L. Ludwig, J.W.
Marshall, G. McLucas, J.E.
Moore, C. Murphy, S.M.
Nettle, K. O’Brien, K.W.K.
Ray, R.F. Sherry, N.J.
Stephens, U. Webber, R.
Wong, P.

NOES
Abetz, E. Allison, L.F.
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.
Johnston, D. Kemp, C.R.
Knowles, S.C. Lees, M.H.
Lightfoot, P.R. Macdonald, I.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.J. Murray, A.J.M.
Patterson, K.C. Payne, M.A.
Reid, M.E. Ridgway, A.D.
Scullion, N.G. Stott Despoja, N.
Tchen, T. Troeth, J.M.
Vanstone, A.E.

PAIRS
Conroy, S.M. Chapman, H.G.P.
Evans, C.V. Tierney, J.W.
Faulkner, J.P. Hill, R.M.
Hogg, J.J. Heffernan, W.
Lundy, K.A. Minchin, N.H.

* denotes teller

Question negatived.
Original question agreed to.
Bills read a second time.

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

In Committee

WORKPLACE RELATIONS AMENDMENT (GENUINE BARGAINING) BILL 2002

Bill—by leave—taken as a whole.

Senator SHERRY (Tasmania) (10.55 a.m.)—by leave—I move Labor amendments (2) and (3) on sheet 2595:

(2) Schedule 1, item 1, page 3 (line 7) to page 4 (line 2), omit the item, substitute:

1 After section 170MK

Insert:

170MKA Good faith bargaining

(1) A negotiating party to a proposed agreement must take part in negotiations and must negotiate in good faith and genuinely try to reach agreement with the other negotiating party or parties.

Note: The issue of whether a negotiating party is genuinely trying to reach agreement with the other negotiating parties was considered by Justice Munro in Australian Industry Group v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, Print T1982.

(2) This section is not to be taken to require a negotiating party to:

(a) agree on any matter for inclusion in an agreement; or
(b) enter into an agreement.

(3) For the purpose of subsection (1), “negotiating in good faith” includes:

(a) agreeing to meet face-to-face at reasonable times proposed by another party;
(b) attending meetings that the party has agreed to attend;
(c) complying with negotiating procedures agreed to by the parties;
(d) disclosing relevant information, subject to appropriate undertakings as to confidentiality, for the purposes of negotiations;
(e) stating a position on matters at issue, and explaining that position;
(f) considering and responding to proposals made by another negotiating party;

(g) adhering to commitments given to another negotiating party or parties in respect of meetings and responses to matters raised during negotiations;

(h) dedicating sufficient resources and personnel to ensure genuine bargaining.

(4) For the purpose of subsection (1), a party must not:

(a) capriciously add or withdraw items for negotiation; and

(b) refuse or fail to negotiate with one or more of the parties; and

(c) in or in connection with the negotiations, refuse or fail to negotiate with a person who is entitled under this Part to represent an employee, or with a person who is a representative chosen by a negotiating party to represent it in the negotiations; and

(d) in or in connection with the negotiations, bargain with, attempt to bargain with or make offers to persons other than another negotiating party, about matters which are the subject of the negotiations.

170MKB Management of good faith bargaining

(1) For the purposes of section 170MKA, the Commission may make orders to:

(a) ensure that a negotiating party negotiates with another negotiating party; or

(b) ensure that negotiating parties to a proposed agreement negotiate in good faith; or

(c) promote the efficient conduct of negotiations for a proposed agreement; or

(d) otherwise facilitate the making of an agreement.

(2) In determining what orders (if any) to make, the Commission:

(a) must consider whether a negotiating party has negotiated in good faith pursuant to the obligations imposed by section 170MKA; and

(b) may consider:

(i) proposed conduct of any of the parties (including proposed conduct of a kind referred to in paragraph (a)); and

(ii) any other relevant matter.

(3) Without limiting the generality of subsection (1), the Commission may make orders that a negotiating party take, or refrain from taking, specified action, including:

(a) requiring a negotiating party to adhere to commitments given to another negotiating party or parties in respect of attending meetings and providing responses to matters raised during negotiations;

(b) setting time limits for the completion of negotiations in respect of a proposed agreement.

(4) The Commission may not make an order which will:

(a) prevent a negotiating party from trying to reach an agreement with another negotiating party;

(b) require a negotiating party to:

(i) agree on any matter for inclusion in an agreement; or

(ii) enter into an agreement.

(3) Schedule 1, page 4 (after line 2) after item 1, insert:

2AA At the end of subsection 170MW(2)

Note: The issue of whether a negotiating party is genuinely trying to reach agreement with the other negotiating parties was considered by Justice Munro in Australian Industry Group v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, Print T1982.

As was referred to in my speech in the second reading debate and in the contributions of a number of other senators on this side of the chamber, the amendments moved by Labor are designed to restore the power of the Industrial Relations Commission to ensure that enterprise bargaining is truly conducted in good faith. This power was stripped from the commission by the Liberal government in 1996. Amendment (2) proposes a new section 170MKA that requires all parties—and I emphasise ‘all’—to a pro-
posed agreement to negotiate in good faith and to genuinely try to reach agreement.

Mention has been made in a number of the contributions earlier of the decision by Justice Munro in Australian Industry Group v. AFMEPKIU. This decision has been referred to by a number of speakers in previous second reading contributions. The principles embodied in His Honour’s decision will assist in reckoning what is and is not acceptable conduct in negotiations. Further provisions in proposed new section 170MKA give guidance on what is expected in negotiations. I think it is worth while running through the expectations of negotiating in good faith and genuinely trying to reach agreement that are detailed in the Labor Party’s amendments.

For example, it means showing up for agreed meetings, following agreed procedures, responding to proposals and disclosing relevant information. Apart from being good manners, such conduct would no doubt help bring about a meeting of minds, if a meeting of minds is to occur.

Also under proposed new section 170MKA are examples of the sort of conduct which is not to be countenanced. Some examples of that are capriciously adding or withdrawing items from negotiations or failing to negotiate with authorised representatives. However, no-one can be compelled to accept or reject a term in an agreement. Certainly, for those who are not, or have not been, involved in industrial relations negotiations and who are listening to this debate, it would seem quite extraordinary that before a party sits down with a list of proposals the other party can simply refuse to respond in any way whatsoever or that you get the absurd situation where you get to a face-to-face meeting and ask for a response to a set of claims and the party opposite does not say anything; it does not open its mouth. Then there is ‘disclosing relevant information’. These are things that the Australian community would generally and reasonably expect. It is the sort of conduct that the parties should be guided by when negotiations are entered into. Certainly by any community definition and commonly understood definition, turning up to agreed meetings, following agreed procedures and at least responding to proposals is ‘negotiating in good faith’.

The Labor Party has listed in some detail the sort of best practice that would be normally expected in these types of negotiations and has also listed the sorts of practices that should not be countenanced and would be unacceptable to any reasonable person in the community, whether that person is or is not involved in negotiations of this sort. Under proposed section 170MKB, the commission will be given the power to make negotiating parties observe what is required under section 170MKA. Consistent with proposed section 170MKA, the commission will not have the power to require a party to agree on any matter for inclusion in an agreement. Those are the comments that I wish to make in this debate in support of our amendments (2) and (3).

Senator MURRAY (Western Australia) (11.02 a.m.)—We have thought for some time that there needs to be a return to a consideration of good faith bargaining in industrial relations law. The original part of the old Industrial Relations Act which dealt with good faith bargaining appeared in sections 255 and 253ZD, and, in presenting their proposed amendment, the Labor Party have drawn on a great deal of tradition and case law with respect to good faith bargaining. We think that good faith is another version of genuine bargaining, and the issue is therefore whether you should take our approach to good faith bargaining or Labor’s approach. The key point to note is that Labor seek to amend section 170MK of the Workplace Relations Act, which states what should hap-
pen when a bargaining period begins. For those without a copy of the act, it is a short section which says:

The bargaining begins at the end of 7 days after:

(a) the day on which the notice was given; or

(b) if the notice was given to different persons on different days—the later or latest of those days.

What Labor are saying is that the act must then go on to say, ‘You must conduct your bargaining in good faith.’ Our view is that that is likely to happen anyway. You have to be concerned only when the parties arrive at a situation where bargaining breaks down. Either they will have a blue and go out with protected action or they will march off to the commission and say, ‘Look, we want you to suspend or terminate the bargaining period.’ In our view, it is only at the stage when you look at suspending or terminating the bargaining period that the commission should be asking the questions: have you been bargaining in good faith, and have you been genuinely trying to reach an agreement? It is only at that stage that the commission has to get involved in the detail of what has been going on between the parties.

So the different approach we have taken is very much as to where this provision should apply, not whether it should apply. In my revised amendment on revised sheet 2621, we have quite shamelessly adopted much of the language that Labor have used in their amendment (2) on sheet 2595. The reason we have done that is that, although my original intention was to be extremely short and to just say that genuinely trying to reach an agreement includes bargaining in good faith, it seems to us that a larger exposition of the issue needs to be attended to. That is why we have done that. We do, however, think that Labor have gone into excessive detail and that their overall recommendation in amendment (2) is a bit expansive, but that is not an endless fault.

The other thing I want to say is that I think this is a most important idea. If you look at the suspension or termination of bargaining period provisions in section 170MW, they are actually very powerful and they already exist. But provisions such as subsection 170MW(3) are quite easy to use. It says that circumstances which would entitle the commission to use the power to suspend or terminate the bargaining period would be, for instance, that the life, or the personal safety or health or the welfare of people are being endangered; or that significant damage to the Australian economy is being caused. That is not a difficult case to make in those circumstances.

Another easy area for the commission to determine is whether their orders have been disregarded and therefore it could suspend or terminate a bargaining period. An area that is not easy to determine is the provisions in section 170MW whereby the commission is supposed to determine whether the parties have genuinely been trying to reach an agreement. It is for that reason that we think that you need to expand on the good faith approach and give the commission a specific outline.

I will recap my arguments—and I will put them again when I am moving my own amendments—in terms of our approach rather than Labor’s approach. Labor seeks to establish a good faith or genuine bargaining provision at the outset of bargaining by relating this to section 170MK. We say you should assume that to be happening and things will proceed normally. It is only when they break down that you should be asking, ‘Was there good faith?’ That is why we attach the good faith provision to section 170MW, which is about suspending or terminating a bargaining period, and not to section 170MK, which applies when you are commencing the process. We agree that a good faith provision or a genuine bargaining provision—and we link the two—needs to be in the act; we just think the placement of it is wrong.

Senator HARRIS (Queensland) (11.10 a.m.)—In rising to commence my contribution to the Workplace Relations Amendment (Genuine Bargaining) Bill 2002, I would like to place on record that One Nation will be supporting the Labor amendments for the following reasons. The purpose of the bill is to amend the Workplace Relations Act 1996—the principal act—to give effect, in modified form, to two long-standing government policy proposals. The first would
place even greater emphasis on enterprise bargaining by making it harder to obtain access to protected bargaining under the act. The major target of the proposed legislation is actually de facto or covert forms of industry-wide bargaining, sometimes referred to as pattern bargaining.

The bill also seeks to confer on the Australian Industrial Relations Commission new powers to suspend a bargaining period for a specified time. The suspension or termination of the bargaining period by the commission removes the statutory protection available to persons engaged in industrial action.

The ACTU clearly says:

• There are no industrial circumstances to justify the Bill.
• Common claims and similar outcomes are a normal component of bargaining, engaged in by employers as well as unions.
• The Bill would have the effect of prohibiting common claims.
• The Bill would create a presumption which would operate to fetter the Commission’s discretion.
• The ability to bargain on a multi-employer or industry-wide level is available in every developed nation internationally and is integral to the ILO’s core labour standards.
• Industry-wide bargaining is not a barrier to employment or productivity.

The power already exists in the Workplace Relations Act to suspend a bargaining period.

So where does the desire of the government come from to bring this legislation forward? It is very clearly set out in the public information notice of the International Monetary Fund. In the conclusion of that notice, under the heading ‘Article IV Consultation with Australia’, they made the following comments:

In addition to fiscal reform, Australia has been pursuing a range of other microeconomic reforms, with important recent achievements in several key areas. These reforms cover: the labor market; the financial sector; competition policy; and the corporate law code. An important measure is the passage, in late 1996, of the Workplace Relations Act (WRA) that has encouraged wage bargaining at the enterprise level. With respect to the financial sector, a package of pathbreaking reforms, which puts Australia at the forefront of international practice, is in the process of being adopted. A major reform proposal for the tax system, which would address many of the shortcomings in the current system, was announced in mid-August, 1998.

So it is very clear that the government is responding to requests from the International Monetary Fund to curtail both the ability and the power of the unions and the individual members, and it clearly indicates to the government that it should move away from industrially based agreements to enterprise bargaining. The IMF goes on to say:

Directors welcome the government’s efforts at labour market and social welfare reform. Further reforms will be necessary however to reduce the high level of structural unemployment. In the labour market, reform should focus on strengthening enterprise bargaining further and reducing the role of awards and third parties in wage determination.

You cannot have it explained any clearer than that. This is a clear interference by the International Monetary Fund in Australian policies and the direction we are taking.

A review by Katherine Murphy in the Australian Financial Review in February 1999 states:

The International Monetary Fund has urged the Australian government to cut welfare benefits and attack trade union power to address Australia’s persistently high unemployment rate.

She goes on further to say:

While the IMF acknowledges the Howard government’s efforts to deregulate the labour market and tighten the availability of social welfare benefits, it suggests the reforms were incremental in scope and might need tougher measures.

She goes on to say:

It suggests that a more fundamental break from the past industrial relations and social welfare system may be desired to accelerate reduction in structural unemployment and improve Australia’s growth prospects.

That is the Australian Financial Review’s overview of the IMF’s report to Australia. Finally, in May 1998, the Managing Director of the IMF, Michael Camdessus said:

As regards labour market reform, the 1996 industrial relations legislation was a step in the right direction. However, in the modern globalised economy wage rates and labour market practices cannot be insulated from market conditions. While inevitably sensitive and politically diffi-
cult, further reforms should concentrate on strengthening bargaining at the enterprise level and reducing the central control of both the Industrial Relations Commission and the complex system of awards. In the same vein, I am sure that Australia will continue to use its influence to promote economic reform throughout the region and thereby help its neighbours re-establish the basis for sustained high-quality growth.

You cannot get a more reputable quotation than that from the Managing Director of the International Monetary Fund, advising that the Australian government should accept and implement the policies that this bill brings in.

If this bill is passed in its present form, the TWU will not be able to approve the eight major enterprise bargaining agreements with a three per cent increase for all of those who would derive that benefit across the industries. Australians, both employers and employees, do need the ability to have the freedom of consistency. If enterprise bargaining is going to be made on a one-by-one basis—and we will take the transport industry as an example—where the major transport companies in Australia are able to sit down individually and negotiate enterprise bargaining, the sheer size and economic ability of those companies and their ability to hold out and to reduce the benefits to their workers could ultimately see those enterprise bargaining agreements returning far less to the workers. Then, conversely, throughout the rest of the industry, because the proprietors of the smaller transport industries do not have the same muscle or the same economic basis, they may well not be able to negotiate the same rates of pay. Therefore we would have within the industry a disparity between drivers driving transport vehicles doing exactly the same work but receiving different rates of pay. I do not believe that is acceptable.

Where we have a group of people across an industry performing a relatively similar duty then it is most un-Australian to accept some of those working at one rate of pay and others receiving a higher rate of pay.

That is the case when you look at it purely from the aspect of the workers. But let us then have a look at the effect that it has on the bottom line of the companies. It gives a huge economic benefit to the larger companies if the cost of their drivers is substantially less for them than for their smaller competitors. So what happens then? Because of the sheer economics and the tightness of profit within the transport industry, in all probability we will see less competition. As a result, flowing right through from this bill, we could see another advantage to the larger companies and a disadvantage to the smaller companies. Therefore it is absolutely imperative that union and non-union members can expect to have freedom to have consistency across industries. This legislation in its present form would ban that.

Let us consider Qantas as another example. At the moment, Qantas negotiates collectively and simultaneously with up to 10 unions. I believe that this legislation will ban that, so that Qantas will have to negotiate with each and every union separately. The next example that I put before the chamber is the government itself. What is the government doing in relation to its negotiations with public servants? Does it say that it will sit down with each and every individual union and negotiate in good faith? No, it does not. The government expects all negotiations, across all of the unions, to be bargained collectively and at the same time. We have a situation where the government is saying, ‘Don’t do as we do; do as we say.’ It will have one set of rules for the government and will legislate totally the opposite for all private enterprise. One Nation supports the Labor amendments.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.24 a.m.)—I rise briefly to indicate that the government does not support the Labor Party’s approach. I heard what Senator Murray had to say and I thought that he made a very good distinction between what the Labor Party has in mind and what the Democrats have in mind and certainly there is a lot more plausibility about their approach. What Labor essentially has in mind is to smother this from the outset. The amendments give the commission the ability to make orders from the outset and, in doing so, to consider any relevant matter. That is a recipe for endless involvement and intrusion. Clearly, it is not necessary at that stage, as Senator Murray rightly points out. It is only
if negotiations break down that you should be particularly concerned to interfere. But, as always, the Labor Party approach is to try and set the rules of the game at the outset and make it very easy to rush off to the commission and get orders that could well limit negotiations to a straitjacket which they prefer. We certainly do not think that that is the way to go. The government’s approach, as outlined in the bill, is to identify those matters which we would regard as unacceptable and evidence of bargaining in bad faith, but not to go down the track of trying to specify every aspect of the matter which must be adhered to and, in the case of the amendments, spell out in advance.

Senator SHERRY (Tasmania) (11.26 a.m.)—I thank Senator Harris and Senator Murray for their contributions. The reason for the Labor Party moving these two provisions on good faith bargaining and the management of good faith bargaining is that, as I outlined earlier, the Labor Party believes that there should be certainty from the start. Senator Alston refers to certainty as a straitjacket, but the fact is that the types of behaviour that are outlined in the Labor Party’s amendments in respect of good faith bargaining are what I think the community would expect.

People in the community who are not part of industrial relations negotiations would normally expect that, from the word go—from the commencement of any negotiations—the parties involved would agree to meet face-to-face at reasonable times. It is normal behaviour that any reasonable person in the community would expect of anyone entering into discussions. It is also good manners to do so, as is actually attending meetings that the parties have agreed to attend. This is not just necessary for good faith bargaining, it is also good manners. When you agree to a meeting date, unless there are some extenuating circumstances, you attend that meeting. You do not, as some sort of disruptive tactic, agree to a meeting and then simply not show up. That goes for whoever would practise it, whether it is the employer or the union. Regrettably, these things do occur from time to time, so the Labor Party prefers that we have certainty from the start.

These provisions are not straitjackets. They are reasonable approaches which any reasonable person would believe should be practised by anyone in any sorts of discussions more generally in the community. If you do not have these provisions, defining the sorts of things that we have laid out would develop over time through court or commission decisions. That, we believe, is unsatisfactory because it would take time to evolve and it would not necessarily be consistent—and it must be on the basis of consistency, certainty from the start and reasonable definition and outline of what constitutes good faith bargaining. If you showed this list to a person in the street and asked whether they thought that it was a reasonable set of proposals, they would say they are and that they are what any person would expect in any approach to negotiating. If we have that certainty from the start, then it will be clearly understood by all parties in negotiations that these sorts of reasonable proposals are guidelines and outlines as to how parties should behave in their treatment of one another in such negotiations.

Senator HARRIS (Queensland) (11.31 a.m.)—I find it absolutely astounding that in the minister’s opening contribution to this piece of legislation he neither denied the existence of the influence of the IMF on government policy nor agreed that it existed. We can only suppose, in the absence of any response whatsoever from the minister, that the reports in newspapers like the Financial Review, other articles, and reports directly from the IMF itself, are in actuality correct. Do we have this piece of legislation being put forward by the government in a genuine way to resolve some of the complex issues relating to industrial relations or are we seeing an absolutely blatant intent by the government to further implement another IMF policy? In the absence of any response from the minister, we have no option other than to accept that that is exactly what is happening. The government is implementing IMF policy.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.32 a.m.)—For the benefit of Senator Harris, I will respond. As I understand it, he is arguing that, because the
IMF thinks there are productivity benefits to be derived from an efficient workplace relations system, which would include streamlining the approach to bargaining processes, somehow we are simply implementing their regime slavishly. The reality is that those on this side of the chamber, certainly the government parties, have always taken the view that industrial relations is an unnecessarily arcane science. Many people on the other side have made a good living out of it and got themselves into parliament as a result, but we do not like the huge amount of involvement and intrusion—and this latest case is probably a good example of it—where parties are not left to their own devices: they always have to have someone acting on their behalf; you have to have the commission looking over everyone’s shoulder. It just becomes a very tightly regulated area.

We are in favour of deregulating the labour market and we have been consistently pursuing that policy approach since we have been in government. I hasten to assure Senator Harris that that is because we make an independent judgment that that is ultimately in the best interests of consumers. If you recall, under the accord some years ago there were very modest increases in real wages. I cannot recall the stats now, but I think during the period of the accord there may have even been a negative increase in real wages. I cannot recall the stats now, but I think during the period of the accord there may have been a negative increase in real wages. Under us, low income earners in particular have seen significant real wage increases. We say that is very much because of a freer environment in which to negotiate and to reward productivity. We do not like this ‘one size fits all’ pattern bargaining approach. We do not like this ‘one size fits all’ pattern bargaining approach. What we much prefer is for people to negotiate according to their contributions and their capacity to pay and get better outcomes for workers as a result. We are not doing what the IMF says. If they happen to agree with us on some matters then that is good, but that is not really what is driving us at all.

Senator SHERRY (Tasmania) (11.35 a.m.)—The minister is being a little provocative in that contribution. I did expect him to respond to Senator Harris. I just want to make it clear to the Senate chamber on behalf of the Australian Labor Party, particularly as we are being broadcast, that the minister has cast an aspersion. He made reference to a number of Labor senators having a trade union background. It is important in that context to understand that before a number of Labor senators were trade union officials, they held a wide range of occupations and jobs. Senator Campbell, to whom Senator Alston occasionally makes reference, was an official of the AMWU—

The TEMPORARY CHAIRMAN (Senator Lightfoot)—That is Senator George Campbell.

Senator SHERRY—Yes, Senator George Campbell, of course. Senator George Campbell was a metal tradesman—an apprentice—who worked in shipyards, as I understand it.

Senator Alston—Probably a union activist from day one.

Senator SHERRY—He could not have been a union activist from day one, Senator Alston. Even you must understand that. I will conclude on this point: what we can say about the government is that they are dominated by lawyers. Senator Alston referred to the arcane nature of industrial relations. You could make the same comment about the law and lawyers and the way they behave in some respects. What we do know about lawyers is this: once a lawyer, always a lawyer. That is generally what happens.

Senator Ferris—Once a trade unionist, always a trade unionist.

Senator SHERRY—At least, Senator Ferris, trade union officials have had an occupation in the real world outside the legal world before they become trade union officials. It is extraordinarily rare for a person to be a trade union official—in fact, I do not know of an example—and not have spent some considerable time in the work force carrying out their particular occupation and job. On this side of the chamber, the Labor Party is proud of that.

What we know about this mob opposite is that about half of them have been lawyers from day one—law students and lawyers. So, if you want to make the point, Senator Alston, about union officials, we will obviously respond. We have got a government dominated by lawyers. Senator Alston is a lawyer. You look along the front bench and half of
them are lawyers. Well, big deal—once a lawyer, always a lawyer. You make the point about union officials and I am very proud that we have significant representation of people who have been union officials and who have had significant experience in a whole variety of occupations—everything from meatworkers to shearers, metalworkers and hotel workers. There is a huge variety of very rich experience and contact among Labor senators—who are representatives of working people in this country—on this side of the chamber, unlike the other side of the chamber, which is dominated by lawyers. They are everywhere.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that amendments (2) and (3) be agreed to.

Question negatived.

Senator MURRAY (Western Australia) (11.39 a.m.)—The Democrats oppose schedule 1, item 1, in the following terms:

1. Schedule 1, item 1, page 3 (line 7) to page 4 (line 2), TO BE OPPOSED.

Those items on page 4 marked (2A), (2B) and (2) are left intact and I will deal with those later. This is the nub of the government’s attempt to deal with bargaining periods, and I think it is the reason I lay such emphasis on the provisions of 170MW, which already exist, and the need for greater clarification to ensure that genuine bargaining is occurring. It is for that reason that later on I will be proposing some amendments to deal with that issue.

The difficulty for the government, for the Democrats and, I would suggest, for all participants in this debate is to know whether the fears of pattern bargaining and the concerns as to some of the trends apparent in the manufacturing industry and in other industries will prove real. One of the difficulties we have is that prior to Campaign 2000 we were presented with enormous concerns and, frankly, I personally was racked in trying to arrive at a decision. In the end we decided not to support the government’s bill of that time and to let the bargaining process find its own feet, as it is intended to do.

There is another difficulty often faced by people in assessing the nature of what goes on in the federal industrial relations regime. I would remind those who pass remarks about industrial relations that unfortunately for this country we have six industrial relations regimes and we would do far better to have just one. There is a great deal of confusion as to what goes on out there. One of the things that people forget is that the entire purpose of the Labor regime, as established in 1993 and further developed by the coalition regime as established in 1996, is to ensure that enterprise bargaining is at the forefront of the relationships between employers and employees. Both the Labor Party in 1993 and the coalition in 1996 walked away, in both instances supported by the Democrats—those two political parties walked away from industry-wide bargaining.

Awards constitute a safety net. Industry-wide bargaining does not apply in the federal regime and enterprise bargaining is to be encouraged. If you accept that is how it is to be, then as far as possible you want to step back from the interaction between those parties and let them get on with it. The problem we see is that the government’s amendment might shift a balance which, so far, seems to us to be working. But we are not at all certain on the issue; it is far too unclear as to how things are. On balance, looking at a lack of evidence as to its need, we would recommend that this section of item 1 be opposed.

Senator SHERRY (Tasmania) (11.43 a.m.)—We are obviously concerned that the Australian Democrats could not support the two previous amendments, which were defeated, but Senator Murray’s suggested approach is better than nothing, so we will be supporting Senator Murray on this occasion.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.44 a.m.)—This really does go to the heart of the government’s approach, where we spell out a number of matters which we regard as unacceptable conduct. The combination of Labor’s and the Democrats’ proposals would mean that that heart of the bill would be excised. Whilst I do not think we should divide, because of the time that is taken up as a result, I do want to indicate that this is a pretty fundamental
proposition and we will clearly be strongly opposed to it.

Senator HARRIS (Queensland) (11.44 a.m.)—My query goes not to the content that is going to be removed from the bill but to the structure of the amendment. It deletes from line 7 on page 3 through to and including line 2 on page 4. If we look at the heading on line 5, we see that it says:

After subsection 170MW(2)
Insert:

Senator Murray—No, MW(8).

Senator HARRIS—I am speaking from the copy of the bill that I have. If we look at line 3, it would then leave 170MWA. My question to you, Chair, is about whether excising that section from the bill alters the structure of the bill in such a way that we will have section 170MWA sitting under the heading 170MW(2).

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Harris, I think you may be reading from an earlier print of the bill. There is a third reading print.

Senator HARRIS—Thank you, Chair. That is correct. I will ask the attendant to get me another copy of the bill.

The TEMPORARY CHAIRMAN—The question is that item 1 stand as printed.

Question negatived.

Senator MURRAY (Western Australia) (11.47 a.m.)—I move Democrats amendment (2) on sheet 2621 Revised:

(2) Schedule 1, item 1, page 4 (after line 2), insert:

Note: The issue of whether or not a negotiating party is genuinely trying to reach agreement with the other negotiating parties was considered by Justice Munro in Australian Industry Group v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, Print T1982.

Senator Sherry, you were a bit grudging about the previous amendment: it actually ripped the heart out of the bill! The minister was rather kind, because he should have walked over and given me a poke in the eye for doing so!

The TEMPORARY CHAIRMAN (Senator Lightfoot)—That would be unparliamentary, Senator Murray.

Senator MURRAY—It would, I suppose! The trouble with Hansard is that it does not show amusement, which I was trying to convey. Returning to the amendment before us, what I have done there is attempt to address the issue of the Justice Munro decisions. There is an important precedent within the Workplace Relations Act whereby the act frequently uses a device I would call signposting. The effect of Democrats amendment (2) on sheet 2621 is to signpost the act with a note which refers to the Justice Munro decision on whether agreement is reached genuinely. Senators would be aware that a note is not law; it is just a note and a signpost, but it is designed to ensure that the commission and those who use the act refer to that relevant issue.

Senator SHERRY (Tasmania) (11.49 a.m.)—I owe Senator Murray an apology. I was actually looking at an old copy of the Democrats amendments when I made my ‘grudging’ acknowledgment of the positive contribution that you made on the previous amendment, Senator Murray—my apologies. Like Senator Harris, occasionally you do get caught looking at older documents. Rather than expressing the Labor Party’s acknowledgments in terms of ‘ripping the heart out of the bill’, Senator Murray, I would prefer to say ‘restoring balance to the bill’, which we acknowledge and appreciate and which is why we supported it.

We are supporting this amendment from the Australian Democrats in reference to the Munro decision. This is not setting a precedent; there are other references in the bill to other cases. I understand there are judgments scattered throughout, and the Labor Party obviously believe that it is a useful reference point to have in the legislation reference to judgments that are useful in the context of industrial relations. It is a positive initiative.

Senator HARRIS (Queensland) (11.50 a.m.)—I rise to indicate that One Nation will also support the Democrats amendment. We support it largely because it makes reference to Justice Munro and his decision in what is now known as the metals case. It has a particular influence on pattern bargaining. The ACTU submit that the Workplace Relations Amendment (Genuine Bargaining) Bill 2002
is intended to have, and would have, substantially the same effect on the bargaining process as the original 2000 bill. For the same reasons, the ACTU do not support the bill. In their submission to the Senate on this legislation, the ACTU wrote:

**Campaign 2000**

The 2000 Bill was introduced as the Government’s response to what it claimed would be 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.

In his decision in Australian Industry Group v. Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, Print T1982, Justice Munro said:

> Industry-wide demands are often made by unions and sometimes pursued at national level. It is not that character of the demand that may cause offence to the policy embodied in section 170MP and paragraphs 170MW(2)(a) and (b). I see no reason why such claims may not be advanced in a way that involves a genuine effort to have each employer concede the benefit sought. In such cases, the ‘pattern’ character of the benefit demanded, its source, and even the uniform content of it, may be a cogent demonstration that the negotiation conduct is genuinely directed to securing agreement from the other party.

Justice Munro concluded his decision by stating:

> I explain the order and declaration in that way because no part of my reasoning should be taken to mean or imply that it is not lawful or industrially proper for the unions to pursue the core conditions objectives of Campaign 2000. However, the Act operates to inhibit the ways in which common conditions can lawfully be collectively bargained for. If the relevant unions are to continue to pursue the core conditions now associated with Campaign 2000, the necessity of doing so in a manner that complies with the single business bargaining focus of the Act must be adequately heeded.

I believe that it is important to place on the record very clearly what Justice Munro was saying. In response to Senator Murray’s statement that we know that notes carry no weight at law, I disagree with him because—

**Senator Murray**—That is not what I said.

**Senator HARRIS**—If I have misconstrued it, I apologise. I believe notes do carry weight at law. Section 15AB of the Acts Interpretation Act clearly says that if a piece of legislation is obscure or unclear, in coming to decision in relation to that legislation, the judiciary can refer to extrinsic evidence. That extrinsic evidence obviously includes the content of the bill, the minister’s second reading speech, the government’s explanatory memorandum, the Bills Digest and the debate in this chamber. Therefore it is absolutely paramount that, in carrying out our duties in this chamber, we place on the record the actual intent. In that way it most definitely does carry the force of law.

Question agreed to.

**Senator MURRAY** (Western Australia) (11.56 a.m.)—I move Australian Democrats’ amendment (3) on sheet 2621 Revised:

(3) Schedule 1, page 4 (after line 2), after item 1, insert:

1B After subsection 170MW(2)

Insert:

(2B) Genuinely trying to reach agreement includes bargaining in good faith.

The amendment attends to the act itself. Section 170MW(2) of the Workplace Relations Act states:

A circumstance for the purposes of subsection (1) is that a negotiating party that, before or during the bargaining period, has organised or taken, or is organising or taking, industrial action to support or advance claims in respect of the proposed agreement:

(a) did not genuinely try to reach an agreement ...

The whole provision refers to genuinely trying to reach agreement. The government has, quite properly, placed great emphasis on the need to genuinely bargain. I think the importance of Labor’s initiative in terms of good faith bargaining is to recognise the link between the two and to acknowledge that in the case law and the precedents that exist, and an understanding at jurisprudence and in commission and tribunal matters, what good faith means—you need to recognise that
genuinely trying to reach agreement includes bargaining in good faith. The purpose therefore is in law to acknowledge that section 170MW(2) refers to that difficult area. I call it difficult because it is difficult to establish how people reach agreement. I wish to acknowledge that genuinely trying to reach agreement includes bargaining in good faith. Subsequent to that, of course, I will attempt to move my good faith amendment which develops that in greater detail. I see the two as linked but they can stand alone. (Quorum formed)

Senator SHERRY (Tasmania) (12.01 p.m.)—The Labor Party will support this amendment moved by the Australian Democrats.

Question agreed to.

Senator MURRAY (Western Australia) (12.02 p.m.)—Before moving my next amendment, I apologise for the fact that there is a typographical error which I did not pick up. If honourable senators refer to amendment (4) on sheet 2621 Revised, in the heading which begins with ‘1C’ the subsection should read ‘170MW(2)’, not ‘1710MW(2)’. With that correction, I move the amendment:

(4) Schedule 1, page 4 (after line 2), after item 1, insert:

1C After subsection 170MW(2)

Insert:

(2C) In considering whether or not a negotiating party has met or is meeting its obligations to genuinely try to reach an agreement with the other negotiating parties, the Commission must consider whether or not the party has or is bargaining in good faith. Bargaining in good faith includes:

(a) agreeing to meet face-to-face at reasonable times proposed by another party;
(b) attending meetings that the party has agreed to attend;
(c) complying with negotiating procedures agreed to by the parties;
(d) disclosing relevant information, subject to appropriate undertakings as to confidentiality, for the purposes of negotiations;
(e) stating a position on matters at issue, and explaining that position;
(f) considering and responding to proposals made by another negotiating party;
(g) adhering to commitments given to another negotiating party or parties in respect of meetings and responses to matters raised during negotiations;
(h) dedicating sufficient resources and personnel to ensure genuine bargaining;
(i) not capriciously adding or withdrawing items for negotiation;
(j) not refusing or failing to negotiate with one or more of the parties;
(k) in or in connection with the negotiations, not refusing or failing to negotiate with a person who is entitled under this Part to represent an employee, or with a person who is a representative chosen by a negotiating party to represent it in the negotiations;
(l) in or in connection with the negotiations, not bargaining with, attempting to bargain with or make offers to persons other than another negotiating party, about matters which are the subject of the negotiations;
(m) any other matters which the Commission considers relevant.

The purpose of the amendment is to make that link which I think is an insight we have come to, and hopefully the parliament will come to. It was provoked by Labor’s amendment, which caused me to think that they were on the right track in trying to put this issue back into law. I have not been quite as expansive as them but, as I said earlier, I have shamelessly adopted some of their language here.

The reason that I think it is very important to include it is that, as I said earlier, I think the government is dead right: you need to find means by which you can really put some emphasis behind ‘genuinely trying to reach agreement’. I have attached this amendment to 170MW. As I said earlier, it is in contrast to Labor’s approach, which was to include it at the outset, in 170MK. I have put it in so
that where there is a breakdown the commission is able to make reference to these things and ask, ‘Did you really get on with the business of bargaining properly or were you either going through the motions or deliberately disrupting and damaging the bargaining process?’

I think this amendment does a great deal to improve the operation of 170MW, which covers the power of the commission to suspend or terminate the bargaining period. It falls under subsection (2). As I have emphasised several times during this consideration, that is the subsection which has been most difficult for the commission to assess in terms of the behaviour of the parties. When I say ‘most difficult’ I mean that it is most difficult relative to the greater ease with which you can address such circumstances under 170MW(3), which refers to endangering life, personal safety and health and damage to the economy, or under other sections, which refer to complying with the orders.

Senator SHERRY (Tasmania) (12.05 p.m.)—Firstly, with respect to typographical errors, surprisingly, Senator Murray, I have just noticed that we had two paragraphs marked ‘(f)’ in our previously defeated amendment. I have only just picked it up; I do not know what the impact would have been if the amendment had been passed in that form. It does happen; it is understood. When our staff and Senate staff are drafting amendments which can be extraordinarily complex, the odd number may be incorrectly inserted. Those sorts of mistakes are understandable given the pressure and the often difficult time frames under which we all work in this place.

As you said, Senator Murray, your amendment (4) does not exactly reflect but it certainly substantially draws on the types of good faith practice that we outlined earlier in the amendments that were defeated. Without sounding grudging, we will support your amendment because it certainly represents an improvement on existing provisions in the bill.

Before we go to a vote, I indicate that we still believe that it would have been preferable to have it very clear from the start of negotiations as to what the parameters should be in respect of good faith bargaining, rather than the parameters being laid down at a later time. There could be some game playing—if I could use that expression—before we get to the point where the commission will consider whether bargaining is in good faith. To minimise game playing by either party, we thought it should be necessary to lay down what are reasonable practices, commonsense practices, commonly understood decent behaviour and good faith behaviour by the broader community at the commencement of the negotiations rather than partway through. However, your approach, Senator Murray, is an improvement on what is proposed by the government and, as I said, the Labor Party will support it.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.08 p.m.)—I want to indicate that the government certainly regards Senator Murray’s position as an improvement on the Labor Party’s position, but I also want to indicate why we still have ultimate concerns sufficient to oppose this amendment. The whole purpose of the exercise really should be to ascertain whether bargaining in good faith is occurring in order to make a judgment about whether or not to suspend or terminate a bargaining period. Our particular concern is that, if you require the commission to consider a fairly long list of matters which you say must be taken into account, you essentially create an expectation that, however unrealistic a bargaining position might be, all those matters have to be addressed in detail.

As we know and as Mr Justice Munro identified, a large part of the problem is unions pursuing pattern bargaining or industry-wide agreements. To the extent that that is not an acceptable practice, you would be requiring the commission to not only take that into account but also create an expectation that all those matters would have to be addressed and responded to in detail by the negotiating parties, yet in most instances the unions would have quite a separate agenda from what was on the table. So we do not think that that is a desirable approach. We much prefer what we have done, which is draw on the decision and identify a number
of those matters which we say are clearly evidence of bad faith and are the ones that should be ruled out.

Question agreed to.

Senator MURRAY (Western Australia) (12.10 p.m.)—I move Australian Democrats’ amendment (5) on sheet 2621 Revised:

(5) Schedule 1, item 2, page 5 (line 29), omit “or the Minister”.

Clause 5 states:

(5) The Commission may make an order under subsection (2): (a) on its own initiative, or on application by a former negotiating party or the Minister;

I turned to the explanatory memorandum to see if there was an explanation of why the words ‘or the Minister’ were included, and there was not. It struck me that to put the minister in there is contrary to the very intention of the act. The intention of the act is, as far as possible, to keep politicians out of the process of bargaining—that it should be between employers and employees and, when that fails, it is up to the commission to resolve the matter. The intention of the act is, as far as possible, to keep politicians out of the process of bargaining—that it should be between employers and employees and, when that fails, it is up to the commission to resolve the matter. I know that this coalition minister, Minister Abbott, like his predecessor Mr Reith, occasions some aggression from those who disagree with him. However, I have found this minister able, intelligent and very capable. The fact that his political persona in the House of Representatives at question time might be quite confronting does not affect that judgment of mine with regard to industrial relations matters.

There is a fear, however, amongst those who are not supporters of the coalition, that coalition ministers’ involvement in IR matters would always be from a position of bad faith. I do not accept that. There is also a fear on the part of employers and people who are coalition supporters that, in the event of a Labor government getting in, a minister who was acting with regard to industrial relations matters could also be regarded as operating from a position of bad faith. I do not think you can draw those conclusions. It is not who the minister is and which government it is that matters; what matters is whether the minister should properly be involving himself or herself. I cannot see that there is a reason for it. That is why I have withdrawn the reference.

Senator SHERRY (Tasmania) (12.13 p.m.)—The Labor Party supports this amendment moved by the Australian Democrats. Senator Murray makes a very well-balanced point on this issue. In this particular section of the act, it is important, whether it is a minister of this government or a future Labor government—whichever political party—that they should not be given the power to interfere in this area. I cannot recall any time when the current minister, Minister Abbott—where he has had the power or authority to interfere in an industrial relations case—has come in on the side of workers or unions; it has always been to support the employer. I think that is a good example of the lack of a balanced approach by both this government and the current minister, and, I am also sure, by a future minister in this government.

I recall Minister Abbott interfering and intervening in the excessive hours working case before the commission and arguing that Australian workers were not working excessive hours. There has subsequently been a raft of evidence publicly available that, for many Australian workers, that is simply not the case. The minister is out of touch. We want an impartial, balanced, independent Industrial Relations Commission. We do not want ministers of any political description—but particularly this one, and his predecessor and his successor, if there is one—to be interfering in this area in an independent Industrial Relations Commission. It is inappropriate. Senator Murray is quite correct and balanced in his approach, and the Labor Party will be supporting the amendment.

Senator HARRIS (Queensland) (12.15 p.m.)—I rise also to speak on the Democrats amendment that, under proposed new section 170MWA, will remove the words ‘or the Minister’. I concur with Senator Murray’s points that he raised and I strengthen them even more by contributing the fact that it is the duty of the government and this place to produce legislation. The pillars of our democratic society that our Constitution is based on are the separation of powers—that is, the parliament, the executive and the judiciary.
Therefore, as our democracy is based on that principle, it is equally important that neither the government nor the executive should interfere in the administration of the legislation. It is our duty to produce the legislation. I do not believe that the House of Representatives or the Senate should produce legislation that will give any minister the ability to step over that separation of powers. The minister has the carriage of the legislation and, therefore, the minister should not have the ability to unduly influence the commission in such a way by making an application under the legislation which he has the ability and the authority to set out.

In supporting the Democrats and Senator Murray’s position, I believe that an overpowering and substantive argument for supporting this amendment is that the minister should not be able to, firstly, bring in the legislation and, secondly, access that legislation and influence the commission in an incorrect manner.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.18 p.m.)—I will just explain the government’s position on this matter. The doctrine of separation of powers is a very important fundamental element of any democratic system. It ensures that there is not an overlap: on the one hand, the executive arm of government cannot tell the courts what to do and, on the other hand, the courts cannot tell the ministers what to do. Of course, courts can strike down legislation which might empower ministers to do certain things, so indirectly it can have that effect. But they do not have the ability to interfere in the executive process and nor do ministers in particular have the power, but the parliament in general has, to tell a court how it should decide a matter. Clearly, that would be a fundamental breach of that doctrine.

That is a far cry from saying that ministers should not be allowed to approach the courts. You only approach the courts with discretion because otherwise you will get knocked back and you will undermine your own situation. So you have to think carefully before you do approach the courts. We consider that, where there are matters of fundamental importance in the national interest where you might have a protracted industrial dispute, it can often be quite helpful for the commission to be made aware of not only the government’s feelings on the matter but how the government sees the wider implications. At the end of the day, it is entirely a matter for the commission to say whether it accepts those arguments. It would be an insult to suggest that, simply because a minister applies to the court, the court somehow should feel compelled to give particular weight to that submission or accede to it to any extent. But the minister already has power under this legislation to apply for an order to terminate or suspend a bargaining period.

We say that, in appropriate cases such as protracted industrial action where the implications go beyond the negotiating parties, the minister should be able to approach the commission. The commission will make that judgment. As Senator Harris rightly said, they can look at the intrinsic materials and one of those might be the debates. They will hear what the minister says about the circumstances in which the government might be justified in approaching the commission. So if you simply go along on a frolic of your own or you want to pursue a personal indulgence—and it is always a fundamentally flawed approach to judge the powers by the personality of the incumbent minister, and that is what Senator Sherry is largely doing here—you should not. You should look at it in the abstract. You should ask whether it is appropriate for an officer of the Crown or a minister of the government to bring matters to the attention of the commission. We say that you will find those sorts of provisions in heaps of Commonwealth and state legislation.

Just as individuals can approach the courts, lawyers can approach the courts as amicus curiae. The commission does not have to accede to those requests. If people want to be represented, the commission has a discretion. If people want to make submissions, the commission is able to reject the argument and, indeed, not even consider matters that it thinks are inappropriate. All we are doing is providing that discretion which would enable matters to be brought to the attention of the commission in circum-
stances where we think it will have a greater impact than the mere subject matter of the dispute.

Question agreed to.

Senator SHERRY (Tasmania) (12.23 p.m.)—The opposition opposes item 2 of schedule 1 in the following terms:

(5) Schedule 1, item 2, page 4 (line 32) to page 5 (line 33), TO BE OPPOSED.

We believe that the commission should be able to do what Justice Munro has outlined in his decision, and for that reason we oppose this item.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.23 p.m.)—The ALP opposes item 2, which would insert a new section to empower the commission to prevent the initiation of a bargaining period or order the conditions attached to the initiation of a bargaining period after a party who initiated a bargaining period withdraws from bargaining. This power enhances the commission’s role in effectively handling industrial action that does not meet the statutory intent and objects of the act. The proposed provision would close a loophole that allows the pre-emptive withdrawal of a bargaining period to avoid the intervention of the commission. This provision mirrors powers already available to the commission when it terminates a bargaining period. The commission retains discretion in relation to these new powers.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Item 2 of schedule 1 has previously been amended by the Australian Democrats amendment (5). The question now is that item 2, as amended, stand as printed.

Question agreed to.

Senator SHERRY (Tasmania) (12.26 p.m.)—The Labor Party withdraws amendments (4), (6), (7) and (8) on sheet 2595.

Senator MURRAY (Western Australia) (12.26 p.m.)—I withdraw Democrat amendments (6) and (7) on sheet 2621.

Senator SHERRY (Tasmania) (12.27 p.m.)—The opposition opposes schedule 2 in the following terms:

(9) Schedule 2, page 7 (line 2) to page 8 (line 19), TO BE OPPOSED.

Given the constructive amendments that have been made to the bill so far, we believe that the cooling-off periods are no longer appropriate. The commission can deal with the issue satisfactorily, so we believe that the provisions for cooling-off periods should be removed.

The TEMPORARY CHAIRMAN—The question is that schedule 2 stand as printed.

Question negatived.

Senator SHERRY (Tasmania) (12.28 p.m.)—I move:

(1) Clause 2, page 2 (table item 3), omit the table item.

This amendment is a consequence of the previous vote that we had.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.30 p.m.)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [12.34 p.m.]

(Ayes 35, Noes 28, Majority 7)

AYES

Senator SHERRY (Tasmania) (12.39 p.m.)—I have just indicated to the chamber that the Australia Democrats' amendments to the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 are being circulated. I am not criticising that; we received a copy about an hour ago. Senator Murray, I want to make some comment about the amendments. I will do that now. When we resume the committee stage this afternoon, I am sure we can deal with the amendments in a considered and timely way. In terms of the committee debate we are having, I want to continue with some remarks I was making previously which are relevant to the bill that we are considering.

Concerning the proposed amendments, I was making some comments about clause 170NBCK and the difficulty the commission will have in dealing with this. In that process, the commission would have to compile a roll of eligible voters. The commission is given the power to require the employer and the union to provide a list of names and any other information it is reasonable to require to assist with the compilation of the roll. Employers will no doubt thank the Minister for Employment and Workplace Relations for this aspect of the bill: they will have to put aside their GST paperwork to complete secret ballot paperwork. I do not think employers will be particularly keen on that approach.

An employee is only an eligible voter if they were employed on the day the ballot order was made and their employment would be subject to the agreement. If the applicant for the ballot is a union, then the employee must also have been a member of that union on the day the ballot order was made. But an employee is not an eligible voter if they are subject to an AWA on the day that the order was made. Once the roll has been drawn up, there is then an opportunity for employees to apply to have their names either added to or removed from the roll.

Clause 170NBDA of the bill heralds the arrival—not before time—of ballot day. Ultimately, when the ballot is cast after this extraordinarily bureaucratic process, employees can vote. For employees who have spent many days compiling the paperwork, appearing in the commission and finalising the electoral roll, their minds have presumably long since turned from reaching an agreement with the employer and their one goal is to cast their votes so that they can go on strike.

But, first, the ballot paper must be prepared and copied and it must be in a prescribed form. Senator Alston made a contribution in the previous debate about prescription. He criticised prescription. I have rarely seen prescription of the type that we are considering in the legislation we are dealing with in committee. Clause 170NBDA states:
The ballot paper must be in the prescribed form and must include the following:

(a) the name of the applicant or the applicant’s agent (as the case requires);
(b) the types of employees who are to be balloted;
(c) the name of the ballot agent authorised to conduct the ballot;
(d) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action; and
(e) a statement that the voter’s vote is secret and that the voter is free to choose whether or not to support the proposed industrial action; and
(f) instructions to the voter on how to complete the ballot paper.

Once the ballot has been held, the votes counted and any disputes about hanging chads are put to rest—I think people are pretty much aware of what a hanging chad is now, although I noticed they could not get it right in Florida for the second time.

Senator Murray—It’s not a medical term, is it?

Senator Sherry—It is not on the PBS.

Senator Murray—The hanging chad! Whilst the paperwork is finalised, including the ballot agent’s report and the publication of the ballot results by the industrial registrar, the employees turn their eyes to clause 170NBD to see if they can take industrial action. One by one, they tick off the requirements: the action was the subject of a protected action ballot; the prescribed percentage of persons on the roll are voters for the ballot voted in the ballot—40 per cent by default; more than 50 per cent of the votes validly cast were votes approving the action; and the action commences within 30 days of the declaration of the results of the ballot.

The Workplace Relations Act already contains provisions which enable the Industrial Relations Commission to order a secret ballot on industrial action or on any other issue in an industrial dispute. In fact, in a ministerial discussion paper entitled ‘Pre-industrial action secret ballots’, published in 1998, it was found the commission had used its existing powers strategically to progress dispute resolution, particularly when the parties had reached a stand-off.

Progress reported.

MATTERS OF PUBLIC INTEREST

The Acting Deputy President

(Senator Brandis)—Order! It being 12.45 p.m., I call on matters of public interest.

China: Mao Tse Tung

Senator Mason (Queensland) (12.45 p.m.)—Just over a week ago the world remembered the 26th anniversary of the death of Mao Tse Tung, the man who founded, and for 27 years stood at the helm of, the People’s Republic of China—

Senator Forshaw—How long was Franco in power?

Senator Mason—Presiding in that time over the worst genocide in human history. This anniversary, I believe, provides a valuable opportunity for all of us, including Senator Forshaw, to recall and reflect upon the failure of our moral imagination in facing the greatest challenge of the last century—the challenge of totalitarianism. Totalitarianism was without doubt liberalism’s greatest enemy, though as George Orwell reminds us, for much of the Left:

Such things as purges, secret police, summary executions, imprisonment without trial … are too remote to be terrifying. They can swallow totalitarianism because they have no experience of anything other than liberalism.

This reflection is particularly relevant now as the Liberal Party is being constantly lectured by its opponents about human rights and morality in international politics.

When I reflect on the last 50 years, it saddens me to realise how weak and inadequate the reaction of our liberal democracy was to the genocide taking place in our own part of the world. It saddens me to realise that not indignation, not disgust, not a vocal outcry, but silence was the most common response to the tragedy that kept unfolding in China for decades. It saddens me to say that too few in my own party stood up to condemn tyranny and to speak in defence of its victims. But it saddens me even more to say that hardly anyone on the other side politics ever even raised their voice. If my own party’s sins here were ones of omission, those of the Labor Party were of wilful blindness.
This wilful blindness was prevalent not of course because my colleagues on the other side of the chamber were communist sympathisers. It was prevalent not because my Labor colleagues championed and supported genocide overseas. No, I would never suggest that. I am sure that all my Labor Party colleagues would be utterly shocked and disgusted by the loss of life and the human tragedy and misery that invariably accompanied socialist experiments throughout the last century. No, my colleagues in the Labor Party did not support genocide in China. But they did nothing even when they knew or suspected it was happening. They turned a blind eye to the horrific reality because they did not want to believe it, because they chose not to believe, because it was too difficult—

Senator Forshaw—I raise a point of order, Mr Acting Deputy President. Under the provisions of standing order No. 193(3), I believe that Senator Mason is now making assertions of improper motives and reflections upon members of parliament.

The ACTING DEPUTY PRESIDENT—There is no point of order.

Senator MASON—They chose not to believe because it was too difficult and too inconvenient to believe the breadth and scale of the horror. What is even worse, many in the Labor Party—and more broadly speaking, on the Left—not only chose not to believe that genocide was going on in China but they also chose to ridicule and deride those who did. They might not have been communists—they were not—but they were anti-communists—and you would relate to this, Senator Bartlett. They thought the anti-communist case somewhat vulgar and unfashionable, not sophisticated enough; a bit too simplistic. They thought that to condemn communist tyrants overseas would give too much satisfaction to their political opponents in Australia. Their reflexive anti-Americanism—and we can see that happening at the moment—made them give the benefit of the doubt to all those who also hated the United States. Their alienation from their own Western society made them reluctant to find fault in anyone who might have been pursuing a different, socialist path to the future.

And now the silence of the Left continues. The Left has never come to terms with its moral failure last century. There was never any reflection, any acknowledgment, that by averting their eyes, they gave succour to murderers and failed to recognise the suffering of millions of victims. There are many estimates of the number of those who perished during Mao’s reign. The most recent and most reliable estimate puts the number of dead at around 65 million people. Consolidation of power, the Great Leap Forward, collectivisation, the Cultural Revolution—all took their deadly toll. As we look at these figures it becomes apparent that Mao was the worst mass murderer of the 20th century and, indeed, of human history. In his genocidal mania he dwarfs Hitler and surpasses even Stalin. And of course in addition to those who died, there are countless millions of others who were persecuted, imprisoned or exiled. China’s economy and social fabric were stretched and torn and are only now recovering from the ravages of Marxism.

Let me repeat: between 1 October 1949, when Mao and his troops entered Beijing, and 9 September 1976, when Mao died peacefully in his bed, the lives of 65 million Chinese people were sacrificed in pursuit of this communist utopia. Only a few weeks ago this chamber rang with passionate and heartfelt words as senators from both sides of the chamber remembered the horrific attacks on the United States on 11 September 2001. That appalling crime claimed the lives of about 6,000 innocent people. We condemned the perpetrators, as they deserve to be condemned. But think of this: over 6,000 men, women and children were either starved or murdered every day of every week of every month of every year for 27 years under Mao’s reign, and there was barely a whimper.

Perhaps Stalin was right about one insight: the death of a thousand people is a tragedy; the death of a million is a statistic. There was no outcry from the Left, no condemnation of the appalling loss of life and not the slightest indication of moral disquiet. In fact, quite the contrary. When Mao died, Mr Whitlam, the then leader of the Labor opposition, stood up in this parliament and eulogised the man
whom communist propaganda called ‘the Great Helmsman’. Mr Whitlam said that Mao’s:

...courage, his sagacity, his gifts as a writer and interpreter of Chinese philosophy and civilisation, and his extraordinary stature as national leader have ensured that his influence will outlast his death ... No one who visited his country could be in any doubt of the veneration in which he was held by his people.

Remember that Mr Whitlam was singing the praises of a man who was responsible for more deaths than Hitler or Stalin. Mr Whitlam went on to say:

It says much for the changing attitudes of Australian politicians as it does for the greatness of Mao himself that we are paying tribute in this place to a man and thus to a nation and a people who until a short time ago were the object of widespread hostility and suspicion in this country ... This progression from hostility to recognition, from recognition to respect, and from respect to admiration has been slow, belated and welcome. I am gratified that my colleagues and my Party have been in the forefront of this movement.

Indeed, Mr Whitlam, but I wonder: are you still proud of those comments? How can you face the shadow of Mao’s 65 million victims and say that you admire him?

It is no wonder many in the Labor Party and the Left generally hate it when we remind them of their record on this issue. It is no wonder all we ever hear now are feeble excuses as the Left embarks on their own long march of denial. Some of them may say, ‘But we didn’t know!’ I say back to them, ‘Because you chose to become the three monkeys of totalitarianism.

The Cold War was a long struggle. Democracy, human rights, the rule of law and free markets are only now making their slow but sure progress around the world. With the socialist alternative now clearly proven to be a monumental failure, the Left has moved on to other causes: deconstructing Western civilisation and the Enlightenment and creating a culture of complaint, victimhood and entitlement. They are always moving onto the next crusade, seeking salvation somewhere else. The Left, to recall the words once used to describe Sir Samuel Hoare:

... passes from experience to experience, like Boccaccio’s virgin, without discernible effect upon [their] condition.

It is important to remember the past and, as we remember, to draw some lessons. The Labor Party and, more broadly, the Left always saw, and still see, themselves as the champions of human rights. Yet where were
they when the worst abuses of human rights in the history of mankind were taking place in China? The Left and the Labor Party always try to occupy and monopolise the moral high ground, accusing my side of politics of unprincipled opportunism. Yet where were they, and what did they do, while 65 million Chinese men, women and children were murdered or starved to death? What have they done since then to acknowledge their silence and inaction?

These are the lessons that all of us in this parliament and in public life should always bear in mind. Let us hope that no challenge like that of Mao’s China will arise to test our moral temper in the future. But let us also hope that, should it arise, we will at least know how to face it with courage, honesty and integrity. We must never again forget that it is our duty above all else to recognise the lives and deaths of those who are not always visible from afar, whose cause is not necessarily fashionable from where we stand and whose voices are often drowned out by excuses and rationalisation.

Immigration: ‘Children Overboard’ Affair

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.59 p.m.)—Ask any member of the public what really happened in the so-called children overboard affair and chances are that they will tell you. They will tell you that, although the government claimed that asylum seekers had thrown children overboard when the HMAS Adelaide intercepted an Indonesian vessel on 7 October last year, this did not happen at all. They will tell you that the truth did not come out until well after the election on 10 November last year. Many will tell you that they feel lied to and played for mugs. How do so many people know so much about what was, after all, just one of the scores of interceptions of suspected illegal entry vessels which have taken place in our northern waters?

The answer is simple: Labor have exposed the truth about the ‘children overboard’ incident through many hours of questioning at Senate estimates hearings and through even more hours of questioning at the hearings of the Senate Select Committee on a Certain Maritime Incident. We have used the powers of Senate committees to obtain evidence from those involved in the lead-up to the incident, those involved in the incident itself and those involved in its aftermath. Through the processes of the Senate we have laid bare the truth of this affair in minute—some would say excruciating—detail. To do this we have relied on the cooperation and testimony of over 50 witnesses: secretaries of departments, senior public servants, the Chief of the Defence Force, senior officers of the Navy, experts in public administration, journalists and others. This is the true power of Senate committee inquiries—their ability to probe the actions of the government and expose any wrongdoing or maladministration to the public.

While we have a very detailed knowledge of what happened in the ‘children overboard’ affair, we still do not know how far up the government hierarchy the deception extended. We know Peter Reith and his staff were informed of the truth but did nothing to correct the record. We know Peter Reith’s staff were instrumental in releasing doctored photos in an effort to prolong the deception of the public and prevent the truth emerging during the election campaign. We know members of the Prime Minister’s staff received briefing material which indicated that children had not been thrown overboard. We know that doubts about the veracity of the photos were conveyed directly to the Prime Minister by Peter Reith. We certainly know the Prime Minister did nothing to have these doubts investigated, but we do not know if the Prime Minister himself, or Mr Ruddock for that matter, was actually complicit in the public being deceived about the true facts of this incident until after the election.

The reason we do not know the answers to those questions is the government’s persistent refusal to allow key witnesses to give evidence to the Senate select committee. The committee twice invited Mr Miles Jordana from the Prime Minister’s office and former Reith staffers Mr Michael Serafton, Mr Ross Hampton and Mr Peter Hendy to give evidence to the inquiry. Both invitations were refused: on the first occasion by the Prime Minister’s Chief of Staff, Mr Sinodinos—
who advised the committee that ‘in accordance with the decision of cabinet, ministerial staff and public servants who were in that category will not appear’—and on the second occasion by the Minister for Defence, Senator Hill. Mr Reith refused three invitations to cooperate with the committee. Senator Hill also prevented Rear Admiral Gates and Ms Liesa Davies, another former Reith staffer, from appearing. We are left to draw our own conclusions about the government’s refusal to allow these key witnesses to give evidence. As Mr Howard said on the ABC’s AM program on 9 September in relation to Iraq:

People keep talking about evidence. To me the strongest piece of evidence is Iraq’s refusal to comply with the United Nations Security Council Resolutions.

By the same logic, Mr Howard’s refusal to comply with the requests of the Senate select committee is the strongest piece of evidence that knowledge of the ‘children overboard’ deception reached the very highest level of his government.

Naturally the opposition have considered carefully how we should respond to the government’s intransigence. We acknowledge—and this was confirmed in a resolution of the Senate Select Committee on a Certain Maritime Incident—that a Senate committee has the ability to summon witnesses and that those summoned, other than serving members of the House of Representatives, have no immunity from summons. We also acknowledge that both Labor and coalition governments have followed a general practice of not making ministerial staff available for questioning by Senate committees. This practice has rested in part on the doctrine that staffers act only at the direction of ministers and with their explicit knowledge and consent and that they are therefore accountable through ministers’ accountability to parliament. It also rests on the doctrine of executive privilege: that in order for minister-staff relationships to function effectively, they must remain confidential. This is similar to the principle of legal professional privilege.

That said, there have been exceptions to this practice. In October 1975, Prime Minister Whitlam agreed to two staffers appearing before a Senate inquiry into the government’s handling of South Vietnamese refugees. The Director of the National Media Liaison Service appeared voluntarily in 1989. The only example of a ministerial staffer being compelled to appear by a resolution of the Senate was the appearance of the then Director of the National Media Liaison Service, David Epstein, before a Senate estimates committee in February 1995. While Mr Epstein was employed under the Members of Parliament (Staff) Act, he also headed an agency with a budget of $1.5 million, and it was in that capacity that he was called.

Three former ministers appeared before the Senate Select Committee on Certain Aspects of Foreign Ownership Decisions in Relation to the Print Media in 1994. One appeared and gave evidence voluntarily. The other two appeared following the issuing of summons. Senate committees have usually proceeded by way of invitation and where, on rare occasions, the invited witnesses have been staffers or former ministers, they have generally—with the three exceptions I have mentioned—appeared voluntarily. In the event of a refusal to appear, a Senate committee can report this to the Senate. It is then open to the Senate to find that a contempt has been committed and impose a penalty of either a prison term or a fine.

Should Labor have sought to have the Senate exercise these powers in order to force the aforementioned witnesses to appear before the Senate Select Committee on a Certain Maritime Incident? I sought advice on precisely this matter from the Clerk of the Senate, Mr Harry Evans, in May this year. Mr Evans expressed the view that summons should not be issued unless the committee concerned is willing to take substantive action in the event of a default. Ultimately this would mean—on the assumption that the opposition would be able to gain a supporting majority in the Senate—jailing or fining the persons concerned. Does anybody really think the Senate would or should jail or fine anybody, let alone government employees who are prohibited from testifying by decision of cabinet?
Labor’s answer to that question was, and remains, a resounding no. We have never sought to use the Senate in this way. We do not want the Senate to be converted into a star chamber. We do not want Senate committees embarking on McCarthyist witch-hunts. We do not want a repeat of 1975, when an unprincipled opposition was prepared to abuse the powers of the Senate to bring down the Whitlam government.

Let me also say that I have never in my parliamentary career voted in favour of summoning a witness. I have been completely consistent on this. I am strongly opposed to changing the way Senate committees operate. If we start compulsorily hauling witnesses before Senate committees, those committees will become more partisan, much less effective and the Senate as a whole will suffer. The Senate is properly a chamber of review. As I have said, its true power lies in its ability to probe the actions of government through questioning ministers and the public servants who implement those actions, not in its power to jail or fine witnesses who refuse to appear before Senate committees.

The Senate expressed a similar view in 1994, when it declared in a resolution that it would be unfair to penalise officers for failure to comply with a Senate requirement because of instructions to such officers by a minister. Would it be fair to jail or fine staffers Jordana, Scrafton, Hendy and Hampton and let off scot-free the government ministers who instructed them not to appear? Certainly not, in my view. The Clerk of the Senate has also pointed out that any penalties imposed by the Senate would probably be challenged in the courts. The Clerk has made the further point that the law of parliamentary power in practice works very well against the ordinary citizen, where it is not needed, given that ordinary citizens are generally only too willing to put their case to Senate committees, but is less effective against the great and the powerful—governments being the greatest and the most powerful of all. Of course, that is where it is needed.

This is why the opposition decided on an alternative response to the government’s intransigence. We proposed the appointment of an appropriately qualified independent assessor to assess all the evidence obtained by the select committee and formulate findings which the committee could make in respect of the roles played by those who declined to respond to the invitation of the committee. The Clerk of the Senate expressed the view that this course of action ‘is preferable to summoning the persons concerned and imposing penalties for default’. He considered that ‘there is no alternative course of action ... which is likely to bring the committee and the Senate closer to discovering the truth about the subject matters of its inquiry’.

It remains a matter of great concern to the opposition that the government, which initially promised full cooperation with the Senate select committee inquiry, refused to allow key witnesses to give testimony. In the course of the inquiry there were numerous editorials and articles criticising the way ministerial advisers had intruded inappropriately into the Department of Defence and the operational chain of command. Ministers neither took responsibility for these actions themselves nor permitted the staffers concerned to be held to account. The doctrine of staff being accountable through their ministers to parliament has clearly outlived its use-by date. It needs to be revisited.

Similarly, the blanket application of the principle of executive privilege to the relationship of ministers with their staff also needs to be re-examined. What has emerged in the ‘children overboard’ inquiry is a very serious failure of public administration, which, in the heightened political atmosphere of an election campaign, has resulted in the public being deceived in relation to the most sensitive political issue in that election campaign. You have to ask: in these circumstances, is it appropriate that the government be permitted to hide behind the principle of executive privilege?

Public administration experts who appeared before the select committee expressed concerns about the lack of accountability of
ministerial staff. They called for a substantial revision of the framework under which they are employed. Some have called for advisers to be more directly accountable to parliament in ways similar to public servants. For our part, I can say that Labor share those concerns and that, in the near future, we will be moving to establish such a review.

AusAID: Development Cooperation Program

Senator NETTLE (New South Wales) (1.14 p.m.)—I rise to take note of the ministerial and policy statement Australian aid: investing in growth, stability and prosperity tabled yesterday in the Senate. This document clearly shows that the Australian aid program is focused on ensuring Australian business investment, growth, stability and prosperity rather than on making any attempt to reduce global poverty. Australia sits at a miserable 14th out of 22 countries on the OECD donor table, giving only 0.25 per cent of GDP towards our aid program—well short of the 0.7 per cent recommended by the United Nations. This is indeed a sad state of affairs. But when the quality of our aid program is also considered the picture becomes much worse.

The stated goal of AusAID is to alleviate poverty, but there are many programs which DFAT actively promotes that do not even attempt to address this alleged core goal. The Minister for Foreign Affairs talks fondly of the report he commissioned in 1996, known as the Simons report. Published in 1997, this report called for wide ranging changes to Australia’s aid program. Its chief recommendations were completely ignored by Mr Downer and the government. The Simons report pointed out the paradox that exists in Australia’s aid program: on the one hand, claiming to alleviate poverty while, on the other hand, prioritising the advancement of Australia’s national interest. This translates, like much of this government’s work, into ‘lining the pockets of the rich whilst taking from the pockets of the poor’. The Simons report clearly stated that ‘tying aid’—the process whereby only Australian companies are able to access foreign aid contracts—‘undermines the effectiveness of aid by focusing on inputs rather than outcomes’. The coalition government is more interested in securing Australia’s economic dominance in the region and using aid programs to bully governments and communities.

Assertions in this report that trade liberalisation is lifting millions of people out of poverty are clearly ludicrous. The United Nations released a report last year that showed 80 per cent of populations in least developed countries are living on less than $2 a day, nearly 800 million people are not getting enough food and 500 million are chronically malnourished, more than $40 million adults are illiterate and 1.2 billion people are living without access to safe drinking water.

The Minister for Foreign Affairs points to Korea as an example of this turnaround. Korea has turned the economic corner because it used strong protective measures in its domestic industry. The steel industry, for instance, began in 1973—or somewhere around that time—with enormous subsidies that enabled the industry to stabilise before arriving on the free market. Now Korea has no tariffs on its steel industry, and it is one of the largest producers in the world. This is in direct contrast to how the WTO, Mr Downer and his free trade cohorts would like to paint the picture.

The free trade approach promotes comparative advantage as one of its key conditions. This policy actively promotes reliance on one or two products. For instance, in Zambia it is copper and in Brazil it is coffee. Thus, when these products are at a low price on the world market, these economies are extremely vulnerable. The emphasis on the WTO, free trade and associated conditionalities have left heavily indebted poor countries extremely vulnerable. Countries should be free to set their own paths to development, but Australia is pushing its ideological belief in a free trade agenda onto our aid countries.

In this document, Mr Downer promotes three strategies: growth, openness and good governance. It would appear that AusAID has paid very little attention to these principles. The aid budget has shrunk continuously since the 1970s in comparison to GDP. AusAID is shifting away from accountability measures by increasingly moving towards
private companies administering Australia’s foreign aid budget. Commercial-in-confidence is the common refrain when any member of the public attempts to question details about a program conducted by one of these ‘development corporations’. Trade liberalisation and the corporatisation of aid is focused on pushing Australia’s interests above the interests of aid recipients. It seems strange that a government which is fixated with its own sovereignty has so little regard for the sovereignty of its official development assistance partners.

Australia’s main area of aid is the Pacific and Papua New Guinea. To suggest that our aid has assisted in their situation at the moment is appropriate, but to suggest that it has been positive is highly controversial. AusAID appears to cloak itself in secrecy, bullying and siphoning off money to private companies. PNG and the Pacific countries, it could be argued, have paid a little too much notice to how their aid partner operates. Australia can take responsibility for the reliance of these countries on our aid money. By sourcing our contracts to Australian companies only, we have not passed on valuable skills and services that could easily have been handed on.

AusAID has an increasing willingness to give Australian taxpayers’ money to big business. Over 75 per cent of Australia’s aid budget is delivered through private companies, serving their commercial interests and maximising their profits while they deliver ‘aid’ programs. One of the top three recipients is GRM, a wholly owned subsidiary of Australian Consolidated Press and owned by none other than Kerry Packer. How does Mr Downer justify giving over $100 million to the richest man in this country, in addressing the core objective of alleviating poverty? It is also interesting to note that a further use of $116 million of Australia’s aid money went straight to DIMIA for the implementation of the Pacific solution.

If Australia really wants to be effective in its attempts to alleviate poverty, it should implement the recommendations from the key report that the coalition itself requested. The Simons 1997 report stated unequivocally that Australia should untie its aid. We recommend that this should be done immediately. The United Kingdom recognised this untying of aid to be only real way to alleviate poverty and it did so in 1996. We also need to move away from private contracting and give more emphasis to developing strong relationships with NGOs that already have considerable connections with the real victims of poverty and that are working to address these without the commercial concerns associated with private companies.

In the area of aid and debt, the Australian Greens recommend that Australia increase its level of funding in the official overseas assistance package to at least 0.7 per cent of GDP, in line with international targets and UN recommended levels. We need also to increase funding for community driven projects in PNG and the Pacific. Affected communities must be involved in project designs and implementation. We need to make Australia’s aid program more effective by addressing people’s basic needs—real needs such as health and education in the region. This means increasing funding for water and sanitation programs that enhance the democratic participation in the governance of water.

Australia needs to move away and cease placing its commercial and political interests at the forefront of its overseas aid program. This means untying 100 per cent of our bilateral aid while promoting aid procurement policies that strengthen and take advantage of local skills in PNG and the Pacific islands. We need to ensure that the sole purpose of aid delivery is poverty reduction through socially and environmentally sustainable programs. This means presenting communities in PNG and the Pacific with real choices about their aid projects. Australia needs to give guarantees that, in the case of aid project failures, it can ensure the provision of services, and it needs to place ecologically sustainable development at the forefront of these aid projects.

The right to self-determination must be upheld at all stages of project design and implementation. We can start this by ceasing to use Australia’s aid to fund any Pacific solution program and by abandoning this refugee dumping solution. We need to focus
Australia’s aid projects on cost-effective, appropriate and innovative solutions that will not increase dependence on foreign expertise, funds or technical advantage. Instead, local skills must be utilised and developed to reduce the reliance on donors. This means increasing the democratic involvement of recipients in aid programs. Rather than commercial-in-confidence being prioritised in private sector agreements, contracts must be made public and must be genuinely open to participation by community and civil society groups.

In our aid program we need to respect customary land tenure and to support this. Renewable energy sources and solutions in the region can also be addressed and supported through our aid program. This means respecting and supporting indigenous languages in PNG and the Pacific, promoting gender equality and dropping 100 per cent of the debt owed to Australia by PNG and Pacific nations. We recognise that the failure of governments in many of our development partner countries is a legacy of colonial rule and that all measures should be attempted to engage traditional means of organisation in AusAID programs. The Australian Greens will continue to campaign for these necessary changes to Australia’s overseas aid program.

Environment: Great Barrier Reef Marine Park

Senator BARTLETT (Queensland) (1.26 p.m.)—Mr Acting Deputy President, given that I am unlikely to have time to give my speech, because of my allocated order on the speakers list, I seek leave to incorporate my speech in Hansard. I have given that to the whips.

Leave granted.

The speech read as follows—

Over the last year the Australian Democrats have been actively researching and investigating the activities of government departments and oil industry interests in the Coral Sea, adjacent to the Great Barrier Reef Marine Park (GBRMP). In March this year, the Australian ran a major story, utilising many documents and materials secured by the Australian Democrats, outlining some of the history of oil exploration in the GBRMP and the Coral Sea—a secret history, a history filled with attempts to disguise the nature of the work occurring in and next to one of our most valuable natural areas.

We have been assured by Ministers and department officials that release of areas in the Coral Sea under the Petroleum (Submerged Lands) Act is not being considered; that the oil industry is not expressing interest; that claims of massive reserves in the area are “not worth the paper they’re written on”—and many of these claims have been made before Senate committees.

I am rising today to say that the evidence gathered by the Australian Democrats, and documents procured by them—points to the contrary. They point to the oil industry and Geosciences Australia (GA) and perhaps government more broadly engaging in systematic deception of the Australian people while they move inexorably towards an offshore oil industry that will directly threaten the GBRMP.

The Australian story in March omitted one major detail. Geosciences Australia has been buying satellite data in the Townsville Trough, adjacent to the GBRMP, and they are using it to detect petroleum reserves and it appears they are doing it in conjunction with Shell and Woodside petroleum companies.

Synthetic Aperture Radar (SAR) is used to detect oil seeps. The seeps are indicators of petroleum reserves. According to Infoterra, an Australian company that has approached GA offering to evaluate satellite data for seeps in the Townsville Trough region, “seep detection is an ideal technique for evaluating large frontier basins… Almost all known oil provinces in the world seep”.

Unfortunately for the world’s coral reefs, seeps in the marine environment are also associated with the development of reef systems and are areas of unique habitats and assemblages.

At Senate Estimate hearings in June 2002, GA claimed that the acquisition of the satellite data was for environmental outcomes. They claim that it was interest from the Great Barrier Reef Marine Park Authority that prompted the acquisition of the data and the initiation of a pilot project in the areas adjacent to the GBRMP.

The claim is spurious on a number of grounds.

The Great Barrier Reef Marine Park Authority (GBRMPA) has repudiated the statements made by GA in a letter to me from August this year.

GA has tabled no documentation of any sort describing the project. There is no correspondence from GBRMPA indicating interest in the project.

GA has now acknowledged in writing that, “there are no such communications or records of com-
munications$^3$ with GBRMPA. They also admit that the program is not contained in their Workplan, a yearly statement of projects, outcomes and outputs of the organisation.

Instead there is evidence that the acquisitions relate to a proposal from Seismic Australia, a private company, asking for GA support in the reprocessing of seismic data in the Townsville Trough.$^4$

Also in May, Woodside and Shell submitted a proposal inviting GA to participate in the Eastern Australia Frontier Deepwater Basins Industry/AGSO Consortium. The proposal is explicitly intended to lead to gazettal of areas for release under the Petroleum (Submerged Lands) Act 1967—the process by which areas are opened up to commercial oil exploration and exploitation. Areas include the Townsville Trough, Queensland Trough and Plateau and the Capricorn Basin.

As part of the project the Consortium offers to fund an AGSO study "principally based on a Seismic Australia seismic reprocessed dataset, potential field and satellite seepage data" (emphasis added).

The role of GA includes “Collation and Correlation of existing well data (including ODP data)...Oils/shows analysis...SAR slick screening...Simple summary of prospective hydrocarbon areas”

The proposal is contingent on the participation of at least 3 oil companies in addition to Shell/Woodside. The cost of joining is $600,000—with $100,000 from each membership going to GA for their work.

The consortium will give the reprocessed seismic data to GA at no cost. There are some constraints on GA's use of the data, but it is recognised that GA “will have to display and show selected data to promote industry interest in the area”

Testimony by GA during estimates hearings in June this year did not reveal any of this information. I asked:

Senator Bartlett: “Do those international oil representatives approach GA directly or, through the Minister, do those sorts of indications of interest get passed on to you?”

Dr Powell: “I am not aware of any official letters to the Minister. We have had informal discussions with representatives of companies from time to time about their interest up there”

Senator Bartlett: “When you talk about informal communications, what form does that take?”

Dr Powell: “We meet regularly with the industry for them to review their exploration programs with us and for us to review geological issues with them. It is not uncommon for the ensuing question to be asked: has there been any change in policy relating to north-east Queensland?”

The answer is misleading at best. The question was seeking information on approaches by the oil industry to GA. A major proposal had been received by GA from two international oil companies, offering GA significant amounts of money, but this response fails to mention the proposal at all.

This is also less than a month after GA decides to have the satellite data interpreted at a cost of $48,000 and that interpretation of this data was part of the Shell/Woodside proposal.

The relationship between the two proposals—that of Seismic Australia and Shell/Woodside is still not clear. That of Shell/Woodside includes work by Seismic Australia in 3 areas adjacent to the GBRMP. Seismic Australia’s proposal appears to be a separate proposal for reprocessing work in only 1 area—the Townsville Trough. Perhaps GA rejected the Seismic Australia proposal because the same information was to be provided, free of charge, through the Shell/Woodside proposal.

GA rejects the Seismic Australia proposal in writing in July 2000, although the nature of the rejection does not foreclose on the project proposal per se. “AGSO does not wish to participate in any reprocessing or marketing of these data under the current Joint Venture Agreement” (emphasis added).$^5$

GA provides no documents indicating their response to the Shell/Woodside proposal. In tabling documents under a return to order, they indicated to the Australian Democrats that they have given a “verbal no”$^6$ to the proposal.

The claim is difficult to believe.

Firstly, a proposal offering up to $800,000 to GA for work relating to the Coral Sea is not likely to be rejected so casually and informally. It is not likely to be rejected without any documentation, correspondence, record of phone calls, memos—but GA has not tabled anything in response to an offer for a major joint venture.

Secondly, and more importantly, it now turns out that GA purchased the SAR satellite data in the same year as the Shell/Woodside proposal, and the proposal explicitly calls for GA to analyse SAR satellite data.

GA purchased the SAR data in dated June 2000 for $51,362$^7$ approximately a month after the proposal from Shell/Woodside arrived at GA and
a month before they rejected the proposal from Seismic Australia. It simply beggars belief that GA did nothing, said nothing, wrote nothing, corresponded with no one—in other words simply ignored a proposal from two large oil companies with whom they have regular dealings.

Significantly, the GA Workplan for 2000-2001 contains no mention of this project, no program of work at all in the Coral Sea and no allocation of funds for the acquisition of SAR data or explanation of their purpose in fulfilling GA objectives. According to a source within GA, the only explanation for this omission is that the information was not intended to become public.

The 2001-2002 GA Workplan, however, contains evidence that the Shell/Woodside proposal was actually accepted by GA and included in the Workplan after the fact. Section 2.11 calls for a “geological overview of the east coast basins in order that decisions can be made regarding petroleum exploration opportunities and acreage release.” The outputs for that project include a report on the east coast basins and a desktop study “integrating data and interpretive products for basins in the eastern region into corporate databases”. This bears an uncanny resemblance to the Shell/Woodside proposal.

It is also directly contradicted by testimony given to the Senate during Estimates hearings in June this year. “We are not doing any research into the petroleum potential of that area (Townsville Trough) until we have an indication that there may be a release area.”

On April 11, 2002, GA decided to have the data interpreted. It isn’t clear from released documents why they purchased the data in 2000 but waited almost 2 years to have the 24 Queensland ‘scenes’ interpreted. Perhaps it is only now that the Consortium has the 4 oil industry members required under Shell/Woodside proposal for the project to proceed.

They approach Resource Industry Associates seeking a quote for the work. The quote, dated four days later, gives the project cost as $48,000. The cost will include a rating of the likelihood of hydrocarbons in each ‘scene’. No mention is made of any environmental outcome or purpose in the study.

By the 19th of April, GA has agreed to the project and received their first invoice for partial payment. As of early September 2002, the interpretation isn’t complete.

Simply on the basis of cost alone (a total of approximately $100,000), it is difficult to believe that this project was never discussed, formally authorised or included in the Workplan for 2000-2001 by GA. The almost total absence of documentation indicates either the documents relating to the project weren’t provided as requested by the Senate or the project has no paper trail at all in an attempt to avoid exposure and accountability. It is difficult to arrive at any other conclusion.

This secret project to have vast areas of the Coral Sea adjacent to the GBRMP gazetted for oil exploration purposes isn’t new, but it is time for the entire secretive story to be brought out into the open. The stakes are too high to leave this issue in the hands of government.

The petroleum prospects in the Townsville Trough and other basins adjacent to the GBRMP are believed to be approximately 5 billion barrels. This would make the region far and away Australia’s richest offshore oil fields. It would also seriously threaten the ecological and economic viability of the GBRMP.

We have heard the attempts to deflect the issue—arguing that there are no plans to drill inside the GBRMP. Well, there are few who believe that the GBRMP is under direct and immediate threat of oil drilling—law clearly prohibits it—although there is evidence of petroleum prospectivity within the GBRMP.

The greater and more immediate threat is the known reserves in the Coral Sea directly adjacent to the Marine Park.

It’s a long way out, it would never be done without stringent requirements in place, there are no current plans…these are the kinds of statements the government is making. It’s no longer good enough, no longer convincing to anyone who looks at the evidence. The Townsville Trough is within 50km of the eastern boundary of the GBRMP. Any offshore oil industry in the Coral Sea would use the shipping lanes of the GBRMP as its highway.

The significance and danger of an offshore oil industry adjacent to the GBRMP has been highlighted in the last two years by shipping accidents in the inner channel of the GBRMP. The inner channel, which runs between the outer reef area and the coastline, is currently a major shipping route both for ships stopping at ports adjacent to the GBRMP and for passage to southern and northern ports. An oil industry in the Coral Sea would have to use the GBRMP shipping routes for tankers and rigs.

The Democrats estimate that an oil industry in the Coral Sea would approximately double the number of oil tankers using the GBRMP.
In the last 7 years there have been 10 major groundings inside the GBRMP, almost all a result of pilot error. While there have been no spills associated with the grounding, in one case, explosives had to be used to destroy coral preventing the ship from refloating.

In 2000, The Australian Maritime Safety Authority (AMSA) reviewed shipping in the GBRMP in response to a grounding of a cargo ship on a reef near Cairns. The report, based on a submission from the Department of Industry, Science and Resources expressed concerns about limiting the use of the inner passage because “banning of petroleum industry ships could affect exploration and development of resources in the region outside the GBRMP and could negatively affect the economic viability of potential petroleum production in the Coral Sea”.

It is also of obvious concern to the Australian Democrats and the Australian environmental community that the Australian Government, already a greenhouse renegade, would consider promoting such a major greenhouse industry adjacent to a marine park already suffering considerable mortality from greenhouse related rises in sea surface temperature.

These concerns are only heightened by the approval by the Federal Government almost five years ago of a greenhouse intensive oil shale industry on the mainland adjacent to the Great Barrier Reef.

No one should underestimate our determination to see GA come clean about their activities and their intentions. We do not believe that GA has found or released all of the materials that have been requested of them. We do not believe that either GA or the Government have been forthcoming about their intentions or their activities in the Coral Sea. We want to know, and the Australian people want to know, the full story of this secret history. And we want this Government to publicly declare their support for the Australian Democrats Boundary Extension Bill, which will ensure that the Coral Sea—its reefs and islands—and the Great Barrier Reef Marine Park are protected from an offshore oil industry.

1 Dr Trevor Powell, Senate Estimate, June 3, 2002, p 89
2 http://www.infoterra-global.com/explore/seep1.htm
3 Response to Order for Production of Documents, 19 August 2002, p2
4 Tabled document, Return to Order, August 2000
5 The Ocean Drilling Program has conducted two survey in the Coral Sea and Great Barrier Reef Marine Park—1990 and 2001
6 Tabled document, Return to Order, August 2000
7 Senate Estimate, 3 June 2002, p 132
8 Tabled document, Return to Order, August 2002
9 Response to Order for Production of Documents, 19 August 2002, p1
10 Response to Question on Notice, no 0397, to the Minister for Industry, Tourism and Resources, question 9, p3.
11 AGSO-Geoscience Australia Workplan 2001-2002
13 Tabled documents, Return to Order, August 2002

Senator TCHEN—If ever Australians needed an example of why Labor should not be, and cannot be, trusted at the helm of government, they need look no further than the Bracks Labor government in Victoria and how they have completely botched the job. I speak of that most visible example, the Federation Square project. When the Bracks government won office in October 1999, they inherited a state with not only a strong and robust economy but also a series of major projects that would enhance the state’s physical infrastructure and sustain the people’s pride and vision for their community.

In the seven years that Jeff Kennett was Premier of Victoria, we saw the commencement and completion of an impressive list of major projects, including the Exhibition Centre—also known as ‘Jeff’s shed’, of course, to those who had forgotten that it looked like a bomb site for three years—

Senator Robert Ray—The tollway, the casino—

The ACTING DEPUTY PRESIDENT—Order! Senator Ray!

Senator Robert Ray—Why? Is he a protected species?

Senator TCHEN—after the Kirner Labor government ran out of money for a much smaller project. The list includes the Jolimont Sports Centre, the Regent Theatre restoration, the Old Treasury Building Exhibition and Reception Centre, the Albert Park Sports and Aquatic Centre, the old Customs House restoration and its development as the Immigration Museum, the Yarra Maritime Precinct, the new Arts Centre Spire, the Jolimont, Bayside and Beacon Cove residential developments, the City Circle Tram Network and the first stage of Docklands. The list goes on but I shall not continue because I must move on to something more immediate.

A number of other major projects were also well advanced at the time. Some of these, such as the CityLink project and the new Melbourne Museum, were so far advanced that even the most incompetent management could not delay them, and they were completed within the first six months of the Bracks government taking office. A number of other projects were not so far advanced, including the state library refurbishment and the National Gallery of Victoria renovation as well as the Federation Square project. Through the Bracks government’s complete mismanagement of these projects, they are running significantly over budget and over time. Federation Square is the prime example of the Bracks Labor government’s complete incompetence in handling major projects. They have messed with the design, they have mismanaged the project, and the responsibility rests firmly with them. The original completion date for the Federation Square project was December 2000.

Opposition senators interjecting—

The ACTING DEPUTY PRESIDENT—Order! The persistent interjection of senators on my left is disorderly.

Senator TCHEN—That date has now been stretched out to December 2002, but no-one should be holding their breath for even that late date for this Centenary of Federation project to be completed. It took less time to establish the Commonwealth after the Federation referendum! The original estimate of the cost of the project was $110 million, of which the Howard government committed $50 million in funding. The cost has now been revised to $467.5 million. This is a staggering $357.5 million increase in cost, more than four times the original project cost. This project was designed to be a gift of a centre of Australian culture to the people of Victoria and the people of Australia for the celebration of the Centenary of Federation. It is now 2002 and we still have no Federation Square. The people of Victoria have been given by the Bracks government a $357.5 million bill in celebration of their incompetence.

Senator Marshall interjecting—

The ACTING DEPUTY PRESIDENT—Order, Senator Marshall! Let Senator Tchen make his remarks without persistent interjection.

Senator TCHEN—They have no centre of culture but, rather, a culture of debt. New South Wales is no better off, Senator Mar-
shall, as you well know. The minute we can look at that balance sheet we will know. This Labor government will again leave Victoria with a legacy of debt. Under the Bracks government’s stewardship of Federation Square, delay and variation claims worth $33.5 million have been lodged against the state. The contractor, Multiplex, was paid $70 million—more than double the original fee—after threatening to pull out of the project, and the Bracks government authorised a $25 million loan to the managers of Federation Square. How did this all come about? The Bracks government wasted millions of dollars altering the design of the project and axing what was known as the western shard.

The original design was the subject of a two-stage competition with an exceptionally qualified judging panel chaired by Professor Neville Quarry, a Royal Australian Institute of Architects gold medallist, which included the award-winning Polish architect Daniel Libeskind. Certainly there was no shortage of talent and expertise in the team that selected the original design. One only has to look up the official Victorian government web site for Federation Square to see that there is no shortage of laudatory remarks about this award-winning design. Surely it is bizarre that the Bracks government has seen fit to chop and change the winning design for the square with no regard for the expertise of the people who selected the winning design when its official web site is full of praises for the design.

Under the original design by LAB Architecture Studio of London and Bates Smart Architects of Melbourne, Federation Square was to be a striking heart of art and culture in Melbourne and Victoria linking with the existing arts precinct, comprising the National Gallery of Victoria and the arts centre nearby. The primary entrance to the square, opposite St Paul’s Cathedral, was to have been flanked by two shards made from glass and zinc. The shards were to be at an angle and positioned about 30 to 40 metres apart. Together the two shards would have framed and highlighted William Butterfield’s design of St Paul’s Cathedral. They would also have served a practical need of housing the essential service mechanism for the project. However, as Peter Ward, reporting in the Australian newspaper back in February 2000, said of the change to the project:

... it will be gap-toothed without either, but that is what Premier Bracks has decreed, on the advice of a Labor mate, Melbourne University architecture professor and former Cain government minister Evan Walker, who was engaged by the Premier to review the design.

Peter Ward also said:
The commissioning of the review looked shabby and its outcome is both shabby and shaming to all involved in wielding the blue pencil, fudging the politics, and using rump pressures as the excuse.

Peter Ward is right: it is a shabby decision—a shabby, dirty decision that Victorians are now paying for, literally. Victorians are now paying an extra $357.5 million for the Bracks government’s mismanagement. This project is now $357.5 million over budget and will not be finished until late this year, if then. That is unacceptable and demonstrates Labor’s mismanagement.

I am not sure how many senators would be aware that the incompetence of the Bracks government in relation to Federation Square is now affecting the World Masters Games to be held in Melbourne during October 2002. Federation Square’s function centre and atrium were to have been the central administration centre for the games, but we are now told that they will not be ready in time. Federation Square was to be where the games’ approximately 20,000 competitors and their supporting staff would be administered from, as well as being the central information and accreditation centre. In place of using the function centre and atrium, the games staff have been offered the use of marquees in the plaza area of the square.

So we are now left with the administration centre for the World Masters Games being housed in a tent. This is Melbourne’s chance to show off its city and its capability to host major events prior to the 2006 Commonwealth Games—and we are forcing the World Masters Games into a tent. If such an event were held in a historic cultural centre such as Rome, it might be appropriate to have officials working in the shadow of the Colosseum as a reminder of Rome’s, and Italy’s, spectacular past. But to house offi-
cials in a tent in the unfinished Federation Square serves only to remind Victorians and visitors of the inglorious record of the Bracks government. As a Victorian, I fear the next embarrassing development the Bracks government will deliver for Victoria in the lead-up to this important event. I dread to think of it. As my adjournment address to the Senate indicated last week, Victorians deserve better. We have the ability, the commitment and the vision to provide for our future and for our community—with the exception, of course, of the Bracks government. If we need an example of why we should never go back to Labor, we have an unfortunate living example in my home state.

Privilege: Former Ministers and Ministerial Staff

Senator ROBERT RAY (Victoria) (1.39 p.m.)—Some journalists allege that, in failing to support demands that former ministers and ministerial staff be compelled to attend Senate select committees, the Labor Party were protecting themselves into the future. Nothing could be further from the truth. We are honouring the position that we have taken in the past and for our community—with the exception, of course, of the Bracks government. If we need an example of why we should never go back to Labor, we have an unfortunate living example in my home state.

The Clerk of the House of Representatives, Mr Harris, has argued that the basis of the immunity rests not on established conventions or the need for comity between the houses but on constitutional grounds establishing the complete independence of the houses from each other. Specifically, Mr Harris points to sections 49 and 50 of the Constitution, which allow each house to determine its own rules and orders. The Clerk of the House may well be correct in asserting that the immunity is a legal one based on the Constitution. The fact remains, however—as Mr Evans rightly points out—that there are no legal precedents establishing that the bicameral nature of the legislature confers a legal immunity on members of parliament allowing them to avoid a summons to appear before the other house.

There is a very clear political imperative to ensure that the parliament does not descend into chaos through the summoning of members of one house to appear before the other house or its committees of inquiry. This type of immunity also extends to members of state parliaments, because of the obvious need for comity between Commonwealth and state governments. The High Court has held that the Commonwealth may not interfere in the vital functions of the states, so there is probably a legal immunity as well.

The ‘children overboard’ affair raised the question of whether former ministers who had been members of the House of Representatives could be called before a Senate committee—namely, the Senate Select Committee on a Certain Maritime Incident. In that case, former defence minister Peter Reith sought advice from the Clerk of the House of Representatives as to whether he should appear before the committee. The Clerk’s view was that the immunity enjoyed by members of one house being summoned by the other continued even though the member had left the parliament.

The Clerk’s view was not supported by either historical or legal precedents; in fact, the historical precedents directly contradict his view. In 1994 the Senate Select Committee on the Print Media called two former treasurers, Mr Dawkins and Mr Kerin, and a for-
mer Prime Minister, Mr Hawke, to give evidence at its hearings. Mr Dawkins attended voluntarily, but Mr Hawke and Mr Kerin attended only after a summons had been issued. Just a few years later, the Liberal Party has done a backflip on the calling of former ministers and, even worse, has directed departments not to make submissions to a select committee. This is sleazy opportunism at its worst.

The Senate inquiry into the ‘children overboard’ affair and the Victorian Legislative Council inquiry into the appointment of the managing director of the Urban and Regional Land Corporation serve to highlight the point that the executive arm of government is generally inclined to withhold information from the legislature. Both Labor and coalition governments have stood by the argument that ministerial advisers should not be required to give evidence to parliamentary committees because their ministers are accountable to parliament. However, the ‘children overboard’ affair highlights the fact that the duties of ministerial advisers are no longer confined to advice and personal assistance and that advisers have increasingly exercised delegated executive authority. In the ‘children overboard’ affair, as my colleague Senator Faulkner has written:

... we have even seen staff inserting themselves in the Defence chain of command and, according to witnesses, abusing defence personnel, making direct demands of public servants and generally exercising power in the name of, but not necessarily with the authority of, the minister.

This point is backed up more generally by the Clerk of the Senate, Mr Evans, in his advice on the question of calling ministerial advisers to the Select Committee on a Certain Maritime Incident. According to Mr Evans:

Ministerial staff are said to and seen to:
Control access to ministers, and determine who has that access
Determine the flow of information which reaches ministers, particularly information flow from departments and agencies
Control and regulate contact between ministers and other ministers, other members of the Parliament and departments and agencies
Make decisions on behalf of ministers

Give directions about government activities and actions, including directions to departments and agencies
Manage media perceptions and reporting.

The fact of the matter is that no immunity exists to prevent advisers from appearing before parliamentary committees other than a tradition reinforced by Senate experience. In the ‘children overboard’ affair, both the Prime Minister and his former Minister for Defence blamed ministerial staff for not passing on information at critical times. The Westminster conventions of responsible government would have required that they take full responsibility for the incompetence of their staff, possibly followed by resignation. That they chose not to do so indicates that the buck no longer stops with ministers and that staff should be open to questioning by appropriate committees of parliament.

In Britain, the Transport, Local Government and the Regions Committee recently asserted the right of the House of Commons to compel ministerial advisers to come before its committees. Lord Birt was personally appointed by Prime Minister Blair as an unpaid adviser, to provide long-term strategic analysis on transport issues. Lord Birt’s work was conducted out of the Prime Minister’s Forward Strategy Unit, which sits at 10 Downing Street. The number of staff employed by the unit is said to have grown considerably during the current PM’s tenure, and it consists of three main sections: communications and strategy, government and political relations, and policy and government. Effectively a Prime Minister’s department, the unit has significant contact with the civil service with respect to policy formulation.

In December 2001, the Transport, Local Government and the Regions Committee announced its inquiry into the review of the government’s 10-year plan for transport. The committee called Lord Birt to give evidence on the government’s transport policy, particularly its objectives and the analysis underpinning it. Civil servants had given evidence that Lord Birt’s work was taking up a considerable amount of departmental time, and the committee believed that his evidence would be relevant to the review. The Prime Minister’s office barred Lord Birt from giv-
ing evidence by saying that advisers should not appear before select committees because, amongst other things, their appearance would undermine the system of cabinet government, the advice given by advisers to ministers should be confidential, and a requirement to appear would discourage individuals from taking up adviser positions—very familiar arguments. Ultimately, the committee asserted its right to call advisers and its power to summon recalcitrant witnesses but in this instance chose not to exercise that power, because Lord Birt was a member of the House of Lords.

Interestingly, the committee had something to say about the convention that members of one house cannot be summoned to appear before the other. It appears that the Prime Minister’s Forward Strategy Unit employs—at no pay, I stress—a number of members of the House of Lords. The committee stated that it was inappropriate for advisers to take advantage of a convention that was established for different circumstances in order to avoid giving evidence at committees. The committee recommended that the Procedure Committee consider whether the convention should be modified to prevent members of the House of Lords who are government advisers from refusing to appear before select committees. Although this situation would be constitutionally impossible in Australia, it is worth reflecting that even the House of Commons, the birthplace of our parliamentary conventions, is willing to reconsider those conventions to suit modern circumstances.

As a product of a parliamentary system, I cannot leave this discussion without making at least one salient partisan observation. As I said earlier, both federal Labor and coalition governments have sought to claim immunity for ministerial advisers. The difference between them, however, is that Labor has held a consistent view on this issue both in government and in opposition. In 1995, for example, Mr David Epstein, the head of the government’s National Media Liaison Service, appeared before the Senate Finance and Public Administration Legislation Committee. The Minister for Finance had initially refused to allow him to appear but relented following a Senate resolution directing Mr Epstein to do so. The Senate resolution at that time was carried by coalition members now in government, in combination with the Australian Democrats.

During the ‘children overboard’ hearings, the Prime Minister categorically banned three advisers involved in the affair from giving evidence to the Senate committee and would have continued the ban, Senate resolutions notwithstanding. The Labor Party did not seek to pass resolutions, as the Liberals did in 1995, or issue subpoenas compelling the advisers to appear before the Senate committee. Issuing subpoenas and possibly fining or jailing recalcitrant witnesses would result in prolonged and expensive legal battles. Instead, we have opted for a more innovative approach that will see an independent assessor compile a list of questions for the advisers to answer on the basis of available evidence.

The Government Members Secretariat is an interesting case study. Initially there was ministerial responsibility for it at, let us say, estimates committees. When scrutiny became too difficult for this government, it was moved to the Chief Whip’s office. No minister will now answer for its behaviour. The only questions to be answered are those of the resourcing of the secretariat, and no questions can be asked as to its role, behaviour and activity. The point being that, according to this government, staffers do not appear before Senate committees because there is ministerial responsibility. This government has stripped these 10 employees of ministerial responsibility. They no longer have the slightest protection from being called to Senate committees, and we intend to call them in the immediate future or have a minister be responsible for them. That is the government’s choice. As I said, they cannot hide behind the device that the Chief Whip’s office is in the House of Representatives and we do not look at House of Representatives business. They were deliberately moved there to hide them from scrutiny, so the past conventions do not apply in those cases where they are maliciously and malignantly applied in the way they have been.
A recent study by Maria Maley of the ANU’s Research School of Social Sciences has shown that resources to ministers have grown significantly over the last 30 years, as has the number of ministerial advisers. In 1983, for example, the Hawke government’s 27 ministers had 95 advisers, as against 152 advisers for the Howard government’s 30 ministers. In 1983, The Hawke government had 165 ministerial staff members; currently this government has 374. With this growth of staff and with the changing roles of staff, you cannot say that they cannot appear before parliamentary committees, unless ministers take total responsibility. This issue has to be looked at into the future. You cannot have people exercising executive powers, delegated by inference or directly by a minister, and not have them accountable to the parliament. That is just not possible. But at least we will be consistent on it. You can always rely on the Liberal Party to act one way in opposition and then, the moment they get into government, reverse 180 degrees—because they believe they were born to rule.

Sitting suspended from 1.54 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE
Veterans: Gold Card

Senator MARK BISHOP (2.00 p.m.)—My question is to the Minister for Health and Ageing, Senator Patterson. Can the minister confirm the report in the Courier-Mail last week that cabinet has decided to allow veterans with the gold card to take out private health insurance with no penalty for being over 30 years of age, thereby exempting veterans from the Lifetime Health Cover rules? Is this unannounced cabinet decision an admission that the gold card no longer guarantees free private health care and choice of doctor, and an acknowledgment that veterans may need to take out personal private health cover?

Senator PATTERSON—I thank the honourable Senator for his question. There were questions about the veterans gold card a couple of weeks ago in the chamber and I answered them by saying that the overwhelming majority of doctors are continuing to accept the repatriation gold card for veteran patients. The Labor Party have been undermining the gold card. I do not know whether they have a policy of withdrawing the gold card. I do not know what their policy is on private health insurance. Mr Smith will not make a categorical statement about whether the private health insurance rebate will remain. They refuse to make that statement.

We have brought in a range of measures to address the issue of lifetime cover. I would need to double-check what the honourable senator has said. I know that we have extended it to migrants who come to Australia. They have a 12-month period. I just cannot remember—there is an enormous amount in the portfolio to remember—the issues surrounding veterans and the veterans gold card. I will get back to him at the end of question time to confirm if that is the case. I just cannot remember. I know we extended it to migrants who arrive in Australia and are over 30. We thought it was inappropriate to penalise them because they did not have the opportunity beforehand, so they have a 12-month period from when they arrive to take out private health insurance.

Labor ran this scare campaign about the gold card and veterans. June Healy, the National President of the War Widows Guild of Australia, said she had written to Minister Danna Vale saying that Mark Bishop’s media release on the extent of specialists refusing to treat veterans with gold cards ‘tends to inflame the situation’. There is what one of the stakeholders is saying—that what Labor are doing is inflaming the situation.

John Ryan, the National President of TPI Federation and a fearless advocate for veterans’ rights, was reported in the West Australian as saying, ‘The problem was not serious.’ Labor run around scaring people saying that the situation is worse than it really is. As I said, I cannot remember, and I defy anybody on the other side to remember, every aspect of the portfolio. I know that we extended it to migrants. I will check and get back to the honourable senator as soon as question time finishes.

Senator MARK BISHOP—Mr President, I ask a supplementary question arising from the minister’s answer. Is the minister aware of the government’s admission
through questions on notice that at least 75 specialists have formally resigned from the gold card scheme, and that in the last three months veterans have been reimbursed for doctors’ consultations on 477 occasions, in large part because their doctors have refused the gold card? What are the implications for the health care of veterans, and when will the Howard government advise veterans that they should be making alternative arrangements in line with the cabinet’s unannounced decision? To assist the minister, I seek leave to table a circular from the Department of Health and Ageing addressing the issue I raised in the first part of my question.

Leave granted.

Senator PATTERSON—Here we go again: Labor are inflaming the situation, which is what the stakeholders say is happening. We are aware that some medical specialists are unhappy with the level of fees for services to the veteran community and Veterans’ Affairs is currently discussing the matter with the AMA. It would not be appropriate for me to comment further. However, Labor should be supporting the veterans. They did not extend it and they did not give a rebate for private health insurance to anybody, including the million pensioners who now get the rebate and are able to afford private health insurance. They left private health insurance running at a level which was totally unsustainable. I said this in answer to an earlier question on the veterans gold card: if a veteran is unable to get a service and is having difficulty, the Department of Veterans Affairs will locate a treating specialist and DVA will arrange an alternate specialist—somebody who will actually look after them at a rate that does not include a gap. DVA is aware that some specialists are not doing it. They will look after veterans and ensure that they get the service. (Time expired)

Social Welfare: Gambling

Senator BARNETT (2.05 p.m.)—My question is to the Minister for Family and Community Services, Senator the Hon. Amanda Vanstone. Will the minister outline to the Senate the opportunities the states have to save people from the dangers of excessive gambling?

Senator VANSTONE—I thank the senator for his interest in the issue of problem gambling. It is a very serious issue around Australia. Problem gambling is a disaster for anyone, but it is a serious disaster for low income Australians. Low income households pay a much larger share of their own income in gambling taxes. We know that from the Productivity Commission and from other research that has been done. We also know that, despite the differing interests in this issue of gambling, it is possible for people to work together. Only last year under the Prime Minister’s business and community partnerships awards scheme, a South Australian award was given to what I thought was one of the most unusual partnerships you could form. It was between the Heads of Churches in South Australia and the Australian Hotels Association—somewhat unlikely partners I would have thought.

The Heads of Churches got together with the Australian Hotels Association recognising that there was a problem with gambling in South Australia, recognising that parliament would be regulating and recognising that they both had a common interest in working together to get a better outcome. I would hope that that is what can happen in all of the states and I would also hope that, at a national level, the Hotels Association and people who are interested from the consumer viewpoint can work together effectively for a common outcome. It would be a disaster if people who have a particular interest in this use it to promote themselves or their industry as opposed to working together to get a positive outcome.

The question I am asked relates quite specifically to the individual states. It is a well-placed question because it is the states that reap the windfall from the misery of problem gamblers. Gambling continues to increase dramatically. Since 1990-91 gambling taxes have increased by over $1.1 billion—that is over 45 per cent in real terms. That is money coming out of the pockets of low income Australians. The real causes of this problem are poker machines. It is instructive to compare the states. The state of Western Australia compares very well to all other states in this respect. Western Australia, a Labor state,
doesn't allow poker machines in any place other than in its casino. The consequence of that is that Western Australia has the lowest per person expenditure on gambling and the Western Australian government receives the lowest gambling tax revenue.

Honourable senators interjecting—

The PRESIDENT—Order! Senator Abetz and Senator Ray, please come to order.

Senator VANSTONE—So five gold stars for Western Australia. On the other hand, when you average it out, every Victorian pays $343 to the state government in gambling taxes.

Senator Conroy—Yes, blame Labor. Who introduced all those poker machines? Jeff Kennett!

Senator VANSTONE—Victoria has extremely high per capita collections from gambling. Think how much that would be—$343 per capita—if we actually shifted that to focus on how much problem gamblers were spending. Senator, I could give a lot more information in relation to this question. If you want to ask for more, I will get it.

Senator Conroy—You might want to have a chat with Julian McGauran.

Senator VANSTONE—So Victoria does not deserve a gold star; neither, frankly, does New South Wales. The New South Wales gambling taxes are the second highest after Victoria, and when you average them out they come to $261 per capita. Every person in New South Wales spends on average nearly $1,200 a year on gambling. Imagine how much that is when you actually say, 'It's not everybody,' and focus on problem gamblers. (Time expired)

Senator BARNETT—Mr President, I ask a supplementary question. The senator has outlined the opportunities in the states of Victoria, New South Wales and Western Australia. The supplementary question is: can the minister outline the opportunities for the states to save people from the dangers of excessive gambling in the other states?

Senator VANSTONE—Yes, as a matter of fact I can. The question asked me to focus on the other states in particular. That is the appropriate question to ask in this place.

What have the premiers of each of the states done to limit problem gambling in their states?

Senator FORSHAW—They got rid of the Liberal governments.

Senator VANSTONE—Senator Forshaw says that they got rid of the Liberal governments. That is interesting. What have they done since they came to power to limit problem gambling? It is a big zero.

Senator CONROY—What has Julian done?

Senator VANSTONE—What have they done to spend some of this money that they are ripping out of the pockets of low income Australians? What have they done to spend that on social services? What have they done to help the families of problem gamblers? They have done absolutely nothing. The problem is that the states are absolutely glued to gambling tax revenue, and none of the Labor states has done anything about that. They are too afraid to take on the Hotels Association. That is what you are: too afraid. (Time expired)

The PRESIDENT—Order! I ask the Senate to come to order. Senator Conroy, once again you have been continually interjecting.

Fuel: Ethanol

Senator HOGG (2.11 p.m.)—My question is to Senator Coonan, the Assistant Treasurer and Minister for Revenue. Can the minister precisely inform the Senate of her knowledge of, or role in, the imposition of the multimillion dollar tax hike on a shipment of ethanol belonging to the commercial competitors of Manildra Petroleum?

Senator COONAN—Thank you, Senator Hogg, for the question. My role in relation to ethanol relates entirely to the administration, in part at least, of the new arrangements that have been announced. Apart from that, I have no role whatsoever.

Senator HOGG—Mr President, I ask a supplementary question. Was the Minister for Revenue informed of the circumstances of this case? Was she told of the details of the shipment already bought and loaded? In particular, was the minister told of the desire of the Prime Minister that nothing should be
Senator COONAN—Thank you for the supplementary question, Senator Hogg. The answer that I gave to your first question does not vary but, in that respect I would add, as I have done throughout this week when asked about this matter, that this whole issue of Manildra has the Australian Labor Party barking up the wrong tree. It has been said—I have said it and I think anyone who has been asked a question about this has said it—that the arrangements do not benefit Manildra other than the fact that they are a producer of ethanol. There are other producers of domestic ethanol, and the arrangements in no way discriminate in favour of Manildra. Furthermore, as I said yesterday, Mr Honan in particular has had negotiations with the Labor Party. Indeed, all other stakeholders in relation to this matter have made representations, and that is as far as it can be taken.

(Time expired)

Electoral Roll: Fraud

Senator FERRIS (2.14 p.m.)—My question is addressed to the Special Minister of State, Senator Abetz. Is the minister aware of a warning in today’s Australian by Mr Pat Bradley, an international expert on electoral matters, that Australia’s electoral roll is open to fraud? Will the minister inform the Senate of the attempts that have been made by the Howard government to improve the integrity of our electoral rolls?

Senator ABETZ—I thank Senator Ferris for her ongoing interest in the integrity of the electoral roll. The integrity of the electoral roll is fundamental to our democratic system. But we have been reminded again today that, whilst our electoral roll is very good, it could benefit from some basic safeguards. Mr Pat Bradley, an international authority on elections, has questioned why we give away the precious right to vote without requiring any proof of identity. Recently I met with Mr Bradley, a former chief electoral officer from Northern Ireland who also has vast experience as an election adviser in 26 countries. I told him that we did not have in our enrolment process any requirement to show ID, because of Labor’s obstruction. Labor Party careerists, in their unseemly scramble for office, saw fit to compromise the roll’s integrity and to corrupt its spirit. Who can forget the revelations of the Shepherdson inquiry into electoral rorting by Labor in Queensland? Surely I do not need to remind those opposite that a Labor deputy premier and two other state Labor MPs were forced to resign and one Labor operative in fact went to jail.

The problem is that at the present time it is literally easier to get onto the electoral roll than it is to hire a video. There is no need to produce any form of ID at present, and almost anyone can witness the form. That is how certain Labor officials were able to port the system and enrol phoney voters, and I am sure that Senator Cherry would understand what I am talking about. Last year the Howard government drafted new regulations which would require people enrolling to vote to present some form of identification and have their enrolment forms signed by a responsible individual. I remind the Senate that the presentation of identification at the time of enrolment was a recommendation of both the Shepherdson inquiry and the report of the Joint Standing Committee on Electoral Matters.

Despite these recommendations and despite their own shabby record of rorting and deceit, Labor refused to support the new regulations. Even in Queensland, the home of Labor rorts, the Labor Party are fighting this reform. Labor even tried the spurious argument that it would somehow disenfranchise young people—the very same young people that are able to provide ID to get into nightclubs. For all their froth and bubble, Labor did not present a single credible example of how voter ID at the time of enrolment might disenfranchise anyone. Labor have led a shameful campaign to frustrate our much needed reforms, thus preserving the scope of Labor rorting. In the face of this obstructionism, what moral leadership has Mr Crean shown? Absolutely none, just as he has failed to show any moral leadership on the $36 million Centenary House scandal.

Defence: Dr Allan Hawke

Senator CHRIS EVANS (2.18 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Can the minister ex-
plain why the government has decided not to renew the contract of the Secretary of the Department of Defence, Dr Allan Hawke? Was the decision taken by the Prime Minister or by the defence minister? What are the reasons for the government’s decision, reasons it must have considered to be so strong that they justified yet another change of leadership of the department during a time of great international uncertainty and, to use the words of the Acting Prime Minister, ‘exceptionally high operational tempo’?

Senator HILL—Decisions relating to the employment of departmental secretaries are made by the Prime Minister, in consultation with ministers.

Senator Robert Ray—Why didn’t he announce it, then?

Senator HILL—Because he is overseas; the Acting Prime Minister made the announcement. Government has a responsibility to put into the office of secretary the person who it believes is best suited for the role during an ensuing period of office. We recognise and appreciate Dr Hawke’s contribution during the three years of his term in office. It has been a time of significant change in the department—with the development of the white paper, the defence capability plan, organisational renewal and the like—with a background of intense operations. Nevertheless, in this next phase of consolidation, it is believed that the talents and experiences of Ric Smith are better suited for that objective. Contrary to what some in the opposition have been saying, this is the completion of a contract of a term of office. We thank Dr Hawke for his contribution during his term of office, and we have appointed somebody else for the next term of office.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. Minister, why was Dr Hawke given only a three-year contract in 1999, when the standard contract for departmental secretaries was five years? Why has the minister decided to appoint the new defence secretary, Mr Ric Smith, for just three years? Won’t another short-term appointment as secretary exacerbate the discontinuity and instability suffered under the Howard government by Defence, which has had four defence ministers and four departmental secretaries during this time? Can the minister confirm that only three of Defence’s 14 top offices are now occupied by a person who has held that office since before September last year?

Senator HILL—I do not think there is a standard term, and the term of three years for Mr Smith was presumably decided by the Prime Minister.

Foreign Affairs: Iraq

Senator BARTLETT (2.21 p.m.)—My question is to Senator Hill, the Minister representing the Prime Minister. In the past week, President George Bush and Prime Minister Tony Blair have each released major documents and made major speeches setting out their case for military action against Iraq—

Senator Kemp interjecting—

Senator Robert Ray interjecting—

The PRESIDENT—Order! Senator Kemp, Senator Ray and others are being disorderly. I ask you to come to order so that we can listen to the question. The football is on Saturday, not today.

Senator BARTLETT—My question is to Senator Hill, the Minister representing the Prime Minister. In the past week President George Bush and Prime Minister Tony Blair have each released significant documents and made major speeches setting out their case in relation to potential military action against Iraq. Why has our own Prime Minister, Mr Howard, failed to provide this government’s own independent, up-to-date assessment of evidence against Iraq, failed to outline the consequences for Australia of any support for military action and failed to clearly communicate the government’s preferred course of action concerning Iraq to the Australian people? Does the Prime Minister intend to continue to sit in the background on this issue and simply follow the lead of President Bush and Prime Minister Blair? Minister, we have heard repeatedly from Tony Blair and George W. When is the parliament going to hear from John W?

Senator HILL—I think the honourable senator fails to appreciate the position of the Australian government in this matter. Australia has not been asked to participate in any
military campaign and has therefore not considered the question or taken a decision to do so. We do, however, share the concern of most of the international community that Saddam Hussein’s program of weapons of mass destruction is continuing to develop, that it is a threat and that it must end. We are pleased to be supportive of the current process within the United Nations, in which we hope collective pressure will be brought to bear in a way that ends that program without the need for military action. If the honourable senator is referring to the evidence in support of the weapons of mass destruction, the Prime Minister and others—Mr Howard before he went overseas—have given evidence in the other place on that. The evidence is now supported by Mr Blair, in the release yesterday of his dossier, and I suspect that it will be supported by evidence provided by other international leaders in the time ahead.

Senator BARTLETT—Mr President, I ask a supplementary question. When is the Prime Minister of Australia going to start leading the debate in relation to Australia’s role and Australia’s approach to this particular issue rather than simply lending tacit support to the UK or the US?

Senator HILL—The trouble with Senator Bartlett’s question is that it is falsely premised. He is assuming that the government has reached a position which it has not reached and he asks that certain conclusions be drawn from that. The Prime Minister has set out, in a logical and sensible fashion, the evidence that is available on Saddam Hussein’s program of weapons of mass destruction, the reasons for our demand—why we see the program as a threat and why we wish it to end—and our support for the United Nations, with its potential for collective influence to bring about an end to that program. Basically, that is the path we continue to move down.

Fuel: Ethanol

Senator MACKAY (2.26 p.m.)—My question is to Senator Coonan, the Assistant Treasurer and Minister for Revenue. I refer to Minister Coonan’s claim on Monday: ... there is absolutely no benefit to any particular individual and that includes Manildra.

Isn’t it a fact that Manildra will derive more than $15 million in production subsidy over a 12-month period if it produces the 40 million litres of ethanol that it produced in 2000-01?

Senator COONAN—Thank you to Senator Mackay for the question. As I said earlier this week, have said every day and will say again now, the whole notion of Manildra being somehow disproportionately advantaged over any other domestic producer of ethanol is barking up the wrong tree. Indeed, any estimates that might be made by Senator Mackay or others are probably also erroneous. Certainly I could not agree to any estimate that Senator Mackay might give. However, I think it is worth reminding the Senate that the changes that related to the administrative and other arrangements in relation to ethanol were the subject of a taskforce. They were the subject of a proper process. The decision was one that was carefully taken and considered. It arose out of deliberations that involved the sugar industry and considered the use of feedstock, which would assist the insurance industry. Input was taken from a lot of sources and the government did form a taskforce. The matter went to cabinet, it was deliberated on a number of occasions and the decision about ethanol was part of this.

The subsidy is not administered by my portfolio. The subsidy is administered by the department of industry, and I cannot make any comment in relation to that subsidy other than the fact that there are clearly a lot of other cross-portfolio interests involved. But the clear issue coming out of this is that the decision was taken by the government and a proper process was followed in reaching this decision, which is well supported in industry. The consultation took into account all the different interests and it was widely applauded, of course, by those in the sugar industry, who desperately need some assistance for issues way beyond the control of this government. But the improved legislative and administrative arrangements that relate to excise are issues which only partly involve my portfolio.

The questions from those opposite that continue to suggest that there is some im-
proper process because of Manildra are simply fanciful. They are wearing very thin, because if it could be demonstrated by those opposite—and it cannot—that somehow or other there was some special preference given to Manildra or that Mr Honan did not approach the opposition for support for the proposals that he was advocating, there might be some substance in it. But we know that Mr Honan did approach Mr Crean; he had an interview with Mr Crean. In the circumstances, Mr Honan thought, for some reason best known to himself, that there might be some advantage in speaking to Mr Crean. Who knows why he thought that, but in the circumstances there has been nothing other than an even-handed approach to this whole policy announcement.

Senator MACKAY—Mr President, I ask a supplementary question. Which ethanol producers other than Manildra will get money under the production subsidy and how much will they get?

Senator COONAN—I thank Senator Mackay for the supplementary question. Obviously, I am sure even Senator Mackay can appreciate that it is very difficult to make any estimate about what anyone might be entitled to until we know what they produce.

Senator MURPHY—My question is addressed to the Minister representing the Prime Minister, Senator Hill, and it relates to a commitment given by the Prime Minister on 14 August 2000 for an inquiry into the wrongful dismissal of former Tasmanian Trust Bank employee Mr Alwyn Johnson. Despite the pathetic refusal by the Bacon government to jointly fund an inquiry, the Prime Minister, to his credit, maintained his commitment to conduct the inquiry—albeit somewhat slowly, it seems. Can the minister inform the Senate how this proposed inquiry is proceeding?

Senator HILL—It is true that the Prime Minister agreed to set up a Commonwealth inquiry into aspects of the termination of Mr Johnson’s employment. That followed earlier attempts to broker an arbitration involving Mr Johnson and the Commonwealth Bank. The Tasmanian government refused to co-sponsor an inquiry with the Commonwealth into this matter. I am told that the inquiry will cover whether the disclosure by the Reserve Bank of the information provided to Mr Bernie Fraser, the then Governor of the Reserve Bank, by Mr Johnson contributed to the termination of Mr Johnson’s employment and the adequacy of the compensation that has been paid to Mr Johnson. I am told that the Commonwealth has approached a senior legal figure to undertake the inquiry and we are currently awaiting a response from that person.

Senator MURPHY—Mr President, I ask a supplementary question. Given the time that has now elapsed since the Prime Minister’s initial commitment, can the minister assure the Senate that this inquiry will be concluded by the end of this year, thus bringing to an end the ongoing injustice suffered by Alwyn Johnson?

Senator HILL—Obviously I cannot give that undertaking, but clearly the government is moving on its previous undertaking. As I said, a senior legal figure has been approached to conduct the inquiry. I will pass on to the Prime Minister the honourable senator’s request that it be concluded as quickly as possible.

Fuel: Tax Policy

Senator HUTCHINS—My question is directed to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Does the minister agree with the statement by Lachlan McIntosh of the Australian Automobile Association that the rural fuel tax subsidy has been a failure? What action does the minister propose to take in response to Mr McIntosh’s criticism that ‘it is a pity that the government won’t seriously look at fuel tax reform’?

Honourable senators interjecting—

The PRESIDENT—Could honourable senators come to order.

Senator Conroy—His name’s Kemp.

The PRESIDENT—Senator Conroy, I was on my feet and you interjected once again. I call Senator Coonan.

Senator COONAN—I thank Senator Hutchins for the question. No, I do not agree
with the statement. In fact, as those opposite would well know, as indeed those on this side of the chamber know, the government has made a commitment to introduce an energy grants credit scheme by 1 July next year. We intend to meet that commitment, which involves a serious rethink of how to approach this issue of energy grants. That scheme builds on the clean fuel and environmental initiatives contained in the Measures for a Better Environment package that was announced in 1999. It provides a context for considering a number of issues about alternative fuels.

The Measures for a Better Environment package, which I assume is supported by those on the other side of the chamber, and certainly by the Democrats, contains a range of fuel and environmental initiatives, including the Alternative Fuels Conversion Program and the phased introduction of Euro vehicle emission standards for new diesel and petrol vehicles. I am sure Mr McIntosh would agree with that. It also includes the introduction of an excise differential for ultra-low sulfur diesel from 1 January 2003 and the mandating of it from 2006.

We do want to seriously consider alternative fuels. The issue of ethanol was predicated on the basis that we would continue to develop a view about other fuels and more environmentally friendly ways of looking at the matter. There are some problems with issues such as LPG, which cannot be mixed with petrol. That is a difficult issue but obviously we are keen to look at all reasonable alternatives in order to develop biofuels and to find a way forward so that this country can have world’s best practice in relation to fuel and fuel policy.

**Senator Hutchins**—Mr President, I ask a supplementary question. Minister, you ignored my first question; you might try to answer this one. Can the minister indicate the likely effect on Commonwealth revenue of the current rising world price of oil, and how much of this additional Commonwealth tax take will come from non-metropolitan areas now that the rural fuel tax subsidy has been widely recognised as a complete failure?

**Senator Coonan**—I thank Senator Hutchins for the supplementary question. I do not accept, and will continue not to accept, that the policy has been a failure. The whole issue in relation to the impact on oil prices is, once again, very much one of speculation—as indeed Senator Hutchins would know. It is very difficult, because of the current volatile situation, to in any way predict how it will go. (Time expired)

**Agriculture: Sugar Industry**

**Senator Lightfoot** (2.37 p.m.)—My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Ian Macdonald. Will the minister outline what recent steps the Howard government has taken to further assist Australia’s sugar industry? In particular, could the minister outline arrangements, if any, that have been made between the Commonwealth and the state governments in relation to this issue?

**Senator Ian Macdonald**—Senator Lightfoot would know, as a senator with a background in country Australia, that the Howard government has been very determined to help country Australia and the sustainable industries that are built in country Australia. That is why we are very keen to help the sugar industry through the difficult period that it is currently experiencing. Sugar is a $1 billion industry. It employs 6,500 growers, plus 15,500 other people directly throughout Queensland, New South Wales and Senator Lightfoot’s home state of Western Australia.

The sugar industry, as we all know, has been in some difficulty, with low world prices and difficult climatic conditions, and that is why we have announced a $150 million package to assist the sugar industry through this difficult time. As part of that package, we are requiring growers, millers, unions, local government and workers to all work together for the best results for the industry. It is therefore appropriate that we get governments at all levels to work together.

I am delighted to announce today that the Queensland government has signed a memorandum of understanding with the Commonwealth government on support for the
sugar industry. Mr Truss, the Minister for Agriculture, Fisheries and Forestry, Mr Henry Palaszczuk, the Queensland Minister for Primary Industries and Rural Communities, and Mr Tom Barton, the Minister for State Development in Queensland, have just this morning in Canberra signed the memorandum of understanding. I want to thank Queensland for joining with the Commonwealth in putting this package together.

I also pay tribute to my colleagues Warren Entsch, De-Anne Kelly, Paul Neville, Peter Lindsay, Alex Somlyay and David Jull, who all represent country areas—sugar areas—for the support that they have given to this package. Regrettably, I cannot mention any Labor Party politicians because none of them in this parliament have made any contribution to the package, which is such a shame.

The package includes income support of some $36 million to support eligible growers for a period of up to 12 months. It also includes an interest rate subsidy that will offer subsidies on new loans obtained from financial institutions for replanting purposes. Centrelink will be administering those and they will apply from 1 October this year. There will also be a number of regional projects. We will be funding up to $60 million to support regional initiatives and industry adjustment to assist with the medium to longer term restructuring of the industry. There will be some money provided for exit from the industry for those wishing to exit. Of course, there will be no compulsion, but those wishing to exit will get $45,000.

The Queensland government will be putting in $30 million in various assistance measures for the industry, including low interest loans and encouragement for value adding, innovation and new practice. We expect the industry to play their part in this. We will be providing $10 million for an industry group to make sure that they work towards implementation of change in their industry, including regionally. There are a number of ways this will be done. All in all, it is a great package involving Queensland, the Commonwealth and the industry, to move ahead this industry which has been so significant in the development of Queensland over the past 150 years.

Information Technology: Deficit

Senator LUNDY (2.42 p.m.)—My question is to Senator Alston, Minister for Communications, Information Technology and the Arts. Can the minister confirm that the Australian Bureau of Statistics has found that Australia’s information technology and telecommunications deficit grew by over $2 billion between 1998-99 and 2000-01, from $9 billion to $11 billion? Can the minister also confirm that his response to these disturbing figures was to say:

We shouldn’t be overly concerned about it so we shouldn’t put a great deal of effort into reversing it.

Given that this deficit includes software and applications development—a sector in which Australia has an excellent reputation and potential for substantial growth, along with other information technology services—how does the minister justify this comment?

Senator ALSTON—The first point to be made is that the Australian IT&T sector continues to show strong growth in the face of difficult operating conditions. Exports grew by 34 per cent in the last two years, employing almost 240,000 Australians. While obviously there is a difficult operating environment out there which places downward pressure on profit margins, income from domestic production of IT&T goods and services has grown by 25 per cent to $50.2 billion over the last two years. Our support for the sector has seen almost 4,500 new jobs in IT&T specialist businesses created in the last two years—up by 25 per cent—with the sector employing an additional 40,000 Australians between 1999 and 2000. Growth in IT&T employment has been strongest in the computer consultancy services industry and the telecommunications services industry.

I will move to the more general proposition that Senator Lundy puts forward, and that is that somehow we should be once again wringing our hands because there is an ICT trade deficit, as there has been, of course, for many years. In fact, the US has the largest ICT trade deficit by a mile, and yet that has not stopped them achieving very significant growth in productivity benefits. Similarly, in Australia, we have seen the transformation of a number of traditional
industry sectors, such as agriculture, mining, the wine industry, insurance, banking and finance—all of those show up under different silos in the trade figures. It is quite simplistic to look at one particular manufacturing sector and say that—

Senator Lundy—Why don’t you support it?

Senator ALSTON—Because it is the transformational effects across the economy that are important. Don’t kid yourself—

The PRESIDENT—Order! Minister, would you address your remarks through the chair? Senator Lundy, would you cease interjecting, please.

Senator ALSTON—The henny pennies of this world would have it that somehow Australia is going backwards. Australia happens to have the best performing economy in the OECD and it is not accidental. Apart from all the good government decisions that have been taken, it is also because of the intelligent use and application of IT to those traditional industry sectors. As a result, there has been very effective cost reduction because IT offers you those opportunities. It also provides many more opportunities for trading offshore. It does not show up in ICT; it shows up in the sectors where the ultimate end product is exported. But if you do not understand that then presumably you are of the school—and I am speaking of ‘you’ in a generic sense—who would take this line and presumably say that a deficit in any area is bad news. As we know, you cannot possibly expect to have a surplus in every area. You have to choose where you ought to concentrate your efforts.

Senator Lundy would presumably have been all in favour of that $2 billion fab plant a few years ago. We did not fall for that one; we did not give away very significant tax concessions and payroll tax exemptions and all the other things that might be needed to entice footloose capital into this country. We concentrated on the value added end of the market. That is what the innovation action plan is all about. We are concentrating on centres of excellence; we want to build clusters, and we want to attract a lot more intelligent activity in this country. You do not do that just by mindlessly concentrating on low margin, high volume commodity manufacturing products. That is the essential difference. I am not sure who represents the manufacturing unions in this parliament, but you really should look a bit broader and understand how you can have a major impact in sectors well beyond that traditional manufacturing silo.

Senator LUNDY—Mr President, I ask a supplementary question. Can the minister explain why the coalition’s IT outsourcing framework still so consistently favours large multinational corporations at the expense of Australian small and medium sized information and communication technology businesses?

Senator ALSTON—I would like to elaborate on this at some length. Perhaps if Senator Lundy would like to be a little patient, I will come to that in the not too distant future.

Child Abuse

Senator MURRAY—My question is to Senator Vanstone, Minister for Family and Community Services. I refer to the recent media reports concerning widespread serious allegations of child abuse, including physical and sexual assaults perpetrated on children while in the care of the Sisters of Nazareth. Is the minister aware that such evidence and allegations have previously been documented and reported on in the Queensland Forde inquiry, the stolen generation report and the child migrant inquiry? Could the minister indicate how the government proposes to provide services or assistance to meet the need for reconnection with their past for healing and to deal with major social problems for those many tens of thousands of Australian children who are now adults and who were placed in institutional care last century?

Senator VANSTONE—I thank the senator for his question. Yes, I have seen some of those reports. The most unattractive report I have seen was in the Weekend Australian last weekend detailing the story of a Mrs Howard, now a grandmother, and the appalling circumstances in which that woman was kept as a child. In fact, she had her childhood
taken from her. The stories that she and others, I understand, tell about the mistreatment at that home, if you can call it that—which you should not be able to—are very, very distressing.

Abusing children would have to be one of the worst crimes, if not the worst crime, that could be committed. I know that all senators and the House of Representative members would share your concern about those children and the past failures of child protection policies in some, if not all, states. It is not a policy that any state government can afford to get wrong. Unfortunately, the states—and this is not a political statement on my behalf irrespective of their political persuasion, have not got it right. We know that as more and more stories come out.

I do not think it is certain as to what is the best way to handle these things. I know of people who have suffered one form of abuse or other as a child who believe that, when there is sufficient reporting and a public inquiry, they feel better. Even if they do not participate, they feel better because in some way it legitimises the concern that they have had and tells them that it was not their fault, which is often the problem with these children—they believe that it was their fault. Equally, I know of others who hate that publicity and who would just rather forget it and never ever go back. There is not an easy answer. How do we make a decision and say that it would be better to go one way rather than another? I do not believe it is necessary the responsibility of, or appropriate for, this parliament to make that decision. It is a responsibility given to the state parliaments, which in my view—and I am not expressing a view on behalf of the government here—they have not appropriately taken up in the past or now, and not because they are Labor states now.

I notice that Judy Spence in Queensland has said that more money has gone into this and she is going to try and clean up the cases by the end of the year. I welcome them putting more money in, and I hope they can clean them up by the end of the year. But I do not know that I would have said that in August if I were the state minister and if I had the Public Sector Union telling me about the distress that their workers feel when they worry about whether one of the kids in their case load will not be there the next day. I think it was a very ambitious claim. The Prime Minister has said he will give serious consideration to whether this matter is appropriate to raise at COAG, because I do not think it is something that any one government can handle on its own. It is a reality they are all going to have to face.

Senator MURRAY—Mr President, I ask a supplementary question. Minister, I thank you for your answer and for your attitude in giving the answer. How is the government going to attempt to establish the scale of the problem of all forms of abuse and neglect of children in institutions and in care last century? How is the government going to evaluate and deal with the long-term, knock-on social and economic effects of abuse and neglect of children in institutions by members of religious orders and others?

Senator VANSTONE—I do not know that the Commonwealth government can do that, because of the differences that I mentioned. Some people handle these things quite well. As I say, I have met people in both of the categories that I referred to. Both of them are in completely different circumstances now. As a matter of interest, the one that would rather it be forgotten is not handling his life well; the one that has dealt with it is. But I do not think it is up to us to make that decision and I do not think you can quantify it. We would all love to have a magic wand to make it right, but we all have to accept that we do not have one.

Telstra: Services

Senator LUNDY (2.54 p.m.)—I have a question for Senator Alston, shadow minister for communications. Can the minister confirm—

Government senators interjecting—

The PRESIDENT—Order! I believe Senator Lundy did make a mistake and has corrected it.

Senator LUNDY—Can the minister confirm that over one million Australians have been provided with pair gain telephone line
connections by Telstra, a cost-cutting means of gaining extra phone connections without investing in new copper lines? Can you confirm that pair gain connections drastically reduce dial-up Internet speed and preclude the provision of broadband Internet via ADSL? How can the minister justify allowing Telstra to charge customers massive phone line rental fee increases when they are short-changing over one million Australians with pair gains?

Senator ALSTON—I may be a shadow of my former self, but I am happy to be on this side of the chamber.

Senator Chris Evans—You shadowy figure!

Senator ALSTON—Well, some of us take it seriously!

The PRESIDENT—Order! Minister, return to the question.

Senator ALSTON—I am sure Senator Lundy well knows that pair gain systems allow two telephone services to be provided over the same copper lines, and of course that is a particular benefit to people who want a second line for voice services, for emergency purposes or generally as a backup arrangement. Of course, when those telephone lines were invented—and we are going back some decades now—it generally was not contemplated that they would be able to provide more than ordinary voice services. So there is always going to be a compromise involved, unless and until you are able to replace the existing network with the latest state-of-the-art technology. I do not think anyone for a moment expects that Telstra ought to be out there building a new fibre-optic network connected to every home in the land simply because Senator Lundy thinks it is a good idea. I think they are much more interested in Telstra balancing its CAPEX on the one hand and keeping prices as low as possible on the other.

Senator Mackay—You’ve cut the CAPEX!

Senator ALSTON—No, we have not; they have—by 17 per cent, which would be about the worldwide industry average, I would say.

Senator Mackay—Forty per cent cuts!

Senator ALSTON—We do not run their business. I know that that is Labor’s policy. I know you would like to do that; that is why you have kept that ministerial power of direction. You would have a field day—until of course the company went into liquidation and two million shareholders lost their money and all the consumers complained bitterly about prices going up. But, in the meantime, you would have a bit of fun. But we do not actually run the company. We do not tell them how their business ought to operate, so we leave them to make commercial decisions. Pair gain technology is a very appropriate commercial decision to take where otherwise people would not able to get a second line. That is what it is about. They are making the best use of the copper telephone network.

We are aware of some issues raised about the way Telstra uses pair gain systems and about the information provided to customers, and I think there is something to be said for some greater level of awareness. But, most times, people are not particularly concerned about how it is delivered; they want to know what will be delivered. As long as people understand what limitations might attach to the provision of a pair gain service then they purchase the service with their eyes open. The ACCC has been investigating the way that Telstra informs customers about its use of pair gain systems, and it has written to Telstra proposing some changes to procedures. Telstra is taking a number of steps to address those issues. All in all, Senator Lundy should also be conscious of the fact that we have a digital data service obligation in place for those who might want to get high-speed access or at least a higher level of access than might be available on a pair system. You can get 64 kilobits, as you well know, wherever you are in Australia through that system.

Senator LUNDY—Mr President, I ask a supplementary question. Minister, can you confirm that it is currently the case that Telstra’s policy is not to reveal to a customer that their line is a pair gain and that Telstra is therefore effectively deceiving them into thinking that they have been given a completely new line? Isn’t this a classic case of
misleading and deceptive conduct? How do you justify Telstra’s massive phone line rental increases when they are still short-changing so many customers, charging more while delivering less?

Senator ALSTON—That might go down well at branch meetings, Senator Lundy, but in the real world it does not stack up. I do not think Telstra is intentionally or otherwise misleading customers. The ACCC will have a view on this in due course and we will await the outcome.

Communications: Information Technology

Senator WATSON (2.59 p.m.)—My question is directed to the Minister for Communications, Information Technology and the Arts, Senator Alston. Will the minister please outline to the Senate the steps the government has taken to ensure Australia’s information and communications technology industry continues to foster innovation and contribute to the broader economy? Is the minister aware of any alternative policy proposals and the effects that they will have on the ICT industry in Australia?

Senator ALSTON—That is a very good question, Senator Watson. I am very grateful, because it enables me to address an issue that Senator Lundy raised a short while ago, venting her usual spleen and prejudice against multinational corporations, believing they should be forced to do everything but of course not recognising that they have a choice as to whether they are involved in the Australian industry or not. As a result of our much more flexible approach, we recently announced a new simplified ICT procurement arrangement which allows for a much more transparent procurement system. It eliminates a lot of the red tape; at the same time there is a proactive ICT SME facilitation package. So we are about getting the balance right; we are about minimising the obligations you place on those who have a choice about whether to be involved in Australia, but you also encourage them to develop R&D in Australia and to put an emphasis on innovation. In fact, later this afternoon I am presenting Fujitsu with a certificate for recognition of their contribution to industry development in Australia. We certainly work closely with these large corporations to ensure that they choose to remain here and that they play an important role.

The stark contrast between us and the Labor Party was best exemplified by an absolute catastrophe for the government in the state of Western Australia recently. Senator Vanstone might have praise for them on one front, but can I say that what their minister for ICT did recently was an absolute disaster. He published a 100-page document on industry development without any consultation with the industry and backdated it. What it said was that, if you get more than $5 million worth of contracts with the state government, you have to automatically turn around and spend a dollar for every dollar you get, which is effectively a tax—and retrospective at that. You can imagine the huge outcry that followed, and now of course as a result the government are in full disaster recovery mode; they are reviewing the policy.

I wondered how on earth they could have got it so wrong: where did they get their inspiration from? Of course, we went to the obvious source; we checked Senator Lundy’s web site—and what did we find under ICT industry? Blank! We thought, ‘Maybe there are some stats that are pretty relevant,’ but we find that on her web site ABS stats on Internet access cease at 1998. The latest information on innovation is contained in a speech in 1999. As for industry development, which of course is what this is all about, there was a total blank. Believe it or not, this is the same Senator Lundy who got herself in the *Canberra Times* recently with a very studious portrait looking earnestly into a computer and saying things like, ‘The strength of my web site is in the immediacy and the control of the content, and I take full responsibility for my site’s content.’ You wonder where they get it from, don’t you? Talk about trying to sell an image without any substance! This is a very sad sizzle, Senator Lundy. The reality is Senator Lundy was on the adjournment last night rabbiting on about broadband take-up being nondescript. Well, 131 per cent in the last 12 months on broadband, DSL with 354 per cent, business with 299 per cent—it is about as good as it gets and maybe it can get better, but it is hardly an indication that broadband
take-up is pretty sluggish. Of course, Senator Lundy’s proposals for things like forcing all broadband providers to be open access—in other words, turning them into utilities so they cannot make a quid—are about the best way to send them out of Australia as well. So you will be getting rid of the multinationals on the one hand, you will be closing down broadband suppliers on the other and of course what you will do to Telstra heaven only knows. It is very bad news over there, and I think it is about time for a change.  

(\textit{Time expired})

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

\textbf{UNPARLIAMENTARY LANGUAGE}

\textbf{The President} (3.04 p.m.)—Yesterday, during the course of an answer being given by the Minister for Family and Community Services, the minister remarked to me that she thought I should have directed the withdrawal of an unparliamentary remark. Although I knew an interjection had been made, I was not sure of the precise words because of the noise of the general conversation across the chamber at the time, which I remind honourable senators on both sides is also in breach of standing orders. I have now had the opportunity to check the \textit{Hansard} record, and the remark is clearly unparliamentary. I invite Senator Cook to withdraw the imputation he made at the time.

\textbf{Senator COOK} (Western Australia) (3.04 p.m.)—Mr President, I too have had a look at the \textit{Hansard}, and it records me as saying to Senator Vanstone:

\begin{quote}
Tell the truth for a change.
\end{quote}

That is unparliamentary; I withdraw.

\textbf{QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS}

\textbf{Veterans: Gold Card}

\textbf{Senator PATTERSON} (Victoria—Minister for Health and Ageing) (3.05 p.m.)—I would like to add to a question which Senator Bishop asked me earlier. Senator Bishop, obviously the Labor Party beat up an issue. In the changes to the lifetime cover, people who have been issued with a gold card by the Department of Veterans’ Affairs will be recognised as having hospital cover for the purposes of lifetime cover. This means that, should a person lose their gold card, they will be deemed to be aged 30 for the purposes of lifetime health cover for a period of one year. If they apply for private health insurance after this period, they will be treated according to their actual age. The imputation was that this was put in place to in fact augment the gold card. That is not the case. Apparently it is for a handful of veterans who, for personal reasons and for particular circumstances, are given a gold card and if they then lose that gold card because their circumstances change—and I have been advised it is less than a handful a year—they will then be subjected to the lifetime cover penalty.

\textbf{Senator Mark Bishop}—It only changes when they die.

\textbf{Senator PATTERSON}—Senator Bishop screams out, ‘It only changes when they die.’ I am indicating there is a handful of people who, in particular circumstances, are given a gold card and then their circumstances change—and apparently it is a handful. Here is a government who cares about individuals. We want to make sure that they are not then penalised by having to take out private health insurance at a higher level. But I am advised by the office of the Minister for Veterans’ Affairs that it is a handful a year.

\textbf{Industry: Innovation Access Program}

\textbf{Senator MINCHIN} (South Australia—Minister for Finance and Administration) (3.06 p.m.)—Mr President, Senator George Campbell asked me a question yesterday about the Innovation Access Program and I part-answered that question after question time. I now have some further detail which, given its length, I seek leave to incorporate in \textit{Hansard}.

Leave granted.

\textit{The document read as follows—}

The Innovation Access Program (IAccP) is part of the Government’s innovation package Backing Australia’s Ability aimed at promoting innovation and competitiveness by improving Australia’s access to global, leading-edge research and technologies and facilitate their uptake by Australian firms, particularly by small to medium enterprises (SMEs) and researchers.
The program seeks to address the commercial reality that:

- over 98% of innovations and technologies are developed overseas;
- markets for commercialisation of new technology are often global; and
- for Australian firms to access these innovations and compete in these markets and international supply chains they need international linkages, access and support to facilitate technology transfers.

The IAccP is a competitive program that provides limited matching funding to Australian firms and technology transfer agents to facilitate the transfer of overseas innovation and technological developments to Australia for the benefit of Australian industry and the national economy.

By their very nature projects for the transfer of global technology to Australia at times include developing strategic relationships with multinational companies. In the Innovation Access Program this is likely to involve contacts with multinational firms either as:

- sources of technology of value to Australian firms;
- access points for international networks of research and application specialists; and/or
- lead contracts in international supply chains.

The IAccP has involved multinational firms based in Australia as grant recipients or participants in projects. However multinational firms cannot use grant funds for activities of a distinctly commercial or proprietary nature for the applicant.

Examples of projects that include multinational firms include technology access missions, technology integrations, national diffusion networks and international alliances.

In January 2002 the Collaborative Health Informatics Centre was awarded a grant of $8,600 to coordinate a best practice study mission which included visits to leading North American firms in health informatics. Each of the 11 participants in this mission paid for their own travel expenses. Funding was specifically provided for the travel costs of the coordinator of the group and for reporting costs associated with the mission. As part of the original application and the expressions of interest for this mission a representative of Microsoft was nominated to be part of the mission. Ultimately the group that travelled did not include a representative of Microsoft however the group did visit the Microsoft centre in the USA and this was considered to have been one of the highlights of the visit.

Information provided to Senator Campbell for the June Senate Estimates, based on the application, indicated that a Microsoft nominee would participate in the mission. The subsequent final report confirmed the Microsoft nominee did not participate, but the mission group did visit Microsoft in Seattle.

The CRC for Advanced Composite Structures proposed that Australia be represented by Hawker de Havilland and the CRC to participate in the international SAMPE technical conference this year in Seattle USA. They met with researchers of Boeing and other international researchers. The project received $23 052 through the Innovation Access Program for six participants (four from Hawker de Havilland and 2 for the CRC)—funding supported direct travel costs, registration costs. Outcomes from the project include:

- further development of international collaborative research programs, inter-company technology transfer agreements and contributions to the ongoing development of world leading composite research within Australia;
- increased technology transfer to Australia through the project participants and to associated industry and institutional linkages including RMIT and Monash, Melbourne and Swinburne universities; and
- improvement in Australia’s Reinforced Thermoplastic Laminate Composite capability to position us to meet international demand for such aerospace components.

Project outcomes have been transferred to the wider industry through the CRC.

**QUESTIONS WITHOUT NOTICE:**

**TAKE NOTE OF ANSWERS**

**Defence: Dr Allan Hawke**

**Senator CHRIS EVANS (Western Australia) (3.07 p.m.)—I move:**

That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Evans today relating to the Government’s decision not to renew the employment contract of the Secretary of the Department of Defence, Dr Allan Hawke.

The Minister in his response clearly did not wish to engage in too much debate on this issue and seemed to be suggesting that it was all the work of the Prime Minister. I thought that was an interesting observation. I raise this matter today because it reinforces concern in the community regarding this government’s politicisation of the Department of Defence and the instability that they have
brought about to the leadership of the defence department and the military in this country. With respect to the treatment of Dr Hawke, we have seen that, in February this year, he had offered his resignation from his position as Secretary of the Department of Defence to the minister, Senator Hill. When asked what the minister’s response was he indicated that he was not sure. The minister had not accepted his resignation, but equally the minister had not endorsed his leadership. Since that time we have effectively had a Secretary of the Department of Defence swinging in the breeze, with the minister refusing to endorse him in his role as the Secretary of the Department of Defence.

The end result of this is that Dr Hawke’s contract was not renewed and so we will be having the fourth Secretary of the Department of Defence appointed since 1997. There is serious concern about the instability and changes in leadership in the Department of Defence, particularly, as the Deputy Prime Minister indicated yesterday, at a time of very high operational activity. Our Defence Forces are as committed now as at any time since the Vietnam War. We are dealing with not only the increased threat of terrorism but also a range of other issues confronting the Department of Defence, including the much heralded Howard government reform program which has lurched from one crisis to another, the strategic review, and of course the problems with defence procurement.

Under the Howard government we have the administration of the Department of Defence in this country characterised by political interference, the changing of directions and the removal of senior leadership at very critical times. The history of the Howard government’s management of the Department of Defence sees them with a record of four ministers. In six years we have had four Ministers of Defence, three whom have gone on to retire from politics. I do not know whether there is a message there for Senator Hill but clearly it has become a bit of a retirement lounge. There have been four ministers in a very short time. We now see the appointment of Ric Smith, the fourth Secretary of the Department of Defence since 1997, so in a very short period of time we have had four secretaries.

I gathered information today that shows that, of the 15 top jobs in the Department of Defence, including the Minister for Defence, the Chief of Defence Force and the senior non-military positions, only three of the occupants have been in those positions for more than the year or since at least September last year. Of the 15 top jobs in the Department of Defence, only three have been occupied by a person who has held that job continuously for more than a year. It is a sign of the turmoil in the Howard government’s administration of the Department of Defence and it is a sign of the instability that is beginning to impact on the effectiveness of the department and the role they play in supporting Australia’s fighting forces.

It is a very serious concern. It is leading to instability and a lack of continuity and it results in a lack of follow-through in what is allegedly the Howard government’s reform agenda. It sees a constant shuffling of people through very important jobs that does not allow for follow-through, does not allow for delivery and results in the terrible circumstances that we have seen with outcomes in our procurement program. It has got to the stage now where people in the Department of Defence do not bother having their names put on the door because they are not going to be there long enough to make it worth while. The minister may well fit into that category. Certainly, there have been four ministers and four secretaries in a very short period of time and increasing concern among defence personnel about the politicisation of the Department of Defence, which of course was brought to head with the quite despicable activities regarding the ‘children overboard’ affair. We have seen the politicisation of the Department of Defence by theHoward government—(Time expired)

Senator SANDY MACDONALD (New South Wales) (3.12 p.m.)—It is very hard to see the point of this motion to take note. Certainly, the arguments were not set out by Senator Evans. We face some of the biggest challenges in defence in our postwar history and certainly since the Vietnam War. I might say that in my role as Chair of the Senate
Foreign Affairs, Defence and Trade Committee I found Dr Hawke to be a very competent and capable public servant. But he has been in the job for three years, and over those three years he continued to face probably one of the biggest jobs in Australia. Defence is one the biggest land-holders in the nation and it is one of the biggest purchasers in the nation. It is one of biggest businesses in the country. I think that Dr Hawke did the job well. But three years is a long time and contracts are contracts, and he chose, for the reasons that the minister has explained, not to continue.

Defence needs all the support that it can get because it faces enormous challenges. It faces the challenges of the white paper, the capability plan and the annual review by the CDF. It is also challenged by a very substantial procurement program. In its commitment in its operational capacity at this time we have the considerable challenges of the war against terror. We have vessels in the Persian Gulf in the food for oil program, we have a company of the SAS in Afghanistan and we have aircraft in Kyrgyzstan. That is all in addition to the commitment that we have in what might still be regarded as our arc of instability in the Pacific and East Timor. At this time we still have 1,200 troops in East Timor doing the very important job that the UN has set us in that particular and ongoing responsibility. We also have peacekeeping operations around the world with a number of troops involved—small in number perhaps but still important—and we still have our commitment in Bougainville.

The Department of Defence is an enormous organisation. It takes a considerable amount of energy and expertise. We have good people involved and we need to have the very best advice that government can get. I commend Dr Hawke on the role that he played, but it is now time to move on.

Senator COOK (Western Australia) (3.15 p.m.)—I just want to pick up from where Senator Sandy Macdonald finished, because he made some very valid points that need to be emphasised again. There is huge pressure on the Defence department given the commitments of our troops overseas and the unstable international situation. At the same time, Defence is going through a refurbishment program that is huge and there are other responsibilities in reorganising the department. As he says, Dr Allan Hawke, the now sacked chief of the Defence department, has done a fantastic job. He has done a terrific job and that is acknowledged on both sides of this parliament. What he has not explained, with the greatest respect to Senator Sandy Macdonald, is the attitude of the government here: ‘Thank you, Dr Hawke, you’re sacked. You have done a terrific job, but you’re out. Your contract comes up after three years; you’re gone.’

You do not have to take a partisan view about this. Let us do a survey of today’s headlines in reporting this. The *Herald Sun* reports, ‘Defence reformer shown the door’. The *Australian Financial Review* reports in the headline of their article, ‘Defence head loses his post’. The *Canberra Times* says, ‘Defence chief axed’, and in a feature by their Public Service reporter, Verona Burgess, there is the headline ‘Rumours had foreshadowed knife’. Of course the Pryor cartoon does encapsulate it all. It has a drawing of Senator Hill throwing the secretary of the department, Allan Hawke, overboard—Defence chief overboard. There is that ‘overboard’ again that keeps haunting the government. The *Sydney Morning Herald* says, ‘Hawke axed after defence blowout’. The *Daily Telegraph* says, ‘Plain speaking defence chief loses his job’ and the *Australian* has, ‘Defence gets fourth boss in five years’—all of which points to the instability and to the surprise and shock. All of which shows the damage to the morale of the Defence forces, the instability at the top continues and that a minister, who appears to be very difficult to get on with, has exercised a private whim on this occasion in order to get rid of someone who is a plain speaker, forthright and truthful, and accountable when it comes to dealing with his responsibilities.

What we can take from all of the newspaper reports—this is not the opposition; this is the media in Australia—are the following points: Dr Hawke is a highly regarded bureaucrat. He is regarded as a plain speaker with an excellent record of public service
reform. His sacking was brutal. The Canberra Times says:

It was a pathetically short term to appoint anyone to such a senior job, and the brevity contrasts with the five comfortable years given to the Government’s favourite secretaries.

It was a brutal performance in sacking Dr Hawke. The press also agrees that Senator Hill, in terms of the press’s perception, was unhappy in having as his head someone who was so forthright and so accountable. Let me again quote from the Canberra Times which says:

Senator Hill had been obviously furious at the Senate Estimates early this year after it was revealed senior military officers had tried to tell the Government before the election that the photos being touted as showing refugees throwing children overboard did no such thing.

Dr Hawke had offered his resignation as head of the department. What we also see in all of the reports today is that Dr Hawke had a strong sense of duty and responsibility and, under the best traditions of the Westminster system, offered his head—to resign—although he directly was not responsible for the circumstances of the children overboard affair.

Now in short order, when Defence is under more pressure than at any time since the Vietnam War, we have had four ministers and four secretaries. We have discontinuity. We have instability. We have short-term decision making and a lack of consistency in top leadership, all of which is damaging to Defence morale. Why? Because this government has set out deliberately to politicise the Public Service, and this is an example of it. The three-year term for Dr Hawke is an example that, if you are not a loyal Liberal and a Public Service chief, out the door you go.

Secondly, the Defence portfolio has been a parking lot for failed ministers—John Moore, failed minister; Peter Reith, failed minister; Robert Hill, failed environment minister and applicant for the Nairobi post for the UN Environment Commission. Now he is being recycled as Minister for Defence at a time when Australia needs a more responsible, more capable, more visionary, more able minister than this pathetic example of a Minister for Defence. (Time expired)

Senator LIGHTFOOT (Western Australia) (3.20 p.m.)—I find it rather sad that there is no bipartisanship on this particularly important issue of defence. Generally speaking, those decent people on the Labor side have agreed—quietly perhaps but have agreed—that this is the one issue in the federal parliament on which we should have bipartisan agreement that we do not criticise Defence to the degree that the previous speakers on the other side have done. I do not think that this does any credit for the Labor Party. The Labor Party seem to want to instil in the people of Australia some insecurity, whereas the coalition parties have gone out of their way to demonstrate clearly and manifestly that they care about defence. Under the coalition, in terms of a percentage of GDP, spending has not fallen like it did under the Labor Party. You will recall under Mr Hawke—not the Hawke in question, but the former Prime Minister—and Mr Keating defence occupied a secondary role in their tenure in this place.

This government, through its very effective ministers that Senator Cook, unfortunately, denigrated a moment ago, has done an excellent job. For instance, it produced, with the Defence 2000 white paper, the biggest spending in the history of this nation. It is a shame that the ALP do not recognise that a job is well done. I am not going to criticise former Labor governments on the spending on submarines and other issues that I think were a mistake and which I hope are never, ever emulated again. Such spending on defence equipment like that should only ever happen once, and it is a pity that it happened at all. But let me get back to the thrust of the take note debate. Dr Hawke, as I understand it, was not sacked. In fact, Senator Cook admitted that. He said that his three-year contract was up and he chose to do something else. The government recognised the contribution that Dr Hawke has made. In fact, after a short time off, Dr Hawke is going to resume his public service in a key diplomatic role overseas. So he was not sacked. Yet you find such terms as, ‘Hawke axed’, ‘knifed’ and ‘brutal performance’.
Senator Ferris—I think they mean Bob Hawke!

Senator LIGHTFOOT—I think there were certainly some brutal performances by the former Prime Minister and perhaps that is where some confusion lay. But, as the Labor Party has already publicly acknowledged, Dr Hawke’s replacement with Mr Ric Smith is a step in the right direction. Mr Smith is a fine man. I have met him on many occasions. He comes from a very senior diplomatic position—one of the most important that we hold in the world—in Jakarta. Mr Ric Smith understands and speaks Bahasa, the language there. I am simply saying that when a man knows that his time is up, no matter how important he may seem to be to this nation, no one is irreplaceable. We have Mr Ric Smith coming in, and there is not going to be a blip on the horizon. You will not see a blip on the diplomatic or secretarial horizon with respect to the changeover.

That is the way that this government operates. Look at what the government has done in East Timor. Look at the government’s white paper. Remember the old maxim: those deserve peace who are prepared to defend it. This is no way to defend peace in Australia or to let Australia contribute to those important roles that it plays overseas. Australia is a country with 20 million people, far outweighed by the contribution that it makes to world peace. No doubt we will continue to contribute in Afghanistan. No doubt will we contribute in Iraq when, and if, that case arises. And no doubt we will continue to hold a high profile throughout the world, no matter that we are only a small country in terms of our population. On the issue of defence, it is a good lesson here this afternoon that this should be a bipartisan issue. What the government has done with respect to defence in the years that it has been here and in this third election period is little short of outstanding. Criticism from the other side rings hollow. We should face this together. (Time expired)

Senator BOLKUS (South Australia) (3.25 p.m.)—I do not know what Senator Lightfoot is on, but it obviously gives him a very positive and cheery view of the world. Maybe he should pass it around. Unfortunately for this debate, he is wrong. My understanding is that Dr Hawke was not happy to have been removed from the position and would have liked to have stayed on. That is something that the government has to contend with.

A number of important issues arise out of the removal of Dr Hawke. It is an ill-timed and unfair decision. In terms of timing, this is a government that is, one way or another, preparing for war. What does it do? It removes the Secretary of Defence from a very important position—a position requiring continuity. The decision was appalling, dangerous and ill-timed. No matter how good Ric Smith may be, it takes months, if not years, for an incoming secretary to get on top of the portfolio. Ric Smith has to embark upon a very quick, steep learning curve. He has not run a department before. The challenges of the Defence department, at a time when war is being prepared for, are going to be virtually insurmountable.

It is not good policy to change the head of the Defence department when we are in the situation that we are in now. It is appalling management. Not only is this government preparing for a war situation, but the department is also in the middle of a reform agenda—one that was steaming along, if one was to believe the information from the government and the bureaucracy. Instability is being instilled by this decision, and it is a decision that is, in many ways, probably reckless to the national interest. What this government and this country needs at the moment is stability at the top during the preparation over the next few months for the tussle with Iraq. As we embark upon this mission, it is becoming more and more apparent that this government’s planning is not adequate. It is inadequate and has been exposed as such in Australia. There needs to be planning. We can see from the US perspective that they have been spending months at it. What about here? The fact that there is no cohesive statement of this government’s position is evidence that the planning has not been adequate. There are many signs of this government being all over the place. The public does not have confidence in the government’s preparation for the Iraq challenge, and this decision will increase community
fears as to how stable and prepared this government is.

Internationally, the public is not prepared to go all the way with G.W. At home, there is no confidence in the meanderings of Foreign Minister Downer and there is concern at the fact that the Prime Minister has been absent from the public debate, particularly in parliament. They are all signs of the government being all over the shop, and this decision of removing the head of the department is one that will further undermine public confidence. Why make Dr Hawke a scapegoat? What for? It is being claimed by the government that finances are out of control, but no-one fixes a department like Defence, particularly in a short period of three years. There has been recognition of the good work that Allan Hawke has done and was continuing to do. His administration should have been given a real chance to fix some of those problems. If they were concerned about finances being out of control, they should have remembered that finances are not just the responsibility of one department. For a start, they are the responsibility of the ministers and cabinet. They are also the responsibility of departments like Finance and Treasury, which have a critical role in the preparation of budgets. I do not think that you can make Allan Hawke the scapegoat for this without you, Minister, and this government taking the blame for it.

Let us look at the record of instability—four secretaries in six years and four ministers in six years. That is not a recipe for stable administration. As Senator Evans said just a little earlier, only three out of 15 top administrators have been there for more than one year. The reality here is that this department has been used for political purposes by this government—the kids overboard affair and some of the problems they are facing in Senate estimates committees. It is also on the public record that this department, the Department of Defence, has been driven to distraction by the continual interference of this minister, a practice that he showed continually in his previous portfolio of Environment and Heritage. Basically, this minister has taken a dummy spit and sacked a secretary who should have stayed in the job in terms of both his competence and the national security requirements of this country at this particular sensitive time in our history.

Question agreed to.

Foreign Affairs: Iraq

Senator BARTLETT (Queensland) (3.31 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Bartlett today relating to proposed military action against Iraq.

The simple thrust of the question, which continues to be recognised by most of the Australian community, is that we are not getting clear and decisive leadership from the Australian Prime Minister on the issue of Australia’s potential engagement with Iraq. It is all well and good to have the leader of the United States and the leader of the United Kingdom putting forward the case and arguing strongly about it as they have been doing. The Democrats do not support their arguments but the least you can say for them is that they are out there strongly arguing the case. We are not getting that from the Australian Prime Minister. All we are getting are his general expressions of support for what the US and the UK are talking about.

There are specifically Australian ramifications of any support for military action. There are specifically Australian consequences, as we have just heard from Senator Bolkus, in relation to the impact on our defence forces as well as other issues such as the impact on our region. Those sorts of issues should be made public, out on the table, and the Prime Minister should be showing leadership on them. He should not be keeping his head down on those core Australian issues and saying, ‘No decision has been made yet so I do not have anything to say.’ Everybody knows that if the US decides to take any form of action, with or without UN endorsement, George Bush will be seeking at a minimum political support and probably logistical support as well from the Australian government. Everybody knows that, if he seeks that support, this Prime Minister will give it. What we therefore should be seeing as a result of those facts is an outlining of the case and an outlining of the consequences for
Australia before any call for support from the US. Once it comes, we all know what Mr Howard’s decision will be.

It is completely inadequate, in terms of Australia’s interests as well as in terms of showing very poor leadership, for the Prime Minister to continue to sit back and keep his head down on this, and to leave such running as is being made to the foreign minister, whose performance has been not only all over the place but also generally unhelpful, to be polite. Even if we had a capable foreign minister, it should not be left to the foreign minister; it should be the Prime Minister out there showing leadership in the same way as are the leaders of the UK or the US or indeed other leaders who are taking a contrary view, such as the German Chancellor or the French President, who have been out there.

Senator Ian Campbell—Jack Straw should stop doing his job too?

Senator BARTLETT—It is not a case of saying that nobody else is allowed to say anything, as has just been misrepresented by Senator Campbell; it is a matter of the Prime Minister being out there leading from the front.

Senator Ian Campbell—Who is over in London, then?

Senator BARTLETT—He should be here in Australia in the Australian parliament leading from the front. He is not doing that; he has failed to do that the whole way along. He is failing Australia’s interests by doing so. Everybody knows that Australia will support the US if the US acts. Given that that is undoubtedly the case, the Prime Minister should be making the case for why he will do that. He should not be saying that it is just all hypothetical, as Senator Hill basically said in his answer today.

There are specifically Australian aspects of this issue as well as Australian perspectives on global issues—the issues of international law and international security, and of the best way to deal with war criminals such as Saddam Hussein. There is quite clearly, and the Democrats recognise and state repeatedly, no case for doing nothing. That is the worst option. But there are plenty of alternatives between doing nothing and sending in the warplanes and the Army. Those middle options have to be explored, and those are the areas where Australia should be putting its diplomatic efforts; those are the areas where the Prime Minister should be showing leadership. He has not shown much leadership of any sort but he should be showing leadership in relation to getting Australia to be pushing in a more positive direction in the global community. That is what would be in Australia’s interests. That is what our Prime Minister should be doing rather than sitting back and leaving Australia and the future of Australia to the US. (Time expired)

Question agreed to.

PETITIONS

The Clerk—Petitions have been lodged for presentation as follows:

Environment: Fraser Island Dingoes

To the Honourable the President and Members of the Senate in Parliament assembled: This petition of certain citizens of Australia draws to the attention of the House the fact that the genetic viability of dingoes in the Fraser Island World Heritage site is being threatened through a program of shooting initiated by the Queensland Government.

Since the dingo massacre started in May 2001 more than 30 dingoes out of a population that the Queensland Government then estimated at only 100 have been shot. The policy of shooting, dingoes deemed to present a threat to human safety remains in place. This policy is placing the future viability of this most important dingo gene pool at risk.

The Queensland Government acknowledges that the dingoes are one of the World Heritage values of Fraser Island because they are amongst Australia’s purest populations.

Your petitioners therefore request the Senate to do everything in its power to persuade the Queensland Government to seek alternative methods to protect visitor safety on Fraser Island without risking the, deliberate destruction of a World Heritage value on this island National Park.

by Senator Brown (from nine citizens).

Workplace Relations: Paid Maternity Leave

To the Honourable the President and Members of the Senate in Parliament assembled. The Petition of the undersigned shows:
• Our concern that Australia is now one of only two OECD countries without a national scheme of paid maternity leave;
• Our concern about the two-thirds of Australian working women who currently lack any paid support on the birth of a child;
• Our strong support for the adoption of a national scheme of paid maternity leave for Australian working women at the earliest opportunity;
• Our belief that paid maternity leave is an employment-related measure that recognises, first and foremost, the benefits of at least 14 weeks paid leave for working mothers, their children and their families, along with its contribution to equal opportunity at work, productivity, and women’s employment security and attachment.

Your Petitioners request that the Senate should at the earliest opportunity pass legislation to provide a national system of paid maternity leave which recognises the principles of ILO Convention 183, and provides at least a 14 week payment for working women at the level of their normal earnings (or at least at the minimum wage), with minimal exclusions of any class of women, and a significant contribution from Government.

by Senator Stott Despoja (from 32 citizens).

Foreign Affairs: Iraq

To the Honourable the President and Members of the Senate in Parliament assembled. The Petition of the undersigned calls on the members of the Senate to support the Australian Democrats’ motion opposing Australia’s involvement in preemptive military action or a first strike, against Iraq.

We believe a first strike would undermine international law and create further regional and global insecurity.

We also call on the Government to pursue diplomatic initiatives towards disarmament in Iraq and worldwide.

by Senator Stott Despoja (from 39 citizens).

Petitions received.

COMMITTEES

Selection of Bills Committee

Report

Senator FERRIS (South Australia) (3.37 p.m.)—I present the ninth report of 2002 of the Selection of Bills Committee.

Ordered that the report be adopted.

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

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 9 OF 2002

1. The committee met on Tuesday, 24 September 2002.

2. The committee resolved to recommend—

That—

(a) the provisions of the Renewable Energy (Electricity) Amendment Bill 2002 be referred immediately to the Environment, Communications, Information Technology and the Arts Legislation Committee for report by 19 November 2002 (see appendix 1 for statement of reasons for referral);

(b) upon its introduction into the House of Representatives, the provisions of the Telecommunications Competition Bill 2002 be referred immediately to the Environment, Communications, Information Technology and the Arts Legislation Committee for report by 14 November 2002 (see appendix 2 for statement of reasons for referral); and

(c) the following bills not be referred to committees:

• Aboriginal Land Rights (Northern Territory) Amendment Bill 2002
• Kyoto Protocol (Ratification) Bill 2002
• Medical Indemnity Agreement (Financial Assistance—Binding Commonwealth Obligations) Bill 2002
• Treasury Legislation Amendment Bill (No. 1) 2002.

The committee recommends accordingly.

3. The committee deferred consideration of the following bills to the next meeting:

Bill deferred from meeting of 19 March 2002
• Aviation Legislation Amendment Bill 2002.

Bill deferred from meeting of 14 May 2002
• Great Barrier Reef Marine Park (Boundary Extension) Amendment Bill 2002.
Bill deferred from meeting of 18 June 2002
- Australian Broadcasting Corporation (Scrutiny of Board Appointments) Amendment Bill 2002.

Bills deferred from meeting of 20 August 2002
- Financial Sector Legislation Amendment Bill (No. 2) 2002
- Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002

Bill deferred from meeting of 27 August 2002

Bills deferred from meeting of 24 September 2002
- Australian Animal Health Council (Live-stock Industries) Funding Amendment Bill 2002
- Inspector-General of Taxation Bill 2002
- International Tax Agreements Amendment Bill (No. 2) 2002
- Murray-Darling Basin Amendment Bill 2002
- Taxation Laws Amendment Bill (No. 6) 2002
- Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2].

(Jeannie Ferris)
Chair
25 September 2002
Appendix 1
Proposal to refer a bill to a committee
Name of bill(s):
Renewable Energy (Electricity) Amendment Bill 2002

Reasons for referral/principal issues for consideration
Windfall gains to existing generators operating under business as usual
Use of native forest waste as a renewable energy source

Possible submissions or evidence from:
Hydro Tasmania, Business Council for Sustainable Energy, Australian Conservation Foundation, The Wilderness Society, Pacific Hydro

Committee to which bill is referred:
Environment, Communications Information Technology and the Arts Legislation Committee

Possible hearing date:
Late October

Possible reporting date(s):
Late October

Senator Sue Mackay
Whip/Selection of Bills Committee member

Appendix 2
Proposal to refer a bill to a committee
Name of bill(s):
Telecommunications Competition Bill 2002

Reasons for referral/principal issues for consideration
To enable industry and consumers to provide views on the competition implications of the bill.

Possible submissions or evidence from:
Representatives from carriers and telecommunications consumers.

Committee to which bill is referred:
Upon introduction of the bill (expected in the House of Representatives on 26 October 2002), refer provisions of the bill to the Environment, Communications Information Technology and the Arts Legislation Committee.

Possible hearing date:
To be determined by the committee.

Possible reporting date(s):
31 October 2002

Senator Jeannie Ferris
Government Whip

NOTICES
Presentation

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 Wednesday, 23 October 2002, from 11 am to 12.30 pm, to take evidence for the committee’s inquiry into central Europe.

Senator Sherry to move on the next day of sitting:
That the Senate notes the Howard Government’s third term failures on superannuation, including:

(a) the failure to provide for a contributions tax cut for all Australians who pay it, rather than a tax cut only to those earning more than $90,500 a year;
(b) the failure to adequately compensate victims of superannuation theft or fraud;
(c) the failure to accurately assess the administrative burden on small business of the Government’s third attempt at superannuation choice and deregulation;
(d) the failure to support strong consumer protections for superannuation fund members through capping ongoing fees and banning entry and exit fees;
(e) the failure to provide consumers with a meaningful, comprehensive and comprehensible regime for fee disclosure; and
(f) the failure to cover unpaid superannuation contributions in the case of corporate collapse as part of a workers’ entitlements scheme.

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

That the Senate—

(a) notes:

(i) that Australians use an estimated 13 million plastic bags a year,
(ii) that the introduction of a plastic bag levy in Ireland in March 2002 has totally changed consumer behaviour so now about 90 per cent of people bring their own bags to avoid paying the levy,
(iii) the serious, and sometimes fatal, impact plastic bags have on Australia’s native fauna and flora, and an estimated 100,000 birds, whales, seals and turtles around the world,
(iv) that, according to research conducted by the Council for the Encouragement of Philanthropy, 85 per cent of shoppers in Australia support a levy on plastic bags, and
(v) the recent comments by the Minister for the Environment and Heritage (Dr Kemp) that the Government is considering a plastic bag levy if measures under the National Packaging Covenant fail;

(b) congratulates the Council for the Encouragement of Philanthropy in Australia for its research and lobbying for a levy on plastic bags; and
(c) urges the Federal Government to consider a levy on plastic bags as a priority, independent of the National Packaging Covenant.

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

That the Senate—

(a) notes that:

(i) the building sector accounts for about 20 per cent of Australia’s greenhouse gas emissions,
(ii) the Victorian Government has proposed a compulsory ‘five-star’ minimum energy rating for new homes,
(iii) a minimum five-star energy rating for new houses could halve energy demand for heating and cooling in those homes,
(iv) within 10 years this will result in the reduction in greenhouse gas emissions of around 2 million tonnes in Victoria, the equivalent of removing 550,000 cars from the road or planting 3 million trees,
(v) most Organisation for Economic Co-operation and Development countries have had minimum building energy performance requirements for more than a decade, and
(vi) in comparison with most European countries and North America, the Victorian five-star rating sets a lower standard of energy efficiency;

(b) welcomes the Victorian Government’s move towards reducing greenhouse gas emissions from the building sector; and
(c) urges the Victorian Government to take the next step by taking into account solar hot water and photovoltaic systems in calculating building energy ratings.

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

That the Senate—

(a) notes that:

(i) United Nations (UN) efforts to accomplish the decolonisation process in Western Sahara have not been successful yet,
(ii) more than 165,000 Saharawis have been living in refugee camps in the south-west of Algeria for the past 27 years in dire conditions, waiting to return to their homeland which is occupied by Morocco.

(iii) the UN Security Council adopted Resolution 1429 on 30 July 2002 and asked the UN Secretary-General and his personal envoy to continue their efforts to provide a genuine opportunity for the Saharawi people to exercise their right to self-determination,

(iv) the mandate of the UN mission for the organisation of a referendum on self-determination in Western Sahara expires on 31 January 2003,

(v) the only just, legal and lasting solution to the conflict in the Western Sahara is the organisation of a free and fair referendum to allow the Saharawi people to exercise their right to self-determination, in accordance with the UN/Organisation of African Union peace plan, and

(vi) a failure by the UN to implement the peace plan would compromise UN credibility and lead to further instability in north-west Africa;

(b) calls on both parties in the conflict, Morocco and the Frente Polisario, to cooperate fully with the UN in its efforts to organise a free and fair referendum in Western Sahara; and

(c) urges the Commonwealth Government to make representations to:

(i) the UN, urging it to proceed in organising the long overdue referendum of self-determination without further delays, and

(ii) the Moroccan Government, asking it to cooperate fully with the UN, to respect human rights in the occupied territories and allow independent observers to visit Western Sahara.

Senator Hutchins to move on the next day of sitting:

That—

(a) the Community Affairs References Committee request the Commonwealth Ombudsman to report to the committee annually, at least for the next 5 years, on the operation of the social security breaches and penalties system; and

(b) the committee publish the Ombudsman's report and, if it considers its necessary, seek submissions from interested parties before formulating any proposals it may wish to make for improving the operation of the system.

Senator Ridgeway to move on the next day of sitting:

That the Senate—

(a) notes that Ms Mary Robinson ended her term as the second United Nations (UN) Human Rights Commissioner in September 2002, having held the office since September 1997 and having won the praise and respect of human rights advocates around the world for her strong, principled and consistent promotion and protection of fundamental human rights and freedoms;

(b) welcomes the appointment of Mr Sergio Vieira de Mello as the new UN Human Rights Commissioner, following his leadership of the UN Transitional Administration in East Timor and longstanding contribution to the promotion and defence of human rights in other UN posts, including Kosovo, Lebanon and Cambodia;

(c) pays tribute to the tireless and courageous work undertaken by Ms Robinson as UN Human Rights Commissioner, acknowledging that she:

(i) held this demanding position during a particularly unstable period in world history, including the civil war and peacekeeping effort in Sierra Leone, the civil unrest and wars in the former Yugoslavia, the independence of East Timor, growing unrest in the Middle East, the attack on the World Trade Centre and the war in Afghanistan,

(ii) was proactive in her promotion of universal human rights, visiting some 60 countries, including China, Russia and Israel, to address concerns about the erosion of fundamental principles of civil liberty and basic human rights, including the rights of minorities and refugees, and

(iii) worked skilfully to promote greater public understanding of fundamental human rights, particularly through international conferences, including the UN World Conference on Racism in Durban, South Africa, in 2001; and
(d) concurs with Ms Robinson’s philosophy that anything less than universal adherence to the basic principles of human rights will diminish, ‘our capacity to transmit these values to succeeding generations’.

Postponement

Items of business were postponed as follows:

General business notice of motion no. 178 standing in the name of Senator Allison for today, relating to proposed military action against Iraq, postponed till 26 September 2002.

General business notice of motion no. 184 standing in the name of Senator Stott Despoja for today, relating to the treatment and storage of radioactive waste, postponed till 26 September 2002.

General business notice of motion no. 188 standing in the name of Senator Bartlett for today, relating to parliamentary debate on any involvement by Australia in military action against Iraq, postponed till 26 September 2002.

General business notice of motion no. 189 standing in the name of Senator Bartlett for today, relating to the need for a conscience vote on any motion concerning any involvement by Australia in military action against Iraq, postponed till 26 September 2002.

COMMITTEES

Economics Legislation Committee

Meeting

Senator FERRIS (South Australia) (3.38 p.m.)—At the request of Senator Brandis, I move:

That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 14 October 2002, from 5 pm, to take evidence for the committee’s inquiry into the New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Bill 2002.

Question agreed to.

Rural and Regional Affairs and Transport References Committee

Extension of Time

Senator RIDGEWAY (New South Wales) (3.38 p.m.)—as amended, by leave—I move the motion as amended:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport References Committee on forestry plantations be extended to the last sitting day in August 2003.

Question agreed to.

Economics Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (3.39 p.m.)—At the request of Senator Brandis, I move:

That the time for the presentation of the report of the Economics Legislation Committee on the provisions of the Excise Tariff Amendment Bill (No. 1) 2002 and a related bill be extended to 22 October 2002.

Question agreed to.

Legal and Constitutional References Committee

Extension of Time

Senator MACKAY (Tasmania) (3.39 p.m.)—as amended, by leave—At the request of Senator Bolkus, I move the motion as amended:

That the time for the presentation of the report of the Legal and Constitutional References Committee on the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 and related issues be extended to 21 October 2002.

Question agreed to.

HEALTH: MATERNITY SERVICES

Senator LEES (South Australia) (3.40 p.m.)—I move:

That the Senate—

(a) notes that maternity services in Australia deny the majority of women a choice in how they are supported during pregnancy and birth;

(b) recognises that fewer than 1 per cent of women can currently access one-to-one primary care from midwives;

(c) notes that international research has shown that in industrialised countries only 15 per cent to 20 per cent of women need obstetric intervention in order to achieve a good outcome, while in Australia there is at least one medical intervention in 80 per cent of births; and

(d) supports the National Maternity Action Plan launched on 24 September 2002 by the Maternity Coalition.
Question agreed to.

COMMITTEES

A Certain Maritime Incident Committee

Extension of Time

Senator MACKAY (Tasmania) (3.41 p.m.)—At the request of Senator Cook, I move:

That the time for the presentation of the report of the Select Committee on a Certain Maritime Incident be extended to 23 October 2002.

Question agreed to.

NELLY BAY HARBOUR PROJECT

Senator BARTLETT (Queensland) (3.41 p.m.)—I move:

That there be laid on the table no later than 4 pm on 24 October 2002:

(a) any application to clear granite from the Nelly Bay Harbour project site by methods other than those approved through the 1995-1998 environmental impact statement process;

(b) any documents outlining problems and responses to problems in relation to clearing the inner harbour and access channel of the Nelly Bay Harbour project;

(c) the weekly site supervisor reports for the Nelly Bay Harbour project;

(d) any applications by Nelly Bay Harbour Pty Ltd (or anyone else) for permission to attach pontoons to residential land bordering the Great Barrier Reef Marine Park;

(e) any documents relating to the Great Barrier Reef Marine Park Authority’s position in relation to private moorings inside the Great Barrier Reef Marine Park in relation to the Nelly Bay Harbour project;

(f) the results of the Nelly Bay Harbour monitoring programs (summaries only);

(g) any reported breaches of the Deed of Agreement of the joint Great Barrier Reef Marine Park Authority/Queensland Park and Wildlife Service permit; investigations and outcomes of investigations of those breaches;

(h) any documents in relation to funding or financial problems associated with the Nelly Bay Harbour project; and

(i) any documents evidencing actions on site that the Great Barrier Reef Marine Park Authority stopped, prevented or changed.

Question agreed to.

MATTERS OF URGENCY

Foreign Affairs: International Criminal Court

The DEPUTY PRESIDENT—I inform the Senate that the President has received the following letter, dated 25 September, from Senator Greig:

Dear Mr President

Pursuant to standing order 75, I give notice that today I propose to move:

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

The worldwide campaign by the United States of America to persuade states to enter into impunity agreements which seek to prevent US nationals accused of genocide, crimes against humanity or war crimes from being surrendered to the International Criminal Court and the apparent willingness of the Australian Government to enter into such an agreement.”

Yours Sincerely

(signed)

Senator Brian Greig
Senator for Western Australia

Is the proposal supported?

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

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

Senator GREIG (Western Australia) (3.43 p.m.)—I move:

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

The worldwide campaign by the United States of America to persuade states to enter into impunity agreements which seek to prevent US nationals accused of genocide, crimes against humanity or war crimes from being surrendered to the International Criminal Court and the apparent willingness of the Australian Government to enter into such an agreement.
I move this urgency motion today to draw to the attention of the Senate and to the Australian people the apparent willingness of the Australian government to enter into an impunity agreement to prevent United States nationals—that is, citizens accused of genocide, crimes against humanity or war crimes—from being surrendered to the International Criminal Court, the ICC. We believe this is an outrageous proposal that undermines the very ideal of the ICC, which is to bring to an end impunity for those who commit these atrocities. It is a step backward in the struggle for global justice. The 20th century has seen some of the most horrific atrocities in human history. There is a growing recognition that the international community cannot ignore these crimes where they occur and that where the perpetrators of genocide, war crimes and crimes against humanity can escape punishment humanity itself is diminished.

The purpose of the International Criminal Court, over which we have had lengthy debate, is to ensure that future gross violations of international law, such as crimes against humanity and genocide, do not go unpunished. The ICC will provide a politically neutral forum in which such violations can be tried when normal legal avenues have been exhausted. History teaches us that individuals responsible for serious crimes against humanity are, sadly, rarely brought to justice. We have a unique opportunity to change that from this point forward.

After considerable internal turmoil within the government, it finally ratified the Rome Statute of the International Criminal Court earlier this year. The Minister for Foreign Affairs and the Attorney-General had initially been strong advocates of ratification. However, the government faced some revolt over the issue. At the time, Mr Andrew Thompson, the then Chair of the Joint Standing Committee on Treaties, said of the Rome statute:

Politely speaking, this thing is toxic waste and it ought to be dealt with as such ... This is a road to hell paved with good intentions.

After finally overcoming hostility to the ICC within its own ranks, the government now appears set to undermine the ICC at the request of the US government. The US has been promoting section 98 agreements, which would give US nationals who have committed genocide, war crimes or crimes against humanity immunity from prosecution before the ICC. This absolutely undermines the ICC, the fundamental principle of which is that no-one should be immune from prosecution for these deplorable acts. The US has been threatening a number of countries with the withholding of military aid if they do not sign these agreements. Laws recently passed by the US Congress will actually allow the US military to invade the Netherlands to free any US service personnel brought before the International Criminal Court at The Hague.

The Australian government has expressed agreement in principle with the idea of making and entering into an article 98 agreement with the US. In response to a question without notice from me last month, the government confirmed that it had received a request from the US to conclude such an agreement. The Attorney-General recently said on the *Sunday* program:

What the United States has requested Australia to do is to enter into an agreement, of a sort, that it actually contemplated by article 98(2) of the statute. That’s presently under consideration. In principle, the Australian government has no objection, but we are still working out the details with the United States to ensure that any agreement we make with them is consistent with our international obligations and consistent with our extradition policies and regime.

The statement that the government has no objection in principle to such an arrangement is extraordinary. The principle is completely wrong. It is about placing one country above international law and human rights standards. It undermines the rule of law and will threaten the credibility and effectiveness of the ICC. Furthermore, the idea that these article 98 agreements were somehow anticipated and approved by the Rome statute has been strongly rebutted. Amnesty International have released a considered paper on this issue, and it states:

... any claim that the US impunity agreements were consistent with Article 98 (2) of the Rome Statute would not meet the requirements of an interpretation in good faith. Such an interpretation would be completely at odds with what the states
at Rome intended and, thus, contrary to the over-riding principle of treaty interpretation under international law.

It further pointed out:

... the drafting history confirms that Article 98 (2) was not intended to include agreements such as the US impunity agreements. Indeed, any interpretation that Article 98 (2) did cover such agreements would lead to the manifestly absurd and unreasonable result that a non-state party could subvert the fundamental principle in the Rome Statute that anyone, regardless of nationality, committing genocide, crimes against humanity or war crimes on the territory of a state party is subject to the jurisdiction of the International Criminal Court when states are unable or unwilling genuinely to investigate and, if there is sufficient admissible evidence, to prosecute.

In conclusion, this proposal to conclude an impunity agreement with the United States is outrageous. It is inconsistent with our international obligations. It will undermine the International Criminal Court and the struggle for global justice. I urge the government to reject the article 98 agreement proposed by the US. It is wrong as a matter of law and as a matter of principle. We participated in a constructive way at an international level in the development of the ICC. We should continue to be a good international citizen and not go back in our good work at the request of the United States. Australians have made it very clear in recent days that there is increasing anxiety about Australia acting quickly and with haste on requests from the United States, and I fear that this is another such situation.

Senator FERGUSON (South Australia)
(3.50 p.m.)—It seems that in recent times the Democrats—and, on some occasions, the Labor Party—want to discuss or debate issues which have not yet been decided. You use phrases such as ‘the government’s apparent willingness’. I am not quite sure where you get your information from, Senator Greig, but there are a few facts that I think ought to be put on the table in relation to the International Criminal Court and a lot of other matters.

The United States of America is the largest and most powerful country in the world. Not only that; thankfully, it has a democratically elected government. All the horrific crimes you talk about and all the things that you would seek to criticise have mostly been done by or caused by leaders of governments which are not democracies and in many cases are complete dictatorships. So the people at large—or those who would, in a democracy, get a chance to vote—have no opportunity to vote out of office those dictators and the perpetrators of crimes.

You say that serious offenders have not been brought to justice throughout history. In fact, many serious offenders have been brought to justice—for instance, at the Nuremberg war trials. Many serious offenders and the perpetrators of horrendous war crimes were brought to justice at the war trials in Nuremberg. And right now we have the situation where one of the most recent perpetrators of horrific crimes—Milosevic—is being tried in The Hague. So I do not think that it is true that people have rarely been brought to justice. It is true that there are some that have got away, and nearly every case involved crimes that had been perpetrated by a dictator.

When you are talking about the United States, you need to remember that it is the most powerful nation in the world, whether you like it or not. It is the most powerful, both economically and in relation to its armed forces. Because it is such a powerful nation, it is vital that the United States, which currently makes such a central contribution to global peacekeeping, continue to play an active and productive role. The United States has expressed its longstanding concerns about the International Criminal Court. To those like Senator Greig and others who would say we blindly follow the United States in the decision making, I say that we as a government in fact decided to support the introduction of the International Criminal Court. The United States did not. We do not follow blindly what the United States does.

We have a mind of our own but we do acknowledge that the United States has had longstanding concerns about the ICC. Those concerns include the legitimacy of the ICC exercising jurisdiction over nationals of non-parties and the potential for politically motivated prosecutions. You must know yourself, Senator Greig, that there is potential for po-
litically motivated prosecutions. History would suggest that that is a possibility, as well as all of the other things that you said history has done. Australia is sympathetic towards the United States’ concerns to protect its own citizens—particularly its peacekeepers, who number more than the peacekeepers of all the other countries in the world—from politically motivated prosecutions. It is in Australia’s interests to ensure that the United States continues to make that central contribution to global peacekeeping.

There is no evidence to suggest that, in the absence of the International Criminal Court, the United States itself is not going to bring any perpetrators of violence or crimes to justice. I will only cite one instance: that of Lieutenant William Calley in the Vietnam War, who was prosecuted, tried and convicted by the United States for a war crime. I do not think there is any need to cite any more examples. The United States has been very careful about making sure that its troops involved in peacekeeping or wartime operations are not breaking the law or committing crimes against humanity.

It has come to pass that the United States has approached Australia to discuss a bilateral arrangement which would potentially operate pursuant to article 98(2) of the statute and meet the concerns which the US has expressed. The United States, naturally enough, has made a lot of approaches to a number of other countries around the world in which it has diplomatic missions. Despite its concerns, we regard it as a positive move that the United States is seeking an accommodation with the ICC through the article 98(2) agreements. It is in Australia’s interests to ensure that the United States continues to make this central contribution to global peacekeeping and to international security. There is no other country the world strong enough to make the contribution to international security that the United States does.

If you look through history—while it may not have been perfect in every action that it has taken over the past 50 years—without the United States since the Second World War, we would not see the degree of peace that we currently see in the world today. You only need to look at Europe and the mess it would have been in from the end of the Second World War to the present day. Had it not been for the strength of the United States in maintaining peace and bringing those countries together, there is no way that we would have the peace in Europe that we have today. Neighbouring countries can now go to bed at night without wondering whether or not they are going to be attacked the next day by a neighbour or by a nearby country. There is peace in Europe. The United States has displayed a considerable part in making sure that that peace in Europe is what it is today.

It is only natural that, while Australia recognises that the United States has concerns about the ICC, we believe that the protections in place through our domestic legislation will ensure that Australia’s peacekeepers will be dealt with in the Australian domestic system. We are quite sure that, because we signed on to the International Criminal Court, Australian peacekeepers will always be protected by domestic legislation. But the United States does not necessarily share our views in that regard.

The US are world peacekeepers and find themselves spread around so many different countries, usually mopping up the mess that has been caused by some tyrant who has committed horrendous crimes within their own national borders. The United Nations in most cases has been powerless to intervene because national sovereignty has always been considered to be the dominant force in all of these arrangements. Too often, American peacekeepers, along with others, are called in to clean up the mess after the horrific event has happened. We do not want that to happen. In an inquiry of the Joint Standing Committee on Foreign Affairs, Defence and Trade, which reported only at the end of last year, we tried to look at ways and means through which the United Nations could perform a useful function and intervene before the tragedy occurs—not go in to mop up the mess and keep the peace after the tragedy has occurred.

I do not necessarily agree with it, but I can understand the United States’ position in being the most powerful country in the world economically and the most powerful country the world as far as its armed forces and secu-
rity are concerned. Because of the very fact that it finds itself in so many countries around the world—often in hostile environments in many of the peacekeeping areas that it is working in—I can understand its concern that, when it comes to politically motivated prosecutions, it wants some protection. I do not believe that, as Australians, we need it—we never have. Our armed forces do not believe it and that is why they encouraged us to become signatories of the International Criminal Court. I for one am very pleased that we did.

You selectively quoted some members of my party who were opposed to us joining the ICC. We have a very healthy party. We have very healthy debates on these issues and we have a variety of views within our own party. But, at the end of the day, the right decision was made by the government and the right decision was made by our party. Please do not selectively quote some members who simply have a different view. We may never know but, even in the Democrats, there may be some people with differing views—it seems to have come to the surface somewhat in recent times. The sign of a healthy decision is when you have had that healthy debate within the party and made the right decision at the end. The right decision of the Australian government was to be a part of the International Criminal Court. But we do acknowledge the concerns that the United States have. As the US is the most powerful nation on earth, we must seek to accommodate them.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—I call the Leader of the Opposition in the Senate, Senator the Hon. John Faulkner.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.00 p.m.)—Thank you for that most generous call, Mr Acting Deputy President; I do appreciate it. Can I say at the outset of my speech that the opposition in the Senate, Senator the Hon. John Faulkner.
was also the prime mover in the creation of the United Nations Economic and Social Council.

At this time in our history, with the world confronting—and this has been a matter of considerable debate over the past week in the Australian parliament—the possibility of another armed conflict, it is pertinent to recall Evatt’s words to this self-same parliament 53 years ago, reflecting on the multilateral system. He said:

It is not difficult to find some flaws in the Charter itself. Neither would it be difficult to prove that the machinery of the United Nations is not being used as effectively as it might. The important thing, however, is that a Charter does now exist, and that a world organization has been set up under which the habit of international conciliation and consultation can and must be developed. It is the duty of all of us to encourage the habit of reference to the United Nations...

As I have said, the International Criminal Court is a vital part of this multilateral system. It is designed to create a permanent international court focused explicitly on three heinous crimes: genocide, crimes against humanity and war crimes. The reason for this is that these three sets of crimes have been responsible for more civilian and military deaths since the conclusion of the Second World War than any other military factor. One estimate is that there have been 170 million casualties arising from more than 250 conflicts over that period around the world. I note that until recently the issue of support for the ICC has been a bipartisan one. Foreign Minister Downer, at the very beginning of his ministry in 1996, said:

I believe an International Criminal Court would be an important step forward for the international community in dealing with the most serious crimes of international concern such as genocide, war crimes and crimes against humanity.

That is why I want to make this one of the Government’s prime multilateral and human rights objectives...

Those are Mr Downer’s words—the same Mr Downer who also indicated that Australia would introduce legislation ratifying the ICC by the end of the year 2000. In September 2000, the Deputy Prime Minister praised Australia for ‘demonstrating leadership in the negotiations that concluded the statute of the ICC’. But, of course, the government’s enthusiastic support quickly became at best lukewarm earlier this year when the rabid Right of the coalition parties and the uglies in the joint party room, well led by Senator Minchin—who joins us in the chamber today—started beating the old anti-UN drum. Deep divisions opened up within the government’s ranks over the issue of ratification of the ICC statute.

Mr Howard began to pay more attention to the increasing hostility of the United States to the ICC proposal and less attention to Australia’s national interest. That national interest has always resided in a strong and effective multilateral system. Mr Howard even sought a specific briefing from the office of the US national security adviser on this issue, one that lies exclusively within Australian sovereignty and has no direct relevance to the ANZUS alliance. Ultimately, the government decided very reluctantly to ratify the Rome statute, and of course we welcome that decision. But now it appears the government is preparing to sign an agreement with the United States that would potentially completely undermine the effectiveness of the court. This agreement is what is known as an impunity agreement or an article 98 agreement.

Article 98 of the Rome statute permits ICC member states, such as Australia, to negotiate bilateral agreements with non-member states, such as the United States of America. We understand the United States is seeking to negotiate with ICC parties a bilateral agreement which would prevent US nationals accused of genocide, crimes against humanity or war crimes from being surrendered to the ICC. These impunity agreements do not require the USA or the other state concerned to investigate and, if there is sufficient admissible evidence, to prosecute the US national accused by the ICC of such crimes.

The opposition shares the deep concern expressed by many that these agreements violate the obligations of states parties, under article 86 of the Rome statute, to arrest and surrender persons accused of such crimes to the ICC, and they will effectively neuter the
court. The object and purpose of the Rome statute is to end impunity for the worst possible crimes in the world in accordance with the principle of complementarity, which places the primary responsibility of investigating and prosecuting these crimes on states, but ensures that the International Criminal Court will be able to exercise jurisdiction when states fail to fulfil these responsibilities. A fundamental principle underlying the Rome statute is that no-one is above the law and no-one is immune from prosecution from genocide, crimes against humanity or war crimes. Accordingly, the opposition views with very deep concern a proposal from the US to the Australian government to negotiate an agreement under article 98 of the Rome statute on the ICC, which would effectively make all US personnel immune from prosecution by the ICC.

The United States has apparently made this request of many countries around the world, with a number having acceded, including, as I understand it, Romania, Israel, East Timor, Colombia and Tajikistan. I note that Senator Ellison, in answering a question without notice on 27 August, stated:

The Government is aware that the US has approached a number of countries to propose that they conclude bilateral agreements, consistent with Article 98(2) of the Statute of the International Criminal Court (ICC), to ensure neither country would surrender or transfer the other’s nationals to the ICC without consent.

It continues:

Australia has been approached by the US to conclude an Article 98(2) Agreement. The Government is carefully considering the US proposal.

On 28 August, Foreign Minister Downer, on the PM program on the ABC, said that the government was sympathetic to what the Americans say. He added:

It is consistent with the statute of the International Criminal Court.

In the opposition’s view, these impunity agreements raise the fundamental question of the overall integrity of the International Criminal Court. The ultimate effect of the US proposal, if acceded to, could be a series of bilateral agreements right around the world, seeking to exempt not just US personnel from the ICC but also the personnel of the other contracting government. Furthermore, if the United States seeks to withdraw more fundamentally from the ICC system, given that the US has already withdrawn its signature from the Rome statute, there is a grave danger that this would erode the impetus for the remaining states that are yet to ratify the ICC treaty to proceed with ratification.

Labor’s view is that, if we are to have an international criminal court, it must be truly international and it must be truly effective. These impunity agreements will ensure it is neither international nor effective. Accordingly, I say to the Senate that we concur with the terms of the motion before the chamber. We agree that this is a matter of urgency and we will be voting in support of the motion.

Senator JOHNSTON (Western Australia) (4.14 p.m.)—It is most regrettable and disappointing that even among allies and friends of the United States the United States must contend with snipers from behind the shield of capitulation and pacifism. I am pleased to say that, save for New Zealand, Australia has a unique and close relationship with the United States. Indeed, she is probably our closest and friendliest ally. The relationship is just that for good reason. These are things that Senator Greig in his urgency motion fails to understand. Australia and the United States have a common and moral view on the question of civil rights. They have a common and moral view on the question of the rule of law and the right to a fair trial and the right to be judged by an impartial judiciary. Very many other cultural and historical similarities draw our two nations together. It is a tragedy that Senator Greig would seek to try and drive a wedge in that relationship with his naive motion. It is a very sad and sorry situation when Senator Greig and a number of other senators were here last week being so much more vociferous, agitated and energetic when talking about China than they have been when talking about the atrocities and the ongoing breaches of human rights in Iraq. The reason for that is that they are anti-American. It is a very sad and sorry situation to see that the Labor Party has been sucked in by exactly that type of sentiment.
It is obvious to anybody with any understanding of international history that America is on the front line of protecting human rights right around the world. It is a difficult and complex frontier. In Somalia, Yugoslavia, Rwanda, Kuwait and more recently, of course, in Afghanistan, America is putting its troops on the front line to protect the civil rights of the people in those countries.

Senator George Campbell—Who put the Taliban in Afghanistan? Read your history.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Senator George Campbell, you should desist.

Senator JOHNSTON—Some senators sit here in utter and complete ignorance. I remind them to have a look at the plight of women in Afghanistan. Senators will sit here and say that America has gone into the war against terror for its strategic benefit. It is an absolute tragedy that some people in this parliament do not even know why and how they have the freedoms to sit here and express the views that they do.

It is vital to Australia’s national interest that the United States continue to maintain its peacekeeping forces right around the world. It is to our benefit that they commit those forces. What we have seen here is a living, breathing, walking example of why the United States should not participate in the International Criminal Court. We have seen here anti-American sentiment, anti-American prejudice, anti-American bias and then they complain why the Americans will not be judged. All they will get is that level of justice and that is what they are worried about. So Senator Greig in his motion explains why the Americans will not have a bar of it.

Senator McGauran—He doesn’t even want the Taliban rooted out!

Senator George Campbell—You supported them!

The ACTING DEPUTY PRESIDENT—Senator McGauran and Senator George Campbell, please desist from your cross-chamber interjections and your dialogue with each other!

Senator JOHNSTON—Thank you, Mr Acting Deputy President. The reasons why the United States would not entertain submitting its citizens to this jurisdiction are exemplified, sadly, by the bias here in this parliament. They are exemplified by descriptions and quotes in the Iraq debate last week. When talking about why America was looking towards arresting this dire situation in Iraq, Senator Nettle said:

Some of this engagement has been constructive, but the current rhetoric is totally unproductive and clearly focused on extending US influence in the region, particularly relating to resources. ‘Regime change’ is marketing jargon for putting in place a new US-friendly government. Regime change does not mean democracy, improved human rights for Iraqi civilians or stability in the Middle East; it simply means putting in place someone the United States can do business with.

That is the type of anti-American sentiment, anti-American naivety, that the Americans are absolutely frightened of. But there is a saving grace: article 98, which Senator Greig conveniently failed to address in his urgency motion. Article 98 is clear in its terms. It states that such bilateral agreements are intended to operate under article 98(2) of the ICC statute which provides:

The Court may not proceed with a request for surrender—

and that means of a citizen—

which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

The US Ambassador-at-Large for War Crimes, Pierre-Richard Prosper, is reported to have said on 20 September, while meeting with the UK government, that 16 countries had signed, or were about to sign, bilateral article 98(2) agreements. He is also reported to have said:

What we are asking is that if there is a crime then that person not go to the ICC. But we believe in the rule of the law and we will ensure that the person is investigated and properly prosecuted.

He was thereby indicating that the US recognises that impunity is unacceptable and that persons credibly accused of ICC crimes should be investigated and, if necessary, prosecuted.
The fact is that, while His Excellency the Ambassador for the United States, Ambassador Schieffer, was in this parliament both this morning and last night, providing advice as to the current circumstances in Iraq and elsewhere in the world, none of Senator Greig’s colleagues—none of the people behind this motion—were there to hear him. They are talking in utter and complete ignorance about the current state of world affairs. The fact is that their deep-seated, deep-rooted prejudice against the United States is the absolutely classic reason why the United States should not, could not and would not submit its citizens to the type of bias that these people would deliver to them in judgment.

Senator LUDWIG (Queensland) (4.22 p.m.)—I listened closely to Senator Johnston’s speech, although I do not give him the status of an international jurist in interpreting article 98. I think that, quite rightly, the jury is still out on that. Clearly, though, it is of grave concern to the Labor Party that the Australian government appears so willing to accede to the request by the United States for an article 98 agreement on the International Criminal Court. For the first time, the world has a permanent institution capable of bringing to justice persons who have committed genocide, war crimes and crimes against humanity. The International Criminal Court was established to achieve justice for the victims of these appalling crimes, to end the impunity hitherto enjoyed by many perpetrators of such crimes, to promote peace by breaking the cycle of violence and retribution that accompanies such crimes and to deter the commission of genocide, war crimes and crimes against humanity in the future. It is a principle at the foundations of the International Criminal Court that the court exists to act when national criminal justice institutions are unwilling or unable to do so. That is why the Labor Party supports this urgency motion by Senator Greig.

After the United Nations first recognised the need to establish an international criminal court in 1948, it took some 50 years of diplomatic effort to achieve agreement on the Rome statute establishing the court. From the start, Australia was at the forefront of these efforts. It took another four years for the Liberal and National parties to settle their internal division over the court before the Australian government finally ratified the statute in July 2002. It is no exaggeration to say that, if the United States is successful in persuading countries such as Australia to sign article 98 agreements, much of the 54 years of hard work will gradually be undone. So far it would appear that only a handful of countries have signed the agreement. They range from Romania, East Timor, the Marshall Islands, Pakistan, the Dominican Republic and Honduras to Afghanistan. If Australia were to do likewise, it would inevitably provide convenient cover for many other countries to follow.

The effectiveness of the International Criminal Court can only be eroded by a growing network of bilateral agreements removing citizens—not only those of the United States but potentially those of many other countries—from the reach of this court. It is revealing that, despite the government’s willingness to enter an article 98 agreement, neither the Attorney-General nor the Minister for Foreign Affairs have bothered to make a public case for such an agreement. They argue, as Senator Johnston poorly attempted to do, that article 98 permits such agreements. Article 98 might, on one reading, permit them but it certainly does not require them. I should also note that there is controversy among legal experts about whether it even permits the kind of agreement that the United States has apparently sought.

The foreign minister points to the fact that the United States have threatened to withdraw from peacekeeping. They say such a withdrawal is not in Australia’s interest. Nor is it in Australia’s interest—particularly our long-term interest—to accede to that. Germany, Switzerland and Canada have not done so; we should not do so either. If what I have just outlined, with Senator Johnston’s comments, is the sum total of the Australian government’s case for entering an article 98 agreement then it is wholly unconvincing. In fairness, I should acknowledge that the At-
torney-General did say on the Sunday pro-
gram on 8 September:
... we are still working out the details with the
United States to ensure that any agreement we
make with them is consistent with our interna-
tional obligations ...

The words ‘international obligations’ cross
the Howard government’s lips so rarely these
days that it is reassuring to hear that they still
figure in at least the Attorney-General’s
thinking. But, in seeking to make an agree-
ment that is consistent with our international
obligations, I fear that he has set himself an
impossible task.

By ratifying the International Criminal
Court, the Australian government recognised
a number of things. It recognised that geno-
cide, war crimes and crimes against human-
ity threaten the peace, security and wellbeing
of the world. Unpunished crimes have almost
invariably led to the continuation of wider
conflict and violence. The government sig-
nalled its determination to put an end to im-
punity for the perpetrators of these crimes
and to contribute to their prevention. The
government recognised that the effective
prosecution of these crimes must be ensured
not only by national measures but, where
these measures are unavailable, by interna-
tional cooperation. It affirmed that it is the
duty of every state to exercise its criminal
jurisdiction over those responsible for inter-
national crimes but also resolved that there
could be no lasting respect for international
justice without the establishment of a truly
international criminal court with comple-
mentary jurisdiction over the most serious
crimes of concern to the international com-

munity as a whole.

Having argued for the International
Criminal Court and made these solemn dec-
larations, it is difficult for the government
then to suggest that Australia has no obliga-
tion to promote cooperation with the court by
the community of nations as a whole. Yet, by
cooperating with the United States’ cam-
paign for a wholesale exclusion from the
International Criminal Court by the use of
the article 98 bilateral agreement, the Aus-
tralian government would be suggesting just
that. Who knows how many countries—and
perhaps Senator Mason can suggest who
else—would use a similar mechanism to
shield war crimes from justice using the
precedent such an inclusion would set?

Labor has been supportive of the estab-
lishment of the International Criminal Court
and has been solidly behind the ratification
of the Rome statute by this government. La-
bor supported the enactment of the necessary
legislation to give effect to the Rome statute,
which established the International Criminal
Court. Labor cooperated with the govern-
ment to secure the timely ratification of the
statute. The government’s legislation also
incorporated a number of amendments,
which were considered by the Joint Standing
Committee on Treaties. I am sure Senator
Mason will also comment on the treaties
committee’s good work in ensuring that the
International Criminal Court proposal was
given proper scrutiny and was one that was
deserving of ratification by this government.

But it was important that during the pas-
sage of these bills in July the government—
which had, prior to July, allowed the ratifi-
cation by July—did three things. Firstly, it
incorporated some technical amendments
and a declaration. The declaration stands
with article 98 as one of two backflips by
this government where they sign, ratify and
then baulk. It is disheartening to see this
government, in the international commu-
nity’s eyes, take a backward step in relation
to the International Criminal Court by con-
sidering the article 98 bilateral agreement.
That is why we support the urgency motion.
I am sure Senator Mason, when he gets to his
feet, will similarly agree that we should not
take backward steps in relation to the Inter-
national Criminal Court.

Senator Mason—Just wait, Joe.

Senator LUDWIG—It is an important
court, and Senator Mason knows that. Sena-
tor Mason participated in the treaties com-
mittee and agreed with the underlying basis
that the court had to have international juris-
diction and it had to ensure that it had a
community of nations—(Time expired)

Senator MASON (Queensland) (4.32
p.m.)—I want to touch on the law before I
touch on the politics of the International
Criminal Court issue. This arrangement, so
decried by Senator Greig and others, is specifically provided for under the ICC statute. Article 98 recognises that states have arrangements regarding extradition and it respects such arrangements by circumscribing the powers of the court in those circumstances. So Australia would not be doing anything unlawful under international law should it enter into an impunity arrangement with the United States. There is nothing illegal or unusual about it—it is catered for under the ICC statute.

As in Australia, there has been much debate in the United States about ratification of this treaty. Nearly every former US Secretary of Defense and Secretary of State opposed it. Senator Ludwig is right; I thought it was in Australia’s national interest to ratify. The Americans disagreed. They are entitled to their own definition of their self-interest.

The United States has two principal concerns with the ICC. First—and this is very unusual—the ICC seeks to exercise jurisdiction over the nationals of non-parties to the convention, such as citizens of the United States. That is unusual because this treaty seeks to exercise jurisdiction over every citizen on earth, irrespective of whether the governments of those nations sign up to the treaty. That is very unusual; whether it is good or bad is a different question. Senator Ludwig may support it; I think it is in Australia’s national interest to ratify. The Americans disagreed. They are entitled to their own definition of their self-interest.

The second thing that concerns the United States is the spectre of politically motivated prosecutions. They are concerned that this court will be used for political purposes, and I understand why. During the Cold War, the United States fortunately developed a habit of activism on a global scale; it spent much on the defence of liberty and democracy. Having won the Cold War—we actually won it, I inform the Labor Party—

Senator O’Brien—You won it, did you? Congratulations.

Senator MASON—No thanks to you lot. The United States wants to reinforce that victory. That means not only promoting good but also crushing evil and, if necessary, doing it by force. This activism brings with it the renewed capacity to make enemies and create animosity and fear. This is particularly so in the context of September 11, 2001. The United States has committed itself to destroying the monster of terrorism. Terrorism is an elusive, amorphous and shadowy enemy. There is no doubt that the United States pursuit of those terrorists could cause all sorts of difficulties with their relations with states, and it again opens the United States to politically motivated prosecutions when other states do not support the United States in their activities. That is a problem.

There is another point too, and I mentioned it in a speech I made earlier today. Latent among the political left and potentially even an issue on the right is the resurgence of anti-Americanism. It is back! In a recently published lecture, Professor Owen Harries spoke of the resurgence of anti-Americanism. He cited the recent observation of Rosemary Righter, chief editorial writer of the Times of London, that ‘America-bashing is in fashion as it has not been since Vietnam.’ She is not talking of Asia and the Middle East, but of those European sophisticates in London, Paris and Berlin.

American nationals, specifically soldiers, are not above the law; they remain subject to American law. American law is among the most sophisticated of all legal systems. Its due process protections are probably the most stringent in the world. To argue that that is less than is given by the ICC is ridiculous. The Americans are concerned about politically motivated prosecutions. The truth of the matter is that there is a great concern that countries like the US, rather than the real gross human rights violators, will become the target of the ICC. There are enough governments, NGOs and activists around the world that are hostile to the US specifically, and to Western liberal democratic ideals more broadly, to ensure that the mechanisms of the court might be used as a
perverse weapon against the world’s only remaining superpower.

Some will say that this risk is overstated. The United States argues that it is not in their national interest to take that risk. It is not hard to understand why. The US currently maintains 200,000 soldiers and sailors outside its border and has base rights in more than 40 countries. The US armed forces have been the backbone of most major United Nations operations, both in wars such as Korea and Kuwait and in peacekeeping in areas such as Somalia, Bosnia and Kosovo. They provide the troops to keep the world at peace as well. Now the US is bearing the brunt of the war against terrorism. By virtue of its position and resources, the US is involved around the world and gets called to be involved around the world whenever anything of any importance happens. All this means that the US, more than any other country on Earth, is potentially exposed to actions under the ICC.

Senator Ludwig—You missed out the principle of complementarity.

Senator MASON—We in the West, we in Australia—and Senator Ludwig as well, no doubt—so often want the United States to be active in international affairs and global peacekeeping, but we want it on our terms. We want the US to be involved on our terms. I am afraid that we are not always going to get it that way—that is the bottom line.

Senator Ludwig—So you should stop trying.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Senator Ludwig, I wish you would stop trying.

Senator MASON—The conclusion of an article 98(2) agreement might just be the price Australia has to pay for continued United States involvement in the war against terrorism and global peacekeeping. If that is the price we have to pay, you might just have to pay it. (Time expired)

Senator GREIG (Western Australia) (4.40 p.m.)—Volume and animation is no substitute for substance. I welcome the support from the opposition and thank all senators for their contributions, regardless of how they feel about the issue. I will say a few things in conclusion. I find it intriguing that anybody who speaks up against current international circumstances, speaks up in support of the United Nations or speaks up in support of the International Criminal Court is somehow accused of being anti-American. We Australian Democrats are not anti-American, but we are antithuggery and anti-imperialist. We believe in the international rule of law and international global support.

Senator Ferguson argued repeatedly that America was a very powerful nation, politically and economically. I have no argument with that. But for that reason it must be a team player. For that reason the peoples of the world are concerned that the most powerful nation in the world is not above the law. That is why it is in the United States’ interests and in global interests for it to be a cooperative team player in the way the International Criminal Court is constituted and operates.

Senator Ferguson said that the Americans were concerned about the possibility of politically motivated prosecutions—that is an understandable concern for any country that signs on to this—yet he was silent on the question of politically motivated non-prosecutions and the possibility for countries to remove themselves and their citizens from prosecution for their own political reasons, which is why the ICC can best operate if it is one-in, all-in. Senator Ferguson argued also that domestic remedies were the best option for dealing with this. We have seen, Senator Mason, in long discussions we have had on antigenocide in relation to Australia, for example, that domestic remedies are often inadequate and they have clearly failed within an Australian jurisdiction, which is why our signing on to the ICC is welcome.

Senator Johnston argued that America was a great human rights advocate and talked about the appalling way that women were treated in Afghanistan. He failed to point out that the US funded and resourced the Taliban—the most appalling administrators of the laws in that country—for some time. He failed to point out that the US was absent during the Indonesian invasion of East Timor. He failed to point out the funding and support for military regimes in South Amer-
ica. He failed to point out that the US bombing of Iraq has killed 400,000 children in the last decade and that when Madeleine Albright was asked about this she said it was ‘a price worth paying’.

We believe the ICC should be supported without qualification. We believe that the Senate has a duty and a right to express its opinion on this. As Senator Ferguson said, the government has not signed off on this, but let us get in early and make our case. (Time expired)

Question agreed to.

COMMITTEES
Scrutiny of Bills Committee
Report
Senator BUCKLAND (South Australia)

Ordered that the report be printed.

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (AUSTRALIANS WORKING TOGETHER AND OTHER 2001 BUDGET MEASURES) BILL 2002
Report of Community Affairs References Committee
Senator HUTCHINS (New South Wales)
(4.44 p.m.)—I present the report of the Community Affairs References Committee on the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 and related issues, together with the Hansard record of proceedings and submissions received by the committee.

Ordered that the report be printed.

Senator HUTCHINS—I move:

That the Senate take note of the report.

The Senate Community Affairs References Committee was asked to inquire into the adequacy, effectiveness and fairness of the proposed participation requirements for parents and mature age unemployed Australians as contained in the Family and Community Services Legislation Amendment (Australians Working Together and Other 2001 Budget Measures) Bill 2002. The committee was also asked to consider the report of the Independent Review of Breaches and Penalties in the Social Security System, also known as the Pearce review. I would like to thank the members of the committee and the staff for their diligence and commitment to the process.

The Pearce review presents a balanced and sensible approach to the issues of participation requirements and breaching. In our view, the Pearce approach represents a way forward both in terms of this legislation and the reform of the penalties regime more broadly. Currently, the legislation does not accurately reflect the reciprocal nature of the principles of mutual obligation. The phrase ‘mutual obligation’ implies that there are two groups who are obliged to take action. In the relationship between government and the individual, the government is the stronger, more experienced and more powerful partner. As such, it has a greater responsibility than the individual concerned.

The so-called Australians Working Together package and the McClure report on which it was based spent a great deal of time discussing the concept of community involvement in the process of engaging people in work. But the proof is in the pudding. While the government vaunted the importance of the community, individuals and government working together, its package failed to deliver. In the $1.7 billion package, many hundreds of millions of which simply extend existing programs, a measly $22 million is to be spent on community engagement. Of that $22 million, the vast majority is to be spent on the Prime Minister’s Community Business Partnership, which has scope of myopic proportions. For a government that has mutual obligation at the heart of its agenda for the welfare system, that is a pretty poor commitment. Members of the government such as Minister Abbott would love to shift the burden of welfare to charities and the community. But that will just not happen. If it is a workable proposition, a major cultural change will need to occur. At the moment, the government is not willing to
commit to what is necessary for that change to happen. Instead, it has proposed changes to the social security system which punish the most vulnerable members of our society.

The government has clearly not thought through the costs of being subject to a participation agreement. The government’s payment of $20.80 per fortnight, which would offset the additional costs incurred as a result of complying with a participation agreement, is grossly inadequate. Conservative estimates provided to the committee by witnesses suggested that this figure should be doubled if it were to adequately reflect the type of expenses that people incur. The breaching system is punitive by its very nature and there would be few senators in this chamber who disagree with the principle that one should participate in the job market if one is a recipient of a Centrelink payment such as Newstart or Youth Allowance. They are, after all, payments which are paid in return for job seeking, training or education.

The Senate Community Affairs References Committee, however, was entrusted with an inquiry into the effect that participation requirements and breaching would have on single parents and older unemployed people. Single parents are a group in society that is often targeted by conservative commentators as undeserving of the supposed privileges it is given by the Australian social security system. During the inquiry the committee heard evidence from a number of groups that showed how difficult life is for single parents. They told us of the commitment that single parents have to their children and the high priority they give to caring for them. The Sole Parents Union made particular reference to the importance of a balance between work and family. Single parents are not unemployed; they are engaged in caring for their children. Nor are they welfare bludgers—they are, in fact, the group of welfare recipients most likely to be engaged in work.

Most of us here are parents and we understand the demands that our children place on our time. Those demands are not unpleasant, but they exist. I doubt that there is anything more important than the caring and responsible upbringing of our children. Separated and divorced parents may well be to blame for their own actions, but the imposition of unreasonable participation requirements on single parents punishes children as much as it does their parents. The family is the most basic element of our society. Where it fails, we are obliged to ensure that it does not also fail the next generation.

With respect to the provisions within the bill for the mature age unemployed, simply not enough is done. If there is a group which has suffered at the hands of the government, it is the older unemployed. While enforcing compulsory participation agreements on single parents, the bill that the committee reviewed allows older unemployed people greater flexibility. While there is flexibility, the sense one gets is that these are people that the government has given up on. These are the people who most need to be retrained and taught new skills. Yet the government’s package provides them with no new opportunities and no hope. They are parked and essentially left to wait for the old age pension to kick in.

Mutual obligation, if it were used effectively, could be part of a targeted reduction in welfare dependency. The point is that participation agreements should have an aim, and that aim should be to get people jobs. Almost everyone who receives a Centrelink benefit would jump at any opportunity they were given. But, instead of being a tool of training and a means of increasing the employability of our work force, the government uses participation agreements as a way of deceiving the electorate and cutting costs to the tune of tens of millions of dollars.

Under the proposed model of breaches, single parents would stand to lose $987 for missing one interview. By the third breach, a parent and their children would suffer a $3,990 decrease in their standard of living over a period of 14 months. The aim of participation requirements should be to assist individuals in taking part in the work force. Penalties of this order would appear to be counterproductive. The government should not ignore the impact of such pay cuts on the lives and opportunities of a single parent’s children. The government may not sympathise with the children of single parents, but
the public does. In a survey conducted by the Brotherhood of St Laurence, members of the public suggested that a fair breaching program would be $20 for the first breach, $50 for the second and $75 for the third. The government’s proposal is some 27 times greater than what the public considers to be punishment enough.

The parenting payment is not something that benefits the parent only, it also benefits their children. Submissions to the committee made it very clear that parents would consider their responsibility for the welfare of their children more important than the fulfilment of obligations under a participation agreement. When a system makes a parent choose between his or her children and financial benefits, there is something very seriously wrong. I would certainly not call myself a bleeding heart. In fact, there are a few members of this chamber whom I have accused of being bleeding hearts in a very derogatory sense. But I do believe in the principle of a fair go. I do believe that if the government is going to make life hard for people, there has to be a good reason. I also believe that the government’s proposed changes to the social security system are mutton dressed up as lamb.

Our current system of breaching is arbitrary in its punishment of individuals for failing to comply with participation agreements, it is out of step with the public’s perception of how people should be treated, it is counterproductive in terms of slowing welfare dependency and the government has opted out of its side of the bargain. The overwhelming decision of the committee was to endorse a sensible and effective program of participation requirements to ensure that Australians are given a chance rather than being arbitrarily punished.

**Senator MOORE** (Queensland) (4.54 p.m.)—The proposed changes to the participation requirements and penalties in the social security system have been introduced by the government as part of its Australians Working Together package, which is designed to assist Australians looking for work. A most disturbing aspect of our committee’s activities is the clear division among the very Australians who are supposed to be working together. During the public hearings and submissions to the inquiry there was significant evidence provided by key welfare groups and people who are actually receiving some form of welfare assistance which highlights the problems in the system and cries out for further involvement in any process to improve the system.

There is no doubt about the need for the system to change. There is no doubt that there is a need to develop methods to reduce the high proportion of working age population reliant on income support. There is no doubt that there need to be more participation requirements and indeed in some cases some form of penalty. However, the doubts relate to the methods and the processes used by the government to implement policies. Unfortunately, during our committee process there seemed to be some conflict and some competition about who was actually right and the motives behind statements being made about the system were questioned. Any question seemed to be seen as criticism and was not welcome.

Instead of a genuine atmosphere of cooperation stimulated by the real agreement about the need to effectively support Australians into appropriate work and training, a system which was promoted by the government with its appointment of a reference group on welfare reform in September 1999, too often in the submissions from key welfare agencies there was evidence that they were unsure of the ability of officers of the government and particular departments to involve the community in consultation and in particular to understand or respond to any criticism of the system.

The committee recommended that the Department of Family and Community Services implement in full the recommendations of the Independent Review of Breaches and Penalties in the Social Security System. The independent review was chaired by Professor Pearce and was established in August 2001 by leading charities and community organisations including ACROSS, Welfare Rights, the Brotherhood of St Laurence and indeed the Community and Public Sector Union. The purpose of this independent review was to look specifically at penalties, their effects,
how they were enforced and to recommend any improvements needed. It was set up because people and organisations directly involved in service delivery and in the confronting and often heart-rending work with people in need were concerned about the way the system was working. Rather than just making simplistic media grabbing statements or allegations, this review explored the available data on the process, interviewed welfare dependent people and produced a report with 36 recommendations relating to the nature and the specific processes used by the department to work with their clients.

This report was presented in good faith to the Department of Family and Community Services which then stated that it ‘provided a valuable perspective on very detailed aspects of breaching policy and practice’. The department, coincidentally, had conducted an internal review at exactly the same time and many of the issues had been identified and addressed. In discussion with our committee, Professor Pearce expressed some disappointment about the response from the department and indeed the respect with which the recommendations were received and understood. He said:

All I say is that when looking at those responses, one needs to be very clear that they tend to put a gloss on or generalise the position without really getting to the nitty-gritty of what we have recommended. There have been some occasions when we think that the way in which the response represents the intention of the recommendation is not entirely accurate.

Professor Disney, another member of the independent review, highlighted a particular concern with the lack of accurate information. He said:

... it is very hard to find out with accuracy what is really happening and to find out whether changes that are promised have actually been introduced, whether if introduced they have been kept because quite often they are pilots which are then discontinued, and if introduced to find out the detail.

Indeed, this exchange of information issue, a critical aspect of any real relationship, was highlighted by the inability of ACOSS, Welfare Rights or this house to obtain current accurate data on breaching numbers. Unnecessary argument as well as some direct questioning of motivation were caused because of confusion over the way stats were kept and how they were exchanged. One real result of our whole review must be that in some way accurate data can be exchanged so that if any differences are identified we are able to work on the same figures, so that we do not waste time in unnecessary argument. Part of Australians Working Together must be the people who actually supply the service in the departments. One of the crucial factors, as acknowledged by the department during the review, was the role of the people working in Centrelink:

In large part, the successful administration of the provisions and the participation support framework they underpin will come down to the capacity of Centrelink to administer the flexibility and individualisation of service delivery expected. Two factors, in particular, will be critical:

—the capacity for policy guidelines and administrative procedures to be interpreted appropriately and equitably while maintaining the flexibility to allow an individually tailored approach ...

This is a critical aspect of the whole process: to have individuals who are particularly in danger identified clearly and to have systems to work with them, not against them. The second point put by the department is:

—the training and management of those staff charged with providing the participation planning, support and monitoring at the heart of those measures—the new Personal Adviser role.

The role of the staff must be understood in any discussion about any change of government policy. Welfare Rights, in their submission, particularly said:

It is a complex system. There are many provisions to look at. Centrelink at their best cannot make sure that everything is going to happen correctly all the time. Indeed, we have seen, with the penalties regime applying to unemployed people, how it breaks down in hundreds of thousands of cases on hundreds of thousands of occasions.

Whilst allowing for some exaggeration to make a point, the real issue here is that any system relies on the availability of and the competence of people to work. We must ensure that any system must be effectively resourced, training provided and once again trust engendered between those people who need the system and those people who im-
implement the system so that genuinely in Australians Working Together people will have a hope of working together.

The review by our committee has recommended that we take up the recommendations of the Pearce report and a range of other issues. Whilst there are concerns about the way the penalty system works, the real issue must be that people understand the system and are not isolated or further disadvantaged by the same system which has been set up to help them. While we believe that the recommendations should be taken up, we also believe that this system must be continually reviewed. In fact, the department have agreed that any system must be reviewed on an ongoing basis—and in fact they do it.

We state that the reviews must continue but that the reviews must genuinely include all those Australians who wish to work together and all those who have something to offer to go into the review. People should not be excluded; they should not be pushed away. Most clearly, they must be respected for their right to continue to exist in our society and for their right to be helped and not punished. The concept of the penalty regime must be to encourage people to be involved, rather than to punish. As long as there is a system focused on punishment, there will not be people willing to take part in this system. I commend the recommendations of our committee. I believe that there has been goodwill in our process and I believe that there is real activity that can be gained by an ongoing, actively involved Australians Working Together process. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

FOREIGN AFFAIRS: IRAQ

Return to Order

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—I present a response from the Prime Minister, Mr Howard, to a resolution of the Senate of 21 August 2002 concerning military action against Iraq.

Senator STOTT DESPOJA (South Australia) (5.05 p.m.)—by leave—I move:

That the Senate take note of the statement.

As you well know, Mr Acting Deputy President Bartlett, I cosponsored a motion with Senator Faulkner on 21 August and this is a response from the Prime Minister to that motion. The motion, which we had passed in the Senate on that day, called upon the government:

... to define the circumstances under which Australia would consider diplomatic or military support for a United States led attack on Iraq...

In particular, that motion called for the outlining of:

... the evidence linking Iraq to international terrorism or evidence of a significant expansion in the threat from Iraq’s nuclear, chemical or biological weapons programs.

The motion was founded on a fundamental recognition that, if Australia is to commit to military action against Iraq, it must first be very clear about the objectives, the merit and of course the legality of any such action. I am disappointed with this response because the Prime Minister has failed to respond in detail to this resolution of the Senate. Once again I believe the Prime Minister has missed an opportunity to outline his and of course his government’s independent assessment of evidence against Iraq. I welcome the Prime Minister’s indication that he believes that Australian policy on a US-led attack on Iraq should be the subject of a thorough discussion by the Australian community and a full parliamentary debate—something that the Australian Democrats have called for continually in this debate. However, as one would acknowledge—and certainly as you, Mr Acting Deputy President Bartlett, as our party’s defence spokesperson, have said many times and indeed in the Senate today and in a series of questions this week—any such debate must be informed. The ability of this parliament to make decisions in the best interests of the Australian community on this issue will be compromised if the Prime Minister fails to equip us with the relevant information. Yet again, the Australian people and their representatives in this place are left to consider these issues only on information provided by other political leaders.

The justification put forward by the US and the UK for war against Iraq has not been
consistent. While much attention has been
given to Iraq’s possession of weapons of
mass destruction, the US, as you have no-
ticed, has focused on different issues in re-
cent months. In fact, I believe it has changed
its focus towards the need for a regime
change in Iraq. Moreover, there have been
indirect attempts, although no clear evidence
has been presented, to link Iraq with the ter-
rorist attacks of 11 September. On the issue
of weapons of mass destruction, there is evi-
dence that Iraq continues to produce chemi-
cal and biological weapons, that it is working
towards building nuclear weapons and that it
has extended the range of its ballistic mis-
siles.

The Australian Democrats strongly op-
pose the development and possession of
weapons of mass destruction. We are con-
cerned by the evidence regarding Iraq’s ca-
pability in this respect—of course we are
concerned. However, we do not believe that
unilateral military action is an appropriate
way to address these concerns. Any strategy
involving unilateral military action is fraught
with danger. Legal opinion demonstrates that
such action would be in contravention of
well-established principles of international
law. There is also much evidence to suggest
that it would result in further destabilisation
in the Middle East, particularly given the
potential for Israel to become involved in
such action.

Perhaps most significantly, pre-emptive
military action has the potential to seriously
undermine the authority of the United Na-
tions and thus lead to global instability. This
issue of Iraq’s possession and development
of weapons of mass destruction must be ad-
dressed through well-established multilateral
frameworks in accordance with international
law. The Democrats have welcomed, and we
state again for the record that we welcome,
Iraq’s agreement to readmit UN weapons
inspectors and we believe that this course
must be pursued as the first step towards dis-
armament. We welcome the Prime Minister’s
indication that ‘Australia looks to the UN to
take action now’ to address Iraq’s defiance of
its international obligations. Significantly,
however, President Bush has made it clear
that regime change—not simply the destruc-
tion of weapons of mass destruction—will be
the objective of any US-led attack or military
action against Iraq.

The current regime in Iraq, as I think we
would all acknowledge, is undemocratic,
violet and has consistently displayed a dis-
regard for basic human rights. This regime,
under the dictatorship of Saddam Hussein,
contributes to ongoing instability in the Mid-
dle East and poses a threat to international
security. However, there is a long list of po-
litical regimes around the world that could be
the subject of the same criticisms. The
Democrats believe such regimes must be
challenged, but again, for the reasons I have
outlined, unilateral military action is not the
appropriate avenue. If democratic nations
around the world work together as a collec-
tive community, there is much we can do to
challenge and hopefully ultimately transform
such regressive regimes.

The United Nations was founded on the
basis of collective security and we believe
very strongly, and I hope all in this place
believe, that it is worthy of our ongoing sup-
port. There is certainly scope to improve its
operations but it is the best model we have at
present for collective diplomatic action and
the promotion and hopefully protection of
international peace. Despite the absence of
any evidence linking Iraq to the tragic and
appalling events of 11 September, there have
been clear attempts to justify pre-emptive
military action as a means of preventing
further terrorist attacks. President Bush has
said:

In the new world we have entered, the only path
to safety is the path of action ...

While the world may have changed since the
events of 11 September last year, we must
not let our assessment of the situation in Iraq
be clouded by any incorrect associations
with the terrorist attacks of that day. Unless,
and until, there is evidence to suggest a link
between the two, we must be careful to give
independent and thorough consideration to
the situation in Iraq and the best way that we
can address those current concerns.

As pre September 11 media reports dem-
strate, President Bush’s intentions con-
cerning Iraq extend back before 11 Septem-
ber. Given the absence of any evidence to
link Iraq to the terrorist attacks, it is misleading to argue that the case for pre-emptive action against Iraq has become more compelling since the events of 11 September. I take this opportunity to record once again the Australian Democrats’ serious concerns regarding the National Security Strategy of the United States. Clearly, it is the intention of the President of the United States, President Bush, for any US-led military action against Iraq to be conducted in accordance with this strategy. This must be a key consideration in any decision by this country to participate in such action.

The strategy emphasises the unprecedented position of power and influence enjoyed by the US. It expressly states that the United States will act to ensure that other nations do not acquire a military build-up in the hope of surpassing or equalling the power of the United States. This document depicts the US as the foremost guardian of international freedom and democracy, yet it expressly states that US military endeavours will not be hampered by investigations or prosecutions conducted under the jurisdiction of the International Criminal Court. We have just conducted a debate about this in this chamber today, led by Senator Brian Greig.

President Bush’s strategy is not about upholding the rule of law; it is about upholding the rule of America. Australia should be very wary of participating in any military action initiated pursuant to such a strategy. The Australian Democrats believe that pre-emptive military action against Iraq is neither justified nor legal. We certainly do not believe it is in the best interests of the Australian people to participate in such military action.

We believe very strongly that, in such life and death matters, such passionate issues should be debated in this chamber. These issues are not just passionate and emotive; there are legal, political and resource concerns and a range of other concerns that have to be taken into account. We believe that Australian politicians—the members of this and the other place—should be entitled to a conscience vote on such matters. I think that is a fundamental debate that we need to see take place in this chamber.

Similarly, we want to see this debate led by our Prime Minister. We want to see him in Australia leading the debate. That is what we expect. We do not want it deferred to the foreign affairs minister. We want to see the nation’s leader providing progressive, open, accountable, passionate leadership on this issue. I think most Australians are wondering not ‘Where’s Wally?’ but ‘Where’s Johnny?’ With all due respect to the Prime Minister, where is the Prime Minister in this debate? I think it is about time we had that leadership—hence my concern today with that very specific motion passed in the chamber, which I moved in my then capacity as Leader of the Australian Democrats, along with Senator Faulkner, the leader of the opposition in this place. I am sorry we did not get a more detailed and comprehensive response to an issue that should be at the forefront of politicians’ minds right now, as it is indeed at the forefront of many Australians’ minds.

Senator BROWN (Tasmania) (5.15 p.m.)—I take note of the Prime Minister’s letter and its failure to inform the Senate of the reasons Australia should be floating on the coat-tails of the White House towards the invasion of Iraq. Let none of us be beguiled by what is going on and by the statements of ministers, including the Prime Minister, of recent days that they can divulge no game plan for the attack on Iraq because there has been no request from the United States. How silly do they think the Australian people are?

We see nightly on television the process of American armaments going to Qatar and other places in the Middle East—armed service personnel, aircraft, rockets; the full works. We also see Australian senior Defence personnel being presented with the minister on television for discussions about what are called ‘contingencies’. What is happening here is the readiness process for an invasion of Iraq whether or not the United Nations gives its approval—and it will be approval under great pressure from the United States if that occurs. We are going to war because John Howard does not have the nous to be an independent Prime Minister.
He does not lead an independent government; he does not see Australia as an independent nation. It is about time he woke up to himself. It is certainly about time he woke up to the rapidly growing public opinion in this country, which is very much against the direction in which he is taking the country.

How could we be in a situation where it is now being decided by the White House that we go to war? The answer to that is that it is the result of the attack on the twin towers and then the loss of contact with Osama bin Laden and his leadership of Al-Qaeda. Maybe he was vapourised in one of those bomb attacks on the caves in Afghanistan, or maybe he was not, but in the absence of Osama bin Laden and in the face of the American President’s determination to find a target of evil, the focus was then turned on Saddam Hussein as a substitute for Osama bin Laden although even our Prime Minister said there is no hard evidence to link Saddam Hussein with the twin towers attack. And it was notable that Tony Blair offered no such new evidence last night either.

Why is President Bush in this frame of mind? If you look at his record, you get a clue. It is a record of tunnel vision and immaturity from the American President. He told a group of people in Cedar Rapids, Iowa, before the attack on the twin towers:

When I was coming up it was a dangerous world and we knew exactly who the they were. It was us versus them and it was clear who them was. Today, we’re not so sure who the they are, but we know they’re there.

That was quoted in the Guardian Weekly in January last year. This is an extraordinary reference to the fact that, when he was growing up, the communist Soviet Union was there and they were seen as the nidus of evil. After that, he was not so sure but he knew somebody was out there.

After the attack on the twin towers, that evil was given face in the form of Osama bin Laden. But, as I said, he then went off the agenda. In that circumstance—and I will refer to 60 Minutes two weeks ago—when asked by the American interviewer:

But you have won the war before you find Osama bin Laden dead or alive?

President Bush said:

If he were dead there’s somebody else to replace him and we would find that person.

We have here a very narrow-minded fundamentalist in the President of the United States who has this immature view that ‘we are good and they are bad’. In some way or other, to enhance the view that the United States, as he sees it, is good and somebody else is bad, you have to chase that bad to vindicate that very narrow, and ultimately dangerous, point of view—that we are good and they are bad.

What amazes me is that John Howard—and Tony Blair, extraordinarily enough—have not got the wit or wisdom to see that this is a president who has an obsession with the evil as a counterpoint to the good he sees in the United States. There are psychological interpretations to be made about that. But there is one thing I would say to President Bush: all of us have in us the great capacity for good and the great capacity for evil, and we should know that. Not to understand that is dangerous, particularly when you have power.

We now have dangerous adventurism by President Bush. If Saddam Hussein were to somehow pack up his bags and fly to another Arab country and leave Iraq and its oil to the intentions of the American multinationals to get a slice of the oil fields of Iraq, another face of evil would then have to be invented for this president—and it would indeed be invented. There is no obvious end point to the very narrow and simplistic viewpoint that President Bush has. It needs other statespeople, people with more worldly wisdom, to contain it, to put a hand on its shoulder, and that is what John Howard is failing to do. He does not have the wisdom to be able to say, ‘Here is a President I can influence for the better. Here is a President who needs some restraint.’ Instead of that, he is reduced to being one of what President Bush calls the ‘sum of the friends’ he will invade Iraq with regardless of what the United Nations does.

From the feedback that I am getting from Australians, including not a few long-term Liberal voters, I can tell you that there is a very strong feeling against Australia being involved in such an invasion of Iraq. The revelations by Tony Blair last night totally
failed the build-up, the hype and the expectation that here was going to be a dossier which revealed that Saddam Hussein is ready to attack with the armaments and arsenal at his disposal. It did nothing of the sort. I agree with John Howard on one point: much of what was in Tony Blair’s dossier was recycled information, and the rest of it was based on supposition, or at least unidentified sources. We are in a very dangerous situation here. As somebody said to me just yesterday: have they not thought it through? If we attack Iraq and inflame the rest of the Arabic or Muslim world, there are going to be decades of repercussions. Mr Galloway, the Labor MP in Britain, has pointed out that it will lead to a tenfold increase in the amount of terrorism around the world. That is what the Prime Minister is unnecessarily exposing this country to.

Certainly, we have to put a cap on Saddam Hussein, but nothing that has been revealed by Mr Blair or Mr Howard—or Mr Bush, for that matter—in the last few weeks changes the profile that Saddam Hussein had pre September 11 last year. There was no action then. There should be action now, but it certainly should not be a US unilaterally decided invasion of Iraq with Australia following suit, putting the lives of Australians on the line, along with potentially thousands of Iraqi lives. This is the wrong way to go. The Greens are absolutely opposed to war at the behest of John Howard and President Bush. We stand firmly on that point. We will continue to advocate that and to support the growing numbers of people in the Australian community who feel the same and who feel that they are being let down by Prime Minister Howard and his government on this mightily important issue, which is going to draw Australia into an unnecessary war.

I draw the Senate’s attention to the letter from the Prime Minister in which he says that he would like to have a full parliamentary debate on this issue. However, people may note that it is conditional in that the Prime Minister’s letter says that he would like to have the debate ‘at an appropriate time’. The Australian Greens question when John Howard is going to decide that it is an appropriate time to have this discussion. Certainly, the question has been asked in many forums previously whether the Prime Minister would like to see discussion on this issue after the executive—the Prime Minister and his friends—have made a commitment to send Australian troops to Iraq. That is, after they have made a commitment to send the sons and daughters of so many Australians to Iraq, where they will be exposed to Gulf War syndrome, when they will not have the support of the Australian people for being there and where they will potentially be involved in unilateral action led by the United States and George Bush, with all his warmongering talk that we have heard in the last few months.

I would also like to draw the Senate’s attention to the next paragraph from our Prime Minister, where he continues to articulate what we have heard him and his ministers articulate in the public arena for some time now. They like to be able to fall back on it. It is their safety blanket to say, ‘But we haven’t received a request from the United States for us to go to war.’ Perhaps the Prime Minister or his representatives in this chamber could elaborate on what we heard the foreign minister, Alexander Downer, saying on the weekend. He said that the Australian government has been consulted about contingency plans by the United States with regard to an invasion of Iraq. Perhaps the government would like to expand for us on what these contingency plans entail. Perhaps the government would like to explain whether ‘contingency’ is another word for the fall-back plan—the unilateral plan. If George Bush, John Howard and Tony Blair are not able to bully the United Nations Security Council into giving them the resolution that they want, perhaps their fall-back option is these contingency plans that have been dis-
cussed with our government by the President of the United States.

As we heard Bob saying, Tony Blair presented a dossier of evidence to the parliament in the United Kingdom last night, and we saw nothing new in that. We saw a similar thing to what was presented here by Alexander Downer, the foreign minister—

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—Order! Senators should address members of the other house by their proper title, such as Mr Downer or Mr Howard.

Senator NETTLE—When Mr Blair in the United Kingdom presented the dossier of evidence on why we should immediately jump on our horses and head towards Iraq and the imminent invasion there, we saw no new evidence in that dossier. Rather, we saw what Mr Downer presented in this chamber and in the other place, which was a conglomerate of things in which Saddam Hussein had been involved for the last 11 years. Everyone in this chamber knows, and the Australian people know, that Saddam Hussein is a cruel dictator. There is most certainly a strength of evidence supporting the way in which he has treated his own people and the way in which he has ignored the calls by the international community and, indeed, kicked out the UN weapons inspectors in 1998.

None of this gives us any clear evidence that there is an imminent threat that Saddam Hussein will use weapons of mass destruction, be they biological, chemical or nuclear, if they have that capacity, in the near future. Certainly, the evidence produced by Mr Blair in the United Kingdom does not add any strength to those arguments put forward by our own Prime Minister or by the President of the United States. Rather, this dossier put forward in the United Kingdom is being used by those world leaders as part of their campaign to bully the United Nations. Each of them has said on several occasions now that if the United Nations does not come up with the goods, does not come up with the resolutions that they would like to see, clearly the United Nations is deficient. We have seen them continuing to bash the United Nations and the role that they play in the international community by saying, ‘If they do not do what we want them to do, clearly they are not doing their job.’

We would like the opportunity to put forward positive and constructive changes in respect of how the United Nations may be changed. Indeed, joint committees here have looked at evidence and, I understand, have come up with bipartisan proposals for how the United Nations Security Council could be democratized and organized to ensure that all nations had a say and that all voices were heard in that peak decision-making body of the United Nations. Now is the opportunity for us to have that debate, to put forward those views, rather than continuing to harp on, as we have heard these world leaders do, saying that the United Nations are clearly deficient and that clearly we cannot listen to them on a range of international treaties—Kyoto of course being one example and the International Criminal Court, which was referred to earlier in this chamber, being another. If they do not comply with what the powerful nations want, clearly they are deficient.

We also see in the letter from our Prime Minister, John Howard, that he wants us to focus on Iraq’s refusal to comply with United Nations Security Council resolutions. This is something that the international community has needed to do, and some elements of the international community have now been doing it for some time. Their push to have Iraq comply with United Nations Security Council resolutions has been hindered in recent months because of the warmongering talk we have heard from George Bush, Mr Downer, Mr Howard and, of course, Tony Blair in England. Whilst ever those nations continue to articulate a view that they would like to invade Iraq, whether or not it is UN supported, whether or not UN weapons inspectors are admitted into Iraq, it becomes less and less likely that we will have the opportunity for those UN weapons inspectors to be admitted into Iraq and for the international community to determine once and for all whether indeed there is evidence of weapons of mass destruction in Iraq.

We also saw on the weekend the release of a 33-page document from George Bush—his
National Security Strategy. I can say that I am certainly not feeling any safer having this doctrine out there on the international stage to be discussed. On a range of issues, it reads to me like a blueprint for global domination by the United States. Indeed, it goes through the way in which they would like to ensure that no other nation around the globe is able to develop the capacity to compete with them, let alone get even on weapons of mass destruction or the military arsenal which the United States commands. It then goes further than that to talk about the way in which the United States agenda of trade liberalisation and the free trade agenda are going to lift millions of people around the globe out of poverty. It goes further in talking about the ways in which it is winning freedoms for the people of the world by pushing on with the ideological agenda shared by this government about free trade and trade liberalisation.

The Greens are extremely concerned to have this response from our Prime Minister with regard to what is such a serious issue. Indeed, during the last few weeks when we have had limited opportunities for debate about Australia’s potential involvement in an invasion of Iraq, it has been disappointing to see that we have not had more robust debate, we have not had more comments and more people coming forward articulating their concerns and the concerns of the Australian people with regard to any future invasion of Iraq. We understand that a range of political parties in this place have been equivocating and looking at what will be their decision with regard to any future invasion. We welcome calls from backbenchers for them to be allowed a conscience vote. Clearly the Australian Greens do not need a conscience vote on this issue—our conscience is quite clear—and we have been unequivocal and continue to be unequivocal in our opposition to Australian involvement in Iraq. We would like people here to have the opportunity to listen to the electorate and to listen to the people who are contacting them and saying, ‘We do not want Australian troops involved in any invasion of Iraq.’ The Greens will continue in this place and in the community to articulate our opposition to a war on Iraq. Quite clearly this is not about Saddam Hussein, UN resolutions or September 11; it is about the United States—(Time expired)

Question agreed to.

ENVIRONMENT: MINING WASTE DISPOSAL

Return to Order

Senator PATTERSON (Victoria—Minister for Health and Ageing) (5.35 p.m.)—I table documents in response to an order that the Minister representing the Minister for the Environment and Heritage produce documents no later than 5 p.m. on Wednesday, 25 September 2002. The Department of the Environment and Heritage has provided the attached documents in response to the order in relation to questions (d) and (e). No documents are held by that department or by the Department of Industry, Tourism and Resources.

FAMILY LAW LEGISLATION AMENDMENT (SUPERANNUATION) (CONSEQUENTIAL PROVISIONS) BILL 2002

TAXATION LAWS AMENDMENT (STRUCTURED SETTLEMENTS) BILL 2002

First Reading

Bills received from the House of Representatives.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (5.37 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 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 PATTERSON (Victoria—Minister for Health and Ageing) (5.37 p.m.)—I table revised explanatory memoranda relating to the bills and 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—

FAMILY LAW LEGISLATION AMENDMENT (SUPERANNUATION) (CONSEQUENTIAL PROVISIONS) BILL 2002

The Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Bill 2002 will make amendments to legislation dealing with Government income streams to ensure that appropriate means test assessment is applied to superannuation interests that are split pursuant to the Family Law Legislation Amendment (Superannuation) Act 2001 (Family Law Superannuation Act).

It will also amend the legislation that provides for pensions for Commonwealth judges and amend the Family Law Act 1975 to ensure the effective operation of the superannuation reforms contained in the Family Law Superannuation Act.

The Family Law Superannuation Act is a major landmark in the Howard Government’s ongoing reform of family law.

Under the current law, superannuation interests can—and usually are—taken into account in court proceedings for a property settlement following marriage breakdown.

However, under the law as it now stands, superannuation interests are not able to be split in a family law property settlement.

Under the Family Law Superannuation Act, when it commences, couples will be able to split their superannuation interests on marriage breakdown in the same way as their other assets.

Superannuation interests will be able to be split either by agreement between the parties or, if the parties are unable to agree, by court order.

Under the Family Law Superannuation Act, both agreements and court orders will generally be binding on the trustees of superannuation funds.

The Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001 makes consequential amendments to relevant tax legislation to ensure that appropriate tax treatment is applied to superannuation interests which will be split pursuant to the Family Law Superannuation Act.

This bill will make consequential amendments to social security and veterans’ affairs legislation to ensure that superannuation interests that have been split pursuant to a family law settlement are assessed consistently with the current assessment of other income and assets under the means test.

The bill will amend the Social Security Act 1991 and the Veterans’ Entitlements Act 1986 to ensure that, where an income stream is split under the new family law arrangements pursuant to the Family Law Superannuation Act, the income and asset values of the separate income streams will be assessed in accordance with guidelines that cover the various situations.

Those guidelines will be set out in disallowable instruments.

The bill will also repeal a complex provision of the Social Security Act 1991 that treats the profit component of a withdrawal from a superannuation fund as income over the following 12 months.

If not repealed, these provisions could result in the inequitable outcome that a split of superannuation under the Family Law Act could lead to the assessment of income against the partner who owned the superannuation.

Following the implementation of a measure announced in the 2001 Budget, people aged 55 and over were exempted from the provisions from 1 July 2001.

Accordingly, the provisions are now of very limited application.

Repeal of the provisions is also in accord with the Government’s objective of simplifying social security and veterans’ entitlements to the maximum extent possible.

The bill will also repeal mirroring provisions in the Veterans’ Entitlement Act 1986.

The bill will also amend the Judges’ Pensions Act 1968 (Judges’ Pensions Act) to authorise the making of regulations to contain factors for use in determining the proportion of a pension that had accrued at the time of a judge’s marriage breakdown.

Under the Judges’ Pensions Act, a judge generally does not qualify for a pension until he or she has turned 60 years of age and has served for at least 10 years. If a judge does not satisfy these preconditions, no pension is payable. For this type of benefit, it is more equitable to divide the interest by way of a percentage split, rather than attempting to calculate a dollar value.

In some circumstances, such as where most of a judge’s pension entitlement accrued after separation, it may be appropriate that the percentage split apply to only that portion of the pension which accrued before separation. In determining that proportion, the relevant formulas in the fam-
ily law legislation refer to the judge’s ‘accrued benefit multiples’ at certain dates.

As the Judges’ Pensions Act currently does not contain factors that would constitute accrued benefit multiples for the purposes of the formulae, the bill will amend the Judges’ Pensions Act to authorise the making of regulations to set out such factors.

The bill will amend the Family Law Act 1975 (Family Law Act) to provide that the amount that is calculated in accordance with the valuation method prescribed in the Regulations is taken to be the value of the superannuation interest for the purposes of the Family Law Act.

The Family Law Act provides that before making an order splitting a superannuation interest the court must, if the regulations provide a method for determining the value of the interest, determine the value in accordance with the regulations.

The Family Law (Superannuation) Regulations 2001 (‘the Regulations’), together with amendments made by the Family Law (Superannuation Amendments) Regulations 2002, relevantly provide for an actuarial method of valuing a defined benefit superannuation interest.

It is not possible to accurately speak of “the value” of a defined benefit superannuation interest as a single figure that can be objectively defined. Defined benefits are intrinsically uncertain. The actual benefit received by an individual member from a defined benefit interest will depend upon the time and reason for their exit from the scheme. As a result, actuarial techniques have been developed to allow calculation of “a value” of the benefits that reflects the range of possible outcomes. However, there is a number of possible methods for valuing a defined benefit superannuation interest as well as a range of assumptions that may be considered to be reasonable in any particular situation. The method and assumptions adopted will depend upon the purpose of the valuation exercise and the judgement of the actuary carrying out the valuation.

The actuarial method of valuing a defined benefit superannuation interest that is prescribed in the Regulations has been developed specifically for the purposes of the splitting of superannuation interests on marriage breakdown. It does not, for example, take into account the actuarial value of any additional benefits which the member could be expected to accrue if their membership in the scheme continued into the future. These additional benefits could be, for example, an increase in the accrued benefit multiple for an additional year of membership or an increase in the pension entitlement for additional years of membership, which is something that trustees of a superannuation fund would normally take into account when valuing a defined benefit superannuation scheme for the purposes of determining a future employer contribution rate.

For this reason it is necessary to provide in the Family Law Act that the amount that is calculated in accordance with the valuation method prescribed in the Regulations is taken to be the value of the superannuation interest.

Finally, the bill will also make minor technical and correcting amendments to the Family Law Act 1975 to ensure the efficient operation of the family law superannuation reforms. These amendments will:

- insert a definition of “reversionary beneficiary” into Part VIIIIB of the Family Law Act;
- clarify that the provisions dealing with second and subsequent splits of a superannuation interest so that they will apply if the parties to a marriage separate, re-marry and then separate a second time;
- ensure that the preservation requirements that apply to any interest that the non-member spouse has in a regulated superannuation fund will also apply to any interest that the non-member spouse has in an approved deposit fund or to an exempt public sector superannuation scheme; and
- make a minor drafting amendment, consequent on amendments made in the Parliament during debate on the Family Law Superannuation Act.

I commend the bill to the Senate.

TAXATION LAWS AMENDMENT (STRUCTURED SETTLEMENTS) BILL 2002

This bill will amend the Income Tax Assessment Act 1997 to encourage the use of structured settlements for personal injury compensation, by providing an income tax exemption for annuities and deferred lump sums paid as compensation for seriously injured persons under structured settlements.

The income tax exemption will be available in relation to such payments if the necessary eligibility criteria are met. The eligibility criteria are designed to remove the disincentives in the tax system in relation to structured settlements and to ensure that the interests of the injured persons are protected; for instance, by providing for prudential regulation of the annuities and preventing the injured party from commuting an annuity.
Structured settlements involve periodic payments for life or over a substantial period. They give injured people greater security about their future income and their capacity to meet ongoing medical expenses.

Many people who receive large lump sums as damages for personal injury may be unable to properly manage the investment of the lump sums. This can result in the early dissipation of compensation payments, leaving an injured person unable to provide for his or her future needs. Regular periodic payments avoid these problems. They can also more closely align the damages awarded with a person’s actual needs.

There are cases of windfall payouts that are much larger than necessary, because of the uncertainty surrounding a claimant’s future medical needs. There are also cases where the lump sum was spent too soon, or proved inadequate for the long term care of the injured person.

Structured settlements therefore provide better outcomes for both claimants and insurers who make large payouts on behalf of defendants.

At the Ministerial Meetings on Public Liability Insurance in March and May 2002, Commonwealth and State and Territory Ministers recognised the importance of introducing structured settlements into the Australian insurance market, as one of a range of measures to address difficulties associated with the availability and affordability of public liability insurance.

The Commonwealth agreed to introduce the legislation contained in this bill and State and Territory Ministers have agreed to sponsor legislation to remove the barriers to structured settlements as an alternative to lump sum payouts—and in some cases have already done so.

These amendments are the result of extensive consultation with the Structured Settlements Group, which represents a broad range of interested organisations.

The bill will also amend the Life Insurance Act 1995 to provide that any commutation or assignment of a tax-exempt annuity or lump sum will be ineffective. This will ensure the settlements continue to benefit the person they are intended to benefit.

A statutory review of the operation of the tax exemption is to be undertaken no later than five years after the date of commencement.

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

I commend this bill.
This is a very important distinction that has not been made by the current minister and that is fairly typical of Mr Abbott.

Thirdly, the minister, Mr Abbott, had sought to draw a false analogy between the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 and industrial laws in the United Kingdom. The UK legislation, while being unnecessarily complex and a source of extensive litigation—again, the lawyers make a feast of this type of legislation, and we know there are plenty of them on the government side—is a model of simplicity compared to this bill that the government is advocating here. The closest analogy with this bill is the Liberal Court government’s laws in Western Australia, which were a complete failure.

Labor does not believe the bill has anything to do with democracy; it has everything to do with bureaucracy. It is taking up the government’s line about intervention, bureaucracy and straitjackets. If ever there is a bill that represents those sorts of themes it is this particular legislation, drowning employees, unions and employers in paperwork. For those reasons, we are very sceptical and will not be supporting this legislation.

Senator MURRAY (Western Australia) (5.42 p.m.)—by leave—I move Democrat amendments (1), (4), (R6) and (8) on sheet 2632 Revised:

(1) Schedule 1, item 2, page 3 (lines 27 to 29), omit the item, substitute:

2 Subsection 134(5) (paragraphs (d) and (e) of the definition of prescribed premises)

Omit “or 136”, substitute “, 136 or Division 8A of Part VIB”.

(4) Schedule 1, item 20, page 7 (line 33), omit “170NBDC”, insert “170NBCD”.

(R6) Schedule 1, item 25, page 10 (line 33) to page 36 (line 18), omit the item, substitute:

25 After Division 8 of Part VIB

Insert:

Division 8A—Secret ballots on proposed protection action

Subdivision A—General

170NBA Object of Division and overview of Division

Object

(1) The object of this Division is to establish a transparent process which allows union members directly concerned to choose, by means of a fair and democratic secret ballot, whether to authorise industrial action supporting or advancing claims by unions.

Overview of Division

(2) Under Division 8, industrial action by union members is not protected action unless it has been authorised by:

(a) the relevant union; or

(b) a secret ballot of relevant union members; or

(c) the Commission.

(3) A secret ballot is required if it has been:

(a) requested by a relevant union member; or

(b) ordered by the Commission.

(4) A secret ballot is conducted according to:

(a) the rules of the relevant union; or

(b) if there are no union rules, the model rules established by the Commission;

and in any case rules must be adopted within nine months of the commencement of this provision.

(5) The rule that industrial action by employees is not protected action unless it has been authorised does not apply to action in response to an employer lockout (see section 170MQ).

170NBA Definitions

In this Division:

ballot order means an order made under section 170NBBF requiring a protected action ballot to be held.

bargaining period has the meaning given in subsection 170MI(1).

negotiating party has the meaning given in subsection 170MI(3).

party, in relation to an application for a ballot order, means either of the following:

(a) the applicant;

(b) the employer of the relevant union members.

proposed agreement, in respect of a bargaining period, means the proposed
agreement in respect of whose negotia-
tion the bargaining period has been ini-
tiated.

protected action ballot means a secret 
ballet under this Division.

relevant union, in relation to proposed 
industrial action against an employer in 
respect of a proposed agreement, means any union which is a negotiating 
party to the agreement.

relevant union member, in relation to 
proposed industrial action against an 
employer in respect of a proposed 
agreement, means any member of the 
relevant union who is employed by the 
employer and whose employment will 
be subject to the agreement but does 
not include a union member who is a party to an AWA whose nominal expiry 
date has not passed.

Subdivision B—Authorising protected ac-
tion

170NBB How is protected action author-
ised

Industrial action by employees is not 
protected action unless it has been 
authorised by:

(a) the relevant union; or

(b) a secret ballot of relevant union 
members; or

(c) the Commission.

170NBBA How and when can a union 
authorise protected action

(1) A relevant union may, subject to sub-
section (3), make a declaration to 
authorise industrial action by relevant 
union members as protected action in 
accordance with its rules provided that:

(a) if there is only one existing agree-
ment—the action commences during 
the 30-day period beginning on 
whichever is the later of the fol-
lowing:

(i) the date of the declaration; 
(ii) whichever is the last occurring of 
the nominal expiry dates of those 
existing agreements; or 

(c) if there is no existing agreement— 
the action commences during the 
30-day period beginning on the date 
of the declaration.

Note: Industrial action must be 
authorised under this Division 
if it is to be protected action 
under Division 8—see section 
170MQ.

(2) However, the action is not authorised to 
the extent that it occurs after the end of 
the bargaining period.

Note: If another bargaining period is 
initiated later, and industrial ac-
tion is proposed for that later 
period, it can only be authorised 
if a fresh application for a ballot 
order is granted, and the other 
steps required by this Division 
completed, during that later pe-
riod.

(3) If a relevant union does not have in 
place rules that establish how protected 
action may be authorised, then pro-
tected action requested by a relevant 
union member may only be authorised 
according to a secret ballot conducted 
under the Commission’s model rules 
according to section 170NBCC.

(4) A relevant union may not authorise 
protected action under subsection (1) if 
a secret ballot is required under section 
170NBBB.

170NBBB When is a secret ballot re-
quired to authorise protected action

A secret ballot is required, and no pro-
tected action will be otherwise author-
ised, if it has been:

(a) requested by a relevant union mem-
ber as provided by the rules; or 

(b) ordered by the Commission.

170NBBC Secret ballot may be requested 
by relevant union member

A relevant union member may, during a 
bargaining period for the negotiation of 
a proposed agreement under Division 2 
or 3 of this Part, request the relevant 
union to which the member belongs to 
hold a protected action ballot to deter-
mine whether proposed industrial ac-
tion has the support of the majority of 
relevant union members.
170NBBD Secret ballot may be ordered by Commission

(1) A party referred to in subsection (2) may, during a bargaining period for the negotiation of a proposed agreement under Division 2 or 3 of this Part, apply to the Commission for an order for a ballot to be held to determine whether proposed industrial action has the support of a majority of relevant union members.

Note: For the duration of a bargaining period, see sections 170MK (when it begins) and 170MV (when it ends).

(2) The following parties may apply:

(a) the relevant union to which the relevant union members mentioned in subsection (1) belong;

(b) any employer or organisation of employers who is a negotiating party to the proposed agreement.

170NBBE Commission must be satisfied of various matters

The Commission may grant an application for a ballot order, but must not grant the application unless it is satisfied that:

(a) any court, judicial inquiry or Royal Commission findings justify such an order; or

(b) any other particular and significant circumstances exist that mean such an order is appropriate.

170NBBF Grant of application—order for ballot to be held

If the Commission grants the application, the Commission must order a protected action ballot to be held by the relevant union.

Note: The Commission may make an order requiring a secret ballot to be held for one or more bargaining periods.

Subdivision C—Conduct and results of protected action ballot

170NBC Ballot must be secret

A protected action ballot must be a secret ballot.

170NBCA How is a secret ballot to be conducted

(1) Subject to subsection (2), a secret ballot is conducted according to:

(a) the rules of the relevant union; or

(b) if there are no union rules the model rules established by the Commission.

(2) Before conducting a secret ballot a union must give its relevant union members:

(a) reasonable notice that the secret ballot will be held; and

(b) information as to the matters which are to be dealt with in the proposed agreement and the general nature of the proposed industrial action.

170NBCB Union rules for conduct of secret ballot

(1) A secret ballot is to be conducted according to the rules of the relevant union.

(2) If the relevant union does not have rules in place in accordance with subsection (1) for the conduct of a secret ballot to authorise protected action then the secret ballot is to be conducted in accordance with the model rules established by the Commission under section 170NBCC.

(3) A union must adopt its own rules or the Commission’s model rules within nine months of the commencement of this Division.

170NBCC Commission model rules for conduct of secret ballot

The Commission shall issue model rules for the conduct of secret ballots.

170NBCD Declaration of ballot results

As soon as practicable after the end of the voting, the union must, in writing:

(a) make a declaration of the result of the ballot; and

(b) inform the relevant union members, negotiating parties and the Industrial Registrar of the result.

170NBCE Effect of ballot

(1) Industrial action is authorised under this Division if more than 50% of the votes validly cast were votes approving the action and:

(a) if there is only one existing agreement—the action commences during the 30-day period beginning on whichever is the later of the following:
(i) the date of the declaration of the results of the ballot;
(ii) the nominal expiry date of the existing agreement; or

(b) if there are 2 or more existing agreements—the action commences during the 30-day period beginning on whichever is the later of the following:
(i) the date of the declaration of the results of the ballot;
(ii) whichever is the last occurring of the nominal expiry dates of those existing agreements; or

(c) if there is no existing agreement—the action commences during the 30-day period beginning on the date of the declaration of the results of the ballot.

Note: Industrial action must be authorised under this Division if it is to be protected action under Division 8—see section 170MQ.

(2) However, the action is not authorised to the extent that it occurs after the end of the bargaining period.

Note: If another bargaining period is initiated later, and industrial action is proposed for that later period, it can only be authorised if a fresh application for a ballot order is granted, and the other steps required by this Division completed, during that later period.

(3) The Commission may, by order, extend the 30-day period mentioned in paragraphs (a), (b) or (c) by up to 30 days if the employer and the applicant for the ballot order jointly apply to the Commission for the period to be extended.

(4) The Commission must not make an order under subsection (3) extending the 30-day period if that period has been extended previously.

(5) If industrial action commences during the 30 day period, stops and re-starts within a reasonable period after the 30 day period, no new authorisation is required if the industrial action is substantially the same.

(6) Industrial action is taken, for the purposes of this Division, to be duly authorised even though a technical breach has occurred in authorising the industrial action, so long as the person or persons who committed the breach acted in good faith.

Subdivision D—Funding of ballots

170NBD Liability for cost of ballot

Union member initiated ballot

(1) The relevant union is the party liable for the cost of holding the protected action ballot, if a relevant union member initiated that ballot under section 170NBBC.

Commission ordered ballot

(2) If the Commission ordered the ballot to be conducted, the applicant for a ballot order is the party liable for the cost of holding the ballot.

(3) Subsections (1) and (2) have effect subject to subsection 170NBDA(3).

170NBDA Commonwealth has partial liability for cost of ballot

(1) If:

(a) the liable party notifies the Industrial Registrar of the cost incurred by the relevant union in relation to the holding of the ballot; and

(b) does so within a reasonable time after the completion of the ballot;

the Industrial Registrar must determine how much (if any) of that cost was reasonably and genuinely incurred by the relevant union in holding the ballot. The amount determined by the Industrial Registrar is the reasonable ballot cost.

(2) The Commonwealth is liable to pay to the liable party 80% of the reasonable ballot cost.

(3) If the Commonwealth becomes liable to pay to the liable party 80% of the reasonable ballot cost, the liable party for the ballot order is:

(a) to the extent of the Commonwealth's liability, discharged from liability under section 170NBD for the cost of holding the ballot; and

(b) liable to pay 20% of the reasonable ballot cost 30 days after the Industrial Registrar's determination.

(4) The regulations may prescribe matters to be taken into account by the Industrial Registrar in determining whether
costs are reasonable and genuinely incurred.

(8) Schedule 1, item 30, page 37 (line 15) to page 38 (line 12), omit the item, substitute:

30 After section 307

Insert:

307A False statement in application for protected action ballot order

(1) A person must not, in an application for a ballot order under Division 8A of Part VIB:

(a) make a statement; and

(b) do so reckless as to whether the statement is false or misleading in a material particular.

Penalty: 10 penalty units.

(2) For the purposes of an offence against subsection (1), strict liability applies to the physical element, that the application is made under Division 8A of Part VIB.

Note: For strict liability, see section 6.1 of Criminal Code.

307B False statement in joint application for protected action ballot order

(1) A person must not, in an application for a ballot order under Division 8A of Part VIB:

(a) join with other persons in making a statement; and

(b) do so reckless as to whether the statement is false or misleading in a material particular.

Penalty: 10 penalty units.

(2) For the purposes of an offence against subsection (1), strict liability applies to the physical element, that the application is made under Division 8A of Part VIB.

Note: For strict liability, see section 6.1 of Criminal Code.

The Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 has at its heart the requirement for the conduct of a secret ballot among employees as a prerequisite for taking legal protected action during enterprise bargaining. Similar provisions were included in the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999 and again in the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000. The provisions in the bill are additional to those that already exist in the Workplace Relations Act.

One of the assumptions that lie behind this approach is that there is intimidation present and that secret ballots would prevent intimidation. I say that it is one of the assumptions—not necessarily held by those who are close to this issue—because yesterday Senator Macdonald, as duty minister on behalf of the coalition, made some remarks and interjections which indicated that he had that view. At the hearings into the bill, which was one of five bills considered by the Senate Employment, Workplace Relations and Education Legislation Committee in May 2002, clearly some witnesses believed that coercion of at least some employees occurs, or that some employees perceive that they are under pressure to vote in a certain way in the event of an attendance vote on industrial action. Frankly, that is possible. If, in this chamber, everybody were allowed a secret vote on every single bill, you would probably find the outcomes a little different from what they are as a result of party discipline and pressure. But that is not the same as intimidation; that is what might be referred to as peer pressure. There is no indication, no evidence, that intimidation is usual or common in industrial matters. Obviously, if at all possible such coercion should be prevented where it exists, but the department advised the committee that this was not the prime purpose of the bill, and that is the important thing. In his evidence, Mr Smythe said:

I do not think the legislation is predicated on the premise that there is intimidation and therefore there must be secret ballots. As you have acknowledged, it is not impossible that there may be intimidation, but I think the simple proposition is, as Mr Anderson said—

Mr Anderson being another member of the department—

that the principle of democracy can be most readily guaranteed by a secret ballot process.

That is something that we all except. I do not know anybody who does not accept that proposition: a secret ballot can indeed most readily guarantee the principle of democracy. The bill is directed at secret ballots prior to protected action being taken, with consequent disputation occurring. As outlined ear-
lier in my remarks on the Workplace Relations Amendment (Genuine Bargaining) Bill 2002, disputation may well be more common as a result of unprotected action. It is not something that is commonly recognised in the broader business community or indeed in the community at large. It is unprotected action which often results in damaging strikes and industrial action, not protected action. This bill attends to protected action.

In evidence to the committee, the department indicated that it had no data to separate days lost in protected action disputation from days lost in unprotected action disputation, although it was negotiating with the ABS to ascertain such data in the future. If the purpose of the bill is to encourage employees to take their time and be far more considered when calling strikes and taking other actions, the bill will be ineffectual if it is unprotected action strikes that occur.

At present, prestrike ballots are available to employees under section 136 of the act, and the commission can order secret ballots at its discretion under section 135. The mechanisms for such ballots are deliberately not prescribed in the act in detail except that they must be conducted in accordance with directions given by the commission. This discretion may be useful to retain. Certainly the provisions of sections 135 and 136 have been seldom used, perhaps suggesting that there may be little real demand from employers or employees for further access to secret ballots or perhaps because a strike or industrial action is more often taken in unprotected circumstances, so the employees would not be approaching the Industrial Relations Commission anyway. In relation to the provisions under sections 135 and 136, my statistics indicate that, of 30,000-plus applications for a bargaining period that have been made since 1997, only 12 orders for a secret ballot have been made, so there really is not a great demand.

There does not appear to be any criticism of the current methods that the Industrial Relations Commission uses to implement the conduct of a ballot, rather than prescribe them step by step. The bill, in contrast, seeks to impose a fairly fixed approach in all examples of protected action, creating new administrative complexity, cost and, no doubt, legal argument. While exaggerated by some, potential for delays in the implementation exists. Unions have argued that the bill’s real intent is to frustrate the timely exercise of employee democracy and to work to reduce, through the burden of administrative complexity, the level of industrial action taken around enterprise agreements. To that, the coalition argues that there are secret ballot provisions in the United Kingdom and other OECD countries that work perfectly well, and that is a fair point to make.

If we recognise that longstanding coalition policy is to require secret ballots for industrial action, particularly for strike action, and if we accept that that is an ideological approach as well as what they regard as a practical approach, we then have to look at the efficacy of the bill. The technical requirements are overly complex, prescriptive and onerous. The Democrats would oppose this bill in the event of our amendments not being successful.

So what do our amendments try to do? One of the things that I like about hearings is that you discover things you did not know. The first thing I discovered that I did not know was that the department itself did not know how many days had been lost in unprotected action. You cannot distinguish between days lost in protected industrial action and days lost in unprotected industrial action, which I hope you will remedy shortly. The second thing I discovered—and I really think I should have known better, having had this exacting job for over 6½ years—is that most unions, it turns out, do not have secret ballot provisions in their rules—quite an amazing outcome. So we have a situation currently where an employee or an employer can go to the commission and say, ‘I want a secret ballot,’ and where the commission can order secret ballots; but we do not have a situation where a union member can say to their union, ‘I want a secret ballot.’ I pursued this issue at the hearing, and I established
that the union members concerned have absolutely no objection to the provision of secret ballot rules. I then pursued that further with the ACTU, and they too have no objection to it.

So what have I sought to introduce here? I have sought to introduce two simple propositions. The first is that unions must have rules for secret ballots. If they do not have rules for secret ballots, the commission will develop model rules and provide them. The second proposition I have sought to put forward is that the commission may have circumstances in which it can pursue a ballot order. I will come to that, but let me deal with the union rules first.

First, it is not my intention, through this legislation to dictate at all what those rules should be. Secondly, secret ballots for a union would be initiated on an entirely voluntary basis. In other words, a union member would be able to put up their hand and say, ‘I would like a secret ballot conducted in this circumstance.’ The union would look at their rules and say, ‘We need 10 members to agree with you; where are the other nine?’ The other nine would say, ‘We are here.’ A ballot would occur according to the union rules. It is entirely voluntary; it is entirely at their request. I think that is a democratic provision which should be available to union members, and it is not. This law would simply say, ‘You have to have rules of that sort; develop them on your basis and in the way that suits your union.’ That is one side of things. If people want me to explore the detail within the amendments, I can.

On page 4, proposed section 170NBBE states:

The Commission may grant an application for a ballot order, but must not grant the application unless it is satisfied that:

(a) any court, judicial inquiry or Royal Commission findings justify such an order; or

(b) any other particular and significant circumstances exist that mean such an order is appropriate.

What happens now is that the commission can be approached for a specific circumstance. What the government wants is to apply secret ballots across every circumstance, in every industry and on every occasion. That does not make sense; you should target it. If you have a situation where a particular union or a particular employer is bloody-minded and causing harm and problems which might mean that members involved in industrial action would be best served by the protection a secret ballot would provide, they should have that available. Firstly, this proposed section is a general, voluntary and open provision; and, secondly, it gives the commission further grounds on which they could order a so-called secret ballot. That is basically the framework.

In closing this debate—we are looking at amendments (1), (4), (6) and (8) together—I want to apologise to participants. The amendments were difficult to get together and I could not circulate them as early as I had wished, but I had signalled my intentions both in my second reading amendment and in my discussions with a number of people.

Senator Sherry (Tasmania) (5.55 p.m.)—The contribution by Senator Murray has been very constructive, as was his contribution to the debate on the previous bill that we considered this morning. The Australian Democrats and Senator Murray have made a strong attempt to bring a balance to the legislation that we are considering—in this case on industrial action. Industrial action is a serious matter. It causes dislocation to industry and to the public. Importantly for workers, industrial action leaves a hole in their pay packet. From experience and the knowledge that I have gained from conversations with individual workers and their representatives throughout the trade union movement, I know that industrial action is not undertaken lightly. We have a former Secretary of the Tasmanian Trades and Labor Council, Senator Brian Harradine, in this place. He and I have talked about these issues over many years. From Senator Harradine’s contribution as a former Secretary of the Trades and Labor Council in Tasmania, I know that industrial action is not entered into lightly by any group of workers, even when the action is lawfully protected action.

A decision to go on strike is a serious decision; it is not a step that should be or is taken lightly. It is right that there are discussions, debate and a vote before workers take
that step because the consequences of a strike are severe. Again, from my knowledge of and contact with workers and union officials, I know that that occurs. There is always a considerable debate—as robust a debate as would occur in parliament—when these actions are being considered. I do not have the statistics with me but if we look at the incidence of industrial disputation and strikes in this country over the last 20 years we will see that there has been a steady, significant decline in industrial action. However, in this parliament we have repeatedly heard the government tell all who will listen that they believe workers should be free to make their own decisions, free from outside interference or intrusion, bureaucracies, outside interventions and straitjackets.

However, in this bill—and it has been debated extensively—there is the strong implication that workers are incapable of independent thought about whether they should participate in industrial action. There is the assumption by those opposite in the Liberal-National Party that the so-called union bosses—we hear this term all the time—say, ‘Strike,’ and the members just follow blindly and walk out. That is simply not the case. In reality it does not happen. Workers can and do vote with their feet. The decision to participate in industrial action rests either with the workers or, in the case of a lockout, with the manager of the business and the manager alone. The so-called union bosses know that. The universal practice is for unions to call a meeting prior to workers deciding whether industrial action will occur. The meeting decides whether industrial action will take place.

As I said earlier, I know of no union official who would be powerful enough and, frankly, stupid enough to simply get up and say to workers, ‘Walk out,’ without any debate, and tell them that they should strike because the union supposedly knows best. It simply does not happen. Labor says that it is appropriate to leave it to workers and their associations—unions—to determine how they make a decision to take a strike.

There are checks against coercion. Firstly, union membership is voluntary; workers need not be in a union in the first place. That is always a decision that workers in a union have to weigh up when they contemplate industrial action. Secondly, union members can—again, from my experience and knowledge—ignore a so-called union directive to go on strike if one is given. Thirdly, union members need not follow what a meeting decides—there is no compulsion to strike. Fourthly, a secret ballot can be ordered by the commission on the application of a small proportion of affected members under section 136 of the Workplace Relations Act.

Prior to coming to the chamber to take part in the debate I checked whether there has been any case before the commission where the commission has had to determine whether alleged coercion has taken place by union or non-union members in respect of industrial action. Apparently, there has not been any.

In these circumstances Labor will vote against the bill and against the Australian Democrats’ amendments. We have given the matter a lot of thought. As I said earlier, we believe the Democrats—and Senator Murray in particular—have made a constructive and positive attempt to deal with the very difficult issues that are faced as a consequence of this Liberal government’s legislation. The amendments do take the rigidity out of the bill, as well as the absurd requirement that there be a preindustrial action secret ballot even if no-one wants one. This Liberal-National Party government is foisting draconian interference—and that is all it can be described as—on workers and indirectly but quite clearly is slowing down the efficient enterprise bargaining process.

The Democrats’ amendments are a positive step. A very significant amount of work has gone into them, and I acknowledge the contribution that Senator Murray has made to the debate on these amendments. Labor’s position is that the amendments create a system that is unnecessary given the checks I referred to earlier. For that reason we will vote against them.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (6.03 p.m.)—I found that an extraordinary exercise in casuistry on the part of Senator Sherry because, whilst he made at least four attempts to say how
statesmanlike Senator Murray’s contribution had been, I kept waiting for his objection. Eventually we heard it: they did not want to create an unnecessary system, whatever that means. In other words, he is really conceding that Labor will not have a bar of anything that smacks of a secret ballot.

Senator Sherry—That is not right.

Senator ALSTON—It certainly is right. You trot out those lines about ‘incapable of independent thought’; you might as well say that about voting at general elections. This is the party that invented ‘show and tell’. And why did they do that? Because they do not trust people to vote in the right way. In fact, you get expelled from caucus, don’t you, if you vote against something in the parliament that is contrary to the party line?

Senator Carr—What do you do?

Senator ALSTON—We don’t. I don’t know anything about it; sorry.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—Order! Senator Carr, if you wish to interject, return to your place.

Senator ALSTON—It is worth pointing out the monumental hypocrisy of all these honeyed words that somehow have the veneer of reasonableness but disguise the very ugly fact that the unions are terrified of secret ballots, that they do not trust workers and that they are not prepared to allow them to have a view on a very important issue without telling the rest of the world about it. As we know, in the real world you can lean on people, you can send them to Coventry—you can do all sorts of things if you regard someone as a troublemaker. That is what the whole game is about; otherwise you would have no objection in principle to secret ballots. It just seems extraordinary to me.

Senator Sherry floated the complete red herring that no union official would ever insist on a ballot without a debate. Who is precluding prestrike debates? This bill does not do so. You can have endless debates about it; you can kick it around as much as you like. You can speak; you don’t have to speak; you can listen to the arguments. All we are talking about here is the vote. And all we say is: what have you got to hide? Why are you so afraid of secret ballots? It is the antithesis of democracy.

Senator Mackay—How do you select your front bench?

Senator ALSTON—On merit. I think sometimes you do, too; otherwise Senator Carr would have been there, through sheer brute force of numbers, some years ago.

Senator HARRIS (Queensland) (6.06 p.m.)—In rising to speak to the Democrats’ amendments to the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002, I would like briefly to address a couple of issues that I raised during my contribution to the second reading debate. As the bill presently stands, 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 as it stands proposes to reduce the rights of workers to take genuine industrial action. Industrial action would only be protected if at least 40 per cent of the eligible voters participated in a ballot and if more than 50 per cent of the votes cast were in favour of the proposed industrial action. This procedure would result in only a small number of employees in a secret ballot determining whether to take industrial action.

The bill is all about unions. It does nothing to address employer secret ballots of shareholders, nor does it address lockouts, where an employer refuses to allow its employees on the premises and does not allow them to work. Under the Workplace Relations Act, employees have a limited right to take industrial action and there is a right to lock out employees. This can lawfully occur only when bargaining for a certified agreement or when a workplace agreement is being negotiated. If the government is serious about this proposed amendment, then it should, in order to maintain a balanced position, require that employers be also subject to the same secret ballot provisions as workers. As the Shop, Distributive and Allied Employees Association pointed out in its submission to the Senate committee considering the legislation:
It would appear that the Government believes that Chief Executive Officers of major corporations which may have large shareholders can effectively be a law unto themselves and be the decision maker for and on behalf of their constituents. That is, the shareholders. It also said:

It would appear that the Government takes the view that shareholders of corporations have no right to have a say in relation to such serious issues as the taking of protected industrial action by a corporation against its workers.

That is one of the areas where, if it is good enough to impose a condition on workers, then it is good enough to impose exactly the same condition on employers. That is one issue that this piece of legislation does not take into account.

I would also like to point out that the secret pre-strike ballots are already available under section 136 of the Workplace Relations Act when requested by employees. 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 to resolve a dispute where industrial action is pending or to ascertain whether an agreement has been genuinely made. Another problem with the bill relates to the cost of the secret ballots. Section 170NBF would provide that the applicant for a ballot order is liable for the cost of holding the ballot. Under new subsection 170NBFA(1) the Industrial Registrar is required to determine the reasonable ballot costs. New section 170NBFA(2) provides that the Commonwealth will be liable to pay to the authorised ballot agent 80 per cent of the reasonable ballot costs. Through this bill, the government are attempting to prescribe secret ballots, and I believe that, if they are going to do that, it is their responsibility or the responsibility of any subsequent government to bear the cost of it.

If we look at a submission by the Australian Education Union—which was put to the Senate Employment, Workplace Relations and Education Legislation Committee comments on over six or seven bills, but I will address the issues only relating to the secret ballots—they say:

The provisions of the Secret Ballots for Protected Action Bill, as they relate to the compilation of a Voting Roll, would delay the holding of a ballot by 6-8 weeks at large education employers ...

The rights given to employers to contest the holding of a ballot for industrial employers will ensure that employers will easily be able to delay ballots ...

The Secret Ballots for Protected Action Bill will in some cases lead to more serious industrial action and will make industrial action harder to lift ...

The Australian Education Union goes on to say:

In summary, we urge the Committee to recommend the rejection of all the Amendment Bills in their entirety. They would further disadvantage workers, add confusion instead of clarity to tribunal and court proceedings, impact hardest on the least organised and most vulnerable sections of the workforce, and place cumbersome and expensive barriers in the path of workers and their organisations participating as equals in genuine enterprise bargaining.

I believe the unions represent something like 155,000 employees. There are teachers and teachers’ aides and, in lots of private enterprises, there is a far greater range of members. So, when a union that represents such a substantive number of employees puts very clearly and succinctly the problems relating to this particular bill and urges the committee to recommend that all the bills in their entirety be opposed, it is very difficult to accept the position that the government is putting forward. The Democrats amendments are an attempt to rectify in some way the problems with this bill, but I believe the fact that the bill is so structurally flawed and one-sided leaves the senators in this place no option other than to also vote against the Democrats amendments; albeit they are an attempt to rectify some of the problems. I indicate that One Nation will not be supporting Senator Murray’s amendments to the bill.

Senator MURPHY (Tasmania) (6.14 p.m.)—With regard to what is proposed by Senator Murray’s amendments, whilst I respect the effort that he has made, I am not able to support them. I think that the existing rules are more than adequate in respect of secret ballots. Just because the government says that something is wrong with current legislation it does not mean that there is anything wrong with it. Rather, in respect of
trade union matters, it is likely that there is nothing wrong with it and it is all working perfectly well. But it is just that the government, because it is bent on disliking the trade union movement, seeks to change these things.

As has been pointed out by a number of other senators in this chamber, workers do not take lightly any decision to involve themselves in industrial action. Those who have been involved in the trade union movement and who have represented workers know full well that it is certainly not an option that you take to workers in the first instance. Any recommendation made on the part of a trade union to take a course of industrial action is always done because there is no other course of action available. For those reasons, I put on the record that, whilst I respect Senator Murray’s efforts and with regard to the other amendments that he has also moved that have been supported, I am not able to support what he is proposing here. I likewise am opposed to the bill per se. I will vote with the opposition when it is put to the vote.

Senator MURRAY (Western Australia) (6.17 p.m.)—I have listened to the contributions made by the senators and, just in case it is unclear, the effect of my package of 10 amendments is to gut the bill so that the government’s proposition would be rejected and to replace it with the one area in which secret ballots are deficient—namely, that unions presently do not have rules of their own which provide for secret ballots and which members can access. There are unions that do have those rules, but a substantial number do not. These amendments are simply an attempt to make sure that all unions have rules which members can access on a voluntary basis when they so choose.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—The question is that amendments (1), (4), (R6) and (8) moved by Senator Murray be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that items 3 to 15, 18 and 19, 21 to 23, 26 and 27, 31 and 32 and 36 stand as printed.

Senator MURRAY (Western Australia) (6.18 p.m.)—I address all of those items in my amendments on sheet 2632 Revised in amendments (2), (3), (5), (7), (9) and (10). But having been defeated already on the ones that are at hand, I see no point in moving to oppose them.

The TEMPORARY CHAIRMAN—The question is that those items stand as printed.

Question agreed to.

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

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (6.20 p.m.)—I move:

That this bill be now read a third time.

Question negatived.

CRIMINAL CODE AMENDMENT (ESPIONAGE AND RELATED MATTERS) BILL 2002

Second Reading

Debate resumed from 16 September, on motion by Senator Ian Campbell:

That this bill be now read a second time.

(Quorum formed)

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (6.23 p.m.)—I am pleased to speak on behalf of the opposition in relation to the Criminal Code Amendment (Espionage and Related Matters) Bill 2002. As long ago as 1991 the committee to review Commonwealth criminal law, headed by Sir Harry Gibbs, recommended that the Commonwealth’s espionage offences, originally drafted on the eve of the First World War, be rewritten in a simpler form using modern language. Following the 1999 Wispelaere espionage case, the Inspector-General of Intelligence and Security, Mr Bill Blick, was commissioned by the government to undertake a comprehensive review of security procedures. Mr Blick’s report confirmed the need to update our espionage laws and im-
pose tougher penalties on those who choose to break these laws.

This is important legislation that deals with a fundamental aspect of our national security. The bill is designed to strengthen Australia’s espionage laws and impose tougher penalties on those who break these laws. A somewhat different version of this bill was first introduced into the House of Representatives on 27 September last year. The bill was not debated, and lapsed when the parliament was dissolved for the November 2001 federal election. In addition to the espionage provisions, which I will mention in a moment, last year’s version of the bill also transferred the official secrets provisions of part VII of the Crimes Act 1914 to chapter 5 of the Criminal Code Act 1995. This aspect of the bill was heavily criticised for containing jail terms for secondary disclosure or whistleblowing in relation to non-national security matters, even when the information was disclosed or published on public interest grounds. Given the heavy criticism, the government dropped those provisions from the bill like a hot potato. The official secrets provisions applied well beyond situations involving national security. They would have made it illegal to leak or publish the information that led to the infamous telecard affair involving the equally infamous Mr Reith or even the information about travel rorts—the bread and butter of accountability in political debate. In the end, the government was forced to remove those elements of the bill.

The opposition believes Australia’s response to the new security environment must be strong, effective and consistent with our democratic values and freedoms. In assessing the government’s other security legislation, Labor has been guided by the desire to protect citizens from terrorist attacks and to protect our rights from the attacks of the Howard government. That is why we insisted on strong and principled amendments to the five antiterrorism bills, and it is why we do not support the draconian and unprecedented powers proposed in the ASIO bill. The opposition believes the bill before us will modernise and strengthen Australia’s espionage laws. Now that the sweeping official secrets provisions have been removed and other minor amendments have been proposed, it can be said that the bill strikes the right balance. The bill transfers the offence of espionage from the Crimes Act to the Criminal Code. The antiquated offences of harbouring spies, illegal use of uniforms and official permits and impersonation will disappear from the statute books.

A number of features of the bill are of note. First, by referring to conduct that may prejudice Australia’s ‘security and defence’, rather than its ‘safety and defence’, and explicitly defining this term, the bill will give protection to material not protected under current laws. In particular, the term will include the operations, capabilities and technologies of, and methods and sources used by, the intelligence and security agencies. The type of activity that may constitute espionage will also be clarified. A person may be guilty of an espionage offence if they disclose information concerning the Commonwealth’s security or defence and do so intending to prejudice the Commonwealth’s security or defence. They may also be guilty of an offence if they disclose information concerning the Commonwealth’s security or defence, without authorisation, to advantage the security or defence of another country.

These provisions will capture the Wispelaere type situation where the information that is compromised does not necessarily prejudice Australia’s security or defence. Maximum penalties range from seven years to 25 years imprisonment for the most serious espionage offences. Penalties in comparable countries for equivalent offences range from the death penalty in the United States to 14 years imprisonment in the United Kingdom, Canada and New Zealand. The bill also covers a range of other matters—including initiation of prosecutions, holding hearings in camera and forfeiture of articles—which were originally enacted in the Crimes Act.

The Senate Legal and Constitutional Legislation Committee have considered the bill and their unanimous report was tabled on 10 May 2002. With the more controversial elements of the 2001 version of the bill having been excised by the government, the Senate committee raised four remaining issues of concern. The committee advised that, subject
to their recommendations on these areas, the bill should proceed. The first area of concern identified by the committee is an element of the proposed offences relating to espionage involving communicating or making known information that ‘is or has been in the possession of the Commonwealth’. Essentially, questions were raised as to whether information both within the possession of the Commonwealth and in the broader public domain would still technically fall within the offence provisions. The Attorney-General’s Department advised that the bill is not intended to inhibit the free flow of information in the public domain. However, given that this intention is not made clear either in the bill or in the explanatory memorandum, the committee recommended that the bill be amended to ensure that espionage provisions do not apply to the communication of information already in the public domain.

The Senate committee also expressed concern as to whether the proposed offences would inadvertently cover government disclosure of protected information through lawful and official channels, such as under intelligence sharing agreements that Australia has with other countries—for example, with New Zealand or the United States of America. The Attorney-General’s Department agreed that this was an unintended consequence of the bill’s provisions. The committee accordingly recommended that the bill be amended to address the uncertainty arising from the term ‘disclose to another country or foreign organisation’. The Senate committee shared the concerns of the International Commission of Jurists that offences may be committed by a person who communicates information to another country not knowing that the information is in the possession of the Commonwealth. The committee recommended that the bill be amended so that an element of each offence is that a person knows that the information is or has been in the possession or control of the Commonwealth.

The other concern relates to the offence of illegal soundings. The Crimes Act contains an offence of communicating to any person outside of the Commonwealth hydrographic soundings of the sea surrounding Australia, and the bill proposed to translate that offence across into the Criminal Code. The 1991 Gibbs Review of Commonwealth Criminal Law recommended that, because of the questionable need for the provision in light of technical and technological developments, the soundings offence should be repealed. The Senate committee took evidence about the unintended application of such an offence—for example, by foreign owned fishing vessels sending soundings information back to their country of origin and thereby committing an offence. The committee also raised concerns that, where the taking and recording of soundings is required under law, ships’ masters were inadvertently potentially committing an offence. It is currently a requirement, for the safety of crews and ships that lie within Australian waters, to maintain an ongoing record of the sounding of the ships at all times. The committee therefore proposed that the current provisions relating to soundings be repealed and that the bill be amended to delete proposed division 92. The government introduced amendments to the bill that substantially give effect to recommendations of the Senate committee. The House of Representatives unanimously agreed to those amendments. The government has also agreed not to proceed with the soundings provisions contained in the bill. The government is not prepared to repeal the existing soundings provisions without further consideration of the commercial, navigational safety and security implications. In fact, the opposition does not demur from the government’s approach.

As I indicated at the commencement of my remarks, this bill relates to fundamental aspects of our national security. The capacity of the Commonwealth to deter and thwart espionage is vital to our nation’s defence. It is vital to our foreign relations. Indeed I think it is vital to our national wellbeing. We must have both a strong legislative framework and appropriate administrative measures to safeguard sensitive national security information held by government and, in some cases, by private firms such as defence contractors. At the same time we must also ensure that the pursuit of tighter security does not trample over the civil liberties and the privacy of citizens. In this regard, I note
that on 25 June this year the Minister for Foreign Affairs, Mr Downer, and the American Ambassador, Mr Schieffer, signed a new legally binding agreement governing the exchange of classified information between Australia and the United States. The General Security of Information Agreement replaces a 1962 pact between Australia and the United States and takes into account advances in information technology. In his press release of 25 June announcing the new security arrangement, the foreign minister, Mr Downer, indicated that it covers the appropriate protection and handling of classified information and includes:

... a requirement that personnel accessing such information be security-cleared to an appropriate level.

The parliament’s Joint Standing Committee on Treaties will presumably examine this new security agreement before it is allowed to enter into force. Effective parliamentary scrutiny will be especially important if the introduction of any new security clearance procedures is contemplated as a consequence of this agreement. In this regard, I note that in September last year the Attorney-General announced that, following the Blick security review, ASIO had agreed to undertake an internal and voluntary trial of polygraph tests to evaluate the potential of such technology as a personal security tool. I have always thought Mr Reith would be a very good person to start the polygraph tests with—he would probably blow the thing off the scale.

Polygraph tests have of course been employed for many years by United States intelligence agencies including the Central Intelligence Agency and the National Security Agency. Such tests are indeed mandatory for US personnel having access to certain types of highly classified information. Some of this information is shared by the United States with Australia, and the new security agreement requires Australia to afford such information a degree of protection equivalent to that of the United States.

My colleague the shadow minister for justice and customs raised the issue of polygraph tests in the debate on this bill in the House of Representatives, but there has been no response from the government. It would be highly desirable for the Attorney-General to inform the parliament in general terms of the result of the ASIO polygraph trial and whether the government intends to proceed with mandatory polygraph tests in ASIO or elsewhere in our security and intelligence agencies.

The introduction of polygraph tests as a general security tool would be a significant development in our country’s security arrangements. It is something that should not be pursued without very careful, indeed exhaustive, consideration of the administrative and legal implications. The opposition are pleased the government was forced by political and media pressure to remove the controversial official secrets provisions, and we are pleased that the government introduced amendments which give effect to the recommendations of the Senate committee. The opposition will support the Criminal Code Amendment (Espionage and Related Offences) Bill.

Senator GREIG (Western Australia) (6.40 p.m.)—I rise to speak on the Criminal Code Amendment (Espionage and Related Matters) Bill 2002. The Australian Democrats believe we have a consistent approach to issues of national security. We are strongly supportive of attempts to enhance Australia’s security and the safety of Australian citizens. However, we firmly believe that civil liberties must not be unduly compromised in the name of national security. We are supportive of this legislation, as it will strengthen Australia’s espionage laws.

This bill differs in some important respects from the bill that was originally introduced in the House of Representatives last year. That bill provoked significant and understandable concern in the community arising out of provisions that would have permitted the jailing of public interest whistleblowers. The government responded that the proposed laws did not change the substance of the existing official secrets provisions but simply modernised the language.

We Democrats are strong supporters of public interest whistleblowers. Those who speak out against corruption and impropriety deserve protection. Whistleblowing is often the only way that impropriety can be ex-
posed. However, this can come at a significant personal and career cost to the whistleblower. The often justified fear of reprisal can stop potential whistleblowers from coming forward. As a result, corruption or improper conduct can continue unchecked.

As it happens, we currently have a private senator’s bill before a Senate committee that proposes comprehensive whistleblower protection. The existing level of protection for whistleblowers is absolutely inadequate. The Australian Democrats believe that the government has failed to address the issue of whistleblower protection. The report of the Finance and Public Administration Committee on the Public Interest Disclosure Bill 2001 [2002] is to be tabled this Thursday. It is my hope that the government will look at that report very closely, with a view to determining whether it is time to finally take action with regard to this issue.

Turning to the bill itself, I should start by saying that the existing espionage provisions in the Crimes Act are quite dated and it is appropriate that they be modernised. We support the increase in the maximum penalty for espionage from seven years to 25 years. The government advises that penalties in comparable jurisdictions for equivalent offences range from the death penalty in the US to 14 years imprisonment in the UK, Canada and New Zealand.

Espionage is an extremely serious offence and it should be treated as such. The damage that can be caused by espionage is sufficient to warrant a very severe maximum penalty. In the current security environment, it is vital that countries that share information with us can be confident that we will afford it appropriate protection. For that reason, we support the proposed protection of foreign-sourced information belonging to Australia.

A number of outdated provisions will be repealed by this legislation. These include provisions relating to harbouring spies, illegal use of uniforms, special powers of arrest without warrant and so on. The modernisation project is a welcome one and has the support of the Australian Democrats. This bill has changed in a number of respects since it was initially introduced in the House of Representatives. In the face of significant public concern, a number of provisions were removed from the bill. The bill was then referred to the Senate Legal and Constitutional Committee. The committee identified a number of problems with the bill, to which the government responded with amendments. I think it is appropriate that the government has taken on board reasonable objections and made changes accordingly. In his second reading speech, the Attorney-General, Mr Williams, stated:

The government is committed to protecting Australia’s national security and punishing those who threaten Australia’s interests. That is the purpose of the bill. It is not aimed at hampering or preventing public discussion.

The espionage provisions send a clear message to those who choose to betray Australia’s security that this government regards espionage very seriously.

That is a sentiment supported by the Australian Democrats and, consequently, we will be supporting this legislation.

It has been mentioned in part that part of the reason for bringing about these changes and this legislation related to what has been called the ‘Wispeelaere case’ in relation to Mr Jean-Philippe Wispeelaere, and I would like to make a few comments about him and his case. According to a press release of 18 May 1999, the Attorney-General said that Mr Wispeelaere was arrested at Dulles Airport, Washington, on 15 May 1999 and charged with attempted espionage. His arrest followed a joint investigation by the Australian Security Intelligence Organisation, ASIO, the Australian Federal Police and the US Federal Bureau of Investigation. When he appeared in court a couple of days later, he is alleged to have made unauthorised disclosure of US intelligence material.

Mr Wispeelaere, a Canadian-born Australian citizen, had worked for the Australian Defence Intelligence Organisation between 13 July 1988 and 12 January 1999, reportedly as an analyst of American spy satellite photographs. After leaving the DIO, he went to Bangkok where he attempted to sell hundreds of top secret documents to an unidentified foreign embassy. The US was informed by the embassy involved and an FBI sting
operation lured him to the US where he was arrested.

Following Mr Wispelaere’s arrest, the Attorney-General requested an inquiry into the circumstances of the case and advice on additional measures which might be necessary to strengthen the protection of classified material. The report by Mr Bill Blick, the Inspector-General of Intelligence and Security, recommended more stringent vetting of staff and strengthened security procedures. The 2001-02 budget included an extra $12 million over four years to enable ASIO and the Attorney-General’s Department to undertake security improvements in line with the Blick report.

Mr Wispelaere was judged not fit to stand trial in January 2001, after treatment for mental illness. He has blamed Australian intelligence services for not questioning his behaviour and he asked to be extradited back here to Australia to face charges. This request was rejected by the Australian government. Mr Wispelaere pleaded guilty in March 2001 and was sentenced to 15 years jail in June 2001. He has agreed to cooperate with the US and Australian intelligence agencies. In June 2001, his father was reported to be considering suing the Australian government for negligently giving his son a security clearance without recognising his schizophrenia and addiction to steroids. US prosecutors have agreed to allow Mr Wispelaere to serve the last five years of his 15-year sentence in Australia if a prisoner transfer treaty is in effect by that time. When we get to the committee stage of the bill, I would like to explore some of those issues further with the minister. But the bill in general has our support.

Debate interrupted.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—It being 6.50 p.m., we move now to consideration of government documents.

DOCUMENTS

Aged Care Act 1997

Senator WEBBER (Western Australia) (6.50 p.m.)—I move:

That the Senate take note of the document.
Instead of extra nursing home beds and secure accommodation facilities for some of the older residents of Geraldton, they now have an Internet site that can help them. Is there anything more ludicrous than the minister and his department coming up with a solution to provide information to a target group than to use a medium not widely used by that target group?

But do not worry, because the report goes on to inform us that there are 90 access points around rural and regional Australia that have free phones. What happens if an older Australian does not have access to the Internet or has difficulty in reaching one of these access points? On that matter, the report and, indeed, the entire government are silent. Older Australians need to be aware that this government is adopting, slowly but surely, a new strategy when it comes to dealing with our aging population. With the increase in the age of our population and a falling birthrate that has been a matter of much debate, it would seem that the Minister for Employment Services has let slip the government’s new policy. Instead of providing income security for our older Australians and secure accommodation for those who are in need and do not have family support, he thinks that the strategy should be to raise the retirement age. Apparently that is the government’s new answer. It seems that ultimately this government wants to solve any future problems with aged care by making all of us work until the day we die. They hope that at that point aged care will become a non-issue.

Question agreed to.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—Order! There being no further consideration of government documents, I propose the question:

That the Senate do now adjourn.

Health: Diabetes and Obesity

Senator BARNETT (Tasmania) (6.54 p.m.)—I rise to speak on the issues of obesity, diabetes and fast food in Australia and to say that Australians are getting fatter. Fifty-five per cent of Australians are overweight or obese, and childhood obesity has nearly trebled in the last 10 years. Obesity leads to diabetes, heart disease, cancer and the vicious circle of a sedentary lifestyle. We have seriously unhealthy habits and refuse to change. The Australian Institute of Health and Welfare recently released a paper noting that 7.5 million Australians over the age of 25 years are overweight or obese and that there has been a significant increase in the proportions of overweight or obese Australians over the last 20 years. Recent analysis of data from the 1995 survey showed that 19 to 23 per cent of Australian children aged two to eight years are overweight or obese, depending on age. The number of overweight and obese children aged 7 to 15 years almost doubled between 1985 and 1995. In 1985, 10.7 per cent of boys and 11.8 per cent of girls were overweight or obese while, in 1995, 20 per cent of boys and 21.5 per cent of girls were overweight or obese.

In May this year, the Hon. Larry Anthony MP, Minister for Children and Youth Affairs, released the Australian Institute of Health and Welfare’s report, Australia’s children: their health and wellbeing 2002. He advised:

The report shows:
24 per cent of children aged 12-14 years had consumed alcohol in the week prior to the survey;
29 per cent of boys and 23 per cent of girls aged 12-15 years have taken an illicit drug at least once;
15 per cent of boys and 14.4 per cent of girls aged 4-12 years have a number of emotional and/or behavioural problems; and,
Death rates for indigenous infants were three times higher than for other Australian children.

He said:
Childhood obesity is getting worse. While most children aged 2-14 are of an acceptable weight, 18 per cent of boys and 22 per cent of girls are overweight or obese.

This is totally unacceptable and parents have a responsibility to ensure their children have a well balanced diet and regular exercise. Not only will overweight and obese children have serious health concerns later in life, they may not be able to fully participate economically and socially.

I congratulate the Hon. Larry Anthony on his comments, on the release of that report and on his efforts to highlight these concerns and
problems for all Australians; not just Australian children, but Australian families.

Tomorrow or the day after, a study will be released with regard to the cost of diabetes in Australia. I predict that it will be a very significant cost in terms of this particular epidemic. Diabetes affects one million Australians. Five hundred thousand people are actually diagnosed with diabetes, and a further 500,000 are undiagnosed with type 2 diabetes. About 100,000 of the million Australians with diabetes have type 1, or insulin dependent, diabetes. If those who are undiagnosed are not found, they are likely to have very serious complications affecting their health at a much earlier age than is necessary. These complications include kidney problems, eyesight problems, amputation problems and a whole range of health problems that are very serious indeed. This particular study will highlight the cost. It is the first major study in this area that has been undertaken. I hope that it really jerks Australians into gear in terms of highlighting the importance and adverse effects of this disease on the Australian community and the need to identify the one in two Australians who have diabetes but do not know it. It is a problem, and we need to do something about it.

In regard to the health problems caused by fast food and obesity, I attended a conference in the USA in June and I also attended the Joslin Diabetes Center in Boston, which is the largest research institution for diabetes in the world, and I learnt a number of things. Like our American cousins, nearly half of all Australian deaths are preventable or can be postponed by effective public health practices. That is a staggering figure and I was quite shocked when I learnt it at the conference put on by the Harvard School of Public Health. What are we doing about it in Australia? Not much. What can we do? In terms of fast food companies, I believe they could become the tobacco companies of tomorrow. We are focused on an academic outcome at the expense of a good healthy lifestyle. That is a cause for concern. We are not nurturing the education of our children, who are forced daily to choose from a smorgasbord in many cases of junk food and tuck shop treats regardless of the interests of their immediate nutrition or even their long-term health. Rather than receiving any encouragement to eat a healthy balance of foods, it appears that our children’s growing social ability to purchase foods for themselves and to influence parents’ purchases are instead being exploited by corporate food interests using aggressive advertising strategies.

Lessons have been learnt and are being learnt from overseas. I draw the Senate’s attention to two lessons in particular. In France, McDonald’s is advertising the message: ‘Don’t eat too much of our food.’ In the US, the fast food companies have joined together in supporting a multimillion education campaign saying: ‘Eat a balanced diet and exercise regularly.’ I congratulate them on such a public education campaign. It makes sense. It is a good message for our children and for us. Fast food companies should embark on a public education campaign like that in Australia. Primarily it should highlight the benefits of a balanced diet and regular exercise as well as highlighting the dangers of excessive consumption of their product. After all, such a lifestyle is the single most effective preventative health measure that a person can take. The campaign should also actively inform the public of
both the nutritional value of the food as well as the long-term health risks of eating such food on a day-by-day basis.

Is there any risk in eating fast food? You had better believe it. Ralph Nader, the US consumer advocate, called the McDonald’s double cheeseburger a ‘weapon of mass destruction’. If this seems a bit over the top, perhaps we should look at the nutritional information on these types of products. A Harvard University study has demonstrated a link between diet, exercise and cancer. A minimal amount of walking and eating 25 grams of fibre a day can significantly reduce a cancer risk. We ignore that advice at our own peril. Nearly one in four children aged 10 to 14 are either overweight or obese already, as I have mentioned earlier. The future health of these children looks grim. Not only should Australians recognise that children’s bodies are still developing but also that lifelong habits are formed in early years.

The intake of salt, excessive sugar, fat and additives such as caffeine and MSG are all directly responsible for many chronic and untreatable diseases. Nutritionists and doctors know it; fast food chains and processors know it. And lawyers know it. Those whose advertising and marketing encourages poor lifestyle habits are at risk of litigation. Future litigants will attempt to demonstrate negligence on the part of the food producer or retailer in knowingly selling a product that carries health risks, especially where those products were marketed as a day-to-day lifestyle food. The whole of our society, including children, have the right to know both the contents of our food purchases and the likely effect that consumption will have on the body. Society demands no less transparency and accountability from its professionals, politicians and public servants.

Immigration: Border Protection

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (7.04 p.m.)—This is the third and last of the three speeches on the government’s people-smuggling disruption program which I foreshadowed during the adjournment debate on Monday this week. How much ministerial knowledge is there of the disruption activities being directed out of the Australian embassy in Jakarta? DIMIA has three compliance officers working out of the Jakarta embassy. Two of these positions were created in the last two years. Their major priority is to work on people-smuggling matters. Two AFP agents also work from the embassy in Jakarta. These agents work closely with the Indonesian National Police, Indonesian Immigration, Indonesian navy, army and marines. They report directly to the Director of International Operations, Dick Moses, and the general manager of international operations, Mr Shane Castles. Both Mr Moses and Mr Castles were regular attendees of the Prime Minister’s People Smuggling Task Force last year. They would inform the task force of the criminal aspects of people-smuggling, involvement with the people-smuggling teams and disruption activities.

At the Australian embassy in Jakarta an interagency coordination group on people-smuggling has also been established. The portfolios represented at these meetings are DFAT, DIMIA, AFP and Defence. The purpose is to share information and assessments and to represent the agencies’ view in relation to people-smuggling matters. Geoff Raby from DFAT has indicated disruption activities are a key focus of this group. I note that on 13 June 2001 the Minister for Immigration and Multicultural and Indigenous Affairs, Phillip Ruddock, travelled to Jakarta. He had meetings with the Australian ambassador, Ric Smith, and the interagency people-smuggling group. He also met with the Indonesian Minister of Justice and Human Rights and the Indonesian Minister of Foreign Affairs. Mr Ruddock should now confirm whether he raised certain disruption activities during meetings at the embassy either in June last year or during his visit in September.

By September 2001 we know that something concerned the Indonesian foreign affairs department enough to request the protocol between the AFP and the Indonesian police be set aside. AFP Commissioner Keelty told the CMI committee that on 15 September 2000 ‘a specific protocol under the MOU to target people-smuggling syndicates operating out of Indonesia’ was agreed to by the
AFP and their counterparts the Indonesian National Police. We have asked the AFP for a copy of the protocol and MOU but so far it has not been released. Under this protocol the AFP provides equipment and training to the Indonesian National Police. At the CMI committee, Commissioner Keelty revealed that the protocol under the MOU was set aside by the Indonesian government in September 2001 due to concerns the Indonesian Department of Foreign Affairs, DEPLU, had in relation to disruption. Amazingly, Commissioner Keelty could not or would not tell the committee why the protocol was cancelled by the Indonesian government.

Despite this setting aside of the protocol—

I believe because of concerns the Indonesians had about disruption activities between the two police organisations—Commissioner Keelty told us he was not aware of the full detail of the Indonesian complaints. Repeatedly, I asked Commissioner Keelty at the CMI committee the reasons behind the Indonesian authorities cancelling of the protocol. For instance, when I asked Commissioner Keelty, ‘What concerns did the Indonesians express in relation to the disruption operation?’ he replied, ‘I do not have a briefing on that and I do not know that anyone in the AFP does.’ I replied, ‘I would be surprised—very surprised—if the AFP was not informed of what these concerns might have been.’ Commissioner Keelty responded, ‘It was a decision by the Indonesian government in their DEPLU, so I would not necessarily expect them to tell me why.’ Later at the CMI committee, I again asked Commissioner Keelty the following question: ‘Commissioner, did you ask why the protocol was cancelled?’ He replied, ‘I do not specifically recall.’ I then asked, ‘You do not know if you asked why?’ Again, he replied, ‘I answered you. I do not specifically recall.’

Despite the concerns the Indonesian foreign affairs department had about the protocol, the AFP says it continued to cooperate with the Indonesian National Police until June 2002. However, the breakdown in the protocol does not appear to have stopped disruption activities from occurring. Between September 2001 and June 2002 the activities continued on a case-by-case arrangement between the AFP and the INP.

In October 2001 the high-level PM&C People Smuggling Task Force notes indicate that disruption activities were discussed on a number of occasions including a direction that disruption be ‘beefed up’. On 10 October 2001 the task force notes state, ‘Discussion on the “architecture”—disruption, regional conference proposal, UNHCR positions.’ On 12 October the task force notes state, ‘Discussion of disruption activity, and scope for beefing up.’ At the CMI committee I asked Ms Jane Halton, DIMIA officials and the Australian Federal Police what exactly could be meant by these references? What was the task force asking agencies to do when they referred to it being ‘beefed up’?

The head of the People Smuggling Task Force, Ms Halton, admitted there were a ‘couple of discussions’ regarding disruption at the meetings but she would not or could not elaborate further. Ms Halton had no memory of the ‘beefing up’ discussion except she thought it might refer to T-shirts. Ms Halton told the committee that the task force had never tasked any agency to disrupt in Indonesia. But Ed Killesteyn from DIMIA, who attended the task force meetings on 10 October and 12 October, said:

... the People Smuggling Task Force was concerned about the evidence of a surge and was, in a sense, giving a direction to the responsible areas to look for further opportunities for disruption. Commissioner Keelty also indicated that the People Smuggling Task Force was tasking agencies to beef up the disruption activities. Commissioner Keelty said:

To me it is just an operational call along the lines of, ‘The departure of the vessel is imminent; we’d better be doing everything we can possibly do.’ Let me repeat Commissioner Keelty’s words: ... we’d better be doing everything we can possibly do.

This is the deeply concerning aspect of disruption. How far has it gone? What activities are acceptable; what are not? Who carries them out? Who pays for them? What accountability and control mechanisms are in place? Who authorises these activities? What is the effect of these activities? What, if any,
consideration was given to questions of the safety of lives at sea?

The issue of sabotage of people smugglers’ vessels has been canvassed by the AFP informant Kevin Enniss. I ask these questions: was Enniss involved in the sabotage of vessels? Were others involved in the sabotage of vessels? Do Australian ministers, officials or agencies have knowledge of such activities? And what about the vessel now known as SIEVX, part of the people-smuggling operation of the notorious people smuggler Abu Qussey? That vessel set sail on 18 October 2001 and sank on 19 October 2001, drowning 353 people, including 142 women and 146 children. Were disruption activities directed against Abu Qussey? Did these involve SIEVX?

I intend to keep asking questions until I find out. And, Mr Acting Deputy President, I intend to keep pressing for an independent judicial inquiry into these very serious matters. At no stage do I want to break, nor will I break, the protocols in relation to operational matters involving ASIS or the AFP. But those protocols were not meant as a direct or an indirect licence to kill.

Employment: Policy
Social Welfare: Policy

Senator CHERRY (Queensland) (7.14 p.m.)—A couple of weeks ago, I had the pleasure of meeting someone who is making a difference in the town of Beaudesert. Jim Daynes from Beaudesert Rail told the Senate inquiry into small business what he reckons is needed to get mature age people back into jobs, and I would like to relate his experience to the chamber. Jim made his comments after several businesses complained that they could not get qualified tradespeople. Jim pointed out that he has been overwhelmed with them, but his are of the mature age variety.

Beaudesert Rail has completed three Community Jobs Plan projects, and two more are currently under way. Thirty people took part in the first three programs, and 28 of those people now have full-time jobs. That is an extraordinary figure: 93 per cent of participants getting real full-time jobs. Another 22 people who have been long-term unemployed are now taking part in the CJP projects with Beaudesert Rail, and two of them already have been offered full-time jobs.

At a time when employers are complaining that they cannot get skilled tradespeople, Beaudesert Rail got 80 applications from unemployed mature age tradespeople for just 12 positions. When these people get a break, when they get a 19-week paid job with the Community Jobs Plan, their work, as Jim Daynes describes it, is magnificent. He reckons that what people really need is a chance to do some meaningful work and to feel involved in their community, and that is what we reckon too.

Compare this with the Work for the Dole program. Even the name has that stigma about it: it is for ‘dole bludgers’. It does not even imply that the participants will move beyond benefits. It is a penalty that is applied for being guilty of unemployment, in a policy environment that has become completely devoid of imagination or empathy. Participants in CJP programs do not work for the dole; they work for a living.

While the federal government has been focused on finding new ways to breach unemployed people, the Queensland government has negotiated a training and entitlements conditions order for the Community Jobs Plan. The CJP puts together a practical balance of paid work and on-the-job training, and, unlike Work for the Dole, the CJP participants get the dignity and self-respect that comes from taking home a pay cheque each fortnight as well as from contributing to their local community.

Work for the Dole is based on a harsh philosophy: a belief that people are unemployed because they have some personal defect, that there is something wrong with them as individuals. Because the current government’s policy is based on this behavioural model, its solutions are all about individual behaviour as well. That is one reason that the Work for the Dole program only has a 34 per cent outcome rate.

The current government has lost sight of the need to create jobs. It is all very well to take a big stick to job seekers, but the reality
is that long-term unemployment is just as high now as it was when this government came to office in 1996. Despite a booming economy, this government has no idea of how to deal with long-term unemployment. Just last week, the Productivity Commission found that the Job Network does not help people find work. The outcomes for people who participated in Intensive Assistance were the same as for people who did not. What greater indictment could there be of an employment program than that it does not actually help people to get jobs?

Programs like the Community Jobs Plan work because they meet people’s needs. They give people an opportunity to get back into the work force, to earn real wages and to prove their abilities; and they do it without the stigma of a compulsory program and a derogatory label like Work for the Dole. The Community Jobs Plan treats job seekers like real people who have real aspirations and helps them to build a real future.

The Australian Democrats call on the government to replace the failed Work for the Dole with community based jobs on approved projects at award training wages. There is plenty of useful real work to be done in the community. By reallocating funding from Work for the Dole to real community jobs at award training wages on approved projects, we can create 15,000 new jobs at a net cost of $106 million. That is less than half the amount that the government ceded to tobacco companies earlier this week.

Beaudesert Rail’s Community Jobs Plan shows on a small scale what could be achieved with a wider program. People can get real jobs that lead to long-term employment. What is needed is a step back from the ideology of the big stick, and the adoption of a commonsense policy that respects job seekers. People do not want to work for the dole; they want to work for a living.

Tonight I also want to touch on the Senate Community Affairs Committee report tabled earlier today on the Australians Working Together package. The notion that social security recipients have an obligation to seek work in return for benefits has long been part of the Australian social security system, but there have been major changes to social security policy over the last 10 years. In the early 1990s, the obligation to seek work was expanded under the Working Nation program to include activities which would increase people’s chances of gaining employment, with a focus on job skills, training and vocational training. The idea of reciprocal obligation meant that the government would do more to create employment and assist unemployed people to get jobs—for example, by expanding labour market programs and introducing wage subsidies—with the argument that greater efforts and obligations could therefore be expected of unemployed people.

One feature of this system was the revamping of penalties to be applied to those in receipt of unemployment benefits if they did not meet or if they breached their obligations. At the same time as this government abolished many of the pre-1996 Intensive Assistance employment programs, it expanded the number and scope of requirements, such as the introduction of mutual obligation activities. Work for the Dole, job seeker diaries and preparing for work agreements.

In 1997, the breach system was again revised, with penalties being applied at a lower rate but for a longer duration. In order to receive unemployment payments, Newstart job seekers must comply with the activity test. Currently, this means that someone must actively look for suitable paid work; register with at least one Job Network member; accept suitable work offers; attend all job interviews; attend Centrelink offices when requested to do so; agree to attend approved training courses or programs; not leave a job, training course or program without sufficient reason; correctly advise Centrelink of any income earned; enter into and comply with a preparing for work agreement; lodge fortnightly forms; apply for up to 10 jobs per fortnight; participate in a mutual obligation activity after a certain amount of time on benefits; have certificates signed by employers approached about jobs, if required; and complete a job seeker’s diary with details of job search efforts.
People who fail to comply with any activity test requirement without a reasonable excuse are penalised by having their benefits reduced. In June 2002, for an unemployed single adult receiving $185 per week, these amounted to reductions of $863 for the first breach, $1,151 for the second breach and $1,476 for the third. There are also separate breach penalties for administrative breaches such as failing to attend an interview at Centrelink. These entail a reduction in payments of 16 per cent for 13 weeks, equivalent to $383.

However, the difference between administrative and activity breaches has become blurred due to the practice at some Centrelink offices of including administrative requirements in preparing for work agreements, which effectively turns administrative breaches into activity test breaches, as was recently highlighted by ACOSS. Research by ACOSS and the National Welfare Rights Network has shown that the number of breaches has risen dramatically over the last few years. For the full year 2000-01, there were 386,946 breaches—294,747 activity test breaches and 92,199 administrative breaches—as presented to the Senate Community Affairs Committee.

Studies by ACOSS and other agencies report that the impact of breaching is falling most heavily on the most disadvantaged job seekers. Hanover Welfare Services, a welfare agency which works with homeless people in Melbourne, found that almost one-third of its clients had been breached in the previous 12 months. Similarly, the Salvation Army found that around one-quarter of its emergency relief clients had been breached. Even more concerning, it found that 11 per cent, or one in nine people, said that they had to turn to crime to survive.

The Independent Review of Breaches and Penalties in the Social Security System, the Pearce review, reported in March 2002, finding:

While the current system often functions in an appropriate manner, there are many occasions on which its operation in relation to particular job seekers can be reasonably described as arbitrary, unfair or excessively harsh. There are also many occasions when it diminishes people's capacity and opportunity to continue seeking work and become less dependent on social security.

The Pearce report also concluded that breaches were imposed too frequently and that penalties for breaches were often too severe and caused unnecessary and unjustifiable hardship. The review team made 36 recommendations aimed at improving the penalty and breach provisions. Recommendation 25 proposed three broad measures to reduce the level of financial penalties associated with breaching. First, all penalties should be fully recoverable if the job seeker takes reasonable steps to comply with the obligation in question not later than four weeks after the imposition of the breach. Second, the duration of penalties should not exceed eight weeks and the rate of reduction in allowance should not exceed 25 per cent, except in the case of persistent serious breaches. Third, if penalties are not made fully recoverable as recommended above, the duration of penalties should not exceed eight weeks and the rate of reduction should not exceed 15 per cent, except in the case of persistent serious breaches. The last proposal would set an upper limit of $221 on the penalty for an activity test breach for a single adult.

The government responded to the report indicating that it had already agreed to, or was planning to implement, many of the recommendations, such as suspension of allowance in the first instance to encourage the recipient to attend Centrelink. However, the Minister for Family and Community Services rejected other recommendations, including those suggesting that the level of penalties be reduced. Her rationale for rejecting these was that a softening of the penalty regime does not reflect the wider community's expectations. The minister fails to acknowledge that the penalty levels operate to place many people in undue hardship. (Time expired) I seek leave to have the rest of my speech incorporated in Hansard.

Leave granted.

The document read as follows—

Nor can the Minister continue to assert that the present harsh punitive breaching regime is one that is expected by the community. Research by the Brotherhood of St Lawrence entitled “The
The community expects” conducted in June 2002 clearly dispels that notion. The Brotherhood of St Laurence study clearly showed that a majority of those surveyed did not think the current penalties for activity test breaches were fair. The survey found:

- Almost two-thirds of people believed that the current penalties for a first breach were unfair.
- The median total penalties proposed by the community were a total of $20 for first breach, $50 for a second breach and $75 for a third;
- One in four people thought there should be no penalty whatsoever for a first breach;
- Six out of ten people believed the total penalty for a second breach should be $50 or less;
- Six out of ten people believed the total penalty for a third breach should be $100 or less;
- Around ninety-five per cent of respondents proposed a level for breach penalties lower than the current level for first, second and third breaches.

The Brotherhood of St Laurence survey results suggest that a majority of the Australian community believes that, while people receiving unemployment payments should incur some financial penalty for not complying with their requirements, the current levels of penalties are unfair.

The Australian Democrats referred this matter to committee because we know only too well the devastating social and economic outcome of breaching. We are alarmed at the determined effort by this Government to place vulnerable and disadvantaged sole parents directly in the firing line of breaching.

Sole Parents already participate in employment and training more than any other group of income support recipients, including Newstart allowance recipients. The average sole parent is a woman in her thirties who, having lost the support of a partner, receives parenting payment for less than 3 years.

Sole Parents already play a valuable role in society as parents, and are best placed to determine when their parenting responsibilities will allow them to enter or return to the workforce. The legislation proposed by the Government does not exempt parents of children with cystic fibrosis or juvenile diabetes since these are not ‘profound disabilities’ specified by the legislation.

The Government wants to force parents of children such as these to leave their children unattended, abandon their parental responsibilities and travel for periods of up to 1½ hours to undertake specified activities. When these parents decide that their parenting responsibilities prevent them from doing so, they will be breached.

The Salvation Army, Hanover and other agencies know, as we do, that in imposing punitive financial breaching on this group, the Government will be placing their children into greater poverty, and forcing many into homelessness.

The Democrats accept that for unemployed Australians there is a tension between obliging a person to participate in employment, training or an activity that will facilitate their re-entry to the workforce, and a financial disincentive for failing to do so.

We submit that the present regime, as reported by the Pearce Report and this committee, is inappropriate, unjust and unduly harsh. Denying people accommodation, food and financial assistance does not help them get a job.

We call on the Government to implement in full the recommendations of this committee and in particular those of the Independent Review of Breaches in the Social Security System to unemployed Australians, before any further attempt is made to extend the current regime to other income support recipients.

**Warringah Mall: Parking Fees**

**Senator FORSHAW (New South Wales)**

(7.24 p.m.)—Tonight I rise to speak about a greedy grab by the owners of Warringah Mall in Sydney. The owners of Warringah Mall have made an application to Warringah Council to vary the development consent on this supermarket complex to allow them to charge employees working in the mall daily parking fees. They propose to charge, if consent is granted, a $4 per day fee for all employees parking their cars in the shopping centre complex. A similar application was made to the council in October 2000. At that stage the owners of Warringah Mall sought to introduce a $3 per day parking fee for employees parking their cars in the shopping centre complex. A similar application was made to the council in October 2000. At that stage the owners of Warringah Mall sought to introduce a $3 per day parking fee for employees. At that time, the council, following a campaign which was led by the shop assistants union and supported by the community and the major retailers in the complex, rejected the application. Indeed, this is the third occasion in three years that the owners of Warringah Mall have made such an application. On this occasion, as I said, the proposal is to charge $4 per day, so it appears that each time they make the application the fee is increased.
Some people might think that $4 per day is not a lot of money but to employees in the retail industry it is. Over the course of a year it would amount to a substantial impost upon their wages if they were required to pay this fee each time they drove into work at Warringah Mall. Let me just give some examples of how this would affect typical shop assistants employed in a shopping centre such as Warringah Mall. The first example is a working mother engaged at Grace Bros. Typically, she would be working part-time, doing five shifts per week for four hours per day. The weekly wage for such a working mother, before tax, would amount to $261. A $4 per day parking fee would amount to a total of $960 per annum that this working mother would be required to pay to park her car in the complex whilst working there. That would represent the equivalent of 3.7 weeks of that working mother’s income which would have to be spent on parking fees.

My second example is an 18-year-old student engaged at Kentucky Fried Chicken as a casual employee, working, say, three shifts per week for three hours per day and often working at night. That student, struggling to get some additional income to help them whilst they are doing their studies, would receive around $95 a week before tax. Over the course of a year, the $4 per day flat fee for parking would amount to $624—the equivalent of a loss of 6.6 weeks wages for that student.

In one further example, an employee engaged part-time at Woolworths stacking the shelves, doing what is called ‘night fill’, would typically be working four shifts per week for four hours each night—quite late hours, usually from 11 p.m. to, say, 3 a.m. That employee would receive a weekly wage of around $275 before tax. The total fee for parking their car there while they worked at night would amount over the year to $768. That means a loss of the equivalent of 2.8 weeks income. One can see that this would be a significant impost upon workers at Warringah Mall if it were introduced.

Retail workers are characterised by low to modest incomes. A full-time adult retail employee engaged under the shop employees state award in New South Wales earns an ordinary weekly wage of $489.80 before tax. But the high proportion of junior, part-time and casual employment means that the average income for employees across the industry is less than half that amount per week. If this proposal were introduced it would have a disproportionate impact upon young workers and female workers. The union advises me that around 75 per cent of employees in this sector are women and 38 per cent to 41 per cent are between the ages of 18 to 25. Further, as I have indicated, the industry is characterised by high levels of part-time, casual, and shift workers. Over the course of a year, parking fees would have a substantial impact upon young people, female workers, particularly working mothers, and other employees working casual or shift work.

In Warringah, which is in the electorate of the Minister for Employment and Workplace Relations, Mr Abbott, driving to work is not a matter of convenience. Firstly, the area is not serviced by the Sydney train system, so employees have to get to work either by driving their own car, car pooling, bus service or walking to work. The hours that are worked in this industry by these workers are not the typical nine to five daily employment hours. They often travel to work and work outside the hours when regular public transport is available. That is particularly the case for workers who are employed at night as casuals; for example, people working in supermarkets stacking the shelves for the next day. I am told that as many as 25 per cent of retail employees drive to work because they have family or domestic responsibilities. They may have to drop the kids off at school or child care, go to work and then pick them up on the way home.

Clearly this proposal will have a severe impact upon the employees at Warringah Mall. What we have seen in other situations where shopping centres charge parking fees is that the fees do not stay at the introductory level. I am advised that in other centres such as Parramatta and Chatswood, where parking fees are charged because of the particular development consent arrangements made at the time the centres were built, the fees started out at low rates but they have since
increased significantly. You often find in those centres that the customers may get the first two or three hours of parking free but the employees who have to stay there for longer periods end up paying parking fees. They bear the cost.

If this proposal were to be agreed to by Warringah Council, where would all this money go? It would go to the owner of Warringah Mall. It would not assist retail shops in the complex; it would go to the owners of the mall. I am advised that in the first year of operation of such a proposal, the owners would receive around $2.5 million. That would be paid for by the ordinary workers, the low income workers, employed at Warringah Mall. I am happy to be associated with the campaign by the shop assistants union who are opposing this application. I look forward to the support of the member for Warringah, the Minister for Employment and Workplace Relations, Mr Abbott, in standing up for the workers against the greedy grab of the owners of Warringah Mall.

**Senate adjourned at 7.34 p.m.**

**DOCUMENTS**

**Tabling**

The following government documents were tabled:

- *Australian Radiation Protection and Nuclear Safety Agency*—Quarterly report for the period 1 January to 31 March 2002.
- *Australian Rail Track Corporation Limited (ARTC)*—Statement of corporate intent 2002-03.
- *Human Rights and Equal Opportunity Commission*—Reports—Inquiries into complaints of discrimination in employment on the basis of criminal record—No. 19—Mr Mark Hall v NSW Thoroughbred Racing Board, and No. 20—Ms Renai Christensen v Adelaide Casino Pty Ltd.

**Tabling**

The following documents were tabled by the Clerk:

- *Class Ruling CR 2002/72*.
- *Lands Acquisition Act*—Statements describing property acquired by agreement under sections 40 and 125 of the Act for specified public purposes [2].
- *Goods and Services Tax Determination GSTD 2002/3*.
- *Goods and Services Tax Ruling GSTR 2000/21 (Addendum)*.
  46B [2].
- *Taxation Determination TD 2002/23*. 
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Aviation: BAe 146 Aircraft

(Question No. 400)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 26 June 2002:

Since January 2000, has the Civil Aviation Safety Authority received any reports relating to breaches of flight and duty times by crew operating BAe 146 aircraft for regular public transport services; if so: (a) how many reports have been received; (b) in each case when was the report lodged; and (c) what action was taken in response to each report.

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 (CASA) has provided the following advice:

(a) and (b) CASA has received two Confidential Aviation Incident Reports (CAIR) forwarded from the Australian Transport Safety Bureau. The reports, dated 28 September 2000 and 4 December 2001, were received by CASA on 29 September 2000 and 7 December 2001 respectively.

(c) CASA responded to the report dated 28 September 2000 and advised that the issue has been raised with the Company’s Chief Pilot during a scheduled audit. However, the evidence obtained was inconclusive regarding the matters raised in the CAIR report and it could not be positively established that a true breach of Civil Aviation Order 48 had occurred.

CASA further advised that the Chief pilot was counselled by a CASA Flying Operations Inspector on the issue raised and that future CASA audits would examine compliance in this area.

CASA responded to the report dated 4 December 2001 and advised that the matter would be considered as part of a scheduled audit of the company planned for February 2002.

Following the conduct of this audit, no significant safety concerns were identified associated with the operator’s fatigue management arrangements.

Aviation: BAe 146 Aircraft

(Question No. 401 (amended))

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 26 June 2002:

To ask the Minister representing the Minister for Transport and Regional Services: Since January 2000, has the Australian Transport Safety Bureau received any reports relating to breaches of flight and duty times by crew operating BAe 146 aircraft for regular passenger transport services; if so: (a) how many reports have been received; (b) in each case when was the report lodged; and (c) what action was taken in response to each report.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

This answer supersedes the answer previously printed in Hansard on 20 August 2002 following the provision of further advice from the Australian Transport Safety Bureau (ATSB).

(a) Since January 2000, three (3) reports relating to alleged breaches of flight and duty times by crew operating BAe 146 aircraft for regular passenger transport services have been received by the ATSB.

(b) The reports were lodged with the ATSB on 28 September 2000, 26 April 2001, and 3 December 2001.

(c) The reports were submitted to the ATSB by way of the Confidential Aviation Incident Reporting System (CAIR). After de-identification, the reports were referred to CASA as regulatory matters on 28 September 2000 and 4 December 2001 respectively. At the request of the reporter, the report received on 26 April 2001 was withdrawn.
Wide Bay Electorate: Program Funding
(Question No. 431)

Senator O’Brien asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 10 July 2002:

1. What programs and/or grants administered by the department provide assistance to people living in the federal electorate of Wide Bay.
2. What was the level of funding provided through these programs and/or grants for the 1999-2000, 2000-01 and 2001-02 financial years.
3. Where specific projects were funded: (a) what was the location of each project; (b) what was the nature of each project; and (c) what was the level of funding for each project.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:
The following table relates to particular grants that are being delivered by my department to the electorate of Wide Bay:

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<tr>
<th>1999-2000 FINANCIAL YEAR</th>
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<tr>
<td>TYPE OF PROGRAM/GRANT</td>
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<tr>
<td>NHT World Heritage Management</td>
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<td>Water Watch</td>
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<td>National Wetlands Program</td>
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<td>Coasts and Clean Seas Commonwealth Component</td>
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<td>Coastcare Program</td>
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<tr>
<td>TYPE OF PROGRAM/GRANT</td>
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<tr>
<td>Coastcare Program</td>
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<td>Clean Seas Program</td>
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<tr>
<td>Coastal Monitoring Program</td>
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<td>Bushcare</td>
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<tr>
<td>Grants to Voluntary Environment and Heritage Organisations</td>
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</table>
### 2000-01 Financial Year

<table>
<thead>
<tr>
<th>TYPE OF PROGRAM/GRANT</th>
<th>PROJECT DESCRIPTION/PURPOSE OF GRANT</th>
<th>LOCATION OF PROJECT</th>
<th>AMOUNT 2000-01</th>
</tr>
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<tbody>
<tr>
<td>NHT World Heritage Management</td>
<td>Toilet facilities – Lake Allom</td>
<td>Fraser Island</td>
<td>$55,000</td>
</tr>
<tr>
<td>NHT World Heritage Management</td>
<td>Eli Creek Boardwalk reconstruction</td>
<td>Fraser Island</td>
<td>$200,000</td>
</tr>
<tr>
<td>NHT World Heritage Management</td>
<td>Ablution Block – Dundubara campground</td>
<td>Fraser Island</td>
<td>$160,000</td>
</tr>
<tr>
<td>NHT World Heritage Management</td>
<td>Base Funding for WH Committee operations</td>
<td>Fraser Island</td>
<td>$36,000</td>
</tr>
<tr>
<td>Water Watch</td>
<td>This project will focus on producing scientifically accurate data to document the effects of catchment activities and land use on downstream (estuarine and marine) values.</td>
<td>Noosa</td>
<td>$15,600</td>
</tr>
<tr>
<td>National Wetlands Program</td>
<td>Undertake an environmental assessment of the Booral Wetlands and develop facilities to permit controlled access for monitoring and public education purposes.</td>
<td>Hervey Bay</td>
<td>$30,000</td>
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<tr>
<td>Coastcare Program</td>
<td>Project to improve the safety and sustainability of foreshore beach access.</td>
<td>Torquay</td>
<td>$8,800</td>
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<tr>
<td>Coastcare Program</td>
<td>Project to collect data related to the health of seagrass in the Hervey Bay area for a DPI databank.</td>
<td>Hervey Bay</td>
<td>$18,766</td>
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<tr>
<td>Coastcare Program</td>
<td>Project to train community volunteers and produce visual materials to identify and systematically record relevant macro-invertebrate fauna during ongoing Seagrass-Watch quarterly monitoring.</td>
<td>Hervey Bay</td>
<td>$7,636</td>
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<tr>
<td>Coastcare Program</td>
<td>Environmental assessment of the Booral Wetlands and develop facilities to permit controlled access for monitoring and public education purposes.</td>
<td>Noosa</td>
<td>$19,100</td>
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<tr>
<td>Clean Seas Program</td>
<td>Project to install a Continuous Deflective Separation (CDS) Pollutant control device and conduct stream improvements on the Hilliard St (Pialba) drainage path, which leads directly into Tooran Tooran Creek, and to install an aeration fountain in Tooran Tooran Creek.</td>
<td>Tooran Creek</td>
<td>$179,700</td>
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<tr>
<td>Clean Seas Program</td>
<td>Project to install a Continuous Deflective Separation (CDS) Pollutant control device and piped beach outlet at the foreshore near Pilot Street in Urangan to reduce overall pollution entering the Great Sandy Strait from land based inputs.</td>
<td>Urangan</td>
<td>$189,530</td>
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<td>TYPE OF PROGRAM/GRANT</td>
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<td>Bushcare</td>
<td>To encourage fencing of remnant riparian vegetation on the Dawson River and off stream watering.</td>
<td>Theodore</td>
<td>$76,650</td>
</tr>
<tr>
<td>Bushcare</td>
<td>The project seeks to enhance, protect, extend and revegetate disjunct vegetation corridors in the</td>
<td>Gympie</td>
<td>$178,500</td>
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<tr>
<td></td>
<td>Mary River Catchment.</td>
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<tr>
<td>Bushcare</td>
<td>The project will undertake on ground restoration works to protect an area of remnant bushland</td>
<td>Biggenden</td>
<td>$12,000</td>
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<tr>
<td></td>
<td>adjacent to the township of Coalstoun Lakes in the Biggenden Shire.</td>
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<tr>
<td>Bushcare</td>
<td>The project will implement Land for Wildlife initially in at least seven (up to 14) Local</td>
<td>Hervey Bay</td>
<td>$92,600</td>
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<td></td>
<td>Government Areas in the Wide Bay - Burnett Region of Southeast Queensland, with the objective of</td>
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<td></td>
<td>expanding the program to all 21 Shires over a period of 2-3 years.</td>
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<tr>
<td>Grants to Voluntary Environment and Heritage Organisations</td>
<td>Payment to Wide Bay Burnett Conservation Council to assist with its administrative costs</td>
<td>Maryborough</td>
<td>$4,050</td>
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</tbody>
</table>

2001-02 FINANCIAL YEAR

<table>
<thead>
<tr>
<th>TYPE OF PROGRAM/GRANT</th>
<th>PROJECT DESCRIPTION/PURPOSE OF GRANT</th>
<th>LOCATION OF PROJECT</th>
<th>AMOUNT</th>
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<tbody>
<tr>
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<tr>
<td>NHT World Heritage Management</td>
<td>Base funding for WH Committee operations</td>
<td>Fraser Island</td>
<td>$40,000</td>
</tr>
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<td>NHT World Heritage Management</td>
<td>Eli Creek Boardwalk reconstruction</td>
<td>Fraser Island</td>
<td>$250,000</td>
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<td>NHT World Heritage Management</td>
<td>Central Station Campground development</td>
<td>Fraser Island</td>
<td>$140,000</td>
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<td>NHT World Heritage Management</td>
<td>Sediment Traps to protect Lakes environment</td>
<td>Fraser Island</td>
<td>$60,000</td>
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<td>NHT World Heritage Management</td>
<td>Lake Wabby Lookout carpark and toilets</td>
<td>Fraser Island</td>
<td>$130,000</td>
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<td>NHT World Heritage Management</td>
<td>Management of vehicle use</td>
<td>Fraser Island</td>
<td>$80,000</td>
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<tr>
<td>Rural and Regional Historic Hotels Program:</td>
<td>Restoration of Mulgildie Hotel and Miners Arm Hotel.</td>
<td>(a)Mulgildie, (b)Torbanlea</td>
<td>(a)$15,909, (b)$6,841</td>
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<td>Cultural Heritage Projects Program:</td>
<td>Conservation of Maryborough Customs House</td>
<td>Maryborough</td>
<td>$9,090.91</td>
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<td>Product Stewardship – Waste Oil</td>
<td>Banana Shire Council – Construction of storage facilities at four Shire landfills and two Shire transfer stations</td>
<td>Moura, Theodore, Wowan, Baralaba, Thangool Hambin</td>
<td>$26,633</td>
</tr>
<tr>
<td>Product Stewardship – Waste Oil</td>
<td>Wondai Shire Council - Construction of waste oil collection sites in Wondai Shire</td>
<td>Wondai and Proston</td>
<td>$7,950</td>
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<tr>
<td>TYPE OF PROGRAM/GRANT</td>
<td>PROJECT DESCRIPTION/PURPOSE OF GRANT</td>
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<td>AMOUNT 2001-02</td>
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<tr>
<td>Water Watch</td>
<td>This project will focus on produc-</td>
<td>Noosa</td>
<td>$15,600</td>
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<td>ing scientifically accurate data to</td>
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<td>document the effects of catchment</td>
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<td>activities and land use on down-</td>
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<td></td>
<td>stream (estuarine and marine) val-</td>
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<tr>
<td>Coastcare Program</td>
<td>Sediment, water, salinity sampling</td>
<td>Hervey Bay</td>
<td>$19,396</td>
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<td></td>
<td>to ascertain if a problem exists</td>
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<td>with rural and urban runoff/floods.</td>
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<td>Relationship between marine ani-</td>
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<td>mals and seagrass recovery. Rela-</td>
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<td>tionship between Forestry (pine) and</td>
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<td></td>
<td>mangrove dieback. To prove or dis-</td>
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<td>prove perceived problem.</td>
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<tr>
<td>Clean Seas Program</td>
<td>To install a Continuous Deflective</td>
<td>Urangan</td>
<td>$1,500</td>
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<td></td>
<td>Separation (CDS) Pollutant control</td>
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<td>device and piped beach outlet at</td>
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<td>the foreshore near Pilot Street in</td>
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<td>Urangan to reduce overall pollu-</td>
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<td>tion entering the Great Sandy</td>
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<td>Strait from land based sources.</td>
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<td>Bushcare</td>
<td>This project will coordinate and</td>
<td>Theodore</td>
<td>$39,900</td>
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<td>integrate action planning, inform-</td>
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<td>ation exchange, catchment edu-</td>
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<td>cation, vegetation monitoring and</td>
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<td></td>
<td>native fisheries migration activities</td>
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<td>as identified in the Dawson River</td>
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<td></td>
<td>Catchment Strategy.</td>
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<tr>
<td>Bushcare</td>
<td>Build upon the achievements of the</td>
<td>Hervey Bay</td>
<td>$92,600</td>
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<td></td>
<td>Wide Bay-Burnett Land for Wildlife</td>
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<td>project by extending its coverage to</td>
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<td>include the entire Wide Bay-Burnett</td>
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<td>region and undertaking extended data</td>
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<td>collection and digital GIS mapping</td>
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<td>Grants to Voluntary</td>
<td>Payment to Wide Bay Burnett</td>
<td>Maryborough</td>
<td>$4,050</td>
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<td>Environment and</td>
<td>Conservation Council to assist</td>
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<td>Heritage Organisa-</td>
<td>with its administrative costs</td>
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**New South Wales: Steel Profiling Plant, Moruya**

*(Question No. 503)*

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:

With reference to an application made through the Dairy Regional Assistance Programme (DRAP) to fund a steel profiling plant at Moruya, in the Eurobodalla Shire of New South Wales, listed in the DRAP project summaries round 6, 2001-02:

1. When was the application lodged with the south-east New South Wales Area Consultative Committee (ACC).
2. Who lodged the application.
3. On what date was it lodged.
4. Can a copy of the original application for assistance for this project from the DRAP be provided, together with a copy of any related documentation.
(5) (a) What was the funding sought through the application; and (b) what was the level of funding approved.

(6) (a) What was the total cost of the proposal; and (b) what commitment was given by the applicant to meet at least 50 per cent of these costs.

(7) Did this proposal contain an evaluation process to ensure that agreed project outcomes were met; if so, can a copy of the evaluation details be provided; if not: (a) were details of any proposed evaluation mechanism sought; and (b) was this material provided; if not, why not.

(8) If such an evaluation process was not included in the application, why was the application approved.

(9) Was there any communication between the proponents of the proposal, or persons on their behalf, the Federal Member for Eden Monaro, the Minister, or his office, the Minister for Agriculture, Fisheries and Forestry, or his office and the ACC; if so: (a) when did each communication take place; (b) who was involved in each communication; (c) what was the nature of each communication; (d) what was the form of each communication; and (e) which members of the ACC were involved in these contacts.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:


(2) The proponent, Moruya Decking and Cladding Pty Ltd.

(3) See question (1) above.

(4) The application contains Commercial-In-Confidence information.

(5) (a) The application sought $300,000 (GST exclusive). (b) $309,000 (GST exclusive). The amount requested in the final application.

(6) (a) The total cost of the project was $619,000 (GST exclusive). (b) The applicant committed $310,000 in cash contributions toward the project.

(7) Yes. The evaluation will be conducted independently at project completion.

(8) Not applicable. See Question (7) above.

(9) The Department of Transport and Regional Services is not aware of any such communication between the proponent, or any persons on their behalf, the Federal member for Eden Monaro, the Minister, or his office, and the Minister for Agriculture, Fisheries and Forestry, or his office. Numerous communications occurred between the proponent and the ACC during the development of the project to final application stage.

New South Wales: Steel Profiling Plant, Moruya

(Question No. 504)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:

With reference to an application made through the Dairy Regional Assistance Programme (DRAP) to fund a steel profiling plant at Moruya, in the Eurobodalla Shire of New South Wales, listed in the DRAP project summaries round 6, 2001-02:

(1) Were the terms of the application varied in any way following publication of the original application guidelines; if so: (a) were these variations related to the construction of the plant or the installation of equipment; (b) when were the terms of this application varied; and (c) who varied those terms.

(2) Can a copy of the varied application for assistance for this project from DRAP be provided.

(3) (a) What level of funding was sought through the amended application; and (b) what was the level of funding approved.

(4) (a) What was the total cost of the amended proposal; and (b) what commitment was give by the applicant to meet at least 50 per cent of these costs.

(5) Did this amended proposal contain an evaluation process to ensure that agreed project outcomes were met; if so, can a copy of that evaluation process be provided.
(6) (a) If the amended application did not include an evaluation process, why not; and (b) was this material sought as part of the approval process; if not, why not.
(7) If such an evaluation process was not included in the application, why was the application approved.
(8) Was there any communication about the variations to this application between the proponents of the proposal, or anyone acting on their behalf, the Federal Member for Eden Monaro, the Minister or his office, the Minister for Agriculture, Fisheries and Forestry or his office, and the ACC prior to the lodgement of the amended application; if so: (a) when did each communication take place; (b) who was involved in each communication; (c) what was the nature of each communication; (d) what was the form of each communication; and (e) which members of the ACC were involved in these contacts.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) The DRAP application guidelines were published upon commencement of the programme. This application, as with most applications to the DRAP, was revised. (a) Yes. (b) Between 27 August 2001 and 12 December 2001. (c) The proponent.
(2) The application contains Commercial-In-Confidence information.
(3) (a) $309,000 (GST exclusive). (b) $309,000 (GST exclusive).
(4) (a) $619,000 (GST exclusive). (b) The applicant committed $310,000 in cash contributions towards the project.
(5) Yes. The evaluation will be conducted independently at project completion against the project plan and the objectives and performance indicators contained within.
(6) Not applicable.
(7) Not applicable.
(8) The Department of Transport and Regional Services is not aware of any such communication between the proponent, or any person on their behalf, the Federal Member for Eden Monaro, the Minister, or his office, and the Minister for Agriculture, Fisheries and Forestry, or his office. Numerous communications occurred between the proponent and the ACC during the development of the project to final application stage.

New South Wales: Steel Profiling Plant, Moruya (Question No. 505)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:

With reference to an application made through the Dairy Regional Assistance Programme (DRAP) to fund a steel profiling plant at Moruya, in the Eurobodalla Shire of New South Wales, listed in the DRAP project summaries round 6, 2001-02:

(1) Were the terms of the application varied such that funding was no longer for the plant but was being sought for some other purpose; if so, what was the nature of the new proposal.
(2) Is the new proposal the provision of a sewerage system on the industrial estate in Moruya on which the steel profiling plant is located.
(3) (a) When were the terms of this application changed in this way; (b) who initiated these changes; and (c) can a copy of the changed application for assistance for this project through the DRAP be provided; if not, why not.
(4) What was the date of the publication of the DRAP project summaries round 6, 2001-2.
(5) What level of funding for the installation of the sewerage system on the industrial estate was provided by: (a) the estate developer; (b) the Eurobodalla Shire Council; (c) the New South Wales State Government; and (d) the Federal Government.
(6) Does the provision of funding for the installation of sewerage systems comply with the DRAP guidelines; if so, where in the guidelines is the endorsement of proposals that fund the provision of public infrastructure such as sewerage systems; if not, why was the application funding the sewerage system approved.
(7) (a) What was the level of funding sought through the application for this new proposal; and (b) what was the level of funding approved.

(8) (a) What was the total cost of the changed proposal; (b) what commitment was given by the applicant to meet at least 50 per cent of these costs; (c) in what form was the commitment given; and (d) who gave the commitment.

(9) Has work commenced on the project.

(10) If work has commenced on the new project, what was the date of the commencement of that work.

(11) If that work has been completed, when was it completed.

(12) If there was a variation in the estimated cost of the new proposal: (a) what was the original cost; and (b) what is the level of the cost variation.

(13) Did this changed proposal contain an evaluation process to ensure that agreed project outcomes were met; if so, can details of the evaluation process be provided; if not: (a) were details of such a process sought; and (b) why was this material not provided.

(14) If such an evaluation process was not included in the application, why was the application approved.

(15) Was there any communication about the changes to this application between the proponents of the proposal, or anyone acting on their behalf, the Federal Member for Eden Monaro, the Minister for Transport and Regional Services or his office, the Minister for Agriculture, Fisheries and Forestry or his office, and the Area Consultative Committee (ACC) prior to the lodgement of the changed application; if so: (a) when did each communication take place; (b) who was involved in each communication; (c) what was the nature of each communication; (d) what was the form of each communication; and (e) which members of the ACC were involved in these contacts.

(16) When was the changed application lodged with the south-east New South Wales state office of the Department of Transport and Regional Services.

(17) Was there any communication between the proponents of the changed proposal, or anyone acting on their behalf, the Federal Member for Eden Monaro, the Minister for Transport and Regional Services or his office, the Minister for Agriculture, Fisheries and Forestry or his office, and the south-east New South Wales state office of the Department of Transport and Regional Services; if so: (a) when did each communication take place; (b) who was involved in each communication; (c) what was the nature of each communication; (d) what was the form of each communication; and (e) which officers of the south-east New South Wales state office of the Department of Transport and Regional Services were involved in these contacts.

(18) When was the changed application lodged with the federal office of the Department of Transport and Regional Services.

(19) (a) Who lodged the changed application; and (b) can a copy of the changed application for assistance lodged with the federal office be provided; if not, why not.

(20) Was there any communication between the proponents of the changed proposal, or anyone acting on their behalf, the Federal Member for Eden Monaro, the Minister for Transport and Regional Services or his office, the Minister for Agriculture, Fisheries and Forestry or his office, and the federal office of the Department of Transport and Regional Services; if so: (a) when did each communication take place; (b) who was involved in each communication; (c) what was the nature of each communication; (d) what was the form of each communication; and (e) which officers of the federal office of the Department of Transport and Regional Services were involved in these contacts.

(21) What assessment was made by the Department of Transport and Regional Services of the changed application.

(22) (a) When was that assessment completed; and (b) what were the findings of that assessment.

(23) What assessments of the above application were made by the Department of Agriculture, Fisheries and Forestry or any other federal or state agency.

(24) In each case: (a) who did the assessment; (b) when did the assessment commence; (c) when was the assessment completed; and (d) what were the results of the changed assessment.

(25) (a) How many direct and indirect jobs were estimated to result from the changed application; and (b) what was the anticipated duration of these jobs.
(26) (a) What was the basis of the above job creation estimates; (b) who made the estimates; and (c) was there any review or analysis of these estimates as part of assessing the changed application for funding; if so: (i) who did that assessment, and (ii) what was the result of that assessment.

(27) (a) What assessment was undertaken of the ability of the changed proposal to improve the skills base of the region; (b) who undertook that assessment; and (c) what was the result of that assessment.

(28) (a) What assessment was undertaken of the ability of the changed proposal to tackle disadvantage and encourage growth in the region; (b) who undertook that assessment; and (c) what was the result of that assessment.

(29) When was the changed application sent to the Minister for Transport and Regional Services, or his office, for approval or endorsement.

(30) When did the Minister for Transport and Regional Services, or his office, approve or endorse the above proposal.

(31) When was the changed application sent to the Minister for Agriculture, Fisheries and Forestry, or his office, for approval or endorsement.

(32) When did the Minister for Agriculture, Fisheries and Forestry, or his office, approve or endorse the above proposal.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) No.

(2) No. The former Department of Employment, Workplace Relations and Small Business initially received an application for the provision of a sewerage system on the industrial estate in Moruya in July 2001. This application was assessed and found not to meet the guidelines of the Dairy Regional Assistance Programme.

(3) Not applicable.

(4) 7 February 2002.

(5) (a) Unknown. (b) Unknown. (c) Unknown. (d) Nil through DRAP.

(6) No.

(7) to (32) Not applicable.

New South Wales: Steel Profiling Plant, Moruya

(Question No. 506)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:

With reference to an application made through the Dairy Regional Assistance Programme (DRAP) to fund a steel profiling plant at Moruya, in the Eurobodalla Shire of New South Wales, listed in the DRAP project summaries round 6, 2001-02:

(1) What assessment was made by the department of the application.

(2) (a) When was that assessment completed; and (b) what were the findings of that assessment.

(3) What assessments of the above application were made by the Department of Agriculture, Fisheries and Forestry or any other federal or state agency.

(4) In each case: (a) who did the assessment; (b) when did the assessment commence; (c) when was the assessment completed; and (d) what were the results of the assessment.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) The application was assessed against the Dairy RAP Guidelines.

(2) (a) 12 December 2001. (b) The project was recommended for funding.

(3) None.

(4) Not applicable.
New South Wales: Steel Profiling Plant, Moruya  
(Question No. 507)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:

With reference to an application made through the Dairy Regional Assistance Programme (DRAP) to fund a steel profiling plant at Moruya, in the Eurobodalla Shire of New South Wales, listed in the DRAP project summaries round 6, 2001-02:

(1) When was the application lodged with the federal office of the Department of Transport and Regional Services.

(2) (a) Who lodged the application; and (b) can a copy of the original application lodged with the federal office of the Department of Transport and Regional Services be provided; if not, why not.

(3) Was there any communication between the proponents of the proposal, or anyone acting on their behalf, the Federal Member for Eden Monaro, the Minister for Transport and Regional Services or his office, the Minister for Agriculture, Fisheries and Forestry or his office, and the federal office of the Department of Transport and Regional Services; if so: (a) when did each communication take place; (b) who was involved in each communication; (c) what was the nature of each communication; (d) what was the form of each communication; and (e) which officers of the federal office of the Department of Transport and Regional Services were involved in these contacts.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) The original application was lodged with the former Department of Employment, Workplace Relations and Small Business on 27 August 2001. The proponent lodged the final, refined version of the application with the Department on 12 December 2001.

(2) (a) The proponent. (b) The application contains Commercial-In-Confidence information.

(3) The Department of Transport and Regional Services is not aware of any communication between the proponents, or persons on their behalf, the Federal Member for Eden-Monaro, the Minister for Transport and Regional Services or his office, the Minister for Agriculture, Fisheries and Forestry, or his office regarding the proposal. Numerous communications have occurred between the proponent and staff of the Department of Transport and Regional Services from 3 July 2001 to present.

New South Wales: Steel Profiling Plant, Moruya  
(Question No. 508)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:

With reference to an application made through the Dairy Regional Assistance Programme (DRAP) to fund a steel profiling plant at Moruya, in the Eurobodalla Shire of New South Wales, listed in the DRAP project summaries round 6, 2001-02:

(1) When was the application lodged with the south-east New South Wales state office of the Department of Transport and Regional Services.

(2) (a) Who lodged the application; and (b) can a copy of the original application for assistance lodged with the state office of the department be provided; if not, why not.

(3) Was there any communication between the proponents of the proposal, or anyone acting on their behalf, the Federal Member for Eden Monaro, the Minister for Transport and Regional Services, or his office, the Minister for Agriculture, Fisheries and Forestry, or his office, and the south-east New South Wales state office of the Department of Transport and Regional Services; if so: (a) when did each communication take place; (b) who was involved in each communication; (c) what was the nature of each communication; (d) what was the form of each communication; and (e) which officers of the south-east New South Wales state office of the Department of Transport and Regional Services were involved in these contacts.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:
Refer to Question 507. There is no distinction between lodgement of applications to Regional Offices or Central Office in Canberra.

**New South Wales: Steel Profiling Plant, Moruya**  
(Question No. 509)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:

With reference to an application made through the Dairy Regional Assistance Programme (DRAP) to fund a steel profiling plant at Moruya, in the Eurobodalla Shire of New South Wales, listed in the DRAP project summaries round 6, 2001-02:

1. Were the terms of the application, or any variations of that application, such that it required retrospective approval of funds; if so: (a) on what basis was the funding approved or provided retrospectively; and (b) does the funding of a proposal retrospectively breach the guidelines of the DRAP.

2. (a) Who approved the retrospective funding of the proposal; (b) when was that approval given; (c) when was the Minister, or his office, advised that the project would be funded retrospectively; and (d) when did the Minister, or his office, endorse or note that advice.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

1. No.
2. Not applicable.

**New South Wales: Steel Profiling Plant, Moruya**  
(Question No. 510)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:

With reference to an application made through the Dairy Regional Assistance Programme (DRAP) to fund a steel profiling plant at Moruya, in the Eurobodalla Shire of New South Wales, listed in the DRAP project summaries round 6, 2001-02:

1. When was the application sent to the Minister for Transport and Regional Services, or his office, for approval or endorsement.

2. When did the Minister for Transport and Regional Services, or his office, approve or endorse the above proposal.

3. When was the application sent to the Minister for Agriculture, Fisheries and Forestry, or his office, for approval or endorsement.

4. When did the Minister for Agriculture, Fisheries and Forestry, or his office, approve or endorse the above proposal.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

1. Not applicable. DRAP applications are not sent to the Minister for Transport and Regional Services, or his office, for approval or endorsement.

2. Not applicable.

3. Not applicable. DRAP applications are not sent to the Minister for Agriculture, Fisheries and Forestry, or his office, for approval or endorsement.

4. Not applicable.

**New South Wales: Steel Profiling Plant, Moruya**  
(Question No. 511)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:
With reference to an application made through the Dairy Regional Assistance Programme (DRAP) to fund a steel profiling plant at Moruya, in the Eurobodalla Shire of New South Wales, listed in the DRAP project summaries round 6, 2001-02:

(1) Has work commenced on the proposal.
(2) (a) When did work commence on the construction of the plant; and (b) when was new equipment installed in the new plant as described in the project summaries document.
(3) (a) If the construction of the plant has been completed, what was the date of completion; and (b) if the new equipment has been installed, when was the installation of the equipment completed.
(4) If there was a variation in the estimated cost of the construction of the plant and the installations of the equipment and their actual cost, what was the level of the cost variation.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) Yes.
(3) (a) The Department was advised by the proponent on 30 April 2002, that the construction of the plant had been completed. (b) The Department was advised by the proponent on 30 April 2002, that new equipment had been installed.
(4) The proponent has not advised the Department of any changes in estimated costs following the approval of Dairy RAP funds.

New South Wales: Steel Profiling Plant, Moruya
(Question No. 512)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:

With reference to an application made through the Dairy Regional Assistance Programme (DRAP) to fund a steel profiling plant at Moruya, in the Eurobodalla Shire of New South Wales, listed in the DRAP project summaries round 6, 2001-02:

(1) (a) How many direct and indirect jobs are estimated to result from the provision of $339,900 through the DRAP; and (b) what is the anticipated duration of these jobs.
(2) (a) What was the basis of the above job creation estimates; and (b) who made the estimates.
(3) Was there any review or analysis of these estimates as part of the application assessment; if so: (a) who did that assessment; and (b) what was the result of that assessment.
(4) (a) What assessment was undertaken of the capacity of the proposal to improve the skills base of the region; (b) who undertook that assessment; and (c) what was the result of that assessment.
(5) (a) What assessment was undertaken of the capacity of the proposal to tackle disadvantage and encourage growth in the region; (b) who undertook that assessment; and (c) what was the result of that assessment.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) (a) 14-16 direct full time equivalent jobs. No estimate was made of the number of indirect jobs to be created. (b) It is anticipated that these jobs will be ongoing.
(2) (a) The estimation of job creation outcomes was outlined by the proponent in their application. (b) The proponent.
(3) Yes. (a) The Department. (b) The project was approved.
(4) (a) The application was assessed against the DRAP guidelines. (b) The Department. (c) The project was approved.
(5) (a) The application was assessed against the DRAP guidelines. (b) The Department. (c) The project was approved.
New South Wales: South-East Area Consultative Committee
(Question No. 513)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:

(1) What is the area covered by the south-east New South Wales Area Consultative Committee (ACC).
(2) When was the area covered by the south-east New South Wales ACC assessed by the Commonwealth/state taskforce to determine whether or not it would meet the eligibility criteria for the Dairy Regional Assistance Programme (DRAP).
(3) (a) When did the assessment process commence; (b) when was the process completed; and (c) what were the findings of that assessment process.
(4) Can a copy of the assessment report be provided, together with any related documentation.
(5) Has this area been the subject of any review to determine its ongoing eligibility for assistance through the DRAP; if so: (a) when did that review commence; (b) when was it completed; (c) who did the review; and (d) what was the outcome of that review.
(6) Can a copy of that review be provided, together with any related documentation.
(7) If there has not been a review of the eligibility of the area for assistance through the DRAP, why not.

Senator Ian Macdonald—The Minister representing the Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) The South East NSW Area Consultative Committee covers the shires of Eurobodalla, Bega Valley, Bombala, Snowy River and Cooma-Monaro.
(2) The area was not assessed by the Commonwealth/state taskforce.
(3) Not applicable.
(4) Not applicable.
(5) No.
(6) Not applicable.
(7) The need for a review was obviated by the release of the ABARE report The Australian Dairy Industry – Impact of an Open Market in Fluid Milk Supply. This report identified regions impacted upon by dairy deregulation.

New South Wales: South-East Area Consultative Committee
(Question No. 514)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 August 2002:

(1) What is the membership of the South-East New South Wales Area Consultative Committee (ACC).
(2) (a) When was each member appointed to the South-East New South Wales ACC; (b) what is the occupation of each member; and (c) what are their qualifications.
(3) Has any member of the South-East New South Wales ACC held any public office since January 2000, including appointments by local government, the New South Wales Government and the Commonwealth; if so, what was: (a) the title and nature of office held; (b) the term of office; and (c) the method of election and appointment.
(4) What selection process was followed in the appointment of members of the South-East New South Wales ACC, specifically: (a) who nominated each member; (b) what assessment was made of each nominee; (c) who undertook that assessment process; (d) who approved the appointment of each member; and (e) did the appointment of each member receive ministerial endorsement.
(5) If the appointment of each member to the South-East New South Wales ACC was endorsed at ministerial level: (a) which minister endorsed each appointee; and (b) in each case, when did the minister give the endorsement.
Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) The membership of the South East NSW Area Consultative Committee (as at 6 August 2002) is as follows:

Mr Greg Malavey (Chairperson)
Ms Kerry Boyenga
Mr Steve Farkas
Mr Huon Hassall
Mr Tony Farbery
Ms Michelle Robinson
Mr Chris Vardon
Ms Clare Whiter
Ms Gwen Prendergast (Deputy Chair)
Mr David Bisiker
Mr Brian Coyte
Mr Colin Hobson
(Source: SEACC website: www.seacc.org.au.)

(2) (a)-(c)

Mr Greg Malavey – was initially appointed to the Chair’s position in June 1998. Mr Malavey is a Board member of the Southern Phone Company; a member of Moruya Rotary and the Chamber of Commerce; a past board member for the Development of Carroll College and Moruya Hospital Boards and a local businessman.

Ms Kerry Boyenga – was appointed in August 1997. Ms Boyenga is a Teacher at Broulee Public School, President of the Far South Coast Aboriginal Education Consultative Group and a member of the Cobowra (Moruya) Local Aboriginal Land Council.

Mr Steve Farkas – was appointed in August 1997. Mr Farkas is a farmer and former small business manager, a Councillor with Bombala Shire Council and has been actively involved with the forest restructuring process.

Mr Huon Hassall – was appointed in August 1997. He is a semi-retired senior consultant with Hassall and Associates Pty Ltd, Agricultural Consultants.

Mr Tony Farbery – was appointed in August 1997. Mr Farbery is a Solicitor and a member of Tharra Surf Club and Far South Coast and Monaro Regional Law Society.

Ms Michelle Robinson - was appointed in September 1998. Ms Robinson is the Tourism Promotion Manager for Sapphire Coast Tourism and the Vice Chair of the South Coast Regional Tourism Organisation.

Mr Chris Vardon – was appointed in 1994. Mr Vardon is a councillor with Eurobodalla Shire Council and a member of numerous committees in Eurobodalla.

Ms Clare Whiter – was appointed in February 1999. Ms Whiter is the Country Area Program Resource Centre Officer for Eden Cluster of Schools and she works with the Department of Land and Water Conservation. Ms Whiter is also Secretary of the Eden Port Development Committee, a Director of the Eden Foundation and a founding member of Eden Community Access Centre.

Ms Gwen Prendergast – was appointed in February 1999. Ms Prendergast is a member of Jindabyne Partnerships Committee and owner-manager of Anglers Reach Caravan Park on Lake Eucumbene.

Mr David Bisiker – was appointed in December 2000. Mr Bisiker is the District Operations Manager of the South Coast District, Illawarra Institute of Technology.

Mr Brian Coyte – was appointed in August 2000. Mr Coyte is the Managing Director of South East Printing, President of Cooma Family Support Services, and a member of the Cooma Apex Club and Cooma Unlimited.
Mr Colin Hobson – was appointed on 5 December 2000. Mr Hobson is the Owner-Manager of Wilfred’s Restaurant at Jindabyne. He has been active in small business and tourism in the area and a member of the Lions Club for 14 years.

(Source of all information except appointment dates: SEACC website: www.seacc.org.au.)

Note: Under the Associations’ Incorporation Act 1984, Section 21A, the NSW Government must keep a register of committee members. The Public Officer of the associations is the keeper of this information and must make it available to the public. The Commonwealth does not have this material on record.

(3) To the Department’s knowledge, only two members of South East NSW Area Consultative Committee Board have held public office since January 2000.

(a) Mr Chris Vardon is currently a councillor with Eurobodalla Shire Council and was formerly its Mayor. Mr Steve Farkas is currently a councillor with Bombala Shire Council.

(b) The terms of office for councillors are not recorded by the Department.

(c) Both councillors were elected in local government elections under the conditions prescribed in the NSW Local Government Act 1993.

(4) The Chair of the SE NSW ACC, Mr Greg Malavey, was appointed by the Secretary of the Department. The Secretary of the Department is responsible for appointing ACC Chairs.

(a) Other members of the committee are nominated and appointed in accordance with the rules of the Constitution of the South-East NSW ACC.

(b) The Commonwealth is not involved in the process of assessing ACC committee members nor does it keep historical records of each nominated member. ACC committee members are appointed under the provisions of their constitution.

(c) and (d) Refer to 4(b) above.

(e) The appointment of an ACC member is in accordance with the rules of their Constitution and does not require ministerial endorsement.

(5) (a) and (b) Not applicable, refer to (4) (e) above.

Environment: Kyoto Protocol

(Question No. 530)

Senator Allison asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 7 August 2002:

With reference to the Government’s decision not to ratify the Kyoto Protocol at this time:

(1) What are the implications of this decision for participants in the International Greenhouse Partnerships (IGP) program.

(2) What would be the value of greenhouse gas credits currently held by IGP program investors had Australia ratified the Kyoto Protocol in May 2002.

(3) Is it the case that the IGP program has now closed.

(4) Have any of the businesses involved in the IGP program initiated legal action against the Commonwealth for breach of contract; if so, can details be provided.

(5) Which, if any, of the businesses involved in the IGP program have since moved off-shore.

(6) What are the estimated job and revenue losses to the Commonwealth from such relocations.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) The IGP program provided an opportunity for Australian organisations to gain experience in the establishment of international collaborative projects in advance of credit generating mechanisms coming into operation. The decision not to ratify Kyoto at this time does not affect that experience.

(2) IGP program investors do not currently hold credits arising from their IGP participation. IGP projects were undertaken as Activities Implemented Jointly under the United Nations Framework Convention on Climate Change. There is no provision for the generation of credits under the Activities Implemented Jointly pilot phase.
(3) No new projects are being funded under the IGP Program, but Deeds of Agreement between the Commonwealth and businesses participating in IGP projects approved before the IGP Program closed to new projects continue to be administered by the Department of Industry, Tourism and Resources.

(4) to (6) None that have been brought to the Government’s attention.

Trade: GATS Treaty
(Question No. 533)

Senator Brown asked the Minister representing the Minister for Trade, upon notice, on 8 August 2002:

(1) What steps, if any, does the Government intend to take towards giving a commitment: (a) to begin, without delay, a campaign of informing the Australian public, in practical terms, about the implications of the General Agreement on Trade in Services (GATS) treaty; and (b) to maintain the public dissemination of information as stages in the completion of GATS occur.

(2) (a) Is the Minister aware of the view that, while Australia is a signatory to the GATS treaty the threat perceived as implicit to the integrity and sovereignty of national Parliament is paramount; and (b) how can the Government sustain its decision to continue its membership of GATS, when foreign investors propose to sue the Government, through the World Trade Organization, on the grounds of claims that government legislation or regulations were ‘more burdensome that necessary’, as stated on the Australian Broadcasting Corporation’s program, Background Briefing, on 23 June 2002.

Senator Hill—The Minister for Trade has provided the following answer to the honourable senator’s question:

(1) (a) The Government is keeping the Australian community informed about progress in the GATS negotiations, and regularly provides opportunities for public input and views on Australia’s negotiating positions. The Minister for Trade chairs the WTO Advisory Group comprising experts from industry, non-government organisations, trade unions and academia, which meets regularly to provide advice on Australia’s interests across the whole WTO agenda including GATS. The Minister has also twice recently called for public submissions on the WTO negotiations, in July 2001 and again in April 2002. The Minister’s press release on 1 July 2002 also provided a detailed overview of Australia’s initial GATS requests.

In addition the Department of Foreign Affairs and Trade conducts broad based consultations with industry, NGOs and community groups in the development of Australian negotiating positions for the WTO. The DFAT web site includes a weekly bulletin on the Doha negotiations and regular reports on the GATS negotiations.

(b) The Government will continue to inform and consult with the Australian community as the GATS negotiations unfold, consistent with the need to respect the confidentiality of information provided by other Governments and to able to conduct the negotiations efficiently and in the national interest.

(2) (a) The GATS provides explicitly for the right to regulate by Member Governments, and this right was reaffirmed in Paragraph 7 of the Ministerial Declaration adopted in Doha on 14 November 2001. Any amendments to Australia’s GATS commitments will be subject to the standard treaty review processes of the Parliament.

(b) As with all WTO treaties, the GATS only confers rights on Member Governments: The private sector has no standing and no legal rights in the WTO and cannot launch a dispute to “sue” member governments.

Environment Protection and Biodiversity Conservation Legislation: Community Consultation
(Question No. 559)

Senator O’Brien asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 19 August 2002:
(1) What mechanism is in place for consultation with the community prior to the listing of threatened species and ecological communities under the Environment Protection and Biodiversity Conservation Act 1999.

(2) What changes have occurred to that mechanism for consultation in each of the following financial years: a) 2001-02; and b) 2002-03.

(3) (a) When did the ‘new arrangements’ for consultation with the National Farmers’ Federation, advised by the Minister in his speech to AgForce 2002, come into effect; and (b) what are these new arrangements.

(4) Do these arrangements include the provision of funding for a full-time position based at the National Farmers’ Federation; if so: (a) what costs of employment, including related costs, are funded by the Commonwealth; and (b) for what period.

(5) (a) What arrangements are in place to consult with other rural groups and industry organisations prior to the listing of threatened species and ecological communities under the Act; and (b) if no arrangements are in place with other rural groups and industry organisations, why not.

(6) Will the Commonwealth fund employment positions at rural groups and industry organisations other than the National Farmers’ Federation for the purpose of enhancing industry consultation relating to the Act.

(7) What arrangements are in place to consult with environmental groups prior to the listing of threatened species and ecological communities under the Act; if no arrangements are in place with environmental groups, why not.

(8) The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

In April 2002, the Department implemented a new process for the public notification of new nominations for listing threatened species, ecological communities and key threatening processes, under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). Prior to April 2002, the Register of Interested Parties was the mechanism for public consultation. Under this arrangement, organisations and individuals were invited, through the national press, to register their interest in receiving information on public nominations. Following this call, a Register of Interested Parties was established whereby only those people or organisations who had registered an interest were listed on the Register and received notification of new nominations. The process implemented in April 2002 involves placing all new nominations on the Environment Australia website for two months so that all members of the public may gain access to relevant information and provide advice or comments to the Threatened Species Scientific Committee (TSSC) on listing nominations. Anyone wishing to comment on a nomination will be able to download the nomination directly from this website. In addition, letters from Environment Australia are sent to relevant state agencies, peak industry, and rural and conservation groups informing them of the nominations.

This comprehensive approach to consultation will enhance the transparency of the consultation process and will ensure that nominations are freely available to all interested individuals and organisations.

In addition to the arrangements relating to consultation on new listings, the Commonwealth has offered to fund a full-time position, including associated employment costs, for a period of 12 months based at the National Farmers’ Federation (NFF) to ensure effective communication and information about the EPBC Act.

The consultation arrangements described in (1) (2) and (3) above are applicable to all interested individuals and organisations, and apply equally to all rural groups and industry organisations. (b) not applicable.

Commonwealth funding has been offered to the NFF as a peak national organisation representing rural interests. It is expected that the NFF will liaise with other rural interest organisations to ensure effective communication and information about the EPBC Act to all rural landholders.
(7) The new consultation arrangements described in (1) (2) and (3) above are applicable to all interested individuals and organisations, and apply equally to environmental groups.

(8) The Commonwealth provides funding support to the World Wide Fund for Nature, the Humane Society International and the Tasmanian Conservation Trust to operate an EPBC Unit to raise community awareness about the EPBC Act.

Aurora Australis

(Question No. 566)

Senator Chris Evans asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 19 August 2002:

(1) Has the *Aurora Australis* been used in any civil surveillance operations; if so, what use was made of the ship, and in what month was the ship used.

(2) Is there any arrangement, formal or otherwise, between the Australian Antarctic Division and Customs, Coastwatch or Defence for the patrol or surveillance capabilities of the *Aurora Australis* to be used; if so, can details of the arrangements be provided.

(3) Have any of the other vessels or helicopters chartered by the Australian Antarctic Division been tasked by Coastwatch, or used in any way, as part of Australian civil surveillance operations; if so, can the following information be provided: (a) the dates; (b) the type of vessels and helicopters; and (c) the nature of the support supplied.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the Senator’s question:

As a general rule, it would be inappropriate to make public details of Australia’s surveillance operations. Notwithstanding this, the answers to the Senator’s questions are:

(1) No.

(2) No.

(3) No.

Environment: Climate Change

(Question No. 572)

Senator Brown asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 21 August 2002:

With reference to Australia’s Third National Communication on Climate Change 2002:

(1) Which ‘known projects’ are included in the projections for stationary energy sector emissions.

(2) What other ‘significant energy intensive major projects’ are projected or planned which have the potential to increase the projection.

(3) (a) What proportion of electricity generation is generated from gas at present; and (b) what factors will influence the assumed 13 percent contribution of gas by 2010.

(4) (a) What effect will Basslink have on greenhouse gas emissions; and (b) will it have the effect of increasing brown coal emissions and reducing gas generation.

(5) (a) How much hydro-electricity was generated in 1990; (b) how does this compare with the baseline amount used for the mandatory renewable energy targets (MRET); and (c) how does this affect the projected savings under MRET in 2010.

(6) What measures will the Minister take to reform the energy market so it does not favour brown coal for electricity generation.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) The projections for stationary energy published in the Third National Communication were derived from a combination of top down and bottom up models.

The top down models used in developing the projections use aggregated data, and therefore do not account explicitly for individual projects.
The bottom up modelling used in the projections utilise the energy demand projections from ABARE that were current at the time the work was undertaken (Australian Energy: Market Developments and Projections to 2014-15, ABARE Research Report 99.4). Inclusion of major projects is therefore consistent with the listing of key major projects assumptions set out in Table 8 on page 38 of ABARE Research Report 99.4.

(2) The Third National Communication reports a ‘high scenario’ for stationary energy emissions at 2010 of 145% of 1990 emissions. This estimate is consistent with a range of ‘significant energy intensive major projects’ beyond those included in the ‘best estimate’ projection. However, given the nature of the projections methodology, a list of potential additional major projects associated with the high scenario is not available.

(3) (a) Currently, the share of electricity generated using gas is estimated at around 8 per cent. (b) Factors influencing the 13 per cent contribution of gas in electricity by 2010 include the underlying rate of growth in demand for energy, commercial considerations relating to decisions on electricity infrastructure (in part driven by the price of gas, and hence the extent of investment in new gas fields and supply infrastructure), and the impact of policies on commercial decisions relating to energy infrastructure.

(4) (a) Modelling of the impacts of Basslink on greenhouse gas production in the National Electricity Market indicate a range of possible outcomes, from a small reduction, to a small increase, in the order of 0.5%, depending on the scenario chosen. (b) A Joint Advisory Panel (JAP), which was appointed by the Victorian, Tasmanian and Commonwealth Governments to undertake an integrated assessment of the environmental, economic and social effects of Basslink, concluded that the modelling and range of scenarios considered was appropriate. The JAP also concluded that it is not possible to be more definitive as to the actual outcome, as it would depend on a wide range of factors including electricity demand growth, developments in the electricity market and in electricity generation and transmission, and also developments in greenhouse policies and programs.

(5) (a) According to Australian Energy: Projections to 2014-15: ABARE Research Report 99.4, there was 55.6 PJ (15 444 GWh) of gross electricity generation from hydro sources in 1990. (b) The 1990 figure is not comparable to the 1997 Eligible Renewable Power Baseline used for the MRET. The 1997 Baseline is representative of the amount of renewable generation for ‘typical’ conditions for 1997, given the configuration of participating power plants as at 1 January 1997. (c) The 1990 figure has no impact on the projected savings under MRET at 2010.

(6) On 8 June 2001, the Council of Australian Governments (COAG) agreed to a national energy policy framework with a key national energy policy objective of mitigating local and global environmental impacts, notably greenhouse impacts, of energy production, transformation, supply and end use. The Ministerial Council on Energy (MCE), which is chaired by the Commonwealth, is currently considering a number of priority issues as part of its ongoing work program to deliver on the framework objectives.

The national energy policy framework is being supported by a Commonwealth instigated high-level independent strategic review of medium to longer-term energy market directions. This strategic review is assessing among other things the relative efficiency and cost effectiveness of options within the energy market to reduce greenhouse gas emissions from the electricity and gas sectors. A final report on the Review’s findings is expected to be released in December 2002, and its recommendations are expected to guide future energy policy decision-making.

CUSTOMS: VESSELS

Senator Ludwig asked the Minister for Justice and Customs, upon notice, on 21 August 2002:

(1) How many Australian Customs Service vessels are currently deployed in: (a) Townsville; (b) Cairns; (c) Darwin; and (d) Broome.

(2) What is each vessel’s size, displacement and crew number.

(3) What are the official stated tasks of these vessels and crews.
(4) Are the crews of these vessels required to perform any duties or tasks normally performed by any other Commonwealth or state departments and agencies; if so: (a) how is the Commonwealth reimbursed for these ‘other duties’; and (b) can the memoranda of understanding outlining these agreements be provided.

Senator Ellison—The answer to the honourable senator’s question is as follows:

(1) Australian Customs Service vessels are currently deployed out to and sometimes beyond the 200 nautical mile Exclusive Economic Zone anywhere around Australia’s 37,000 kilometre coastline. The tasking and deployment of these vessels is governed by a range of factors including coastal demographics, international marine activity levels and past history of illegal activities.

With the current focus on northern operations the majority of the fleet is operating between Broome and Townsville and Cairns where greater maintenance and support infrastructure exists. These vessels also conduct regular port visits to Broome and Townsville for crew changeovers, refuel/resupply purposes or to embark representatives from tasking client agencies.

(2) Customs “Bay” Class vessels have a measured length of 34.95 metres, a displacement of 112 tonnes, and a nominal crew of eight. However, depending on operational requirements up to 12 crew members may be embarked.

(3) Deployment of Customs vessels is made in response to a diverse mixture of taskings initiated by Federal, State and Local Government agencies. Taskings range from those of a highly sensitive nature to those encompassing the provision of a Customs strategic presence in areas of operational interest. “Bay” Class vessels are tasked to:

- Respond to breaches or suspected breaches of Australia’s border and assist clients in enforcing legislation such as Customs, Fisheries, Immigration and Quarantine;
- Conduct operations in areas of interest for research and environmental organisations;
- Maintain an operational presence in areas designated as ‘high risk’ by Government or by clients;
- Conduct community participation activities and public awareness programs on behalf of Customs; and
- To gather information relevant to border risk assessment.

(4) In addition to enforcing the Customs Act 1901, Customs marine crew are authorised and regularly enforce Federal Fisheries, Migration and Quarantine laws. A number of Customs marine crew are also authorised to act as park wardens on behalf of Environment Australia. Customs has an agreement in place with Environment Australia for the provision of on-site park management and protection services in the Ashmore and Cartier Islands Marine Reserve. (a) Under this agreement Environment Australia pays Customs direct for these services. Customs is directly budget funded to provide a range of services to other Commonwealth and State agencies. (b) A copy of the agreement for payment of services by Environment Australia to Customs will be provided to the honourable senator’s office. As indicated because of budget funding for Customs vessels, there are no agreements with other agencies for payment of services.

Health and Ageing: Morbidity and Mortality

(Question No. 579)

Senator Allison asked the Minister for Health and Ageing, upon notice, on 27 August 2002:

With reference to the 1998 study by S. Hollins (et al), Mortality in people with learning disability: risks, causes, and death certification findings in London, which indicates that people with moderate and more severe levels of developmental disability die 20 to 30 years younger than the general population and are 58 times more likely to die before the age of 50:

(1) Has any such study been undertaken in Australia; if so, did the findings match those of the United Kingdom (UK) study; if so, does the Government consider that such early death and high levels of unrecognised and poorly managed disease are acceptable.

(2) Is the Government aware that a 1996 survey of Australian General Practitioners (GPs) indicated that 89 per cent of GPs felt it was difficult to gain a complete history from people with a develop-
mental disability and that over 75 per cent of GPs considered themselves inadequately trained to care for people with a developmental disability.

(3) Will the Government establish and fund national medical training schemes for specialised practice in developmental disability.

(4) Will the Government consider adopting the World Health Organisation’s health targets for this population.

(5) Will the Government consider recognising this group as people who have chronic and complex health needs by using the health assessment descriptors under the Enhanced Primary Care Initiatives for General Practice, and by including them in generic health promotion research and campaigns.

(6) Will the Government consider setting up a national register of people with intellectual disabilities, as the UK has done.

Senator Patterson—The answer to the honourable senator’s question is as follows:

(1) Yes, the Government is aware that a small study has been undertaken in Australia, although due to its size this may not be directly comparable to the study done in the United Kingdom. Morbidity and mortality from any condition due to lack of recognition and poor management by health professionals would be considered as unacceptable to the Government.

(2) The findings of this study were reported in the Journal of Intellectual Disability Research in 1997.

(3) It is not clear that the establishment of separate specialised practice in developmental disability would be the most effective method for ensuring better health care of people with developmental disabilities. A core unit of general paediatrics is training in community child health. Training in this unit includes comprehensive exposure to developmental disability, including skills in assessment and early intervention. Increasingly, paediatric trainees are working in the community with general practitioners, psychologists, other allied health professionals and care providers to design and manage appropriate programs for children and adolescents presenting with a range of disabilities.

(4) There are currently no ratified World Health Organisation (WHO) health targets for people with disabilities. The Government is aware that draft health targets have been proposed to the WHO.

(5) The Enhanced Primary Care (EPC) health assessment items are designed to encourage and enable more preventive care for older Australians, including people who may be in good health. These items are available to people who are aged 75 years and over (or 55 years and over for Aboriginal and Torres Strait Islander people). Health assessments are not suitable for younger people with chronic conditions and complex health needs.

The EPC Medicare items also include multi-disciplinary care planning and case conferencing items which are available for people of any age, with a chronic or terminal condition and complex needs, requiring care from a multi-disciplinary team. People with developmental disabilities are eligible for care planning and case conferencing services, when they have complex needs requiring care from a GP and at least two other care providers. Care planning enables the total care of the person, including preventive care, to be planned and coordinated by, or in consultation with, a GP. This provides a better mechanism for ensuring total care than the health assessment, which has been designed for older Australians.

The Government is aware of research undertaken by organisations such as the University of Sydney’s Centre for Developmental Disability Studies, the University of Queensland’s Centre for Primary Health Care and the Spastic Centre in New South Wales into the health care of people with developmental disabilities.

(6) The Government is not considering setting up a national register for people with intellectual disabilities at this stage.

Environment: Mundulla Yellows Disease

(Question No. 587)

Senator O’Brien asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 28 August 2002:

With reference to the answers to questions on notice Nos 497 and 498 (Senate Hansard, 26 August 2002, p. 3556):
(1) Can the Minister provide advice on the known impact of Mundulla Yellow disease, if any, on vegetation in: (a) each region of South Australia; and (b) each state and territory.

(2) (a) What is the total Commonwealth funding for research on Mundulla Yellow disease in the 2002-03 financial year; and (b) from what program is that funding sourced.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) The full impact of Mundulla Yellows is unknown for any region, state or territory.

(2) The Commonwealth is committed to spending $66,000 on Mundulla Yellows Research in the financial year 2002-03. The money comes from the Bushcare Program of the Natural Heritage Trust.

Human Rights: Nigeria

(Question No. 602)

Senator Stott Despoja asked the Minister representing the Minister for Foreign Affairs, upon notice, on 30 August 2002:

(1) What measures, if any, is the Government taking to prevent the planned execution of Nigerian woman, Ms Amina Lawal, a sentence passed for having a child outside marriage.

(2) Is the Minister aware that as of 29 August 2002, more than 100 000 people have signed an online open letter to the President of Nigeria calling for this sentence to be overturned, and for the human rights of the citizens of Nigeria to be respected.

(3) Is the Government working with the Nigerian Government in any way to end the barbaric execution process of death by stoning.

Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:

(1) On 29 August 2002, I (Downer) met with the Nigerian High Commissioner, Dr Rufai Soule, and on 6 September the Prime Minister wrote to Nigerian President Obasanjo. Both of these representations were used to convey the deep concern of the Australian Government and people at the sentencing to death by stoning of Amina Lawal, to emphasise that the Australian Government considered death by stoning a cruel, inhumane and degrading practice, and to call on the Federal Government of Nigeria to ensure that action is taken to prevent the violation of international human rights standards that the execution of this sentence would represent.

(2) I am aware of the widespread public expressions of concern both in Australia and in the international community that this sentence has generated. The Government has added its voice to this chorus by making strong statements opposing the sentence in the Australian and international media, and to the Nigerian authorities.

(3) Australia has worked consistently through multilateral fora, as well as through bilateral channels, to address the question of capital punishment, including with Nigeria. Australia has been a co-sponsor of Resolutions at the United Nations Commission on Human Rights and the United Nations General Assembly calling for the abolition of the death penalty. By keeping its views before the Nigerian Government through regular bilateral representations, Australia helps to ensure that Nigerian leaders remain aware of international opposition to practices which breach internationally accepted human rights standards.

Agriculture, Fisheries and Forestry: Superannuation

(Question No. 615)

Senator Sherry asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 30 August 2002:

(1) For each department within the Minister’s portfolio, how is superannuation calculated (i.e. 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 the ar-
arrangement so as to reduce the base upon which superannuation is calculated, what proportion of employees do this.

**Senator Ian Macdonald**—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

1. The Department of Agriculture, Fisheries and Forestry has advised that it calculates superannuation in accordance with the Superannuation Act 1976, the Superannuation Act 1990, or the Superannuation (Productivity Benefit) Act 1988 and the Regulations or Rules which append to the relevant Legislation.

Accordingly, the superannuation salary comprises base salary and any allowance or fee which the Regulations or Rules determine are to be treated as salary. The calculations do not include overtime payments or performance bonuses.

2. Employees are unable to opt out of the relevant Legislative arrangements that determine the salary on which superannuation is calculated.

**Health and Ageing: Superannuation**

(Question No. 618)

**Senator Sherry** asked the Minister for Health and Ageing, upon notice, on 30 August 2002:

1. For each department within the Minister’s portfolio, how is superannuation calculated (i.e. 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 Patterson**—The answer to the honourable senator’s question is as follows:

1. Superannuation is calculated on base salary and the following allowances recognised in accordance with the Superannuation (CSS) Salary Regulations 1978:
   (a) Higher Duties Allowance
   (b) First Aid Allowance
   (c) Departmental Liaison Officer Allowance
   (d) Restriction Allowance

2. The Department of Health and Ageing does not calculate superannuation on a broader basis and does not allow staff to opt out of the superannuation arrangement.