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

TEMPORARY CHAIRMEN OF COMMITTEES

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

PETITIONS

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

Education: Deregulation

To the Honourable the President and Members of the Senate in Parliament assembled:

The Petition of the undersigned university student shows, that Australia does not have a bill of rights. However, we are signatories to many international conventions on human rights including The International Covenant on Economic Social and Cultural Rights. I know the current government would rather ignore international human rights, such as refugee rights and the right to strike.

I deplore this current government’s attitude on this issue. I note that this government is attempting to deregulate university fees and HECS. I also note that this government wishes to rationalise university courses and will attempt to thwart the ability of university staff to agitate for anything that resembles uniform working conditions.

I draw your attention to Australia’s obligations under article 13 of the ICESCR where it states—

Article 13

1. The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The, development of a system of schools at all levels shall be actively pursued, an adequate fellowship system be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Your Petitioner asks that because governments cannot be trusted to maintain this right—that the Senate should enact this right into law as part of an Australian Bill of Rights.

by Senator Nettle (from 165 citizens).

Petition received.
NOTICES

Presentation

Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) the week beginning 20 October 2002 is Carers Week,

(ii) there are 2.3 million people in our community who care for a relative or friend who has a disability, mental or chronic illness or who is frail aged, and

(iii) carers provide 74 per cent of care needs to people requiring care, saving health and community care systems around $20 billion per year;

(b) congratulates:

(i) carers around Australia for their selfless support of family and friends, and

(ii) Carers Australia for its work to have carers recognised for their contribution; and

(c) urges the Federal Government to seriously consider ways to offer further support to carers who often feel isolated in the community.

Senator Tierney to move on the next day of sitting:

That the Senate—

(a) recognises that the Federal Coalition Government has increased investment in education each year, with $2.4 billion being provided for public schools in 2002-03, an increase of 5.7 per cent over the past year and a 52 per cent increase since 1996;

(b) expresses alarm that New South Wales state government spending on education currently lags $318 million a year below the Australian national average;

(c) notes that New South Wales primary schools have the worst student-to-teacher ratios in Australia and some of the largest class sizes in the country;

(d) further notes that the Vinson report into public education demonstrates the under resourcing of the public education system in New South Wales by the Carr Government; and

(e) congratulates New South Wales Opposition Leader, John Brogden, who vowed on 24 September 2002 to spend more on public schools and backed the need to reduce class sizes.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.31 a.m.)—I move:

That the following government business orders of the day be considered from 12.45 p.m. till not later than 2 p.m. today:

No. 6 Treasury Legislation Amendment Bill (No. 1) 2002,

No. 7 Taxation Laws Amendment Bill (No. 3) 2002, and

No. 8 Education Services for Overseas Students Amendment Bill 2002.

Question agreed to.

NOTICES

Presentation

Senator TCHEN (Victoria) (9.32 a.m.)—I give notice that, at the giving of notices on the next day of sitting, I shall withdraw business of the Senate notice of motion No. 1 standing in my name for 11 sitting days after today relating to the disallowance of regulations Nos 65.060 and 65.270 in item 1 of schedule 1 of the Civil Aviation Amendment Regulations 2002 (No. 2), as contained in the Statute Rules 2002 No. 167 made under the Civil Aviation Act 1988. I seek leave to incorporate in Hansard the committee’s correspondence concerning these regulations.

Leave granted.

The correspondence read as follows—

Regulations 65.060 and 65.270 in item [1] of Schedule 1 of the Civil Aviation Amendment Regulations 2002 (No.2), Statutory Rules 2002 No. 167

22 August 2002

The Hon John Anderson MP

Minister for Transport and Regional Services

Parliament House

CANBERRA ACT 2600

Dear Minister

I refer to the Civil Aviation Amendment Regulations 2002 (No. 2), Statutory Rules 2002 No. 167
and make two observations about these Regulations.
Regulation 65.060 prohibits carrying out an unauthorised flight service function. This is a strict liability offence. It is interesting to compare this with regulation 65.045 which prohibits carrying out an unauthorised air traffic control function. There is a defence to a charge under this regulation where the relevant action was reasonable in the interests of safety of aerial navigation. No comparable defence is supplied for regulation 65.060.

Secondly, paragraph 65.270(1)(d) provides that CASA may cancel or suspend a licence (etc) if the holder “appears not to have the characteristics of personality, and other psychological attributes” that are necessary to carry out the duties of an air traffic controller or flight service officer. It is not clear how this paragraph is to be applied. For example, what criteria are to be used in determining a person’s personality characteristics? The Committee would appreciate some clarification of this matter.

In addition, the Committee has received correspondence concerning the regulation of civil aviation in Australia through the adoption of a Manual of Standards that is not subject to parliamentary scrutiny. The Committee notes that these Standards may be amended from time to time and seeks advice on the steps CASA takes to ensure interested persons are aware of proposed changes and the impact they will have on them.

The Committee would appreciate your advice on these matters as soon as possible, but before 16 September 2002, to enable it to finalise its consideration of this instrument. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG 49, Parliament House, Canberra.

Yours sincerely,
Tsebin Tchen
Chairman

Senator Tchen
Chairman
Senate Standing Committee on Regulations and Ordinances
Room SG 49
Parliament House
CANBERRA ACT 2600
28 Sep 2002

Dear Senator Tchen
Thank you for your letter of 22 August 2002 concerning Civil Aviation Amendment Regulations 2002 (No. 2) and Statutory rules 2002 No. 167.

**Regulation 65.060—Carrying out of flight service function without authority**

The omission of a defence to a charge of carrying out an unauthorised flight service function on the grounds the action was reasonable in the interests of the safety of aerial navigation was an oversight. This omission was not detected prior to making of the Regulation.

I agree that such a defence should be included, and undertake to amend Part 65 accordingly at the earliest opportunity.

**Paragraph 65.270(1)(d)—Cancellation of licence on grounds of characteristics of personality and other psychological attributes**

It is a requirement for the issue of an Air Traffic Controllers (ATC) licence that the applicant for the licence possesses characteristics of personality and other psychological attributes necessary to carry out the duties of an air traffic controller safely and efficiently.

This condition must be satisfied by the holder of the licence and paragraph 65.270(1)(d) provides the Civil Aviation Safety Authority (CASA) with a power to cancel, suspend or vary an ATC licence should its holder fail to meet this condition.

Given the broad spectrum of human psychological behaviour, it was decided not to set out an exclusive list of psychological or personality characteristics that would automatically trigger a suspension or cancellation of an air traffic service licence.

Nevertheless, regulation 65.070(2) provides that alcohol or drug abuse are relevant matters which CASA may take into account in the assessment of an application for an ATC licence, and would also therefore be relevant in the determination of cancellation action under regulation 65.270.

There are however, potentially other behaviours and characteristics, which might be of concern in a person with as critical a safety role as an air traffic controller. Examples may include depression or suicidal tendencies, or obsessive, reckless or impulsive behaviours.

On receipt of information of a licence holder exhibiting serious behavioural problems that potentially affects the safe provision of air traffic services by that person, CASA would consider initiating assessment action. Only suitably qualified personnel, such as medical examiners or clinical psychologists, would conduct such assessments.
CASA would not suspend or cancel a licence for psychological or personality reasons unless it has professional advice indicating that suspension or cancellation is necessary for aviation safety.

**Procedures for amending a Manual of Standards**

At the outset, I would like to assure the Committee that amendments to a Manual of Standards (MOS) will be subject to a robust consultation process with persons affected by the proposed changes.

The MOS is a CASA policy document that supports a particular regulation. It contains essential technical standards, specifications and requirements of a non-regulatory nature considered necessary for aviation safety.

CASA has established a procedure for amendments to a MOS, which is documented in the Standards Development and Rule Making Manual, Chapter 12, ‘Legislative Supporting Material (Procedures)’, Section 12.4, ‘Developing/Amending a MOS’ Amendments to a MOS will be referred to the Office of Regulation Review for Regulation Impact Statement determination.

The magnitude and impact of a proposal for change to a MOS will determine the degree of consultation necessary with the various stakeholders. Generally, consultation on MOS changes will be effected using the Notice of Proposed Change (NPC) process, which will be structured in a similar manner to CASA’s current Notice of Proposed Rule Making (NPRM) process.

All proposed amendments to a MOS will be exposed to the affected parties via the NPC process, with comment on any proposed changes specifically sought from:

- industry associations/organisations
- industry/aviation community
- unions
- staff
- other parties likely to be affected by the changes eg. local authorities, governments, communities etc.

Following the consultation period, all comments received will be considered by a joint CASA/industry evaluation group, disposition actions determined and the MOS duly amended.

The amended master version of the MOS will be published on CASA’s website and an amendment service initiated, to ensure all holders of a paper MOS are duly informed and supplied with the changes.

In conclusion, I would like to assure the Committee that amendments to a MOS will only take place after interested persons have been made aware of proposed changes and their impacts.

Yours sincerely

(signed)

John Anderson

**BUSINESS**

**Rearrangement**

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.32 a.m.)—by leave—I move:

That the routine of business for today shall be—

(a) from not later than 4.30 pm, consideration of the following government business orders:

- No. 2 Space Activities Amendment Bill 2002,
- No. 3 Research Agencies Legislation Amendment Bill 2002,
- No. 4 Plant Breeder’s Rights Amendment Bill 2002;

(b) after the consideration of the government business orders listed in paragraph (a), but not later than 6 pm, consideration of government documents under general business; and

(c) from not later than 7 pm, consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2).

Question agreed to.

**NOTICES**

**Postponement**

Items of business were postponed as follows:

General business notice of motion no. 197 standing in the name of Senator Allison for today, relating to a response by the Australian Competition and Consumer Commission to an order of the Senate, postponed till 23 October 2002.


General business notice of motion no. 199 standing in the name of Senator Brown for

WORLD RETINA DAY

Senator ALLISON (Victoria) (9.34 a.m.)—I move:

That the Senate—

(a) notes that:

(i) Saturday, 28 September 2002, was World Retina Day,

(ii) macular degeneration is an incurable eye disease and is the leading cause of blindness for those aged 55 and older in Australia,

(iii) macular degeneration is caused by the deterioration of the central portion of the retina, causing progressive deterioration of sight from loss of central vision leading to total blindness,

(iv) every year, 10 000 Australians are diagnosed with age-related macular degeneration, and an estimated 20 000 Australians have macular degeneration that can be attributed to their smoking, and

(v) macular degeneration has already robbed nearly 350 000 Australians over the age of 50 of their eyesight, yet there is still very little understanding of or research into the disease; and

(b) calls on the Government to fund research into this condition, for which there is currently no known cure, and support the Macular Degeneration Foundation Australia’s aims to bring dignity, support and education to Australians suffering from this disease.

Question agreed to.

PARLIAMENTARY ZONE

Approval of Works

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.34 a.m.)—I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the Joint House Department to construct a roof extension to the gardeners’ compound, to protect the new vehicle washdown bay from weather.

Question agreed to.

COMMITTEES

Superannuation Committee

Extension of Time

Senator FERRIS (South Australia) (9.35 a.m.)—At the request of Senator Watson, I move:

That the time for the presentation of the report of the Select Committee on Superannuation on tax arrangements for superannuation and related policy be extended to 10 December 2002.

Question agreed to.

GOODS AND SERVICES TAX: PUBLISHING INDUSTRY

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.35 a.m.)—At the request of Senator Stott Despoja, I move:

That the Senate—

(a) notes that:

(i) the 4th Australian Publishers’ Bookshow will be held at the New South Wales Writers Centre on the weekend of 19 and 20 October 2002,

(ii) this is an opportunity to celebrate and encourage local publishing in light of the increasing globalisation of the Australian publishing industry,

(iii) the recently-released 2000-01 Australian Bureau of Statistics survey of publishers found a drop of 19 per cent in the number of new books bought in Australia in this period compared with the previous year, and

(iv) the average publishing business cut staff by 15 per cent in this period and that profits fell by 41 per cent; and

(b) calls on the Government to exempt books from the goods and services tax.

Question negatived.

Senator Brown—Mr President, I would like the Greens’ support for that motion recorded.

AUSTRALIAN RECORD INDUSTRY ASSOCIATION AWARDS

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.36 a.m.)—At the request of Senator Stott Despoja, I move:

That the Senate—
(a) notes:
(i) that the 16th Annual Australian Record Industry Association Awards were held on 15 October 2002,
(ii) that the awards recognise a range of contributions made to the industry, including awards for Best New Artist, Highest Selling Album, Best Children’s Album, Best Independent Release, Best Cover Art and Engineer of the Year,
(iii) that the awards provide an opportunity to showcase the depth and talent of craft evident in the music sector in Australia, and
(iv) the strong presence of female performers in this years winners list;
(b) congratulates the many nominees and winners for their contribution to the Australian music industry; and
(c) calls on the Government to provide continuing support for the Australian music industry.

Question agreed to.

GENE TECHNOLOGY: REGULATION

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.37 a.m.)—At the request of Senator Stott Despoja, I move:
That there be laid on the table by the Minister representing the Minister for Science, no later than 2 pm on Thursday, 24 October 2002:
All documents held by the Office of the Gene Technology Regulator relating to the risk assessment for the Canola trial licence application (Application No. DIR 011/2001) and the decision to approve the licence, including submissions, correspondence, records and minutes of meetings scientific reports, and the risk assessment itself, including any drafts, risk assessment criteria and protocols and memos.

Question agreed to.

HUMAN RIGHTS: NIGERIA

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.37 a.m.)—as amended, by leave—At the request of Senator Stott Despoja, I move the motion as amended:
That the Senate—
(a) notes that:
(i) the Nigerian woman, Ms Amina Lawal, has been sentenced to death for bearing a child out of marriage,
(ii) 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, and
(iii) the Australian Government has conveyed the deep concern of the Australian Government and people to the Nigerian Government on this issue; and
(b) calls on the Australian Government to maintain its advocacy in relation to this issue.

Question, as amended, agreed to.

IMMIGRATION: REFUGEES AND ASYLUM SEEKERS

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.38 a.m.)—I move:
That the Senate—
(a) notes that:
(i) the circumstances that drive people to attempt to travel from Indonesia to seek asylum in Australia are many and varied, and include long waiting periods in Indonesia for the resolution of claims for asylum and long delays in determining a durable solution for those found to be genuine refugees,
(ii) on 19 October 2001 a boat, now identified as ‘Suspect Illegal Entry Vessel X’, carrying 421 passengers and crew including 70 children, sank with the tragic loss of 352 lives, and
(iii) a number of those who lost their lives had close family members in Australia who were undergoing refugee determination or who had been granted temporary protection visas;
(b) acknowledges the concerns raised by this tragedy within the Australian community and expresses its regret at the loss of life; and
(c) asks the Minister for Immigration and Multicultural and Indigenous Affairs (Mr Ruddock) to grant those who have suffered such a loss, whether they are in detention awaiting a decision or are in the community on a temporary
protection visa, a permanent visa on humanitarian grounds.

Question put.
The Senate divided. [9.43 a.m.]
(The President—Senator the Hon. Paul Calvert)

| AYES |  | 10 |
| Noes |  | 41 |
| Majority |  | 31 |

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

NOES
Barnett, G.
Boswell, R.L.D.
Brandis, G.H.
Calvert, P.H.
Campbell, G.
Campbell, I.G.
Carr, K.J.
Colbeck, R.
Collins, J.M.A.
Eggleston, A.
Ferguson, A.B.
Ferris, J.M. *
Forshaw, M.G.
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McLucas, J.E.
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Sherry, N.J.
Stephens, U.
Tchen, T.
Tierney, J.W.
Troeth, J.M.
Watson, J.O.W.
Webber, R.

* denotes teller

Question agreed to.
Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.47 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Vocational Education and Training Funding Act 1992 appropriates funds to support vocational education and training, provided to the Australian National Training Authority (ANTA) for distribution to the States and Territories and for National Projects.

This bill will increase the amount previously appropriated for 2002 by $24.348 million in line with normal price adjustments, giving effect to the Government’s commitment to maintain base funding in real terms under the Australian National Training Authority Agreement 2001 to 2003.

As a result, total funding for 2002 will be increased to $1,055.506 million, including $76.725 million in growth funding, matched by the States and Territories under the terms of the ANTA agreement.

The bill appropriates $1,094.020 million for vocational education and training in 2003. The total figure includes an amount of $12.381 million provided under the Australians Working Together initiative of this Government and a first instalment of $4.545 million to deliver new training opportunities for people with a disability under the Recognising and Improving the Capacity of People with a Disability initiative.

This record level of funding provided to the States and Territories for their vocational education and training systems in 2003 is a demonstration of the Commonwealth’s commitment to a strong national vocational education and training system. This Government believes it is essential to develop a highly skilled workforce to increase the productivity and competitiveness of Australian industry, and to enable individual Australians to fully realise their potential.

It is also essential that our vocational education and training system provides opportunities for all our young people who decide to embark on careers that do not involve university study. Young
people’s decisions need to be respected and nurtured.

It is very pleasing to see that participation in vocational education and training in schools continues to grow. An estimated 170,000 students participated in vocational education and training in schools in 2001. The ANTA funding provided in the bill includes $20 million per annum to assist with the implementation of vocational education and training in schools.

Our commitment to training is further demonstrated in the 2002-03 Budget.

Under measures announced in the Budget we will be providing $33 million over three years, commencing in 2003-04, for vocational education and training to assist people with a disability. This is in addition to the $72 million for vocational education and training provided under last year’s Australians Working Together package, $24 million of which was to provide additional places for people with a disability.

In the Budget the Government has provided $54 million over the next four years for additional New Apprenticeships incentives to encourage employers to employ and retain young people in school-based New Apprenticeships as well as to encourage employers in the field of Information Technology and other emerging highly skilled occupations to take on New Apprentices.

The sustained expansion of New Apprenticeships is clear evidence that they are delivering the types of training that responds to the needs of businesses and are opening up opportunities for more Australians in a wider range of occupations than ever before. The latest figures from the National Centre for Vocational Education Research show that there are a record 333,000 New Apprentices in training.

In an important life long learning initiative the Budget also provides for IT training for older workers. Up to 46,000 older Australians will be assisted through this four year, $23 million initiative. The IT Skills for Older Workers programme will provide training valued at up to $500 to help develop skills to a level that will allow effective participation in today’s workforce. The training will be aimed at people aged 45 years and over who are in the labour force and are welfare dependent but have no previous post-school qualifications in IT.

These measures together with the funding we provide to the States and Territories under the ANTA Agreement 2001-2003 are helping to provide new vocational and training opportunities for many more Australians.

The increased Commonwealth funding provided to the States and Territories through ANTA in 2003 will help ensure that emerging issues such as support for new and emerging high technology industries and the training needs of older workers can be addressed.

Together with the reforms to vocational training that the Government has led, this new funding provides a sound basis for the vocational education and training sector to develop in the year ahead.

I commend the bill to the Chamber.

Debate (on motion by Senator Mackay) adjourned.
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—

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT BILL 2002

This bill reflects the continuing commitment of this Government to securing legitimate title to traditional lands on behalf of the Aboriginal people of the Northern Territory.

The Aboriginal Land Rights (Northern Territory) Act 1976 (which I will refer to as the Land Rights Act) provides a mechanism whereby traditional Aboriginal land in the Northern Territory, referred to in Schedule 1 of that Act, may be granted to Aboriginal Land Trusts to hold title on behalf of Aboriginal people with the agreement of this Parliament. Since the Land Rights Act came into operation in 1977 a total of 64 separate parcels of land have been scheduled under the Act. This amendment will bring the total to 69.

The effect of this bill would first of all be to bring within Schedule 1 of the Land Rights Act four areas of land that were the subject of the Upper Daly (Repeat) Land Claim. The land, situated about 250 kilometres to the south-west of Darwin, not far from the township of Pine Creek was the subject of an agreement between the Northern Territory Government, the Northern Land Council and the claimants. The agreement was entered into on 15 November 1999 and finalised in February 2002 after discussions relating to native title, the granting of other titles to the Northern Territory government and the making of a leaseback agreement in respect of the Umbrawarra Gorge Nature Park Reserve. The area to be scheduled comprises nearly 110,000 hectares.

The bill will also be to bring within Schedule 1 of the Land Rights Act a single block of land, situated some 40 kilometres to the north of Alice Springs, near the Stuart Highway. This scheduling proposal arises from the Government’s decision to provide funding to enable the construction of one of the greatest infrastructure projects in Australian history to proceed, being the Darwin to Alice Springs railway.

Title to this block of land will be granted to the Harry Creek East community. The community’s current land is situated on the old North-South Stock Route and has been rendered unfit for community purposes by its proximity to the Darwin-Alice Springs Railway corridor. Hence the former Government of the Northern Territory agreed to grant the community another parcel of land, located only a few kilometres to the south-east of their current land.

With construction of the Darwin to Alice Springs Railway having now commenced in the area concerned, the Central Land Council, which has jurisdiction over the area, requested that this land (some 450 hectares of vacant Northern Territory Crown land) be granted to the Armpipe Aboriginal Land Trust, on behalf of the members of the Harry Creek East community. The Northern Territory government has agreed to this scheduling proposal.

As a result of the scheduling of these parcels of land, the Aboriginal people concerned will be able to have the full rights of enjoyment of their traditional lands in fee simple, in other words, as freehold title.

This bill is further evidence of this Government’s commitment to land rights and its acknowledgement of the cultural and spiritual importance of land to indigenous Australians. However, while supporting the return of traditional land to its Aboriginal owners, the Government considers that the Land Rights Act is in urgent need of repair because it has not assisted, as it should have, in improving the social and economic position of Aboriginal land owners. The provisions relating to exploration and mining on Aboriginal land are a case in point. There has only been one new mine on Aboriginal land in 25 years. There have been over 1000 applications to explore on Aboriginal land but more than half of those applications remain outstanding.

The Government believes that many traditional owners are interested in the development of their lands but the cumbersome provisions in the Land Rights Act are preventing that occurring. With no circuit breaker in the Act, there are endless negotiations.

The Land Rights Act maintains paternalistic aspects, particularly in relation to Aboriginal people needing to go through a distant land council bureaucracy to manage their own land. Regionalisation of decision making in relation to the Northern and Central Land Councils, and even establishing new Land Councils where people want it, would assist in quicker land use decisions and greater local control.

The Land Rights Act is over 25 years old and has not been substantively amended since 1987. There are continuing calls for changes to the Act, particularly from the Land Councils, ATSIC and Aboriginal communities across the Northern Territory. The Government is currently waiting for the views of the Northern Territory Government and the Central and Northern Land Councils on a
paper canvassing options for reform, which the government circulated to interested parties earlier this year. I am hopeful that I will receive these views in the near future so that reform of the Land Rights Act can be progressed.

As I have said amendments to the Act are long overdue. However, this bill demonstrates that the government is prepared to continue to work with the existing legislation. This is an act of good faith and I ask the other stakeholders and particularly the two major Land Councils and the Northern Territory government to join this government in good faith to reform the Act.

I ask the Opposition to give the matter of amendments to the Land Rights Act priority and to support changes, which will contribute to improving the lives of traditional owners.

There are no financial implications arising from this bill.

I commend the bill to the Senate.

EXCISE LAWS AMENDMENT BILL (No 1)
2002

The Excise Laws Amendment Bill (No 1) 2002 contains amendments to the Excise Act 1901, as well as consequential amendments to the Spirits Act 1906 and the Distillation Act 1901.

The proposed alterations contained in the bill were announced in the Budget and will take effect retrospectively from 7.30pm on 14 May 2002, by legal time in the Australian Capital Territory.

This bill amends the Excise Act 1901 to provide that excise duty on excisable alcoholic beverages is payable on the higher of the labelled alcohol content or the actual alcohol content.

Currently, excise duty is imposed on the actual alcohol content, not the labelled content, of excisable alcoholic beverages.

The Australian New Zealand Food Standards Code allows for a discrepancy between labelled strength and actual strength for alcoholic beverages consumed in Australia. This bill arises from the Government’s concern that certain manufacturers were gaining a competitive advantage by deliberately labelling their products at a higher alcohol content than the actual alcohol content while paying excise duty on the actual content.

Amendments to the Excise Act 1901 will also allow the CEO (Commissioner of Taxation) to determine, by instrument in writing, rules for working out the percentage by volume of alcohol in the beverage. These rules will be able to take into account that in some classes of alcoholic beverage, there may be natural variations in the alcoholic strength of batches of product, which are beyond the control of the manufacturer.

Amendments to the Spirits Act 1906 and the Distillation Act 1901 are consequential to changes to the Excise Act 1901. The amendments remove a previous reference to how the volume of alcohol should be physically measured and substitutes references to the new sections in the Excise Act 1901. The new references provide that excise duty on excisable alcoholic beverages is payable on the higher of the labelled alcohol content or the actual alcohol content, or ascertained in accordance with the rules (if any) for working out the percentage by volume of alcohol in the beverage. These rules may be determined by the CEO, by instrument in writing.

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

I commend the bill.

EXCISE TARIFF AMENDMENT BILL (No 2)
2002

Excise Tariff Amendment Bill (No 2) 2002 contains amendments to the Excise Tariff Act 1921 that are consequential to the amendments to the Excise Act 1901 contained in Excise Laws Amendment Bill (No 1) 2002.

The amendments remove a previous reference to how the volume of alcohol should be physically measured and substitutes references to the new sections in the Excise Act 1901. The new references provide that excise duty on excisable alcoholic beverages is payable on the higher of the labelled alcohol content or the actual alcohol content, or ascertained in accordance with the rules (if any) for working out the percentage by volume of alcohol in the beverage. These rules may be determined by the CEO (Commissioner of Taxation), by instrument in writing.

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

I commend the bill.

NEW BUSINESS TAX SYSTEM
(CONsolidation AND OTHER MEASURES) BILL (No. 1) 2002

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

Consolidation Regime

The Consolidation measure is an important business tax reform initiative that allows wholly-
owned corporate groups to be treated as single entities for income tax purposes. The Consolidation regime will promote business efficiency, improve the integrity of the Australian tax system and reduce ongoing income tax compliance costs for those wholly-owned groups that choose to consolidate.

The majority of the rules for the Consolidation regime were contained in two earlier tranches of legislation. The first, contained in the New Business Tax System (Consolidation) Act (No. 1) 2002, received Royal Assent on 22 August 2002. The second, contained in the New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Bill 2002 was introduced on 27 June 2002. I will refer to these as the May Act and the June Bill, respectively.

The measures contained in this bill deal with outstanding matters necessary for the implementation of the Consolidation regime, which commences on 1 July 2002. For most corporate groups the measures contained in this bill will complete the legislative package required for them to enter the consolidation regime. Further legislation scheduled to be introduced later this year relates to remaining discrete and specialist areas of the consolidation regime such as the special rules for the life insurance industry.

The Consolidation cost setting rules align the cost of membership interests in an entity joining a consolidated group with the cost of the net assets of that entity. This then allows assets to be transferred within the consolidated group without income tax consequences, and for the group to be treated as a single entity for income tax purposes.

This bill adds to the cost setting rules contained in the May Act and the June Bill by introducing the cost setting rules for the further scenarios where one consolidated group joins another consolidated group and where multiple related entities simultaneously join an existing consolidated group.

The bill also contains modifications to the cost setting rules that remove unintended tax benefits to groups during transition to consolidation as foreshadowed by the Government on introduction of the June Bill. It also contains measures that ensure the cost setting rules in the May Act and June Bill apply appropriately to trusts within consolidated groups and Multiple Entry Consolidated (MEC) groups.

MEC groups are consolidated groups that, instead of being headed by a single resident head company, are headed by a non-resident company. Although the Consolidation regime will apply to MEC groups in the same way as other consolidated groups, this bill contains a number of measures that recognise the special structure of a MEC group.

The bill provides that, in certain circumstances, the head company of a consolidated or MEC group may be replaced without the group’s overall tax position being affected. This amendment supports the regime’s underlying policy rationale that an election to consolidate is irrevocable.

The Consolidation regime, by ignoring intra-group transactions, structurally removes the need for grouping rules in the current income tax law.

The bill contains amendments to remove the grouping rules for foreign tax credits, thin capitalisation, the inter-corporate dividend rebate and capital gains and losses. Foreign bank branches will be able to continue to group with related companies as they are not able to become members of a consolidated group.

The bill also contains additional rules and amendments of a consequential or technical nature.

## Other measures

### Simplified Imputation System

This bill will also make a number of amendments to the new Simplified Imputation System that commenced on 1 July 2002. As such, the amendments will generally apply to dividends paid on or after 1 July 2002.

The bill will amend the Income Tax Assessment Act 1997 to extend exemptions from the benchmark rule for public listed companies. The benchmark rule requires that all dividends paid by a company in the same period be franked to the same extent. These changes will recognise additional situations where dividend streaming is not possible.

This Bill amends the Income Tax Assessment Act 1997 to replicate provisions in former Part IIIAA of the Income Tax Assessment Act 1936 relating to distributions on non-share equity interests that are still relevant to the new regime.

The bill will also amend the Income Tax Assessment Act 1936 to remove the inter-corporate dividend rebate for franked dividends paid after 30 June 2002. The rebate has been replaced by the imputation tax offset.

Finally, the bill amends the Income Tax (Transitional Provisions) Act 1997 to provide transitional rules for the new simplified imputation system in relation to early and late balancing companies.

I commend this bill.
NEW BUSINESS TAX SYSTEM (FRANKING DEFICIT TAX) AMENDMENT BILL 2002

The New Business Tax System (Franking Deficit Tax) Amendment Bill 2002 makes consequential amendments to the New Business Tax System (Franking Deficit Tax) Act 2002 that are required following the commencement of the new simplified imputation system on 1 July 2002. These amendments facilitate the transitional determination of franking deficit tax liability for late balancing companies.

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

I commend this bill.

INSPECTOR-GENERAL OF TAXATION BILL 2002

This bill will establish an independent statutory office of Inspector-General of Taxation. The role of the Inspector-General will be to review tax administration systems and advise the Government on improving tax administration for the benefit of Australian taxpayers.

Establishing the Inspector-General will fulfil the Government’s commitment in the 2001 economic statement, Securing Australia’s Prosperity, to strengthen the advice given to government on tax administration and to promote the advocacy of taxpayer concerns.

The bill provides for the appointment of an Inspector-General of Taxation by the Governor-General for a fixed term of up to five years. The terms of appointment and strict prerequisites for dismissal will ensure that the Inspector-General enjoys a high degree of independence.

The Inspector-General will be able to conduct reviews of tax administration and invite submissions from the public on a matter that is under review. The Inspector-General may initiate a review on his or her own initiative and the Treasury Ministers will be able to direct the Inspector-General to conduct a review.

The bill provides for the Inspector-General to have strong powers to compel production of documents by tax officials and to take evidence from tax officials where this proves necessary. This will ensure that systemic tax administration issues can be rigorously pursued and resolved.

However, the bill will not compromise the absolute independence of the Commissioner of Taxation in the administration of the tax laws. The Inspector-General will not be able to direct the Commissioner other than to require the disclosure of information for a review.

The bill will not affect the powers or functions of other taxation review agencies, including the Ombudsman. The Inspector-General is required to consult with the Ombudsman and the Auditor-General at least once a year. This consultation process is intended to avoid duplication of effort in reviews of tax administration but will not compromise the Inspector-General’s discretion to determine his or her work program.

This bill will not impose any additional obligations on taxpayers nor increase their compliance costs. The compulsive investigative powers of the Inspector-General will not extend to taxpayers, since the Inspector-General will be reviewing systemic tax administration issues and not the tax affairs of individuals or businesses. The bill prevents taxpayers from being identified in reports by the Inspector-General.

Finally, I would like to acknowledge the advice and recommendations the Government received from the Board of Taxation. I would also like to thank those who participated in the public consultation process convened by the Board of Taxation—taxpayer representative groups, the tax advising professions, businesses and individuals. The Government has taken account of community views in the development of the bill and the bill has been heavily influenced by the Board’s recommendations. The bill is, in my view, a better and more robust proposal as a result of the significant input by Board members and the people with whom the Board consulted.

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

Ordered that the Excise Laws Amendment Bill (No. 1) 2002 and the Excise Tariff Amendment Bill (No. 2) 2002, and the New Business Tax System (Consolidation and Other Measures) Bill (No. 1) 2002 and the New Business Tax System (Franking Deficit Tax) Amendment Bill 2002 be listed on the Notice Paper as two orders of the day, and the remaining bills be listed as separate orders of the day.

WORKPLACE RELATIONS AMENDMENT (GENUINE BARGAINING) BILL 2002

Message received from the House of Representatives returning the Workplace Relations Amendment (Genuine Bargaining) Bill
2002, acquainting the Senate that the House has agreed to amendments Nos (1), (2), (3), (6) and (7) made by the Senate, disagreed to amendments Nos (4) and (5) and requesting the reconsideration of the amendments disagreed to.

Ordered that consideration of the message in Committee of the Whole be made an order of the day for the next day of sitting.

MEMBERS OF PARLIAMENT (LIFE GOLD PASS) BILL 2002
Consideration of House of Representatives Message

Message received from the House of Representatives returning the Members of Parliament (Life Gold Pass) Bill 2002, acquainting the Senate that the House has not made the amendment requested by the Senate.

Ordered that consideration of the message in Committee of the Whole be made an order of the day for the next day of sitting.

GREAT BARRIER REEF MARINE PARK AMENDMENT REGULATIONS 2002 (Nos 1 and 2)
Motion for Disallowance

The PRESIDENT—As Senator Harris has not moved his disallowance motion, I advise honourable senators that, in accordance with standing order 78, other senators have the opportunity to take over the notice of motion. This is the last day for the notice of motion to be resolved under the terms of the Acts Interpretation Act 1901. If the notice has not been withdrawn or resolved by the end of today, the instrument will be deemed to have been disallowed. I therefore indicate that, if no other senator advises the chair by 2 p.m. today that he or she wishes to take over the notice of motion, it will be taken to have been withdrawn.

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002
Second Reading

Debate resumed from 15 October, on motion by Senator Abetz:

That this bill be now read a second time.

(Quorum formed)

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.54 a.m.)—The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 was introduced into parliament on 21 March this year, one week after the government introduced its five antiterrorism bills. These six bills formed the bulk of the government’s legislative response to the challenging security environment post 11 September 2001. Now, following the horrific bombings in Bali on 12 October, terrorist violence is no longer just a threat to Australia; it is a reality. The Australian government must act but not overreact. Our response must be strong, measured, proportionate. Australia’s defences against terrorism may need to be strengthened. The Prime Minister has announced a wide-ranging national security review. That is appropriate. For the review to be worth while, it must be based on careful assessment of potential threats, not politically charged rhetoric and alarmist headlines. We must resist the temptation to legislate just to be seen to be acting.

Now, just three days after the Prime Minister’s call for an urgent review of domestic security legislation, we are debating a bill that has been before the parliament since March. Bringing the ASIO bill on for debate today would be prudent if it could somehow help our efforts to track down those responsible for the horrific bombings in Bali. Unfortunately, it will not do that. Make no mistake: the ASIO bill is a controversial bill that will radically change many of the accepted principles of law and policing in Australia. Our most important defences against terrorism are comprehensive and effective laws enforced by properly resourced police, security and intelligence services. ASIO is our most important security and intelligence agency, but Labor is deeply concerned that the secret detention regime proposed by this bill would undermine ASIO’s status in the community and its ability to effectively gather intelligence.

In assessing the government security legislation, Labor has been guided by the desire to protect citizens both from terrorist attack
and from attacks on their rights. We have always regarded the laws underpinning our national security as being of the utmost importance. We consider the protection of the democratic rights and liberties of Australian citizens to be equally important. These principles cannot be traded off against one another. We must be vigilant in taking measures to protect the community from terrorist threats. We must be equally vigilant in protecting civil liberties and democratic freedoms. In June 2002 parliament passed tough new antiterrorism legislation. New offences were created with appropriate penalties, including a life sentence for preparing and planning a terrorist act. At the Press Club on 11 September this year, the Prime Minister said he believed that parliament had got the balance right with the five antiterrorism bills passed by the parliament in June. The opposition shares the Prime Minister’s view, but Labor also stands ready to consider on its merits any further legislation that the government may wish to bring forward.

I would like to turn to the specifics of the bill. The Attorney-General began his 23 September opinion piece in the Australian newspaper with a rhetorical question: should ASIO be given new powers to gather information that could avert terrorist attacks on Australia? It was no surprise that the Attorney-General answered yes to that question. But another question must be asked: should ASIO be given unprecedented new powers to detain in secret Australians who are not suspected of any wrongdoing? That is a serious question raised in this legislation, and Labor’s answer is no. Labor has voted against the ASIO bill in the House of Representatives because, even with the amendments made in the House, it involves radical departures from established legal and human rights principles. Labor will not support laws that attack the same democratic rights and freedoms we are seeking to protect from terrorism.

Under the amended bill, Australians not suspected of any offence could be detained in secret for questioning by ASIO. They may be detained for up to seven days. ASIO has never had powers of coercion and detention before. This is a proposed regime of detention without charge. A person not suspected of any wrongdoing, but detained because they may possess information possibly relating to terrorism, would have fewer rights than a person arrested by the Federal Police on suspicion of murder or treason. Australians detained by ASIO would not have guaranteed access to legal advice for the first 48 hours of detention. Even then, they would have access to government-approved lawyers. They would not be able to confer in private with their lawyer; they would only be able to do so in the presence of an ASIO officer. ASIO would still have the power to detain children aged 14 to 18 years for questioning. Fourteen- to 18-year-olds are recognised as having criminal responsibility under the criminal law, but this bill is not about dealing with criminal suspects; it is about intelligence collection. It provides for detention without charge. This bill goes further than corresponding legislation in other countries facing terrorist threats, like the United States of America, the United Kingdom and Canada.

Labor does share the concerns of many who have spoken out against this bill: that it may establish part of the apparatus of a police state, and that its provisions would not be out of place in a dictatorship. These are real and legitimate concerns, given the assault upon established legal principle contained in this bill. In assessing the government’s other antiterrorism legislation, we have been guided, as I have said many times, by the desire to protect Australians from terrorist attacks and to protect the rights and freedoms of Australian citizens. That is why we insisted on strong and principled amendments to the government’s earlier antiterrorism legislation. That is why we do not support the extraordinary and unprecedented measures contained in this bill.

Australia’s antiterrorism laws may need further strengthening, but this must be based on careful and realistic assessments of potential threats to Australia and the capacity of our police and intelligence services and agencies to meet them. In this regard, the preliminary findings of the US joint congressional intelligence panel’s inquiry into the intelligence warnings prior to the September
11 attacks should be noted. It found that the primary failings of American intelligence agencies were not in the area of intelligence collection or in the area of the adequacy of powers, but failures of analysis. US intelligence and security agencies failed to prevent September 11 not because they lacked coercive powers such as those proposed in the ASIO bill but because they failed to appreciate the significance of the intelligence information which was available to them from a wide variety of sources.

The Labor Party wants ASIO and the Australian Federal Police to hunt down and deal with the terrorists, but only terrorists. We want to protect peaceful, law-abiding Australians from infringement of their rights. Australia’s security and intelligence agencies already have strong capabilities to detect and respond to terrorist threats. ASIO already has extensive intelligence collection powers, including use of telecommunications interception, listening devices, covert searches and inspection of postal articles. ASIO also draws upon intelligence collected overseas by ASIS and the Defence Signals Directorate and through intelligence liaison and sharing arrangements by our major allies the United States, the United Kingdom and many other countries. In addition, the ability of the Federal Police to investigate terrorist activities has been broadened with the enactment of new offences relating to terrorist organisations.

Two parliamentary committees found the ASIO bill would be open to serious abuse. Both described it as one of the most controversial pieces of legislation considered by this parliament in recent years. The Joint Statutory Committee on ASIO, ASIS and DSD made 15 substantive recommendations intended to go towards making this bill more acceptable. The Senate Legal and Constitutional Legislation Committee did not conduct a detailed inquiry into this bill but reserved its right to do so if the government did not accept all of the joint committee’s recommendations. The government’s amendments to the bill do not adequately address the concerns of these two committees. The amendments fall well short of what the joint committee considered the minimum necessary for the bill to be acceptable. Even more importantly, the government still proposes that people not suspected of any offence may be detained in secret for up to seven days. In contrast, under the Crimes Act a murder suspect can be detained by police for a maximum of only eight hours. They must then be charged or released. The proposed detention of nonsuspects is extraordinary and unacceptable.

The government also proposes that a person detained by ASIO will not be guaranteed access to a lawyer until after 48 hours. Even then, they would be allowed to consult with a government approved lawyer only while ASIO is listening. We have to ask ourselves: if the United States, which is the main target of terrorists, can allow citizens who are detained to have access to lawyers, why is it proposed to deny Australians this fundamental right? The detention in secret of persons not suspected of any offence is quite alien to our system of justice. Some consider it as being unconstitutional.

Labor will move to refer the ASIO bill to the Senate Legal and Constitutional References Committee to examine alternative ways of enhancing the capacity of our law-enforcement agencies to counter terrorism without compromising civil liberties. The earlier review by the Senate committee reserved the right to examine the bill in detail if the government did not adopt all of the joint committee’s recommendations. The government has not done so and I think it is appropriate now for the Senate committee to revisit the matter and explore the alternatives. There has been a claim, and a very unfair one, from the Attorney-General that Labor is toying with this legislation at the expense of national security. We have never done that and we never would. We are not toying with it. Labor’s preparedness to deal very seriously with national security legislation was demonstrated for all to see inside this parliament and outside it by our handling of the antiterrorism bills passed by parliament before the winter recess. Our approach was constructive and it was principled. Labor stands ready at all times to consider proposals—any sensible proposals at all—that will help protect Australians and uphold the val-
ues that we all hold dear. This bill does not achieve that. I am therefore moving on behalf of the opposition the second reading amendment which has been circulated in my name:

At the end of the motion, add:

“But the Senate:

(a) notes with concern that:

(i) the Government’s response to the report of the Parliamentary Joint Committee on ASIO, ASIS and DSD is inadequate;

(ii) the Government proposes that, for the first time, Australians not suspected of any offence could be detained by ASIO for questioning;

(iii) the Government proposes those detained by ASIO do not have the right to legal advice for the first 48 hours of their detention;

(iv) the Government proposes children can be detained by ASIO for questioning; and

(v) the Government’s proposals will significantly change the role of ASIO by giving it powers of coercion and detention, and

(b) therefore refers the ASIO Legislation Amendment (Terrorism) Bill 2002, together with the following matters, to the Senate Legal and Constitutional References Committee for inquiry and report by 3 December 2002:

(i) the development of an alternative regime in which questioning to obtain intelligence relating to terrorism is conducted not by ASIO but by the AFP, including appropriate arrangements for detention of terrorist suspects, and questioning of persons not suspected of any offence;

(ii) the relationship between ASIO and the AFP in the investigation of terrorist activities or offences;

(iii) the adequacy of Australia’s current information and intelligence gathering methods to investigate potential terrorist activities or offences;

(iv) recent overseas legislation dealing with the investigation of potential terrorist activities or offences; and

(v) whether the Bill in its current or amended form is constitutionally sound”.

I commend the opposition’s approach to the Senate.

Senator STEPHENS (New South Wales) (10.15 a.m.)—I rise today to speak about the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, which of course we all know was originally proposed as part of the government’s legislative response to the tragic events of September 11 last year. The events of this week have of course brought these issues again to the fore.

Can I say at the outset that any response to terrorism must be very carefully thought out. Terrorist attacks over the past year, and particularly over the past week, have been grave and they have changed the world’s political landscape quite significantly. Australians have not faced a threat like this before; therefore our responses to this threat must be proportionate to its gravity. They certainly must not be ad hoc and they must not be politically motivated. They must consider what it is they are protecting and find the best way to protect it—not the first way that comes to mind, certainly not the most dramatic way or the most publicity effective way but the best way.

At the outset, the question we must ask is: what is it that our antiterrorism legislation is trying to protect? It is to protect Australian citizens from threats to their lives and their freedom. It is intended to enable Australians to live without being fearful of events that they cannot control and it is to make sure that Australia has the legal provisions for taking part in international efforts to stop terrorism.

The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 is not the best way to achieve any of these protections because it has the capacity to become as great a threat to our democracy as that of terrorism. It goes against the vital principles of the rule of law that keep us safe. People have been saying this since World War II, and even before. Prime Minister Menzies said in 1939:
The greatest tragedy that could overcome a country would be for it to fight a successful war in defence of liberty only to lose its own liberty in the process. It is to be expected in a time of crisis in national security that some rights be derogated. But any derogation of citizens’ rights must, according to the United Nations High Commissioner for Human Rights, use precise criteria, not confer unfettered discretion on those charged with their execution, be necessary for public safety or order, conform to the principle of proportionality, and be appropriate to achieve protective function and be the least intrusive instrument amongst those which might achieve that protective function.

The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, as it stands, fails on all these counts. Its criteria are anything but precise and could allow for gross abuses of power. The discretion that is conferred upon ASIO and its prescribed authorities could be described as unfettered, particularly considering the fact that this power is in the arm of the executive and not the judiciary. Prescribed authorities have the power to issue warrants and must be members of the Administrative Appeals Tribunal. These are non-judicial appointments with fixed terms, and reappointment is determined by the government. In other words, these are political appointments who should not have the power to issue warrants to detain people in secret.

Under the current provisions of the ASIO bill, a person can be detained without having committed an offence. Detention of non-suspects is unprecedented in Australia and is not permitted under equivalent legislation in the USA, Britain or Canada. This also amounts to arbitrary action by the executive arm of government. Regardless of how much trust we might have in the current government, there must be protection against future possible abuses of power. It is lunacy to set down the provisions that would enable Australia to effectively become a police state—a state like those that we condemn—simply trusting that it would never happen to us.

The fact that detention can be incommunicado and that a person can be denied access to a lawyer for up to 48 hours is also a serious concern. Proposed section 34F(8) states: A person who has been taken into custody, or detained, under this Division is not permitted to contact, and may be prevented from contacting, anyone at any time while in custody or detention. Incommunicado detention has been widely condemned as a serious human rights violation that often leads to other abuses. Among the recommendations of the parliamentary Joint Committee on ASIO, ASIS and DSD that were not taken up by the government was that the bill be amended to provide for legal representation for people, with a framework for the appointment of security-cleared lawyers. The government proposed an alternative model whereby a person must be provided access to a security-cleared lawyer after 48 hours of detention. This 48-hour period without a lawyer is simply unacceptable, as is the situation of a person being unable to consult with their lawyer, even if he or she is security cleared, without the presence of an ASIO officer. A fundamental principle under international standards requires governments to ensure that all those arrested, detained or imprisoned have the right to communicate with a lawyer in full confidentiality. This 48-hour period without access to a lawyer is an unnecessary provision. There are ways of providing legal representation without compromising an investigation: for example, having a list of independent court appointed lawyers or a list of security-cleared lawyers who can be given immediate access to a detained person. The presence of a neutral third party such as a lawyer places real constraints on the ability of the authorities to treat detainees in any way they want. It is an important safeguard, without which this bill should not be passed.

Proposed section 34 creates offences to do with failing to give information and failing to produce a record or thing as requested by an ASIO officer. The penalty is five years imprisonment. There is a safeguard of sorts in clauses that state that the offences do not apply if the person does not have the information, record or thing. However, the evidential burden is explicitly placed on the defendant. In other words, the onus of proof is reversed. It is up to the accused to prove
that they are not guilty of withholding information, which is absolutely contrary to current standards of law in Australia. Linked to this is the right to silence, which is denied to those detained under this legislation. This is vital to the important concept that the prosecution must prove guilt beyond reasonable doubt.

The committee recommended—and sensibly—that this legislation is not to apply to children under the age of 18. The government has proposed that it will not apply to children under 14 and that children from 14 to 18 years of age can be detained only if they are under suspicion and have a lawyer and a parent or guardian present. This takes no account of the usual distinction under the law in relation to detaining children. Considering the breadth and the extraordinary nature of the new powers proposed to be given under this legislation, the committee also recommended that protocols be developed to govern custody, detention and the interview process and that the act not commence until the protocols are developed and in place. The government has said that the exercise of powers under the act will be delayed until the protocols are in place but that the commencement of the bill will not be delayed. These protocols are vital to ensure that there are standards against which ASIO officers can be measured.

This bill proposes to grant ASIO powers that usually reside in the police force. If ASIO is to be granted police powers, it should be subject to the political and community scrutiny and controls that would apply to any other police force. This would be somewhat difficult in relation to ASIO, considering its primary role as an intelligence-gathering organisation. Community scrutiny and controls would have a worrying impact on the whole secrecy issue. In order to ensure that this legislation is proportionate and appropriate to the threat that we face, there should be, as recommended by the committee, a three-year sunset clause. Without such a clause this bill will not specifically target the current terrorist threat. As George Williams has argued, it will bring about a permanent change to law enforcement in Australia and will entrench the notion that the detention of people who may have useful information is an appropriate tool for the gathering of information about criminal activity. The ASIO bill is not about detaining terrorists; it is about detaining Australians who might have information about terrorist activities. Detention is not the only way to obtain this information and I do not think it is the best way. The United Kingdom’s Terrorism Act 2000, for example, imposes on citizens a positive obligation to disclose information which he or she knows or believes might be of material assistance regarding an investigation into terrorist actions.

This legislation would effectively create a shadow legal system, with none of the legal safeguards of our existing one. It looks like an attempt to allow detention that would otherwise be illegal in Australia and to remove the legal remedies that would usually be open to a person detained in this way. We might ask ourselves: to what extent are these provisions necessary to protect Australians from terrorism? Are there sufficient safeguards? Is this the best way? Any response to the threat of terrorism should have human rights as its unifying objective. This debate has polarised security and human rights, which is completely inaccurate. Human rights standards constitute the bare minimum of standards necessary to protect the safety and integrity of individuals from abuses of power. Human rights standards are not simple legal niceties. Security and human rights do not have to be inconsistent. Freedom should be built into our concept of national security. True security should be based on respect for human rights. We should not join terrorists in treating them as dispensable. This is the test of how well we are responding to the threat of terrorism. The real challenge is to create effective legislation that protects our citizens from abuses of their rights. The ASIO bill, as it stands, fails this test.

Senator LUDWIG (Queensland) (10.28 a.m.)—I rise to speak on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002. Before I set out the arguments that I wish to advance, it is worth noting that, to date, there has been An Advisory Report on the Australian Secu-
The Bill is one of the most controversial pieces of legislation considered by the Parliament in recent times. The Bill, in its original form, will provide for a person to be detained for up to 48 hours incommunicado, without legal representation and the right to silence removed. If further warrants were issued, a person could be detained indefinitely.

I will talk about the recommendations shortly, but it is worth pausing to consider the implications of this bill and what that paragraph provides. Removing rights that have accrued to people over a long period of time is something that this parliament should not do quickly, lightly or without serious consideration. This matter should not pass through this house without serious comment and proper debate. To assist in understanding, it might be worthwhile to set out the purpose of the bill, which was ‘to enhance the Commonwealth’s ability to combat terrorism’, firstly, by amending the definition of ‘politically motivated violence’ in the ASIO Act 1979 to include terrorism offences and, secondly, by giving ASIO special powers. The idea was to extend ASIO’s capacity to obtain intelligence in relation to terrorist organisations which may operate in Australia and could conceivably do horrendous harm.

Those are the principles underpinning the legislation. They are perfectly legitimate and good principles that should be pursued and would ordinarily be accepted and agreed to by me and by the Senate. What has occurred with this ASIO bill, though, is that those premises have been dissected and changed so that the thrust of the legislation has changed to include principles that are not really found in the heading. To put the bill in context, when the issue was first mooted ASIO had identified no present threat in Australia. It is also worth considering that ASIO already has extensive powers to investigate terrorism activities.

Going back to the process that brought us here today, on 21 March 2002 the ASIO bill was referred to the Parliamentary Joint Committee on ASIO, ASIS and DSD, as I have already highlighted, and to the Senate Legal and Constitutional Legislation Committee, which I will speak about further this morning. The reference to the legal and constitutional committee was to look at the ASIO bill after the parliamentary joint committee had tabled its report, and that is what the legal and constitutional committee considered it would do. As a member of that committee, I recall those circumstances if perhaps not all of the dates that go with them. At that time, during the early part of this year, the Legal and Constitutional Legislation Committee was considering in the order of 10 other pieces of legislation, principally those dealing with security issues—‘terrorism bills’, as they are perhaps now colloquially called.

The Legal and Constitutional Legislation Committee considered that it would allow the Parliamentary Joint Committee on ASIO, ASIS and DSD to consider the issue of the new ASIO bill first, as is proper and appropriate. The first, practical, reason for this was the amount of work that was already confronting the Legal and Constitutional Legislation Committee. The second reason was that the joint committee was the appropriate place for that bill to go first for proper scrutiny and consideration. I thought the issue could be revisited at a later time, pending the outcome of the joint committee’s examination of the ASIO bill. The Legal and Constitutional Legislation Committee would not ordinarily rework or go over the contents of another committee’s report. That would be considered by many to be an unnecessary exercise that might generally pose a difficulty for some people. For example, it could cover territory that had already been covered, which would be a waste of calling witnesses and an expense and might also give rise to issues relating to changing circumstances or different reflections by witness to the particular committees. Therefore, it is usually sensible to have one committee examine and report. But in this instance a number of matters arose, some more practical and process orientated and some more legal or constitu-
tionally based in relation to the overall issues, so there was some tension about whether or not the bill should be examined jointly. At the end of the day the committee made what I think was the best decision at the time, given the work pressures: that the parliamentary joint committee would examine the report.

The Parliamentary Joint Committee on ASIO, ASIS and DSD tabled its bipartisan report in June 2002. It made substantive recommendations designed to improve the operation of the bill, provide a better functioning bill and ensure that a balance was found between people’s liberty and security. Those recommendations included:

The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 be amended to include a provision giving the Attorney-General the power, by way of regulation, to nominate an authority that can issue a warrant under the Bill.

On the issue of the period of detention, it provided recommendation 3:

The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 be amended so that the maximum period of detention of a person is no more than 7 days (168 hours), and at the expiry of that period a person must be either charged or released.

The thrust of those amendments was, firstly, to make improvements to the ASIO bill in terms of its procedures, its operation and its effect on the community at large and, secondly, to try to resolve some of the more difficult elements of the bill to ensure that people’s liberty was balanced against the security of this nation. There were 15 recommendations. As I understand it, the government’s response to that could only be described as extraordinarily poor. As I have said, it was one of the most controversial pieces of legislation considered by this parliament in recent times, and one would have expected the government to deal with the report in a more adequate way than it did.

It seems to me that there are sound reasons for recommending that this bill go to the Senate Legal and Constitutional References Committee. Those sound reasons are also supported by the Senate Legal and Constitutional Legislation Committee’s consideration of the legislation. Although the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 is the bill’s proper title, which is a mouthful, I have been describing it, using shorthand, as the ‘ASIO bill’. The report of the Senate Legal and Constitutional Legislation Committee, at paragraph 1.38, said:

In the event that the Government accepts all the PIC’s recommendations, the Committee recommends that the Bill, as amended, proceed without further review by this Committee. In the event that the recommendations are not adopted, the Committee reserves the right to revisit its consideration of this Bill.

It was clear—and, I think, instructive—that the conclusion of the report was, in effect, that this legislation requires further and better consideration if the government is not to provide an adequate and fulsome response to the parliamentary joint committee’s recommendations and report; it leaves a hole that needs to be filled, an area which requires consideration.

These concerns are not insignificant. It is instructive to go to a number of the submissions that were provided both to the Legal and Constitutional Legislation Committee and to the Parliamentary Joint Committee on ASIO, ASIS and DSD. A number of people made, or wished to make, submissions to the Legal and Constitution Legislation Committee about the ASIO bill and, as was proper, we referred them to the parliamentary joint committee for further consideration. It was not a matter that we would then take evidence on and consider. One of those submissions argued that the bill falls into three areas: the process by which special warrants are sought and issued, the execution of the special warrants and offences with respect to those special warrants. Touching on some of those provisions is important to highlight the argument that I have put forward: that the second reading amendment is the best way to proceed with this bill. It is supported by the Senate Legal and Constitutional Legislation Committee report, the parliamentary joint committee’s report and—really, by omission—the government’s failure to respond fully to the parliamentary joint committee’s report.
Touching on some of the issues, the main provisions of the bill—which were highlighted by Senator Kirk earlier but are worthy of touching on again to reinforce the argument that I have put this morning—include item 24, which inserts new division 3, which goes to questioning and the detention power. The way this would work is that the Director-General of Security would be able to seek a warrant from a federal magistrate or a legal member of the Administrative Appeals Tribunal that would require a person to appear before a prescribed authority to provide information or to produce documents or things. These reforms would allow ASIO, before a prescribed authority, to question people who were not themselves suspected of terrorist activity but who might have information that might be relevant to ASIO’s investigation into politically motivated violence.

In Australia there are few examples of this mandatory duty to inform—that is, the power to compel disclosure. This generally occurs in response to subpoenas or summonses as part of court processes. So we find that in royal commissions, in powers exercised by ASIC—the Australian Securities and Investments Commission—or in something like the New South Wales ICAC. The duty to provide information may also arise in response to a request or a production notice as a statutory incidence of an executive power, like—and I am not sure all have experienced this—the Taxation Office or Customs may provide. Ordinarily, though, there are various ways to avoid an executive duty to provide information, and these might go to issues such as the relevance of the request or might involve use of the defence of reasonable excuse or self-incrimination. It usually comes with the right to legal representation in a court. What I have set out are really the ordinary processes—although sometimes they are not that ordinary—that would occur.

This bill seeks to introduce an unusual combination of powers in order to address the threat, or potential threat, of international terrorism in Australia. As the bill stands, it essentially gives the law enforcement function of questioning to an intelligence agency—ASIO—and gives the criminal justice function of detention to nonjudicial persons. It removes or permits the suspension of standard procedural guarantees as to the rights of an accused—privileges against self-incrimination, the right to legal representation. As I understand it, immunities are also dabbled with in this bill. These powers overlap with the ordinary criminal justice system. The bill creates, in effect, a system parallel—one with no safeguards in the bill that are visible to me—to the criminal justice system, which is a system that does have safeguards, a system that people are more familiar with and a system that provides a balance between security and the civil liberties of people.

In relation to the compulsion to answer questions, protection in the form of use or derivative use immunity, as I have said, seems to be lacking. In this bill there is a lack of balance between safety and liberty. That is principally where Labor differ with the government. There is a need for the Legal and Constitutional References Committee to examine that balance, to take the reference in the second reading amendment that Senator Faulkner has moved, to examine and hear submissions and to re-examine the ASIO bill in the broader context of both the legal implications and the constitutional issues that I have raised.

In my view, there is an absence of security in the bill. It may be possible to argue that preventive detention is inconsistent with the separation of powers. It would seem logical that if the federal parliament is to have the authority to make laws for administrative detention—and, indeed, preventive detention—it may be necessary to have some protections. Constitutional implications of the ASIO bill have been raised continually by Professor Williams and others, and these also require considered examination. It is not about trying to argue that there are needs to be addressed in the security legislation; it is about examining it to ensure that we have sound, good security legislation that is considered and well thought through.

Senator KIRK (South Australia) (10.48 a.m.)—I rise to speak today on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002.
This bill has been described as one of the most controversial pieces of legislation considered by this parliament in recent times. In my first speech in this place, I spoke of my commitment to the protection of civil liberties of Australian citizens against government legislation that seeks to unduly or unnecessarily infringe those fundamental freedoms.

In this past week, Australians have suffered one of the most tragic and devastating events in our nation’s history. Of course, I refer to the bombing of the Sari Club on the Indonesian island of Bali. This tragic event followed just a short time after we remembered the first anniversary of the tragic loss of life in the United States on 11 September 2001. Since the events of September 11, Australia’s antiterrorism laws have undergone a much needed update. Before September 11, there were no Commonwealth laws dealing specifically with terrorism; such laws existed only in the Northern Territory. Labor recognised that antiterrorist measures needed to be strengthened. Accordingly, Labor worked with the government to enact appropriate laws. Parliament has now enacted the first round of antiterrorism legislation, following significant amendment by Labor to remove the more draconian provisions of these laws. It cannot be questioned that Australia needs a national legislative response to address terrorist activity. However, new measures must strike an appropriate balance between national security and civil liberties. As Professor George Williams has said, we must not pass laws that undermine the same democratic freedoms we are seeking to protect from terrorism.

The legislation before the chamber today is, as I said, the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, the ASIO bill. In examining this law, it is necessary to ask the fundamental question I posed above—that is, does this law achieve an appropriate balance between national defence and security and civil liberties and human rights? In making this assessment, it should be borne in mind that the protection of national security is not of itself an end. Any diminution of the rule of law or human rights effected by national security legislation must be proportionate to the actual or perceived threat. Professor Williams said:

The case for derogating accepted rights and key elements of our democracy must be fully justified and carefully scrutinised.

Academics and others who have made this assessment of the ASIO bill before us today have concluded that it does not strike an appropriate balance between protection of national security and civil liberties. It is for this reason that Senator Faulkner, on behalf of the opposition, has indicated that the opposition will be supporting the referral of this bill to the Senate Legal and Constitutional References Committee for further examination.

The bill in its current form would authorise the detention of Australians, including children, without charges being laid against them. Australian citizens could be detained by ASIO not because they have engaged in acts of terrorism or are likely to do so but because they may substantially assist the collection of intelligence that is important in relation to a terrorism offence. The bill in its original form would provide that such people could be held without access to legal advice and without the normal right to silence and the right to avoid self-incrimination. A five-year jail term applies for refusing to answer a question, and information may be used in the prosecution of a terrorism offence.

As many other speakers have mentioned, this bill has been referred to two committees of this parliament which have undertaken reports into this bill. There was one report by the Parliamentary Joint Committee on ASIO, ASIS and DSD and a second inquiry by the Senate Legal and Constitutional Legislation Committee. As other speakers have said, both committees found that in its current form the bill would be open to serious abuse as a consequence of the significant increase in unchecked executive power that this bill will confer.

The joint parliamentary committee found unanimously that the bill would undermine key legal rights and erode the civil liberties that make Australia a leading democracy. Despite this sweeping condemnation of the
bill, the committee made only 15 recommendations for amendment to the bill and these were limited to its operational aspects. The committee proposed a number of important amendments, including a seven-day limit on detention, a requirement for representation by security-cleared lawyers of individuals held in detention, and protocols governing detention and interview which will be subject to parliamentary scrutiny. Further, it proposed that there be protection against self-incrimination, that anyone under 18 years of age be excluded from interrogation and detention, that there be accountability and reporting measures in relation to warrants issued and, finally, that a three-year sunset clause be inserted.

The report of the Senate Legal and Constitutional Legislation Committee focused on whether the executive can authorise the detention for questioning of someone not suspected of any offence and whether the issuing of such warrants by magistrates is an exercise of judicial or executive power. The Senate committee recommended that the bill not proceed if the government refuses to accept the recommendations of the joint committee to which I referred. Unfortunately the government has indicated that it supports only 10 of the committee’s 15 recommendations. Time does not permit me to address all of the joint committee recommendations that were accepted by the government, but I will mention a few of them.

Recommendation 1, which was accepted, aimed to ensure that only federal magistrates issue all warrants and federal judges issue all warrants where detention will exceed 96 hours. The original bill authorised members of the Administrative Appeals Tribunal to issue warrants. To have permitted members of the AAT to issue warrants would have established a dangerous precedent because such individuals are now appointed for fixed and limited terms and lack the entrenched independence and tenure of judicial officers. Whilst the government has accepted that members of the AAT are not appropriate officers to issue warrants, federal magistrates and judges remain permitted to do so. It has been suggested that this may amount to an unconstitutional conferral of non-judicial powers on a chapter III judicial officer. In the case of Grollo v. Palmer the High Court held that non-judicial powers, such as granting a warrant, can be conferred on a federal judge in his or her personal capacity, but only where the function so conferred is not incompatible either with the judge’s performance of his or her judicial functions or with the proper discharge by the judiciary of its responsibilities as an institution exercising judicial power. There are strong arguments that have been made that it is quite probable there would be a successful High Court challenge should this bill be enacted in its current form. The reason for this is arguably that the conferral of such non-judicial powers as the issue of warrants on chapter III officers could well be regarded as incompatible with their exercise of judicial power.

Other joint committee recommendations that the government has accepted are as follows. Recommendation 2 suggests that a provision be included giving the Attorney-General the power, by way of regulation, to nominate an authority that can issue a warrant under the bill. Recommendation 3, which was accepted, is that the maximum period of detention be limited to seven days, after which a person must be released. Recommendation 4 proposes a requirement that the Director-General of ASIO must seek the consent of the Attorney-General before requesting further warrants on a suspect. Recommendation 5 aims to ensure that people are immediately brought before a prescribed authority.

Recommendation 8 is that people be given protection against self-incrimination for the provision of information relating to a terrorism offence. Recommendation 9 suggests the introduction of penalty clauses that will apply to officials who do not comply with the provisions of the bill. Recommendation 11 requires disclosure by ASIO in its declassified reports of the total number of warrants issued under the bill. Recommendation 13 advises that the Director-General of ASIO should notify the Inspector-General of Intelligence and Security every time he seeks the minister’s consent to a warrant. And, finally, recommendation 15 suggests a requirement that people must be advised that they have
the right to seek judicial review of their detention after 24 hours.

While the measures I have referred to do improve the bill, the government, unfortunately, rejected five of the most important recommendations of the joint committee. I refer firstly to recommendation 6, which is in relation to lawyers. The joint committee recommended that the bill be amended to provide for legal representation for people who are the subject of warrants within a framework for the appointment of security-cleared lawyers. The government has proposed an alternative model whereby a person must be provided with access to a security-cleared lawyer after 48 hours detention. This inevitably raises the question of what is to happen to people who are held during those first 48 hours. The government further proposes that once a person has access to a lawyer they cannot consult privately with that lawyer. Labor believes that the critical first 48-hour period without a lawyer is unacceptable. Even when a person does have access to a lawyer, it is not possible for them to consult privately with them without ASIO representatives being present. This is unacceptable.

Recommendation 7 is about protocols in relation to the custody, detention and interview process. These protocols must be developed before the legislation can proceed. Recommendation 10, in relation to children, is another important recommendation of the committee. The government has proposed that children under the age of 14 not be detained or questioned and that children aged between 14 and 18 only be detained if they are under suspicion and have a lawyer, a parent or a guardian present. The government argues that the age of 14 is appropriate because it corresponds to the age of full criminal responsibility. Labor believes it is inappropriate that government propose the same time periods for detaining children as for adults. In relation to these provisions, Dr Jenny Hocking of Monash University said:

It is extraordinary that a democratic nation adhering to notions of the rule of law can even contemplate the passage of legislation which would permit children to be taken and held incommunicado without their parents' knowledge, let alone consent. That children can be held without suspicion of their involvement in any offence, without legal representation, strip searched and questioned is an appalling proposal and one which has no place in a humane and just society.

Labor considers it abhorrent that children be treated like terrorists. These provisions contravene up to six articles of the Convention on the Rights of the Child. It is wrong to subject children to such laws. Labor wants children excluded from detention under this bill, just as we wish to see all children released from migration detention centres in this country.

Recommendation 12 proposed that a sunset clause be inserted so as to terminate the legislation after three years. The government has opposed this recommendation. Labor agrees with the joint committee, however, that a sunset clause is necessary because it would represent a significant accountability mechanism. It will ensure that there is continued public debate about these provisions and their necessity in future circumstances. As Professor Williams said:

Without such a clause this Bill cannot be seen as a short term immediate response to September 11. It will bring about a permanent change to law enforcement in Australia and it will entrench the notion that the detention of people who may have useful information is an appropriate tool for the gathering of information about criminal activity.

Labor has two further concerns about the bill. Firstly, we are concerned that it allows for Australian citizens who are not suspected of any criminal activity to be detained. This is a fundamental and unacceptable departure from established legal and human rights principles in this country. These measures go further than equivalent laws in the United States and the United Kingdom—for example, while United States law permits the detention of aliens without charge, it does not allow the detention of its own citizens. Professor Williams has said that this bill would establish the apparatus of a police state and that it would not be out of place in some former dictatorships. If the bill is enacted in its current form, Australians not suspected of any offence could be detained by ASIO for questioning.

Secondly, Labor is concerned that the bill allows people to be questioned by ASIO rather than by a law enforcement agency.
ASIO has never had such powers before, nor should it. ASIO already has extensive powers to investigate terrorist activities, including the use of telecommunications interceptions, listening devices and the like. Most fundamentally, the bill does not achieve an appropriate balance between the protection of national security and fundamental civil liberties. The Australian people will not and should not accept the infringements on civil liberties that this bill will effect. As Senator Faulkner said, Labor supports the referral of this bill to the Senate Legal and Constitutional References Committee, of which I am a member. The committee must be given the opportunity to examine alternative ways of enhancing the capacity of our law enforcement agencies to counter terrorism without compromising civil liberties. The government has had more than 12 months to develop laws that will provide appropriate measures to combat terrorism without compromising civil liberties.

This bill was introduced into the parliament in March. It was debated in the House of Representatives last month. Today the government has brought this bill before the Senate, just five days after the Bali tragedy. This bill has the appearance of a hasty over-reaction to the tragedies of September 11 and Bali rather than an appropriate response to the issues facing Australia. We in this chamber and indeed the Australian people have the right to ask how this bill will assist in dealing with the threat of terrorism facing our nation. It is likely that the answer is that the bill may not be particularly helpful.

The bill would confer unprecedented new powers on ASIO that could be used against the Australian people by an unscrupulous government. The powers in this bill may not be used against the Australian people today, tomorrow or even in the next decade, but we cannot speculate about the wisdom and motives of a government or of ASIO in the next decade or beyond. This bill would unduly infringe the civil liberties and fundamental rights of all Australians, and this is why the bill must be referred to the Senate Legal and Constitutional References Committee for further scrutiny.

Senator GREIG (Western Australia) (11.08 a.m.)—I think it is important in discussing the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 today that we do deal with the issue of timing. It is worth noting for the record that this bill, while it was due to come up in this session, was not scheduled for debate until at least next week. It is fair to ask why it is that all of the legislation proposed for this morning was at the eleventh hour last night removed and replaced with this legislation. While I accept the government’s right to schedule its agenda as it chooses, I do think we need to question this. I think it is reasonable to conclude that the government is keen to be seen to be doing something about terrorism in the wake of the appalling tragedy that we have all experienced and witnessed over the last few days, but there is a danger in that. There is a danger in responding to tragic events in a knee-jerk way; there is a danger in exploiting understandable fear, shock and anger by perhaps trying to coerce a parliament in progressing legislation that it might not consider in more peaceful times.

Certainly this event in Bali was appalling and tragic and it does appear that it was an act of terrorism, but it is quite wrong, I think, to exploit the shock, grief and fear that people are feeling. In dealing with legislation of this nature we need cool heads and clear thinking and to address the issues at a time when people are not so focused on understandable anger and concern, not just about terrorism but about instability in the region. For that reason we Democrats will be supporting the Labor proposal that this bill go to committee—and I will talk a little bit more about that later.

The timing of the bill is more symbolic than practical. The sad reality is that the passage of this legislation, if that had eventuated, would have made no difference to the events in Bali. I think it is fair to ask whether any law or laws can stop terrorism, let alone domestic laws that would have no jurisdiction in Indonesia. We must also question why there is a perceived need for it at this time when there is uncertainty around our surveillance powers and surveillance opera-
tions—whether that be through questions raised about the SIEVX refugee boat incident, the so-called ‘children overboard’ matter, or more recent questions raised in the last few days about intelligence surrounding prewarnings of the Bali tragedy.

Following the September 11 terrorist attacks in New York and Washington, many countries around the world reacted very swiftly with laws—or at least the promise of them—to address terrorism, and they included the United States, Britain and of course Australia. In our jurisdiction we witnessed that through the introduction of a suite of five antiterrorism bills, all of which caused considerable community concern and outcry, largely around the principle of civil liberties and the rights and freedoms that we enjoy. There was a very real and anxious concern overwhelmingly expressed by the organisations and individuals which came before the Senate committee hearing investigating that suite of bills about hastily introducing laws we might regret in the future.

At the end of the day I think it is worth complimenting the government for ultimately accepting significant amendments to that legislation, some of which we Democrats supported. Ultimately we opposed four of those five bills on the grounds that we had deep concerns about the definitions of terrorism and terrorists and the way in which that legislation might be used in the future if it were not more finely tuned. It is worth noting that one of those bills from that suite of five which we did support was in fact a bill entitled ‘Suppression of Terrorist Bombings’. It is clear that people who came before the committee felt anxious about any loss of civil liberties and that any extraordinary government power which might have been introduced through that legislation could be abused or misused to the detriment of the community.

We were not convinced that the definitions and powers that ultimately were proclaimed—and it is worth noting that the legislation we are talking about only came into effect very recently—were appropriate and adequately allowed for the natural justice which we felt ought to have applied, yet now we find that the Prime Minister, Mr Howard, has said, only in the last 48 hours, that we need to review our domestic antiterrorism laws. I find that quite extraordinary given that they have only very recently been cemented into our legislative framework. I think that was a knee-jerk response to the tragedy of the Bali bombings. It was only two days ago—I think it was Monday—that Senator Faulkner, on behalf of the opposition, asked a question of Senator Vanstone, who was that day representing the Attorney-General, as to what form this review would take: who might be involved, how it might be conducted and what degree of public input would be invited and allowed for. Minister Vanstone, representing the Attorney, was unable to answer that. To be fair, she was just acting in an interim position, given the absence that day of Senator Ellison in Indonesia. But that suggested perhaps that the government, at least as of Monday, had not really given consideration as to exactly how the review would be constructed and conducted.

How can we possibly review legislation that was only very recently proclaimed into law? What possible connection could there be between the slaughter in Indonesia and Australian domestic security measures? We Democrats can support a review but not if that is simply code for reintroducing or attempting to reintroduce some of the more draconian aspects of that suite of antiterrorism bills that were removed in the first instance. I think the Prime Minister has used the words ‘review the legislation with a view to beefing them up’. If ‘beefing them up’ is code for attempting to reintroduce those aspects which were originally rejected by the Australian community and the parliament, we would have no part of that.

Yet we have a bill before us today which would allow federal authorities to remove someone from the street or their home simply because they think they might be able to provide useful information and not because they are suspected of having committed an offence. In relation to this, Professor George Williams from the University of New South Wales—and it is worth noting that he is one of the nation’s better known constitutional academics—has said, ‘This bill is inconsis-
tent with basic democratic and judicial principles, because no Australian should be detained without a trial or for a bail hearing. In fact, Professor Williams, who is not noted for his exaggeration, likens the bill to something out of Chile under the regime of Pinochet.

While that might seem dramatic, it was my experience only yesterday, when discussing this issue on talkback radio in New South Wales, that the radio presenter said to me that this would not happen, that the Australian government would not introduce legislation to allow for the detention of people for up to seven days and that it would not introduce legislation that would ensure that those people would have no right to a lawyer for at least 48 hours. It was all I could do to convince him that that was precisely what the government was doing; yet I was significantly challenged on that point. There seems to be a sense of disbelief, at least in some quarters in the Australian community, that this is the path that the government is traveling on.

In his brief, the Attorney has argued that the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 would enhance ASIO’s ability to gather intelligence to help prevent and deter terrorism. The Attorney has said that the bill establishes a warrant process to allow ASIO to question a person who may have information relating to a terrorist attack. The bill was introduced into the House of Representatives on 21 March this year and was referred to both the Senate Legal and Constitutional Legislation Committee and the Parliamentary Joint Committee on the Australian Security Intelligence Organisation, Australian Secret Intelligence Service and Defence Signals Directorate. The parliamentary joint committee then reported on 5 June 2002 and the Senate committee reported on 18 June 2002.

The parliamentary joint committee made a number of recommendations for changes to the bill, with which the Senate committee agreed. Worth noting, too, is that the joint committee is a bipartisan committee in the true sense of the word. It has representatives from only the coalition and Labor; there is no crossbench representation on it. Yet, in spite of the fact that government members strongly advocated significant reform, which is sometimes unusual from a committee perspective, the government has agreed to those recommendations, indicating at the time that it understood that compromise was essential, given the community anxiety around the suite of bills which preceded the introduction of the ASIO legislation. The government amendments to the bill responding to the recommendations of the committees were passed by the House of Representatives, and a separate document outlining the government amendments has been provided by the Attorney.

The Attorney has also notified the parliament that in terms of access to legal representation—an issue with which the Democrats have significant concern—all people detained under a warrant will have the right to contact an approved lawyer; that is, a legal practitioner of at least five years standing who has been approved by the Attorney-General following a security clearance. There was considerable concern during community debate and investigation into this issue, and people overwhelmingly believed that anyone detained under this legislation really ought to have the right to contact an approved lawyer; that is, a legal practitioner of at least five years standing who has been approved by the Attorney-General following a security clearance. There was considerable concern during community debate and investigation into this issue, and people overwhelmingly believed that anyone detained under this legislation really ought to have the right to contact an approved lawyer; that is, a legal practitioner of at least five years standing who has been approved by the Attorney-General following a security clearance. There was considerable concern during community debate and investigation into this issue, and people overwhelmingly believed that anyone detained under this legislation really ought to have the right to contact an approved lawyer; that is, a legal practitioner of at least five years standing who has been approved by the Attorney-General following a security clearance. There was considerable concern during community debate and investigation into this issue, and people overwhelmingly believed that anyone detained under this legislation really ought to have the right to contact an approved lawyer; that is, a legal practitioner of at least five years standing who has been approved by the Attorney-General following a security clearance. There was considerable concern during community debate and investigation into this issue, and people overwhelmingly believed that anyone detained under this legislation really ought to have the right to contact an approved lawyer; that is, a legal practitioner of at least five years standing who has been approved by the Attorney-General following a security clearance.

I understand that the Law Council of Australia has expressed enthusiasm on its part for being a part of the process and contributing to the process of vetting and suggesting which lawyers might be appropriate in those situations. On the face of it, that would seem reasonable.

The Attorney has also said that contact between legal representation and those detained may be delayed for up to 48 hours in exceptional circumstances and only in rela-
tion to adults. To delay access to a legal practitioner, the Attorney-General must be satisfied that it is likely that a terrorism offence is being or is about to be committed and may have serious consequences. The power to delay access to a lawyer can therefore only be exercised to protect the community from imminent terrorist danger. Then, after 48 hours, all people will have the absolute right to contact an approved lawyer. Lawyers will be subject to special rules during the period their client is subject to a warrant. This is necessary, it is argued, to ensure that the very sensitive information that they would be exposed to is appropriately protected.

The issue of children was a difficult and sensitive one in relation to community concerns around this bill also. It is worth noting that the bill does not apply to people under the age of 14, although as I understand it that was not originally the case. If the prescribed authority considers that the person brought before it is under 14, it must order that the person be released. We would welcome that. The Attorney-General has argued that there are legitimate reasons for the bill to apply to people between the ages of 14 and 18. I for one would like to be convinced of that before giving consideration to supporting that notion. I do have some problems with the notion of 15-, 16- and 17-year-olds being detained under these circumstances. The Attorney-General has argued that, for example, there are known instances of persons under the age of 18 being actively involved in terrorist activity, including suicide bombings. I understand there is evidence to suggest that that is the case overseas. I am not aware of any suggestions that that is the case domestically. However, the government has recognised the importance of protecting the rights of young people to some degree, and a warrant will only be able to be issued in relation to persons between 14 and 18 years of age in limited cases, and these will be subject to strict safeguards.

In terms of those safeguards, the Attorney-General has argued that the bill would ensure that the powers are properly exercised. We Democrats would argue that that statement does not stand up to scrutiny on one basic premise, and that is that no safeguard, no objectivity and no accountability can be ensured if a person or persons are being detained for 48 hours with absolutely no access to legal representation and without their family, friends or employer knowing where they are. This is not an aspect of the legislation that we could support. However, we do agree that the proposal by the Labor Party for further committee and community investigation is warranted and welcome. Labor is proposing that the committee to investigate the legislation and report by 3 December should be the Senate’s Legal and Constitutional References Committee. I welcome that, being a member of that committee and contributing to it.

Perhaps the two most important aspects of what is being proposed in terms of committee investigation are as follows. The first aspect concerns the potential to develop an alternative regime in which questioning to obtain intelligence perhaps relating to terrorism is conducted not by ASIO—an organisation which never before has had these powers—but by the Australian Federal Police, including appropriate arrangements for detention of terrorist suspects and the questioning of people not suspected of any offence. There is also the question proposed in this amendment by the opposition that we should consider whether the bill in its current form, or perhaps amended, is constitutionally sound. There is some suggestion that elements of it may not be. That too is fully worthy of investigation and I for one would certainly welcome input from Professor George Williams on this matter once again.

Fundamentally we need to ensure that the community is convinced that there is no secrecy surrounding this legislation, and that the community is convinced that it has appropriate input to discussion and debate around it. The one strong thing that struck me from all of those people that came before the previous committee dealing with the suite of five bills was the gratitude that many hundreds of them felt for simply having the opportunity to have their say on what was very controversial and contentious legislation—to the point where a further hearing was held, I think in Sydney, in a public fo-
rum where people could simply get up and speak for two or three minutes to express an opinion and not necessarily engage in debate. We wanted to ensure that everybody who wanted to be heard could be. When you are dealing with espionage or, in this case, an intelligence or, if you like, a spy agency, there are considerable community conspiracy theories surrounding the matter. The only way to alleviate people’s anxiety about that is to have openness and transparency. It is appropriate that we engage in further community debate on this, but more appropriate that we encourage submissions and invite comment, and it is imperative that any legislation dealing with this matter in relation to security services has the support of the Australian people, because without that there will be ongoing community concern. Let us alleviate that by engaging in the process.

We Democrats look forward to the committee process which I hope will eventuate from this. We will contribute to it. We continue to have concerns about the notion of a pool of lawyers being appointed by the government, but we are open-minded about that. We would not, under any circumstances, like to see the situation where any Australian citizen was denied legal representation under such circumstances, let alone for 48 hours. We have ongoing concerns with the notion that 15-, 16- and 17-year-olds might find themselves in this situation. In an overall sense, we are very supportive of appropriate antiterrorism measures. We understand the community concern in this regard, but fundamentally the principle for us is never eroding civil liberties, and ensuring that rights are balanced with responsibilities. Let us not erode our democratic freedoms while trying to protect them.

Senator BRANDIS (Queensland) (11.28 a.m.)—As I listened to Senator Kirk’s speech earlier on this morning, I was struck by what implausible advocates for civil liberties are those who come into this parliament representing parties of the Left. It is never to be forgotten that those who represent the parties of the Left in Australian parliaments have been the apologists for most of—not all of, but most of—the most brutal and oppressive governments of the 20th century. I do not remember reading of Dr Evatt being too fussed with the civil liberties of people in the Soviet Union or eastern Europe. I do not remember Mr Whitlam being too concerned with the civil liberties of people in the Baltic states or in China. I do not remember Dr Jim Cairns being too concerned about the civil liberties of people in Vietnam. I do not remember some of the household gods of the left-wing intelligentsia, like the late Professor Manning Clark, who published that disgraceful book, Meeting Soviet Man, many years ago, being too concerned about the civil liberties of people who suffered under communist regimes. I do not remember any of that.

What I do remember though is that, when one reads the tracts and the doctrines upon which socialism is based, what one reads is an incessant attack on civil liberties as bourgeois false consciousness. That is what socialists say about civil liberties: that civil liberties are bourgeois false consciousness. It is those who represent the parties of the right, those who sit on this side of the chamber, who are concerned about the rights of the individual and who are concerned to limit the power of the state. It is those who sit on the left of the chair, those who come into this parliament to represent parties of the left, who are concerned to glorify the power of the state and to diminish the rights of the individual. So, as I say—and I do not include you in this, Senator Greig; I want to focus myself quite specifically on the Australian Labor Party—whenever one hears Labor Party politicians putting on the mantle of civil liberties one ought to be sceptical, and one ought to consider what they did and what they said in defence of regimes which in the 20th century were among the greatest violators of the rights of their peoples the world has known.

Senator Cook—Mr Acting Deputy President, I rise on a point of order. Senator Brandis has cast a slur of the worst sort upon honourable senators on this side who are members of the Australian Labor Party. He has done so using terms which can only be fairly described as inflammatory and disgraceful to describe our conduct and our attitude. They are terms which—although I
concede that that is a matter for debate—are fundamentally untrue. He has referred to the Australian Labor Party. I am an Australian Labor Party senator, and many of those on this side are. The reflections he makes upon us as a collective group are reflections upon us as individual senators too. They are rejected and they should be withdrawn.

The ACTING DEPUTY PRESIDENT (Senator Watson)—I do not think Senator Brandis was reflecting on individual senators. I warn Senator Brandis to make sure that he does not reflect on individual senators, but if he is talking generally that is acceptable.

Senator Cook—Mr Acting Deputy President, I rise on a point of order—

The ACTING DEPUTY PRESIDENT—Is it a further point of order? Because I have responded to that point of order.

Senator Cook—Yes, it is a further point of order given the ruling that you have made. My point of order is that you accept that a reflection upon us as individuals would be unparliamentary and should be withdrawn. I understand that is what you have said?

The ACTING DEPUTY PRESIDENT—That is right.

Senator Cook—As I say, I am a member, and a proud one, of the Australian Labor Party. He has reflected upon my party in the harshest and most unreasonable terms. That can only be regarded by me, and by anyone listening to this debate, as a reflection upon me as well. I take that to be personal and I reject it in the most trenchant manner. Because it is personal, I think you should consider your ruling and rule that those remarks be removed.

Senator Kemp—Mr Acting Deputy President, I rise on a point of order. This will be a vigorous debate. I have sat long hours on this side of the chamber and listened to the likes of Senator Cook and his colleagues and the relentless and savage attacks that they make on distinguished Australians such as John Howard and on the Liberal Party. I point out that Senator Cook is notorious for having a glass jaw.

The ACTING DEPUTY PRESIDENT—What is your point of order, Senator Kemp?

Senator Kemp—The point of order is that no point of order has been raised by Senator Cook. This is a matter of debate, and the debate should be allowed to continue. I make the point that, if Senator Cook continues to jump to his feet, we will be jumping to our feet during his remarks.

Senator Cook—On a point of order, Mr Acting Deputy President—

The ACTING DEPUTY PRESIDENT—Just a moment, Senator Cook; I will just give a ruling. He cannot reflect on senators individually or collectively, and I do not believe he has done it to date, but I will listen very carefully.

Senator Cook—Thank you, Mr Acting Deputy President. I now rise on a further point of order. It relates to the remarks made just now by Senator Kemp. As I recall those remarks—and Hansard will be a true and accurate copy of them, so it is a matter of a clear record—

The ACTING DEPUTY PRESIDENT—Please come to the point of order, Senator Cook.

Senator Cook—The point of order is that he said that, should I continue to raise points of order—which I raise conscientiously for the good conduct of this chamber—he will ensure that he raises consistent points of order on me during my remarks, which will follow lately. I take that as a threat that, if I conduct myself in a principled way to defend the standing orders of this chamber, I will be dealt with by a use of the standing orders against me by Senator Kemp. That is a reflection upon me, and you should rule that he withdraw.

The ACTING DEPUTY PRESIDENT—I do not regard that as a reflection; I think it is just part of the robust debate that we are likely to continue to have during this particular debate.

Senator Cook—If that is the ruling then that is the ruling.
The ACTING DEPUTY PRESIDENT—Thank you, Senator Cook. Please continue, Senator Brandis.

Senator BRANDIS—Mr Acting Deputy President, may I say that I do not make any personal reflection against Senator Cook. My reflections are about the side of politics and the political point of view which the Labor Party represents and which Labor senators represent. I asked the question rhetorically, merely to point out the hypocrisy of Labor politicians representing themselves as champions of civil liberties.

Senator Cook—Mr Acting Deputy President, I rise on a point of order. I am a Labor politician and I represent myself as a champion of civil liberties. I object to the use of the word ‘hypocrisy’ and I ask him to withdraw it as unparliamentary.

The ACTING DEPUTY PRESIDENT—Senator Brandis, I did not take it that you were referring to a particular senator.

Senator BRANDIS—I do not say these remarks about any nominated or individual senator, no.

Senator Cook—Or senators collectively.

The ACTING DEPUTY PRESIDENT—Or senators collectively?

Senator BRANDIS—Or senators collectively. I am talking about the Australian Labor Party. I do ask rhetorically: if the Australian Labor Party are so concerned about civil liberties, where were the Australian Labor Party when the peoples of eastern Europe and the Baltic States were yearning and striving for their freedom? Where were the Australian Labor Party during the Gulag? Where were the Australian Labor Party during the Great Leap Forward? Where are the Australian Labor Party today when it comes to concern for the rights of people under the diminishing number of communist governments in the world? They were nowhere. They were deafening by their silence. They are condemned by their own neglect of the greatest civil liberties issue in any of our lifetimes. That is why I have scorn and contempt when I hear members of the Australian Labor Party representing themselves as champions of civil liberties—people who come into this place to enlarge the power of the state and diminish the rights of the individual. It is the Liberal Party that is the party of civil liberties, and let that never be forgotten.

I want to deal specifically with some of the aspects of this legislation and, as we know, as always, legislation of this kind involves a balancing exercise. Liberty is a key value of any liberal democracy. Nobody disputes that; that is not an issue.

Senator Lundy—Trade it off.

Senator BRANDIS—That is right! There are balances to be struck, Senator Lundy—you are right. One of the other core values of any liberal democracy and one of the core responsibilities of government is the protection of its citizens from harm. Does anybody dispute that one of the fundamental obligations of a government is to protect its citizens from harm? I dispute the proposition that this legislation, in the form which it now takes, having been amended to incorporate most of the recommendations for safeguards that came from the Senate Legal and Constitutional Affairs Committee, goes too far or is a knee-jerk reaction. The particular evil with which we are concerned—that is terrorism—is an evil which we will be successful in meeting only if we anticipate it before it happens. That is why the entire approach that I heard from Senator Kirk and Senator Greig is quite wrong. This legislation is not dealing with the investigation of criminal conduct after the crime has been committed. That is not the point. If the crime has already been committed, it is too late. If the terrorist act has been committed, it is too late. It will have been a failure. The whole point of this legislation is to enable terrorism to be anticipated so that it does not occur. I cannot for the life of me see that there is anything inherently illiberal about that. It seems to me that it is at the very core of a government’s responsibility to protect its people from harm.

Mr Crean last Monday gave a press conference and he said, and he was right in saying so, that one of the lessons of the terrible event last weekend in Bali was that the most effective form of prevention is ‘having good intelligence about terrorists and their opera-
Those were Mr Crean’s words and I am sure nobody in this chamber would disagree with them. The point of this legislation is to enable such intelligence to be derived, to be gathered. I do not agree, with respect, with the view propounded by Senator Greig that there is necessarily something intrinsically wrongful about enabling coercive powers, subject to strict safeguards, to be employed against people who have not and are not suspected of committing a crime if it be the case —

Senator Lundy interjecting —

Senator BRANDIS—Just wait to hear what I have to say, Senator Lundy—if it be the case, and this is the case with which this legislation is concerned, (a) that there are reasonable grounds to believe that the person against whom those coercive powers are to be employed has knowledge of an imminent terrorist event and (b) the exercise of those powers is regulated by strict safeguards. If a person in Australia not presently under suspicion of a criminal offence but nevertheless believed on reasonable grounds to be in possession of information which might lead to the apprehension of a terrorist event so that it is anticipated and prevented before it can happen, do you seriously say that there ought to be no capacity to use coercive powers to elicit that information from that person?

Senator Lundy interjecting —

Senator BRANDIS—Apparently Senator Lundy does. I do not. If a person is in possession of knowledge which, if communicated to the authorities, might assist in the anticipation and prevention of a terrorist crime, I do not regard it as an unacceptable abridgment or abrogation of civil liberties to enable the coercive power of the state to be used to elicit that information from them so long as the circumstances in which that can be done are protected by appropriate safeguards.

Senator Lundy—You are constructing a scenario to suit your purpose. There is no basis in Australian law.

Senator BRANDIS—Senator Lundy, don’t you throw civil liberties at the Liberal Party. We are the party of civil liberties and you are the party of apologists for those who have violated civil liberties in the most gross and egregious manner the 20th century has ever seen.

I want to turn to another point that Senator Greig made. Senator Greig made the observation, and he is right, that there is a risk of abuse of power. May I respond by saying two things. First of all, whenever any government authority, particularly an investigative or a policing agency, is vested with power, there is a risk that that power will be abused. That is in the nature of things. It does not follow from that proposition that no power or extended powers should ever be given to investigative agencies. Senator Greig, if you are going to run that argument, you could run it as a critique of every single piece of legislation that this parliament passes—sometimes with the agreement of your party—whereby investigative agencies are given a new power. It is not an argument to say that the power should not exist because it might be abused. Of course it might be; that is in the nature of things. The answer is to ensure that the exercise of the power is hedged and guarded by sufficient protections and safeguards to ensure that that does not happen, and to define the power in the most narrowly focused way to ensure that there is not an extravagant opportunity for abuse. But it is not an argument to say: this is a power; therefore it can be abused and therefore it should not exist. That is a poor argument.

Senator Lundy—No-one is saying that.

Senator BRANDIS—That was Senator Greig’s argument; and it is wrong. In the time available to me I am going to respond to Senator Kirk’s question when she asked rhetorically: how will the bill assist to protect the Australian people from the threat of terrorism? That is what the bill is about. Let me tell you, Mr Acting Deputy President, how it will in a realistic, measured and material way, assist in protecting the people from terrorism. First of all, as I said a moment ago, the bill is about the eliciting of information—the gathering of intelligence. Intelligence is the key tool for the prevention of terrorism. It is not about punishing terrorists; it is about preventing terrorism. The bill provides a warrant procedure whereby information may be elicited in circumstances where
presently ASIO is not empowered to elicit that information. To obtain a warrant that can, in exceptional circumstances, authorise ASIO officers to investigate a person believed on reasonable grounds to have knowledge of an imminent terrorist act, an elaborate procedure needs to be engaged in. In the first place, the Director-General of ASIO has to seek the consent of the Attorney-General to apply for the warrant. If that consent is withheld, the process ceases. Secondly, the application must be made to an issuing authority. The issuing authority must be a member of the federal judiciary or another qualified person.

Before he gives his consent, the Attorney-General is under a statutory obligation to be satisfied on reasonable grounds that the warrant ‘will substantially assist the collection of intelligence that is important in relation to a terrorism offence’ and ‘that relying on other methods of collecting that intelligence would be ineffective’. Further, if the warrant authorises someone to be taken into custody, the Attorney-General must also be satisfied that the person who it is sought to take into custody:

(i) may alert a person involved in a terrorism offence that the offence is being investigated; or
(ii) may not appear before the prescribed authority; or
(iii) may destroy, damage or alter a record or thing the person may be requested in accordance with the warrant to produce ...

If the warrant concerns a person between the ages of 14 and 18 years, the Attorney-General is under a statutory obligation to be satisfied on reasonable grounds that the person will commit, is committing or has committed a terrorist offence. When, but not until, the Attorney-General’s consent is given, the Director-General can then apply to an issuing authority for a warrant. At that stage the issuing authority—that is, a member of the federal judiciary—may only issue the warrant if it has been requested in a proper manner and he is ‘satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence’. So there are two high thresholds which must be satisfied before a warrant can be issued: first, a reasonable belief on the part of the Attorney-General and, secondly, a reasonable belief on the part of an issuing authority. And before any of that can happen the Director-General of ASIO must arrive at a view that this extraordinary process—because it is an extraordinary process—is necessary.

In respect of people who may be detained without access to legal representation for 48 hours, that is something that can only occur, in the language of the bill, in exceptional circumstances. Those exceptional circumstances are that the relevant issuing authority and the Attorney-General are both satisfied that the power must be exercised to protect the community from imminent terrorist danger. How absurd would it be if you had a situation in which the Australian authorities reasonably believed and persuaded both the Attorney-General and the independent judicial authority that there were reasonable grounds that a terrorist act was imminent and they could be defeated and thwarted by the person suspected of possessing the material information saying, ‘I am not going to speak until I see a lawyer nominated by me’? It would be the most obvious ruse to enable the very purpose of this legislation to be thwarted and avoided.

I am a lawyer. I take second place to no-one in being concerned about the rights of people to legal representation. It is a very important right. But, like any right, it can be abused. The one circumstance for which provision is made that a person may be held in custody without access to a lawyer for 48 hours is in the extremely narrow case where there is a reasonably held belief of an imminent terrorist act. I do not have any difficulty in accepting that that is a reasonable limitation on that right. Rights do not exist in isolation. They are balanced not only by responsibilities but also by the obligation of governments to protect their people from harm, which is the point at which I commenced.

There are limitations on existing rights in this legislation—in very narrow circumstances and very carefully hedged in by safeguards. The Attorney-General and the government have been most cooperative in
adopting most of the recommendations of the Senate committee to augment and improve those protections. At the end of the day, the question we as senators have to ask ourselves is: is the obligation of government to protect its citizens from harm sufficiently urgent that these limitations are justified? (Time expired)

Senator ROBERT RAY (Victoria) (11.53 a.m.)—Like quite a few senators, I made notes to speak on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 some weeks ago. One of the first things I did was to try to distil the arguments that others, not I, had run against the bill. The first point I made was from those critics that Australia does not face a terrorist attack. I said that this assumption can only be proved wrong with disastrous consequences. I take no joy out of that prescience. But the fact is that we have international obligations. We must try to prevent terrorism wherever it occurs around the globe. It was irrelevant whether Australia was under terrorist threat—we have to take the appropriate action to prevent it anywhere around the globe. I just find it amazing that some of the critics of the antiterrorist legislation are those people who have previously been the most noted internationalists in this parliament and Australian society. Suddenly that internationalism is reversed: just because we may not be under threat, we should do absolutely nothing about it. I think we have an absolute obligation to stamp out terrorism whenever it occurs and against whomever it occurs.

The second argument I have seen run is that existing powers are sufficient to deal with a terrorist threat. That is just not so. The right to silence must be balanced off against the right of innocent people to be protected. Under existing law, suspects could be questioned, but those who are recipients of information, but not participants, could in fact be exempt from questioning. The right to silence has already been abrogated in several other areas of Australian law that are far less serious than this. The third criticism of the legislation in broad is that ASIO will become a secret police unit if these powers were conferred on it. What is proposed are powers to detain, not to arrest or gather evidence.

When you go back to the original bill, we heard no real justification of it from Senator Brandis in his rather hysterical contribution this morning. The original bill that was introduced into this parliament was poorly drafted, insensitive to civil liberties and had the unintended consequence of maximising criticism across the board from all sorts of usual and unusual quarters. Let us go through the weaknesses of that original legislation. First of all, it allowed for the AAT to issue warrants. Most AAT members are not chapter 3 appointments; they do not have permanency. Therefore, they are under some degree of political influence and control. To allow them to issue warrants is not acceptable in the regime of Australian law. It also allowed Federal Court judges to participate as a prescribed authority—almost certainly unconstitutional. Of course, the government has yet again refused to produce its legal advice on this matter. It produces legal advice only where it is unimpeachable and supports it on the matter. One suspects that this advice has not been produced because it is flawed. At no stage has the Attorney-General properly addressed this issue.

The second major weakness in the original legislation was that it allowed for renewable detention on an unlimited basis. Why was there not a limit put on this in the original bill? I did not know that I was living in South Africa in the apartheid era. This is typical of laws of that apartheid regime. Thirdly, poor drafting allowed that loophole to exist between being detained and being questioned immediately. There is only one ‘immediately’ there, so you could have been detained and not questioned for weeks. The clock starts ticking on your 48 hours only when the questioning begins. How in heaven’s name did that get past the drafters?

The fourth area is the lack of legal representation. An argument that can be adduced here is that there is not much point in detaining a suspect or a potential recipient of terrorist information if you allow them to contact their local lawyer, who can then place straight into the hands of the terrorist network the fact that they are under suspicion. But the alternative regime that we suggested—that the Bar Council of Australia
provide a panel of security cleared lawyers who, from the very first minute, can repre-
sent these people—has not been taken up by
the government. There is still this 48-hour
period with no legal representation. This is
just not part of Australian society. The sugges-
tion from the Joint Committee on ASIO,
ASIS and DSD solved this problem—this
counteracts the sorts of points made by
Senator Brandis today—but it has not been
taken up by the government.

We found a total absence of protocols as
to how this questioning should occur. Can
you question someone for 48 hours on end?
Where do you keep them when you are not
questioning them? Do you throw them in the
local jail? Not one detail was contained in
the legislation. It was assumed that the pre-
scribed authority would in fact detail all of
those particular procedures. Now, of course,
we have advanced. We now have a commit-
ment from the government not so much that
the act will not be proclaimed but that it will
not be invoked until protocols have been
developed and cleared by the Inspector-
General of Intelligence and Security. That is
a big improvement and it is to be welcomed.

I suppose the greatest stupidity in this
legislation as it was originally produced is
that there was no prohibition against self-
incrimination. Let us take the classic case of
someone who is suspected of having knowl-
dge of a terrorist act. They can admit to that
under questioning and face a life sentence;
they can refuse to answer questions and get a
five-year sentence. Which do you think your
suspected terrorist would choose? They
would take the five years above life every
time. The whole intention of this legislation
is not to gather evidence but to glean infor-
mation to prevent terrorists acts. So why
would you not have protected the detainees
from self-incrimination?

The original bill would have allowed
ASIO to detain and to strip search 10-year-
olds. The great defender of civil liberties,
Senator Brandis, who is now absent from the
chamber, apparently let that go through the
party room—that you could strip search 10-
year-olds and detain them. Their parents
would not have been allowed to know that
you had detained them. What do you think
would happen to a parent whose kid went
missing for 48 hours and who could not be
told about it? The compromise they put up is
a 14-year-old, yet when you go through all
these details with the security agency they
can hardly nominate someone under the age
of 18 who would ever be affected. That is
why seven members of the joint intelligence
committee—including four government
members—said, ‘Eighteen and that’s it.’ But
the government just could not accept that.

There was no accountability for the num-
ber of warrants to be issued. There is a justi-
fiable case for not listing the number of tele-
phone intercept warrants. We have been
through all that in the past. If they are really
high, it warns people off; if they are really
low, it encourages people to use the phone
for those purposes. I understand that argu-
ment. But in this case it is absolutely essen-
tial that the parliament and the public of
Australia know how many of these warrants
are issued. For instance, if it were only one
or two a year, then a lot of the civil liberties
problems we have with this legislation would
not be deemed to be so serious. If it were
scores or hundreds a year, then we would
know that this legislation was being used or
abused. The government has come to see
sense on that.

One of the worst aspects is that the gov-
ernment has rejected a sunset clause, and this
is the sort of legislation that must have a sun-
set clause. We want to see how it works in
practice—remember? The Labor Party did
not insist on a sunset clause on the other five
antiterrorist bills, because we could see the
necessity for them to be an ongoing feature
of the Australian legal system. But going
into this new and tough territory—you are
actually detaining people who have not
committed an offence—there must be a sun-
set clause. A government must have to re-
represent such legislation within three years to
see whether the parliament will certify it.

You might ask why this legislation was so
draconian. Was it just a clumsy attempt at
wedge politics? We know how enamoured
this coalition government is of wedge poli-
tics. You only have to look at the asylum
seeker issue to understand that. In that area,
bipartisanship was deliberately and mali-
ciously destroyed. But it seems to me that this is not a wedge political issue. You have to ask yourself whether, if you were a government intending to play wedge politics, you would give the task to the current Attorney-General, Mr Williams. He is a rather avuncular Tory but a ditherer. Let us face it, he has the killer instinct of a six-day-old blancmange. He could not get a kick in a stampede. So I cannot really believe that this was put forward as a wedge political issue. It is more likely that it was a case of: ‘We will put forward an extremist bill, we will have it referred to a committee, we will then get a compromise up and the bill will float through.’ I think those are the tactics employed here. They are not honest tactics and they are not decent tactics. They have backfired very badly, because the bill was so badly drafted and so extreme in its impingement on civil liberties that it has had more critique and more attention given to it than a balanced bill would have had.

I understand—and I am ready to be corrected—that we have not yet seen, either in this chamber or in the House of Representatives, the government’s official response to the joint intelligence committee’s critique of this piece of legislation. I find that disappointing. However, the opposition have been briefed as to the government’s official reaction to that committee’s 15 recommendations, and we understand that they have basically accepted 10 of the recommendations on this legislation. I think that is a good thing. In two other cases—in regard to the protocols and to the inspector-general’s role—they have not accepted the committee’s recommendations but what they have counterproposed is quite acceptable and in some cases better than what the committee could have proffered. I thank the Attorney-General’s Department for developing those two proposals on when the protocols kick in and the inspector-general’s role.

The three critical areas in which disagreement remains—not between the opposition and the government but between the government and the joint committee—are legal representation, a sunset clause and the age at which the legislation applies. In those three areas the government has not seen sense. Overall, the tone of the government’s response is very defensive—bordering on the smarmy. It reflects the hubris of government. One or two recommendations are grudgingly acknowledged, but for different reasons. It is as though they cannot just come out and honestly say, ‘The original bill was badly flawed and we accept the criticism by the committee.’ Throughout, the common strain is: are these matters constitutional? They never properly address that. They do not produce their legal advice to say that the matters are constitutional. We may well find if this bill goes through that it proves, even in its amended form, to be unconstitutional in some parts.

The opposition has provided a second reading amendment that tasks the Senate Legal and Constitutional References Committee to develop a different regime altogether—to look at whether the AFP, rather than ASIO, should be given powers to detain and question. All I can say to that is good luck. I will keep an open mind on it but I have my doubts as to whether an alternative regime based on Federal Police powers is preferable to one based on ASIO powers. I know that the glitterati of the Melbourne and Sydney legal circles have forgotten the pernicious activities of state special branch police. I have not forgotten. Any sins that have been committed by security agencies in this country, especially in the Cold War days, are nothing when compared to the gross insensitivities to civil liberties committed by special branches operating out of state police forces. I do not want to see the development at a federal level of police forces being given even the sorts of powers that are proposed for ASIO. Conceptually, they have got that wrong. But I will keep an open mind, because you never know—I always acknowledge that there are smarter people around me and they may well come up with a regime that this parliament could find more acceptable than the nonsense so far put into the legislation by the current Attorney-General.

I want to stress that this is not a delaying tactic. We will get accused of that, of course. The government has been very slow to respond to some of these details. The original
timetable put on the joint intelligence committee to report on this ASIO bill was crazy: it only allowed a few days for public submissions; the timetable was just too tight. We ignored it, and we put a resolution to this parliament to extend our terms of reference and time to report. Even then, we had a reporting date of 15 June but we managed through hard work and effort to get the report to the Attorney-General by, I think, 29 May, with the intention of being able to deal with it in the June session. There were negotiations, thank you very much, between the opposition and the government. But what happened to the amendments that we were promised on, I think, 13 different occasions? They never materialised. They were supposed to come in June; they never arrived. So I resent the Labor Party ever being accused of trying to delay this bill. It was the failure to produce government amendments in response to the committee report that delayed consideration of this legislation.

If this second reading amendment to adjourn the bill to the legal and constitutional committee is successful, the government will claim that we are not genuine in our determination to combat terrorism. This is just standard operating procedure for those who believe that patriotism only exists on the conservative side of politics. We as an opposition have a duty, as do the minor parties in this place, to ensure that this legislation is balanced and decent. If people think they are going to put a gun to our heads and call us unpatriotic because we stand by those principles then so be it. I acknowledge that there will be political gain to the government in that. It is just a pity that they put those sorts of political gains above political decency.

We would never have had to refer this to yet another committee if this legislation had been properly considered in the first instance. I was pleased to see the Prime Minister acknowledge that the five pieces of antiterrorist legislation in the end got the balance right. I think he was right in that; there was a lot of cooperation around this chamber to make sure that the balance was right. But in this legislation it has essentially gone one step too far. On the joint committee we had the duty to improve the legislation, not approve it—that was always going to come later.

The crux of this whole debate and the issue that the Senate committee has got to look at is not so much how suspects are treated but how much the civil liberties of people who are not suspected of a crime but have knowledge of a potential crime—they may not even know that it is a potential crime—can be impinged upon to protect others. It is about where you draw the line. If you come down on the side that only suspects should be dealt with in this way, then you can make the legislation tougher, more stringent and more draconian if you want to. But if the main body of people being affected—and this is what I suspect will happen—will be non-suspects who have potential information, then you have to protect their civil liberties. You have got to give them legal representation, but you do not have to give them their choice of legal representation—we can take it that far.

I wish the Senate committee well. I hope—and I am pretty much assured, given their previous track record—that the Attorney-General’s Department will take that inquiry seriously and cooperate with it, as they always have. I am sure, given the enormous cooperation that Dennis Richardson and ASIO have given in the consideration of this legislation, that that committee will be able to report promptly. But, again, I say—and this is only an individual point, not a party point—that I have some doubts about giving these powers to the Federal Police. I do not want to see a British-style special branch developed in Australia. Ironically, I would be more comfortable with ASIO and their reputation over the past decade than I would be with the police force.

Senator NETTLE (New South Wales) (12.12 p.m.)—I rise to speak on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002. I start by saying that the Australian Greens believe that now is the time for us to be showing appropriate mourning and grieving for the deaths that occurred in Bali on the weekend. We think it is the time to focus on efforts to find the perpetrators of this tragedy and to carry out a review of security intelli-
gence services. All of these things the government have either begun or indicated they will be doing.

The Australian Greens do not believe it to be appropriate to be rushing this bill up the government’s legislative program. When this legislation was first introduced, it was clearly recognised by the vast majority of society and certainly by the vast majority of parliamentarians in this place as an overreaction to the event of September 11. Since being introduced, this legislation has been sent to two committees: the Parliamentary Joint Committee on ASIO, ASIS and DSD and the Senate Legal and Constitutional Legislation Committee. The joint committee came up with a range of recommendations that the Australian Greens would characterise as tinkering at the edges of an unacceptable bill. The Senate Legal and Constitutional Legislation Committee itself recognised that it had not carried out a rigorous review of this legislation and it simply endorsed the recommendations of the joint committee. There is an important role for the Senate committee to play in examining the detail of this legislation, so the Australian Greens will be supporting the opposition’s second reading amendment which proposes to send this amended bill back to that committee.

We must recognise that tinkering at the edges will not improve this legislation. No amendment can alter the fundamental undemocratic character of this legislation, which removes rights that have been enshrined in legal systems around the globe for centuries. The Australian Greens believe we must unequivocally state that no-one should be detained or imprisoned unless suspected of a crime on reasonable grounds or convicted by a court. Even the governments of the United States and the United Kingdom have not gone as far as this legislation in giving their security agencies the power to arrest and detain innocent people not suspected of being involved in any crime. The Australian Greens believe that the existing powers and processes available to the police services and to ASIO under criminal law are adequate to investigate and prosecute any terrorist crimes. The Federal Police can arrest anyone they suspect of committing fences and they can question them for a reasonable time. Anyone who is suspected of being engaged in terrorist crimes is extremely unlikely to be granted bail, so they will be held in custody whilst the investigation proceeds. ASIO can already tap telephones, access computer files and search people’s homes. The Greens believe the police and ASIO have the powers and the resources to pursue terrorist crimes.

But this bill would give virtually untrammeled power to ASIO to crack down not only on terrorists but also on ordinary Australians that ASIO say have information that ASIO believe they need. Those people could be friends or family, colleagues, neighbours, doctors or journalists—anyone ASIO believe has information about a person or a group that they allege is involved in terrorism. This bill would enable ASIO to ‘disappear’ these people. That is why eminent constitutional lawyer and academic Professor George Williams, whom others have quoted in this place today, has warned us that this bill will turn ASIO into a secret police force, that this is akin to Pinochet’s Chile.

I take this opportunity to go through the recommendations of the Parliamentary Joint Committee on ASIO, ASIS and DSD on this bill as a means of highlighting the fundamental flaws of this bill which cannot be improved by amendment. One of the crucial flaws of this legislation is the intention to give ASIO the power to detain incommunicado people who are suspected of being involved in terrorist activities but who may have information potentially relating to terrorist activities—throwing the net extremely widely. The joint committee has not acknowledged this crucial flaw or suggested a way to amend it, simply because this legislation cannot be amended to remove this flaw; rather, it needs to be rejected outright.

For the first time in Australia’s history, this bill intends to give ASIO the power to detain individuals. This extension of ASIO’s role from intelligence gathering, by giving it the power to detain, turns it into a secret police force. When this legislation was first introduced, it was designed to empower ASIO to detain people for 48 hours. It then became apparent that—potentially through
the hasty drafting of this legislation after September 11—it allowed for an indefinite number of warrants to be issued, effectively allowing for a period of indefinite detention of non-suspects. The joint committee recommended that the period for secret detention of non-suspects should be seven days. It is worth noting that this period of detention which was recommended by the joint committee goes well beyond the original period of detention of 48 hours proposed by the government—assuming, as I do, that the government did not intend for that period of initial detention to be indefinite.

Another flawed aspect of this bill is the refusal to give detainees access to a lawyer of their choice. Through this amended bill, the government is currently proposing that people detained under this legislation have no access to a lawyer for the first 48 hours of their detention and that no lawyer should be present during the granting of a warrant for their arrest. The government is proposing that, after the initial 48 hours of detention, people detained under this legislation have access only to a lawyer from a small pool of lawyers vetted by ASIO and that any individual able to access a lawyer from this small pool of lawyers cannot consult with that lawyer without having an ASIO officer present. It is hardly the sort of fair process that the Australian public expects.

Originally the bill also proposed that people detained under this act would have no right to silence and no defence of self-incrimination, so a person detained under a warrant may not refuse to give information even if it may incriminate them. The joint committee recommended that, if the bill must remove the right to silence, then a person must have protection against self-incrimination in providing information relating to a terrorist offence. Again, the Australian Greens would hardly argue that this recommendation is sufficient to address civil liberties concerns in Australia.

In its current form, the bill also stipulates that a person must not fail to produce any record or thing requested, and if they do refuse to provide such a record or a thing they face five years imprisonment. Aside from the obvious questions about how you can prove that somebody has failed to provide evidence, to have this kind of proposal applying to non-suspects caught by this legislation is clearly unfair.

This piece of legislation when first introduced allowed for the strip searching of children as young as 10 years of age. The committee recommended that no person under the age of 18 should be questioned or detained under this bill. This was rejected by the government that now wants to see in this amended bill a minimum age of 14 and bring in special provisions for children between the ages of 14 and 18. Another recommendation that the joint committee made with regard to this legislation was that a sunset clause should be put in place. This recommendation has also been rejected by the government.

The committee also recommended that the Inspector-General of Intelligence and Security be given the power to suspend an interview being conducted under warrant procedures on the basis of non-compliance with the law or an impropriety occurring. The government also rejected this proposal, preferring to allow the Inspector-General if he or she saw fit to notify a prescribed authority when a breach of the act had occurred and that the prescribed authority could then act after the event if they saw fit. It is hardly an efficient way to deal with a breach of this bill. In particular, its lack of timeliness undermines its efficacy as a safeguard. The fundamental flaws of this legislation simply cannot be amended out. No-one should be detained or imprisoned unless convicted or suspected of a crime on reasonable grounds by a court. I concur with the report of Senator Cooney and Senator Brown in the Senate Legal and Constitutional Legislation Committee that said:

The appropriate course to take with this legislation is to dispense with it.

Senator MARSHALL (Victoria) (12.24 p.m.)—I thank the Senate for this opportunity to speak on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 before us today. The bill before the Senate, known widely as the ASIO bill, is an inappropriate overreaction by the federal government. It is inspired
by overseas counter-terrorism practices, but it is flawed. We support steps taken to achieve real protection from terrorist attacks. We support the government’s initiative to review all of our security arrangements in light of the horrific attacks in Bali. We stand ready to consider any genuine proposals to meet the challenge of terrorist threats, but we do not accept that an appropriate response to terrorist threats is the secret detention of Australian citizens and a denial of natural justice and access to legal counsel.

In many ways the proposed bill, which aims to give powers to ASIO, is one that many a police state would be envious of and goes further than the legislative response to terrorism by governments that have experienced acts of terrorism on their own soil. The proposed bill is inconsistent with fundamental aspects of the rule of law and with core international human rights obligations. It is lazy legislation and it seeks to meet the threat of terrorism with the removal of fundamental rights and freedoms from its citizens and basically fight fear with legislative fear.

The bill before us in the Senate is amended slightly from its original form after serious concerns were raised by the Parliamentary Joint Committee on ASIO, ASIS and DSD. However, the bill still remains far too draconian to have this parliament pass it into law. The scope of the bill enables an extraordinarily vast range of persons to be potentially questioned and detained, even if they are not suspected of committing or preparing to commit an act deemed as a terrorist offence. The legislative process that has occurred since the government first proposed to introduce new laws to deal with the threat of terrorism in Australia and to Australian interests overseas raises grave concerns on this side of the chamber.

This is a government that is prepared to support a bill that would allow adults and children to be detained and strip searched. This is a government that is prepared to allow people to be denied access to anyone outside of ASIO while being detained by ASIO. This Attorney-General is prepared to accept that people may be held indefinitely without charges being laid or even the possibility that charges will be laid. The bill proposes to change ASIO as an organisation that operates as a gathering of intelligence agency that feeds the product of that intelligence into agencies which are charged with the responsibility for investigating potential crimes into some sort of secret police with all the powers that come with it—arrest and detention. ASIO would become a law unto itself.

The powers this government is prepared to give ASIO and the Attorney-General rest in too few hands. The process is not open or accountable and it is not open to public or political scrutiny. This undoubtedly would create a problem as ASIO operates as a secret intelligence gathering organisation and its own operations could be put in jeopardy if the amount of scrutiny required to administer such powers were enforced on ASIO. The government has not thought this legislation through. It has taken over 12 months now to propose legislation that would effectively assist intelligence gathering that would stop any potential terrorist threats to Australia or Australian interests overseas and has come up with a bill that can only be described as draconian and bad policy.

The government has accepted, after substantial public concern, that persons detained may have the minister approve a legal practitioner whilst in detention or being questioned by ASIO. In its original form the bill contained no such measures. That is, if a person were to be detained, they would have no access to legal counsel—a detained person would be held incommunicado. Prior to the amended bill, 34F(8) stated:

A person who has been taken into custody, or detained, under this Division is not permitted to contact, and may be prevented from contacting, anyone at any time while in custody or detention. The government now proposes to insert in schedule 1, item 24, before subsection (4), an amendment that ensures the person being taken into custody for questioning has the ability to contact an approved lawyer at any time when the person is in custody or detention. However—and as always with this government there is a however, and this one is outrageous—the provision to legal counsel may not apply if the minister is satisfied on
reasonable grounds’ that it is appropriate in all the circumstances that the person not be permitted to contact a legal adviser. What the Attorney-General has attempted with this amendment is to put a positive spin—some good PR—on an otherwise almost universally condemned bill. But in reality, the intention of the amendment has been undermined by a clause that allows the minister to prevent a person in custody or detention from accessing legal counsel if he or she so wishes.

The extent of denying Australians fundamental liberties, the deprivation of liberty without charges, through to persons being detained without access to legal counsel or family is an unacceptable standard for any free democracy. Without access to independent legal counsel, proposed section 34J, which is supposed to ensure that a person in custody or detention is treated humanely and is offered respect for human dignity and freedom from inhuman or degrading treatment, is worthless and meaningless. If there is no way in which information about questionable ill-treatment or detention can reach persons or organisations outside of ASIO, there is no practical means to challenge such treatment. The inability of detainees to access legal counsel is in stark contradiction to the UN Human Rights Committee’s General Comment on article 7 concerning the prohibition of torture and cruel, inhumane or degrading treatment or punishment. It states:...

... To guarantee the effective protection of detained persons ... provisions should ... be made against incommunicado detention ... the protection of the detainee also requires that prompt and regular access be given to doctors and lawyers, and under appropriate supervision when the investigation so requires, to family members.

The proposed bill is clearly in contradiction to those comments. The fact that it took the Joint Committee on ASIO, ASIS and DSD to raise concerns that the bill in its original form contained no provisions for access to legal counsel demonstrates this government’s complete disregard for international law and human rights. As I mentioned earlier, while the government now makes provisions in the bill for a detained person or persons to have access to a prescribed legal practitioner, so too does it contain provisions which seek to dismiss the fundamental, internationally recognised human right of having access to legal counsel while in detention or being questioned, simply on the basis of the minister’s discretion.

As I have previously mentioned in this chamber, this government is all too easily prepared to deny its citizens the basic human right of access to legal counsel when being held in detention. The cases of Mr David Hicks and Mr Habib, which I have previously raised in this chamber, demonstrate this position perfectly. Mr Hicks was held in detention in Guantanamo Bay for over nine months before being moved to Camp Delta on 25 May, where he remains. Mr Habib was arrested in Pakistan last year and has been detained in Guantanamo Bay ever since. To date, neither of these two Australians has been charged with any offence under international law, Australian law or US law, yet they remain in detention indefinitely. Since being held in detention, neither Mr Hicks nor Mr Habib has had any access to legal counsel or family members. Is this the situation we want to emulate in Australia: people held in detention without conviction or even charge? Guilt presumed without trial? I do not believe so.

If it is not enough that the government has proposed a bill that allows a person or persons to be detained without charge and without access to legal counsel, the bill also states that the government is content to have a person or persons detained for a period up to 168 hours. The bill as amended states that a direction under proposed section 34F(1) must not result in ‘a person being detained for a continuous period of more than 168 hours starting when the person first appeared before a prescribed authority’. One hundred and sixty-eight hours is equivalent to seven days, starting from the moment when the person first appeared before a prescribed authority. It would be likely that a person would be detained for some time prior to being questioned; therefore, if the parliament were to pass this bill it would effectively allow ASIO to have a person disappear from all communication and knowledge for a period that exceeds a week. The ability of ASIO to detain a person for such a
period without charge is in clear contradiction to the United Nations Human Rights Committee’s General Comment on article 9, which requires the prompt appearance before a judicial officer inside a period which does not exceed several days.

The term ‘several days’ has been defined in cases dealing with such excessive detention. In the case of Jijan v. Ecuador, the Human Rights Committee found a violation where the person was held for five days without being brought before a judge. The European Court of Human Rights found in the case of Brogan v. The United Kingdom that four days and six hours was too long to satisfy the requirement of promptness. I ask the minister and the government what authority they claim to have to disregard these judgments. What is the reasoning for dismissing these judgments? I put it to the government that it has dismissed these judgments for, if it has not, the minister and his staff are failing to adequately examine the legislation’s standing within the international community with respect to overseas test cases around these issues.

These judgments recognise that citizens must be afforded their human rights in all circumstances. The UN has found that the term ‘several days’ shall not exceed five days; the European Court of Human Rights found that four days and six hours was too long to satisfy the requirement of promptness. But the Australian government proposes that seven days is acceptable. The opposition says it is not. While these respected institutions have found that between four and five days is an excessive amount of time to hold citizens that have had no charges laid against their names, this government is demonstrating again that it will disregard overseas practices and legislate to the extreme. It is never enough for this government to recognise how law is progressing overseas and to respect that these laws have been tested and ruled upon by respected institutions.

What this bill demonstrates is that the government is all too easily prepared to disregard due process and human rights. The government cannot claim that it is not aware of the erosion of rights and liberties it proposes to advocate. The Attorney-General has effectively admitted that he is satisfied in advocating for such an erosion. In May, the Attorney-General stated, as he attempted to justify advocating such an erosion of rights and liberties:

We believe the community is prepared to make sacrifices of individual civil liberties in order that the community generally is protected from those threats.

This statement, which the Attorney-General made on behalf of the government, demonstrates, as I stated earlier, that the major answer to the threat of terrorist acts that this government is able to arrive at is the removal of rights and civil liberties of Australian citizens.

The Australian Labor Party do not agree that the strangling of civil liberties is acceptable in order to achieve the desired protection—which we support—against acts of terrorism. Those on this side of the chamber will not accept that the ‘sacrifice’, as the minister would put it, of individual civil liberties is satisfactory. Those on this side of the chamber are not alone in that thinking. It was former Prime Minister Menzies who, in his second reading speech when introducing the National Security Act 1939, stated:

... the greatest tragedy that could overcome a country would be for it to fight a successful war in defence of liberty and to lose its own liberty in the process.

The government should think long and hard about those words by one of their own icons. This bill attempts to advocate such a tragedy. It seeks to remove the liberty of individuals in Australia and, in the words of former Prime Minister Menzies, it would be ‘the greatest tragedy’ that a parliament would seek to remove such rights and liberties during the war on terror—a battle which seeks to ensure that individuals are able to appreciate such rights and liberties without the fear of being injured whilst appreciating them.

Academics and community groups have expressed grave concern over the passage of such a bill. Professor George Williams has expressed concern that the ASIO bill would establish part of the apparatus of a police state. Professor Williams has described it as a law that would not be out of place in former dictatorships such as General Pinochet’s
in Chile. If democracies allow the erosion of fundamental rights that have been accepted as just and fair for many decades by our citizens and for our citizens then we are allowing the tragic events of terrorism to be victorious. I reject this bill and encourage the Senate to reject it.

Debate (on motion by Senator Coonan) adjourned.

NOTICES

Presentation

Senator Ridgeway to move on the next day of sitting:

That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by the last sitting day in 2003:

(a) current rural industry-based water resource usage;
(b) options for optimising water resource usage for sustainable agriculture; and
(c) other matters of relevance that the committee may wish to inquire into and comment on that may arise during the course of the inquiry, including the findings and recommendations from other inquiries relevant to any of the issues in these terms of reference.

Senator Hutchins to move on the next day of sitting:

(1) That the following matters be referred to the Community Affairs References Committee for inquiry and report by the last sitting day of June 2003:

(a) the extent, nature and financial cost of:
   (i) poverty and inequality in Australia,
   (ii) poverty amongst working Australians,
   (iii) child poverty in Australia, and
   (iv) poverty in Australian communities and regions;
(b) the social and economic impact of changes in the distribution of work, the level of remuneration from work and the impact of under-employment and unemployment;
(c) the effectiveness of income-support payments in protecting individuals and households from poverty; and
(d) the effectiveness of other programs and supports in reducing cost pressures on individual and household budgets, and building their capacity to be financially self-sufficient.

(2) That, in undertaking its inquiry, the committee also examine:

(a) the impact of changing industrial conditions on the availability, quality and reward for work; and
(b) current efforts and new ideas, in both Australia and other countries, to identify and address poverty amongst working and non-working individuals and households.

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.41 p.m.)—I move:

That intervening business be postponed till after consideration of government business orders of the day No. 6 (Treasury Legislation Amendment Bill (No. 1) 2002) and No. 7 (Taxation Laws Amendment Bill (No. 3) 2002).

Question agreed to.

TREASURY LEGISLATION AMENDMENT BILL (No. 1) 2002

Second Reading

Debate resumed from 26 September, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

TAXATION LAWS AMENDMENT BILL (No. 3) 2002

Second Reading

Debate resumed from 15 October, on motion by Senator Abetz:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.
Sitting suspended from 12.44 p.m. to 2.00 p.m.

MINISTERIAL STATEMENTS

Indonesia: Terrorist Attacks

Senator HILL (South Australia—Minister for Defence) (2.00 p.m.)—I seek leave of the Senate for Senator Ellison to report on his mission to Bali and Jakarta.

Leave granted.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.00 p.m.)—Thank you, Mr President, and I thank the Senate for its indulgence. The foreign minister, Alexander Downer, and I returned this morning from a two-day visit to Indonesia, where we visited Bali and Jakarta. Key objectives of the visit were to provide reassurance to the victims and their families and thank emergency response personnel, as well as assess the situation on the ground and obtain Indonesian agreement to the establishment of a joint investigative team. As we now know, this mass murder resulted in a loss of life for Australians, Indonesians and many other people of different nationalities. Although early days, it would seem that Australia and Indonesia are the two countries that have suffered the heaviest loss of life. At present, 30 Australians are reported dead and 119 are unaccounted for. We have very serious concerns for these missing Australians.

In Bali, Mr Downer and I met with the Governor of Bali, the Chief of Police and friends and families of the missing and deceased. We met with the directors of the main hospital and morgue in Denpasar and spoke to those who had treated many of the victims. I expressed my sincere gratitude for the amazing effort of the hospitals and volunteers in their care of victims and their families. The hospitals dealt with an emergency that went well beyond their supplies and their capacity. They did more than their best and, without question, with the utmost commitment. Australia has delivered medical supplies to hospitals in Bali and committed $200,000 to the Indonesian Red Cross. Volunteers from the local Australian community in Bali have made an outstanding effort throughout this whole affair, and we met with them and thanked them. In particular, I spoke to a surgeon from Adelaide who was holidaying in Bali with his wife and three children. When he heard of the disaster, he went straight down to the Sari Club and worked there ministering to the injured. As I understand it, he was there for some days. Such were the efforts made by volunteers of all nationalities, but in particular I want to pay tribute to those Australian expats who did such a great job.

Mr Downer’s and my visit to the bomb site in Kuta had a lasting impact on us both. On behalf of the government of Australia we laid wreaths to record in some small way a tribute to those who had lost their lives. Yesterday, in Jakarta, we met with the President of Indonesia, Mrs Megawati Sukarnoputri; the Minister for Foreign Affairs, Dr Hassan Wirajuda; my counterpart, the Minister for Justice, Mr Mahendra; and Mr Yudhoyono, the Coordinating Minister for Political and Security Affairs. We expressed our sincere condolences to the people of Indonesia, and in particular to the families of those who had died. It was an aspect felt by both Mr Downer and me that all whom we met in Indonesia, particularly those in the government including President Megawati, were deeply shocked by what had happened. They conveyed to us their condolences on the loss of Australian life and indicated their total commitment to supporting us in finding those guilty of this outrageous act. They also indicated their total support in relation to helping those who had been injured and the families and friends who were still looking for missing ones.

A significant outcome of our visit was the establishment of a joint investigative and intelligence team to investigate the bombing. The Commissioner of the AFP and the Director-General of ASIO have remained in Indonesia to finalise arrangements to ensure that the very best of Australian and Indonesian expertise is applied to this crucial task. We will hold discussions with other countries affected by the incident about contributions that they can make to this investigative team. The agreement has been made possible under the auspices of the Memorandum of Understanding on Combating International Terrorism signed by President Megawati and Prime
Minister Howard earlier this year. The joint investigative and intelligence team will build on existing cooperative efforts with Indonesian authorities that have seen 45 Australian Federal Police and other state and territory officers undertake investigative work and, importantly, victim identification work in Bali.

As the Senate would be aware, within 24 hours Australian law enforcement officers were in Bali to assist the victims of this brutal, unjustified mass murder and to provide assistance to the Indonesian police in their investigation. It is important to remember that this outrageous crime was committed on Indonesian soil. Consequently, Indonesian authorities are responsible for the investigation of this atrocity. The AFP continues to work closely with Indonesian authorities in assisting them with the criminal investigation. I can inform the Senate that we have now a team of police personnel in Bali assisting the Indonesian police with this investigation and that the group currently includes forensic specialists, crime scene investigation officers, search and rescue, specialist victim identification officers, post bomb blast investigators, intelligence officers, general investigators and support staff. The composition of the team is necessarily varied as the task is extremely complex.

Understandably, family and friends are seeking detailed information on the progress of the investigation but, as with many other criminal investigations, to discuss operational detail is not only inappropriate but dangerous, particularly during an investigation of this nature. Likewise, there will be much speculation in the public arena over likely arrests and other issues relating to the investigation. I expect that will continue but, as I have said, to comment on such speculation is detrimental to the investigation. Suffice it to say that during an investigation of this scale hundreds of people will be interviewed, some likely more than once. To draw premature conclusions from the standard process does not assist investigators in pursuit of the truth. Overseas experience has shown that an investigation of this magnitude will not be concluded overnight. We fully expect that this investigation will take some time but we are in it for the long haul and we will not relent in our pursuit of those responsible for this crime.

It is anticipated that the total number of people returning from Bali and having contact with police will be in the thousands. Already, approximately 5,800 questionnaires distributed to returning passengers have been received. The vast amount of information obtained through this process is being collated in conjunction with many other sources of information. The number of inquiries resulting from this process will be extensive and will take time and resources to pursue. The Australian Federal Police is coordinating those inquiries and pursuing all possible leads. The Australian Federal Police is interviewing all those who were present at the scene of the bombings and obtaining items of clothing from them for examination, both in Bali and here in Australia. They are also obtaining and copying the many hundreds of photos and videos taken by tourists in Bali at the time, and those require close examination. In the meantime, the government urges those with information or material relevant to investigations of the Bali bombing to contact Crime Stoppers on 1800 333 000. This is a very important means of community assistance in gathering important investigation in relation to this inquiry.

I want to place on record the appreciation of the Commonwealth government in relation to those state and territory police officers who are also serving in Bali in relation to this matter and also to the assistance that we have from the state and territory police who have personnel at the Western Control Centre, which is overseeing this investigation.

The Prime Minister announced yesterday that the Australian government will offer a reward of up to $2 million to encourage the provision of information leading to the arrest and conviction of those responsible for the terrorist attack in Bali. The terms of offering the reward will be discussed with Indonesian authorities. The investigating authorities are currently focused on identifying victims and collecting and collating a vast quantity of information direct from the crime scene and witnesses. Inquiries are continuing with hos-
pitals in relation to those Australians who returned with injuries. Physical evidence, including clothing, shrapnel and glass taken from those victims is being obtained for examination. This process also requires interviewing doctors and medical staff to ensure that evidentiary processes are followed.

The focus of the AFP’s initial contribution to the Indonesian police investigation into the bomb blasts at Kuta has been at the crime scene and with victim identification. Currently we have 25 AFP members involved in the disaster victim identification process on the ground. There are plans to send further specialists on the first available flights. My last information was that we are looking at another 19 officers who can assist in this regard. Disaster victim identification includes the procedures used to positively identify deceased victims of events such as those bomb blasts which occurred in Bali. Disaster victim identification is primarily the responsibility of the Indonesian authorities and they have appointed a DVI commander who has assumed responsibility for the oversight of this process and repatriation of bodies to Australia and other countries.

The Australian DVI team in Bali has been engaged by the Indonesian commander to assist in identification and crime scene examination processes. Specifically, six members are currently providing assistance with the mortuary. A number of members are also involved in obtaining information from victims’ families in Bali, and members have also been assisting in the forensic examination of the bomb scene. In addition, the AFP is establishing a major incident room in Canberra with experts from around Australia to assist with disaster victim identification. This process is an extremely complex one which requires an extremely high level of identity certainty to exist before victims can be released to relatives. Whilst the reuniting of families and victims is a priority, it is essential that there be certainty in this process and that there be no mistakes.

The identification processes must comply with internationally recognised protocols which require positive scientific identification in addition to visual identification by a friend or relative. Unfortunately, but unavoidably, this process takes time, and when one has regard to the injuries and the state of bodies at the mortuary and other aspects this proves to be a very difficult task. We had the example of the Childers backpacker case where there was a fire and some 16 people perished. It was two weeks before those bodies could be released. I urge patience from all those concerned, but we can understand the anxiety of those people who are searching for loved ones who are missing and of those who want to be reunited with them.

I am pleased to advise the Senate that arrangements have been put in place to facilitate the painstaking process of identifying the deceased as quickly as possible by using the Commonwealth’s CrimTrac initiative. Under the arrangements, families and relatives of Australians who are presumed killed or missing as a result of the explosion will be able to register missing persons through their state and territory police services. Telephone numbers have been established in each jurisdiction for this purpose. Police will then visit relatives and friends to collect DNA samples to be cross-matched by CrimTrac with DNA data being collected by experts in Bali. This process is one which we believe will provide certainty and which will provide a speedy as possible result in the circumstances.

This has been a great tragedy for not only Australia but also many other countries. On this visit both Mr Downer and I impressed upon Indonesia that we wanted to work closely with that country—and I must say we received the same message in return. We indicated to them that this was as much an attack on Indonesia as on Australia. One only has to see the devastation and impact that this has caused in Bali to realise that. Tragically, this has occurred in a place which many Australians have happy memories of. It has been very much a happy destination over many years for many Australians. That has added to the tragedy of this. There will be an effect felt by the Balinese people, who have been such good friends to Australia. That impact will be felt personally not only through the loss of life but also, unfortunately, through economic aspects.
Again, I want to place on record our thanks to those outstanding volunteers who assisted the work of those consular officials and Defence and emergency personnel who are doing such a great job. I want to acknowledge the great work being done by the Australian Federal Police and other members of police forces from around Australia who are there—expert officers who are assisting in this. I want to acknowledge the cooperation of the Indonesian authorities. I also want to place on record this government’s commitment and the commitment of all Australians who want to see those responsible for this outrageous act brought to justice.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Indonesia: Terrorist Attacks

Senator Faulkner (2.15 p.m.)—My question is to the Minister representing the Prime Minister, Senator Hill. Minister, I refer to the Prime Minister’s statement yesterday that he has requested the Inspector-General of Intelligence and Security to undertake a review of what information Commonwealth agencies had available to them relating to the Bali bombings. Can I ask what the expected time frame is of Mr Blick’s review and whether the minister can provide the Senate with its terms of reference. Will Mr Blick be investigating and reporting on both the nature and the timing of information received as well as what actions resulted from the receipt of that information? Given the clear public interest in this issue, I also ask whether the Inspector-General will be providing a report on this investigation to the parliament, as he did recently in regard to the allegations involving the Defence Signals Directorate.

Senator Hill—I will have to refer parts of the question to the Prime Minister, but in particular I will seek for Senator Faulkner the terms of reference. As I understand it, it is basically open-ended—we will allow Mr Blick to conduct his task without restraints of strict terms of reference. He is to look at the intelligence flow to gauge whether appropriate responses were made. He has the opportunity to look at the source material, the action that was then taken on, say, travel advice et cetera in relation to the assessments; and to report to the Prime Minister on the outcome. Obviously, the Prime Minister has in mind the issue of ensuring that the intelligence system is working effectively in mind of the future rather than simply an assessment of the past. In other words, it is important in these sad circumstances to realise that the terrorist threat remains, and if there is anything that can be learnt from the experience in terms of intelligence, or lack of intelligence, then we would want that opportunity.

In relation to a report to the parliament, I would envisage that the Prime Minister would be reporting to the parliament and providing as much as Mr Blick’s report as he can. Obviously, some parts he may not be able to provide because of the content, but it is important that the Prime Minister does that to the extent that it gives the public confidence in the process that he has adopted. Otherwise, I will see whether the Prime Minister can add further to what I have provided.

Senator Faulkner—Mr President, I ask a supplementary question. I appreciate, as I am sure do all senators, that the Prime Minister is in transit to Bali, but I would ask the minister whether he could respond before the Senate adjourns this evening with some of the detailed elements of this question. Minister, given the nature of your answer and the comments that the inspector-general’s operation is dealing with security and intelligence agencies, can I also ask on this occasion whether the inspector-general will be authorised to seek information from other agencies such as the Department of Foreign Affairs and Trade—in particular, the consular affairs area.

Senator Hill—Again, I do not have specific advice on that matter, but I would envisage that Mr Blick does. In other words, for his inquiries to be as useful as possible, it seems to me that he would need to cast the net to include the users of the information that is provided. Intelligence is only of value in terms of its use. In looking at lessons that might be learned from this experience, how agencies have used that information seems to
me to be important. In relation to how promptly I can provide the information that Senator Faulkner is seeking, I will refer that to the Prime Minister’s office and see if there is anything I can table today.

Indonesia: Terrorist Attacks

Senator TCHEN (2.20 p.m.)—My question is to the Minister for Health and Ageing, Senator Patterson. Will the minister update the Senate on further information she has on how Australia’s health system is managing the impact of the Bali terrorist attacks?

Senator PATTERSON—I thank Senator Tchen for his question. I do not think we can thank our health workers too often for what they are doing in caring for the people who have been injured by this tragedy. I have tried to keep in touch with the relevant state ministers. I have spoken again to my state and territory colleagues Jane Aagaard, Bob Kucera, John Thwaites and the senior staff of Craig Knowles and Wendy Edmond. I was not able to speak to Lea Stevens. They, quite rightly, keep telling me about how stretched some of the sections of the medical profession are, in particular the burns units, but how they are coping. We can marvel at what those people have been able to achieve. Each of them has spoken very highly of how their hospitals are dealing with the crisis, and I join them in this.

Since the beginning of the crisis, my department has been in constant contact with the states and territories to ensure the coordination of health resources. I want to assure people this will continue. My department is liaising with state health authorities on the availability of hospital treatment, especially in relation to the burns patients. I wish to advise the Senate that one Indonesian victim of this tragedy arrived in Darwin for treatment last night. Unfortunately, another, who was identified for evacuation, died before being airlifted. The government has offered to bring Indonesian victims to Australia for treatment, but ultimately this decision will be made by the Indonesian authorities. We stand ready to assist them, as the states have indicated to me as well, and we will work with the states and territories to determine the best locations for their treatment.

On behalf of all the states and territories, the government has agreed to the Australian Red Cross Blood Service exporting albumen to Bali to treat casualties from the terrorist bombing. I wish to thank the states and territories for their cooperation in this. As I said, in my discussions today I have been advised that, although critical care units are under stress, they are managing. The need for counselling, both now and ongoing, is quite significant and has been identified as a significant area of need. I think we all need to remember that many of the people in counselling, especially in mental health departments within the states, are under a particular burden. Many of them knew Margaret Tobin, so they are working under a double disability of working with these people who have faced the tragedy and also of facing the loss of a coworker and colleague. Because she played a significant role in the mental health field, she was known not just in South Australia but also across Australia in the area. For those of us who maybe had not thought about that, something that we need to realise and to understand is that the counsellors, many of whom knew her, are also suffering personally. But I was told by one of the health ministers that they were still managing to do a fantastic job, despite the fact that they had this added load.

Further to this, a part of the national coordination role that the department has been undertaking is the compilation of a full list of people who have been admitted to Australian hospitals as a result of injuries received in Bali. My department has asked the states and territories to advise immediately if assistance in the provision of counselling is required. Our consulate in Bali is providing counselling services, and yesterday the Consul-General held a briefing session for families in Bali, involving the embassy doctor, the DFAT counsellor and other officials. My department is working with the other Commonwealth agencies and states and territories to ensure that victims and relatives will be able to avail themselves of counselling, not just now but also in the future. In other such traumatic events, experience has shown that it can sometimes be weeks and months before the victims or families realise the need and benefit of professional counselling as-
sistance. Yesterday I commented on the significant goodwill and effort being displayed by many private companies and community organisations across Australia in assisting the victims and families of the tragedy in Bali. (Time expired)

**DISTINGUISHED VISITORS**

The President—Order! I wish to draw the attention of honourable senators to the presence in the chamber today of a parliamentary delegation from the United Kingdom, led by Mr Peter Kilfoyle MP. On behalf of honourable senators, I have pleasure in welcoming you to the Senate and I hope that you continue to be informed and to enjoy your stay in Australia.

Honourable senators—Hear, hear!

**QUESTIONS WITHOUT NOTICE**

*Indonesia: Terrorist Attacks*

Senator Lundy (2.25 p.m.)—My question is to Senator Hill, representing the Prime Minister. Given the Prime Minister’s announcement of the establishment of a joint investigative authority to track down the terrorists responsible for the attack in Bali, has the government given consideration to the establishment of a joint authority with Indonesia to better facilitate the identification, preservation and repatriation of the bodies of Australian victims?

Senator Hill—I am not sure exactly what is meant by a joint authority. I think Senator Ellison has brought us up to date on the processes that are being adopted for the earliest possible identification and repatriation. The mortuary is now well staffed and includes people whose specialisation is in dealing with disasters of this type. The short answer is that the government has not considered a joint authority but, beyond that, I do not think it would actually assist in the task. I think that the task is being dealt with now as well as it possibly could be.

*Indonesia: Terrorist Attacks*

Senator Scullion (2.26 p.m.)—My question is to the Minister representing the Minister for Small Business and Tourism, Senator Abetz. Will the minister inform the Senate of steps being taken by the airlines in response to the bombings in Bali? Are there measures to assist people in adapting to changed and trying circumstances?

Senator Abetz—I thank Senator Scullion for his question on this important logistical matter. Can I also take the opportunity of noting that Senator Scullion represents the Northern Territory and that the people of Darwin and the Northern Territory have done a fantastic job in assisting those in need and those flying in and out of Australia. I just wanted to make that comment. The airlines—and I think it is fair to single out Qantas in particular—have responded very quickly to the devastating situation in Bali. I can inform the Senate that Qantas has scheduled additional flights from Bali to bring Australians home as quickly as possible. Qantas has sent two of its own doctors and three nurses to Denpasar. It has also transported 16 medical specialists from Emergency Management Australia to provide medical assistance to passengers in need. Qantas has also waived all conditions on tickets from Bali back to Australia. Australians will get home, regardless of which airport they land at inbound from Bali.

Qantas has also advised the government that it is carrying all airline customers from Denpasar to Australia at no additional cost. For people without a valid ticket, a reduced price ticket is available. A special compassionate return ticket is available for families. Qantas will return the deceased to Australia at no charge to families. In many circumstances, Australians will receive refunds for holidays cancelled or postponed as a result of the travel warning issued in relation to Indonesia and Bali. Qantas and Singapore Airlines are offering full refunds with no penalties for airfares and package deals. Customers can transfer to other flights at a later date at no additional cost until the end of October. Garuda airlines are making a similar offer until 27 October.

Many travellers who have booked their travel through a licensed operator should be able to cancel for some refund for the month of October or, alternatively, postpone their travel or transfer their booking to other destinations. People with any concerns about cancelling their travel should contact their travel agent. My colleague Minister Hockey
has informed the parliament that Air Paradise International, a new Bali based airline which had planned to commence operations next month, has suspended all services until further notice. There will be full refunds on all tickets. As a government we will, of course, continue to monitor the situation. We thank those airlines that have so generously supported those in need.

Indonesia: Terrorist Attacks

Senator CHRIS EVANS (2.30 p.m.)—My question is directed to Senator Hill, the Minister representing the Minister for Foreign Affairs. Can the minister confirm that the travel advisory for Australians travelling to the Republic of Indonesia issued on 20 September was changed on 13 October 2002? Can he also confirm that the travel advisories for Australians travelling to Malaysia, the Philippines and Thailand which were issued on 10 September 2002 have not since been changed? Could the minister advise whether these travel advisories are now under review?

Senator HILL—I think I indicated yesterday that the travel advice is now to defer proposed travel to Indonesia, and it obviously was not that before the bombing—it was basically what I have expressed as ‘take care on your travels’. In relation to other tourist destinations in Asia, my understanding is that the travel advisories have not been changed but the matter continues to be considered.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I thank the minister for his answer, but he did not answer the primary question I asked him, which was whether he can confirm that the travel advisory for Australians travelling to the Republic of Indonesia issued on 20 September was changed on 13 October this year. I would like him to address that. Can he also advise whether Australia, the US, the UK and Canada base their travel advisories on the same shared intelligence and whether the Australian government consults any of those countries in the preparation of travel advisories?

Senator HILL—We are obviously at cross-purposes. I said that it was, as I understand it, changed after the bombing in the terms that I have just expressed. I would need to seek advice from DFAT on the question of whether different countries confer with each other as to their advisories but I would be confident that, in relation to our region, countries such as the United States and Australia would be basically working off the same source intelligence. We might not be working off the same assessments of that source, but certainly there is widespread sharing of intelligence and the intelligence is an important part of the information base which is used to determine travel advisories.

Foreign Affairs: Iraq

Senator BARTLETT (2.33 p.m.)—My question is to the Minister for Defence. Noting that the US President, George Bush, has just signed into law a congressional resolution authorising him to launch military action against Iraq and the current consideration of the same matter by the UN Security Council, is the minister aware of comments by the director of the Central Intelligence Agency of the USA earlier this month advising that a strike against Iraq is more likely to trigger terrorist attacks than prevent them and that, unless provoked, Iraq is unlikely to use weapons of mass destruction against America? Would the minister agree that the same scenario is likely to apply to Australia? Can the minister identify any greater threats to Australia that are closer to home and should take priority over a proposed war that is literally on the other side of the globe?

Senator HILL—I also saw the public reports of claimed CIA statements to the effect that the honourable senator has just stated, but I think it is worth looking at the issue that is really being addressed. The issue that is being addressed is that Iraq has a program of weapons of mass destruction. The international community has sought to contain and deter Iraq through a range of sanctions and no-fly zones and the like but they have only been partially successful. As a result, that weapons program continues to develop. Iraq has in the past been prepared to use weapons of mass destruction against its own people and against others. It has invaded other countries and, if Senator Bartlett ac-
cepts the British assessment that was put out recently, it continues to have regional aspirations. With Iraq, that means using force to achieve those aspirations.

Given that background, Iraq is a significant threat, and as the weapons program further develops so will the threat. The United States is saying that that is intolerable and needs to be addressed, and we share with the United States the view that that program of weapons of mass destruction must cease and that the weapons that currently exist must be destroyed. Obviously, we want that to be achieved without another war. We trust that international pressure through the United Nations and regional bodies such as the Arab League and the like will persuade Saddam Hussein to end that weapons program and to destroy those weapons. But if that communal pressure is unsuccessful then other options will have to be considered, because otherwise the threat will not only continue but also continue to develop.

Senator BARTLETT—Mr President, I ask a supplementary question. Minister, given the clear threat that now exists to the safety of Australians and other civilians in our own region, will the government reassess its potential willingness to devote military resources to a conflict in Iraq? Noting the fact that President Bush sought congressional approval for military actions, will the minister commit the Australian government to do likewise and, before it sends any troops into any conflict in Iraq, first put the question to a genuine conscience vote of both houses of the Australian parliament, as occurred in the United States?

Senator HILL—Australia has not been asked to contribute to a war against Iraq. As I said, the emphasis of the Australian government is to seek, through the United Nations and other collective means, to achieve the goal of ending the weapons program without another war. If, however, it comes to that and Australia is asked either under the United Nations collective banner or without the United Nations collective banner it would be considered by the Australian government at that time. The Prime Minister has said that if Australia took that executive decision, the decision would then be brought to the parliament in the same way that Mr Hawke did in relation to the Gulf War. I have not seen any change in Mr Howard’s position on the matter.

Defence: Russell Offices

Senator HOGG (2.38 p.m.)—My question is to Senator Hill, the Minister for Defence. Why has the government decided to sell and lease back defence headquarters at Russell Offices? Isn’t it the case that Russell Offices house the chiefs of staff of Australia’s armed forces as well as our top security intelligence agencies such as the Defence Signals Directorate and the Defence Intelligence Organisation? Given the significant security risk, has the minister placed any limitations on who may buy the property? Will special security checks be conducted to prevent Australia’s national security from being compromised once the ownership of Russell Offices transfers to private hands? Is the minister aware of any examples of overseas governments that have sold and leased back their national defence headquarters?

Senator HILL—In relation to the last part of the question and answering that first, in the United Kingdom, for example, the Ministry of Defence leases a number of buildings within the Ministry of Defence headquarters. Obviously, security must be ensured, but that does not necessarily mean that ownership must be maintained. The government has been intending to sell and lease back Russell Offices, and in fact it is scheduled to proceed this financial year, but it would be done in a way that would ensure that security is not in any way prejudiced.

Senator HOGG—In a supplementary question. Why does the government continue to ignore the findings of the Auditor-General that sale and lease-back projects are costly and wasteful exercises in which any immediate financial benefits are quickly outweighed by the cost of the leases? Can the minister table the cost-benefit analysis on which the government has based its decision to sell and lease back Russell Offices, so that the public may assess for itself whether it will get value for money from the government’s latest outsourcing exercises?
Senator HILL—The senator is right that you would do a cost-benefit analysis, and if the government did not believe there was a cost benefit in this it would not be engaging in the process. I will see whether that assessment can be released publicly. I am not sure whether one would want to have in the marketplace when one was wanting to maximise the return from the deal. But, as I said, from looking at our record as against the Labor Party’s record, I think we can be reasonably confident that we would be taking the best economic decisions, and we certainly would do it consistent with all security requirements. (Time expired)

Indonesia: Terrorist Attacks

Senator LEES (2.42 p.m.)—My question is to Senator Patterson, the Minister for Health and Ageing. As the minister has already noted, staff at many of our hospitals across the country are working very long hours and doing an outstanding job of caring for those people who have been brought back from Bali. Will the Commonwealth be allocating additional funding specifically and directly to those hospitals that are involved, particularly those hospitals that are coping substantially with burns patients?

Senator PATTERSON—I thank Senator Lees for the question. When I was answering the last question, I did not actually get the opportunity to make a couple of comments that I think are important to make. One of those is that one of the pharmaceutical companies has agreed to supply for free to Australian hospitals its latest product for sepsis—which is one of the conditions that people with serious burns suffer from—for the treatment of Bali victims.

The question that Senator Lees has asked is a little premature. As I said to the Senate, I have been in constant contact with the relevant ministers, and they assure me that they are coping. I do not necessarily want to make this point now, but let me say that when we had the health care agreements which are coming to an end at the moment and private health insurance went up, there was an agreement that would take money back from the states, and the states have had a $3 billion windfall as a result of that. I do not want to be finicky here, but I think we have to look at the load on the states. It is not an even load, because Western Australia, South Australia, New South Wales, Queensland and Victoria have burns units and have therefore taken a heavier load, some more than others, and of course that will have to be looked at.

But at the moment the immediate issue is that the state ministers have advised me that they are managing and coping. As I said, we have got issues like this drug company who are prepared to give their medication, which has just been listed on the PBS, for free, and I commend them for that. There have been other offers as well. The private hospitals have also indicated their willingness to assist, as have the health funds. Until that is all looked at, your question, Senator Lees, is a little pre-emptive.

The ministers have told me that one of the heaviest demands is on counselling—and Minister Aagaard from the Northern Territory has indicated that—because the volunteers were seeing all the patients coming through who were either stabilised or redirected to other hospitals throughout Australia, especially the burns unit. I have asked my department to discuss that with them. The department has indicated to the states that, if additional counselling is required, they need to advise us. But, at the moment, we have been advised that they are coping.

Senator LEES—Mr President, I ask a supplementary question. I thank the minister for her answer and note that hospitals have said that they are coping in terms of being able to care for the patients. But I note that the director of the burns unit at Concord Hospital has estimated that some patients with serious burns will be looking at incurring costs with the hospital of some $250,000 per case. So I ask the minister: looking ahead, and given that many people will require treatment for a considerable period of time, will the Commonwealth consider direct support to individual hospitals? I am not talking about grants to the states but talking about particular support for individual hospitals which are frequently already
stressed as far as their financial capacity to deal with extra patients is concerned.

Senator PATTERSON—I thank Senator Lees for her assistance in developing the policy about this, but that would be a very unusual step to take. I think the most appropriate thing to do is for me to continue my discussions with the states on a regular basis—and discussions of my senior departmental officers with senior departmental officers in the states—to address their concerns. The state ministers will advise us of any additional strains on those hospitals. I think that is most appropriate. I understand the desire of Senator Lees to assist and put forward a policy idea, but I think my discussions and my senior departmental officers discussing this with senior departmental officers in the states is the appropriate way to go. We are monitoring this on a very regular basis.

Telstra: Telecommunications Infrastructure

Senator MACKAY (2.46 p.m.)—My question is to Senator Alston, Minister for Communications, Information Technology and the Arts. Can the minister confirm that over recent years the sealant 3M encapsulant gel was used throughout Telstra’s network to seal cable joints in order to weatherproof them in a program called Seal the CAN? Can the minister also confirm that, far from protecting the cable, this product in fact corrodes and even splits it, causing serious faults and outages? Can the minister confirm that there is now such an enormous backlog of work in fixing these problems that Telstra is using plastic bags as temporary protection for cable connections in some parts of Australia and that it will cost many millions to rectify the problems caused by the use of this sealant throughout the network?

Senator ALSTON—I can advise the Senate that Telstra has informed me that, as part of the general maintenance regime of its cable network, a weatherproofing gel is used to seal cable joints against water damage, and the product has been in use since 1997. The gel continues to be effective on 97 per cent of the joints, and issues that have arisen in recent times relate to the remaining three per cent and are being addressed. Problems arise when the gel is used on older air core cables which also contain moisture. Since March 2001, Telstra has issued work instructions to staff to cease using the gel on this type of cable due to improved methods of cable jointing. Use of the gel ceased altogether in April this year. The problem of degradation does not occur in other cables. Telstra further advised that moisture outside the cable has no effect on the gel and that reports that, with rainfall, the network will fall over are incorrect. Nevertheless, Telstra believes the product is at the end of its life cycle and has been replacing the gel when required.

Despite the figures on this that were bandied around in the media a week or so ago, I think it is quite incorrect to suggest that there is any such thing as an enormous backlog and that there will be very significant amounts involved. The cost is likely to be in the order of $75 million over the next three years, not the $187 million which was mentioned in the media and which relates more broadly to the CAN upgrade. The sealant is confined to only a very small proportion of the network and is a matter that is very much in hand at the present time.

Senator MACKAY—Mr President, I ask a supplementary question. Having slashed its workforce by around 40,000 since 1997 and its capital expenditure budget by $800 million a year since 1997 to satisfy the share market, is Telstra now trying to pay for the cost of this blunder by, amongst other things, drastically increasing phone line rental fees for ordinary consumers?

Senator ALSTON—As the Senate knows, this is basically the strategy that is being used in the run-up to the Cunningham by-election; it has nothing to do with the facts of life. The facts are that Telstra’s capex reduction, which was in the order of 18 per cent in the last year, compares more than favourably with that of a number of the RBOCs in the US, which have capex reductions of around 30 to 40 per cent because of surplus capacity. The use of sealant gels has nothing to do with the reduction in the workforce. That reduction has everything to do with changing technology and a need to increase productivity, as Senator Mackay well and truly knows. Mr Tanner—who now
seems to have more of an interest in education issues than he does in communications issues; I am not sure whether or not he is positioning himself for a bad result on Saturday—quite clearly does not understand the facts of life. Any changes as a result of the price cap arrangements are very much in the interest of consumers, as you well know. There is protection for low-income earners in spades, and there is more flexibility in the system. (Time expired)

Indonesia: Terrorist Attacks

Senator BARNETT (2.50 p.m.)—My question is to the Leader of the Government in the Senate, Senator the Hon. Robert Hill. Will the minister provide the Senate with an update of actions being taken by the Australian government to assist victims of the Bali bombings and to track down those responsible for these senseless attacks?

Senator HILL—There have been some significant developments over the past 24 hours. The Prime Minister has announced that he is travelling to Bali today accompanied by the Deputy Prime Minister and the Leader of the Opposition. One of their first tasks will be to join with other Australians, many of them friends and families of the victims, in a memorial service this evening. That service, I understand, will take place around sunset in Bali. The Prime Minister will also be using this trip to listen to the concerns and frustrations of the families and friends of victims. We are all aware that this is a most tragic and difficult time for these people, and the emotions they feel will often be expressed through frustration and anger. We hope that the presence of the Prime Minister, the Deputy Prime Minister and the Leader of the Opposition will be a symbol to these people that the Australian people as a whole are with them in this time of need. We hope that this will provide some comfort to them.

I want to again put on record our admiration for the efforts of our public servants, medical teams, police investigators and military personnel. During this tragic and difficult time they have worked tirelessly and shown great compassion. The Prime Minister will also use his trip to assess what further resources may be directed towards the outstanding work that needs to be done in Bali. The Prime Minister has also asked the Australian ambassador to Jakarta, Mr Ric Smith, to go to Bali as the overall coordinator of the Australian effort.

Again the Australian Defence Force has responded to the call. Defence diplomatic staff working from the consulate in Bali requested that additional ADF personnel be provided. A party of some 12 additional ADF staff, including three linguists and two chaplains, arrived in Bali last night. Again I record my thanks to the men and women of the ADF who perform magnificently in this task. As was said by Senator Ellison, we understand that the delays caused by the process of identifying bodies will cause some additional grief to families. Our officials will do all they can in these circumstances to minimise such delays.

In addition to the teams we have working on the identification and repatriation process, as Senator Ellison also said, our investigators are also progressing in their tasks. The Attorney-General, as has been said, announced a $2 million reward for information which we hope will lead to and contribute to the early arrest and conviction of those responsible for this callous mass murder. We will leave no stone unturned in our efforts to track down the killers and bring them to justice.

Finally, the government has offered further support to the families of those Australians who suffered injury in the attacks. The government has announced that it will pay airfares and accommodation costs to enable Australians injured in Bali and recovering in hospitals in Australia to be reunited with family members. This arrangement is available for families who live a long way from hospitals where their injured relatives are being treated and who would have difficulty in paying for air travel and accommodation required for hospital visits.

Disability Services: Funding

Senator FORSHAW (2.55 p.m.)—My question is directed to Senator Vanstone, the Minister for Family and Community Services. Minister, I refer to a meeting being convened by state and territory ministers for
disability services in Canberra tomorrow—Friday, 18 October—to attempt to finalise funding for the new Commonwealth, state and territory agreement on disability services before the current agreement runs out in 14 days time. Can the minister confirm she has rejected the invitation of her state and territory colleagues to attend that meeting? Minister, if that is the case, when in the next 14 days do you plan to sit down with your state and territory colleagues to negotiate a solution to this funding crisis and return some certainty to the disability sector?

Senator VANSTONE—Senator Forshaw, you cannot understand how grateful I am for that question. There is a meeting of state and territory disability ministers in Canberra on Friday. The meeting was set by the state ministers without consulting the Commonwealth as to dates that might suit me to attend. On that day I had already made a commitment to launch an Indigenous project in my own state. I have not the slightest intention of breaking that commitment because the state ministers have chosen a time that suits them as opposed to anybody else. I do not see why the Indigenous community should be told that they do not count. I will tell you why in particular I am not going to cancel that. It is because I have consistently said to the state ministers that I am willing—in fact, keen—to meet with them as soon as they are prepared to outline their five-year funding commitments to disability.

The Commonwealth has already put its money on the table. We have outlined our five-year commitments. None of the states has outlined their five-year commitments to the disability sector—not one of them! So my position remains the same as it was at the end of June, and that is that I am very keen and willing to meet with the state ministers to finalise a new Commonwealth State Territory Disability Agreement. But that cannot happen until the states finally recognise that they must give the disability sector the same certainty that the Commonwealth is prepared to give them. So I am afraid, Senator Forshaw, you have been misled. Some whacker has told you that this meeting is to finalise the agreement at all. All they are doing is coming over to have another whinge at the Commonwealth and hoping that there is no-one in the gallery here smart enough to ask them, ‘What’s your commitment for five years?’ That is what I am expecting from the state and territory ministers.

We have always put our money on the table five years ahead. We have offered them an increase. They say, ‘It’s not enough.’ But we have also said they must give the disability sector the certainty that the Commonwealth gives. We have gone a bit further than that and said that we require transparency from the states. I will give you a couple of examples. New South Wales told one Commonwealth authority they had spent one amount of money and told another they had spent a different amount of money, and there was a $39 million difference. New South Wales—again—in the last financial year had not allocated moneys out to services after the end of the financial year. That is more than 12 months late. I could go on and on about the states but, in the spirit of cooperation, I will leave it at that.

Government senators interjecting—

The PRESIDENT—Order! Senators on my right will come to order.

Senator FORSHAW—Mr President, I ask a supplementary question. I thank the minister for her answer. Minister, isn’t it the case that you received letters from state and territory ministers for disability services not on one but on two occasions, dated 21 August and 12 September, indicating that they were prepared to travel to Canberra at any time to meet with you to sort out this issue? Isn’t it the case that those requests have been made and you have yet to respond and indicate when you are prepared to meet with them?

Turning to the second part of my supplementary question: given that you have said you have made a generous offer to the states and have put an offer on the table, isn’t it the case that Dr Ken Baker, head of ACROD, has estimated the cost of meeting unmet demand for disability services at $500 mil-
lion—more than four times the amount that the government has offered? Minister, when will you meet with the states and do something about?—(Time expired)

Honourable senators interjecting—

The PRESIDENT—Order! Senators on both sides of the chamber will come to order.

Senator VANSTONE—Perhaps ‘Lucky’ is the name that comes back to mind to have this job. Yes, it is true that on two occasions the states have tried to meet with the Commonwealth without giving their five-year commitments. The states will simply have to understand that the Commonwealth makes a five-year commitment. We will be willing to meet with them as soon as they make their five-year commitments. They can make as many requests as they like, but until they give us their five-year commitments there does not seem to be much point.

Senator Forshaw, you mentioned Ken Baker. It is also true that Dr Baker, the CEO of ACROD, has written to the state ministers—and I do not now why he did not mention this—and told them that it is appropriate for them to make five-year commitments. While we are on the subject of unmet need, $500 million required for unmet need would of course be met by just a $100 million contribution from the Commonwealth, because if you understood disability funding you would understand that we put in only 20 per cent. (Time expired)

Cunningham By-Election: Vienna Convention on Diplomatic Relations

Senator BROWN (3.02 p.m.)—My question without notice is to Senator Hill, Minister representing the Minister for Foreign Affairs. I refer to the Vienna Convention on Diplomatic Relations, which states that while countries may have their diplomats gather information in other countries: They also have a duty not to interfere in the internal affairs of that State.

Did the US Embassy or anyone from the Bush administration contact the government before their representatives went to Wollongong to question candidates in the Cunningham by-election about issues such as the impending war in Iraq? Did the government respond? Is this not a breach of that Vienna convention? Does the government recollect any similar incursions into Australian domestic affairs in the past?

Senator HILL—I notice that Susan Crystal, the Counsellor for Public Affairs for the US Embassy, has put out a statement on this matter. I think it confirmed that the US Embassy was sending three officials to Wollongong to talk to candidates and others to gauge public sentiment. She said that the visit is part of ‘routinely sending back information to the United States about the feeling of the electorate on particular issues’. She is quoted as saying, ‘As you may be aware, many embassies from many countries around the world—certainly the American embassy—routinely send back information to our host governments, in this case the United States, about various things that are going on in the country in which we are serving.’ On that basis there does not seem to be any issue of interference and therefore the Vienna convention is not relevant. Was the Australian government contacted about the matter? I do not know but I would not have thought so.

Senator BROWN—Mr President, I ask a supplementary question. Does the government not see that this is a clear breach of the Vienna Convention on Diplomatic Relations? While I will be very happy to meet these representatives with Greens candidate Michael Organ tomorrow in Wollongong, I ask again, Minister: has this ever occurred in Australian history and has there ever been an occasion where an Australian diplomat has gone to question candidates for election in the United States about domestic affairs or indeed foreign affairs in that country?

Senator Kemp interjecting—

The PRESIDENT—Order! Senator Kemp, come to order.

Senator HILL—I am not sure they would learn much from a Greens candidate—

Senator CARR—Tell us who the Liberal candidate is.

Senator HILL—If I were a member of the Labor Party, I would worry about how the Labor Party is going to go.

Senator SHERRY—You can’t even field a candidate!
The PRESIDENT—Order! Senator Nick Sherry and Senator Carr, come to order, please.

Senator HILL—I do not think there is any evidence of interference, as I said. This is a free country. If they ask to interview a candidate they can do so, and whether the candidate wishes to respond is up to the candidate.

Business: Corporate Governance

Senator WONG (3.05 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Is the minister aware of the duty of directors under section 300A of the Corporations Act to disclose in the directors’ report the board’s policy for determining the nature and amount of executive remuneration and the relationship between that policy and the performance of the company? Why, then, have there been numerous reputable studies, including those by the university of technology and by the Australian Council of Superannuation Investors, showing that directors of Australian listed companies are not complying with their duties under section 300A?

Senator COONAN—I thank the senator for her question. The situation in relation to the Corporations Law and the duties of directors is clear. It is one of the factors why the CLERP 9 report has in fact not taken up in anything other than a measured way that the expensing of options, the reporting of directors and the expensing in accounts are to be pursued by way of further consultation rather than by way of a prescriptive approach taken by the government.

The report that the senator refers to is in no way definitive. There is no suggestion, other than in the report and of course in some of the matters that have been reported in the press—about which I cannot comment because obviously I am going to have to make some response once the HIH royal commission brings in its report—that the duties of directors are not well specified under the Corporations Law. Apart from the processes that are being undertaken and the CLERP reform program, there is no other proposal from the government to do anything other than ensure that the Corporations Law is understood and enforced where appropriate, both by ASIC and APRA. In those circumstances the report to which the senator refers is not something that the government is going to be reacting to by way of a knee-jerk reaction.

Senator WONG—Mr President, I ask a supplementary question. Minister, why has no action been taken by the government or ASIC against directors who have defied these requirements in the Corporations Act? Is it the case that directors feel that under this government they can simply defy these requirements with impunity, or are they merely unaware of these duties?

Senator COONAN—I thank Senator Wong for the supplementary question. The annual report of ASIC—I think it was tabled a day or so ago—goes into great detail on the effectiveness of the enforcement mechanisms being undertaken by ASIC. The number of prosecutions are in fact spelled out in the report—I think it is in the order of over 100. There is no suggestion that ASIC is under-funded or doing anything other than carrying out its duties in accordance with its charter. It is an agency that I think has reacted very quickly in relation to prosecutions that have unfortunately become necessary in recent times. There is no reason for there to be any lack of confidence that ASIC will take whatever enforcement action necessary when it is appropriate.

Defence: War on Terrorism

Senator McGAURAN (3.09 p.m.)—My question is to the Minister for Defence, Senator Hill. Is the minister aware of calls for the squadron of SAS troops currently operating in Afghanistan as part of the war against terrorism to return to Australia? What steps have been taken to strengthen the ability of the Australian Defence Force to respond to domestic terrorist threats?

Senator HILL—I am aware of that call being made by one member of the House of Representatives in the immediate aftermath of the Bali bombing. I think it is important that the public are reassured that we have the capacity to defend our nation and respond to any terrorist threat within our own borders, even without the SAS troops currently de-
ployed overseas. But, first, I remind the Senate that the very reason our forces are operating so far from home is to confront the threat of terrorism at its source through a coalition of nations deployed to Afghanistan to destroy the infrastructure and training camps of the al-Qaeda terrorist organisation and to remove the Taliban regime that had supported this organisation.

Australia has about 150 special forces troops in Afghanistan, which is a small but highly effective presence. These forces have performed magnificently, and their efforts have justifiably earned the praise of our coalition partners. They continue to do important work as part of the coalition's effort to mop up the remnants of the al-Qaeda network in Afghanistan and try to prevent their members from slipping out of the country undetected. Failure to complete this work will only allow al-Qaeda to re-establish elsewhere and remain a lethal threat to innocent civilians everywhere.

Our presence in Afghanistan, however, does not mean that we have left Australia unprotected, nor does it leave us short if we need to respond to any immediate threat in our region. The ADF has six deployable full-time special forces elements, of which five are in Australia and available for tasking. Two special forces elements are dedicated to specialist counter-terrorism operations. Both are in Australia and are maintained at the highest level of readiness to counter terrorist threats in Australia and abroad. Three special forces elements, one SAS squadron and two commando companies are currently maintained at short notice for contingency and other operational tasking.

This government has also established an incident response regiment to support those forces in Australia and overseas, as well as to provide support to state governments if called upon. It is capable of rendering safe chemical, biological or radiological agents or materials and conducting decontamination and treatment of casualties. The second tactical assault group established by this government doubled the existing counter-terrorism capabilities of the ADF. Defence also maintains a reserve commando regiment that collectively or through individual augmentation can provide special forces capabilities at short notice. Therefore, the Australian public can rest assured that, while we do have forces deployed overseas, the ADF retains a significant special forces capability able to respond to new threats within Australia, our region or further afield.

**Insurance: Dispute Resolution**

Senator **SHERRY** (3.13 p.m.)—My question is to Senator Coonan, the Assistant Treasurer. Can the minister confirm that, during a speech to the Australian and New Zealand Institute of Insurance and Finance on 16 April 2002, she encouraged more use of pre-trial dispute resolution as a means of resolving claims? Isn’t it true that the minister said:

The insurers and the legal profession need to carry out much more focused work in exploring the value of these techniques.

Can the minister explain what she is doing to promote alternative dispute resolution as a way of reducing crippling insurance costs?

Senator **COONAN**—Thank you, Senator Sherry. I am a bit like Senator Vanstone; I cannot believe my good luck in getting such a great question. This area is a very important part of the suite of measures that have been discussed by federal, state and territory governments. And I must say that we have had a great deal of cooperation from state Labor governments—quite opposed to the federal opposition—who have seen the great good sense of needing to work further towards trying to obviate the need to litigate and to therefore drive up the cost of claims.

Many measures that are being discussed with the heads of Treasury—and that includes the Treasury heads of every state and territory government as well as the federal government—look at how one can better do further work to encourage mediation and pre-trial dispute resolution. In fact, even with structured settlements, they are looking at a recommendation that, before any verdict over $2 million is entered, the parties attend compulsory mediation to see whether or not a structured settlement, which is much more aligned to the needs of someone who is catastrophically injured, can apply instead of a
verdict being entered and therefore a lump sum being either a windfall or a shortfall.

With no help and certainly no encouragement from the opposition, this government is getting on with the job of taking a leadership role of coordinating the states and territories in a substantial program of law reform, a program that will see some consistency across states in terms of not only damages but also rules. Although it is largely up to the courts and the court rules as to how they actually implement pre-trial procedures, insofar as I understand it, every single jurisdiction has asked its chief justices to assist it to implement the rules to better target pre-trial dispute resolution, mediation and conciliation to avoid verdicts.

Senator SHERRY—Mr President, I ask a supplementary question. The minister might have some further important information to give us! Can the minister explain why she not only attended but also gave a PR pitch about the insurance law firm Lee and Lyons on 2 October 2002, the same day the final IPP report was issued, as reported in the Australian Financial Review on 4 October? Isn’t it true that a founding partner of this insurance law firm is the partner of the minister’s stepdaughter? Does the minister regard it as appropriate to promote a law firm which has such a close connection to her family, given her ministerial responsibility for insurance and the current focus on containing the ever-increasing costs to the community of insurance?

Senator COONAN—If I may say so, that question is almost beneath contempt. Obviously those on the other side, and particularly Senator Sherry, have absolutely no idea about any conception of reforms of the insurance industry and how legal firms that run insurance cases can play an absolutely vital part in how those reforms are implemented. If the opposition do not understand that how you handle claims also relates to how legal firms handle claims, I hope those people who elected those on the other side have a good think at the next election, because we need some serious cooperation in relation to something that has been a national problem. The best that Senator Sherry and the opposition can do is to talk about my opening a small boutique law firm. It is just beneath contempt. (Time expired)

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Indonesia: Terrorist Attacks

Senator HILL (South Australia—Minister for Defence) (3.18 p.m.)—I would like to add to an answer I gave earlier to Senator Evans in relation to travel advice. I would like to advise him and the Senate that Mr Downer has today announced a decision to further upgrade our travel advice for Indonesia. The decision was taken on the basis of disturbing new information of generic threats to Australians and Australian interests in Indonesia. As I said, we have been recommending since the Bali atrocity that Australians defer all non-essential travel to Indonesia. We now recommend that all Australians in Indonesia who are concerned about their security should consider departure. In particular, short-term visitors whose presence in Indonesia is non-essential should depart. We urge Australians to exercise extreme caution, particularly in commercial and public areas known to be frequented by foreigners, such as clubs, restaurants, bars, schools, places of worship, outdoor recreation events and tourist areas. The government also strongly advises Australians in Indonesia to monitor carefully developments that might affect their safety. As I indicated to Senator Evans, the government is also revising travel advice notices for a range of other South-East Asian countries to highlight the need for vigilance, given the ongoing risk of terrorist activity.

Antiterrorism Legislation

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.20 p.m.)—In my absence on Tuesday last, Senator Vanstone took questions from Senator Faulkner and Senator Ludwig in relation to the review of antiterrorism legislation and counter-terrorism assets. The Attorney-General has provided the following answer. I table the answer and seek leave to incorporate it in Hansard.

Leave granted.
The answer read as follows—

In the wake of the tragic events in Bali—the Government has announced a review of both the adequacy of domestic terrorist legislation and our counter-terrorism capacity.

While both were recently reviewed, the terrorist attack in Bali makes another such review a matter of responsibility to all Australians.

As the Prime Minister has indicated it could be necessary to further strengthen our domestic security laws in light of the Bali terrorist incident, but until that review is complete, it is not appropriate to hypothesise on the outcomes.

I would remind the Senate that the terrorism package passed in June did not include all the elements which the Howard Government regarded as necessary and appropriate at the time.

It may be that there is a need to revisit some of these provisions. If so, that will be the subject of further examination and ultimately, debate, in Parliament.

It would be irresponsible of the Government not to do everything within its power to ensure the safety and security of its citizens.

We must make sure that we are in the best position possible to identify, prevent and punish those responsible for terrorist acts and those planning terrorist acts.

The Government is committed to doing just that.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Telstra: Telecommunications Infrastructure

Senator MACKAY (Tasmania) (3.21 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to a question without notice asked by Senator Mackay today relating to Telstra and the use of sealant gel to weatherproof cables.

Senator Alston’s description of the reason why the gel had ceased to be used in March 2001—that it had come to the end of its life cycle—was extraordinarily euphemistic. The reality is that this gel is destroying Telstra cables all over Australia. So talking about it coming to the end of its life cycle is somewhat disingenuous. The other thing he said which I thought was interesting is that it is going to cost only $75 million over the next five years to fix. He does not regard that as much money. But Roger Bamber, the New South Wales Managing Director of CountryWide, has confirmed that $187 million has already been set aside. So who is right—the minister talking about $75 million over five years or Mr Bamber, CountryWide, New South Wales, talking about $187 million?

The people who actually work on the network are advising us that there are four to five billion cable joints in the network across Australia and that each one is going to cost around $50 to fix. That is a lot of money. I notice that my colleague Senator McLucas asked, in the Australian, for full disclosure in relation to where these faults are and how much this is going to cost—and well may she, because she comes from Cairns. It rains a lot in Cairns and the problem is that next time it rains a lot in Cairns there is an imminent danger of the network falling apart. Along with my colleague Senator McLucas, I exhort the government to provide us with all the information in relation to this.

We have already had major discrepancies. We have already had an indication that the government is in total denial in relation to this issue. We have already had evidence that, as a bandaid measure, Telstra technicians are being forced to use plastic bags to try and stop the cables from becoming totally waterlogged and unusable. Mr Deputy President Hogg, you come from a state where it rains a lot and you will have problems. The reality is that this is a disaster waiting to happen and it is not the only one. There are many more which we will reveal and which I think will be revealed by the Estens inquiry and our Senate inquiry as the months progress.

The reality is that more than 40,000 jobs have been lost from Telstra since 1997. This gel was never tested. That is the problem. The people who used to test products like this have been made redundant. I noticed with interest in the media that the only reason this gel started to be used in the first place was because John Anderson’s phone in Gunnedah kept breaking down. It broke down six to seven times, so John Anderson—

Senator Ferris—Minister Anderson!
Senator MACKAY—Minister Anderson put in a call to his mate Minister Alston, who put in a call to his mates at Telstra and all of a sudden this gel appears all over Australia—this gel that actually ends up corroding the network. It is Monty Pythonesque. Then we had the spectacle of poor old Telstra technicians going out pouring out this gel that is in fact corroding the very cables that it is supposed to fix—and they were directed by Telstra not to tell customers what they were doing. In fact one technician was hauled over the coals for explaining that this was a safety measure in terms of waterproofing the cables. This is positively Orwellian. Not only are the circumstances Monty Pythonesque, but the whole thing is Orwellian in terms of its implications. Telstra and the government are in denial. All they want to do is to try and get through the next few months so that they can try and convince the poor old doormats over there in the National Party to say yes to the sale of Telstra, because they have got their mate Dick Estens—a well-known National Party member—chairing the inquiry. But we have our own inquiry, don’t we, Senator Lundy?

Senator Lundy—We do indeed.

Senator MACKAY—That is the Senate inquiry. We had our first hearing last Friday and it was most illuminating. I say to the government that it will be the first of many. People are desperate to come and talk to us in relation to this. We got so much information on one day that I think we have enough for about five question times. So good luck with your PR campaign in terms of selling Telstra, because I do not think you are going to convince one person.

Senator FERGUSON (South Australia) (3.26 p.m.)—Having listened to Senator Mackay at length, one could be forgiven for thinking that there was no drought in Australia, because it rains a lot everywhere that she talked about. It rains a lot in Cairns, and she mentioned also that it rains all the time in your area too, Senator Hogg. I do not know too many places in Australia right now where it is raining all the time. As a matter of fact, most of the people that I know are affected by serious drought, so I imagine that the sealant joints in most of those areas are quite safe for a considerable time to come, not that Senator Mackay would be very concerned about the drought that is occurring. It rains in Tasmania every now and then.

We all know, and the government recognises, that access to quality communication services is an important issue for all Australians. It is an important issue for every one of us throughout the whole of the country and, having served on a telecommunications inquiry almost seven years ago, which was called ‘Telecommunications towards the year 2000’, I could tell Senator Mackay—if she were willing to stay—that the state of the infrastructure and the services available to Australians in 1995, when Telstra was wholly government owned, was absolutely appalling. Those in regional and rural Australia in many places could not even access a fax machine. That is what the services were like under a fully government owned Telstra. What have we seen since Telstra has been part-privatised and since it has been asked to act as a corporate business?

Senator Lundy—Nothing.

Senator FERGUSON—We have seen nothing. Senator Lundy? Obviously you are too young to have made a telephone call internationally some 20 years ago when, instead of it costing you $5 for half an hour, it used to cost about $3 a minute. But then again, you would be too young to remember those times when Telstra was fully owned by the government. The enormous advances that have been made in Telstra over the past six or seven years cannot be overstated. We have seen the introduction of a far superior infrastructure, even through my area, which is some 170 or 180 kilometres from a metropolitan area. Do not try and tell me, Senator Lundy—or as Senator Mackay would if she were still here—that, because of this ‘terrible’ part-privatisation of Telstra, services have been run down and are not what they used to be, because in fact services are better. I happen to live in one of these places. Services are far better now than they ever were even five years ago. If you took the trouble, Senator Lundy, to move out into the Australian bush, you would actually find out for yourself that services are a lot better.
To absolutely make sure that quality communication services are available, the government has implemented regulatory safeguards such as the customer service guarantee. The customer service guarantee and the proposed network reliability framework should give comfort to all Australians who are looking for communication services. Senator Lundy may come with all of her modern ideas about the state of services provided by Telstra. If only she could go back a few years, she would really understand. I am old enough to remember party lines. Things have come a long way since then. The telecommunications network was fully government owned at that stage. Under the customer service guarantee, as Senator Lundy is well aware, telephone companies must connect or repair services within a specific time frame, or provide an interim service or pay compensation. It must be done and it is done.

The NRF, which is going to be introduced on 31 December this year, will bring a new level of monitoring, reporting and, importantly, preemptive action and remediation at a network and individual service level. It is all right to come in here crying wolf about what might happen in the event of the sealant not working on some joints in the network around Australia. I think 45 billion joints was the number that was quoted by Senator Mackay. She said that a map ought to be provided of where all these joints were. It would be some map, I can tell you! But Telstra have advised in recent times that the gel continues to be effective on 97 per cent of those joints and the issues relating to the remaining three per cent are already being addressed. Senator Mackay comes in here and cries wolf, all because of her philosophical objection to any further sale of any part of Telstra, when in fact Telstra is currently more than 50 per cent government owned and the faults that she finds in Telstra are occurring while the government still owns a majority of Telstra. (Time expired)

Senator LUNDY (Australian Capital Territory) (3.31 p.m.)—It is my great pleasure to be able to reflect on some of the comments just made by Senator Ferguson. I am very pleased that he raised the issue of quality telecommunications services. He claims that Telstra just keep getting better and better. Hello! Ask a few people out in rural and regional Australia. Ask a few people in outer metropolitan Australia who are struggling to get a decent connection. I would put it to the Senate that Senator Ferguson is too old to understand that people do not just want to use the telephone network for voice calls and for telephony; they want to use the network for Internet connections. This might be a concept that Senator Ferguson is completely unfamiliar with because of his old age—

Senator Ferguson—Mr Deputy President, I rise on a point of order. I will not claim that it is a reflection, but I would remind Senator Lundy that you are never too old to learn but sometimes you are too young to remember.

The DEPUTY PRESIDENT—You have no point of order, Senator Ferguson.

Senator LUNDY—That was a very flip-pant attempt to interject, Senator Ferguson. I put it to you that people want to use this network now for purposes other than a mere voice call. They actually want to use it for some of the more sophisticated services like connecting to the Internet for the transfer of data. What has happened is that, since partial privatisation, Telstra have decided that they are not going to spend very much money at all on their network. They are going to pretend, with the help of the minister—who is their chief promoter in the chamber and certainly in public—that they are somehow preparing for the future. The evidence heard at the Senate inquiry and the evidence coming forth to estimates and other inquiries is clearly the opposite. Telstra are not future-proofing their network; they are going backwards at 100 miles an hour. Why? Because they do not want to spend money. They want to Fatten up their bottom line in preparation for further privatisation.

This does not serve the interests of Australians. What Australians want is a quality, affordable telecommunications system that provides for their needs in the future and that provides adequate Internet connections, fast enough to make the transfer of data meaningful. What we have here is a government dead
set on promoting a Telstra that has been moving backwards at 100 miles an hour. Is it any wonder that we find this incredible situation, where Telstra are effectively using what can only be described as dodgy products to try and make their existing network withstand the pressure of wear and tear—I would suggest standard wear and tear—on what is an ageing network. They are using gel that does not work. They forgot to test it. Why? Because they sacked all the people who were supposed to do that kind of work. They have outsourced a lot of this maintenance to NTL and others, and it is no wonder that Australians are now facing a situation where one good shower of rain, as happened in Albion Park recently, can knock out the network—not just for an hour or two hours but for days, and in this case for over a week. That is because they have pared back the maintenance required on an ageing network. By definition it will need more maintenance as it gets older, while ever it is not replaced, and now the network starts falling over. It is very interesting to see that this issue of sealing the can of gel has emerged now. I make this prediction: as time goes on, issue after issue will be put on the table that will demonstrate Telstra’s negligence when it comes to the appropriate and adequate maintenance of our telecommunications system.

Where does that leave Australians, whether they live in the bush or anywhere else? It leaves them with a degraded service. It means they have a system that does not even provide for basic services these days—take note, Senator Ferguson—for Internet connections. Over a million people in Australia cannot even get some of the faster broadband services like ADSL. Why? Because Telstra put in cost cutting technology designed to save them money while they were fattening up the bottom line in preparation for privatisation. This is not where this country needs to go. We need to be installing infrastructure, and we need to be building infrastructure that is actually going to serve our future social, economic and cultural needs. That is not what this coalition is doing and that is not what Telstra are doing. It will never happen while ever they are pursuing the further privatisation of Telstra in this country.

**Senator EGGLESTON** (Western Australia) (3.36 p.m.)—Senator Lundy, you must never have heard of Networking the Nation or the Internet Assistance Program operating in Australia to improve regional telecommunications. I am surprised, because you purported to be someone with a great interest in issues related to telecommunications. Networking the Nation has been an extremely successful program which has greatly enhanced regional telecommunications. The Internet Assistance Program, now operating across the whole of Australia, works to provide advice and support and to increase speeds, where necessary, for users of dial-up Internet services. We, as you know, let a special contract of $150 million to provide Internet data and fast fax access for people in the most remote areas of Australia—a satellite provided service that is the envy of the rest of the world. It is a little unfair, perhaps very unfair, of you to be so critical of a great company which is doing so much for regional Australia, Senator Lundy. It has responded to the outcomes of the Besley report. Telephone services are now installed and repaired. Senator Lundy, please do not go—we would rather you remain to hear the rest of this.

Most of the Besley report findings have been addressed with great effect. Regional telecommunications have greatly improved since the Besley committee went around Australia and took evidence on the level of telecommunications services. To suggest, as Senator Lundy has done, that the company is running down services and not spending money just to fatten up the bottom line so that it will look more attractive as a saleable proposition is just absolute nonsense when one considers how much money has been spent on programs like Networking the Nation and, as I said, the special $150 million program to improve telecommunications in the most remote parts of Australia.

Telstra has also improved mobile phone coverage for around 200 towns around Australia. For example, in Western Australia we have had the Wireless West program which has meant that CDMA has been extended throughout the south-west of Western Australia. Now many of the wheat belt towns
which had no access to mobile phone coverage have mobile phone coverage. We have improved mobile phone coverage along the major highways of this country. That is a great improvement in telecommunications services which simply cannot be denied. We are providing a satellite mobile phone handset subsidy of up to $1,100 a unit, and this means that people living in the most absolutely remote areas of Australia can have access to a phone service wherever they are. For example, if Senator Lundy ever decides one July to take a holiday in Western Australia and go down the Canning Stock Route, she will have access—she is back—with the use of a satellite handset. They are just examples of the way in which Telstra has really worked to improve telecommunications around this country since the Besley report was brought down.

Senator Mackay somewhat cynically referred to the new committee inquiring into telecommunications—the Estens committee—which will report quite soon on the current status of telecommunications in Australia. Mr Estens and his committee are all from regional Australia. They are people who are quite genuine consumers of telecommunications services in the regions. I can say with very little doubt of being wrong that they will report that telecommunications services in Australia have greatly improved and have been significantly enhanced since the time of the Besley report. Telstra will, as the Prime Minister said, be in a position to be sold because—

(Time expired)

Senator KIRK (South Australia) (3.41 p.m.)—I rise to speak on the motion to take note of an answer given by Senator Alston, the Minister for Communications, Information Technology and the Arts, to a question asked by Senator Mackay in relation to this Telstra cabling bungle. In South Australia, as in many communities around Australia, constituents are experiencing already increasing difficulties in the adequacy and reliability of their local telecommunications services. A new blow has come to consumers in the form of these recent revelations of a time bomb in the form of the gel sealant that has been used to patch up, as Senator Lundy was saying, Telstra’s already ageing cable network. This 3M gel has been used throughout Telstra’s network to seal cable joins in order to weatherproof them. It has been in use since 1997 and cost a staggering $500 million to install. As we have heard, far from protecting the cable, this product in fact erodes and even splits it causing serious faults and outages. Despite early warnings from Telstra workers about this gel causing widespread corrosion of phone wires, the sealant continued to be used until last November. It has also emerged, as we have heard, that there was no extensive testing of the gel done before pouring it onto cables. The reason for this, as Senators Mackay and Lundy pointed out, is staff cuts at Telstra.

The use of the sealant has resulted, as we have heard, in the potential disruption of millions of phone lines around the country, most notably in areas where there is high rainfall. This has all come to light just 10 weeks away from the start of the wet season. There is now such an enormous backlog of work in fixing these problems that Telstra workers have had to resort to using plastic shopping bags to cover cable joints as a temporary measure to protect the lines against the weather. It will cost many millions of dollars to rectify the problems caused by the use of the sealant throughout the Telstra network. Telstra has confirmed that $187 million has already been set aside to fix the problem.

Consumers of Telstra want to know why this has come about. The only answer we can give them is that it has come about because we have had a deterioration in the amount of Telstra’s capital resources now being dedicated to reinvestment in the actual infrastructure and the service. Yet the government, in complicity with Telstra management, continues to increase line rentals to try to claw back revenue. Since the federal election in November last year we have witnessed massive increases in line rentals—in the order of $2 to $3 per month in the month of August alone. There is said to be an objective to further increase line rentals to about $30 per month over the next few years. This would mean an increase from $11 per month, which is what the rental was only one or two years ago, to $30. That is a staggering
200 per cent increase in line rental. Whilst this increase may not matter that much to Minister Alston and his colleagues on the other side of the chamber, for a lot of people across Australia those few extra dollars per month really do matter.

Why is all of this occurring? It is occurring because it seems that the government, in conjunction with Telstra management, as Senator Lundy pointed out, is intent on fattening Telstra’s bottom line with the prospect of privatisation down the road. This is what it is all about. The proposed quid pro quo for Telstra consumers was the government’s suggestion that local call costs would fall, and of course they have not been delivered. Telstra’s own ambition seems to be not to provide core telecommunications services anymore but instead to become a huge telco media player. My colleagues and I on this side want to see Telstra concentrate on its core business. I do not want to continue to have my metropolitan, regional and rural South Australian constituents coming to me with very basic problems about their dealings with Telstra. It is time that Telstra attended to its core business. It is time Telstra dealt with the average needs of telecommunications consumers. That is its core business, that is why it is in business; and that is why the Australian public have invested so heavily in the business. (Time expired)

Question agreed to.

Cunningham By-Election: Vienna Convention on Diplomatic Relations

Senator BROWN (Tasmania) (3.46 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 Brown today relating to meetings between officials from the United States Embassy and candidates in the upcoming by-election in Cunningham, New South Wales.

In his answer, Senator Hill told the chamber that, as far as he knew, the government had not been approached by the US Embassy before its representatives went to the Cunningham region in Wollongong to quiz candidates for Saturday’s by-election. This is a historic change in diplomatic courtesies in this country. Never before, so far as I know, has any country, hostile or friendly, ever intervened in a domestic election in this fashion. You would not find New Zealand doing it, you would not find the United Kingdom doing it and you would not find Germany or France doing it. I submit that you would not find Japan or China doing it—or Indonesia for that matter. The question immediately arises: why did representatives of the Bush administration not have the courtesy of contacting the government before they went to question candidates? Why, indeed, did they not come just across the road to Parliament House to speak to representatives of the Labor Party or the Australian Greens to ascertain policy on such matters as terrorism and the impending war on Iraq—the matters that have been cited as being of interest to the representatives of the Bush administration who have gone to Wollongong?

Instead of that, they have had the discourtesy to go straight to the Cunningham electorate and ask to quiz the candidates—at least the leading candidates—in these matters. I personally have no worry about that at all. I will be there with candidate Michael Organ from the Greens tomorrow to talk with the American representatives, and I will certainly have a few questions to ask them while we are at it. But you have to ask: why are they there, in this unprecedented incursion into domestic politics in our country? It is certainly high profile. They are there, I believe, to influence the candidates, if not to influence the electorate. This is not good diplomatic practice. I think it will backfire. I think they recognise that there are differences in the matter between the Labor Party, the Greens and, indeed, the union backed candidate, Peter Wilson. The Greens and Mr Wilson, as I understand it, are opposed to diverting Australian resources and defence personnel to Iraq at the behest of the Bush government. Labor is not so disposed at this point in time.

If there is an intention by the Bush administration to influence either the candidates or the electorate in Cunningham, they are making a very discourteous incursion and they are making a mistake. I do not believe that the people of Cunningham, any more than the people anywhere else in this coun-
try, will be positively influenced by a diplomatic mistake such as this. I reiterate that we have no trouble at any time talking with diplomats from the United States or any other friendly country—or, for that matter, any other non-friendly country—but I think the Bush administration is making a mistake here.

I have in mind the headline in the *Sydney Morning Herald* of a few weeks ago, following a statement by President Bush, entitled ‘Bush: how I’ll rule the world’. I say to the Bush administration that it will do you well to think a little bit more before acting in this fashion. No previous American administration has acted in this way. Diplomacy has very important norms. I am sure no Australian administration would ever want its diplomats in the United States, in a public fashion like this, to quiz candidates about matters that were of interest to Australia on the eve of an election. I will be looking forward, with candidate Michael Organ, to speaking to the American diplomats tomorrow. It will be a very friendly discussion and I will have some questions to put to them, but I think they should have thought this out. *(Time expired)*

Question agreed to.

**COMMITTEES**

**Reports: Government Responses**

*Senator CARR (Victoria)* (3.52 p.m.)—Yesterday the Manager of Government Business in the Senate indicated that a response would be tabled today on the report entitled *Universities in crisis*. I am wondering where the response is.

*Senator ELLISON (Western Australia—Minister for Justice and Customs)* (3.52 p.m.)—I have just received advice that that response is not yet ready to be tabled. It will be tabled as soon as possible. I do not know the reason for it not being tabled, but I will make inquiries and get back to the Senate.

*Senator CARR (Victoria)* (3.53 p.m.)—by leave—Yesterday there was a debate in the chamber. I appreciate that as the Minister for Justice and Customs was overseas he would not be familiar with that, but the matter arose in response to a letter from the Minister for Education, Science and Training which indicated that, in response to a Senate resolution of 28 August, the government was unable to provide a response to the report entitled *Universities in crisis* because the matter was with the printer and was being printed. This is a most unorthodox explanation for the failure of a government to respond to a report that, as I understand it, it has had for 13 months now. It is a considerable period of time. I understand that the report was presented to the minister in February or perhaps March this year from the department. I also understand that the matter has been with the Prime Minister since June. We were told yesterday that the government response cannot be tabled because it is at the printers. It strikes me that it would be appropriate if we could inquire of the minister how long the document is likely to stay at the printers, given that it has now taken many months. I would also seek an assurance from the minister that I be advised of the day on which it is likely to be tabled so that at least we can be made aware of the government’s intentions.

*Senator ELLISON (Western Australia—Minister for Justice and Customs)* (3.54 p.m.)—As I said earlier, I am seeking advice on this and that inquiry is being made now.

**INDONESIA: TERRORIST ATTACKS**

**Letters of Condolence**

The *DEPUTY PRESIDENT*—I present letters of condolence from the Ambassador of Kuwait, the Leader of the House of Lords, the British High Commissioner and the Speaker of the Hungarian National Assembly in relation to the recent terrorist attacks in Bali.

**DOCUMENTS**

**Environment: Plastic Bags**

The *DEPUTY PRESIDENT*—I present a response from the President of the Council for the Encouragement of Philanthropy in Australia (Mr Clarke) to a resolution of the Senate of 26 September 2002 concerning a plastic bag levy.
SPACE ACTIVITIES AMENDMENT BILL 2002

Second Reading

Debate resumed from 29 August, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator LUNDY (Australian Capital Territory) (3.56 p.m.)—The Space Activities Amendment Bill 2002 is designed to support Australia’s space industry. It does this by capping at $750 million the amount of insurance required to be provided by the proponents of each space launch. It also provides for the Commonwealth to accept liability for third party Australian nationals above this $750 million for up to $3 billion. As it stands, the Commonwealth is already liable under United Nations conventions for damages to third party foreign nationals, so it is fitting that Australians are to be similarly protected under this bill.

This bill also strengthens the safety test being applied to commercial applicants. The existing legislation provides for a test of risk that is sufficiently low, whereas this amendment makes for the provision of a test of risk that is as low as is reasonably practicable. The bill also provides for a more practical application and assessment process and a lower fee regime for scientific and educational organisations. The government’s reasoning behind this is as follows. Activities undertaken by scientific and educational organisations are usually on a one-off basis and do not involve the construction of major infrastructure. It is reasonable that these organisations are subjected to a modified and more suitable licensing regime. It is hard to argue with that. Finally, the bill contains a number of small administrative and technical amendments intended, I am assured, to improve the operation and efficiency of the act. As my colleague in the House of Representatives Dr Emerson stated when this bill was before him, Labor sees no compelling reason to oppose this bill. In fact, if it facilitates innovation and growth of the space industry, it is a positive sign.

We are aware of the proposed amendments that are to be moved by Senator Bartlett of the Australian Democrats. However, Labor will not be supporting these amendments. The Democrats say that some of these amendments are designed to further improve the safety of space launches, but the measures they propose to enact through these amendments appear to be over the top. Labor has been assured that there are suitable measures in place in this bill both to address safety concerns and to cover the liability in relation to such launches. Arguably, the further regulation of space launches entailed in these amendments could unduly impede the operation of our space industry.

The bill reminds me of another space related event that occurred last year. In June of 2001 the then Minister for Industry, Science and Resources, Senator Minchin, announced the government’s intention to provide up to $100 million to facilitate the building of a space port on Christmas Island. Quite obviously, the government was keen to support and, indeed, to subsidise an industry which it felt would be of great benefit to Australia. That is why I am quite hopeful that the government will realise the massive potential to Australia of another industry: the information and communications or ICT industry. Australia possesses within its shores some of the best and most innovative ICT small and medium sized businesses in the world. Some of Australia’s small to medium sized software developers are particularly strong. Unfortunately—and this is actually a problem—we have many Australian owned SMEs in the ICT industry but few if any large, home-grown enterprises. This is a problem that the government needs to address when it makes policies.

The fact is that although Australians have a reputation for being very big consumers of information and communication technology—in fact many key sectors of our economy, such as manufacturing and education, require this technology to remain competitive—the Australian market for ICT products and services is comparatively small when you look at other markets around the world. Therefore, if our small to medium sized ICT firms are to grow into big firms such as the kind we are used to seeing come out of the United States, they need to be globally orientated—they need to be exporters and they
need to be building their size and capacity and thinking and acting globally. This is obviously easier said than done, especially with the coalition government doing very little to support these opportunities for significant growth. The coalition appears to be quite happy to help establish Australia’s fledgling space industry—certainly something Labor does not object to—but it does not do much to help these small to medium ICT businesses become medium and large sized ICT businesses that are globally competitive.

All this government needs to do to promote Australia’s ICT industry is to consider how it spends the information technology dollar and look to its own backyard. This is obviously a crucial element of a range of complex policies that are necessary to promote worthy and deserving industries like ICT. On 13 August this year the Australian Financial Review reported that the federal government would spend around $14.6 billion on ICT. I am not sure if it is quite this amount, but I think it is fair to say that it is a very significant expenditure of taxpayers’ money. The question is, how much of this money will be spent on Australia’s SMEs and how much will go to the same old multinationals, bypassing local businesses at the expense of local sustainable jobs and further blowing out the ICT trade deficit—in other words, creating greater demand for imports of ICT goods and services without supporting companies that could in turn offset that trade deficit by building their own exports.

If past policy is any guide, the answer is not too good. The conscious policy of the coalition has been to favour large foreign owned multinationals over Australia’s innovative IT SMEs. This has been, and still is, a disgrace. The coalition like to deny this and make out that they are doing something about it. I note that they have even put together a working group to try to do something about it. However, they have not changed the situation. They are constructing tender processes that they say are improving the situation facing ICT SMEs, but these tender processes continue to discriminate against and make it much harder for Australian SMEs in the following ways. Some of them—and I have seen advertisements to this effect—give only five days for businesses to respond to a tender request. For a very large company with the human resources to redirect and devote to such an exercise, it may be possible. For a small SME with specific expertise, this constitutes a very tangible barrier to participating in that tender. There is also the requirement of onerous and unreasonable professional indemnity commitments, even to an extent that might exceed the requirements of the project.

I have certainly had representations suggesting that, far from streamlining tender processes, employing an endorsed supplier agreement scheme has made it more burdensome for SMEs to participate in tendering for government work. For the many small ICT businesses I have spoken to, these are just some of the barriers they face to competing for, and winning, government tenders. It is often when they are successful as a subcontractor to a multinational that they are handed just enough business to keep their wheels turning, but that gives them very little ability to make the necessary investments in research and development and to keep globally competitive and active in growing their export markets. Many SMEs have told me that they will not bother going through the process of tendering for government work at all. This is a very disturbing situation because, as I have previously stated in this place, some 40 per cent of expenditure on information and communication technologies in this country is in the government market. It is a very important market for these companies.

It is worth while looking for a minute at the coalition’s latest efforts to give the appearance that they are interested in helping the ICT sector, published in a press release entitled ‘Commonwealth Government ICT Procurement and Strategic Industry Development—New Guidelines for Suppliers’. The media statement tells us that the coalition assumes that locally based branches of multinationals equate to local firms. It tells us that the coalition’s guidelines designed to assist
Australian industry only apply to contracts over $20 million, thus excluding a great deal of government business. It also tells us that the minimum SME participation requirements are themselves merely trifles—10 per cent of hardware supplies and 20 per cent of services. Finally, the statement adds the following proviso:

These requirements will be administered flexibly to ensure that tenderers and agencies are not unjustifiably disadvantaged.

So these trifling guidelines, with all their flaws, are not even mandatory. The government or multinational contract winner may be ‘flexible’ if they consider themselves to be disadvantaged.

I remind the Senate that these companies do not want special favours. The domestic ICT sector is incredibly innovative and competitive. These companies are ready, willing and able to fight for work and build their own capability, obviously in their own interests as companies but also in the interests of Australia’s long-term economic outlook. They need fair treatment by this government. However, such a straightforward, meaningful and logical approach has so far eluded the coalition, leaving many people in Australia’s ICT sector to wonder what the space industry has that they do not. Obviously software is not as exciting as rockets. In the meantime, as I said, Labor do not oppose the attention that this government is paying to the space industry and we will be supporting this bill.

Senator STOTT DESPOJA (South Australia) (4.06 p.m.)—I am always keen to have science issues, and particularly the issue of space, debated in this parliament. For some of us here, it seems like only yesterday that the Space Activities Act was introduced and debated in this place, and I think there are still some issues hanging over from that original debate. Certainly, in some of my amendments on behalf of the Australian Democrats I will reintroduce some changes that I attempted to make when the original legislation was debated and passed in this place.

There are two provisions in the Space Activities Amendment Bill 2002 that are of concern to the Australian Democrats. These are insurance liability provisions. Most of the other amendments the bill makes to the Space Activities Act are relatively minor and technical. The most important of those are the definition of ‘space’ and the tightening of some of the safety standards in the licence application process. There are also a number of issues that this bill raises which are not directly part of the bill but are fundamental to the bill’s purpose. These issues have not been addressed through the parliamentary processes thus far.

The first of the two areas of concern is item 31, amending section 48(3). The amendment provides that the company may cap its liability insurance at $750 million. The second area of concern is item 53, which amends the current section 69. This provision provides that the Commonwealth is liable to pay compensation to Australian nationals for damage caused by space activities beyond that covered by insurance set out in section 48 of up to $3 billion. The act does not require that the company bear the entire liability insurance burden and specifically envisages some Commonwealth coverage, although it does not require such coverage, does not indicate how extensive that coverage should be and does not provide any method for apportioning liability exposure between the government and the private company.

As the opposition have pointed out in their second reading debate contributions in the House of Representatives, capping the liability insurance requirements of a private company and providing government guarantees for liability beyond that amount is all very kind, and certainly something the Democrats have pointed out too, but why isn’t the same generosity occurring with, for example, sporting clubs or non-government organisations that are facing massive increases in their liability exposure and do not have the capacity to meet those premiums? One answer is that if the government does not indemnify private operators then the cost of space launches will become prohibitive. So there may be a case for government support for the development of an Australian space industry, but it is a case that the government has not made effectively. Indemnification, just like subsidies and grants, should
occur in a policy context that is committed to an Australian space industry.

A second answer could be that every other country with a space program does it, but the Democrats do not consider that really to be an argument at all. We are after world’s best practice, obviously, with the regulations and the legislative regime that we produce in this country, especially when we are talking about enhancing and developing our own space industry. Perhaps the final answer will be that the actual risk to the government of ever having to pay anything out is minuscule. That is certainly an argument that we have heard. Is this the criteria, then, for government providing this kind of assistance, or is it that space launching is very big business, representing multinational investment, and the government does not want to jeopardise this industry’s development and will therefore foot a significant part of this potential bill?

Do not get me wrong, I find space and space activities to be an extraordinary and exciting area and one that we should be supporting. But I think these issues deserve debate and due consideration, especially when we are talking about taxpayers’ dollars and looking at it in a financial context, let alone looking at the issues of the significance of what can happen if things should go wrong. The government has capped not only private liability but its own. It is pretty clear that, although this is a generic bill, this provision is primarily in response to concerns expressed regarding the Christmas Island space base.

To a lesser degree, these concerns also apply to Woomera, in my home state of South Australia. The WA government and the oil industry have indicated that they believe the potential liability risk in relation to launches from Christmas Island could be as high as $25 billion. The government has indicated that it believes the risk to be so low that there is no need to seek coverage to such an amount. On the other hand, it could be argued, of course, that if the risk is so low then why doesn’t the government assume an unlimited liability, as most other countries do? After all, the Christmas Island space base is, with Russia, being promoted, facilitated and negotiated by this government. Why won’t the government therefore take full responsibility for the risks involved? Who will bear the costs if there is a catastrophic incident—for example, an accident involving offshore oil rigs? Who will bear the cost if gas supplies to Perth are cut—a scenario that both the oil industry and the WA government have raised?

In relation to technology transfer, because obviously this is a significant debate surrounding this legislation and Christmas Island in particular, part of the justification by the Commonwealth for entering into the rocket launch business was the prospect of Australia developing its own space industry. In order for that to happen, there must be agreements with other countries involved in the space industry in Australia that ensure that there will be technology transfer. We want to ensure that transfer of technology to Australia. It is not enough that we are simply a launch pad for other countries. In August last year, when these changes were being introduced and this was being debated for the first time, former Senator Schacht made the following statement regarding the technology transfer:

Two of the four projects envisage the use of Russian launch technology. However, the sensitive and dual use nature of the technology requires agreement between governments to facilitate its release and to ensure control of access. Without a bilateral agreement, the Russian government would not transfer the technology and expertise to Australia, blocking the development of the two space launch projects which are based on Russian systems and depriving Australia of an opportunity to capture a share of the lucrative global satellite market.

The agreement between Australia and the Russian Federation, which, as I have said, was signed on 23 May 2001, provides a legal and organisational framework for the transfer of space technologies, equipment and expertise to the Australian commercial space launch industry. We should all welcome this as we will see the transfer of space technologies from Russia, which has a well-proven record in space technology.

That makes us wonder about media reports, such as the one in April this year, that the Russians were:
worried about Australia’s insistence that customs officials have the right to examine all incoming material...

That was a wire story from 15 April 2002. This impediment appears to have been overcome by the time the minister went to Russia. But it is patently clear that an agreement ensuring real technology transfer is a long way off, because if we are having difficulty agreeing on fairly standard inspections—the kinds of inspection regimes you would assume would happen—how far away is an agreement that allows Australian access to Russian rocket technology?

At a recent conference on space, held just over a month ago I think, it was reported to the Australian Democrats that Australia and Russia were negotiating yet another agreement regarding the transfer of technology. So it appears we are going to have multiple agreements but no technology. I hope that, perhaps in the committee stage of this bill, the minister can outline the progress that has been made to date and provide some specifics on that. Of course, in a fashion, this has become one of the hallmarks, unfortunately, of this government—the push for legislation, for approval and for regulation, all of which facilitate, support and even fund projects—while there are a number of fundamental matters that remain unresolved.

We have seen the same problems with, for example, the nuclear reactor at Lucas Heights. The Australian Democrats have just received clarification of answers provided to Democrat questions during the estimates process in June. As some senators may recall, we questioned the status of geotechnical studies that were being carried out at the Christmas Island space base—something I raised in previous debates on this issue in the chamber. At the time, the government made public statements that there was no problem with the location of the space pad and that this had been confirmed by the geotechnical work. Now we have received the following clarification:

Environment Australia has yet to receive sufficient information on structural stability.

Not only is this a case of not getting straightforward answers to questions but, as I recall, we were lampooned at the time but also told that we were incorrect in even raising these questions and these issues for debate. So we are not getting straightforward answers in relation to Australia’s space industry—that is, everything from the stability of a proposed site to the status of the technology agreements. We are again finding that work that is critical to any prospect of the viability of a space industry has not been resolved. No-one should make the mistake of thinking that this is not fundamental, because these issues are fundamental. On Christmas Island, for example, we have been locked into a number of decisions, including significant financial commitments without the work being completed, that should have preceded those commitments being made.

While this bill, I acknowledge, is not exclusively about Christmas Island, it is important for us to step back and understand why the Australian government is committing money and resources, and legislation, for example, to a development when even the basic agreements regarding access to technology have not been resolved. It seems quite extraordinary. When the objective of entering into bilateral international agreements is not even likely to be met, why are we proceeding down this path? Perhaps the answer lies in French Guiana, the site of the proposed joint space venture between the French and the Russians. In an article in Space News on 22 July this year, which is thoroughly recommended reading, the Russian space agency commented:

Both projects are at a preliminary stage and we look at both of them with equal interest. We are not favouring one or the other. Financial aspects of projects like these are very important and the devil is in the detail.

The Australian minister claims that the agreement is 90 per cent complete. The Russians seem to have a very different view based on those comments and other feedback. One does not have to read this too closely to begin to understand what is actually happening. The Russians are looking for the best deal—and why not? They are playing off the French against the Australians. It is no surprise, then, that there has been no agreement on technology transfer. It is no surprise that the Australian government por-
trays the right to conduct customs inspections as a negotiating success. It is also no surprise that the Australian government has injected $100 million into this project and has pushed through the permits and the approvals. We are racing for the bottom. What a surprise this is! After all, Australia is giving, giving, giving when it comes to this arrangement but unfortunately it does not seem that we have anything to show for it.

In July this year, the Russians were saying that they are not promising anything in particular but they are indicating that we are in fact only at the beginning of the process. So what next? What is required? How much more money? How many more approvals? What is the government's bottom line in order to ensure that we launch something from Christmas Island? But the race to the bottom has a context well beyond Christmas Island. The economic viability of the space industry at the moment is quite tenuous. Expenses are high, there is an oversupply of launch facilities and demand is dropping. That may well change, but in the short term we seem to be promoting an industry at the wrong time if Australia is going to reap the kinds of benefits that this government originally promised.

I have already circulated amendments to four key areas of this bill. These amendments were tabled on 16 September, so members of the Senate have had adequate time to examine them. I have changed one after very worthy advice from the department—and I thank them for that—in relation to the definition of a toxic material. That amendment should be circulated shortly, I hope. One of the amendments being proposed by the Australian Democrats is designed to ensure that we finalise and undertake the negotiations relating to technology transfer. In those cases where we are entering into bilateral international agreements—that is, before we inject money into construction, before we give permits or finalise an impact assessment—an example of why this may be important is in relation to the insurance cap itself. Australia is effectively guaranteeing the safety of the Russian rockets and technology in assuming liability of up to $3 billion. We have heard the claim that the risk is minimal, so low as to be meaningless in fact, but if we do not have full access to inspect the rockets and the other materials how can we properly assess the risks that we are indemnifying?

This leads me to the second Democrats amendment. The government, with the support of the Productivity Commission, has claimed that this bill does not require a regulatory impact statement because it has no financial implications—that is the rationale. The $3 billion of exposure by the Commonwealth surely needs assessment, particularly in light of the broader debate of current insurance liability concerns. The Democrats accept that the risk is low, although I think in this modern world we wonder about risks, especially when we think of some of the things that we could never have imagined happening which clearly have not only human but economic consequences, such as the events at the World Trade Centre. But we have to accept that even low-risk activities are not no-risk activities.

A regulatory impact statement should look at the effect of a catastrophic event in economic and financial terms. That assessment is deserved. It does not mean the event will happen, of course, but as senators and legislators we have an obligation to understand all the potential consequences of the decisions we make and of the legislation that we pass. An incident could cost up to $25 billion, as has been given to us in estimates from the oil industry and the WA government. We need to find out what the impact of such a catastrophic event would be in terms of the financial stability and activities of the Commonwealth. Until we know that, we should not be passing this legislation; we should not be passing this bill. The Democrats amendment prevents this bill, if it should be passed—and clearly it will be, given the numbers in the Senate—from taking effect until the regulatory impact statement is prepared and tabled. So I hope that the opposition will consider that favourably. It means you can pass the bill but at least provide for a regulatory impact statement to be made under that legislation.

The third of the four Democrats amendments will further address the liability issue. It is an issue that I raised back in 1998 when
we were originally debating this bill. As the act is currently written, the liability period is limited, as is the amount. The new liability under this amendment would cover the entire time from the launch until the time the object returns to the surface of the earth. The amendment proposes extending the launch period to cover the existing launch period as well as the time the object is in space and until the object begins a planned re-entry or an event which results in re-entry. Where there is no re-entry, such as when the object is sent out of the earth’s orbit, like the Galileo probe for example, the launch period would be open-ended.

Our final amendment, also derived from an issue I raised back in 1998, seeks to ensure that special assessment and approval provisions apply to launches that involve radioactive and toxic materials. Once again this is a matter of fully understanding and preparing for the risks involved in payloads and materials that are potentially hazardous. There is no doubt that space debris travelling, for example, at 15 kilometres a second represents a dangerous projectile, but those dangers are heightened considerably if there are radioactive or toxic materials present in the payload. It is hard to understand how a proper risk assessment can occur without this information being part of the decision making process.

These amendments are important if Australia’s entry into the space industry is going to be best practice, not big business at any cost. We understand that the opposition supported this bill when it went through the House. However, in the time that has passed since then the evidence is mounting that the concerns that these amendments reflect have not been addressed. In fact, they have become more urgent. We urge the government and the opposition to support these measures that will ensure that Australia develops an independent and vibrant space industry.

Senator WEBBER (Western Australia) (4.26 p.m.)—In considering the Space Activities Amendment Bill 2002 we are told that this piece of legislation aims to overcome a number of deficiencies that were contained in the Space Activities Act 1998 and clarify the operation of space launch sites within Australian jurisdiction. The main elements of the current bill being considered relate to the insurance and capping of liabilities, as referred to by Senator Stott Despoja, in regard to space launches with the Commonwealth also accepting some liability. The bill also includes changes to the risk minimisation test for launches. This change means the applicants for space licences must show that the risk of damage is as low as reasonably practicable. Finally, this bill amends section 8 of the Space Activities Act 1998 to define space as an area beyond 100 kilometres above mean sea level.

The operation of space launch activities is fast becoming a reality with the construction of the Asia Pacific Space Centre, or ASPC, launch facility on Christmas Island. We are told that the ASPC intends that its first launch will take place some time in late 2004. Although this legislation is designed to regulate space activities anywhere within Australian jurisdiction, the reality, I feel, is that the only potential launch site that is likely to be operating within the near future is that belonging to ASPC.

It is clear that the government’s approach to ASPC has been to assist in the development of its facilities. The Commonwealth has supplied land and other infrastructure and signed an agreement with the government of Russia concerning the operations proposed by ASPC. All of this is being done for the benefit of Australia. We will enter into the commercial space market with the opening of the ASPC on Christmas Island. But what is this market worth to Australia? The total cost of the project is in the order of $800 million, with the government to receive some $1.5 billion in licence fees over 20 years. We are told that there will be some 300 to 400 jobs in the construction phase, with a total of 550 jobs once the facility is operating. One of the really interesting claims made is that all of this will lead to opportunities for Australians in high-tech jobs associated with the space industry. However, it has to be noted that of the 550 jobs referred to with the launch activities 300 will be Russian—although I do suspect there will be some jobs for Russian translators and in language instruction on Christmas Island.
as a result. But, as we can see, the majority of the jobs will actually be Russian.

I have said before in this chamber that I am really concerned about the creation of jobs and, like Senator Lundy, I want to see new jobs created, especially at the high end of the employment sector. This facility has the potential to promise just such jobs. However, I think we have to take note of the following concerns: (1) how competitive would APSC be compared to other players in the market; (2) how large is that total market; (3) what are the risks to other sectors of the economy; and (4) will this project lead to benefits to Australia?

My first concern is that there are a number of issues that need to be addressed regarding the competitiveness of APSC. In fact, if you refer to APSC’s submission to the Senate Economics Legislation Committee you notice that the company raises a number of concerns with the bill and how it will impact on its proposed activities. In relation to the amount of third party liability insurance, the bill sets down the second highest rate of required insurance at $US405 million. The European governments, who are also in the space market, only require the European Space Agency to have third party liability insurance to the level of $US53 million. In fact on page 8 of its submission APSC suggests:

... the liability cap be set at a level to support the Australian launch industry by being less than that of Australia’s key competitors.

Now when you take into account the relative merits of the APSC operation and that of its main commercial competitor, the European Space Agency, the most significant factor is this one of third party liability insurance. In fact, APSC will be required to pay for insurance at eight times the level of its European competitor. So it could be said that this bill sets out to make Australian launch providers uncompetitive. So we have this situation where the Commonwealth government bent over backwards to assist APSC to get started and now this legislation is going to provide a significant competitive impediment to their operations.

The second concern I mentioned was about the size of the market. One of the factors we are told that works in favour of the APSC approach is that it will be able to launch larger satellites at less cost because of its location close to the equator. Based on APSC information, I understand the launch facility is designed to launch up to 10 vehicles per year. In recent years, however, there has been a dramatic shift in the number of launches undertaken by this industry. In 1999 there were some 70 launches worldwide. In 2000 there were some 80 launches worldwide. But in 2001 only 18 launches took place worldwide.

Obviously this market, like most others, is subject to dramatic fluctuations. In times of global slowdown it would seem that the number of space launches contracts. The other factor that has to be considered, in my view, is that not all launches are of a commercial nature. In any given year there are a number of staffed launches, for example the famous space shuttle and staffed Russian flights. There are also a number of non-commercial satellites placed in orbit each year that would also shrink the size of the market.

In fact, in 2001 we are talking about a marketplace that saw fewer than 10 commercial launches in total. So we have a market that even in boom times is not particularly large. This is a new space industry that is trying to attract new customers. And into this mix we have new legislation that will impose the second highest third party insurance overhead in the entire world.

It seems strange to me that we have the government wanting to encourage this industry to set up in Australia—to the extent that a considerable amount of money is spent on infrastructure and that special conditions are granted—but it then turns around and imposes such a high cost structure. APSC states that Australia will earn $1.5 billion over 20 years from licence fees and, as I have mentioned before, see 550 jobs created. I suspect, however, that this figure and these jobs are dependent on there being 10 launches per year. But maybe we have got this wrong. I think the operation of this bill will need to be closely monitored to ensure that we have not costed APSC out of the market before it even starts.
The third concern I mentioned was the risk or cost to other sectors of the economy. I, along with all senators in this chamber, and particularly those from Western Australia, was pleased to hear the recent announcement of the natural gas contract with China. As a Western Australian, I was pleased to know that significant levels of business investment and many new jobs will be created in my home state as a consequence. I have also been pleased to note over recent times that the Timor Gap projects, which I am sure Senator Crossin is familiar with, will add significantly to the economies of both Australia and East Timor.

I make these points in the context of this bill because of the proposed flight paths from the APSC facility on Christmas Island. As I understand it, there are three planned trajectories, depending on the type of orbit that is planned for the satellite. The equatorial flight path runs north-east from Christmas Island passing between Australia, Indonesia and East Timor. At no time, I am told, will this flight path pass closer than 30 kilometres to a coastline. The second flight path designed to place satellites in orbit goes along the moderate inclination path that runs south-east from Christmas Island.

This launch profile differs in that the ascent is changed to ensure that all of the hardware falls into the ocean. And therein lies the problem. The basic nature of space launches, as I understand it, requires bits of the launch vehicle to fall back to earth. In the case of APSC there are a number of major components that are designed to fall back into the sea, and they are: four strap-on boosters and stage 2 and stage 3 of each vehicle.

This bill is designed to ensure that all of the risks are adequately covered and that risk is minimised. However, one of the factors that needs to be kept in mind is that, in the event of something going wrong, the potential risk to Australian lives and economic interests could be catastrophic. In the event that this hardware falls in the wrong place, a number of significant offshore economic facilities could be in danger. In fact, many of the other submissions that the committee received also made this point.

At this stage I am reasonably satisfied that there are sufficient protections in place and that the space industry is generally an industry with very high safety standards. However, I believe there are two things that need to be done. Firstly, APSC should consult with the operators of all offshore facilities to outline the way that missions will be conducted. Secondly, the government must classify any staffed facility in the vicinity of these flight paths at the highest level under this piece of legislation.

The last concern I raised was whether this would all be of benefit to Australia. I am of the view that the operations outlined by APSC will be of long-term benefit to Australia. This new industry will provide a significant boost to the economic activity of Christmas Island and does provide for some new jobs. The bill also sets out stringent safety requirements that mean that the potential for accidents is quite low.

The major problem confronting this new industry is the depressed state of the market at the moment. If the market turns around over the next two years, prior to the planned first launch in 2004, the only other issue will be the high cost of third-party insurance. I am hopeful that this will not impact on the competitiveness of APSC. However, I believe we should monitor this carefully and be prepared to amend this legislation if it is warranted.

Senator CROSSIN (Northern Territory) (4.39 p.m.)—In this debate on the Space Activities Amendment Bill 2002, I will begin by congratulating Senator Webber on her excellent portrayal of APSC operations and the contribution that that company may, or may not, make to this country, particularly the Christmas Island community. I will add some further comments about the impact of the newly acquired space industry on Christmas Island, which, as people would know, comes within the jurisdiction of the Northern Territory and for which I am directly responsible as a senator for that area.

As a number of speakers before me have said, the major amendments in the Space Activities Amendment Bill include the capping at $750 million of the amount of insurance required to be procured by proponents
of each launch. The bill also provides for the Commonwealth to accept liability for third-party Australian nationals above the insured amount for up to $3 billion. It is a fact that, under the United Nations convention, the Commonwealth is already liable for damage to foreign third parties, so this bill relates to Australian nationals. The bill also provides for a tightening of the safety test being applied to commercial applicants for instruments.

The bill also provides for a less onerous application and assessment process and a lower fee regime for scientific and educational organisations. That provision makes some sense in that the argument here is that scientific and educational launches are usually done on a one-off basis and do not involve the construction of major infrastructure, and, for these reasons, such organisations should not, as this bill would propose, be subject to the same licensing requirements as commercial launches.

It has been stated in the lower house and by Senator Lundy, who is responsible for this area in the Senate, that Labor will not be opposing this bill. However, this bill does raise a number of issues that relate to the proposed space activities on Christmas Island. There are also two questions underlying the intent of this bill. The first question concerns this government’s priorities in providing insurance cover of more than $3 billion to a commercial operation in respect of the space industry, when over the last nine or 10 months it has been well known that many organisations around Australia, especially sporting organisations, have been struggling to meet their insurance premiums, especially those related to public liability.

During the last few months we have seen a scenario unfold in which organisations around this country have been trying to get the federal government to actually do something to assist them and relieve the situation of the increased costs that they have incurred. Some organisations have come to the point where they have nearly had to close up their operations and cease to exist because of the increased costs in public liability insurance that they are now forced to meet. Yet this government has declined to provide assistance or do anything about it.

Why is it that we have a government which has refused to listen to sporting bodies, small groups, regional show societies and other organisations in their call for assistance with insurance premium increases, but which can respond to big business, to those who are about to enter the space industry and, in this case, assist with insurance payments in relation to space activities?

The second question concerns a situation where this government has managed to provide $100 million in assistance for this project on Christmas Island. We know this money has been found by raiding the contingency reserve. Last year, the Minister for Finance and Administration, John Fahey, actually admitted that the Commonwealth’s $100 million contribution to the Christmas Island spaceport was to be withdrawn from the contingency fund, which was funded at $919 million for 2001-02. The contingency reserve is an appropriation of funds for an emergency. It is insurance against risk and it has long been used by governments on both sides to protect the public finances against any such risk or unforeseen expenses.

But of course this government’s budgetary position has been, and continues to be, so desperate that it was reduced to raiding its own emergency fund. In fact, I think it was labelled the ‘rainy day fund’ by our opposition spokesperson Lindsay Tanner at the time. The contingency reserve is to provide funding for unexpected expenses. It is not meant to be money used to fund election promises and it is certainly not meant to compensate big businesses for their commercial activities. It is a sad indictment also of the government that at the same time as it has frozen the R&D Start program it sees it as appropriate to give funding for space activities on Christmas Island to a company which has received nothing but criticism since its inception.

I want to talk about that for a moment, because it again reflects an unusual set of priorities—in fact, conflicting priorities—of this government. The R&D Start program is an important program for this country’s future. It is meant to assist small and medium-
sized enterprises that are engaged in research and development activities. This government has not been able to find the funds to continue with that program for at least the foreseeable future. In fact, the R&D Start program has had all its applications frozen for an indefinite period—or, as the minister would want us to believe, this is not a freeze; it is just that the government is processing no more applications for the time being. In fact, this government has instructed 115 small businesses to withdraw their applications under the R&D Start program in order that the government not be embarrassed by the large number of applications that will not be processed due to the lack of funds and as a result of this freeze.

The purpose of the legislation before us today, though, is essentially to make it easier for space launch activities in relation to a proposal at Christmas Island. This is a market which is highly competitive, as Senator Webber pointed out, and therefore there must be some question as to whether those activities will in the end be commercially viable. In launching the new $800 million spaceport on Christmas Island in 2001, Minister Minchin at the time said it would establish Australia as a significant player in the satellite launch industry that is currently dominated by the USA, Russia, the European Union and China.

But those in the space industry would say that APSC, the Asia Pacific Space Centre, is in fact targeting a mid-range market for space launches in an area fast disappearing as satellites grow in size and capacity. Executives of the European Space Agency-backed Ariane space consortium warned that APSC is planning to launch satellites that the Americans have already decided are not big enough and that, by the time APSC is operational, satellites will be bigger again. The company also has local competitors, including SpaceLift Australia, which is pushing ahead with plans to launch from Woomera, and United Launch Systems International, which is reassessing its plans to launch from an island off the Queensland coast. However, APSC managing director David Kwon has always maintained that he is confident that the Christmas Island facility would claim critical mass, giving access to about 80 per cent of the market. The company expected to have booked out launch places in 2003 and 2004 by the end of last year—a time line that company stated publicly. But, of course, that time line has now elapsed. It would be interesting to hear from the minister if in fact that has happened.

Let me take this opportunity to once again remind this chamber, as I have done on a number of occasions, that this is the managing director of the same company that bought the Christmas Island resort and announced last year that they would reopen this resort. In fact, a press release put out on 23 June 2001 by Senator Ian Macdonald, who was then the Minister for Regional Services, Territories and Local Government, stated: I am also very pleased that Mr David Kwon, APSC's Managing Director, has today announced he will reopen the Christmas Island resort, which means more jobs.

We are now in October 2002 and once again I am not aware of any application for a casino licence before the current minister nor am I aware that there are any plans to reopen this resort other than to make a number of rooms available for people who are traveling to the island on business and who may need a room to stay in overnight. Certainly, there has been no attempt to reopen the resort that people on Christmas Island would remember, either as a casino or as a popular tourist destination. Certainly there has been no attempt to have the resort operating in a way that will provide many jobs for people on the island.

People may remember that, when this government flew to Christmas Island to make the announcement about this space base, there was a severe lack of consultation, as there always is, with people on this island. This announcement was made in August 2001 and this government was criticised for failing to consult the community adequately. The community has been worried, and remains worried, about the negative social and environmental impacts that this space activity will have on the community and the environment. In fact, in an article in the *Sydney Morning Herald* on 25 June 2001 by Tom Allard on behalf of AAP entitled ‘Manna
from the heavens as we join space race’, it is noted:
... a freelance environmental consultant used by the Asia Pacific Space Centre, Mr Warren Nicholls, said the environmental impact statement for the launch centre was ‘shoddy’.

‘The water supply on the island is a critical issue and if there was any spill either while transporting stuff there or during the launch it could go straight into the water supply—in which case the island’s finished,’ he said.

Noise from rocket launches was the main threat to fragile species and a noise demonstration by APSC was ‘hopeless...just a joke’.

He went on to say:
‘Where you have so many species that are endemic to the island, you have to be extra careful.’ Christmas Island has been likened to the Galapagos Islands. It has an absolutely unique environmental culture in both its fauna and flora. It is true that the residents of Christmas Island remain quite concerned about the impact of the space base on their island. When I was there earlier this year, concerns were raised with me about the issue of noise pollution from the space base and the impact of hydrozene fuel and what that would mean if it were ever to get into the water on the island. The island residents were not aware of any contingency plan in the event of an accident. On 23 May 2001, a space agreement between Russia and the federal government was established to ensure that there was a formal framework of cooperation between our two countries. But there was no such formal arrangement made between the residents of Christmas Island and this government to ensure that they fully understood and comprehended what the new space activity centre and its operations would mean for them. There have been no open forums or public consultations with the people on Christmas Island. An advisory committee has been set up by the Administrator on Christmas Island and there are a couple or maybe just one representative from the Christmas Island Shire Council on the advisory council. Consultation has been extremely inadequate.

This is a government that still fails to take seriously the views of the elected representatives on Christmas Island through the shire council. This is a government that makes a profound habit of making decisions about developments on Christmas Island without full and proper consultation with the residents concerned. In fact, the Public Works Committee report, which was handed down on 27 August, relates to the further development needed on the island for the space base to go ahead. It made the specific recommendation that the government should undertake better and more adequate consultation with the residents on the island. At the beginning of chapter 3 of the report, it states:

In submissions and at the public hearing, the Shire of Christmas Island, and Christmas Island Phosphates— which is the major mining company on the island— indicated that consultations with them had not been sufficient and were concerned that their views had not been adequately addressed.

So there is still a problem on Christmas Island about the lack of consultation between this government, organisations, the duly elected representatives through the shire council and the broader population and residents on the island. This is an issue that I have raised in this chamber time and time again, and it is an issue that is still ignored by the government.

The Parliamentary Joint Standing Committee on Public Works went to Christmas Island and conducted an inquiry into the infrastructure that would be needed to deal with improvements on the island in order to get the space base up and running. The report that the committee handed down some months ago specifically deals with the improvements to Christmas Island Airport—in particular, the extension of the airport runway 460 metres north and 90 metres south. Without the proposed airport upgrade, the Asia Pacific Space Centre’s operations cannot proceed. In other words, a longer runway and improved facilities are required at the airport in order to accommodate and maintain what will be needed for this space centre.

On 9 August last year, the Department of Transport and Regional Services referred a similar proposal to the committee. That reference lapsed as a result of the parliament
being prorogued prior to the election last year. That reference included the additional port on the east coast and a new link road from the east coast to Lily Beach Road to enable the rockets to be transported up the hill to the southern section of the island where they will be launched. It is interesting to note that neither of these projects were ever considered by the Public Works Committee, as was, of course, the proposed immigration processing or detention centre on Christmas Island. It was a decision by the House of Representatives that that particular public works not be subject to scrutiny and, therefore, once again the community on Christmas Island were denied the opportunity to be consulted about the construction of this centre. Christmas Island has long needed a larger and better airport. There is no doubt about that; and, therefore, this upgrade is most welcome. The airport upgrade will provide improved services for the island community and may encourage the development of tourism, which it has always been said should be a key or major industry for the island economy.

I want to highlight a number of issues mentioned in the report. There is the lack of emergency services at the airport, including fire tenders and the associated vehicle storage facilities. There is a need for the department of territories to approach the Civil Aviation Authority and immediately request that these services be provided at the airport. Finally, I want to acknowledge a recommendation in the Public Works Committee report and endorse the fact that this government needs to consider the impact of the current development on the island. The Public Works Committee has called for a social impact study to be conducted, and that recommendation should not only be seriously considered but also taken up and implemented by the government. There will be a major impact on the local community not only from the operation and development of the space base but also from a whole range of other industries that are developing on the island, of which not least in importance will be the detention centre. This is a small community and there is a need to have a social impact study conducted. (Time expired)

Senator ABETZ (Tasmania—Special Minister of State) (4.59 p.m.)—I thank honourable senators for their contributions to the second reading debate. The Space Activities Amendment Bill 2002 amends the Space Activities Act 1998. The bill implements new arrangements relating to liability, insurance and safety that will provide greater protection to the public, to industries underlying flight paths and to other strategic economic assets such as Australia’s oil and gas facilities. These new measures will mean that Australia’s space insurance and liability regime is more consistent with international practice.

The proposed amendments will require proponents undertaking launch activities to procure insurance for each launch of up to a defined maximum probable loss or $750 million, whichever is the lesser. By this bill, the Commonwealth will provide greater protection to Australian nationals by accepting liability of up to $3 billion in excess of the amount covered by insurance for damage to Australian life and property caused by Australian launch operations. The Commonwealth is already liable for damages to foreign nationals under international law. This bill will also apply a stronger test of risk to space launch activities. The new test requires the risk to be as low as reasonably practicable—or ALARP. Adoption of the ALARP principle will ensure that applicants for authorisations under the act demonstrate that they have achieved the lowest practicable risk within the bounds of reasonable cost.

In addition to the new liability, insurance and safety measures, the amendments provide for new arrangements to license the space launch activities of scientific and educational organisations, thereby promoting the development of space science expertise in Australia and increasing opportunities for nonprofit scientific and educational organisations to engage in space science research. These new arrangements will provide for an alternative application processing fee structure which is less onerous and better suited to the modest scale and limited risk associated with scientific and educational launches and returns. The bill also implements a number of minor administrative and technical
amendments, including defining the point at which the act becomes effective, clarifying the fee regime and making provision for an annual review of a space licence. These amendments will improve the overall operation and efficiency of the act.

During the second reading contributions there was some criticism of the Christmas Island project. This legislation is of general application and is not project specific. However, as one person described it to me, it is one small step for the Senate to take, but it will be a giant leap for Christmas Island.

Senator Lundy—You have been waiting for that, haven’t you?

Senator ABETZ—I have been waiting for that, Senator Lundy. It is a very good line from one of my staff members. I confess that I did not think of it, but I thought that it was a very good line.

Senator Crossin—Look at the mess on Christmas Island!

Senator ABETZ—Even Senator Stott Despoja has sufficient grace to laugh at that, Senator Crossin. But let us move on. The original act established a licensing regime to regulate space launch and re-entry activities from Australia and overseas launches of space objects in which Australian nationals have an ownership interest. It ensures that space launch activities will only be undertaken where the applicant has presented a strong case to demonstrate the safety of the proposed activities. The act also ensures that such activities do not compromise Australia’s foreign policy obligations or national security, that procedures to protect the environment are in place and that the Commonwealth complies with its obligations under United Nations conventions.

Passage of the bill will ensure that the Australian space safety regime is amongst the most stringent in the world and that our insurance and liability arrangements are appropriate to the needs of space launch activities in Australia. The bill also facilitates the development of Australia’s space industry by improving and enhancing the regulatory framework needed to create a competitive environment, to protect research into space science technology and to encourage private investment in emerging space launch and research projects. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator STOTT DESPOJA (South Australia) (5.05 p.m.)—by leave—I move Democrat amendments (1), (2) and (3) on sheet 2599:

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

2. Schedule 1, items 1 to 52
A single day to be fixed by Proclamation, subject to subsection (3)

3. Schedule 1, item 53
A single day to be fixed by Proclamation, subject to subsection (4)

4. Schedule 1, items 54 to 62
A single day to be fixed by Proclamation, subject to subsection (3)

(2) Clause 2, page 2 (line 7), omit “item 2”, substitute “items 2 and 4”.

(3) Clause 2, page 2 (after line 10), at the end of the clause, add:

(4) The provision covered in item 3 of the table commences the day after the day on which the Minister tables in both Houses of the Parliament a Regulation Impact Statement of the impact of that provision.

I do not wish to take up the time of the chamber. I have outlined the rationale behind the amendments. I understand that the government will not be supporting the amendments. While I am disappointed, I understand that. However, I need to clarify the opposition’s position. I listened with interest to the contributions from opposition senators relating to broad concerns, from insurance liability issues through to issues of technology transfer. There could be some common ground there. In relation to the commencement provision, picking up on some of the concerns raised in the second reading debate, I would hope that this enables the bill to be debated and passed today. But amendments (1) to (3) obviously provide for a regulatory impact assessment to determine, for example, the financial implications of this legislation. They are worthy amendments and,
given the contributions that have been made, I hope that the Labor Party will support them. I am happy not to divide on the amendments, but I would like to hear the opposition’s line.

Senator LUNDY (Australian Capital Territory) (5.07 p.m.)—As I did state in my second reading contribution to this bill, the opposition will not be supporting the Democrat amendments. We have been assured by the government that all of the concerns that were outlined have been addressed adequately.

Senator STOTT DESPOJA (South Australia) (5.07 p.m.)—I thank Senator Lundy for that. I think I was on my way to the chamber when you made those comments, so I apologise for missing them. I also record my disappointment that given the concerns raised there is no support, but I will not take up the Senate’s time with a division. I wish merely to record that obviously the Democrats are the sole supporters of the amendments before us.

Question negatived.

Senator STOTT DESPOJA (South Australia) (5.08 p.m.)—by leave—I move Democrat amendments (4) and (7) on sheet 2599:

(4) Schedule 1, page 3 (after line 16), after item 3, insert:

3A Section 8 (definition of liability period)
Repeal the definition, substitute:
liability period means:
(a) for the launch of a space object—the period beginning when the launch takes place and ending when the return period begins; and
(b) for the return of a space object— the period beginning when the relevant re-entry manoeuvre or other re-entry event begins and ending when the object has come to rest on Earth.

Note: The liability period for an object which does not return to Earth is therefore open-ended.

(7) Schedule 1, item 53, page 12 (lines 20 and 21), omit “so much of the excess amount as does not exceed $3 billion”, substitute “the excess amount”.

As I mentioned in my remarks—and, indeed, about four years ago as well—these amendments relate to the liability periods, and amendment (7) relates to the government cap on liability. I seek to ensure that that is an uncapped liability, for the reasons that I have outlined and that other senators have touched on. I explained in my second reading comments the rationale behind extending that liability period from the launch and the time when that object comes back to Earth so that it would deal with the launch and the return of a space object. I think that these are reasonable amendments and I commend them to the Senate. Once again, to save time I will not divide on these amendments but, again, if this does not have support from Labor and the government, I wish to record that the Democrats are the sole supporters of these two amendments.

Question negatived.

Senator STOTT DESPOJA (South Australia) (5.10 p.m.)—I move Democrat amendment (5) on sheet 2599:

(5) Schedule 1, after item 9, page 4 (after line 21), insert:

9A After paragraph 18(d)
Insert:
(da) the Minister is satisfied that all negotiations and agreements, if any, relating to the transfer of technology to Australia, are completed and the Minister is satisfied that Australia has sufficient access to technology and sufficient guarantees of technology transfer to ensure the development of a viable and independent space program in Australia.

I am a little disappointed that this one is not going to get opposition support. This relates to technology transfer. There has been much debate about this in the parliament and of course in the media. People have expressed today their concerns about ensuring that Australia is getting technology transferred as a consequence of the agreements and the negotiations we are having with the Russians. I would hope that this amendment, which seems more than reasonable, is supported and that basically we do not enter into agreements and negotiations or we do not inject money into construction and allocation...
of resources, for example, until those negotiations have been finalised, until we actually know what is going on.

I said in my remarks that I would be keen to get an update from the minister as to what the current status of those discussions and the technology transfer agreements is. Perhaps the minister can reassure me and my party that everything is fine. I think this is an appropriate amendment—that is, the minister has to be assured and satisfied that all negotiations and agreements relating to the transfer of technology to Australia are completed. Before we start constructing, we need to complete those arrangements and, of course, have sufficient guarantees to ensure that what we think we are getting we actually are getting as per these arrangements.

Senator ABETZ (Tasmania—Special Minister of State) (5.12 p.m.)—My advice is that negotiations are still under way and it is anticipated they will be concluded with an outcome early next year. In relation to the amendment on the technology transfer, the government supports spaceports being established in Australia as private, fully commercial projects. As commercial projects they are subject to commercial contracts between the launch companies and their suppliers of space technology. Collaboration with foreign partners in spaceport projects will open important opportunities for Australian technology and industry. Where appropriate, the government negotiates technology safeguard arrangements with other countries to facilitate the use of foreign space technology in Australia for use in spaceports. In negotiating such arrangements, Australia ensures that its sovereign interests are preserved, while at the same time taking into account the commercial interests of Australian launch companies in a way that is consistent with our commitments under the Missile Technology Control Regime.

Senator LUNDY (Australian Capital Territory) (5.13 p.m.)—I would just make the observation that, whilst we are very interested in and concerned with the issues surrounding tech transfer, this bill is not the place to address the specifics of those agreements. It is a bill focused on the regulatory framework of safety and insurance matters. Also, it does not just apply to the Asia-Pacific space centre project on Christmas Island.

Senator STOTT DESPOJA (South Australia) (5.13 p.m.)—I ask Senator Lundy which legislation would she consider it appropriate to address this issue under.

Senator LUNDY (Australian Capital Territory) (5.13 p.m.)—What we are talking about here is an ongoing issue. It is an industry that clearly has broad support and technology transfer issues, and a vast range of industry related specific matters no doubt need to be progressed. I cannot see the place for it to be addressed in this particular bill but, as I said, I acknowledge the importance of the matters and urge the government to keep the Senate well briefed in the pursuance of developing the space industry in Australia.

Question negatived.

Senator STOTT DESPOJA (South Australia) (5.14 p.m.)—May I ask that, again, the Democrats sole support for that amendment be recorded. Hence, I will not be calling a division. I move Democrats amendment (R6) on sheet 2599:

(R6) Schedule 1, page 5 (after line 17), after item 15, insert:

15A At the end of section 26

Add:

(5) The Minister must not grant a launch permit to a person if the payload that is the subject of an application for a permit includes radioactive material or a toxic chemical, unless all of the following conditions are satisfied:

(a) the Minister has caused to be prepared a risk and hazard assessment in relation to the material or the chemical;

(b) the Minister has caused a copy of the risk and hazard assessment to be tabled in each House of the Parliament;

(c) the Minister has specifically authorised the inclusion of radioactive material or a toxic chemical in the payload.

(6) In this section:

radioactive material means material that has an activity of more than 35 becquerels per gram.
toxic chemical is a chemical that can cause acute health or significant adverse environmental impacts. This includes:

(a) any chemical known to cause, or reasonably anticipated or expected to cause, significant adverse acute human health effects at concentration levels likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases;

(b) any chemical known to cause, or reasonably anticipated or expected to cause, either:
   (i) cancer or teratogenic effects; or
   (ii) serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutations, or other chronic health effects; or

(c) any chemical known to cause (or reasonably anticipated or expected to cause), because of its toxicity, persistence in the environment, or tendency to bioaccumulate, a significant adverse effect on the environment.

This is an updated version of the amendment that had been circulated earlier. The original amendment also related to special assessment and approval provisions applying to launches that involved radioactive and toxic materials. We had a very interesting and enjoyable debate about this back in 1998— a few science ministers ago. I will not repeat those debates here because I suspect there is not the same level of interest and certainly not the same level, however, of support. I think it is self-evident. Most senators should have a reasonable understanding and, I hope, a level of concern and acknowledgment that, when you are dealing with radioactive materials or toxic chemicals, for example, you are dealing with quite serious matters.

The rationale behind the changed amendments—in fact, improved amendments—is that the original wording was problematic in terms of the definition of ‘toxic materials’ specifically and also the use of the terminology ‘space object’ as opposed to a ‘payload’. I have made those alterations and refer to the NASA definition, which I think is an appropriate one. If anyone has any questions about some of the interesting wording in that amendment, I would be happy to answer them. There is no doubt that when talking about radioactive or toxic chemicals involved in such payloads you are obviously dealing with potentially hazardous outcomes, for example, if something should go wrong.

I mentioned in the second reading debate that if you have space debris travelling at extraordinary speeds, at 15 kilometres a second, it is potentially an extraordinary projectile. Bearing that in mind and add to that the consequences of radioactive or toxic materials being involved, it is quite extraordinary. I do not know how many people remember the Cassini debate that took place in the community, and to a lesser extent in this chamber. I think it is appropriate when talking about those kinds of materials that we do make special provisions. This amendment is an attempt to make special provisions, and I appeal to the government, and more particularly the opposition, to consider this change. I think that it is an improvement to the bill. I would hope we will get some support for that. Failing that, I am curious to hear why it would not get support, particularly from the opposition.

Senator ABETZ (Tasmania—Special Minister of State) (5.17 p.m.)—The amending of the amendment has spoilt some considerable fun that we otherwise would have had given the original proposed amendment because, as I understand it, it would have covered virtually any substance that might have been on the craft. But the Democrats, to their credit, observed the difficulty with the original proposed amendment and now we have a revised amendment before us. Whilst the government does not agree with, and in fact opposes, the proposed amendment, the Democrats are here arguing the cause, undoubtedly on environmental grounds, and I cannot help but note the absence of any Green senator in the chamber to seek to champion these causes. I am sure that, if there is a media interview to be had, they will be the first ones out there condemning what the parliament has passed. But, of course, they have refused to do the hard yards yet again—
Senator Carr—You’d turn down a media interview. All the years I’ve known you, you’ve always turned them down!

Senator ABETZ—Isn’t it amazing that we have got Senator Kim Carr here seeking to defend the Green senators. Why would he do that, especially in circumstances where, as I understand it, the Greens might be beating the Labor Party on Saturday? I would not have thought you would be so defensive of them. The government opposes the Democrats amendment. The granting of a launch permit is already subject to rigorous safety and environmental assessment. A risk-hazard analysis of the launch must be performed and an adequate environmental plan is required. In addition, the Space Activities Act 1998 already states that a space object must not include fissionable material unless approved by the minister. Further detailed requirements for a launch permit are identified in the Space Activities Regulations 2001 and the related flight safety code.

Accordingly, it is not appropriate or necessary to insert additional specific provisions in the act in relation to radioactive and toxic material, nor is it appropriate to table such analyses. Information relating to launch vehicles and spacecraft, including information contained in risk-hazard analyses, may be subject to national security classification, technology safeguard arrangements, international missile non-proliferation commitments, export controls or to other binding confidentiality provisions. Furthermore, the details of risk-hazard analyses are likely to be commercially sensitive to a launch proponent, a spacecraft owner and the suppliers of the related technologies. In such cases, it is appropriate that the risk-hazard analyses remain confidential and not be subject to public release through tabling in parliament.

In relation to the wording in paragraph (a) under ‘toxic chemical’, can I ask Senator Stott Despoja—seeing that we were invited to—how the word ‘adverse’ in the phrase ‘significant adverse acute human health effects’ adds anything to the word ‘acute’ or the other way round. If it is going to have an acute human health effect, I suppose it could have a positive acute human health effect, but to me it is just an interesting use of language.

Senator STOTT DESPOJA (South Australia) (5.22 p.m.)—Why do you ask me that question when ‘teratogenic’ is in there? Here was I thinking, ‘What if Senator Abetz asks about that?’ He has already demonstrated his capacity for mirth in this chamber with at least one of his staff. I just thought that surely that would be the one. I take your point but clearly the fine minds of the rocket scientists at NASA have come up with a definition to emphasise the adverse and the acute. We figure that if it is good enough for them it might be an appropriate world’s best practice definition.

I thank the minister for outlining the government’s opposition. While I may not agree with it, I hope that the minister will at least acknowledge that I am not re-running a debate about whether or not you put fissionable materials into space. I recognise the views on that one and I am fully aware of the provisions in the act, but this was an attempt to add to them. That was the hope of the Australian Democrats—and you are so right to acknowledge that we are battling this on our own. Once again I am not going to ask that we divide, but I do want to record that the Democrats are the sole supporters of this amendment and I want to give the opposition an opportunity to outline their exact concerns with revised amendment (6).

Senator LUNDY (Australian Capital Territory) (5.23 p.m.)—Before I do so, I think it is appropriate to take this opportunity to acknowledge that we are amending this act because the original act was so flawed in its construction. This is not the first time it has happened with legislation brought forward by this government, and it does give us an opportunity to have another look at the legislation. In this case, as I have stated before, the Labor opposition believe that the government has responded appropriately to the deficiencies in the original act and extended its amendments necessary, in our view, to address those concerns. We concur with the government’s observations on the amendment that the Democrat senator has moved.

Senator STOTT DESPOJA (South Australia) (5.24 p.m.)—There was discussion of
some of these issues, obviously, the first time around and opposition parties did have an opportunity to amend or attempt to amend. I would have liked a specific rationale from the ALP. I understand that concurring with the government is easier but I would have thought that there would be someone on the opposition side who would have had some sympathy with this motion. Again, I think Senator Abetz makes a good point about those people who are not here advocating these particular changes.

On that note, the Democrats will continue to monitor the passage of this legislation and this legislation itself. I am not sure how many of these changes were made by the government at the prompting of the opposition. I certainly thank the advisers who have provided briefings to us over the years. They recognise—and I hope the government does too—our genuine interest in this issue. We will continue to monitor this legislation and will no doubt continue to attempt to improve it. I think there is an extraordinary capacity for Australia to play an amazing role in the space industry, and those of us who are genuinely interested in science and this debate will continue to work with the government and watch this debate as it unfolds.

Leave granted.
Bill agreed to.
Bill reported without amendment; report adopted.

Third Reading
Senator ABETZ (Tasmania—Special Minister of State) (5.28 p.m.)—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

RESEARCH AGENCIES LEGISLATION AMENDMENT BILL 2002

Second Reading
Debate resumed from 16 October, on motion by Senator Patterson:
That this bill be now read a second time.

Senator CARR (Victoria) (5.28 p.m.)—The bill before us, the Research Agencies Legislation Amendment Bill 2002, seeks to amend two pieces of legislation, the Australian Institute of Marine Science Act and the Australian Nuclear Science and Technology Organisation Act. It essentially provides mechanisms whereby there can be greater autonomy by the agencies in terms of commercialisation and a reduction in ministerial supervision of them. There are a number of other minor matters that the bill attends to but I do not believe these are of particular importance compared to the more substantive issue of the government’s commercialisation policies for these agencies, so I will be seeking to spend some time on that issue today.

On 20 September this year the Minister for Science, Mr McGauran, and his two colleagues Senator Patterson and Dr Nelson, released a report on Australia’s comparative record of commercialisation of public sector R&D, and they tried to do that in the context of the international scene. When they were launching this report, the troika of ministers essentially put a brave face on what really is a very poor record of Australian research and development. The report, the National Survey of Research Commercialisation, was undertaken by the Australian Research Council, the CSIRO and the National Health and Medical Research Council.
For all the hype that was presented by these three ministers, the report on commercialisation basically said that Australia’s performance in commercialisation of R&D was poor compared with other developing countries. As Mr McGauran said in his media release, there was a need to ‘improve our record of commercialising public sector research’.

This is an occasion when I would agree with the minister. He could not be more correct. Australia urgently needs to improve its record in this area, a record that—as measured by a number of indicators—has worsened significantly under the Howard government. For instance, business expenditure on research and development—an index which I think is widely known—has dropped since 1995 from a peak of 0.86 per cent of GDP to 0.64 per cent in 2000. While there has been a small growth in 2001, I think the overall trend is reflected in a decline.

The BERD measure had been improved steadily under Labor throughout the 1980s, particularly as a result of the taxation policies that were pursued with regard to concessions to companies for research and development. The other index, the gross expenditure on research and development, the GERD, has also fallen under this government and is languishing at about 1.53 per cent of GDP compared with a peak of 1.66 per cent four years ago. In terms of the OECD comparisons, Australia has slipped from 11th in world competitiveness to 13th in just two years. Ireland, Finland and Sweden do better.

Just recently we saw the Federation of Australian Scientific and Technological Societies, FASTS, produce a report, Australian science: investing in the future. I understand that Mr McGauran in fact launched this publication, so that would give it some authority I would have thought. The FASTS paper had, in my judgment, a lot to commend it, not least its emphasis on the shortcomings of the current government’s approach to science policy. The minister had to acknowledge the status quo was deficient. He said:

The greatest impediment faced by research agencies in this country in regard to the development of research and development is government policy itself. The Federation of Australian Scientific and Technological Societies said:

The fundamental issue is the lack of a genuine whole-of-government national approach.

Professor Chris Fells said:

We need a national vision for science. The Howard government lacks the crucial underlying elements in its policies, and Australia is paying the price.

We have a situation where, in response, the minister said he was confident a long-term strategy ‘would emerge’—that was in the Australian on Wednesday, 25 September, this year.

The government acknowledges it does not have a national strategy. It says it will ‘emerge’. Frankly, I find that an extraordinary proposition. As a country we sit almost at the bottom of the list of similar developed countries when it comes to availability of venture capital, especially in a high-risk early stage capital that is so essential for making sure that we translate research into jobs. The government has no clear strategy to deal with this particular problem. The research and development Start program has stalled due to too much interest from industry. The willingness to innovate is out there but the support from the government itself is now lacking.

The centrepiece of the government’s policy is Backing Australia’s Ability. This set of initiatives was, I think, generally welcomed at the time, because it was seen to be an attempt by the government to at least put some of the money back in that it had taken out of the research community. We all know that the bulk of that money was back-ended—that is, it was loaded up for the tail end of quite a protracted period of time. It was in fact too little too late. Most of the funds were back-loaded until the end of that five-year funding cycle so very little has been seen from it since the time of its announcement.

At the same time as the launch of the FASTS policy paper, Minister McGauran announced that this government was re-
viewing the contents of the Backing Australia’s Ability package and that he was prepared to ‘cull programs if necessary’. The government is essentially on the back foot when it comes to research policy and I think the minister’s comments are indicative of the government’s failure. We have seen other organisations such as the Australian Vice Chancellors Committee, the Australian Industry Group and the Business Council of Australia—all peak bodies—indicating that the government has acted poorly in this area and has failed the challenges faced by this country when it comes to research policy. Minister McGauran shot himself in the foot when he agreed to launch the FASTS paper on 23 September. It is not often that we find a minister prepared—and I say he is very generous—to go out there and welcome a paper that is so fundamentally critical of his government’s approach and its inaction.

The commercialisation issue is an important one—it goes right across the research sector. In relation to AIMS in particular, the bill allows for the agency to borrow money and in turn to lend money for wholly or partly owned subsidiaries now to be known as ‘associated companies’. Although such transactions would require the approval of the Minister for Finance and Administration, the opposition has concerns about the way that these new provisions would act in practice and the potential to place Commonwealth funds at risk. This is particularly true when the institute’s interest in the company concerned is not a controlling interest. The marine institute does not have the power formally to ensure that its funds are secure.

It is quite clear, within the public sector and the university sector in particular, that there is no research agency undertaking the commercialisation of research and doing it well. Particularly in the university sector, all too often we have seen relatively inexperienced commercial managers get their fingers burnt. We have seen bureaucrats and others, unused to the commercial environment, become involved in businesses and make mistakes—sometimes very costly mistakes. I am sure that when we get around to seeing it, the government’s response to the report entitled Universities in crisis will detail their concerns about the failure of a whole series of corporate arms of universities to fulfil their obligations in this regard. Many universities have lost money in ill-conceived business dealings.

The Victorian Auditor-General has expressed concern about the lack of transparency and accountability for public funds associated with subsidiaries in business dealings of universities in that state. The state government in Victoria has taken these concerns seriously and has announced a range of measures designed to tighten up reporting requirements and to ensure public accountability for these ventures and activities. Collectively, we ought now to learn from some of these mistakes. The Commonwealth must ensure that, in loosening the financial and regulatory regimes surrounding commercial ventures, whether it be for ANSTO or for AIMS, it does not produce a situation where these mistakes can be repeated. In fact, we want to make sure that we do not throw the baby out with the bathwater. Too little regulation can create a situation where public resources are expended on agencies and potentially placed at risk.

The Business Council of Australia, in a paper contributing to Dr Nelson’s higher education review and released on 24 September, had similar concerns. I emphasise that many of the positions taken by the Business Council of Australia are positions that we as an opposition strongly disagree with. Their concerns, however, about research commercialisation are matters that I think should be noted. In their paper they say:

International experience indicates a practical limit on the proportion of university revenue that can be generated from commercial activities in research and consultancy—a limit of less than ten per cent.

Beyond that point, universities would have to expose themselves to significant financial risk. The same issues are relevant when it comes to publicly funded research agencies. We have seen the effects of too enthusiastic an approach to commercialisation with regard to the CSIRO. I know that this bill does not directly concern the CSIRO but the impact can be demonstrated if we are not careful. We see, for instance, that in the CSIRO’s
land and water division 26 scientists and technicians have recently been told they are losing their jobs. We know that 100 positions in the CSIRO will go between the middle and the end of the year. This is directly related to CSIRO management’s concerns about their budgetary situation as a result of the failure to meet external earnings targets.

We know that the government has abolished external earnings targets with regard to the CSIRO, ANSTO and AIMS but, nonetheless, management within those agencies maintains that approach as part of a commercialisation strategy. The sackings have targeted scientific and other staff who work in core areas of the division. This undermines the CSIRO’s capacity to undertake its core function—that is, public interest research. In areas such as salinity and land and water conservation there could be no more basic a proposition for the CSIRO. I ask whether or not such an example would not also apply to other agencies such as ANSTO and AIMS. Beyond the issue of financial risk, there is the possibility that public agencies’ core responsibilities will be moved from the functions for which they have been created; namely, the provision of public interest research.

We have a further problem with regard to the failure of the government to fund these agencies effectively and appropriately. Part of the difficulty is built into the very indexing arrangements that apply to these agencies. Recently, I made my concern known about the differences in the indexing arrangements that occur. For instance, the indexing of funding for schools is 5.9 per cent, for higher education it is 2.2 per cent, for vocational education it is 1.6 per cent, for ANSTO it is 2.9 per cent, for CSIRO it is 2.6 per cent and for AIMS it is 2.6 per cent. I am certain that the management and the people who work in ANSTO would be delighted to have access to the same level of indexation as other divisions of the Department of Education, Science and Training in terms of the programs that they are operating. I am sure the same would apply to the marine institute: they would be delighted to have access to the same level of indexation that the other agencies have.

The opposition have a number of other concerns about this bill and they are spelt out in the second reading amendment. The opposition are not seeking to deny passage of this bill; we will be supporting it. However, we want to place on the record our concern at the government’s failure to develop and set in place a coherent, national, all-of-government approach to research and development policy and, in particular, a national strategy on commercialisation. We believe that there should be a nationally consistent intellectual property and public research management policy. All of these things are currently lacking. Further, we seek to ensure that the commercial arrangements set in place for ANSTO and AIMS recognise that the policy responsibility for publicly funded research and for the funding of public-good research remains with the Commonwealth, and that commercially generated funds should supplement, rather than replace, public funding.

All too often, the impact is exactly the opposite. Research agencies are told, ‘You are to go out and make money on the side, and you are to use privately generated income to replace public funding.’ By this means, the government is able to abrogate its responsibilities. The impact of that, of course, is to change the profile of many of our research agencies, be they the marine institute, the CSIRO, ANSTO or universities. The impact of that is also to undermine the quality of the programs that are run by those agencies, because the reporting requirements then shift to the stock exchange and away from where one would normally expect them to go: to the community of scholars, in terms of the research that is being undertaken; and to the community at large, in terms of the public interest research that is undertaken.

Our further concerns go to ensuring that the financial management of commercial ventures undertaken by ANSTO and AIMS are soundly based, well informed and open to public scrutiny. I have no doubt that, as a direct consequence of increasing commercialisation, we will see an increase in government claims that we cannot have access to information from these agencies because it is commercial-in-confidence.
We also want to make sure that public assets are not put at risk through these changes. We want to ensure that the financial accountability, probity and reporting requirements of commercial ventures and associated companies of the agencies maintain a rigorous standard which is comparable to those applying to the parent agencies. We have seen too many examples of lax standards. ICAC recently brought down a report on universities in New South Wales. The issue of corruption is becoming all too pronounced within the education system as a direct result of people seeking to secure funding external to government sources and cutting corners in the process. The opposition also want to make sure that the core missions and public resources of the agencies are not compromised or undermined by their commercial activities.

While the government will seek the passage of this bill today, it is important to highlight some of these concerns. I will want to hear, in the committee stage, what action the government is taking to ensure protections on these matters. I move:

At the end of the motion, add:

"But the Senate:

(a) condemns the Government for its failure to develop and set in place a coherent, national, all-of-government approach to research and development policy, and in particular a national strategy for commercialisation, including a nationally consistent Intellectual Property and public research management policy;

(b) calls upon the Government to ensure that:

(i) commercial arrangements set in place for ANSTO and AIMS recognise that policy responsibility for publicly-funded research, and for funding public-good research, remains with the Commonwealth and that commercially generated funds should supplement, rather than replace, public funding;

(ii) safeguards are put in place to ensure that the financial management of commercial ventures undertaken by ANSTO and AIMS is soundly based, well informed and open to public scrutiny;

(iii) public assets are not put at risk in the agencies’ commercial ventures;

(iv) financial accountability, probity and reporting requirements with regard to commercial ventures and associated companies of the two agencies are of a rigorous standard, comparable as far as possible to those applying to the parent agencies themselves; and

(v) the core missions and public resources of the agencies are not compromised or undermined by their commercial activities”.

Senator STOTT DESPOJA (South Australia) (5.47 p.m.)—To facilitate the passage of the Research Agencies Legislation Amendment Bill 2002 and to enable the minister to make a contribution I will keep my remarks brief. The bill amends the Australian Institute of Marine Science Act 1972 and the Australian Nuclear Science and Technology Organisation Act 1987 to encourage AIMS and ANSTO to commercialise their intellectual property. It is consistent with a key theme in Backing Australia’s Ability—that is, to remove barriers to commercialising government-funded research.

AIMS and ANSTO are currently allowed to undertake commercial activities, but the agencies have limits on the size of contracts they can enter into without ministerial approval: $100,000 and $1 million respectively. In addition, neither can commercialise IP developed as a by-product of their core activities—that is, they cannot commercialise non-marine and non-nuclear IP. The Democrats have longstanding concerns with Australia’s participation in the nuclear cycle. However, for the record I stress that this bill only goes to developing ANSTO’s non-nuclear intellectual property. The bill increases thresholds for ministerial approval—to $1 million and $5 million respectively—and broadens functions to allow for the commercialisation of non-marine and non-nuclear IP.

The Australian Democrats will support this bill; however, it does raise some broad policy concerns. In particular, the Senate report to which Senator Carr referred, Universities in crisis, and various reports by state auditors-general have raised concerns
about inadequate accountability and governance arrangements and practices in universities, raising more general concerns about the role of government research agencies. I acknowledge that finding the right balance between providing flexibility to important, publicly funded institutions and insisting on proper constraints and governance requirements does require good judgment and, of course, good and clear policy. However, such concerns are legitimate, and for this reason we will be considering favourably the opposition’s second reading amendment. I am not sure how long ago it was circulated, but I will certainly be considering it.

Senator Carr—Quite a while.

Senator STOTT DESPOJA—Okay, quite a while. I would have liked more consideration of some of the amendments that the Democrats moved on important issues in the previous debate, but I will not reflect on a view of the Senate.

Senator Carr—I did not handle that bill.

Senator STOTT DESPOJA—I know you did not, Senator Carr. I know your commitment to these and other issues, and that is why I enjoy working with you on them. The second policy issue that this bill raises is that successful commercialisation may give a future government a warrant to reduce government funding. There is a clear precedent for this in the way that universities have been forced to find additional private income to cover the cuts imposed on them by the Howard government since it came to office in 1996. The important point about this shift from public to private sources of funding is that in universities private funding does not replace public funding; it goes to quite different activities, including marketing and the recruitment of international fee-paying students, and it does not replace the public funding of teaching, learning and research, notably in the enabling disciplines of physics, chemistry, mathematics, philosophy, languages and history. The third policy issue is that these measures may encourage ANSTO and AIMS to concentrate on non-core research functions. The last issue is that commercialisation always involves a risk. In the event of poor decisions or plain bad luck, there may be adverse exposure or financial implications.

These concerns are valid, reasonable and highly plausible, and I trust that AIMS and ANSTO will consider them seriously and carefully. However, it should be clearly understood that AIMS and ANSTO are subject to public scrutiny and accountability mechanisms, as covered by the Commonwealth Authorities and Companies Act 1997 and, moreover, are subject to ANAO audit. I am not aware of systematic failings of the CAC Act framework, and of course the work of the ANAO is highly respected, particularly by the Australian Democrats.

In my view, none of the concerns warrant opposition or substantial amendment to the legislation before us, and that is why we will be supporting it. In addition, it is worth while acknowledging that there are sound economic reasons to encourage commercialisation of IP. The Democrats will be supporting the legislation before us. Senator Carr, I have read your amendment; I was just wondering when it was circulated. The Australian Democrats will be supporting the opposition on that second reading amendment today.

Given Senator Carr’s reference to science and the debate we have just had in relation to science and indeed the FASTS document, which is a very impressive document, to save time I am not going to mention it in any more detail. With the indulgence of the Senate, I do want to pay tribute to the women of WISENET, the Women in Science Enquiry Network, who are constantly debating these issues. I spoke to them about the Research Agencies Legislation Amendment Bill 2002 today, as a matter of fact, when I addressed them at a luncheon on women in science issues. With that indulgence, I conclude the remarks of the Australian Democrats in the hope that we can facilitate the passage of this legislation this afternoon.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Thank you, Senator Stott Despoja. The amendment that you referred to was circulated yesterday.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.53 p.m.)—I should say at the outset of the government’s
response to the second reading debate on the Research Agencies Legislation Amendment Bill 2002 that the government does not accept the opposition’s condemnation of its supposed failure to develop and set in place a coherent, national, all-of-government approach to research and development policy. The Labor Party might still be searching for a research and development policy, but the government does have a comprehensive policy for science and innovation and, as Senator Carr correctly remarked, it is called Backing Australia’s Ability. But that is only the latest in a series of major measures introduced by this government to boost research, innovation and commercialisation. Perhaps the opposition needs a history lesson on this.

Since 1996 we have established extremely sound economic foundations, a range of research and innovation initiatives and a forward-looking innovation policy, which is backed up by a substantial financial commitment. The Investing for Growth statement, which was released in December 1997, increased support for business innovation by providing $1.26 billion over four years from the year 1998-1999. The government’s response to The virtuous cycle, the report of the Health and Medical Research Strategic Review, injected a further $614 million into health and medical research over six years from 1999, which doubles the National Health and Medical Research Council’s annual budget by the year 2005. Again, the National Innovation Summit, convened by the government and the Business Council in February 2000; the subsequent Innovation Summit Implementation Group report on innovation, Unlocking the future; and the Chief Scientist’s review of the effectiveness of Australia’s science, engineering and technology base were all fundamental in developing Backing Australia’s Ability.

We are just 18 months into that program, which is a five-year plan to rebuild our capabilities in science, technology and engineering. It is a significant milestone for innovation and science in Australia which extends our ability in strategic research; enhances our ability to create innovation driven companies, jobs, new products and services; and ensures that all Australians will gain maximum benefit. It brings together the largest group of measures to foster innovation ever assembled by an Australian government. It crosses five portfolios and it represents a whole-of-government approach to science and innovation, which we regard as crucial in building our national prosperity. To do that we are working cooperatively with industry and the scientific community to make the role of science and innovation a key priority, given the enormous contribution that it makes to the quality of life that we enjoy, and we are seeing the results of our efforts.

In response to Senator Carr’s comparison of Australia’s efforts in the OECD, I should point out that government financing of research and development in Australia is around 0.70 per cent of GDP. This is comfortably above the OECD average of around 0.65 per cent of GDP and up there with the heavyweight OECD economies of the USA with 0.74 per cent, Japan with 0.58 per cent and Germany with 0.78 per cent. We are continuing to build on that momentum. We have put in place $5.1 billion in support of science and innovation in the year 2002-03—an increase of 5.8 per cent on the previous year and the highest amount ever spent by the government on supporting science and technology.

The range of government spending across all portfolios will generate ideas, stimulate creative research, produce skilled people and provide the essential infrastructure necessary to build our strength as an innovative nation. We continue to set the pace in policy settings for science and innovation. The government remain focused on commercialisation. In particular, the Backing Australia’s Ability initiative provides $79 million in pre-seed funding to take proposals to the venture capital ready stage. There are many other ways in which I could respond to Senator Carr’s remarks, but I simply wish to say that we will not be accepting his second reading amendment.

Question agreed to.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—I remind honourable senators that, under a sessional order agreed to on 20 June 2002, after the second reading I shall call the minister to move the third
reading unless any senator requires that the bill be considered in the Committee of the Whole.

Senator Carr—Mr Acting Deputy President, on that point, given the time, I will not pursue the question in the committee stage. There are some matters I will have to take up in estimates hearings.

The ACTING DEPUTY PRESIDENT—Thank you, Senator Carr.

Original question, as amended, agreed to.

Third Reading

Bill passed through its remaining stages without amendment or debate.

DOCUMENTS

Australia’s Development Cooperation Program

Debate resumed from 24 September, on motion by Senator Nettle:

That the Senate take note of the document.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.01 p.m.)—I would like to speak to the report from AusAid, the Australian government’s overseas aid program. The report makes a lot of good statements about the importance of poverty reduction. I think it is particularly appropriate to note that—as many senators would be aware, but perhaps not others outside this place—a petition was presented outside Parliament House today by the National Coalition Against Poverty to a group of parliamentarians, including the Independent member for Calare, Mr Andren. The petition had many thousands of signatures—I think, off the top of my head, that there were about 50,000 Australians calling for a royal commission into poverty, obviously focused on poverty in Australia. As part of that presentation, there was a very good speech made by Professor Julian Disney about poverty levels around the world as well as different issues of poverty in Australia. The conclusion of this document, I think, makes a good point in that it says that aid is a central component of Australia’s foreign policy and national interest—it is and so too is the need for better prosperity in the Asia-Pacific region that Australia is a part of.

The Democrats have argued strongly—and even more so since the tragic events of the weekend—that we must increase our focus on the countries in our region. Part of that is assisting them with issues of prosperity, governance and opportunity. Poverty is not just about lack of money but also about lack of opportunity—whether it is in housing or other areas. The Democrats asked in question time earlier this week whether the government would now consider increasing its aid or changing the direction of its aid. Unfortunately, I think the answer given by the minister was fairly dismissive of the point that the Democrats were making.

I do not think there is much doubt that if you can increase prosperity overall in a region you will increase the opportunity for a society to address issues of extremism and violence and the prospect of such movements gaining greater numbers of adherents. It is true that some of the leaders of some of these terrorist groups are not poor—they have stacks of money—but their ability to gain greater numbers of adherents is often linked to levels of poverty in their region. It is not the sole factor but it is obviously a key factor and I do not think that it can be, or should be, denied. Assisting greater prosperity and stability in our region is in Australia’s national interest and it highlights again one reason, among so many others, that aid is so crucial.

The report outlines world poverty by region and in the East Asia and Pacific region there are over 250 million people in poverty. Those are people living on $US1 a day, so it is a pretty tight definition of what determines poverty. In Indonesia a huge percentage of that country’s population live on less than $US1 per day. I do not think Australians understand, sometimes, the level of poverty and the nature of life for large numbers of people who live in our neighbourhood. That is why aid is so important and that is why it is so disappointing that Australia’s overall aid contribution continues to be so poor.

This report suggests that our aid levels have increased. Australia’s aid as a ratio of gross national income is estimated at 0.25 per cent—one quarter of one per cent. Astonishingly, that has continued to drop. It has
dropped from over 0.3 per cent in the 1980s to 0.25 per cent now. Despite that, this report has the audacity to say that the government continues to support the UN’s 0.7 per cent target. I do not know how you can support the target whilst getting further and further away from it, particularly when a number of other countries, European countries in particular, are much closer to it and a number of them are over it. Some of the northern Scandinavian countries are at, or near, or aiming for, one per cent.

So, fundamentally, the level that we put into aid is a scandal. It must be addressed. We are talking about investing in prosperity in our region and around the world. As the report says, that is in our national interest as well as in the interests of humanity around the globe. It must be given greater priority. If one looks at some of the issues behind the tragedy of the weekend, one will see that the need to provide better assistance to our brothers and sisters around the world who are in need is important. (Time expired)

Question agreed to.

Consideration

The following orders of the day relating to government documents were considered:


Australian Postal Corporation (Australia Post)—Equal employment opportunity program—Report for 2001-02. Motion of Senator Mackay to take note of document agreed to.

Telstra Corporation Limited—Report for 2001-02, including annual review. Motion of Senator Mackay to take note of document agreed to.

General business orders of the day nos 3 and 4 relating to government documents were called on but no motion was moved.

COMMITTEES

Consideration

The following orders of the day relating to committee reports and government responses were considered:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Enterprising Australia: Planning, preparing and profiting from trade and investment—A short report on the proceedings of the inquiry. Motion of the chair of the committee (Senator Ferguson) to take note of report agreed to.


Community Affairs References Committee—Report—Participation requirements and penalties in the social security system [Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 and related issues]. Motion of the chair of the committee (Senator Hutchins) to take note of report agreed to.

DOCUMENTS

Consideration

The following orders of the day relating to reports of the Auditor-General were considered:

Auditor-General—Audit report no. 8 of 2002-03—Business support process audit—The Senate order for department and agency contracts (September 2002). Motion of Senator Mackay to take note of document agreed to.

Orders of the day nos 2 to 5 relating to reports of the Auditor-General were called on but no motion was moved.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! There being no further consideration of government documents, I propose the question:

That the Senate do now adjourn.

United States Free Trade Agreement

Senator BARNETT (Tasmania) (6.08 p.m.)—I rise to support a US free trade agreement for Australia and emphasise the fact that this will benefit this country. The drought is very serious and is having implications for rural and regional communities and others right throughout Australia. It is estimated that the cost to the community could be $4 billion. It is also estimated that the merits of a US-Australia free trade agreement could deliver benefits to this
country in the order of $4 billion each year. Why should the US spend $180 billion over the next 10 years to subsidise its farmers? There is no good reason. In fact it is a tragic outcome for Australian farmers, who by world standards are amongst the most efficient. The US administration and members of Congress support free trade in principle, but they are protectionists in practice, especially in a Congressional election year such as 2002.

During my time in 1986 and 1987 working in a US law firm in Washington DC on behalf of Australian trade and agricultural interests, $26 billion a year in subsidies was paid to US farmers under their US farm legislation. Strong lobbying by the US farm sector has maintained its protectionist and nationalistic approach, as exemplified by the recent passage of the US Farm Bill 2002. The Republicans control the House of Representatives, the Democrats control the Senate and both parties are fighting for the votes of the powerful farm lobby in advance of their Congressional elections on 5 November.

The President has now obtained trade promotion authority from the US Congress, enabling him to negotiate bilateral arrangements with other countries, including this free trade agreement with Australia. As the Prime Minister argued so well during his visit to Washington DC some months ago, a free trade agreement with Australia can deliver benefits to both countries. It is vital that negotiations on the terms and conditions of this agreement get under way as soon as possible, and I understand that that is now occurring. Based on discussions with our embassy officials and the Australian Ambassador to the US, Michael Thawley, during my recent visit in June, I am confident that we are in a good position to act swiftly. It is hoped that a free trade agreement can be finalised by the end of 2004. Our exporters will benefit, especially our farming community.

Beef is Australia’s single largest export to the US and was worth over $A1.7 billion in 2001. This is followed by passenger motor vehicle exports of $591 million and alcoholic beverage exports of $552 million. Imports from the US are dominated by telecommunications equipment at $1 billion and aircraft and aircraft parts at $1.7 billion. A 378,000 metric tonne quota was imposed on Australian beef exports to the USA, and this quota was exceeded for the first time in 2001. Having met with Meat and Livestock Australia representatives in Washington DC, it is clear that not a lot can be done in the short term to gain concessions from the US regarding quotas. Beef exports to the US in excess of the quota incur a 26.4 per cent tariff, making the export of Australian-manufactured beef for US consumption un-economic.

The Meat and Livestock Australia representation in Washington DC is a credit to the Australian industry, as they implement a professional lobbying regime. I met with them on my recent visits; they really are professional and should be commended. In my view, it is time for other Australian industry representatives and business organisations to take MLA’s lead and to have representation in our second largest export market—the home of over one-third of Australia’s investment inflow, which amounts to $215 billion. The US is also the host of over 50 per cent of Australia’s direct investment overseas.

I would like to specifically focus on the subject of poppies, because it is such an important commodity for Tasmania. The US is an important market for the Australian licit opiate industry—the poppy industry. In 1981 the US introduced the so-called 80-20 rule, which stipulates that at least 80 per cent of narcotic raw material imports must be sourced from traditional suppliers such as India and Turkey. Australia competes with other countries such as Yugoslavia, France, Poland and Hungary for the 20 per cent balance of the US import demands.

I met with the US Drug Enforcement Administration, the DEA, who confirmed that thebaine, an opium poppy derivative which Tasmania produces in some quantity, would not be counted within the 20 per cent component. This is good news for the Tasmanian poppy industry, as the DEA confirmed that such an arrangement will remain in place until at least 2005. Tasmanian exports of the-
baine account for about 35 tonnes of the ann-
nual US thebaine imports of 65 tonnes. The US government acknowledges that Australia
and specifically Tasmania maintain the high-
est standards of security.

I commend the Tasmanian poppy industry,
the Poppy Control Advisory Board and all
those associated with the industry in Tasma-
nia for having such a commendation passed
upon that industry by the US administration.
I want to also commend specifically the two
processing factories in Tasmania. Firstly,
there is Glaxo, at Westbury—which is near
my home town of Hagley, in northern Tas-
mania—employing well over 100 people.
That factory is owned by GSK—Glaxo
Smith Kline. The second facility, near Ulver-
stone, is Tasmanian Alkaloids, owned by the
company Johnson & Johnson. They make an
important contribution to the Tasmanian in-
dustry, and I would certainly be encouraging
them to consider other downstream process-
ing activities and options for those particular
activities.

Finally, I would like to congratulate the
Australian government and specifically Mark
Vaile, as Minister for Trade, and also the
Minister for Agriculture, Fisheries and For-
estry, Warren Truss, on the efforts that they
are undertaking to pursue this US free trade
agreement. I would also like to specifically
congratulate our Prime Minister, the Hon.
John Howard, who worked so hard and was
so well recognised during his time in Wash-
ington DC, when he addressed both houses of
the US Congress and had one-on-one
meetings with the President, the Secretary of
State and many other dignitaries in the ad-
mistration. He was indeed honoured in
many ways—and rightfully so. The Bush
administration went out of its way to honour
our Prime Minister. So I would like to pay
those compliments and pass on those con-
gratulations. I urge our government to con-
tinue with haste and professionalism to pur-
sue a US free trade agreement with Austra-
lia. Finally, I want to commend the ambassa-
dor, Michael Thawley, his operatives and his
support staff at the embassy in Washington DC, and also those working in the various
consulates throughout the USA to achieve
these objectives, for the good work that they
do.

Human Rights: Nigeria

Senator COOK (Western Australia) (6.17
p.m.)—I rise tonight to talk on the human
rights of Ms Amina Lawal. Before I go to the
detail of her case, I acknowledge up front
and immediately that Senator Stott Despoja
raised a question on notice concerning this
particular case on 30 August last and that
Senator Hill replied promptly on behalf of
Mr Downer. I want to acknowledge both the
position taken by Senator Stott Despoja on
behalf of the Australian Democrats and the
position taken by the Australian government
in representations in this particular case.

This case concerns an application of
sharia law in Nigeria. On Monday, 19
August, the Funtua appeal court in Nigeria
refused the appeal of Amina Lawal, a 30-
year-old woman, against a death sentence
pronounced on her—a death sentence to be
carried out by stoning—for having a child
outside of marriage and therefore committing
a contempt of that fundamentalist law. The
judge ruled that she will be executed once
she has weaned her eight-month-old daugh-
ter. At the moment, the Funtua court has
granted defence lawyers 30 days to appeal in
this case. On 27 September, Amnesty Inter-
national presented a 1.3 million signature
petition for Amina Lawal to the officials of
the Nigerian high commission in London.
The official at the high commission reiter-
ated that the Nigerian federal government is
opposed to these sentences, expressed opti-
mism that the sentence will be overturned on
appeal and also stated, however, that the
government will not intervene, so that the
judicial process as it is set down will take its
course. I have to say this is in line with a
statement last month by President Obasanjo
that he ‘will weep for Amina and for Nige-
ria’ if Amina is executed.

Several northern states in Nigeria have
introduced new sharia penal legislation, de-
spite the fact that Nigeria recognises many
international human rights standards and has
signed and ratified many international human
rights legal instruments. The federal minister
of justice in Nigeria has declared the sen-
tences to be unconstitutional and yet no
practical action has been taken to end them. It has to be said that no-one has yet been stoned to death for adultery in Nigeria. A woman convicted under very similar circumstances last year won her appeal a few months ago.

I have acknowledged the role of Senator Stott Despoja. She asked a question about this; the question is of course in *Hansard*. On behalf of Mr Downer, Senator Hill advised that the Prime Minister had written to the President of Nigeria, President Obasanjo, and made representations in this particular case. He had, in particular, emphasised that the Australian government considered death by stoning to be ‘a cruel, inhumane and degrading practice’ and called 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. I also note that Senator Stott Despoja has on the *Notice Paper* a notice of motion to come before the Senate next Monday which deals with this matter. I imagine it is a notice of motion one could expect, in the normal course, would pass this chamber unanimously.

Some more detail can be given about this case. The Amnesty International web site contains quite a lengthy summary of these circumstances. Some of those circumstances I have announced in this address so far. But let me pick up the Amnesty International report which, in its second paragraph, refers to the man who is alleged to be the father of this baby girl born out of wedlock. It states:

The man named as the father of her baby girl reportedly denied having sex with her and his confession was enough for the charges against him to be discontinued. Amina did not have a lawyer during her first trial, when the judgement was passed. But she has now filed an appeal against her sentence with the help of a lawyer hired by a pool of Nigerian human rights and women’s rights organisations. Amina is awaiting trial at home. The Shari’ah Court of Appeal of Funtua, Katsina State, set 27 May as the date for the hearing of Amina’s appeal against her sentence to death by stoning.

The report continues with the circumstance of what are her rights under sharia law in this case. On behalf of the Labor Party, I want to indicate our support for the actions that have been taken internationally by the Australian government and by Senator Stott Despoja in this case. We are a country that is proud of our record of human rights. We speak out internationally against human rights abuses. We try to apply the standards that we expect other countries to live by to ourselves and we, as a democracy that values the rule of law, have an obligation, I think, in all of these cases to make our position plain. For the Labor Party, a fundamental part of what constitutes our soul as a party is the recognition of basic human rights.

It is in that context today that Socialist International, an umbrella international organisation with which labour parties and social democrat parties in the world are associated, has announced that a delegation of experts drawn from different legal systems and regions of the world will be in Abuja, the federal capital of Nigeria, from 16 to 20 October—that is, now—on behalf of the SI to address the issue of the application of the new sharia based penal codes with the sentences of women such as Amina and Safiya, the earlier women convicted, and other cases in that country that have seized the world’s attention.

The delegation is composed of Professor Perry Wallace of the Washington College of Law of the American University, United States of America; Professor Abdelwahab Maami of the Faculty of Juridical, Economic and Social Sciences of the University of Hassan in Casablanca, Morocco; and Dr Gabriel Lansky, an Attorney at Law and human rights expert from Austria. The delegation will meet with the Attorney-General and Minister of Justice of the Federal Republic of Nigeria, the Chair of the House of Representatives Committee for Women’s Affairs, the Nigerian Human Rights Commission, the Secretary-General, members of the Women’s Rights Advancement and Protection Alternative and delegations of officials from Kaduna state in the north of Nigeria where sharia law is in effect. I have to report that there has recently been a spread of the adoption of sharia law in the northern states of Nigeria and, according to the Amnesty Inter-
national web site, 12 of those states now apply that law in their penal code.

I am pleased to associate the Australian Labor Party with this international effort to ensure that the human rights of this woman are respected. I think it is preposterous in the modern day that there ought to be any penalty associated with the allegation that this woman had a baby out of wedlock. It is preposterous to any notion of human decency that there should be a legal penalty applied in those circumstances, let alone a penalty of death and let alone a penalty of death by the barbaric prospect of stoning to death. I do hope that the representations of all of the major parties in this chamber can succeed in ensuring that this woman is granted her human rights and that she is able to have the shadow of the death sentence removed from her and lead a decent life in Nigeria and bring up her child in a manner in which all of us would be pleased and proud to see.

Australian National Residue Survey

Senator O’BRIEN (Tasmania) (6.27 p.m.)—On Tuesday I made some comments about the National Residue Survey and the fact that the Minister for Agriculture, Fisheries and Forestry, Mr Warren Truss, has significantly increased charges imposed on a number of intensive industries that participate in this important program. As I said when the National Residue Survey annual report was tabled, the program underpins the integrity of 16 animal commodities, 14 plant commodities, five representative seafood commodities and two representative aquaculture commodities. This program is essential for both our exports and industries that focus on the domestic market. It goes without saying that Australia must meet the residue and contaminant standards required by our export markets. The National Residue Survey program underpins the integrity of our rural exports with data on residue and contaminant levels.

The program also assists a number of domestic industries to maintain effective quality assurance programs. It therefore concerns me that some of these industries may be forced to reconsider their participation in the National Residue Survey program because of the deliberate misallocation of departmental costs to the program. As I advised the Senate on Tuesday, full cost recovery for survey activities was introduced under Labor on 1 July 1993. This program has operated on a cost recovery basis since that time. So the massive hikes being forced on these industries by Mr Truss, through his department, cannot be explained away as a move to full cost recovery. I assume the minister would not try to say that he has suddenly discovered a range of costs associated with the National Residue Survey program not previously identified after nine years of operation on a full cost recovery basis. I must add that these industries are happy to meet the costs that can be fairly attributed to the program, but that is not the issue. It is pretty clear that these cost increases have more to do with exploding departmental expenses than with any real cost increases associated with the National Residue Survey program. What the minister is therefore doing is using a back-door method to raise revenue for departmental administration.

There has been a huge jump in professional support services imposed on the chicken industry by the government. For example, over the period 1998-99 to 1999-2000, professional support services increased by 740 per cent. I note that the fee for these services declined slightly last year, but the overall percentage increase in this impost is nevertheless massive. The National Residue Survey cost profile for the chicken industry saw property expenses jump by 150 per cent between 1999-2000 and 2000-01. I assume that this expense derives from the department’s own calculation of a proportion of departmental property imputed to the chicken industry through its participation in the survey. Therefore, chicken growers are being asked to contribute to the department’s rising rental costs.

The cost of professional services to the pork industry jumped from $5,000 in 2001-02 to over $61,000 in 2002-03. That is a projection. I understand that that increase included a provision to contribute to the costs of departmental audit and security, departmental executive expenses—including some costs incurred by the secretary of the department, Mr Michael Taylor—and even
some costs associated with departmental support to the minister. However, I understand that the minister has now reduced some of these cost imposts on the pork industry, including those associated with the executive, the secretary of the department and ministerial services. The fact that these costs were originally asked of the industry suggests that this is little more than a try-on by the minister. I understand that the National Residue Survey administrative costs being forced on another key intensive industry—the lot feeding industry—are in the order of 300 per cent, with no reduction on the horizon.

As I stated earlier, this program underpins the integrity of a number of key rural industries. I strongly suspect that these cost increases reflect the minister’s failed strategy of outsourcing services. They may reflect increasing leasing costs for the Edmond Barton building. There may even be other cost blow-outs in the minister’s department that have not yet been subject to public scrutiny. Whatever the cause of these growing demands on our intensive industries, the minister can be assured that I will attempt to get to the bottom of it. The minister, of course, be aware that I now have on the Notice Paper a number of questions relating to his departmental costs, and I look forward to the answers—as, I am sure, do all senators interested in good public administration. If this minister cannot properly administer his own department, that is a problem for him and he should deal with it without making extravagant demands on these industries. I fear that his inability to run his department, reflected in recent cost transfers to the National Residue Survey, puts this important national program at risk. That is simply not acceptable.

I wish to make one more point in relation to the minister’s handling of this issue. It concerns the minister’s consultation, or lack thereof. I understand that there was little or no consultation with these industries before the minister increased these charges. Some industry levy reserves were simply run down without any advice from the department to the industry about cost increases or the impact of these increases on levy reserves. I understand that some of the funds are now in deficit as a result of this mismanagement. Cost increases have been imposed over the past few years, with little or no consultation with industry or notice of dwindling levy reserves. In some cases, there has not been a single communication about these fee increases. The first time some industries became aware of the new charges was when they received the bill showing the retrospective impost. I assume that these cost imposts have been imposed at the direction of the minister but, either way, he is the responsible person. He either directed his department to collect these charges or he failed to maintain oversight on actions taken by the department in his name.

Mr Truss has a habit of trying to avoid public scrutiny by slipping out of the ministerial entrance as darkness falls to make significant announcements. Not surprisingly, many of these announcements have a significant impact on Australia’s key rural industries. His decision on the US beef quota is one example of such behaviour, but probably the most celebrated example is his announcement of the government’s grand sugar plan—completely lacking in detail and announced in fading light on the evening of 10 September this year. However, increased administrative costs on industries participating in the National Residue Survey did not even get the ministerial entrance treatment. They were proceeded with without any announcement at all. The imposition of these charges, without consultation and without announcement, represents a new low in Mr Truss’s already low standard of administration. The National Residue Survey, and the intensive industries that rely on that survey, deserve better.

This is a very important program. This is a program which underpins important industries which serve rural and regional Australia well and which provide employment in, and the economic basis of, many communities. It is inappropriate that they become a milking horse for this government, this department and this minister. As I said, I will be pursuing this matter further so that equity can be returned to this area and the program is not threatened.
Simplot: Potato Plant Closure

Senator ABETZ (Tasmania—Special Minister of State) (6.36 p.m.)—Tonight I want to bring the Senate’s attention to the plight of the people of Scottsdale and the people of the municipality of Dorset in north-eastern Tasmania. As you would be aware, Mr President, being a senator from Tasmania, a couple of weeks ago the Simplot potato processing plant in Scottsdale announced its imminent closure, earmarked for approximately 14 months time. That will have an impact on 135 jobs in that community and on a payroll in the vicinity of $6 million to $7 million per annum. Mr President, as you and the Senate may well imagine, that will have a huge impact on the regional town of Scottsdale and the wider Dorset municipality.

The community is a very resourceful one. The work ethic is strong and the community has got together and is working together. I compliment the task force that has been established to deal with the difficulty that Scottsdale is about to face. The task force has established a two-pronged approach. First of all, it aims to seek to convince Simplot to change its mind in relation to the closure, and it has approximately 12 months to do that. I rang the Australian general manager of Simplot, Terry O’Brien, and asked him what, if anything, the federal government could do in relation to policy parameters to change that decision. I was advised that there was nothing the federal government could do. I would like to indicate, in a bipartisan way, that the Deputy Premier of Tasmania rang Simplot as well with, as I understand it, the same question but in relation to the state government. He was given a similar answer, as was the growers’ representative, as was the union that represents some of the workers. So the chances of reversing that decision are pretty tough, but nevertheless the community must, like the platypus that works its way up the stream, try to turn over every stone, because you never know what worm might be under a particular stone—you never know what might be able to convince Simplot to change its decision.

One aspect of the Simplot announcement that does concern me is the fact that Simplot has taken the decision not only to close the factory but to lock it up and not make it available for sale or lease by any other processor. As I understand it, it processes about 65,000 tonnes of potatoes that are produced in that region. Mr President, as you would know, being a senator from Tasmania with good connections in the north-east as well, the Bonlac milk factory at Ledgerwood met a similar fate. It was locked up and not made available to a local growers’ cooperative, the local community or, indeed, a competitor. I have written to Simplot, expressing my concern at its intended action in, firstly, closing but, then, in the event that it does close, not making that facility available to an alternative user. Within the small north-east Dorset community, the prospect of two processing plants simply shutting down without being able to be used for other purposes is to be regretted and does not reflect well on the companies concerned.

The other approach of the Simplot Closure Task Force is to explore what other alternatives there might be for employment growth. I have encouraged the community to consider what options there are. Indeed, there was a very interesting letter to the North-Eastern Advertiser the other day by a Scott Hall, if I remember correctly. In his letter he talked about his days at Scottsdale High School, where they would sit down every now and then and have brainstorming. He invited the Scottsdale community to brainstorm with each other and just find out what prospects there might be for new employment opportunities. One of those which is very exciting is the Summer Rains Project. Nic van den Bosch and Roger Bicknell and others in that community are pursuing the possibility of irrigation dams on the Boobyalla and Ringarooma rivers. It is in that context, in particular, that the Simplot decision is very disappointing, because in the event that those irrigation schemes are put in, the potential production from the north-east will increase considerably and make the plant, in my considered opinion, even more viable.

As a group of Tasmanian Liberal senators, we have been very supportive of the north-east community in these difficult times.
Senator John Watson and I were at the Scottsdale RSL for a public meeting. I had the opportunity to address a rally of community people just the other Friday. I can assure the people of the north-east that the Tasmanian Liberal Senate team will continue to work very hard to try to change Simplot’s decision. In the event that they will not change their decision on closure we will try to get them to make the facility available. Even if we do succeed in getting Simplot to change their mind, there is of course always the opportunity to explore and develop the other employment creating prospects that I think that region may well have. I would like to thank the Tasmania Employment Advisory Council, Sheryl Thomas and the staff, who have worked hard in liaison with the Simplot Closure Task Force in getting things together so that they can put in an application under the government’s very successful Regional Assistance Program.

I would like to indicate that the community is very pleased that on the state scene there has been a bipartisan approach. Two newly elected members for Bass in the House of Assembly—Peter Gutwein, the new shadow Treasurer, and Ms Kathryn Hay, Parliamentary Secretary to the Premier—have both been working together and that has been recognised by the community. Federally, the Australian Labor Party sent Mr Ferguson down, who, might I add, was very well received at the Scottsdale RSL. It was one of those pleasant occasions where we could find no fault with each other in what we had said that evening, and comments were made to that effect. I am aware that there is concern that at those two public meetings there was not a single representative of federal Labor in Tasmania, be it at the Scottsdale RSL meeting or, indeed, at the public rally.

Whilst I acknowledge that Martin Ferguson was at the Scottsdale RSL meeting, I would have thought that with such a dilemma facing the north-east community at least one of the Tasmanian Labor senators might have found their way to that meeting. I indicate for the record that Senator Brian Harradine and Colin Rattray MLC found their way to the Scottsdale RSL meeting. That community does deserve a lot of support, and I would simply encourage federal Labor representatives from Tasmania to adopt the same sort of bipartisan approach as the state opposition in Tasmania has. The people of Scottsdale and Dorset can be assured that the Liberal Senate team, along with their state colleagues and indeed the state Labor Party, will continue to work hard to do whatever they can for the community.

Senate adjourned at 6.46 p.m.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Immigration: Maribyrnong Detention Centre**

(Question No. 380)

Senator Allison asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 18 June 2002:

With reference to the Maribyrnong detention centre:

(1) Given the high level of monitoring, the security camera and the control room, which is manned 24 hours a day and has surveillance over every corridor and every area other than inside the bedrooms and toilets: (a) why is it necessary for 2-hourly headcounts; and (b) how are these headcounts conducted.

(2) Are records kept of headcounts; if so, can copies of these records be provided for the past 6 months; if not, why not.

(3) Can a schedule of the medication currently being taken by detainees and the doses of that medication together with medical records be provided.

(4) Are detainees forced to take sleeping pills or any other medication.

(5) What arrangements are in place to supervise the taking of medication.

(6) (a) What records of self harm are kept; and (b) can they be provided for the past year.

(7) Is it the case that only one blanket and no more than two on request is provided to each detainee.

(8) Why is it that visitors are not permitted to take blankets into the centre on request.

(9) Is it the case that heating at the centre was not turned on for 3 weeks after requests had been made.

(10) (a) Is the heating now fully operational; and (b) for what period of the day and night and in what areas is it turned on.

(11) Is it the case that none of the bedrooms, toilets and bathrooms have doors.

(12) Is it the case that detention guidelines call for privacy considerations; if so, how is this provided.

(13) Is it the case that detention officers who were previously employed as prison officers receive the full 6-week training course.

(14) What measures and processes are in place to ensure that complaints against officers can be made without any repercussions from, or retribution by, those officers towards the detainees.

(15) What are the current arrangements with regard to access to the external grassed area, including the size of groups allowed, times of access, number of detention officers present, etc.

(16) Is the mother of the three children aged 5 years, 3 years and 8 months permitted to accompany her child or children to kindergarten; if not, why not.

(17) Can the medical report on the detainee diagnosed with tuberculosis be provided.

(18) Where is that detainee presently.

(19) Why were detainees in the centre at the same time as this detainee not inoculated against the disease.

(20) Have the exposed detainees been subsequently tested for the disease; if not, why not.

(21) Is it the case that cut flowers are not permitted at the centre.

(22) Is it the case that visitors are not permitted to bring in notebooks and pencils; if so, when was this rule introduced.

(23) Can a copy of the rules that apply for visitors to Maribyrnong with regard to what may be brought to detainees by visitors be provided.

(24) What measures are in place to ensure that the rules are not interpreted differently or changed arbitrarily by various officers.

(25) Given that the department in its submission to the Human Rights and Equal Opportunity Commission indicated that cricket, badminton, treadmill, basketball, billiards, jewellery-making, Egyptian dancing, computing, music classes for children and sewing classes were being provided at the
Maribyrnong detention centre, can a schedule be provided showing the times when these facilities are available to detainees.

(26) What are the rules with regard to birthing mothers.

(27) What arrangements are in place for the two children of the mother who gave birth most recently.

(28) Why is it that a burns victim who required skin grafts, was not provided with that medical attention.

(29) (a) How often are fire drills conducted at the centre; and (b) can records be provided of fire drills so far in 2002 and their duration.

(30) Can a copy of the so-called log of claims developed by detainees at a recent hunger strike be provided.

(31) (a) What is the status of each claim; (b) which of these claims have been implemented; and (c) which were not implemented and why.

(32) Was a representative of the department present at the meeting which the log of claims was discussed.

(33) With reference to a booklet produced by the Australasian Correctional Management there is a warning about injuries that can be caused by strap wire: can details be provided of (a) this device; and (b) what that advice is.

(34) What is the routine or the requirement with regard to informing detainees about the circumstances in which the accommodation charge will be made of them, that is, detainees being told that they will incur a debt and not being given advice that if, for instance, they are granted refugee status there is no debt.

(35) Can a copy of that advice be provided.

(36) What revenue was raised by accommodation charges at the Maribyrnong detention centre in the 2000-01 financial year.

(37) Are there any circumstances in which the accommodation debt is not waived where a detainee is given a residential visa.

Senator Ellison—The Minister for Immigration and Multicultural and Indigenous Affairs has provided the following answer to the honourable senator’s question:

(1) (a) & (b) There are three headcounts per day conducted at meal times for the convenience of detainees. During these headcounts, detainees are required to show their identity cards. In addition, a maximum of two further headcounts are conducted at random times. For security purposes, it is necessary for these checks to be random.

From time to time, where there are concerns about health or wellbeing of individuals, detainees will be placed on an observation routine in addition to normal head count procedures. In some instances, detainees are accommodated in observation rooms for that purpose, in others they will remain in general accommodation but staff will be required to check on their wellbeing at specific intervals, for example, 15 minute or half-hourly observations.

(2) Records solely relating to headcounts are not kept. Times of headcounts are logged in the Australasian Correctional Management (ACM) Shift Supervisor’s handbook. The ACM Shift Supervisor’s handbook is a handwritten continuous document and therefore, may not be useful for the purposes of answering this question. However, should you wish to see a copy of selected days, the Department can arrange to have copies forwarded to you.

(3) This information is highly sensitive, confidential and private information and is therefore not appropriate to provide in this format. However, I am prepared to supply this information in a private briefing.

(4) Any use of medication in Immigration Detention Facilities must be prescribed by appropriate medical professionals in accordance with the relevant Australian medical and legal requirements. There is a provision in the Migration Regulations allowing for the use of reasonable force, including the use of sedation, for the purpose of giving non-consensual medical treatment to a detainee where:

• the medical treatment is authorised by the Secretary;
• the Secretary is acting on the written advice of a medical practitioner; and
the Secretary has formed the opinion that a detainee needs medical treatment because there is a serious risk to their life or health.

(5) A nurse administers the medication during the day and a Supervisor takes on this role throughout the evening as required. If a detainee refuses to take medication, a note is made in their file and the matter is pursued by the medical staff.

(6) (a) Incident reports, medical records and statistical data regarding incidents of self harm attempts are maintained. Self harm is described as self inflicted injury or the act of causing harm to oneself (includes cutting of body parts, voluntary starvation, etc).

(b) Records of self harm attempts are highly sensitive, confidential and private and are therefore not appropriate to provide in this format. It can, however, be supplied in a private briefing.

(7) There is no limit on the number of blankets that can be issued by ACM to a detainee at any one time.

(8) Detainees are permitted to receive and use additional blankets from visitors. Detainees are permitted two additional blankets each. The quantity is limited to facilitate storage arrangements when blankets are not in use.

(9) There had been problems with the heating system which resulted in some areas of the centre being affected. There was a period of two days in May when the heating pumps failed and the heating system was not operational.

(10) (a) The heating is now fully operational.

(b) The heating takes time to warm up, so once it has been turned on at the start of the cold weather, it remains on 24 hours a day until it is turned off at the end of the cold weather. The temperature is controlled by thermostats.

The heating is operational in all areas of the centre except the bathrooms, the recreational room and three family rooms. The three family rooms have oil filled column heaters.

Further to your question, there were several faults with the heating system during the period of 18-27 August 2002. All detainees were offered additional blankets.

The heating system is the original piped hot water system. The system is nearing the end of its economic life and has required regular maintenance during this winter. Options for replacement or refurbishment are being considered as part of the asset management plan for the centre.

(11) Most areas in the facility have doors, including the interview, short stay, observation, education, TV, laundry rooms, dormitories, toilets and family rooms and associated ensuites. Some of these have privacy locks, such as the toilets and family rooms.

The male shower blocks have cubicles with lockable doors. The female shower blocks have external doors and curtains for each cubicle.

One of the six-person dormitories has a door. The remaining sleeping accommodation comprises partitioned dormitories with two double bunks within each partitioned area. The partitioned areas do not have doors.

(12) The Immigration Detention Standards and the agreement between the Government and the Services Provider outline dignity and privacy requirements. Each detainee is required to be treated with respect and dignity and all information about detainees is treated in confidence. Information beyond that reasonably required for the detention of the individual and for the effective planning and supervision and the management of the detention facility is not collected or retained.

(13) All ACM Detention Officers and Correctional Officers complete Certificate III which is a nationally accredited program at Pre-Service Level. The Pre-Service Training consists of five core modules: the Organisation, Communication, Safety and Security, Offender Management and Occupational Health and Safety.

In the case of Correctional Officers, emphasis is placed on the Corrections Act, prisoner’s rights and the relevant state legislation.

In the case of Detention Officers, emphasis is placed on the immigration context including multicultural awareness, torture and trauma, Immigration Detention Standards and Migration Legislation.
If Correctional Officers move to work in a Detention Centre, they undertake a 40 hour Bridging Program to cover the above areas and obtain a Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) specific orientation. In addition, all Detention Officers undertake 40 hours refresher training annually, which includes updating technical skills, communicating effectively with detainees, conflict resolution and cross-cultural awareness.

(14) Complaints may be made directly to the Services Provider or to DIMIA, either in person or in writing. Confidentiality is maintained at all times. Detainees may also make complaints to the Human Rights and Equal Opportunity Commission (HREOC) and the Commonwealth Ombudsman.

(15) At the time of your visit, there was no limit on the group size for women and children using the grassed area. Only six males were permitted access to the grassed area at any one time. This was put in place for security and operational reasons, as there were some operational difficulties with the fence, which was recently installed.

A review of the situation was conducted and groups of 25 detainees are able to access the area at any one time. The grassed area is available twice a day (one period in the morning and one in the afternoon – timing depends on detainee preferences) with two Detention Officers present.

(16) ACM has arranged for the mother to accompany her children to kindergarten except on occasions when escort officers are continuing on to another location.

(17) This information is highly sensitive, confidential and private and is therefore not appropriate to provide in this format. It can, however, be supplied in a private briefing.

(18) The detainee diagnosed with tuberculosis was removed from Australia in December 2001.

(19) The Department reports all notifiable diseases to Health Services Australia who instruct all appropriate action, which was followed.

(20) The Department reports all notifiable diseases to Health Services Australia who instruct all appropriate action, which was followed.

(21) Cut flowers are permitted at the centre.

(22) There is no rule that prevents visitors from taking notebooks and pencils into the visits area. These items can be given to detainees via the Services Provider.

(23) A copy of the rules that apply for visitors to the Maribyrnong IDC is at Document A below.

(24) The Detention Services Provider is required to provide visitor access in accordance with the ministerial direction under the Migration Act 1958 – Direction No. 20: Powers concerning the entry of visitors to immigration detention centres and the centre ‘Operating Manual’.

(25) Recreational activities are organised, taking into consideration the interests of the population, the availability of people to conduct the activities and the infrastructure of the centre. As a result, available activities are frequently changing. A schedule of recreational activities for June 2002 is provided at Document B below.

(26) There are no “rules” with regard to birthing mothers. However, pregnant women are required to give birth in the local hospital and have access to prenatal classes. All cases are assessed individually.

(27) The most recent birth at the centre was Saturday 15 June 2002. There were no other children in the family.

(28) The treating specialist has not recommended skin grafts for this person.

(29) (a) Fire drills are carried out periodically but not to any set timetable and follow the Metropolitan Fire Brigade guidelines (Victoria). There have been two fire drills conducted this year. The first fire drill took place on 27 March 2002 and the second on 30 August 2002.

(b) Records of the fire drills conducted at the Maribyrnong IDC are not always kept. A copy of the incident report detailing the fire drill conducted on 30 August 2002 is provided at Document C below.

(30)-(32) The Department is not aware of a written log of claims developed by detainees during a recent hunger strike. However, during a meeting between detainees and DIMIA, detainees raised a number of issues with the DIMIA representative, which were addressed during the meeting.

• Due to inaccessibility of the kitchen during the evening, can detainees take food and Coca Cola into their rooms?
Detainees are permitted to take snacks into their rooms on the condition that the food will fit into the plastic airtight containers which will be supplied by the kitchen. A maximum of six sealed cans of Coca Cola or one 2 litre bottle is also permitted in rooms.

• When will the drain in the courtyard be cleaned?
  Detainees were informed that DIMIA would arrange for the drain to be cleaned within the week. This issue is now resolved.

• Why did it take one week for the washing machine to be repaired?
  The repairer was waiting for spare parts. The machine is now working properly.

• Detainees often make requests and suggestions to the Operations Manager and nothing happens.
  It was suggested to detainees that they select three detainee representatives who will attend the weekly meeting. The representatives were requested to supply a list of questions to management the day before the meeting so that management could be in a position to respond. The detainees were happy with the suggestion which has now been initiated.

• When would access to the grassed area commence?
  Detainees were informed that there have been concerns with the security of the area and once the new security fence was operational, access to the courtyard would commence. Women and children commenced using the area on 14 May 2002. Males commenced using the area on 21 May 2002.

• Why have some visitors been banned?
  Detainees were advised that visitors are subject to rules and should these rules be broken, visitors would be banned. When visitors have been banned, they are required to sign an undertaking that they will abide by the rules and access is regranted.

• Can toys be placed in the visits area?
  Detainees were informed that this issue would be revisited as the toys previously in the visits area had been destroyed. Crayons and paper are now provided.

• The quality of food is poor and there has been a lack in water supply.
  A meeting with the Kitchen Manager took place following this issue being raised. The lack of water supply was the result of a burst water main. Both issues have been resolved.

• Can a coffee vending machine and microwave be installed in the games room to alleviate mess?
  Detainees were informed that this would not be appropriate, as there would be OH&S concerns with reheating food incorrectly and due to the high level of vandalism, companies would not supply further coffee machines. Detainees were also advised that they needed to be responsible for helping to keep this area clean.

• Can ACM Managers be available to talk with detainees each day?
  Detainees were advised that this would not be possible due to the work pressures of the ACM Managers. However, detainees can approach a Manager when they are walking through the centre as well as submitting a request form.

• Some services are not available from telephones and can there be some clarification about who can read detainee faxes?
  The telephone problems are a result of services provided by Telstra. Telstra was contacted and these problems have been rectified. Detainees were informed that an ACM Officer checks the fax machine and only reads the address.

• Some detainees have not been provided with the detainee booklet.
  Detainees are provided with the booklet at induction. Further copies can be obtained from the Property Officer.

• Detainees are having difficulty accessing doctors after hours.
  Detainees were informed that they are required to see the nurse in the first instance.

• Can Detainee Representative Meetings be held more frequently with less representatives to ensure that matters are resolved quickly?
Detainee Representative Meetings are held once a week with three detainee representatives present.

(33) (a) & (b) Security strap wire is a term used for all barbed security wire (this includes, razor wire, tiger tape, etc). On arrival at the centre, detainees are issued with the booklet and have the contents explained to them. The booklet is available in a variety of languages and interpreters are used if necessary.

The ACM booklet states,

“You should also note that there is in place in certain areas security strap wire which can cause injury if contacted.

Contact with the security strap wire will result in injury”

(34) While not a requirement under the Act, Departmental procedures state that a detained non-citizen should be informed they are liable for the costs of detention and removal from Australia. The contents of the form setting out the advice should be explained to the non-citizen through an interpreter, if necessary. There are separate processes and forms for those who have held a visa at some stage, that is, compliance cases, and for those who have arrived unlawfully without a visa (unauthorised air and boat arrivals).

During the period of detention, the non-citizen may be provided with an update of the debt incurred. At the conclusion of the period of detention, a final notice of the detention debt and removal costs (if applicable) may be served on the non-citizen. A person may remain liable for detention costs even if ultimately allowed to remain in Australia lawfully. This depends on the class of visa granted – see question 37.

(35) The Form ‘Your Detention’ (Document D below) is provided to people who have held a visa at some stage within 24 hours of being detained. It is available in several languages.

The form ‘Notice of Detention Costs Incurred’ (Document E below) is provided to detainees when leaving the centre with the exception of those who receive certain types of visas.

(36) The Department does not record debts at the level of accommodation charges or at the level of individual detention centre charges. The revenue recorded is for all centres for all debts to be recovered under the Migration Act 1958. The debt recorded for the financial year 2000-01 was $11.2 million. $263,301.00 was paid in 2000-01. This includes amounts for accommodation, fares, escorts and other minor costs eg passports.

(37) Departmental policy is that recovery action for the debt will not be pursued where:

- a person has been granted refugee status; or
- a non-citizen was reasonably suspected of being unlawfully present in Australia, was detained, but later was found to have been lawfully present; or
- a s200 deportee was detained, but the deportation order was revoked; or
- extenuating circumstances.

Although debts are not pursued, they are not normally formally waived. The formal approval for debt waiver is a matter for the Department of Finance and Administration. In some circumstances, individual applicants may seek a waiver of their debt but each case must be determined on its own merits.

Copies of documents A to E are available from the Senate Table Office.

Agriculture: Apple Industry Programs

(Question No. 546)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 15 August 2002:

(1) With reference to the Minister’s public statement following his receipt of the report, The Australian Apple Industry Squeeze, in August 2001, does the Minister recall encouraging members of the apple industry to make greater use of the Agriculture- Advancing Australia (AAA) Farmbis Program, AAA-Farm Innovation Program and AusIndustry’s Technology Diffusion; if so, did the Minister’s encouragement extend beyond issuing a media statement on 7 August 2001 and what form did that encouragement take.
(2) How many members of the apple industry received, or will receive, assistance under the AAA FarmBis program in the following financial years (a) 1997-98; (b) 1998-99, (c) 1999-2000, (d) 2001-02 and (e) 2002-03.

(3) Did applications for the fourth and final funding round of the AAA Farm Innovation program close on 31 October 2001.

(4) (a) How many applications were received from members of the apple industry in this round; and (b) how many apple businesses, if any, received funding.

(5) Can the Minister advise whether the Technology Diffusion program he encouraged apple industry members to use, still exists; if it does, how many members of the apple industry are in receipt of its assistance.

(6) If the program does not exist, can the Minister advise: (a) when the program ceased to exist; and (b) whether any members of the apple industry gained assistance from this program between his statement on 7 August 2001 and its abolition.

(7) Can the Minister advise if the report The Australian Apple Industry Squeeze is published on the Department's internet site; if so, at what internet address is the report publicly available; if not, was the report previously published on the departments internet site; if this was the case, for what period of time was the report available and who decided to remove it from the site.

(8) Did the Minister take any action in response to the report other than referring it to the Minister for Justice and Customs.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) Yes. The Minister’s office as well as AFFA program and policy staff held a series of meetings with industry representatives to discuss an anti-dumping case and to assist the industry gain greater understanding of program parameters and application processes for the Farm Innovation and FarmBis programs during August and September 2001.

(2) The number of members of the apple industry who participated in FarmBis is not available, as information on industries to the level of produce type is not collected.

(3) Yes.

(4) (a) Nil in round 4. (b) One in a previous round. Also, enquiries from the apple industry were directed to other government programs.

(5) The Technology Diffusion Program was essentially replaced on July 1 2001 by the Innovation Access Program (IAccP), which shares similar objectives. This change was announced as part of the Federal Government’s Backing Australia’s Ability statement. I am advised that it appears that no applicants that could be identified as apple producers gained funding during the operation of the Technology Diffusion Program.

(6) (a) The Technology Diffusion Program finished on 30 June 2001 and no applications were accepted after this date. b) However, industry interested in technology and innovation were directed to the IAccP, which replaced the Technology Diffusion Program.

(7) The Report is publicly available on AFFA’s Internet site www.affa.gov.au. Access is gained by selecting “Publications”, then “Horticulture” then “Applestudy”.

(8) Yes. A series of meetings were held during August and September 2001 with representatives from apple industry businesses and the Australian Apple and Pear Growers Association. These meetings involved Minister Truss and/or his staff and/or departmental officers. Additional meetings between the Minister’s office and other Ministers also took place. A list of programs and public contacts was developed and given to industry representatives for dissemination within the sector to increase general knowledge of all relevant programs. One outcome was that some apple related businesses were successful in receiving funding from the New Industries Development Program (NIDP). The report was also placed on the website to enable industry to access the material and to use its findings to help industry strategic planning processes. A draft strategic plan was released by the apple industry this year and discussions are continuing between AFFA, Horticulture Australia Ltd and the industry about this plan.
The apple and associated industries will continue to be eligible for assistance under government programs including the recently announced National Food Industry Strategy. Through this strategy, apple processors and growers can continue to apply for program funding as long as they fulfill program criteria.

**Attorney-General: Superannuation**

**(Question No. 613)**

Senator Sherry asked the Minister representing the Attorney-General, upon notice, on 30 August 2002:

(1) For each department within the Minister’s portfolio, how is superannuation calculated (ie. is the superannuation entitlement calculated on base salary and other income payments, such as overtime allowance or performance bonuses, or on base salary alone).

(2) If the department calculates superannuation on a broader basis, by incorporating all income payments in the calculation of superannuation entitlements, but allows employees to opt out of this arrangement so as to reduce the base upon which superannuation is calculated, what proportion of employees do this.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator’s question:

(1) My Department administers the superannuation salary of its employees in accordance with the rules of the relevant superannuation funds. In most cases, employees are members of either the Public Sector Superannuation Scheme (PSS) or the Commonwealth Superannuation Scheme (CSS). For both the PSS and the CSS superannuation salary is the total amount of a member’s salary package recognised by the relevant legislation for superannuation purposes. Changes to the PSS and CSS superannuation legislation which took effect from 1 July 1997 now allow employers and staff to agree on how salary for superannuation is to be calculated under the provisions of an agreement. An “agreement” generally means an Australian Workplace Agreement (AWA) or a certified agreement.

Where superannuation salary is not specified in an agreement, the superannuation salary regulations provide that, additional to the salary payable to an employee, some allowances are automatically recognised as salary for superannuation purposes. Other prescribed allowances are recognised for superannuation if they meet specified criteria concerning the length of time the allowance has been received.

In both the PSS and the CSS, whilst there are a number of automatically recognised allowances, the only one presently of relevance to my Department’s employees is first aid allowance. Allowances that may be included if certain criteria are met include higher duties allowance, Departmental Liaison Officer allowance, restriction allowance and shift allowance. Performance bonuses are not recognised as allowances by the PSS or the CSS.

All non-SES employees of my Department who are PSS or CSS members have their superannuation salary determined having regard to their base salary level, automatically recognised allowances and allowances which satisfy the specified criteria.

My Department’s SES employees have their superannuation salary specified in their AWAs. The superannuation salary specified in SES AWAs is an amount equivalent to the employee’s base salary plus an amount equivalent to the cash in lieu allowance of the private-plated vehicle the employee is entitled to.

(2) There have been no cases of SES employees either declining an offered AWA because of the proposed superannuation salary or requesting an amendment to the proposed superannuation salary.