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

BUSINESS

Rearrangement

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

That government business notice of motion No. 1, standing in my name for today, relating to
the days and hours of meeting and routine of business for the first sitting week in November,
be postponed to a later hour of the day.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.31 a.m.)—as amended,
by leave—

I move:

(1) On Wednesday, 23 October 2002:
(a) consideration of government
documents shall not be proceeded
with; and
(b) the routine of business from 6.50 p.m.
to 7.20 p.m. shall be consideration of
the following bills:
  Insurance and Aviation Liability
  Legislation Amendment Bill 2002
  Family and Community Services
  Legislation Amendment (Budget
  Initiatives and Other Measures)
  Bill 2002
  Family Law Legislation Amend-
  ment (Superannuation) (Conse-
  quential Provisions) Bill 2002
  Aboriginal Land Rights (Northern
  Territory) Amendment Bill 2002

(2) On Thursday, 24 October 2002:
(a) the hours of meeting shall be 9.30 am
to adjournment;
(b) the routine of business shall be:
  (i) Prayers,
  (ii) Notices of motion; and
(c) the Senate shall stand adjourned
  immediately after notices of motion
to enable senators to attend a
  memorial service for the victims of
  terrorist attacks in Bali.

Question, as amended, agreed to.

Consideration of Legislation

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

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

Aboriginal Land Rights (Northern Territory)
Amendment Bill 2002
Broadcasting Legislation Amendment Bill
(No. 1) 2002
Egg Industry Service Provision Bill 2002
Egg Industry Service Provision (Transitional
and Consequential Provisions) Bill 2002
Excise Laws Amendment Bill (No. 1) 2002
Excise Tariff Amendment Bill (No. 2) 2002
Excise Tariff Amendment Bill (No. 1) 2002
Customs Tariff Amendment Bill (No. 2) 2002
Family and Community Services Legislation
Amendment (Budget Initiatives and Other
Measures) Bill 2002
Inspector-General of Taxation Bill 2002
Insurance and Aviation Liability Legislation
Amendment Bill 2002.

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate (9.32 a.m.)—I ask that the question be di-
vided in relation to the Inspector-General of
Taxation Bill 2002. If the question is divided,
then the opposition will agree in relation to
the other matters. We wish to express a dif-
ferent view in relation to the Inspector-
General of Taxation Bill.

Senator BROWN (Tasmania) (9.33 a.m.)—This government motion is to exempt
about 10 bills from the requirement under
standing order 111 that the Senate give time
in any session for the proper evaluation of
legislation coming from the House of Repre-
sentatives or otherwise introduced here, so
that we are able to go to our constituencies,
get feedback on the legislation and properly
handle it from that informed basis. We have
here a list of bills which in the main do not
fit the requirement of urgency, and they have
been put before us now to be dealt with as
bills that are exempt from the cut-off largely
because the government has not done its homework.

Let us look at the bills. The first one, which is the **Aboriginal Land Rights (Northern Territory) Amendment Bill 2002**, is to enable the people of Harry Creek East in the Northern Territory to be relocated, with freehold title, onto traditional land of theirs that is located elsewhere, because the Alice Springs-Darwin railway construction is taking place in their current habitat. We are not going to oppose that bill being given rapid passage through the parliament, because this group of Indigenous people are being effectively dispossessed of their houses by the rapid progress of that railway line. Of course, it is legitimate that they be given freehold title to their own lands at another site.

When we look at the next piece of legislation, which is the **Broadcasting Legislation Amendment Bill (No. 1) 2002**, we see that the government is introducing a piece of legislation effectively to cover the failure on the part of those who have gained from last year’s broadcasting legislation to provide the services that we were promised Australians were going to get under that legislation. I am sure, Mr President, you will remember that debate; it was a very heated one in the Senate. Big media organisations are being given a large part of the spectrum for a pittance in order to bring in high definition television broadcasting and, effectively, at the same time, new players are being excluded from acquiring that broadcast band. New players could give Australians expanded options in a whole range of information and broadcast services.

In the government brief it is proposed that the commencement date of 1 January 2003 for a 20-hour-a-week high definition television quota obligation on those broadcasters who got the spectrum be delayed by six months. The big media organisations are using this rushed legislation to cover their own commercial interests. They have shut out other players. The government supported that. It was supported by Labor. They have now got an obligation to provide the services which they said were essential and for which the legislation was needed.

High definition television is being introduced at a great rate. We warned that new sets would cost $8,000 to $10,000 and that there would not be the rapid uptake that the companies were talking about. Mr President, you will remember the display here in Parliament House when we were told that this technology was here, it was now on the go—‘Let’s get it.’ It is not here, it is not now on the go and people are not getting it. This is a delaying tactic to give the lucky licence holders for that spectrum more time. There is no legitimate argument here. The government have not presented any reason for that other than to say that they are not ready. Why aren’t they ready? They wanted the legislation passed urgently last year. They said they had to get this through or we would be left behind. Without an explanation for that, it is not legitimate that we now drop the provisions of proper Senate process which would allow us to better investigate this matter. We should have an informed debate instead of a rushed one in the interests of people who have apparently defaulted on their intention of providing those services to the Australian public.

The next pieces of legislation are the **Egg Industry Service Provision Bill 2002** and the **Egg Industry Service Provision (Transitional and Consequential Provisions) Bill 2002**. The reasons for urgency provided by the government to the Senate state that the Australian Egg Industry Association consulted widely on this proposal between April and September 2001 and that an industry vote revealed widespread support for a new company and promotional levy—that is, to promote the sale of eggs in the country. That is fine; I will support that. But we are talking about a process whereby the industry adopted this and said to the government, ‘Go ahead,’ more than 12 months ago. The problem is that the minister, Senator Ian Macdonald, has not done his job. He should be here now—he is not—to explain why this is required. He has failed in his job. He has had more than 12 months to get that legislation ready; indeed, it should have been introduced at the end of last year. But we are getting it 12 months later, and we are being told it has to be rushed through because it is urgent.
We are being told to drop provisions which allow the other parties in here to go out as independent arbiters and speak to people who are affected by this legislation in order to make sure that it cannot be improved or altered in the interests of the industry and the buying public. It is not good enough for ministers who do not do their job on behalf of the industries and the public whom they represent to come in here at this stage of the political calendar and suddenly say, ‘We want the proper processes’—which the Senate has put into law and which give the Senate time to properly consult with the community—dropped because we were either too lazy or we have been ineffective or dilatory in our job of making sure that legislation is brought in in a timely fashion so that the Senate can look at it with due diligence.’

Then we have the Excise Laws Amendment Bill (No. 1) 2002 and the Excise Tariff Amendment Bill (No. 2) 2002. The reason for urgency from the government is stated in one sentence: The alcohol labelling and excise payment measure is retrospective to the time of the announcement, 14 May 2002, and it is desirable to provide certainty to affected taxpayers.

May 2002 was five months ago. Suddenly, we are getting this bill and we are effectively asked that it be made an urgent bill—again, because the Treasurer, Mr Costello, has not ensured that the legislation was introduced here in time for a proper perusal by the Senate. It does have an impact on the industry, it is not proper process, and the government have only themselves to blame. Effectively, what they are saying is, ‘We haven’t prepared this on time; the Senate should make up for our default.’

This motion also includes the Excise Tariff Amendment Bill (No. 1) 2002 and the Customs Tariff Amendment Bill (No. 2) 2002. The reason for urgency from the government is stated in one sentence: The alcohol labelling and excise payment measure is retrospective to the time of the announcement, 14 May 2002, and it is desirable to provide certainty to affected taxpayers.

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The Excise Tariff Proposal No.1 (2002) must be validated within 12 months of the date of tabling which is 20 February 2003.

The question is: why wasn’t this legislation brought in earlier? What is the reason for removing the indexation? Is it a gift to the oil industry? If it is a gift to the oil industry and it is going to reduce money going into the product stewardship oil levy—which, amongst other things, I was told, during the opportunity I had overnight to look at this matter, involves helping the legitimate business of recycling oil in the country—the question is: why should we deal with this legislation without having more time to consider it? As you know, Mr President, there are people in Tasmania who have excellent expertise in recycling oil. I do not know whether their industry is depending on this levy, and I do not know whether indexation is going to reduce the levy and therefore not fund their work as well as it could. I want the minister to be present to explain why we need this now and why he did not introduce this legislation earlier. He has obviously had plenty of warning.

Then we have the Family and Community Services Legislation Amendment (Budget Initiatives and Other Measures) Bill 2002. I do not need to remind you, Mr President, that the budget was brought down in May. The Minister for Family and Community Services, Senator Vanstone—who is also not here at the moment—said: The Bill also amend the social security law to streamline the process to allow more people caring for certain terminally ill children to qualify for carer payment.

The Greens do not want to delay the passage of this legislation but what we say is: why wasn’t this legislation brought in earlier? This is a budget flow-on matter. The reason for urgency given by Senator Vanstone was as follows:

The Bill needs to be passed in the spring sittings to allow finalisation of supporting administration ahead of the proposed July next year commencement date for the nominees initiative. Early passage of the bill would also enable more people caring for certain terminally ill children to qualify for carer payment.

Please, where is the minister? She should explain why she did not get this legislation in
earlier. Why was it not here five months ago? The payment is obviously going to be very important to some individuals out in the community, but the minister is treating it as though it were not important—as though it were just something that the Senate should rubber-stamp. We have a function of review in this important house, and that involves our being able to consult with people in the community who are affected. We should not simply take the minister’s word when she says, ‘This is urgent; I haven’t been able to get to it for five months for reasons unspecified but I want you now to deal with it without community consultation.’

On the list is the Inspector-General of Taxation Bill 2002. This time it is Senator Coonan’s responsibility. She also is not here. The reason for urgency given by Senator Coonan states:
The office of Inspector-General of Taxation is intended to be operational by the end of 2002 and funding was included in the 2002-03 Budget for the establishment of the office.

There is a government commitment and community expectation that the office will be established and operational by the end of 2002.

Why didn’t Senator Coonan bring in that legislation months ago? She set the deadline. She should set in place the process that properly recognises the role that this house has in debating an issue which has had quite a lot of media coverage, rather than just dump legislation in here and expect it to be rubber-stamped.

We have another bill from Senator Ian Macdonald, who is not here, titled the Insurance and Aviation Liability Legislation Amendment Bill 2002. Amongst the reasons for urgency, in writing, Senator Macdonald tells the Senate:

Since September 2001, the government has been providing indemnities to cover the difference between the amount of cover commercially available ... and that held by aviation enterprises before the terrorist attacks.

He was referring to the attacks in New York. He went on to state:

Passage of the amending legislation is also likely to significantly reduce the number and size of indemnities provided by the Commonwealth.

We are talking about the government’s emergency provisions of September last year—13 months ago. The question that Senator Macdonald should be answering for us is: why didn’t he have that legislation in here last year? I am not going to simply say, ‘Well, the Senate doesn’t count,’ like these government ministers make out. I am not simply going to allow this process, which is getting worse month by month and year by year, to flout the Senate’s proper role as a house of review. The problem is with the executive; it is not with the Senate. The Senate has to take a stand on this. We concede that there is urgency in regard to some measures; we do not want to penalise people because of the ministers’ lack of diligence, but in the other matters we see absolutely no reason for supporting the government’s failure to get this legislation in here on time. In some cases it should have been in here 12 months ago. We want to support the Senate’s right to have adequate time to consult with the community on these matters. I move:

Omit:

- Broadcasting Legislation Amendment Bill (No. 1) 2002
- Egg Industry Service Provision Bill 2002
- Excise Laws Amendment Bill (No. 1) 2002
- Excise Tariff Amendment Bill (No. 2) 2002
- Excise Tariff Amendment Bill (No. 1) 2002
- Customs Tariff Amendment Bill (No. 2) 2002
- Inspector-General of Taxation Bill 2002

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.49 a.m.)—I will try to be brief in relation to this question but, given the debate that has occurred, it is important to put the Democrats’ views on the record and to explain perhaps a little more clearly the purpose of standing order 111(5) to (7). The motion, I believe, has its genesis in the activities of one of my Queensland Democrat predecessors, former Senator Michael Macklin. The reason behind it was basically to prevent, at such a time during a parliamentary session, having leg-
islation introduced and railroaded through without proper scrutiny. We all know that the risk of that happening increases as we get towards the end of the year. Nonetheless, that motivation, which is one that the Democrats strongly stand by, needs to be balanced against the responsibility of the Senate, which is the key chamber in terms of considering legislation, to make sure that there are no unnecessary hold-ups. Broadly speaking, the Senate has mostly not insisted on preventing bills from being exempted from this cut-off motion under standing order 111, as long as there was a case for their being put through in the specified time. The key aspect is that, as legislators, we ensure that we are across the legislation before us.

The bill that Senator Ludwig outlined, the Inspector-General of Taxation Bill 2002, which I think is going to be referred to a committee, is one that the Democrats agree needs further consideration. Therefore, it should not be subject to time pressures to try to get it back to the Senate before the end of the year. The Egg Industry Service Provision Bill 2002 has already been examined by a committee, and the report is expected to be released today. I do not think that any of the bills on the list is likely to be debated today, so we will have a full fortnight to consider them. Agreeing to Senator Ian Campbell’s motion will not mean that the bills do not receive adequate scrutiny. We obviously will have the opportunity to debate them fully in the chamber, to ask the sorts of questions that Senator Brown has raised and to move or vote against amendments if necessary.

Given that these bills will not be debated today and there is still a full two weeks available, from the Democrats’ view of things, we are aware of the details of the legislation and what they are trying to do. We do not wish to hold up the bills unnecessarily where there is a case that it is beneficial for them to have the opportunity of being passed this year, and that case can be made and it is justified that there has been adequate opportunity to examine them. The Senate needs to balance its responsibilities and it needs to utilise its powers responsibly and not hold things up unnecessarily. We also have a duty to follow legislation, to attend committee hearings and to listen to the evidence to get our heads around the issues. In the case of these bills, with the exception of the Inspector-General of Taxation Bill 2002, that is the case. The Democrats are certainly across them all and we believe that there is no compelling case why they should not be allowed to proceed or at least given the opportunity to proceed, if the government so wishes.

There will, of course, no doubt be increased arm wrestling between us about which bills get priority in the shrinking number of weeks we have left this year. We have slightly less than four full sitting weeks to go. That is a separate debate. Allowing them through at this stage is not the same as saying that we support the bills or saying that they should have priority over other more important legislation but it at least leaves them in the mix for the Senate to determine those that are non-controversial, beneficial or have time issues involved.

Senator Brown was a little bit harsh in his view of some of these things. While I agree with some of his comments in relation to legislation being delayed more than is necessary, I know from experience that legislation like the family and community services legislation takes a lot of time to get together. The Social Security Act is incredibly complex and the IT systems used to administer it are also complex, so there is a long lead time to get legislation together and a long lead time to implement it. In that context, the reasons for it not appearing the night after budget night are fairly justifiable. The same thing applies to a few of the other areas which I will not go into.

It is not quite as black and white as the previous speaker suggested. We have to act responsibly where a credible case is made for urgency. The contrary also applies, of course, particularly given the end of session logjam that often happens. Where there is no case for urgency, we should not allow bills in there, because they simply take up time needed for other more important legislation. That is probably a relevant comment for the next government notice of motion, which I will speak to when we get to it.
Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate (9.55 a.m.))—In relation to the motion, the opposition take the government’s position at face value unless something puts them on notice that that may not be the case. When the government advises that these are urgent bills which are required to be exempt from the cut-off, we examine the issues behind the exemptions from the cut-off, which, as I recollect, the Democrats were behind in this case.

Senator Brown interjecting—

Senator LUDWIG—I am advised that it was the Greens.

Senator Brown—It was Christabelle Chamarette.

Senator LUDWIG—that is right; it was. I am sure the Democrats would have supported you at the time, Senator Brown; so we can say this was collectively between Labor, the Greens and the Democrats.

Nevertheless, the position Labor adopts in respect of this is that, the government having declared these bills as urgent, if there is something that puts us on notice that that may not be the case or there may be requirements to deal with the bills or undue pressure is put on the timetable, that will be an issue. We would then examine the bills individually to see whether they have been dealt with by committees, and we have been advised that some of them have been. We would look at the complexity and nature of the bills to determine whether there is an issue that needs to be addressed before the end of the year and we would make a judgment on those matters and reach a view about whether they can be exempt from the cut-off. That does not necessarily mean that they will be dealt with by the end of the year; it means that they are in the mix to be considered.

As we move towards the end of the year, the Senate knows that there will be time pressures on what legislation can and will be dealt with. As we all know, we will look at the priority legislation the government wants to move and we will examine it in due course. It is a little early to say what that priority list will be, but I think it would be miss of us not to ensure that these bills, except for the Inspector-General of Taxation Bill 2002, are included in that mix for consideration. As Senator Brown knows, some of those bills are non-controversial and can be passed before the end of the year. Some of them will generate further debate, and I suspect some will need further scrutiny, and that can be done during the sitting period before the end of the year. There is sufficient time. We are going into a two-week break, which will allow the various people who have an interest in those bills to consider them before we come back in a fortnight’s time.

Perhaps I can take this opportunity to explain why the Inspector-General of Taxation Bill 2002 should be taken off the list. The reason is more an argument over when that exemption should be requested. I foreshadow that later this morning we will be amending a motion relating to the Selection of Bills Committee to send that bill to a committee. We believe that it requires scrutiny. As I understand it, it will then report back some time this year. At that point, it may be appropriate to consider again whether it should be exempt from the cut-off, but that is a matter for the government to determine in due course and we will consider that issue, should it be put before us. However, at this point in time, it is our view that the Inspector-General of Taxation Bill 2002 should not be provided with exemption from the cut-off. It is not an issue that is urgent for consideration during the break.

Senator MURPHY (Tasmania) (9.59 a.m.)—With regard to the comments made by Senator Ludwig on the Inspector-General of Taxation Bill 2002, I share his view. Whilst I suspect this is a matter that would have been and is still important to taxpayers, it should not have taken the government this long to bring this bill forward. Indeed, my first reading of the bill would suggest to me that this bill is a nothing, that the proposals contained in the bill do not represent what the government promised the taxpayers; and I believe it ought to be referred to a committee, because this is an important issue and it needs to be got right. So I would not agree to the Inspector-General of Taxation Bill 2002 being included in the list of bills. It should be
taken off it. It should be referred to a committee. Despite the fact that the government did promise that they would have this in place by the end of the year, that may not be the case as a result of a failure to bring in this bill in a much earlier time frame. But that is not the fault of the Senate: it is the responsibility of the government to bring in these bills in a timely manner so that they can be considered.

As I said, I have very serious concerns about what is proposed in the bill as it currently stands. I went back and checked some statements made by the Prime Minister on that particular proposal and I would suggest to the government that what the Prime Minister proposed to the people of this country about an inspector-general for taxation is certainly not represented in the form of this bill. So I oppose the motion on the basis that it contains the Inspector-General of Taxation Bill 2002.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.01 a.m.)—I thank all senators for their contribution to the debate—although, on a day when the Senate will probably be dealing with more business than it has dealt with for many days, it is slightly frustrating to have to have the debate. It is still an important one, and I particularly welcome the contribution of Senator Andrew Bartlett, the new Democrats leader: it showed a sound understanding of the process, which we appreciate. I also appreciate the support of the Manager of Opposition Business in the Senate, who shows a sound understanding of the competing stresses on the Senate’s time and the management of the government’s business program in the Senate, which is very rarely anything but difficult because of the modern complexities of managing what you could only describe as an important medium sized power in the world. There is a range of governance issues and there are always changes occurring.

Can I say for the record, because I think it is important that all Australians understand this, that if you listen to Senator Brown’s comments you might think that there is some sort of railroading going on; however, the Senate envisages the exemption of a number of things from standing orders for very good reasons. It always occurs with a majority decision of the Senate, and it seems that the vote on this bill will be passed with a significant majority, if the number-counting skills I have learnt through my career are of any benefit to me, of the order of 74 votes to two, with the exception of pairs. I have not figured out how Senator Kerry Nettle is going to vote yet; she could have a split in the Greens on this one if she is sensible.

We need to understand the process here. In most cases the bills that we are exempting have been available for some extended period of time. Reflections were made on the diligence of my ministerial colleagues. References were made as to why they were not in the chamber to explain the urgency of their bills. I explain the urgency of the bills on their behalf, as the Manager of Government Business in the Senate. They distribute, in most cases, detailed notes on the urgency and on the consultations that have occurred in the process of bringing the bills here. On 8 August this year, many months ago and some weeks before we came together in the national capital for the spring sittings, I circulated a detailed list of all legislation that the government wanted to consider in these sittings, which allowed all senators—including Senator Brown if he was diligent—to go through that list diligently and find pieces of legislation such as the egg bill, as I am beginning to call it—the Egg Industry Service Provision Bill 2002. If he had an interest in the egg bill, he could have picked it up from that list on 8 August—and, yes, it was on that list. He could have come to me or to the minister or to Parliamentary Liaison Officer Myra Croke and said, ‘I have an interest in this bill. Can I please get a briefing on the bill? Can I get a copy of the bill as soon as it’s available or even a draft copy before it is introduced?’ But did Senator Brown do that in relation to the egg bill? Of course not—and it was available.

The customs bill he referred to was introduced on 22 August, two months ago. If he was interested in the customs bill, he could have come to us—come to the minister—and got a briefing from the Assistant Treasurer, the Parliamentary Secretary to the Treasurer
or the Treasurer himself. But was he really diligent and was he interested? Of course not. Was he interested in the Broadcasting Legislation Amendment Bill (No. 1) 2002, which was introduced on 25 September, two months ago? Did he ring up Senator Alston’s office and say, ‘I have an interest in this, Senator Alston. I want to be diligent. I want to ensure the Senate considers this bill properly. I want to do my job as a senator for Tasmania. I care about HDTV and digital TV for Tasmanians’? Did he do that? No, he did not. What he does do is come in here and pull another stunt—and that is what he is good at, not diligent consideration of legislation. What did he do on every one of the 60-odd days between now and 25 September? Did he diligently go and have a look at the broadcasting amendment bill? Did he go and have consultations with people? Did he ring up Kerry Packer or Kerry Stokes or any of the TV people and say, ‘I want to have a yarn to you about this’? No, he did not. He was not diligent: he did not look at the legislation; he has not asked for a copy of it. The family and community services legislation came into the parliament on 26 September. Has he asked for a briefing on that? No. He showed no interest in any of these bills.

What we have seen today from Senator Brown is that he said we are trying to railroad these things. Of course we are not. We introduced them diligently, we went through a diligent policy process, and the ministers worked extraordinary hours to bring these proposals together. Senator Murphy made some quite legitimate comments about the Inspector-General of Taxation Bill, which the government has been working hard on. You could say that Senator Coonan should have brought it here more quickly, but I think even Senator Murphy would know that Senator Coonan has been working particularly hard on a whole range of issues. She probably has one of the busiest workloads in the government, and I think Senator Murphy would respect that.

I am not making any excuses; I am just saying that even Senator Murphy would know that the government have tried very hard to live by our promise to get the bill passed by Christmas this year. We will continue to do that and we will see it go to the Senate committee, which is the proper process. We will cop legitimate criticism from Senator Murphy and others who say we can improve it; we will listen to that. We have done our job within the Treasury, within the government and within Senator Coonan’s office to bring forward the best bill we can through a diligent process. I am sure Senator Murphy knows there is very broad consultation on a new policy proposal. It is a new concept. Are we going to get it right first time? Let us see.

Senator Murphy interjecting—

Senator IAN CAMPBELL—Senator Murphy says no; I am sure Senator Coonan would say she has got it absolutely right. But that is what the Senate can do. Of course, some of the bills for which we are seeking the exemption from the cut-off have in fact already been to two committees. For example, the customs bill, which Senator Brown was saying was going to be railroaded through, has already been through a detailed inquiry by the Senate Economics Legislation Committee. Regarding the egg industry bill, about which he says, ‘We need consultation; the Senate needs to consider the egg industry bill,’ do you know where that bill is? I will give you three guesses. It is actually before the Senate Rural and Regional Affairs and Transport Committee.

Senator Brown would have listeners who are driving around Australia listening to this program on the Parliamentary News Network believe that we are railroading the egg bill through the Senate; it was referred to the relevant committee. They have gone around and consulted, but where were you, Senator Brown? Telling all my ministerial colleagues they are not diligent for doing the bill properly. Where were you on those areas? Did you go to one hearing? Did you get yourself put on the committee? Do you care about the egg bill? Of course you do not. You care about coming in here and casting aspersions on hardworking senators on that committee, hardworking ministers who are doing their job for Australia—you come in here and pull a stunt.

I thank Senator Bartlett for his support and I thank Senator Ludwig for the opposi-
tion’s support. We will not pull any stunts. We will work hard to make sure that Australia is well governed and we will not cop it when this lazy senator wanders in here and pulls another stunt. This person is not diligent. How can he possibly stand up and cast aspersions on ministerial colleagues who work hard for this country—

The ACTING DEPUTY PRESIDENT (Senator Knowles)—Order! Senator Ian Campbell, I ask you to withdraw your terminology in referring to Senator Brown.

Senator IAN CAMPBELL—I referred to him as lazy and I should not have done so. It was inappropriate of me to do so. However, I am saying that he should not call other senators—

The ACTING DEPUTY PRESIDENT—Could you withdraw the comment?

Senator IAN CAMPBELL—I have withdrawn it unconditionally. In fact, I am chastising myself. I am in the process of saying it is not fair for this bloke, this honourable senator, to come in here and say that ministers and other senators are not diligent when they have been working hard on the egg bill, which Senator Brown has not been doing. How dare he come in here and say to the Australian people that this egg bill has been railroaded through, when it is being considered by a committee at the moment? I think the report is coming in today. Will he read the report? Of course he will not. The closest he comes to caring about an egg is when he hoes into one at breakfast time with his knife and fork—that is about as close as he comes to caring about eggs in this place.

Madam Acting Deputy President, the Senate considers legislation in a most diligent fashion. The government brings forward legislation in a most diligent fashion, and the person who is least qualified to talk about the diligence of the process is the one who has caused this debate. I commend my motion to the Senate and I thank people for their support.

Question put:

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

The Senate divided.  [10.16 a.m.]
That government business notice of motion No. 4 standing in the name of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth), relating to the consideration of legislation, be postponed till a later hour.

Question agreed to.

**WORKPLACE RELATIONS AMENDMENT (FAIR DISMISSAL) BILL 2002**

**First Reading**

Bill received from the House of Representatives.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (10.20 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

**Second Reading**

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (10.21 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

_The speech read as follows—_

This bill amends the Workplace Relations Act 1996 to prevent the unfair dismissal provisions from applying to small businesses with fewer than 20 employees.

If passed it will to improve the employment prospects of people, particularly unemployed people, seeking jobs in the small business sector. It will protect small businesses from the costs and administrative burden of unfair dismissal claims in the federal system.

The bill will require the Australian Industrial Relations Commission to order that an unfair dismissal application is not valid if it involves a small business employer. This provision will only apply to the new employees of a small business, not to existing ones.

However, it will not exempt small businesses from the unlawful termination provisions of the Act, which, amongst other things, prohibit employees from being dismissed for discriminatory reasons such as their age, gender or religion.

Members will be familiar with the content and intent of this bill. It is the same bill that was laid aside on 28 June 2002 after Members of this House rejected Senate amendments that would have destroyed the employment creating potential of this bill.

The Government is reintroducing this bill to honour a commitment it has made to the people of Australia to free up the large number of small business jobs that are being lost because of the unfair dismissal laws.

ABS labour force figures show that more than one million jobs have now been created since the Government came to office in March 1996. The Government has produced an environment which fosters sustained jobs growth through sound economic policies, sound fiscal management, and workplace relations reforms to help small business.

These businesses account for 96 per cent of all businesses and our workplace relations system must be responsive to the needs of Australia’s hard working small business men and women.

The unfair dismissal laws currently place a disproportionate burden on small businesses. Attending a Commission hearing alone can require a small business owner to close business for the day. The time and cost of defending a claim can be substantial.

In giving evidence before the Senate Committee inquiring into this bill, the restaurant and catering industry indicated that, on average, $3600 and around 63 hours of management time to defend an unfair dismissal claim.

Many small business owners are not confident that they know how to comply with the dismissal laws. A recent survey by CPA Australia, for example, found that 27 per cent of small business owners thought that they were unable to dismiss an employee even if the employee was stealing from them, and 30 per cent of small business owners thought that employers always lost unfair dismissal cases. These small business concerns will persist under the current laws.

Research has found that many small businesses are reacting to the complexity and cost of unfair dismissal laws by not taking on additional employees. The Senate Committee inquiring into this bill looked at the many surveys and projects on the impact of the unfair dismissal laws and concluded that the arguments in favour of exempting small business were compelling.

For almost a decade federal unfair dismissal laws have created a serious obstacle to employment growth in Australia. A report by the Centre for Independent Studies indicates that if only 5
per cent of small businesses employed just one extra person, 50,000 jobs would be created. The report concludes that ‘employment in small business would rise significantly in the absence of the unfair dismissal laws’.

In reintroducing this bill, the Government is continuing its commitment to address the needs and circumstances of the small business sector and to create jobs. This sector has tremendous growth potential and is vital to the Australian economy.

I commend the bill.

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

**BUSINESS**

**Consideration of Legislation**

**Senator IAN CAMPBELL** (Western Australia—Manager of Government Business in the Senate) (10.22 a.m.)—by leave—

I move:

That the provisions of standing order 111 not apply to the Crimes Amendment Bill 2002.

I table a statement of reasons justifying the need for this bill to be considered during these sittings and I seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—

**Purpose of the Bill**

The Crimes Amendment Bill 2002 will put in place measures to enable the Commonwealth, States and Territories to access and disclose information held on DNA databases for the purposes of:

- identifying persons killed by the Bali bombing incident; and
- assisting with the investigation of the Bali bombing incident.

As the CrimTrac DNA database was established for criminal investigation and not for Disaster Victim Identification (DVI), it is now imperative that legislation be passed so that the CrimTrac system can be used for DVI for the Bali incident.

The Australian community expects us to do everything possible to re-unite relatives and friends with the victims of this attack as quickly as possible.

This legislation will amend the Crimes Act 1914 to modify the effect of Commonwealth, State and Territory provisions that restrict the ability of the Commonwealth, States and Territories to exchange DNA information. This will ensure that DNA collected and analysed by the States and Territories as a result of the Bali bombing, can be up-loaded and matched on the CrimTrac system and the results communicated to the relevant authorities both in Australia and overseas.

The application of the legislation to future incidents will require a determination of the Minister which will be a disallowable instrument. This will ensure that the existing regime remains the primary source governing the exchange of DNA information.

The amendments will also clarify the category of people to whom information may be disclosed for non-law enforcement purposes and enable the matching of the unknown deceased persons index with an unknown deceased person access.

There is a need to have the legislation apply retrospectively to ensure that the existing restrictions on the sharing of that information do not preclude its transmission to the Commonwealth.

**Reasons for Urgency**

The amendments to the Crimes Act 1914 are urgently required as some State and Territory police services have commenced collecting samples from relatives of those who are missing. Until legislation is enacted that modifies existing restrictions on the sharing of information held on DNA databases, the process of investigating the Bali incident and the identification of deceased persons could be delayed.

(Circulated by authority of the Minister for Justice and Customs)

**Senator BROWN** (Tasmania) (10.22 a.m.)—The Crimes Amendment Bill 2002 is an extraordinarily important bill. As the government has informed us by letter, it deals with the tragic events in Bali and the need to assist in the rapid processing of the DNA samples that are required for identification purposes and so on. These circumstances mean that the Greens will indeed support the rapid passage of this piece of legislation.

Question agreed to.

**CRIMES AMENDMENT BILL 2002**

**First Reading**

Bill received from the House of Representatives.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (10.23 a.m.)—I move:
That this bill may proceed without formalities and be now read a first time.

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.23 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 tragic events in Bali on 12 October have brought home to all Australians the horrors that human beings can inflict on others. It has shown that none of us are immune from the suffering that the evil of terrorism can bring.

This Government is committed to helping the victims of that tragedy.

The Australian Federal Police and the Indonesian National Police have established a Joint Australia-Indonesia Police Investigative Team to investigate the Bali bombings and to bring the perpetrators of this atrocity to justice.

This Government has also made Australia’s new national DNA matching systems at CrimTrac available to ensure that the process of Disaster Victim Identification is completed as quickly as possible. This process of victim identification has commenced, with State and Territory police services now collecting samples from the relatives of those who are missing. The use of the CrimTrac DNA matching systems will enable the deceased to be released to grieving relatives and brought home to Australia as soon as possible.

This Government has also offered CrimTrac to facilitate Disaster Victim Identification for the Indonesian Government and other nations who lost people in the Bali attack.

This is a bill to ensure that CrimTrac and Australian officials are able to fully utilise the forensic procedures that are available to them for these purposes.

Part 1D of the Crimes Act 1914 establishes a national DNA database system, which is designed to enable DNA profiles taken from forensic material to be compared with other DNA profiles. For instance, the database consists of a series of indexes. For example, there is a suspects index, a serious offenders index, a crime scene index, a missing persons index and an unknown deceased persons index.

The DNA profiles are stored on these separate indexes and they can be matched with profiles in another index according to a set of tabulated matching rules. For example, it enables DNA profiles taken from unidentified deceased persons to be compared with DNA profiles taken from property that belonged to persons who are missing or from a blood relative of such a person.

As the CrimTrac DNA database was established for criminal investigation and not for Disaster Victim Identification, it is now imperative that legislation be passed so that the CrimTrac system can be used for victim identification for the Bali incident.

The Australian community expects us to do everything possible to re-unite relatives and friends with the victims of this attack as quickly as possible.

It is essential that this national database can be accessed to enable the full, efficient and automatic comparison of DNA profiles that is necessary to resolve the Bali tragedy. This bill will ensure that this can occur immediately.

Part 1D contains a number of safeguards in relation to access to and use of information held on the DNA database. There are also restrictions on the disclosure of that information. These provisions are critical to maintaining the integrity of that DNA database and to ensure a balance between the needs of law enforcement with the privacy of those involved.

Part 1D provides that the ability of the Commonwealth, States and Territories to share information held on the DNA database, is to be facilitated by arrangements in place between the jurisdictions.

While there has been progress in relation to the settlement of those arrangements, they are not as yet in place.

This bill represents the immediate solution that is necessary now, to address the extraordinary circumstances posed by the Bali bombing.

This bill will modify the existing laws so that Commonwealth, State and Territory officials can access the national DNA database for the purpose of identifying an unidentified person who died in or as a result of the bombings that occurred in Bali on 12 October 2002 or for the purpose of conducting a criminal investigation in relation to that incident. This bill will also enable the information held on a DNA data base to be disclosed to law enforcement agencies, foreign law enforcement agencies and Interpol for the purpose of identifying an unidentified person who died in or as a result of the bombings that occurred in Bali on 12 October 2002 or for the purpose of conducting a criminal investigation in relation to...
that incident. There is a need to include foreign law enforcement agencies to remove any doubt about this being covered by the existing provisions.

The provisions of this bill will operate to modify the existing restrictions in existing legislation. The amendments to enable disclosure of information to foreign law enforcement agencies will enable disclosure of the identity of persons who are residents or citizens of that country when they have been identified following DNA profile matchings undertaken by the Australian authorities.

The bill also makes the important amendment to enable the identification of a victim to be provided to a relative, guardian, spouse, de facto partner or friend of that victim.

The situation in which we now find ourselves was simply not envisaged when the DNA database provisions were added to the Crimes Act. Part 1D does not, for example, enable the DNA profile taken from the deceased unknown index to be compared with a DNA profile from the same index. The extent of the devastation in Bali has necessitated that this comparison be available and this bill will ensure that this is the case.

This bill is an emergency measure. However, none of us can predict what might lie ahead. For this reason there is provision in the bill for these special provisions to be activated by way of a Ministerial determination should Australia citizens or residents be killed in a similar incident outside Australia and it is appropriate in the circumstances for these modifications to apply. This determination will be a disallowable instrument. The bill also includes a provision requiring an independent review of the operation of the proposed provisions. This is a safeguard ensuring that there is proper independent oversight of the proposed regime.

Senator LUDWIG (Queensland) (10.23 a.m.)—In speaking on the Crimes Amendment Bill 2002, we are now only too familiar with the terrible tragedy in Bali and its aftermath. Not only are the families and friends of the victims suffering the grief of loss but their loss is compounded by the process of identifying the bodies. Labor is committed to working with the government to find ways of speeding up that process. That means allowing the families to bring home the bodies to bury their loved ones and to grieve. The opposition has worked in a spirit of cooperation with the government to ensure that the bill currently before the Senate is expedited.

Australian officials are assisting with the identification of the victims of the bombing in Bali and with the investigation of the offences. This involves collecting and analysing forensic material. That material in turn provides DNA profiles that can be matched against other DNA profiles. We understand that the Australian Federal Police do not have the capacity to do all the DNA sampling, analysis and profiling of relatives, missing persons and deceased persons without assistance from the states and territories. To assist in this process, some state police forces have already started taking and analysing samples. However, under current legislative arrangements, the samples cannot be matched until enabling legislation has been passed.

Labor shares the government’s concern to remove any delays in the identification and release of remains to families, and that is exactly what this bill aims to do. It is also necessary to clarify the disclosure provisions around the information that is gathered from DNA samples collected in Bali. In essence, this bill is about removing some obstacles that currently prevent DNA information from being entered into a newly created disaster victim database. That new database has been created alongside the national CrimTrac DNA database, but it is an entirely separate database. We have been given absolute assurances by the government that the two will be quarantined from each other and there will be no sharing of information between them.

The amendments in this bill are designed to override state and territory legislation—which requires ministerial arrangements to be in place—but they will only have immediate operation in relation to the Bali bombings. The legislation applies only to terrorist incidents overseas. It will act retrospectively to the date of the Bali bombings. The government has included in the proposed legislation some provisions that will allow it to use DNA from Bali in any criminal investigation aimed at finding the people responsible for the bombings. In the event of a similar incident overseas, it is proposed that the
The minister issues a determination.

I have noted that Labor supports any moves to help families and friends come to terms with their loss and to bury their loved ones. The DNA database will help in identifying the bodies. But the whole issue of DNA records and the storage of that information is an important one for the community. The Australian Law Reform Commission and the Australian Health Ethics Committee recently warned that we need a tighter system to control the collection and use of DNA records. On 28 August, these organisations put out a joint news release where they warned:

The revolution in genetic science means that Australia now requires a careful mix of strategies—stronger ethical oversight, stiffer regulations, industry codes, education campaigns, an independent expert advisory body, revised privacy and discrimination laws, and perhaps even new criminal laws—to ensure human genetic information is well protected and intelligently used.

It is in the context of these broader concerns about DNA testing and privacy, and the fact that we are still finding our way on this issue, that Labor suggested to the government on Monday night that the ability of the minister to use these powers in future should be a disallowable instrument. That is an effective tool to allow parliament to make sure that these powers are used properly. Labor also suggested that these new laws be reviewed in 12 months. The government has agreed to both these requests and they are incorporated into the legislation before us. I sincerely hope that this law will hasten the identification of bodies and allow those who have been left behind to grieve their terrible loss. I extend my sympathies to the families and friends of those who are still missing and those who died in Bali. This legislation will assist their grieving process. I commend the bill to the Senate.

Senator GREIG (Western Australia) (10.28 a.m.)—The Democrats welcome the Crimes Amendment Bill 2002, a legislative initiative from the government which we hope will assist in the identification of bodies in the aftermath of the tragic Bali bombings. We Democrats have already placed on record our sincere condolences to those Australians who lost loved ones in the recent attacks. Our thoughts continue to be with those who are still awaiting news of missing loved ones. I hope this bill will reduce the suffering of such people by ensuring that the process of identification occurs as efficiently as possible.

We Democrats support the intent of this bill and appreciate the urgency of its passage. Nevertheless, we do have some concerns with a few particular aspects of the bill, and I think it is important to talk about those. Specifically, our concerns relate to the disclosure provisions. We note that disclosure of information on Australian databases is permitted to a wide range of agencies and organisations, including foreign agencies. Such disclosure is permitted not only for the purpose of identifying bodies but also for the purpose of investigating incidents such as the Bali bombings. The government should exercise considerable caution in providing the DNA profiles of Australian citizens to foreign agencies over whose activities the government has no control. Information contained on DNA databases is highly sensitive. This is why there are currently strict requirements governing the access, use and disclosure of such information. We Democrats concede that there are some persuasive reasons for departing from such strict requirements in order to facilitate the investigation of incidents such as the Bali bombings. However, we also believe that any such departure should be limited to what is required for the purposes of that investigation.

An additional concern of the Australian Democrats relates to the inclusion of the term ‘friend’ in the categories of persons to whom disclosure can be made of a match between a missing person’s DNA profile and the DNA profile of an unidentified body. We appreciate the strong desire of friends of deceased persons to be informed of such information. However, we are concerned that there are no criteria for determining whether someone was in fact a friend of a deceased person. We urge the government to exercise caution in disclosing information pursuant to the proposed subsection 23YUI(2). We hope that the government will not simply disclose
such sensitive information to any person claiming to be the friend of a deceased person without at least attempting to corroborate such a claim.

I note that the Labor Party had the opportunity to have a number of its concerns addressed by amendments agreed with the government prior to the introduction of this bill. We Democrats have had no such opportunity to address our concerns. Given the urgency of this legislation and the fact that it is to be the subject of an independent review in a year’s time, we are prepared to simply highlight these concerns at this time whilst supporting the legislation. We hope that these issues will be specifically considered as part of the independent review of the legislation and that appropriate recommendations be made. We Democrats will reconsider these issues following the review and take any action necessary to address our outstanding concerns at that time.

Essentially, the bill will amend the Crimes Act 1914 to ensure that DNA profiles are able to be provided by states and territories to the Commonwealth for comparison on the central DNA database; to ensure that DNA profiles are able to be provided by the Commonwealth to states and territories to ensure that the results of the DNA matches can be disclosed to certain specified persons, such as family members; to enable the communication of DNA matches to overseas agencies in relation to the victims; and to enable the matching of body parts with body parts. It is also worth noting that, when enabling legislation or originating legislation dealing with the notion of CrimTrac and DNA databasing was introduced and discussed—essentially, that was done with the Crimes Amendment (Forensic Procedures) Bill 2001 some 18 months or so ago—at that time we Democrats moved a variety of amendments, one of which was successful. That amendment included the notion that any issues relating to privacy or civil liberties arising from forensic procedures be permitted by a part which contained a reference to a review. The amendment related to the review processes existing under the legislation as it was presented at that time and would have been amended by the government bill.

As I outlined in my speech in the second reading debate on that legislation, the Democrats would like to see the review specifically required to address disparities between the various jurisdictions participating in that national scheme. We also wanted to ensure that the review was specifically required to address privacy and civil liberty concerns that may arise, with a view to focusing the review and ensuring that it adequately examined those measures. When it comes to the question of DNA databasing and databasing generally, my party has continuing and ongoing concerns about privacy. I hope that, with the passage of this legislation, which we today support, the spirit of the original and enabling legislation—particularly in terms of reviews and the scrutiny of civil liberties and privacy—is retained.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.34 a.m.)—In reply—I sincerely thank all honourable senators for their contributions to this incredibly important debate on the Crimes Amendment Bill 2002. I am representing my very good comrade, friend and ministerial colleague Senator Ellison here this morning because he is involved in a very high-level meeting in relation to Bali related security issues. I know he would have very much liked to carry this bill in the Senate himself.

The Minister for Justice and Customs has asked me to make the point that this bill is a demonstration of how Australians can work very well together at very short notice in response to the Bali tragedy. It shows that in a place like the Senate—where it is often the fact that legislation gets held up and it takes ages to get it through—we can pull together when a national tragedy confronts this great nation and act expeditiously and steadfastly in response to this challenge to Australia’s security. The other senators and the second reading speech that I have already incorporated make clear the importance of the fact that it will significantly improve the opportunities to help in the painstaking and, I know, painful job of identifying victims of the tragedy of 12 October 2002. The amendments will also enable the Australian officials to contribute to the very important
The task of seeking to identify those who were responsible for these crimes. I commend the bill to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—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 minister requires that the bill be considered in Committee of the Whole.

Question agreed to.

Bill read a second time.

Third Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.36 a.m.)—I move:

That this bill be now read a third time.

Senator BROWN (Tasmania) (10.37 a.m.)—I reiterate that the Greens support this legislation. The need to give rapid identification of loved ones to the people who have suffered so much as a result of the outrage in Bali is paramount. This will obviously also, coincidentally, help people who are suffering in Indonesia and in many other countries around the world in their need to know what has happened to their relatives and loved ones who are missing at this awful time. We recognise that the whole issue of DNA testing—how it should be used and how it should not be used—is a very contentious one. I can see reasons for potentially expanding this legislation in the future—for example, to identify people who die as a result of aircraft accidents overseas. However, that is not the case in point at the moment. There may be ways in which this legislation could be improved both to ensure that DNA testing does not go beyond the parameters that we are talking about here this morning and, in special cases, to ensure that it does. The urgency of the legislation is so important that this is one of the rare cases when it overrides the impulse we all have to look at it further and get more advice. That is why the whole Senate is joining in seeing the rapid passage of this legislation. We are in full support of it.

Question agreed to.

Bill read a third time.

EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT BILL 2002

Second Reading

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

That this bill be now read a second time.

Senator CARR (Victoria) (10.39 a.m.)—The Education Services for Overseas Students Amendment Bill 2002 before us today is one that the opposition will be supporting. It makes a number of relatively minor amendments to the education services for overseas students regime, which forms the basis of the regulation of Australia’s international education industry. However, in speaking to this bill I would like to make a few points about the state of the international education industry in this country. Given that the industry now contributes some $4 billion to our export revenue, I think it is one that this parliament should consider from time to time. It is now one of the most significant contributors to Australia’s export industries.

I am pleased to say that this is an area to which the opposition has been able to devote considerable time over recent years. In many ways it highlights to the cynics in our midst and at large that this is an example of where parliament does matter. We are able to use the forms of the parliament, through the Senate estimates committee and through this chamber, to force change. We now have a situation in which the government has responded to the concerns of the opposition and the industry. The industry, of course, has been only too happy to talk to the opposition about effecting change, and that has resulted in new legislation and, in fact, a whole new regulatory regime. To this extent, I think the government has moved very much closer to the opposition’s views on this matter. In this way, we have the development of what seems to be a much higher level of bipartisanship on this question than there was a few years ago.

I think it has also been affected by the changes that have occurred within the department itself, with new personnel working in the department, and by the change in phi-
losophy that has occurred in the department and the government. When these matters were first pursued, I recall government senators, ministers and some in the sector saying that the opposition was damaging the industry by drawing to public attention some of the problems. That is not said so often now. I think it is understood that to have a strong international education industry this country needs an extremely strong quality assurance regime that is internationally recognised as rigorous and transparent.

In making these points, I draw attention to some of the issues that still concern me. I begin by drawing attention to the shocking tragedy that occurred at Monash University two days ago. I am sure that all senators would be in agreement in expressing their horror at this event and would wish to extend their deepest sympathies to the families of the dead students and to the students who have been injured in this shocking attack. Like many of us, I am amazed at the bravery of the lecturer and the students who disarmed the gunman and at the way in which the students have responded to this at Monash University. In the context of this bill, I note that charges have now been laid for murder. As such, I do not want to comment on the matters that are before the courts.

I would like to comment, though, on a newspaper report in the Melbourne Age yesterday concerning a fourth-year student in the honours degree program in economics at Monash University. It said that the student was struggling with the English language; in fact, the article suggested that this was a contributing factor to the shootings that occurred. The student was due to give an oral presentation to the class on the day that these events occurred. It is argued that the student was suffering from extreme stress. I am not one who runs the argument that people are misunderstood in these circumstances. As far as I am concerned, these are matters for the court, and the full weight of the law should be brought against people in these things.

I want to make a couple of points. The student concerned had been studying at Monash University for four years. According to the AVCC guidelines which exist now—and according to the Commonwealth guidelines, a student whose English language skills are insufficient to undertake a course successfully should not have been enrolled. It would appear, on the material that has been made available to us, that not only did Monash University enrol a student whose English skills were not up to standard but the English skills of the student had not improved in a period of four years.

In fact, it would appear that the student had been enrolled in an honours course but could not meet the basic English language requirements. I think we are entitled to ask what Monash University is doing allowing a situation like this to develop. Is this the only case where students who are enrolled in programs do not have the necessary English skills to complete them? How widespread is the problem of inadequate English language skills within our international student programs?

I note that in the court in Melbourne yesterday the magistrate had to have the charges read out by a Chinese interpreter. I also note that the question of students with inadequate English language skills was the subject of an Auditor-General’s report in Melbourne in April this year, which indicated that a majority of Victorian academics believe that the foreign students they teach do not have sufficient competency in English. A survey of nearly 360 academics in Victoria’s three biggest universities revealed that 66 per cent considered that English language entry requirements were set too low for international students. The Auditor-General pointed out that academics found it difficult to assess the written work of students with underdeveloped English skills and that they should be given greater guidance in such assessment.

This is obviously a question that the Labor Party have been pursuing, and we have expressed our concern about this over a considerable period of time. I raised the matter through the report Universities in crisis, and I note that the government have yet to respond to that—days and days after we were told that they would be responding to it. We are waiting for the government to address that particular issue. We would like to know what action the government has taken to en-
sure that universities and other education providers do not accept for enrolment international students who have had inadequate English language preparation. There is a question here about the quality of programs being provided. If we have students who do not speak English graduating from our domestic campuses then it undermines all students who gain the same qualifications.

I think we are entitled to ask that the government ensures that education providers meet their responsibilities to ensure that there is sufficient support with the English language and that students who do not have the English language skills one would expect are not awarded those qualifications. In the past the government has sought to deny its responsibilities with regard to international education. Senator Tierney has joined us now. He has often pointed out to me that I was on fishing expeditions and that illegal and dodgy behaviour by crooks was a matter that we should not be concerned about. I have always said, and I will repeat, that the overwhelming number of people involved in international education are of the highest quality and our education institutions are of the highest quality. But the problem remains that a few dishonest operators are using colleges for immigration rorts and visa scams and are bringing people here. It is a people-smuggling exercise and it can undermine the entire industry. By ripping off students in this way these operators can undermine the qualifications of all students.

There are a number of notorious examples one could point to. I am sure that Senator Tierney would remember the case that I raised of the G-Quest Institute of Advanced Learning. That was a case that was drawn to the attention of Commonwealth officers as a result of a complaint received from an overseas student, who said that she went down to have a look at the college and it physically did not exist. It was a vacant block of land. What did the department do about this? They did not smell a rat, of course—nothing silly like that! They made sure a refund was organised, which was very big of them!

The nature of that college and how it got registration was something I think we ought to be more rigorous about. There were several rounds of Senate estimates before the department woke up to the problem. There were extraordinary numbers of unscrupulous operators in our major capital cities, particularly on the eastern seaboard, who were using so-called students to work illegally. They were using falsified attendance records. Recently in Sydney printers were charged because they were printing up bodgie qualifications, academic transcripts of results and various other documents necessary to essentially perpetuate a scam. Those persons have been charged under the Crimes Act and I understand they are being processed through the courts. These are examples of what has happened, and we have been raising such matters for some time.

This government likes to talk tough about border protection. It likes to talk about drastic action being taken against asylum seekers but it does not do sufficient work, in my opinion, to ensure that those people who arrive here on aeroplanes with student visas and who have gained those illegitimately and improperly are dealt with. It has not done sufficient work, in my judgment, to make sure that the bodgie providers—who are undermining the industry and who are not approaching this industry on the basis of a level playing field, because they are getting an unfair advantage economically and in many other ways—are forced out. My concern is that the government has not taken sufficient steps to force changes in that regard.

We do acknowledge that changes have occurred and, as I say, the government has moved forward by introducing the new regime last year. We are looking forward to the review in 2003 that the government has announced and we are keen to know how the new legislative framework is standing up to the pressure that invariably occurs. As I say, this is a bit like tax avoidance. You need to be constantly vigilant. The same bodgie operators seem to reappear in one guise or another, involving new groups of people. They are taking in all sorts of gullible people, including people now within the university sector itself who have gone into partnerships with some of these bodgie operators in the quest for additional student numbers without doing the proper checks and review of their
own operations. These are points that have been raised in the Senate estimates hearings and demonstrated to be correct—despite the denials, I might add, of some of these companies who have written to me and no doubt to the Privileges Committee, and I am looking forward to yet another hearing on that.

Despite the fact that ads are placed in newspapers, some simple devices can be used to establish that these events have occurred—that is, that a number of universities have fallen for these bodgie operators. That is why we welcome the changes that have occurred and the change in attitude. We will remain vigilant and we will continue to place pressure on the government to ensure that there is a follow-through to look behind the state accreditations. All too often the government is still relying upon being told that certain things are all right and is not following through to ensure that the decisions taken at other levels of government are in fact followed through. The capacity to enter colleges to ascertain whether the ESOS Act is being contravened; the seizure of documents, computer records and other things; the demand for information or records, and an improvement in student record keeping are all things we support. However, they have to be enforced. That is why we are concerned about recent events. In the time remaining to me I will go to some of those issues.

We have had about 100 colleges close down in the last year or so. Of the 30 or so colleges that I have named, my understanding is that about 25 of them are now out of business. We have a reasonable strike rate record in naming people who have done the wrong thing, having them investigated and having them forced out of the industry. But it should not be up to senators and the resources of a senator’s office to produce this. I am concerned that further actions be taken by the department to show that they too are concerned. I understand there are some six colleges currently under investigation over compliance issues, and I would like to hear from the department about what progress is being made on the six colleges that were named in the last round of Senate estimates—because we have yet to see work in that regard.

We have had the example recently of the Australian College of Technology, which collapsed in August and owed $1 million to students and creditors. The academic director of this college was a Michael Megas. This is a man widely known in the international education industry. I understand he had been convicted for embezzlement while working for other industries. He and the chief executive of the college, Mr Nabil Nasr, have been convicted for embezzlement of funds. Both the key players in the college had criminal records involving dishonesty. Yet they managed to get a licence and run an international college, and only when it collapsed was any attention paid to their past record. These were people who were able to operate under the old rules because the ‘fit and proper person’ test was different under the old rules from what it is under the new rules. This is an area in which we need to move. We need to find a mechanism to make sure that those crooks who are operating in the industry and who are able slip under the regulatory regime are encouraged to get out.

We have had the example of the Sydney International College. The proprietor of that college, Mr Phillip Lobo, claimed a doctorate in business administration which, as I understand it, he bought on the Internet from an institution known as Harrington University. Quite clearly, by purchasing his qualifications on the Internet—running an educational institution and claiming that he has a doctorate—he was misleading potential students and their families.

Then there was a private school in Queensland, the Kooralbyn International School, which collapsed. At that school there were 132 international students displaced. If my memory serves me rightly, a number of those students could not be found. There was some $400,000 in paid-up fees. They had to be bailed out by the state education department in Queensland. Because the current act does not require institutions that are in receipt of recurrent funds from the Commonwealth government to be part of the TAS, the Tuition Assurance Scheme, those students could not call upon the protection of this regulatory regime. That is another area that requires further attention.
There are questions that require further action and, while this bill proposes relatively minor changes, the 2003 review provides the opportunity for more extensive changes to be entertained. They go to, for instance, the relationship between private colleges and the universities, the issue of institutions that receive recurrent funding but are currently exempted from the ESOS provisions, and the question of the fit and proper persons test and the means by which we can ensure that persons who are not genuine educators and who are not genuinely running educational businesses and who have serious criminal records can be excluded from the industry.

This bill is a development on the regime that we have seen and has come about as a result of parliamentary discussion. This is a point that can never be underestimated. It is an occasion where we can demonstrate that the parliament does work. The bill is essentially technical and it does provide for additional powers for the Commonwealth to act. These are measures we support. However, we do think that further action needs to be taken. The bill also needs to be seen in the context of a staging post in that regard. We place the government on notice that our interest in international education is not declining.

Senator TIERNEY (New South Wales)

(10.59 a.m.)—I rise to speak on the Education Services for Overseas Students Amendment Bill 2002. This bill underpins one of the great export success stories of the Australian economy over the last 15 years. The whole education export industry is a sign that a country as intellectually rich as ours—one in which there is a very high level of education and training—can, in the new information age, develop past the primary and secondary stage into the tertiary stage of industrial development and create industries that support jobs and growth in our economy.

Since I have been in this place there has been remarkable growth in this industry. When I first came into the parliament in 1991, this was a $700 million industry and it is now a $4 billion industry. It is very important that the parliament should get right the legislative underpinning of such an important export industry. The development of this legislation has had an interesting history. The first piece of legislation was brought in in 1991, under the Labor government and Minister Dawkins, who had considerable concerns about operations of some of the private colleges that were not delivering quality or value. At that time, he gave reasons as to why this industry needed this sort of legislation. In the parliament in 1991, discussing the export of education services, he said it was:

... a major industry, one which is already making an enormous contribution to Australia and is already extending Australia’s influence as a provider of education and training services throughout the region

We do not need to go back to the old rules, which prevented students coming here at all. We can manage this program and deal with the problems as they arise...

The legislative history of ESOS—the overseas student legislation—is one of managing the problems as they arise. The original legislation was quite draconian and, as I mentioned, it was a $700 million industry which has now grown to a $4 billion industry. But it would have been cut off in its prime if the original legislation, designed by the former Labor government, had gone through at that time.

It was a very short bill, and it was the first bill I ever had to deal with when I came into this place. The education committee then was chaired by Terry Aulich with Karin Sowada, leading for the Democrats, and me for the Liberals. We were all horrified by this piece of legislation. We conducted an inquiry into the eight-page bill and suggested 32 recommendations to change it. At the end of the day the minister accepted that, because he realised that he had overreached the proper provisions that were needed for the control of this industry at that time and it would have killed off the industry if those had gone ahead. So a regulatory regime was brought in that was not quite as draconian.

As the industry very rapidly expanded, obviously, problems did emerge and, as Minister Dawkins originally said, ‘We will manage the program and deal with the problems as they arise.’ There have been five
amendments to the bill over time. As this industry develops and evolves and problems emerge, we have to manage them by adjusting the legislation and the provisions to try to get the balance between providing a system of education for overseas students that, in the first instance, provides quality and, in the second instance, provides a driver for our economy. Those are the goals that we are trying to achieve.

For the most recent changes that were made a few years ago, I would like to pay special tribute to Senator Kay Patterson, who at that time was the parliamentary secretary to the minister for immigration and multicultural affairs. She did major work to get the education bureaucrats and the migration bureaucrats to work together in a much more harmonious and consistent way and actually put in place changes that solved a number of problems that were developing in the industry as it evolved.

I was on the migration committee in the mid-1990s in Cairns when we picked up the fact that the two departments were not working very well together. They were working in their own little silos and they really needed to work in a very cooperative way to make sure that the migration and the education aspects of these problems were being dealt with in a consistent way. Senator Patterson did a marvellous job in bringing that together and developing a regime which solved a lot of the difficulties that were arising. Of course, we now have a new piece of legislation and we welcome the fact that the Labor Party is supporting that legislation. It does strengthen the act further and, as Senator Carr mentioned, there will be a review later this year and further changes might be made then.

In reference to the new changes, Dr Brendan Nelson, the Minister for Education, Science and Training, has said:

Ambiguities will be removed and greater clarity provided with regard to certain sections relating to Commonwealth powers and sanctions of the ESOS Act. These measures all contribute to providing greater certainty for the Australian education and training export industry.

We do have a much better regime: problems have been raised and responded to. In such a complex industry, which is privately provided, I suppose that you are never going to solve all the problems. But, through the processes of the parliament, I think we are just about at the point where we have finetuned the legislation so that it complements and supports a great Australian export industry. It is industries like this that are the hope of the future. I think this parliament has played a major role in helping it flourish, thus not only assisting in the education of students that have come from overseas but also giving great underpinning and support to an export industry and, therefore, to the entire Australian economy.

**Senator ABETZ** (Tasmania—Special Minister of State) (11.07 a.m.)—in reply—I thank honourable senators for their contributions to the second reading debate on the Education Services for Overseas Students Amendment Bill 2002. We have had two contributions, one by Senator Carr and one by Senator Tierney. In relation to Senator Carr’s contribution, I acknowledge some of the concerns he expressed about certain schools and colleges. All I can say to him, and remind him of, is that these schools are in fact registered and licensed by the various state Labor governments around this nation. We as a federal government do not seek to second-guess whether or not they are necessarily appropriate institutions.

**Senator Carr**—You haven’t read the act, have you, to say something as silly as that!

**Senator ABETZ**—I have just checked with the advisers, who confirmed exactly what I have said, Senator Carr, so I think it is quite obvious who has not read the act. Once again Senator Carr has charged in with an interjection, clothed with his usual ignorance, and has shown that he does not know what he is on about. I invite the honourable senator to speak with his mates in the various state Labor governments and see what can be done. If the matters that are raised are an issue—and I am sure they were raised genuinely by Senator Carr—then clearly these matters do need to be addressed, and I simply seek to direct him to the appropriate area to have them addressed.

In relation to Senator Tierney’s contribution, I acknowledge his longstanding interest
in education and especially in overseas students in this country. As Senator Tierney pointed out, when he first came into this Senate in 1991, the value to Australia of overseas students coming to this country was $700 million. That figure is now $4 billion. As I understand it, in the academic year 2000, there was a 16 per cent increase in the number of overseas students. Most of them came from South-East Asia or were our Asian neighbours. So much for the nonsense that we continually have fed to us by those on the extreme left of politics in Australia that somehow Australia’s reputation amongst our near neighbours is being damaged by the Howard government! In fact, overseas students are coming here in droves, as witnessed by these figures, because they respect this nation and they respect the rigour of our education system.

I would not want anybody to think that we are interested only in the dollars. Clearly, we are interested in the dollars; it is good for our economy and good for our educational institutions. But there is also a richness added to this nation by having these students come from overseas. They add to the richness and diversity in the schools and in the communities in which they live. After they have undertaken their education, the vast majority of them go back to their home countries having had a very positive experience of Australia and, as a result, spread the good news about Australia to their fellow countrymen when they go home.

The Education Services for Overseas Students Amendment Bill 2002 seeks to make the regime that we have somewhat more robust. I understand that a review of the complete act will commence by December 2003. I believe that this area of education is often overlooked and not given the regard that it deserves. I compliment Senator Carr and Senator Tierney on their interest in this bill and for the fact that they have been willing to make a contribution to the debate. 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 CARR (Victoria) (11.13 a.m.)**—Given the minister’s comments in the second reading debate about the issue of the states, I have a question. I ask the minister: can he now confirm to the chamber whether this act overrides state legislation, in particular in reference to the fit and proper persons test?

**Senator ABETZ (Tasmania—Special Minister of State) (11.13 a.m.)**—I thank Senator Carr for his question. I think I can now understand where his confusion has arisen with regard to his earlier interjection. Whilst the situation is that this act does have that provision in it, the people who undertake the test on behalf of the Commonwealth are in fact the state education personnel on whom we rely. If they are not undertaking that properly, then once again we might have a problem that we need to address and, clearly, that is something we would need to address with state departmental officials who undertake the test.

**Senator CARR (Victoria) (11.15 a.m.)**—I am pleased that the minister acknowledges the nature of the act, given the ignorance of his previous comments. But I ask him this further question: is it not the case in the act that the secretary has to be satisfied that the fit and proper person test is applied? And is it not the fact that this secretary that I refer to is the Commonwealth officer responsible and that it is the Commonwealth’s responsibility to ensure this act is applied, not the states’ responsibility?

**Senator Abetz**—I refer the honourable senator to section 9(2)(ca) of the act, where he will find the answer.

**Senator CARR (Victoria) (11.15 a.m.)**—I am pleased that the minister acknowledges the nature of the act, given the ignorance of his previous comments. But I ask him this further question: is it not the case in the act that the secretary has to be satisfied that the fit and proper person test is applied? And is it not the fact that this secretary that I refer to is the Commonwealth officer responsible and that it is the Commonwealth’s responsibility to ensure this act is applied, not the states’ responsibility?

**Senator Abetz**—I refer the honourable senator to section 9(2)(ca) of the act, where he will find the answer.

**Senator CARR**—Minister, I am at a disadvantage because I do not have that section in front of me, but I do have a fair knowledge of the act. I have asked you a direct question, so can you confirm this: does the act require that the secretary of the Commonwealth department of education has to be satisfied that the act is being enforced? It is no good for you to come in here and claim that this is a state responsibility when this legislation clearly specifies that it is the Commonwealth’s responsibility.

**Senator ABETZ (Tasmania—Special Minister of State) (11.16 a.m.)**—Mr Tempo-
rary Chairman, I can see that Senator Carr has been caught out—he has been embarrassed and he is now trying to whip up something around this assertion. Clearly, he does not have the act in front of him, so when I refer him to a particular section it will be of no assistance to him; I will have to waste the time of the committee by reading out a section of the act. I would have thought that if somebody wanted to come into this place to make a solid and sensible contribution they would have at least clothed themselves with some knowledge of the act and have the act in front of them so that when we engage in this committee debate they are able to follow it. For Senator Carr’s benefit, section 9(2) refers to the secretary registering the provider, but section 9(2)(ca) then states: 

(ca) except in the case of a provider mentioned in subsection (5)—the designated authority has told the Secretary in writing that the provider has satisfied the designated authority and that the provider is fit and proper to be registered ...

As I understand it, the designated authority is—guess what, Senator Carr?—the state government authority.

Senator CARR (Victoria) (11.18 a.m.)—But the act quite clearly states that it is the secretary who has to register—

Senator Abetz—No, the word is ‘except’. This is embarrassing.

Senator CARR—Given the minister’s comments, I ask what progress has been made on the investigations into the following colleges: the Australian International College of Business—I will give you a code number if you want to look it up—the Bridge Business College, Canterbury Business College, Marrickville Commercial College, Hurstville-Marrickville Business College, the New South Wales International College, the Educationists College of Business and Technology and the Windsor Institute of Commerce.

Senator ABETZ (Tasmania—Special Minister of State) (11.19 a.m.)—I note how very quickly, once I interjected, yet again, with the word ‘except’—the exception in the act—Senator Carr left the subject which we were debating to move on to something else. I welcome that and I accept that he now recognises that the state authority is the designated authority and has some very real role to play. In relation to the investigations with respect to the various colleges that he mentioned, I am prepared to take that on notice and see what detail can be provided. The bill does not deal with what are ongoing investigations, some of which are undoubtedly sensitive.

Senator CARR (Victoria) (11.20 a.m.)—I have a final question. Let us accept your argument—which I do not—in terms of the current legal framework under the new act. Under the old act, that certainly was the case—your departmental interpretation is correct. Of the 30 providers that I named as operating improperly or illegally and causing damage to the industry, how many were registered by state Liberal governments?

Senator ABETZ (Tasmania—Special Minister of State) (11.20 a.m.)—I do not know the answer to that. Unfortunately, we have had a regime of various state Labor governments around this country that have been in office for some substantial period of time and have not seen fit to deregister the 30 institutions that the honourable senator has referred to. So don’t talk about who registered them once; let us ask why current state Labor governments have not seen fit to deregister them.

Senator CARR (Victoria) (11.21 a.m.)—This whole episode has arisen because of your idiotic remarks during the second reading debate. If you had not tried to be such a smart alec, you may well have found this matter would have progressed much more quickly. You would also have known that, of the 30 colleges named, 25 or so are no longer in operation. So you are factually incorrect on that point, but I will leave it there.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (11.22 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (AUSTRALIANS WORKING TOGETHER AND OTHER 2001 BUDGET MEASURES) BILL 2002

Second Reading

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

That this bill be now read a second time.

Senator MARK BISHOP (Western Australia) (11.23 a.m.)—I rise to speak on the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002. Finally we are now nearing the end of what has been quite a drawn-out process on the government’s implementation of its Australians Working Together proposals. The bill before us today originated in 1999, when the former Minister for Family and Community Services, former Senator Newman, heralded a ‘seminal’ address at the National Press Club. According to media reports, the speech and discussion paper were to announce a major welfare shake-up, including cuts to payments for parents with children over 12, cuts to disability pension recipients and more mutual obligation. But the minister was forced to abandon the proposals after community backlash and simply announced the McClure committee process. 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The measures included in the bill are incremental. After more than six years in government and three years specifically contemplating welfare reforms, we have a set of proposals that take us back rather than appreciably forward. We have wasted six years of unemployed Australians’ lives; for six years we have denied them opportunities to assist them back into work. The central spending measure—the work credit—is essentially the restoration of Labor’s earning credit scheme that was abolished by the coalition in 1997. Other elements of the package essentially restore the tailored individual case management that was a feature of Labor’s Working Nation reforms, which were dismantled by the coalition on coming to office. Given the prospect of a continuation of the status quo, the elements contained in this bill are a marginal improvement, but we do have concerns.

Apart from the government’s slash-and-burn mentality when it comes to making the necessary investments to assist people to move off benefits, over the past few years it has demonstrated its cold-heartedness. It has presided over a ‘shoot first, ask questions later’ breaching policy that saw a trebling in the number of people being breached—many unfairly. Labor has no objection to proper compliance in the social security system—indeed, it was Labor that introduced data matching and most of the other compliance tools that are in use today. This is essential to ensure that the public has absolute confidence in the operation of our social security safety net.

But this government went too far and penalised people without sufficient justification. It has used a ramped-up breaching regime as a crude tool to reduce benefit outlays. It did this rather than make the proper investments in people and decent financial incentives, coupled with a fair compliance regime, to assist people to get off benefits and back into work. And Labor was not alone in its criticism. Some of Australia’s largest charities rang the alarm bell: St Vincent de Paul, Uniting Care, and even those who have had close dealings with the government, such as the Salvation Army and Mission Australia. They had to help the flood of people who were left without an income, many of whom had been breached unfairly.

How do we know that they had been breached unfairly? We need look no further than the stories of people being breached for not turning up to appointments that they had never received advice of or that clashed with other compulsory activities. The Pearce review and, more recently, the Ombudsman exposed patently unfair breaching activity. We also need look no further than the government’s own statistics on appeal. Up to 50 per cent of people who appeal their breach have it overturned. Belatedly the government acknowledged that there were problems and announced a range of administrative measures to improve the regime. In all honesty, though, it is not enough. The government is
going to have to accept that further changes need to be made. And in the context of this bill, we are going to insist that they are made if the government is to receive support for its changes in relation to the parenting payment and the mature age allowance.

Before I discuss what Labor will propose to restore the balance in relation to breaching, I intend to outline Labor’s position on the detail of the bill before us. Schedule 1 sets out proposed new arrangements for people receiving parenting payment, PP. The measures apply to both parenting payment partnered, PPP, and parenting payment single, PPS, recipients. PP recipients with a youngest child between the ages of 13 and 15 may be required to participate in one or more activities—such as Jobsearch, education, training or community work—of up to 150 hours duration over a six-month period; that is, up to six hours per week. A participation agreement will set out the activities that the person agrees to undertake or participate in during the life of the agreement. This requirement will not apply to a person with a severely disabled child. The penalty regime proposed for PP recipients subject to the new arrangements differs significantly from the breaching regime for Newstart and youth allowance recipients. The regime has more checks and balances in place before a breach is applied and also has the ability to reinstate and fully backdate payments on compliance.

Before a breach may be applied to a person, Centrelink must first examine whether the person had taken reasonable steps to comply with the agreement, then examine whether the terms of the agreement were appropriate, and then establish whether the person does not have a reasonable excuse for the failure. If at this point it is decided that a breach will be imposed, the person’s compliance will then be monitored at shorter intervals until the person starts to comply. Compliance with the terms of an agreement will trigger waiver of a breach penalty. Their payments will be reinstated and, if compliance occurs within 13 weeks, payments will also be fully backdated. There will be no administrative breach penalties applicable to parenting payment customers, as is the case now.

Labor is broadly supportive of the government’s efforts through these measures to provide a better transition for parents who are just two short years off being placed on a full activity-tested benefit like Newstart. There is compelling evidence that more needs to be done to assist parents to gradually return to the work force as their children become older. Bob Gregory’s research using longitudinal data has reinforced this point. Whilst Labor’s view is that these are not onerous requirements, we believe there needs to be greater scope for exemptions and more flexibility in the participation agreements. In the light of the government’s “shoot first, ask questions later” breaching regime, Labor is concerned to ensure that the application of financial sanctions to parents is an absolute last resort. Accordingly, Labor will be moving amendments in the committee stage to broaden exemptions and improve the flexibility of the participation requirements, with particular attention paid to ensuring that the terms of the participation agreements properly take into account the circumstances of parents and their children.

Schedule 2 establishes a tax exempt language, literacy and numeracy supplement of $20.80 per fortnight to assist people who undertake approved language, literacy or numeracy training and who receive one of the following payments: DSP, mature age allowance, Newstart allowance, parenting payment, partner allowance, widow allowance or Youth Allowance. This is a positive measure and will assist with the costs of participating in such training programs. It receives our full support, although we encourage the government to examine other areas of participation where a payment such as this could be paid to help offset costs.

Schedule 3 establishes the Personal Support Program, the PSP, which replaces the Community Support Program, the CSP. The PSP is designed to assist people who have multiple non-vocational barriers, such as homelessness, drug and alcohol problems, mental illness or domestic violence. These people have been judged to be unable to participate in employment related activities or to benefit from employment assistance because of their barriers. The PSP is designed to en-
courage social as well as economic participation by establishing outcomes that match participants’ individual abilities, capacities and circumstances. The schedule proposes to make PSP an activity available under the activity test for Newstart allowance and Youth Allowance and an activity that can be included in a person’s agreement. It also proposes PSP as an activity that can be included in a person’s parenting payment participation agreement from 1 July 2003. The schedule also contains breach penalty waiver rules that will ensure that a breach penalty does not apply while a person is participating in a Personal Support Program. This schedule is supported by the opposition.

Schedule 4 seeks to close entry to the mature age allowance and partner allowance from 1 July 2003. Current recipients will be saved. As a result, the respective populations of mature age allowance will be completely phased out by 2008, and of partner allowance by 2020. Mature age allowance is currently paid to people who are unemployed and aged over 60 who have no recent work force experience and have been receiving income support payments for nine months. Partner allowance is currently paid to people born before 1 July 1955 who have no recent work force experience and are not caring for dependent children and who have partners receiving an income support payment.

The changes will involve no loss of benefits or concessions. Newstart allowance recipients aged over 60 who have been in receipt of benefits for nine months will still be eligible for the higher rate of allowance, pharmaceutical allowance and a pensioner concession card. Notwithstanding Labor’s concerns about the next schedule and proposed amendments, this schedule will receive our support.

Despite the government’s efforts, the application of new participation frameworks for parenting payment and the mature age unemployed is far from perfect. Accordingly, Labor will be moving amendments in relation to these measures. I intend to outline these amendments in some detail shortly. Whilst not attempting to exceed the scope of this bill, Labor will also be moving amendments to improve the fairness of the compliance and breaching regime for other job seekers.

Schedule 5 seeks to establish new participation requirements for those who formerly would have received mature age allowance and partner allowance. People who might otherwise have qualified for these payments will be eligible for Newstart. These requirements are intended to be more flexible than those applicable to other Newstart clients aged 50 and over. The terms of the activity agreements are made more flexible in line with the changes made to parenting payment recipients. Significantly, a new modified breaching regime will apply which allows full reinstatement of payments upon compliance. The government’s changes also incorporate a more flexible reporting period of 12 weeks rather than fortnightly.

Labor are supportive of these changes but we do have a number of concerns. Labor created the mature age allowance in recognition of the fact that many of those who were eligible faced little prospect that they would work again. Mature age allowance removed this group from the requirements that exist under Newstart and, for many, the view that they were part of the active labour market. While the changes bring this group back within the Newstart population and will ensure that some are more engaged in retraining or skilling, for others it may impose participation requirements that may not be appropriate to their circumstances. Accordingly, Labor’s approach is to safeguard the population of 50-plus-year-olds from any unreasonable obligations. Labor will move amendments similar to those in relation to schedule 1 to ensure that the participation agreements properly take into account the circumstances of the mature age unemployed.

Labor are also concerned to ensure that the mature age group are not forced to apply for countless job vacancies where they have little or no prospect of success. Accordingly, Labor will seek to introduce caps on the number of job vacancies that they will be asked to apply for. These caps will only apply in circumstances where job search is required in the activity agreements; in many
instances, voluntary and paid work may occur in lieu of job search.

Schedule 6 introduces the working credit and a modified implementation date as announced in the 2002-03 budget. The credit is strikingly similar to Labor’s earning credit scheme, which the government saw fit to abolish in 1997, a short-sighted cut by any definition. The working credit will provide a benefit of up to $1,000 per year for all work force age income support recipients. Labor are disappointed that the government has had to delay this measure, which is desperately needed and which is the central spending measure in this bill. It goes some way to improving incentives, but more does need to be done. Those who have exhausted their credit or who have sufficiently low levels of part-time earnings for the credit not to accumulate will still face effective marginal tax rates, EMTRs, of 90 per cent or more.

Schedule 7 contains an amendment that enables Centrelink to trial new methods of flagging family homelessness. This measure is the result of extensive research conducted jointly with Hanover and other homelessness services. It is welcome and receives Labor’s full support.

I want now to foreshadow other amendments. Labor are heartened by the more constructive approach the government has taken in relation to the activity agreement and penalty regime for the parenting payment and mature age allowance recipients. We have in this legislation a different approach to penalties. There has been an attempt to address the situation of parents and older unemployed people, although we do not necessarily believe that the government has got it right yet.

As I indicated at the commencement of my remarks, Labor will be making some moderate amendments to ensure that the proposed new framework for mature age and for parents will work fairly. However, it is our view that a fairer framework should also be implemented for other job seekers at the same time as we consider this bill. Some of the elements in the proposed regime for parents and for mature age should be incorporated into the activity agreement and compliance regime for other job seekers, namely Newstart allowance and Youth Allowance. This needs to be done.

Despite the government’s assurances that its administrative changes have improved the safeguards that protect against unfair breaching, the truth is that the government can just as easily push the changes to one side and ramp up breaching again. The Pearce report, the Commonwealth Ombudsman and Australia’s most respected charities have all concluded that there is a gross imbalance between the level of breaching activity and the incidence of wrongdoing on the part of job seekers and other income support recipients. Labor are of the view that the government too quickly dismissed many of the suggestions made by Professor Pearce in his independent report on breaching. The report is a balanced piece of work that, in some cases, pushes tough but fair requirements. Most importantly, the report focuses on ensuring compliance. The government has consistently claimed that its breaching policies are not about revenue raising. If this is the case, it should embrace the logic of Professor Pearce, Julian Disney and their own Heather Ridout and undertake further reform of the system to ensure that it is compliance oriented.

I reiterate that no side of politics should tolerate welfare fraud. We did not in government and in fact we established the data-matching programs that ensure compliance and weed out the fraudsters. But we must respond when our systems are chewing up Centrelink staff time and time in appeals and are costing people on very low incomes who are trying to play by the rules their payments. Accordingly, Labor will move a range of moderate amendments to give effect to a number of recommendations of the Pearce report. Labor will move amendments to ensure greater fairness and improved compliance for Newstart and youth allowance recipients. Labor will move amendments in respect of the cooling-off period for participation agreements. Recipients required to enter into an activity agreement will be able to change the terms of the agreement, with the approval of the secretary, within 14 days of the agreement first being signed. The secretary will be required to advise them of this
As for appropriate agreement terms, formulation of the terms of participation agreements will need to more thoroughly take into account the circumstances of the job seeker, including costs of compliance, travel, particular barriers to employment, medical conditions and any caring responsibilities. The agreement will also be required to include the assistance to be provided to the job seeker to comply with the agreement. In respect of new safeguards before breaches are imposed, before the application of a breach the secretary is to determine that the terms of the agreement are still reasonable. Before a breach is applied, the secretary will be required to attempt to contact the job seeker by a minimum of two different mediums.

With regard to notice and application of breaches, a notice setting out the reasons for a breach must be sent at least 14 days before the breach is to be applied. As for exemptions from agreements, we will broaden exemptions to include job seekers utilising SAAP funded crisis accommodation. As for measures to ensure that those in housing difficulty are not breached, sections of the act dealing with movement to lower employment areas will be amended to include a clause to protect people who have moved due to housing affordability. In respect of the penalty accumulation period, Labor will move to reduce the accumulation period from two years to 12 months.

These are reasonable amendments and many build into the broader compliance mechanism proposals that the government is seeking to introduce for smaller groups—parents and mature age people—through its bill today. Labor are happy to talk to the government about any technical issues regarding these amendments and are willing to discuss options to make them workable if the government is concerned that they are likely to be difficult to implement. However, we stand by our intentions: we can and must improve the fairness of the system. In addition to these measures, Labor will be moving a second reading amendment urging the government to adopt a fairer and more effective breach penalty regime broadly in line with the Pearce report recommendations—namely, that benefit reductions should not exceed 25 per cent for the first or second breach, that breach reduction and non-payment periods should not exceed eight weeks and that benefits should be reinstated on compliance. I now move the amendment that has been circulated in my name:

At the end of the motion, add:

“But the Senate condemns the Government’s unfair application of breach penalties on job seekers and calls on it to amend the breach penalty regime in line with principles outlined in the report of the Independent Review of Breaches and Penalties in the Social Security System (The Pearce review), including:

(a) a rate reduction for first or second breaches of no more than 25 per cent of benefits;
(b) breach and non-payment periods of a maximum of 8 weeks duration; and
(c) reinstatement of benefits on compliance.

I seek advice from the chair, Madam Acting Deputy President. Do I have to speak to that amendment now or can I address the amendment at a later stage of deliberations?

The ACTING DEPUTY PRESIDENT (Senator Knowles)—You speak to it now, Senator.

Senator MARK BISHOP—If I speak to it now, can I return to it or will my time be exhausted?

The ACTING DEPUTY PRESIDENT—Your time will be exhausted in one minute and 42 seconds.

Senator MARK BISHOP—So, if I choose not to speak to it now, can I speak to it in more detail later?

The ACTING DEPUTY PRESIDENT—No, it is a second reading amendment, Senator, and you need to make your contribution prior to the second reading.

Senator MARK BISHOP—Thank you for that guidance, Madam Acting Deputy President. In that case, in speaking very briefly to that amendment, it is instructive to look at the current breaches under the bill. They are significant breaches: $863 payable over 26 weeks for a first breach, $1,144 payable over 26 weeks for a second breach, and even higher penalties for third and subsequent breaches. They are indeed significant
penalties to apply to those who are seeking employment and whose breach may be of the most minute or incidental nature. When one looks at the history of the current breaching regime in recent years, one notes that in the period from 1996-97 up until 1999-2000 the average monthly number of breaches increased from about 9,400 to 25,200. So there has been almost a trebling in the number of breaches since the government instituted the new regime in 1997. We believe that the government has stepped up breaching activity as part of a concerted attempt to hassle people back into work. This activity reflects a view that the personal attributes of the unemployed are—

(Time expired)

Senator CHERRY (Queensland) (11.43 a.m.)—I rise to speak on the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002. The bill before us is touted by the government as a major step in welfare reform towards building a modern and responsive social support system for people of working age. Reform of the Australian welfare system is overdue and indeed needs to be a continuous process. The Australian Democrats have long called for reform, but true welfare reform is that which assists Australians to participate economically in community and society while at the same time enabling them to live in dignity and with sufficient means to feed, clothe and house themselves and their families. This bill does the opposite. It provides the means to take away the means of support not only of unemployed Australians but now also of sole parents and their children and older Australians. It was never the intention of the McClure report, out of which this bill has allegedly sprung, that people be trapped by rules which do not help them get a job, which cut their benefits and which stigmatise and penalise them because they have lost the support of a partner while raising children. Welfare reform means investment before savings can be achieved. This bill is simply about savings, with little investment by government. In the name of welfare reform, this government is reintroducing the 19th century notion of the undeserving poor, those who in past centuries would be condemned to the workhouse because of unavoidable life events that overtook them.

The government’s construction of mutual obligation is that, if you are a sole parent, you are undeserving not only of income support but of the right to parent your own children. If you are a partnered parent, this government’s policies encourage you to stay at home and care for your child. You can claim the baby bonus to stay at home for five years following the birth of your child and you can claim family tax benefit B for your child’s entire growing period, with no regard to your partner’s income. This way, even wealthy families are therefore encouraged to have one parent stay at home and raise the children. But, according to the public policies, if you lose the support of that partner, you no longer deserve to be a parent.

This bill fails to acknowledge that research published in 2000 by Eardley and in 2002 by Gray et al. reports that, of all income support recipients, single parents are already the most active in education, training and employment—even more than Newstart allowance recipients. ABS data shows that half of the population of single parents with dependent children are already active in the workforce. Gray’s longitudinal data on maternal employment in Australia shows that both single- and couple-family mothers return to employment as their children get older. Given that they already have the highest level of labour force participation and given that the majority of sole parents spend only three years in receipt of parenting payments, the question must be asked: why is compulsion necessary, particularly one with financial penalties attached?

The extension of compulsory activities to parents is a conceptually misguided initiative, drawn from inferences and imagined stereotypes about sole parents, without reference to the demographics or reality. Introducing new compulsory activities devalues the significance of caring for children, even though social indicators such as family homelessness, children in care and youth suicide point to a need to increase support for families’ care-giving activities. The absurdity of this bill is that it requires a parenting payment recipient with young chil-
Forcing parents to agree to undertake an activity which will have no effect on their chances of gaining employment, which has no regard for their personal circumstances and which threatens to take away the financial support with which they house, feed and educate their children is both regressive and dangerous. It provides no protection for children who will be subjected to the outcomes of decisions imposed on their parents because of this bill.

The penalties on sole parents will be considerable. While the percentage reductions of payments are the same as those currently applying to Newstart recipients, the actual amount of penalty for single parents will be greater. A first activity breach for a sole parent will be $987. The Australian Democrats asked Senator Vanstone earlier this week whether she could give a guarantee that a person who fails to attend a Centrelink interview would only be subject to the administrative test and not the activity test. The minister could not give such a commitment, despite touting the changes to administration made by Centrelink since 1 July 2000.

Therefore, a single parent who is unable, because of family or parenting requirements, to comply with a Centrelink direction to attend just one interview could be fined $987. That is just extraordinary. The sum of $987 is a lot of money in anyone’s terms, but it is significantly more so when you are trying to raise children alone on income support, which is already well below the poverty line. It may mean that you will not be able to pay the rent for weeks and hence face being homeless. It may mean you cannot afford school fees, excursion fees or shoes and clothes for your children. It may mean that you will not be able to feed your family adequately for that week. All of this may happen because you could not comply with a request to attend a Centrelink interview, a request that has no regard for your circumstances in the first place.

Reports released this year by the Hanover Foundation, the Brotherhood of St Laurence and the Commonwealth Ombudsman all concur that the current breaches and penalties system applying to Newstart allowance and Youth Allowance customers is harsh and
counterproductive and is sending people into homelessness and poverty. The extension of this punishment framework of breaches and penalties to parents will impact most harshly on parents who are least able to challenge Centrelink’s decisions. A single parent who has just had $987 stripped from her payments and who cannot see her way straight to rent a house and feed the family over the next few weeks will certainly not have the wherewithal to navigate the complexities of authorised review and social security appeals mechanisms.

Most sole parents live week to week with no reserves, and cutting payment on a day when rent and bills are due is devastating for them. Most likely, the disadvantages of illiteracy, limited education, transitory or uncertain accommodation or family trauma have led to the failure to comply in the first place. Adding financial deprivation to the equation does nothing to assist that person to get a job. The impact of such circumstances is not always easily understood by people who have not experienced them personally, and sole parents will be faced with subjective judgments by Centrelink staff. Sole parents are not immune from the severe and demoralising pressures faced by long-term job seekers, particularly when very few jobs are available which they can realistically hope to secure and when many of those jobs—even if secured—will be part time and casual in nature.

This is not mere surmising on our part. We know that the punitive breaching regime has had a devastating impact on the most vulnerable Newstart and Youth Allowance claimants. The system has operated to identify those who are not coping, remove their income, reduce their capacity to cope still further and then blame them for it. Hanover welfare services, which provides services to people who find themselves homeless, found that almost one-third of their clients have been breached in the last 12 months. The Salvation Army found that around one-quarter of its emergency relief clients had been breached. Of even more concern is that it found that 11 per cent of clients said they had to turn to crime to survive.

The report of the Independent Review of Breaches and Penalties in the Social Security System—the Pearce report—made strong recommendations to the government. It found that, notwithstanding the existence of phrases such as ‘reasonable steps’, ‘reasonable excuse’, ‘without sufficient reason’ and ‘special circumstances’ in the relevant legislation, in practice insufficient investigation and consideration of reasons and surrounding circumstances have often prevented the achievement of this intention.

I would draw the relevant provisions of that report to the Labor Party’s attention if indeed they wish to go down the route of adding more special circumstances and reasonable steps as possible exemptions to breaching, because the evidence is that it does not work. The evidence is that it does not reduce unfairness. The evidence is that departmental officers are overstressed, have too many clients and simply do not have the time, the effort or even the inclination to implement things effectively. For this reason the Australian Democrats are not satisfied that the presence of such exemptions or even new exemptions will provide any guard against arbitrary or unfair impositions of penalties, despite the parliament’s clear intention.

For many Newstart and Youth Allowance recipients, the breaching regime has been a sickening and frightening experience. Extending it to new groups, including single parents, means more crisis and suffering for the most disadvantaged people in Australia. The extension of breaching to sole parents raises the prospect of an even worse impact on children, since there is no other income source available to those parents or children. In a climate where welfare agencies are reeling from the impact of Newstart clients who encounter breaching and where they are overloaded with requests for food and shelter, and in the light of the independent review and the Ombudsman’s inquiry, it is simply outrageous to contemplate extending this regime to sole parents.

Research in US welfare reform also provides some unsettling findings relating to children. A considerable body of that research suggests that forcing parents away
from caring for their children may have detrimental effects on teenage children but little effect on rates of poverty. The Australian Democrats have always believed that parents are best placed to make decisions about the relative importance of employment and parenting and to determine when their own parenting responsibilities enable them to participate.

This bill provides for exemptions from compulsory activities for children with profound disabilities or recognised disabilities linked to the carer allowance. The term ‘profound disabilities’ is extremely misleading. Cystic fibrosis, which is a terminal condition, is considered to be neither profound nor a recognised disability, according to this legislation. The actions of this government in 1998 saw the parents of children with this condition denied carer allowance. Juvenile diabetes is not recognised as a profound disability, despite being a potentially life-threatening condition in children that requires significant parental intervention to ensure a safe medication regime. The notion of a single parent being compelled to leave a child with a potentially fatal condition unsupervised in order to participate in training or volunteer activities is contrary to the notion of parenting.

The Australian Democrats do not support rorting of the welfare system, but sole parents struggling to raise their children are not rorters. They are vulnerable people who have encountered difficult life circumstances and who, as statistics report, will move into economic participation relatively quickly as their circumstances permit. The Australian Democrats propose that sole parents should be encouraged to participate and we particularly welcome the inclusion in this particular bill of participation payments, albeit at such a low level. But we want to do this in a constructive way. We want to offer access to affordable and accessible child-care support; access to out of school hours recreation programs for adolescent children; better access to stable, low-cost public housing; accessible transport; and, importantly, access to job creation schemes that will provide them with employment instead of compelling them to add to the ranks of the seven unemployed Australians for every job vacancy already out there in the labour market.

At the very least, we should take long-term measurements of the impact of these changes on Australian families, before implementation. We do not want to hold up the implementation of the Working Credit scheme, although we do wish that it were more in keeping with current earnings patterns. But it is an un-Australian thing to do to link it with legislation that vilifies and penalises people who have lost the support of a partner, as this government has done in the bill before us. The Australian Democrats will sit down with the government and nut out welfare reform but, where that reform reflects a commitment by government to address the real economic and social barriers to participation, we will do what the government has failed to do—that is, act on the recommendations of the independent review by Pearce et al. and amend the breaching provisions of the social security legislation so that it reflects the original will of parliament.

I should note in passing that the bill does contain a number of other provisions, as indicated earlier. The Working Credit scheme will be supported by the Australian Democrats. We opposed the repeal of the former working credit scheme in 1996, as it was a measure that did in fact assist unemployed people in accessing casual and part-time work. It is only a very small, token start and, as Senator Bishop pointed out, it certainly has been delayed as an obvious budget savings measure this year. But it is a scheme that we support, and we would encourage the government to extend it to ensure that it actually does provide much better encouragement to unemployed people to pick up casual and part-time work.

The Personal Support Program included in this bill is also a measure that we will be supporting, but, again, our concern is access to the number of places. The problem right across the welfare reform system and in this notion of mutual obligation is so often that the government is not providing sufficient resources for its side of mutual obligation, whether it be the JET program for sole parents, the PSP or the personal service advisers that are being put into Centrelink offices.
The resources are simply not there to ensure that people are given every encouragement and every assistance to participate in the labour market.

The Democrats have deep concerns about the closing-off of the mature age and partner allowances. This will impose JobSearch activities on groups of Australians who, frankly, really have the probably the lowest chance of actually finding employment. So often, for those in mature age and partner categories who have been out of the work force for a very long-time, if they want work they will look for work. There is plenty of evidence to show that people in those categories want to work rather than not participate in the labour force. As the ABS showed in its statistics on labour force participation earlier this week, it is quite clear that so many people drop out of the work force because they have been told time and time again that they are too old for the job. It has been quite clearly shown through the Job Network and the Productivity Commission that the government is not providing sufficient assistance to the mature aged to get back into work. Whilst there have been some attempts to improve this in recent months, the situation for mature age workers is simply not good enough in terms of ensuring that there are jobs available for them.

I should note in passing that in Queensland the Beattie government has initiated a community jobs program directed at the mature aged in particular. That scheme has a very high success rate of easing the mature aged back into employment by at least giving them a real job for a period of time. It works far better than Work for the Dole, with a 90 per cent placement rate as opposed to about a 35 per cent placement rate on Work for the Dole. It highlights that if you offer real work opportunities doing real community work and real training opportunities then it will be recognised by employers in a way that participation in Work for the Dole clearly is not being recognised.

The changes to the breaching regime in this bill are obviously providing different rules for parents and mature age workers. The Democrats believe that this is the first acknowledgment that we have seen from the government that the breaching regime that is in place is simply not satisfactory in terms of the unfairness that it is causing. I particularly welcome the second reading amendment moved by Senator Bishop, which draws attention to the failings and unfairness of the government’s breaching regime and its failure to ensure that the full recommendations of the Pearce inquiry have been implemented. I would encourage the Labor Party to turn that second reading amendment into formal amendments at the committee stage. Certainly, the Democrats would support amendments reflecting the Pearce inquiry being moved and becoming part of the act, because we believe that that provides a better basis on which the breaching regime can finally be reformed.

In conclusion, this bill contains some things which are good and welcome and a lot of things which simply are very harsh and unfair. It is picking the eyes out of McClure and leaving so much of what is important in McClure and the regional welfare reform blueprint in the too-hard basket. Most of what McClure recommended in terms of the government’s side of mutual obligation has not been delivered. The programs and support which are needed to ensure that people can participate effectively in the work force have not been delivered or have been delivered only partially or ineffectively. These things need to be reviewed by this government if welfare reform is to proceed in a form that delivers social inclusion and better economic opportunities.

Senator HARRIS (Queensland) (12.02 p.m.)—I rise to speak on the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002. The increasing pressure of globalism is leading to a far greater role for economic rationalism in welfare economics. As the negative impacts of globalisation spiral, the wage earners’ welfare state is threatened. All aspects of the welfare state, from financial assistance for the unemployed and disabled to health care, are experiencing considerable cutbacks. The bill before us today, misleadingly titled ‘Australians Working Together’, reflects that fact.
We know that unemployment is rising and that the government’s figures in unemployment are rubbery. The department’s glossy, full covered PR pack—that is, the Australians Working Together initiative—acknowledges that today more than one in five, or over 2½ million people, are receiving government income support. Thirty years ago, just one in 20 working age people were receiving welfare. The government continues to perpetuate the myth of a low rate of unemployment of around 6.2 per cent, or a total of 609,400 Australians unemployed. In a number of regional and rural areas, the official unemployment rate is much higher. I will quote a few statistics from Queensland: in Coolum, it is 17.8 per cent; in Maroochydore, it is 14.4 per cent; in Rockhampton, it is 9.4 per cent; in Mount Morgan, it is 27.8 per cent; in Gladstone it is 7.5 per cent; and in Gympie, it is 11.8 per cent.

The Australian Bureau of Statistics define an employed person as someone who is doing paid work for at least one hour a week. The real unemployment figures would be even higher—and our estimate would be in the millions—if the definition of employment was not so narrow. The Brotherhood of St Laurence recently pointed out that the unemployment rate does not show that jobs are disappearing or being created, whether they are part time or full time, permanent or casual. It also does not show whether people are working too many hours or not enough hours, or for how long they remain without work. The stark reality is that there are simply not enough jobs to go around.

The Australian Bureau of Statistics data indicates that, in February 2002, there were seven job seekers for every job that was available. Trends towards privatisation and outsourcing are forcing jobs offshore. Even Minister Alexander Downer’s foreign affairs department has encouraged Australian businesses to consider outsourcing their computer needs to low-wage developed nations such as India. The deliberate destruction of Australia’s manufacturing, clothing and textile industries through the removal of tariffs has seen the demise of thousands of jobs in small businesses.

Meanwhile, the World Trade Organisation has reaped a fateful harvest for our farmers. The seemingly deliberate and well-orchestrated drive to turn family farmers into peasants on their own land has exacerbated unemployment in rural and regional Australia, with many seeing no way out but to head for a life of unemployment in the cities. Rural Australia is one of the major casualties of the global trap of free trade, yet it is interesting to note that the government’s initiative Australians Working Together ignores the rural constituency. The government’s PR pack does not make one mention of people living in rural Australia, not one mention of the special and unique circumstances—that is, the tyranny of distance, the lack of educational services, the barriers to employment—that these people face. Where is the assistance for those rural people?

The bill should be more aptly titled the ‘Family and Community Services Legislation Amendment (IMF and the Government Working Together) Bill’. Most current economic reform programs here in Australia have a common origin: the International Monetary Fund. The IMF’s prescription included privatisation, removal of health subsidies and cutbacks to welfare budgets. In 1998, the International Monetary Fund made a recommendation to the Liberal-National coalition government:

... to limit the duration of unemployment benefits to encourage employment search, and to scale back other social welfare benefits that discourage labor force participation.

Again, in 2000, the IMF articles of agreement stated:

Directors welcomed the steps being taken to reduce disincentives to workforce participation and endorsed the view that the welfare system should provide greater incentives for people to move from welfare to work.

This year the fund congratulated the government on its Australians Working Together initiative and urged further comprehensive reform. Pushing people off welfare rolls and into low-paid jobs—which fits into the IMF’s description for abolishing the award system for setting minimum wages—is a very narrow solution to the real problem of employment. So what is needed? What is
needed is legislation that addresses the deep structural crisis that Australia has been in and is currently experiencing. Indeed, we have a pathetic bandaid, superficial approach that focuses upon individual responsibilities or individual failings of welfare recipients themselves: legislation which implements a kind of new paternalism and mutual obligation or voluntary compliance centring on people’s choices, not on the fundamental causes of unemployment; legislation which echoes the mantra that there is no society—there are only individuals and corporations; legislation which positions Centrelink as a new interventionist bureaucracy replacing some of the roles traditionally filled by the church, the family unit and professional counsellors.

As a counter to welfare dependence, this new paternalism advocates the controlling of patterns of behaviour. Rather than merely helping those in need, new paternalists place great emphasis on program administration and efficiency, privatisation and the enforcement of social values. They are set out in two of the documents contained within the Australians Working Together package. One has a reference ‘Centrelink—with life events’. The customer chart in that shows a program from birth to death. If we look at the second document, regarding life event frameworks for the new service delivery model, this is what Centrelink is setting out. The document is headed ‘How can Centrelink help you?’ It asks: ‘Are you responsible for children, changing your marital or partner status, needing help after someone has died, sick or disabled, caring for someone sick or disabled, arriving to settle in Australia, looking for a job, responsible for a business or self-employed, in a crisis situation, seeking or changing education, planning your retirement?’ We have Centrelink becoming the overarching program through which this paternalism is going to be effected.

The new paternalism amounts to the close supervision of the poor. This supervision goes hand in glove with future scenarios which would employ the use of biometrics in human service provision. I will raise that issue later in the debate on the bill. This could be along the lines of the model in the US state of Connecticut which uses a person’s fingerprints to verify their identity or it could be an extension of Centrelink’s speech recognition system, the multimillion dollar system that will be used by customers reporting for the government’s working credit scheme, a key initiative of Australians Working Together.

‘Personal support programs’, ‘community work coordinators’, ‘personal advisers’, ‘participation plans’, ‘training accounts’, ‘passports to employment’ and ‘mutual obligation’ are phrases that our unemployed people are increasingly more familiar with. For the government, it is a cosy middle ground between the welfare state and the market economy. It is cosy because governments world wide are gradually extracting themselves from the provision of welfare and other social services. Take the UK, for example, where the leading Centre Left think tank, the IPPR, recently published its report Building better partnerships. This report was seen as a key event in the move towards the privatisation of essential public services in the UK.

In the context of the General Agreement on Trade in Services, GATS, it will be necessary to eventually dismantle the public provision of health, education, welfare and other social services, precisely because these services represent the major area of expansion for corporate profit. Corporations will transform welfare in rich countries so that profits can be made from the delivery of tax funded services. GATS means that these developments may well be forced on our citizens. In Australia, the community welfare coalition has already foreshadowed the outsourcing or privatisation of Centrelink programs and services and has raised issues regarding a lack of staff resources and the enormous pressure to get clients in and out as quickly as possible.

The Howard government’s welfare reforms are premised on the idea that unemployment has been caused or at least exacerbated by the welfare system. The government’s attitude towards unemployment is reflected in Minister Abbott’s statement that welfare is ‘cruelty masquerading as compassion’. Rather than addressing the causes of
unemployment which I mentioned at the beginning of my speech—causes such as the dramatic decline in our manufacturing industries, the devastation of family farming, privatisation, outsourcing and corporate collapses—the government’s programs represent and promote the belief that unemployment is a problem because of the deficiencies of the individual, like being unmotivated or lacking a work ethic. The real problem is that there is insufficient demand or growth in the economy to employ these people.

The Australians Working Together initiative creates a new stream of bureaucrats—that is, personal advisers—who will give information about getting back to work and about balancing work and family, and tips on how to look for work or take on study, training or volunteer work. This is a new sort of intervention where Centrelink becomes a coordinating service for people’s lives. It is a form of paternalism—a life events approach from birth to death. Almost everywhere, the welfare state is under siege and is being recast in new directions. Unquestionably, welfare reform is needed. Equity and efficiency demand suitable new welfare programs where existing programs can be reliably shown to discourage the search for work and the acquisition of skills or to hinder growth and employment. There is even greater need, however, to reconsider the problems that globalisation brings: unemployment, the ascendancy of market immorality, the overriding preoccupation with international competition, privatisation, and the codification of social welfare as economic activities.

Many of the new social problems that old welfare state programs are failing to meet spring from the effect of economic policies being pushed on the world by radical liberalisation. Much of the welfare state crisis is due to market failure and free market ideology. While there will always be support for government initiatives which generally assist unemployed people, One Nation believes that we need a far more vigorous and long-term assessment to ensure the continuation of the public welfare safety net. This will be achieved by the government committing to a program of constructing public infrastructure and the introduction of domestic consumption premiums on primary produce consumed in Australia. One of the major problems that One Nation has with this legislation is that it does bring some benefits but it fails to address the real cause of the unemployment that we see in Australia.

As I mentioned earlier, there is Centrelink’s program for the implementation of voice recognition in their services. The speech recognition system would be used, firstly, for customers reporting to the Commonwealth government’s working credit scheme, which will begin in April next year. People using the scheme will call the automatic speech recognition line, report how much money they have earned and thus, according to Centrelink, they will be able to keep more of their income support payment. People will call in every two weeks. What we actually have is a program whereby, instead of the person going to Centrelink and having at least a one-on-one interview with a person, they will pick up the phone—their voices would eventually have been digitised so that they would be recognised by that system—and they will then give their details to a machine—that is, a computer—over the phone line. How impersonal! How will our unemployed people have an incentive to use a system such as that? I believe that is only one of the uses to which biometrics is eventually going to be put. In conclusion, One Nation sees enormous discrepancies in this legislation. We see that there are areas that should have been addressed, including those that I have raised my speech. I seek leave to table the two documents that I have circulated in the chamber.

Leave granted.

Senator MOORE (Queensland) (12.20 p.m.)—I rise to speak, in this debate on the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002, about the current provisions on breaches and penalties under the social security system. Recently, I was fortunate enough to be with you, Madam Acting Deputy President Knowles, on a review that the Senate handled of the participation requirements and penalties under the social security system. This particular Senate inquiry was for-
tunate enough to be briefed by a range of people—community groups, participants in the system as it currently works and genuinely interested people—about how the current system works before any changes could be made in future legislation. The key, common concern of the people who appeared before the Senate committee was the harshness—perhaps the unfairness—and the fear generated by the current system of breaches and penalties under the social security system. This is a particularly important point as we move towards discussion about extending this same process.

The original changes to the system came under the process of Australians Working Together. That is such a splendid title: Australians Working Together. In fact, the whole concept is that, if there is going to be genuine movement forward, Australians must be working together under this system. One of the key components of the changes to Australians Working Together—it is called AWT, and I do not like that very much—was the concept of increased mutual obligation. This came out all the time during our Senate committee process. What we heard from the people who were working in the system, from recipients of different payments in the system and from people who were helping make the system work as it is was that there was some concern about the mutual nature of the obligation. This is where I come to a point about how any focus of breaches and penalties would operate. Encouraging people to participate is the key concept of Australians Working Together.

There is an acceptance that people must be engaged in the community and must be engaged in participating in the work force and in training. There is no question about that. It is the process by which people are engaged in participation that is being questioned, as well as what happens to people who, for whatever reason, are not effectively engaged. I submit that the current process of breaching and penalties does not encourage participation. In fact, it pushes people away. It encourages fear and concern and it increases the massive distrust of the system. The end result of such a process is not increased participation; I fear it is actually exclusion, marginalisation and total loss from the system.

There has not been a lack of reviews into the way breaches and penalties operate in our system. As with all social security operations of government departments, this has been reviewed and reviewed. In terms of the system of breaches and penalties, there have been internal reviews, the Senate committee process, the much publicised Pearce independent review and an Ombudsman’s report on the whole process. It is a good thing that people are reviewing the system. What we need to do is listen to what comes out of those reviews.

A common theme of the results of those reviews is that it must be done better. Another common theme is that there are genuine administrative and processing problems in the current system, which means that the system is not working effectively. I am not here to put blame on anyone for those failures but I am saying that those failures are making the entire concept of mutual obligation and participation fall over, because people are being pushed away. Their distrust of the system is increasing, and therefore the efforts to involve and engage them are not being successful.

The process that we have had, in terms of what has gone wrong with the system, seems to hinge on a couple of key themes. One theme is the communication between the people who need the system and the people who work in the system. There seems to be an ongoing need for improvement, and this is accepted by all the reviews, accepted by people in the various departments and accepted by the ministry. The issue of getting people who want to be involved back into work and participating as members of the Australian community is being damaged by the fear generated by the way that the breaching system is currently operating.

We had a number of submissions from people that talked about receiving communication from the department. The communication was intended to keep them involved with the department but it actually forced them away. It forced them away for a number of reasons, ranging from their inability to understand the system and their inability to
understand the communication through to their genuine fear of the whole departmental process. The very efforts being made by the department to engage with people actually ended up pushing them further away.

In that way, the entire step 1, step 2, step 3 breaching process, with its increasingly severe penalties, just made people who were already marginalised and feeling isolated more damaged and less capable of doing the very things which the legislation intends them to do: to engage with the department; to engage with the community; and to seek out effective methods of training, communication and ways of developing so that they can return to the work force in some way.

If any of the legislation that has been placed before both houses of parliament is going to be successful, the key issue must be a rekindling of trust between those people who are developing the legislation and those people who need it. The amendment before the house, which talks about a change in the current breaching provisions quite specifically as part of an overall change to the general legislation, takes on board three specific components of our concerns with the current breaching regime.

One aspect is just the sheer size of the breach. We heard various people before our committee talk about the immediate impact of the cut in payment. It was very difficult in many ways for those of us who were sitting on that committee to be confronted with submissions from people talking about what it was like to lose such a large and immediate aspect of your very livelihood. I am not talking about people who are receiving supplementary payments. I am not talking about people who, in most cases, are receiving money on top of some kind of supported wage or any wage that they are currently able to receive. I am talking about people who are totally reliant on fortnightly welfare payments.

That sense of total reliance is something that many of us cannot understand. I am talking about people who are totally reliant on a fortnightly payment which is already quite small, and about a breaching regime which currently takes massive amounts of money. There are various debates about what a fair system is and I am aware that the system that was in place in the early nineties was, in some ways, more difficult than the one that is currently in place. But this is not the time to be talking about which system is tougher than others. This is the time to talk about the information that we have received from people who know the system and participate in the system, and to work together to try and make the system better.

There is no particular value in saying that one system is tougher or has more impact than another. What we have is a body of evidence, which we have all shared, from a range of different reviews and which points out that the impact of the current system is onerous. The impact of the current regime of penalties and breaches has the most monstrous effect on people who, currently, are mostly young unemployed. That is where the current range of breaching penalties is imposed.

Their stories are now public. They are stories about what it means to have your money cut, sometimes without even realising why, sometimes without receiving effective communication from any level of government—to suddenly go to your bank account, on which you are totally reliant, and find significant cuts in your fortnightly payment. Under the current system the cuts can extend over strike 1, strike 2 and strike 3 for increasing periods of time—up to half a year. The current statistics—and there are numerous statistics, but I have to admit there are very few I trust—indicate that there is a low percentage of single breaches. People who are into this cycle of breaching fall into consecutive breaching. Once you have breached once, once you have fallen into the penalty process once, it is highly likely that you will then fall into a second and a third process. That means that you are not further involved in the community and that you are not more likely to take up job opportunities or develop yourself as a trained, effective person in the community. What happens is that you lose money, you lose your accommodation and you lose your ability to move around, because you have no money to access transport. The very system which has been developed to encourage people to participate is, as
I said, moving people further away, pushing them aside and reinforcing some feeling that they are not worthy, that somehow they are evil, that they have done wrong and that they must be punished. I question the ability of a system that uses that form of terminology—the terms ‘breaching’ and ‘penalties’—to effectively engage and enforce participation.

The second point is the quantum. Perhaps it would be useful for all of us on our current wage—and this was something put to us by the Welfare Rights Centre of New South Wales during the committee hearings—to translate our current employment and wage rates to a breaching regime and see, using our own money, what it would mean to cut it down by the current percentages and for the periods of time. It is a particularly confronting system, and I encourage people to have a look at their own processes and see how that would work.

The evidence provided to us by people who were directly involved in the Pearce review indicated that they were not saying that there should not be some form of penalty. They were not saying that there was a philosophical opposition to any kind of process to encourage people to keep in contact. They were questioning the size of the penalty under the current regime and they were clearly questioning the process by which it was administered. They could point to massive amounts of evidence which indicated that people were not trusting the way the system was operating. There was considerable evidence about the administrative processes within the department which indicated that it was not an easy thing to maintain communication between the people who are working within the system at the departmental level and the people who are totally reliant on it. The people who are totally reliant on it do not fit any particular model. There are all kinds people who are reliant on the social welfare system, and not all of them can be clearly defined or labelled. A system that would work effectively for some client groups may not, and in fact I submit does not, work for everyone.

Our reliance on written communication is misplaced. We seem to think that, once you put something in the mail and send a recipient a letter, they will get it automatically and then be automatically part of the process. That has been proven to be just not true. You cannot rely on written communication to engage people in the social welfare system. I submit that you cannot rely on written communication to get anyone engaged in any system and certainly not people who are reliant on the social welfare system, some of whom—our figures indicate many of whom—are in situations of homelessness or, at best, are rapidly moving between different addresses. If our process continues to be reliant on people receiving mail or having regular phone calls, it is guaranteed to fall over. The first step towards receiving a penalty under the system is reliant on someone responding to mail or responding to telephone communications or, I am thrilled to say, responding to an SMS! The department were very excited about their ability to SMS people on mobile phones. That is a wonderful thing but I question just how many people who are totally reliant on the social welfare system will have the immediacy of the SMS system for receiving their information from the department.

It was clear during the discussions that we had that some of the people who were most interested in developing and making the system work better were the people in Centrelink and the Department of Family and Community Services who administer the system. Those people genuinely wanted to make the system work better as well. Throughout the Ombudsman’s report and other documents that I have read it has been noted that the departmental people are very keen to look at ways to make the system work better. That is a tremendous effort to contribute to the concept of Australians Working Together, because we are never going to develop an effective social welfare system if it develops into some kind of contest. I have mentioned this before in this place. There is no moral high ground. There is no righteousness in this argument. The only way we are going to be able to develop and, much more importantly, implement an effective social justice system—as opposed to a purely welfare system—is for everybody who has a stake in this to be actively involved and be part of the solution. That in-
volves some genuine communication between all the stakeholders.

We must ensure that, instead of the first reaction to people expressing criticism being outrage, the first reaction is to listen. We must listen to the issues being raised by the people who know the system. If people say that they are having difficulty with the system, perhaps the first response should be to listen and to say, ‘How do you think it could work better?’ The committee made some specific recommendations about how it could work better. In fact, the three points in this amendment are directly part of a response from the committee comprising people who want to make the system work better. There is no expectation that the system should be destroyed; there is an expectation that the system should be made to work better. One of my pet issues is with point (c) of this amendment, which talks about the ‘reinstatement of payments benefits’—I do not like the word ‘benefits’—‘on compliance’.

I began by saying that the concept of this whole process is to have people participating. That is what we are trying to do. If the concept of the penalty is to ensure that people participate then surely once the person or persons, if it is a group, do fulfil their requirements under the legislation and communicate, that must mean that their payment should be returned. This, in fact, was one of the key issues that came out of our discussion. We have this concept of ‘balance’—we use the word a lot at the moment—between encouragement and the success of the system, which is about getting people communicating and participating, and yet we have a penalty which says, ‘We have not heard from you; we do not know where you are; you have not fulfilled your commitment to the system, so you have breached.’ The requirements of mutual obligation must be fully understood by the person before they receive the payment. If, in fact, the intent of the process is to get people training, engaging, communicating and moving towards work, then when they do communicate, get in touch, and fulfil their requirements surely that must mean that they have complied. Surely then their payments and their status in the system should be restored.

If we use this process to continually punish, to—in many more ways—label and marginalise, we will not have Australians working together. We will have more people who are distrustful of our system and who are fearful of any engagement with government agencies regardless of which ones they are. One of the real issues is that people do not know with whom they are speaking. There is not a great deal of knowledge out there in the community about exactly which government department does what. In fact, if people actually get the courage to come into a government department, they just want all their questions answered by whoever is behind the desk at that time. If we are to break down that fear and engender trust and get people into the system, surely we must reward, encourage and nurture them so that the next steps of Australians Working Together will be successful and they will be working together.

Senator NETTLE (New South Wales) (12.40 p.m.)—I rise to speak on the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002. This bill implements the first stage of the government’s response to the McClure report on Australia’s social welfare system. These measures were announced in last year’s budget and have been examined by the Senate Community Affairs References Committee, which last month tabled its report highlighting the bill’s shortcomings.

This bill increases the requirements imposed on people in receipt of income support under threat of having benefits suspended. With the exception of a few worthwhile measures—such as the introduction of a working credit to assist people moving from income support to paid work; minor financial assistance for language, literacy and numeracy training; and more help with child care—this bill continues the government’s misguided approach to addressing long-term reliance on income support, poverty traps and shortfall of available jobs at adequate rates of pay. The Australian Greens support measures to assist people to move into paid work, including providing relevant training and education, but we do not support coer-
cion or penalties which cause substantial hardship to people already struggling to meet their material needs.

Like so much of this government’s focus, this bill is couched in terms of providing ‘incentives for self-reliance’ which the government says are missing in the income support system. The government tells us people should be ‘taking responsibility for their own futures’. The language reveals the government’s misunderstanding of the circumstances of Australians who find it difficult to obtain a secure job at reasonable pay that also permits them to meet their responsibilities as carers and members of their community. It blames individuals for their circumstances instead of acknowledging structural impediments to greater workforce participation. These include affordable child care, publicly funded education and training, decent wage rates, reasonable hours of work, paid parental leave and creating work in places where people live—not expecting them to move, possibly with a family, to some other place. This language disguises the government’s real agenda, which is to create an impression of activity amid a burden of paperwork and interviews. What is required is a serious refocusing on our workplace environment, including the pursuit of sustainable and socially useful work; the sharing of available paid work; and a significant investment in training, education and child care. It underestimates the generosity of spirit amongst many Australians who in general, unlike this government, are not bent on punishing disadvantaged members of our society.

This legislation is based on the policy of mutual obligation, which under this government translates to onerous obligations on individuals and minimal obligations on the part of government. The government argues that people receiving income support should give something back to society in return. But this policy is founded on false premises. People rely on income support when their circumstances prevent them from earning income. They may be mentally ill, physically disabled, suffering chronic ill health, caring for young children alone, or caring for a sick partner or parent, or they may have been retrenched from their job. These circumstances occur through no fault of the individual, and income support is provided so that they have enough to eat and a place to live. It is the minimum that a decent society should provide to those members whom our economic system has failed.

Debate interrupted.

MATTERS OF PUBLIC INTEREST

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Order! It being 12.45 p.m., I call on matters of public interest.

Western Australia: Timber Industry

Western Australia: Electoral Distribution Repeal Bill

Senator JOHNSTON (Western Australia) (12.45 p.m.)—I rise to discuss as a matter of public interest the situation in Western Australia which arose recently following the demise of the timber industry in that state. People living in rural and regional Western Australia are currently enduring a sustained and vindictive attack, if I may say so, upon their standard of living such as has not previously been seen in my state.

By way of example I point to the formerly thriving communities of Manjimup and Pemberton in the south-west of Western Australia. The Premier of my state, with one stroke of the pen, has devastated Manjimup and the lives of timber workers throughout the entire south-west of my state, but particularly in Manjimup, when he slashed timber quotas in that region. Everyone, including the timber working families of Manjimup, realises that our old growth forests must be preserved for future generations. But that preservation can be achieved through a reasonable program to phase out the logging of such forests with a gradual and less traumatic shift to value adding and plantation industries.

The reality is that my state Premier does not care at all about WA’s rural and regional communities. I have been to Manjimup twice since being elected to this place. The leader of my state parliamentary party, Mr Colin Barnett MLA, has visited Manjimup five times since the last state election. Mr Gallop is yet to go there, notwithstanding his quite
capricious actions regarding the livelihood of
the people living in these communities.

I have observed first-hand, with the assis-
tance of the Hon. Paul Omodei, the very hard-working and popular member who rep-
resents that local community, just how resil-
ient and committed the people of Manjimup
and Pemberton are to their communities and
to the region generally. In the face of the loss
of many millions of dollars in annual in-
vestment and of hundreds of jobs through the
decimation of the timber industry, this com-
munity is bouncing back, I am pleased to
advise the Senate. There is renewed energy
in the area of export horticulture. This region
exports potatoes into South-East Asia and
cauliflowers into Singapore, Thailand and
Malaysia. Avocados, wine, apples and other
horticultural products are all being exported
from this region. Traditional agriculture is
thriving, thanks to beef and sheep. Plantation
timber is coming along, and tourism is
slowly but surely developing, permitting a
recovery from this government induced dis-
aster.

In these circumstances, I am drawn to ask
just how many times the Premier of my state
has visited this community and shown con-
cern for the livelihood of these people. The
answer, of course, is: not once. However,
since being elected, he has been to China,
Dubai, the United Kingdom and other places
with an international address. It seems that,
clearly, he has a great deal more concern for
people living over there than he does for
those living in his own state.

The contempt shown for the hard-working
people of country Western Australia is all
played out against the backdrop of a further
and more insidious assault upon rural and
regional communities. That assault is in the
form of the repeal of the Electoral Distribu-
tion Act. Since the mid-1970s the Australian
Labor Party in Western Australia has used
every possible occasion when it has been in
power to seek to introduce changes to the
electoral arrangements of my state. It seems that,
clearly, he has a great deal more concern for
people living over there than he does for
those living in his own state.

The contempt shown for the hard-working
people of country Western Australia is all
played out against the backdrop of a further
and more insidious assault upon rural and
regional communities. That assault is in the
form of the repeal of the Electoral Distribu-
tion Act. Since the mid-1970s the Australian
Labor Party in Western Australia has used
every possible occasion when it has been in
power to seek to introduce changes to the
electoral arrangements of my state. It was
therefore no surprise when the current West-
ern Australian state Labor government set
out to introduce one vote, one value alter-
ations by undertaking a movement of eight
seats from the country to the metropolitan
area. The changes were going to alter the
balance between metropolitan and country
seats from 34-23 to 41-15.

It is no surprise that various people allied
together to oppose the alteration to the state’s
electoral laws and expressed their determi-
nation to fight those changes. They formed
the Country Alliance, which took the matter,
with the Clerk of the Legislative Council of
Western Australia, to the full court of the
Supreme Court.

The crucial legislation was the Electoral
Distribution Act, which was to be repealed to
inaugurate these changes. There were two
potential problems for the government.
Firstly, section 13 of the act had entrench-
ment provisions. Section 13 stated:
It shall not be lawful to present to the Governor
for Her Majesty's assent any Bill to amend this
Act, unless the second and third readings of such
Bill shall have been passed with the concurrence
of an absolute majority of the whole number of
the members for the time being of the Legislative
Council and the Legislative Assembly respec-
tively.

The government had no difficulty in the
Legislative Assembly. However, it had a 16-
17 ratio in the upper house. The government
actually had 18 seats in the upper house.
However, one of those seats was occupied by
the President and, of course, under the Con-
stitution Act of 1899 the President of the
Legislative Council of the Parliament of
Western Australia does not have a delibera-
tive vote, only a casting vote. The govern-
ment asserted that a vote of 17-16 was suffi-
cient to meet the terms of the Electoral Dis-
tribution Act, which sought simply to repeal
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tribution Act, which sought simply to repeal
the previous entrenchment provisions.

The other question which arose from sec-
ction 13 of the act was that the words seemed
to suggest that the law could be broken if the
legislation, passed in this way, were to be
presented for royal assent. The interesting
legal aspect that flowed from this was the
position in which that left the Clerk of the
Legislative Council, Mr Laurie Marquet,
with respect to the passing of the law in these
circumstances. Marquet himself actually re-
ferred the matter to the full court of the Su-
preme Court of Western Australia for deter-
mination. Liberal parliamentary legal affairs
spokesperson and former Attorney-General Peter Foss suggested that, at the very least, the government had put Marquet in a difficult and precarious position. He stated that if the bill had received vice-regal approval, the Clerk may have been, or could have been, facing criminal charges if the law were subsequently struck down. This would have been on the grounds of it having been found not to have been properly passed. Mr Marquet’s referral sought a determination from the full court, as I said, as to the legitimate passing of this repeal act.

In the unreported decision handed down last Friday week—the case is Marquet Clerk of the Parliaments of Western Australia v. The Attorney-General of Western Australia and Anor, 2002, WA Supreme Court, 277—a 4-1 majority rejected the view that the simple majority of 17-16 met the provisions of section 13 of the Electoral Distribution Act. As Mr Justice Steytler and Mr Justice Parker stated:

It is clear that the entrenchment provision in s.13 was not enacted for its own sake. As indicated there was a purpose for its enactment and that purpose, in our view, is material to understanding the intended meaning of its terms. It is also relevant to the understanding of this purpose, and to the interpretation of s.13 that, in the absence of a fundamental change to the manner of constituting the Houses of the House of Parliament, the 1947 Act could not be repealed, in the sense of finally revoked or annulled, and not replaced.

The legislative purpose for the enactment of s.13 is therefore to be perceived from the viewpoint that it was intended to entrench the provisions of an Act which dealt with an essential and politically important aspect of the process by which the Houses of Parliament are constituted, and was enacted in the expectation that there must always be legislation on that topic.

This discourages any narrow understanding of the intention of Parliament when it used the word ‘amend’ in s.13. It is strongly indicative, that the purpose of s.13, which its language was intended to achieve, was to protect or ‘entrench’ the provisions of the 1947 Act from change, except in circumstances where the requirements of s.13 were satisfied. Whether, as a matter of form, change was effected by some alteration of the existing provisions, or by their complete repeal and re-enactment incorporating the desired change, would appear to be of no materiality in the context of such an intention. ‘Amend’, in our view, should be interpreted accordingly.

That is to say, of course, that to simply drive around the entrenchment provisions by amending the act was unconstitutional. It is, therefore, with some great relief for regional Western Australians that the Supreme Court decision was handed down, as I say, last Friday week. In its wisdom, the court found 4-1 that the democratic principles of the Legislative Council were being abrogated by this piece of legislation.

The Western Australian Attorney-General, who is vested with the onerous responsibility of upholding the law and democratic principles in that state, was attacking the constitution he was bound by his office to defend. The Attorney-General’s actions were found to be unlawful. He, along with the Premier of Western Australia, must bear the responsibility for the undermining of the Western Australian constitution and its parliamentary systems. The position of the Attorney-General is now plainly and obviously untenable, given the decision of the Supreme Court. I pause to observe that this Attorney General has a long and thankfully unsuccessful track record with respect to the prosecution of this issue. He has attacked with zeal the constitutional electoral framework of my state for the past seven years. It has become the major focus of his political life.

Four judges of the Supreme Court have now confirmed that he was wrong to pursue legislative change through underhand and backdoor legislative strategies. He has already been warned by the highly regarded Clerk of the House, Mr Laurie Marquet, that his parliamentary tactic of trying to circumvent the legitimate legislative process was flawed, but he ignored this warning and pressed on. Further to this, there were numerous precedents that would have told him that what he was proposing was wrong. The Supreme Court reminded him of these precedents when telling him that he was so very wrong. It is of considerable concern to realise that Western Australia has an Attorney-General prepared to ignore sound advice and reasonable warnings in the pursuit of an ideological objective. I have no doubt that, given the level of obsession, further scarce
resources will be committed to an appeal of this decision.

The current system of how Western Australians are elected to the Legislative Council has been put in place for very good reason. Western Australia is a large and vast state with, if not the biggest, one of the largest electoral territories in the world. It is 3,000 kilometres from the north of the state to its most southern point. From South Australia and the Northern Territory borders to the west coast it is close to 2,000 kilometres. Coupled with a large population mass that is centred on the capital city of Perth, it is inconceivable that there should be an electorate system that would allow the people living in an area that represents less than one-tenth of one per cent of the landmass of the state to have vastly disproportionate electorate representation in the parliament of Western Australia.

If the Labor government in Western Australia had been successful with its chicanery, we would have one electorate that stretched 2,000 kilometres from Coral Bay on the west coast to the South Australian border on the east side of my state. Four of the country electorates would have been individually larger than the entire state of New South Wales. This would be clearly unfair and would have denied effective representation to a significant number of Western Australians. What was suggested by this legislation was that one member of parliament would be able to travel for a day and a half through his electorate and still not reach the other side.

The Western Australian Attorney-General has reportedly wasted $3 million in lawyers' fees on this bid which, on anybody's reading of the argument, was always going to fail. It would not be beyond the realm of possibility that the all-up cost of this little foray into the electoral reform process is going to cost something like $9 million—an abhorrent waste of taxpayers' funds. Western Australians have rallied to the cause to protect their rights and to protect their right to representation—and decent representation. Of course, senators who come from states such as Tasmania, where you can virtually look across to the other side of the whole island from any high point—have absolutely no concept of what it is like.

Senator Forshaw—What about New South Wales? Talk to Peter Black.

Senator Johnston—For the benefit of the learned senator from New South Wales, I have just cited the fact that under this electoral system we would have had four country electorates each the same size as that one state. I am certain that some of the senators opposite have never even traversed the regions of their own state to see how vast they are.

The Western Australian Attorney-General has not accepted this humiliating defeat. David has taken on Goliath and won. He plans now to present a further amendment and a further law to the parliament—that is, he wants to give the President of the Legislative Council a deliberative vote. This is in the face of a number of citations by his own Premier who, when such a proposal was made in 1997, as reported in the West Australian of 21 January 1997, declared that it was 'a cynical attempt to subvert the will of WA voters'. It was not so cynical for them now to purport to achieve exactly the same purpose. Let us look at what that really means. Harry Phillips, politics professor at Edith Cowan University, said:

Changing the law to give the President a deliberative vote was an unacceptable break with convention.

Further to that, David Black of Curtin University said:

Any change to the president's voting rights would be subject to legal challenge and posed a political danger to the Government.

That is not enough for this Attorney-General. He wants to push on; he has no concept of the convention of this parliament and seeks to undermine it. He has previously lost 4-2 in the High Court; he has now lost 4-1 in the Supreme Court. It is clear that he is going to press on with this foolhardy zealotry when, of course, he should be saving the time and money of the taxpayers of Western Australia.

Superannuation: Industry Funds

Senator Sherry (Tasmania) (1.00 p.m.)—The Liberal and National parties have a long history of making inaccurate and
misleading assertions about nonprofit superannuation funds, particularly multi-employer or so-called industry funds. Despite all the evidence to the contrary, they just cannot help themselves. Today I want to lay out the accurate and true picture of superannuation funds and give some examples of the blatant inaccuracies and claims that have been made by ministers in this government. No amount of evidence of the strong performance of corporate, industry and public sector superannuation funds in terms of investment returns, prudential soundness and value for money, particularly when it comes to fees and charges, can divert the Liberal-National Party government from their political attacks on trustee funds.

The most common line used by almost everyone in the Liberal-National Party government, from ministers who should know better—I am sure they know better but they do not want to tell the accurate story—to backbenchers, some of whom have little idea about superannuation, is that industry superannuation funds are union funds. This is a blatant lie. While there are many superannuation funds where some trustees are appointed by trade unions, there are no union-only funds allowed in Australian law. The law, the Superannuation Industry (Supervision) Act, requires that all nonprofit funds have equal employee and employer trustees. All decisions must be taken by a two-thirds vote. It is simply impossible, even if they wished to, for a trade union or a group of trade unions or, for that matter, a group of employer trustees or their representatives, to control exclusively these funds, provided that employee representatives are independent of employers.

I will provide some more details on the reality of nonprofit superannuation funds a little later, but first it is worth hearing some of the inaccurate and, at times, frankly, stupid statements that have come from some members of the government on matters relating to superannuation. In 1985, the Liberal Party member for Mayo, now the Minister for Foreign Affairs, Mr Alexander Downer, came out with one of the greatest pearls of wisdom that we have seen in terms of an economic prediction when he argued against the insertion of superannuation provisions in industrial awards. Superannuation was, he said:

... one of the most underrated threats to the future stability of Australia’s economy, and indeed to the capitalist system ...

Apparently, superannuation—and most Australian employees now have it—was going to bring about the collapse of the Australian economy and the capitalist system. Since then, superannuation coverage has increased from around 40 per cent to well over 90 per cent of the Australian workforce—thanks to the Labor Party—and superannuation assets stand at some $532 billion but, despite Mr Downer’s dire warnings, capitalism is still alive and well.

Another example occurred in the 1998 election campaign. In the Bulletin magazine, the former Liberal Party director, Mr Robb, suggested that industry funds are a source of donations to the Labor Party and that unions involved in industry funds derive profits from administration fees. He said:

The unions, which would stand to benefit from millions of dollars of management fees over the years ahead, may have a great incentive to put their hands deep in their pockets to see Labor win this election ...

I searched the list of publicly available donations made to all political parties and I could not find one industry fund that has ever made a donation to the Labor Party. Nor could I find from the evidence that I have seen any trade unions that have received financial benefits through the payment of administration fees—presumably that would be approved by the trustees, if it ever happened. In nonprofit trustee funds administration, all the fees are used to cover the expenses of the operation of the fund and any surpluses are paid to members of the fund via the return. Corporate industry and public sector funds do not pay a dividend to their shareholders. They effectively pay any profits to the members of the fund. So Mr Robb’s allegations were just totally false. As I said at the time, Mr Robb was either ill-informed, totally ignorant or deliberately misleading in his article in the Bulletin.

More recently, on 2 October last year, the then Minister for Financial Services and
Regulation, Mr Hockey, made an extraordinary claim when he launched proposed changes to the regulation of super funds. He said:

It is going to be tough. It is going to be hard particularly for the industry funds. It is going to mean that the representatives of some of the workers on those industry funds, including union officials, are going to start to be held accountable for investment decisions. It is going to force those people to disclose and at times, seek approval, of members if they are going to engage in related-party activities. So if they are giving work to mates they are going to need to seek approval of members of the fund. The days of the cosy relationships in superannuation are now over.

I found Mr Hockey’s claim of ‘cosy relationships’ particularly extraordinary, given that the very next day Mr Hockey appointed Mr Baume—former senator, former Consul General in New York and confidante of the Prime Minister—to the independent Superannuation Complaints Tribunal. If that is not a cosy relationship, I do not know what is. When I asked Senator Coonan, on notice, what Mr Baume’s qualifications as a member of the tribunal were, she replied:

Mr Baume has had a long and distinguished career in parliament ...

A quick search of the Hansard over this long and distinguished career reveals that Mr Baume said next to nothing about superannuation. Despite his appointment to this independent tribunal, Mr Baume continues to act as a shamelessly partisan newspaper columnist in defence of the worst policies of this government. On 15 May this year, I asked Mr Hockey’s successor, Senator Coonan, on notice, whether APRA, the prudential regulator, had any evidence to support Mr Hockey’s wild claims about industry funds and whether APRA had ever provided Mr Hockey with any such evidence. Senator Coonan’s answer was short and to the point: ‘No. No to both these questions.’ In other words, Mr Hockey’s comments had no basis in fact. They simply reflected the blind prejudice of the Liberal Party towards any outcomes reached through cooperation between employers and trade unions. Despite disowning Mr Hockey’s comments—and, if the draft of the Superannuation Working Group is anything to go by, most of his ideas for the regulation of superannuation—the new minister, Senator Coonan, has made similarly inaccurate statements of her own. On 14 May, in response to a question from my colleague Senator Buckland about this government’s tardy response to the Commercial Nominees debacle—a case of theft and fraud in superannuation—Senator Coonan made the following outlandish claim:

... Labor’s union masters are responsible for $200 billion in investment assets. This, of course, is a wonderful fund for the union movement’s political wing here in the Senate.

It is worth reiterating that at no stage has an industry superannuation fund made donations to the Labor Party—or any other political party for that matter. Again, it highlights the remarkable degree of paranoia on the part of this government that Senator Coonan seems to believe that some of Australia’s most high-profile employer groups, such as the Australian Industry Group, who are joint trustees of many of these funds, would conspire with unionists to divert superannuation monies to her political opponents. Since then I think even Senator Coonan has tried to hide the stupidity of the remarks she made on those occasions. When challenged on this issue in question time on 22 August, Senator Coonan had the President rule the question out of order. Had she possessed a shred of evidence to justify her wild and inaccurate claims, she could have come into the chamber and presented it to the Senate. Not to be outdone by his more senior colleagues, Senator Ferguson, during a debate in this chamber on 26 September—when dealing, amongst other things, with this government’s failure to provide for adequate superannuation fee disclosure—posed this question:

If you want transparency in superannuation and you want to talk about showing everybody the exit fees and charges, why do you not tell us how much Bernie Fraser is being paid to do his ads for Cbus? Where does that appear on the balance sheet—or is he being very generous in his retirement and saying, ‘I’m prepared to do all of these ads for the industry fund for nothing.’

Senator Ferguson did not need to ask the Labor Party about Mr Fraser. He could, and he should, have asked Cbus before making those remarks—and in a highly accusatory manner. On 2 October, Cbus wrote to Sena-
tor Ferguson, informing him that Mr Bernie Fraser does not receive payments from Cbus or from industry funds for his involvement in these advertisements. It seems that Mr Fraser really is prepared to do all of these ads for nothing. This may come as a profound shock to Senator Ferguson and others in the Liberal-National Party government, but most trustees on superannuation funds are honorary. They receive nothing for the tireless, dedicated work that they do on behalf of superannuation fund members.

This is the issue at the very core of the Liberal government’s approach to superannuation: they simply cannot believe that representative trustees would be motivated by anything other than financial reward. Trustees appointed by employers, employer organisations and trade unions, or elected by members, overwhelmingly are not paid. The Liberal Party mindset requires the invention of secret ulterior motives such as the diversion of funds to the Labor Party, even if such accusations are untrue. The Liberal government simply cannot stomach a successful stakeholder system of governance, particularly when the governance of too many Australian corporations, most of whose directors and executives are handsomely rewarded, has been shown to be wanting. The government would do much better to focus on ensuring that this country does not produce another Rodney Adler or a Jodee Rich rather than to focus on its delusional vendetta against superannuation trustees.

What is most galling for this government is that nonprofit superannuation funds with representative trustees outperform the for-profit sector on every criterion, including investment return, safety and fees and charges. For example, an independent research organisation, Rainmaker, which monitors fees and charges, reported that for 2001-02 retail superannuation products lost on average 4.7 per cent, while nonprofit superannuation funds such as industry and corporate funds lost 2.3 per cent. The company responsible for Australia’s worst case of superannuation fraud, Commercial Nominees, was a for-profit trustee company. Where fraud or mismanagement has occurred in nonprofit superannuation funds, it is where employers have established funds without genuine employee representatives. In the draft report of the Superannuation Working Group, the prudential regulator stated:

The equal representation rules for trustee boards of standard employer-sponsored funds provide balanced representation of employer and employee interests. They are conducive to active member interest in the prudent management of these funds. This benefit exceeds the cost of finding and appointing members who are capable of undertaking trustee duties.

This is the exact opposite of the sort of ideologically motivated misrepresentations coming out of this government. A report prepared for the Investment and Financial Services Association by Phillip Fox actuaries and consultants, which was presented on 9 April this year, showed that member costs as a percentage of assets were 0.95 per cent for nonprofit corporate funds, 0.43 per cent for public sector funds and 1.18 per cent for industry funds—and these costs were coming down. This compares favourably with the 2.34 per cent for-profit personal funds and 2.5 per cent for so-called retirement savings accounts offered by banks. The cost of these products is rising. In other words, in the for-profit sector the costs of fees and charges and particularly commissions are double those of the not-for-profit sector. An additional explanation for the government’s attitude to some superannuation funds is that they do not really believe in, and never have believed in, universal superannuation at all. It was the Liberal Party that opposed the Labor Party and then Treasurer Keating’s initiative for universal superannuation for all Australian workers. They have continued their white-anting, their incorrect claims and on many occasions their false claims against the success of the Australian superannuation industry.

Information Technology: Unsolicited Emails

Senator GREIG (Western Australia) (1.15 p.m.)—This afternoon I want to talk about an issue which anyone who is a regular user of the World Wide Web or just an email user would have found is at best a source of uninvited advertising or at worst an unmitigated nuisance, and that is the issue of spam.
The definition of spam is unsolicited bulk email or junk email which is used to promote a wide variety of products and services—everything from Viagra to household goods and invitations to visit pornographic web sites. It is possible for spammers to send 10 million or even 100 million spams per day without paying for them. What is more, it has been reported that this multimillion dollar industry accounts for an estimated 20 per cent of all email traffic in Australia and this figure is growing.

Earlier this year in my home state of Western Australia a landmark case over spamming between a WA marketing company and an individual Internet user raised some very interesting legal and ethical issues. It also highlighted the need for legislation or other urgent action to address the ever-increasing problem of junk email in Australia. The court proceedings were undertaken by the directors of a Perth IT marketing company called the Which Company, trading as T3 Direct, which filed claims for damages against an individual alleging his action had harmed their business.

It is often the case that originators of spam conceal their identities in such a way that the receiver of the unsolicited email cannot respond, nor request their details be removed from mailing lists. The individual concerned, Mr Joseph McNicol, who in this case became the defendant, has been described as a fearless spam fighter, and defended his case through the District Court of Western Australia. The court heard that Mr McNicol had placed a message on an Internet discussion group complaining about receiving spam from T3 Direct. T3 Direct sued Mr McNicol for allegedly getting the company blacklisted on an antispam web site. In a preliminary hearing, the Which Company increased its claim against Mr McNicol from the original amount of $45,000 to $250,000, the amount the company claimed it had lost through Mr McNicol’s actions.

I am very pleased to say that Mr McNicol was ultimately successful in his defence. The District Court of Western Australia dismissed the law suit, describing it as ‘speculative’ and based on propositions the plaintiff ‘knew to be incorrect’. This legal action highlights the need for laws to provide protection for everyday Internet users who should be able to choose whether or not they are to be bombarded with unrequested emails. Similar jurisdictions around the world are already well on the road to enacting laws against spamming, but Australia is lagging well behind. Court proceedings like those of Which Company v. McNicol will, I fear, become more and more prevalent.

The government needs to follow the example of places such as the state of Washington in the United States, where it is an offence to send junk email to an Internet user who has registered their email address on a government monitored web site banning such email. In other parts of the world, the practice of bulk emailing is severely restricted, to the point where commercial emails can only be sent to an Internet user where a pre-existing business relationship exists. An article in the *Sunday Age* on 8 September this year said that America’s Federal Trade Commission had filed civil lawsuits against six individuals who used a massive spamming campaign to promote a pyramid investment scheme but that, in general, governments have not done enough to tackle the problem.

In Europe, various countries are tightening laws regarding junk email even further to close loopholes in laws which were supposed to be the answer but which in time have proven not to be. The only action this government has taken regarding the Internet has been the heavy-handed censorship laws of the Minister for Communications, Information Technology and the Arts, Richard Alston, which simply resulted in stifling the free flow of information via the Internet. Despite that law being two years in the making, it took a mere 27 minutes for many users of the Internet to bypass it.

According to eMarketing, an online survey company, Australia, with a population of over 19 million people, has approximately five million Internet users. This means that Australia makes up just under one per cent of the number of people worldwide who are currently considered Internet users and yet, incredibly, Australia also accounts for the creation of about 16 per cent of junk email.
worldwide. This means Australia is now producing 16 times more junk email than one would expect, given our relative Internet population. If Australian laws remain as lax as they are at present the percentage of spam emanating from within Australia to email addresses right around the world is likely to skyrocket. Australian Internet users have been complaining long and loud about the issue of junk email, but the government is failing to take proper action. Despite rhetoric and even a survey or two, there has still been no direct action. The only way to protect Internet users is to take legislative action against unscrupulous Internet practices, including spamming.

Mark Reynolds, President of the Western Australian Internet Association, says his association includes as a part of its standards that Internet provider members will not participate in the practice of spamming. He says the Internet provider members were the driving force behind the desire to have such a standard because they constantly have to deal with irate clients sick of receiving junk email. Organisations such as the Coalition Against Unsolicited Bulk Email, Australia, CAUBE.AU, have been calling on the government to take some form of action for several years. That organisation has made a number of submissions to parliament on this issue with its latest being submitted as recently as April this year. Troy Rollo, Chair of CAUBE.AU, is one of the litigants in a case against a junk emailing firm claiming damages for ‘trespass to chattel’. According to Mr Rollo, his group took the step of civil legal action because there were no legislative laws in place and such action would be at least some form of precedent.

In February, the Minister for Communications, Information Technology and the Arts, Senator Alston, directed the National Office for the Information Economy, NOIE, to investigate the issue of junk email. According to many in the Internet industry, it was definitely a case of ‘better late than never’, and NOIE responded by commencing a survey into how Internet users felt about various Internet issues, including spam. NOIE has now completed its report on junk email as requested by Senator Alston. It is good in parts but fails to recommend any sweeping changes to address the overall problem. Internet users and organisations have been calling for action from the government on this issue for many years but, understandably, their patience is wearing thin.

The police, both state and federal, already have enough to deal with without also being responsible for tracking down spammers. A far better solution is to have legislation which allows the receivers of such email to take their claims to small claims tribunals or similar and seek minimal damages. This process is currently being implemented in overseas jurisdictions. Internet service providers should also be able to take action against spammers for damages based on the effort required to clean up after a spam run. Until the government takes action, the issue of junk email will only escalate further and Australia will become the worldwide hub for spamming.

Home Loans: Never Pay Rent Again

Senator MACKAY (Tasmania) (1.24 p.m.)—I rise to speak today about a company operating in my home state of Tasmania, Victoria and, I am advised, some other states that is providing— and I use the term advisedly—home loans on what is known as an ‘instalment purchase contract’ to low-income earners. This company is preying on those who can least afford it by charging outrageous and exorbitant costs for the privilege of lending money to people who are considered to be in a high-risk category due to the fact that they are unemployed or a sole parent. The company concerned benignly refers to these as being like a lay-by transaction, except you get to live in the premises while you pay it off. That is the way it is characterised. This particular company, called Never Pay Rent Again, buys up low-cost houses, doubles the price and then adds a premium of at least another $20,000 onto that price simply because, the company says, it takes all the risk by lending money to high-risk people. The interest rate charged to customers is not disclosed in the contract and is set between two per cent and five per cent above what financial institutions currently offer. An extra two per cent is charged to those who make regular payments and five
percent to those whom the company considers are higher risk.

The properties being sold by this company are on what are called vendor terms. This means that the vendor dictates the terms of the contract of the sale of the property. The company retains the certificate of title in its name until the final payment is made. The only form of protection that the purchaser has is by their solicitor placing a caveat on the premises to protect their equitable interest in the property. For example, I have been told of a case where a woman wished to purchase the housing commission property formerly owned by her parents. The parents had sold the property to the company Never Pay Rent Again for $35,000. This company negotiated to sell the same property to the daughter for approximately $70,000. Another $20,000 was added to this price for what the company terms 'company risk', making the final purchase price $90,000 on a property originally sold for $35,000. Depending on how much of a credit risk the company assessed her as, she would have been up for an extra two percent above the current interest rate for repayments. Thankfully, in this case, after seeking legal advice this woman decided not to proceed with the purchase. However, many other people have not been so prudent or able to get additional legal and financial advice.

The unscrupulous directors of this company are buying up low-cost, ex-housing commission properties in Tasmania, then adding a minimum of $20,000 onto the purchase price to cover their risk of lending money to what they regard as a high-risk group of people, not disclosing the true and full cost of the loan offered in the instalment contract, and not disclosing the interest rate for the loan but saying that it 'will be reviewed from time to time'—to quote directly from the contract—although no actual figure is stated in the terms of the contract. They are targeting people who qualify for assistance from the Streets Ahead program, which operates in Tasmania, but who are unaware of their eligibility for the program. I have been told that this company is sending out the contracts for sale and then a week or so later the company director flies in and signs these people up at the local community hall, where they are put under pressure to sign up so the contracts can be collected.

The target group of people for this unscrupulous company often have little education or they have literacy difficulties. They are therefore reluctant or do not have the resources to approach lawyers or financial advisers to obtain advice regarding the contract for the sale of the property. This company is specifically targeting single mothers aged in their early 20s and early 30s, as well as unemployed people and people who are bankrupt. I find it particularly reprehensible that this company is blatantly targeting and then taking advantage of these people who can barely afford housing in the first place and who will end up paying many, many times more than the original purchase price. The risk that these people may lose everything is extremely high as any breach of the contract, regardless of how minor it is, will—according to the contract—give the company the right to rescind the contract and the purchaser will lose all moneys they have paid into it. If the property burns down, the insurance money goes to the company, which then retains the discretion to give any of the money to the purchaser.

The company are telling purchasers that, if the property is sold, they will keep the house—they will just be making repayments to someone else who has purchased the company's interest in the property. If the purchaser wants to make any cosmetic changes to the premises, they have to have permission from the company—even to paint the walls. If they do not obtain permission from the company, then as far as the company is concerned they have breached the contract and are liable to lose everything they have paid so far. In my opinion, this document reads more like a 25-year lease agreement than a housing loan. This is despicable and blatant preying on those who can least afford it by this company called Never Pay Rent Again. I remind honourable senators that they are not just operating in Tasmania. We know they are operating in Victoria and they may well be operating in other states.

These are the unscrupulous dealings of two people in particular: George Mihos and
Mannix Rousseau, who are responsible for exploiting Tasmanian people who are unable to get housing loans. Immediate measures should be implemented to stop the outrageous exploitation of young mothers who are desperate to provide a home for their children that is their own home. In my home state of Tasmania, the Attorney-General’s office is currently investigating whether the contract is in fact legal and binding. I exhort other senators to take this up with their state governments as well.

I believe that this contract will be found to be in breach of the Consumer Credit (Tasmania) Act and therefore will be declared illegal. That is my belief, and certainly my aspiration and hope. The Tasmanian Department of Justice and Industrial Relations and the ACCC are also inquiring into the legalities of this company, and I pay particular tribute to those two organisations for the work that they are doing. I believe the Tasmanian Department of Health and Human Services is now looking at reviewing their criteria for sale of low-cost ex-housing commission properties. My hope is that people who have paid out money to this nefarious company will not be left financially disadvantaged, with only debts as a result of their exploitation—and there is no other way to put it.

I congratulate those Tasmanians who have had the intestinal fortitude to come forward and make complaints about this company. I congratulate them for doing that. On the grounds of coercion and harassment, this is what they are alleging. I know that for people unfamiliar with the legal and regulatory system this can be a difficult thing to do. I understand that, and I think all senators understand that. I bring this matter to the Senate’s attention in order to—and I am not making any bones about it—expose the unscrupulous dealings of this company called Never Pay Rent Again and the actions of George Mihos and Mannix Rousseau, who in my view are exploiting vulnerable people in Tasmania. I seek leave to table a copy of the contract from Never Pay Rent Again, with all the commercial details identifying anybody having been blacked out. I point out to the Senate that this has been signed by the same George Mihos.

Leave granted.

Senator MACKAY—I thank the Senate for its leave. As I said, the Tasmanian state government is acting on this matter. I urge senators from other states to check whether this company is operating in their state as well. My information is that it certainly is in Victoria, and it may well be in other states. This is an absolute disgrace. This brings everybody who is operating in this sector of the industry into disrepute. This is a disgrace. I cannot tell you how angry I am about it on behalf of those people who have come forward. This issue has had some coverage in Tasmania. I am seeking the opportunity today under privilege—I make no bones about that—to lay out the entire story for the people of Australia and for the people of Tasmania. I thank the Senate for its attention.

Agriculture: Sugar Industry

Senator HARRIS (Queensland) (1.34 p.m.)—I rise to speak about the crisis in the Australian sugar industry. In starting my comments, I would like to acknowledge that they are directly from a Mrs Margaret Menzel, who has given her permission for this to be read into Hansard:

... we are being forced to sell our sugar for an artificially low price by a Qld Govt. Ministerial Directive!

NO OTHER SUGAR PRODUCER IN THE WORLD IS FORCED TO DO THE SAME—We are asked to buy water from the same Gov. for $37.34/megalitre which is considerably more than the independent findings of the Marsden-Jacob Report calculations of $25/megalitre as full cost recovery. WE ARE AWAITING A QCA DECISION WE TRUST WILL RECTIFY THIS EQUITY!

The Federal Government have pitted us against the Multinational Corporate giants and the other sugar producing countries of the world, all being paid subsidies on their product. How then is this OUR FAULT if we are being forced to sell our product below the input costs of producing this product? Why is it the fertiliser/fuel/chemical/water/electricity/wages/machinery etc. costs we pay are not “WORLD PARITY” COSTS also?

... … … … …
Here in Australia, we are paying 1st World costs and receiving LESS than 3rd World countries are paying their sugar producers—the reasons given by the Federal Government include their wanting Australia to show the way for other countries in the Global Trade Market. How is it then that we are asked to bear the full brunt of trade reform; yet wages, input costs, Retail prices, etc. all continue to rise while the world sugar price continues to fall? If we are on a level playing field, how is it that NO-ONE ELSE in the world has shown up to play?

A comment by Pascal Lamy is worthy of note here—what a pity our politicians don’t appreciate us the same way and in fact don’t seem to understand that “EVEN FARMERS HAVE TO COVER COSTS”.

At a WTO conference in Seattle, Mark Vaile, Then CANEGROWERS chairman Harry Bonanno and General Manager, Ian Ballantyne came up against Pascal Lamy, Trade Commissioner for the European Union who said, “In Europe, we have seven million farmers who we believe have another function than just producing food. These people are useful for our environment, they’re important for family structure, for our society, they’re important for our landscape. We have to pay for that. Our taxpayers agree to pay for these functions which our farms, for the number they have and the relatively small size of their farms, do bring to our society. We want to keep these farms by keeping the sort of protection through subsidies which we give to our farmers. If we apply the market rules, they will disappear and we will have problems, which in our view, would be more costly to society.”

I would like to justify a mandate for the ethanol industry. Ethanol is a renewable energy source which comes from cane, grain etcetera and which can effectively replace non-renewable energy sources without material loss in energy efficiency. Ethanol is a non-polluting oxygenate. As a clean-burn fuel, exhaust gases from ethanol blends contain lower particulate mass, posing a lower risk of cancer-forming compounds.

Establishing a defined market for ethanol will create an onshore market for sugar and grain, with great potential for fixing a floor price for produce, based on the less volatile transport fuel industry. At the moment, world sugar prices are very low and are subject to market influences from the Third World production system. The grain price is also affected by US farm subsidies. Direct employment from the operation of the 60 million litre Dalby grain ethanol plant is 34 jobs. The Queensland ethanol 10 market would require approximately 320 million litres of production for ULP and PULP. This equates to the direct employment of around 180 full-time employees. PwC estimates that the Dalby grain ethanol plant will indirectly generate 185 jobs. Thus, indirect employment in the ethanol based industries—transport, distribution and growing opportunities—would be around 990 jobs.

The sugar industry has initiated numerous reforms and has undergone a number of inquiries, all ending at the farm gate. Any schoolchild can work out the maths: if farmers are being paid on average approximately $18 per tonne of cane, equivalent to $220 per tonne of sugar, and customers are paying $1.38 per kilo for sugar, equivalent to $1,380 per tonne of sugar, on the supermarket shelf, consumers are being ripped off somewhere in between. They are definitely not being ripped off by the primary producer.

No other country produces as sustainably or as effectively as Australian producers. Brazil is woodchipping its forests at an enormous rate, to the detriment of our sugar and now our cotton industries, yet our government rewards its environmental vandalism and inefficiency—in some cases they are still hand-cutting cane in parts of Brazil—by providing funds to the World Bank to prop up the Brazilian currency. It seems that the ‘wealth for toil’ part of our national anthem will have to be rewritten, excluding rural Australians who have been reduced to a state of penury while bolstering the profits of corporate Australia and the incomes of subsidised farmers in other countries.

So what are the environmental benefits of ethanol? For each 1,000 litres of ethanol, when mixed with petrol at a rate of 10 per cent, we will reduce carbon dioxide emissions by 1.58 tonnes. Ethanol also stimulates more complete combustion, reducing the amount of carbon monoxide formed by 30 to 40 per cent. Another benefit of ethanol is that ethanol-petroleum blends produce fewer greenhouse gases than straight petroleum
equivalents; thus their use enhances management of greenhouse gas emissions and global warming. Ethanol can be produced from organic waste streams such as molasses, a waste product of sugar production, and the use of rain damaged grain and fruit crops, or from other primary produce. Ethanol is a highly biodegradable fuel and there is some potential to make use of 100 per cent ethanol standing generators, as manufactured by Scania, to replace diesels.

Taking an overall view of the sugar industry, the program initially put forward by a group of sugarcane producers in North Queensland was for a levy to be placed on the sale of sugar products within Australia and for that money to go into a pool similar to that which operates in the dairy industry and, for the first year, for the money from that pool to be disbursed to the growers on the basis of their cane allocation. That is critically important because, if we look at the industry right across the board, we have large private producers, we have some corporate producers and we have smaller, family producers. Irrespective of whether producers are corporate, large private entities or medium sized farms, they all have an exposure to debt, an exposure to the costs of the market. It is reputed that, in the North Queensland area, the cost of production of a tonne of standing cane, cut and ready to deliver, is in the vicinity of $23 to $25. The Burdekin area, because of the additional cost of water, has an additional $6 per tonne of cane factored into the cost.

The proposal put forward by both the Commonwealth government and the Queensland state government has been resoundingly rejected by the cane growers because of its intention to distribute the money through Centrelink. A situation is being proposed where farmers would have to go into Centrelink and take in their tax returns and all of their financial details, and only if they fixed assets were under a certain level would they be able to access the benefit of the proposed scheme. The growers were asking for immediate help, right across the range of producers, and to achieve that by having the levy put into a pool and then disbursed based on the per hectare allocation for each of the growers. The growers have met continually in North Queensland to convey this message to both the Commonwealth government and the state government. In concluding, I would like to cite a passage from Mrs Margaret Menzel’s letter. She writes:

As supported by grassroots cane growers throughout Queensland and voted unanimously by the state canegrowers council at their June board meeting—support in the form of a domestic levy on sugar consumed in Australia could be collected in much the same way as the airline levy is now collected, Australia-wide and would be distributed equitably across all sugar-producing states to individual growers to enable them to cover their costs of production and remain viable within the current corrupted world market.

I seek leave to table the document entitled Australian sugar industry: the crisis ... the realistic solutions as circulated to senators.

Leave granted.

Veterans: Home Care

Senator MARK BISHOP (Western Australia) (1.47 p.m.)—I rise today in this debate on matters of public interest to draw the Senate’s attention to a further erosion of services to veterans and war widows which has been caused by the Howard government’s dramatic reduction of home care services under the Veterans’ Home Care scheme. The Veterans’ Home Care scheme was initiated by the Howard government in the 2000-01 budget in the usual triumphant way, with fanfares and press releases to the veteran community extolling its generosity and expressing all the usual mock concern about the needs of veterans and war widows in growing older—in the same way it trumpets every indexation increase to pensions, which are automatic, and every other dollar spent, as if good government were measured in monetary terms alone.

As the Senate knows, prior to this program, veterans and war widows requiring assistance to stay in their homes, rather than enter residential care, in general availed themselves of the Home and Community Care, HACC, program, which is jointly funded by the federal government and the states and administered on the Commonwealth’s behalf by the Department of Health.
and Ageing. Additionally, veterans and widows can receive personal care from community nurses contracted by the Department of Veterans’ Affairs and avail themselves of the Home Maintenance Helpline, whereby for a commercial fee veterans can get maintenance tasks undertaken by accredited tradesmen.

As we know, the point of all these programs is that the longer ageing people can be kept in their own homes the longer they can avoid institutional care—which is so much more expensive—and can retain the quality of life which comes from living in their own surroundings. The home care program offered no more to veterans except the convenience of having these services all delivered through one agency, namely the Department of Veterans’ Affairs. In brief, services flowing from an assessment could include domestic assistance, personal care, house and garden maintenance and varying levels of respite care. For this, veterans pay a $5 copayment and for personal care they pay $10 per hour.

Given that the proposal offered continuity of care under one agency, it was clearly supportable, particularly as it proffered some additional quality of life for veterans. It also offered to free up additional funds for HACC, as 20,000 veterans would be transferred out of HACC into home care. There were some concerns, however, beginning with the supposition that, for a cost of $62 million per year, there would be $80 million worth of savings based on the assumption of reduced health costs and reduced incidences of institutional care. To give some assurance that those savings were indeed genuine, an evaluation was committed to, eventually being contracted to the University of New South Wales, on which I understand an interim report has been provided but is being kept very secret.

This new program, while appearing to be like HACC, is administered by different means. Rather than being delivered by the states, largely through voluntary, non-government and community based organisations, home care is delivered by the Department of Veterans’ Affairs through contracted agencies on a regional basis, using professional staff and subcontracted service providers. Compared with HACC, it is a high-cost model. The annual budget is divided among the regions, based on some demographic formula. By means of a sophisticated system, all services are centrally recorded and accounted for. The agencies, it seems, have the responsibility for managing all the services, including the apportionment of services and the funding needed. Assessments of individual needs are conducted by telephone by these agencies according to a common standard, and reviews are supposed to be conducted regularly against the standard to ascertain continuing needs.

That sounds like a fine model—in fact a Rolls Royce by HACC standards—but the rub seems to be that, unlike any other veterans’ program, the program has a fixed budget. That means that, if more veterans apply for the service and funds are fully committed, the cake must be cut into smaller pieces; hence, we now have some dramatic reductions in services to veterans in many areas of Australia. Without any advice to veterans, many agencies have had their funding allocations dramatically reduced for this financial year, leaving the agencies to pass on the news to veterans and widows that, despite their assessed needs for care in their own homes, their services are to be reduced. That is now leading to some very unsatisfactory consequences in that veterans, having been promised the world, are now in some cases having the standard of their service reduced to a level where they would have been better off under HACC. And, as I understand it, some are doing just that—going back to HACC.

My colleague in the other place the member for Braddon in fact raised this issue in the adjournment debate last Monday evening, citing the circumstances of an agency in North-West Tasmania. The budget for that particular regional contracted agency had been reduced from $311,000 to $228,000 this year—a cut of $83,000 for an increased list of veteran clients. There is therefore no choice for the agency—the 300 veterans on its books must have their services slashed to meet the budget cuts and no new clients can be taken in. So a waiting list has been drawn up, and those in need who cannot be satisfied
are referred back to HACC, which is struggling to meet the demand. The same tales are also coming out of other states.

For the agencies, this of course is a real problem because they in turn have contracts with their subcontractors for agreed levels of service, all of which now need to be reviewed and written down. So administratively this program has become a nightmare.Imagine the concerns of veterans who are now told that what they were once assessed as needing is no longer available and, by inference, that their ability to remain in their own homes is similarly reduced. This is indeed the situation in a number of cases that have been referred to me, including those of TPI veterans who were interned by the Japanese on the Burma railway. One man has had his house and garden allowance totally removed, and no substitute is available under similar conditions. I am advised that this is a relatively common story. A representation I received just yesterday from the North Coast of NSW states:

Veterans have had their hours reduced by half in most cases without notification from Veterans’ Affairs.

Care plans may have a three month life span and when a new care plan is received a month after the expiration of the initial plan the hours have been reduced by half. The impact of this is—service has been operating for a month without a care plan only to find that the next plan has reduced hours, however the organisation is out of pocket for staff hours in the interim.

Information regarding changes should come to all organisations so that we are equipped to answer queries from consumers.

HACC services have replaced veterans who changed to Veteran Home Care and now do not have the capacity to service veterans with reduced hours who want to change back to HACC services.

This seems to encapsulate what is happening more broadly—to the detriment of agencies and their subcontractors but most of all to the detriment of veterans and widows who have been misled by false promises and are now trapped. Moreover, this growing debacle also raises the question about the integrity of the program’s aims, because clearly it is failing to deliver what was promised. If it is failing to deliver what was promised, it is also failing to realise the savings projected—namely, $80 million per year. But then this is not a new phenomenon, as it seems to me that very few departmental savings options are ever realised, thus corrupting the whole budget process.

I regard this as a very serious matter and I am amazed at this routine whereby agencies and their ministers can bid for what is called ‘new policy’ on the basis of offsetting savings and then blithely forget the savings, take the money and press on spending. In fact, this is one reason we see budget overspends, and it is particularly the case with Veterans’ Affairs, where most of the budget is funded through standing appropriations—that is, open-ended funding, where what is demanded is paid. This then also begs the question about the adequacy of estimating processes; as we have seen in Senate estimates, adequate answers have not been forthcoming.

The home care program is a case in point. First we are presented with what seems to be an eminently good idea, which we support—that is, that retaining veterans in their homes is preferable and more cost effective than institutional care. So far so good, but then we look at the savings. True, there is some logic to the proposal and, yes, one would expect savings in the health budget, but how much? Where was the $80 million promised in the measures estimated? More importantly, how will it be measured in a budget in which there are few controls and so many variables?

In this context I refer to answers I routinely receive in the Senate estimates, in response to my probing on the adequacy of estimates, that overspend on veterans health, despite falling numbers, is due to shifts to higher cost services due to ageing and the use of higher technology. Frankly, that is too easy and it should not be accepted without hard evidence, simply because there are so many other factors, such as program design and policy, which are equally responsible. We in this parliament vote annually to appropriate this money, yet at the same time we can have little confidence about the advice we are being given by the government as to...
the accuracy of the estimates on which it is based.

It seems to me that the much vaunted Charter of Budget Honesty is a fraud. I note to the Senate that I currently have on the Notice Paper a number of questions trying to get to the heart of this very issue because, as sure as night follows day, the department will be back for additional estimates which, as we know, can totally change budget figures. The example of home care is therefore interesting in that, unlike most other veterans programs, it seems to be fixed. So if demand increases, some will miss out or others will be cut. In terms of budget certainty, this is probably a good thing but it does demand that program design should take that limitation into account, and clearly it does not here. So again, like the gold card, we have another magnificent promise in the process of being diminished and broken.

The 20,000 veterans estimated as transferring from HACC are probably ruing the day they transferred, and the agencies are probably regretting doing business with the Department of Veterans’ Affairs. Contracting agencies are very worried about their business viability and of course are not happy about their task on behalf of the government—cutting back services to those they have assessed as in need, in good faith, in line with government guidelines. Veterans affected have very good cause to be angry and disappointed. The gloss has gone already and that is very sad because, with a bit more care, the same outcomes may have been achievable.

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Indonesia: Terrorist Attacks

Senator MARSHALL (2.00 p.m.)—My question is to Senator Hill, the Minister for Defence. I refer to the minister’s comment this morning on Radio National that he ‘didn’t know’ whether the government received intelligence from Australian intelligence agencies on conversations they are reported to have intercepted between Jemaah Islamiah operatives, in which there was discussion of attacks on Australians. Has the minister had a chance to confirm whether this intelligence was in fact obtained? Can the minister inform the Senate what action was taken by his department after receiving this intelligence? Will the minister also indicate whether this intelligence was obtained before the bombings in Bali on 12 October?

Senator HILL—I have now been advised that the relevant Australian agency and its US counterpart searched their databases this morning and have not found a report matching that mentioned in the media out of Washington.

Senator MARSHALL—Mr President, I ask a supplementary question. Will the minister request the Inspector-General of Intelligence and Security, Mr Bill Blick, to examine this specific intelligence as part of his inquiry into what information was available to the government before the terrible bombing in Bali?

Senator HILL—As the Senate and all Australians know, that is the task that has been put to the inspector-general: to search the records of the agencies, to reassess their assessments, to give confidence that there was not something that was missed and, beyond that, to see if there is anything that can be learnt from this experience. In addition to what I have just said to the Senate, the agencies, in searching their records, have also identified no material that specifically warned of the Bali attack.

Indonesia: Terrorist Attacks

Senator EGGLESTON (2.02 p.m.)—I have a question for the Minister for Health and Ageing. Will the minister update the Senate on her recent visit to many of the public hospitals around Australia which are treating the victims of the terrorist attack in Bali?

Senator PATTERSON—I thank Senator Eggleston for his question. I also thank the management and staff of the hospitals. To have a ministerial visit, especially when they are under stress, adds yet another pressure. I appreciate the time and effort they took in organising my visits. The purpose of my visits was not just to thank the hospital staff on behalf of the government; I took the liberty of thanking them on behalf of all members of the federal parliament. The medical staff, the
management of the hospitals, ancillary staff such as the catering, security and cleaning staff—all of them—pulled out all stops in the hospitals that I visited. I want to express my gratitude to all of them, because without them all pulling together it would not have worked.

On Friday I visited the Alfred hospital in Melbourne. On Monday I visited Royal Darwin, Royal Perth and Sir Charles Gairdner hospitals, and I met staff from Princess Margaret and Fremantle hospitals. Yesterday I visited the Royal Adelaide Hospital and I am hoping to visit Concord hospital on Monday. At each hospital it was impossible not to experience the intense mixture of emotions that was etched on the faces of the medical staff and all the other staff: the joy of seeing some of their patients improving and the grief and devastation, despite herculean attempts not only on the part of the staff but also on the part of the families and patients, that some of them failed to survive.

At each hospital there are stories of incredible charity. At one hospital, a cleaning staff member found that an overseas visitor had arrived without toiletries, so they took money out of their own pocket to buy toiletries for the relative. In other hospitals, staff had come in from holidays. In Royal Perth, nurses who had left the hospital 10 years ago reappeared and joined the staff. There were just amazing stories. In the four minutes available, I do not have time to do justice to every story that I heard. In Darwin hospital they told me that they had not treated as many patients at one time since World War II. Again, the memories of their experiences—the staff were in the first line—were etched on their faces.

On Friday at the Alfred the staff spoke in glowing terms about the Australian defence forces and the tremendous work that Darwin hospital had done under enormous pressure to triage patients. They had expected them to come into the hospitals in the south in much worse condition and they waxed lyrical about the incredible skills and the dedication of the ADF personnel and Darwin hospital staff. Great credit should go to the staff. They had just finished emergency training and finished the paperwork on Friday. Little did they know that they would have to put it into action so soon. There were spontaneous comments about that. As I have said, there were stories of doctors who came in off duty. For example, in the Adelaide hospital they had a meeting on Sunday afternoon—doctors came in from leave—and 15 doctors and nurses were in Darwin by Sunday night. That is extraordinary. They were able to get the minister to enable them to assist in Darwin. I am sure that I will hear similar stories when I visit Concord.

The courage of the victims and their gratitude and that of their relatives are a tribute to all hospitals and staff involved. Once again I would like to put on the record the parliament’s appreciation of all those involved in the care and treatment of the Bali victims.

Health: Breast Prostheses

Senator HUTCHINS (2.06 p.m.)—My question is to Senator Patterson, the Minister for Health and Ageing. Is the minister aware of the inadequate arrangements, which differ in each state and territory, for the provision of breast prostheses to women? Will the government support Labor’s proposal that breast prostheses be provided free of charge in Australia’s public hospitals through the upcoming Australian health care agreements to women throughout Australia who have had a mastectomy?

Senator PATTERSON—I thank Senator Hutchins for his question and of course Labor would no doubt pull a stunt like this when we are all concerned about those women who have been affected by breast cancer and who have died as a result of breast cancer. Some 12,500 every year are affected by, or die as a result of, breast cancer. I am aware of the concerns of members. They have written to me about the provision of external breast prostheses for women who have undergone mastectomies. There are issues about Medicare benefits. The Medicare benefits arrangements were designed to provide assistance to people who incur medical expenses in respect of professional services rendered by a qualified medical practitioner. Medicare benefits are not payable for aids and/or appliances including breast prostheses. Funding for such prosthe-
ses, irrespective of whether it is a breast prosthesis, an artificial limb or any other prosthesis, for public patients in hospitals is a matter for state and territory health departments. Some health insurers cover the cost of prostheses as part of their ancillary cover.

The Commonwealth will be happy to discuss the funding of prostheses with the states in the context of the Australian health care agreements, but I remind Senator Hutchins that the states had a $3 billion windfall in the last health care agreement, when private hospital insurance membership went up and we did not claw back the money from the states. With $3 billion they could very well do something about breast prostheses, and I would welcome federal Labor Party members putting pressure on their state colleagues to address this issue. The states are funded to deal with these issues, whether they be breast prostheses or any other sort of prosthetic, and they have had a $3 billion windfall to do so. The number of patients admitted to private hospitals has gone up and the number admitted to public hospitals has gone down. They have had a windfall and they should be able to address it. I encourage Senator Hutchins to go to the minister in New South Wales and encourage that person to do this.

The government have provided unprecedented growth in funding for hospitals through the current agreements and, over the five-year life of the agreements, which ends next year, we have increased our support for public hospitals by around 28 per cent. With this level of funding, I will expect the states to be able to afford prostheses for women who require them.

Senator HUTCHINS—Mr President, I ask a supplementary question. Is the minister aware that some women who cannot afford the cost of a prosthesis have been required to resort to stopgap measures such as the recycling of prostheses of women who have passed away? Will the government use the current negotiations over the Australia health care agreements to ensure that women who need breast prostheses do not have to suffer these same indignities?

Senator PATTERSON—I have just indicated to the honourable senator that the provision of prostheses is the responsibility of the states. The states had a 28 per cent increase in funding in the last round of agreements. They are responsible for prostheses not only for people who have had breast cancer but also for other people who have lost limbs and who require prostheses. I ask honourable senators on the other side of the chamber to put pressure on their state Labor governments to deliver the benefits to their constituents that they ought to deliver, given the Commonwealth’s commitment to the state health care agreements, and to encourage the states to provide prostheses to women who have had a mastectomy.

Insurance: Medical Indemnity

Senator LIGHTFOOT (2.10 p.m.)—My question is directed to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Will the minister update the Senate on what steps the government is taking to help ensure that medical practitioners have access to affordable and sustainable medical indemnity insurance? Could the minister elucidate any alternative policies?

Senator COONAN—I thank Senator Lightfoot for his question and I acknowledge his longstanding interest in this issue. As senators on this side of the chamber would be well aware, Australia’s medical professions have been facing some very real and serious problems in terms of obtaining affordable and available medical indemnity cover. I am pleased to be able to inform the Senate that this morning the Prime Minister announced a package of measures to address rising medical indemnity insurance premiums, which includes long-term measures to ensure a viable and ongoing medical indemnity insurance market.

The government’s package is designed to address two fundamental problems in the provision of medical indemnity insurance which are absolutely essential to ensure that vital health services continue to be provided in this country. The package is designed to address the financial viability of the providers of medical indemnity insurance and the affordability of cover for doctors. To address these two issues, the government has put together a six-pronged comprehensive package. The first prong is financial viability. The
government has agreed to extend the guarantee to the medical indemnity provider UMP-AMIL for a further 12 months. The extension of the guarantee will enable policies to be renewed and provide certainty to UMP members while the provisional liquidator continues to explore options for the restructuring of the business. The guarantee has not been called on to date to meet any of UMP-AMIL’s claims. If it were ever called upon in the future, the cost of the extended guarantee would be funded by members through a levy.

The government will be assuming the unfunded liabilities of medical defence organisations and then later levying doctors to recover the costs of this arrangement over time. The arrangement is to ensure that medical defence organisations are put on a sound financial footing while still ensuring premium affordability for doctors. The alternative to this arrangement would be that doctors would have to fund these liabilities immediately. The levy arrangement enables these liabilities to be funded over at least five years to ensure that premiums for doctors are affordable. It is difficult at this time to say exactly what the levy will be for individual doctors. The liabilities that we are talking about here are highly uncertain. For example, the provisional liquidator has estimated UMP’s unfunded liabilities at between $360 million and $500 million.

The levy will be based on a percentage of premiums. The levy will never exceed the levy imposed in the first year. If it turns out that the unfunded liabilities are higher than expected, the term of the levy will be extended. Certain members, for example retired and student members, will not be required to pay the levy. While the cost is not yet certain, the types of estimates that we expect would work out the cost of the levy being less than 20c per consultation for a GP. The government will require medical defence organisations to be regulated by APRA and to provide insurance contracts to their members. This will ensure that members of medical defence organisations have greater security and will be protected by both the consumer and prudential laws that apply to insurance companies.

As to affordability, the government will be providing subsidies to three groups of doctors facing the most serious premium affordability problems. The government will also be providing a large claims scheme—reinsurance cover funding 50 per cent of claims in excess of $2 million. The measure will directly reduce the costs for medical defence organisations in providing cover, particularly to high-risk groups, and it will reduce the costs of reinsurance and assist in stabilising the cost of premiums. These measures are all designed to assist and to protect doctors and to once again restore the services that people need across Australia.

Environment: Kyoto Protocol

Senator BOLKUS (2.15 p.m.)—My question is to the Minister representing the Minister for the Environment and Heritage, Senator Hill. Can he confirm that the European parliament has passed legislation preventing EU members and companies from trading in carbon credits with countries—like Australia—that have not ratified the Kyoto protocol? What has the government got to say to Australian business, which will now be cut out of what is expected to be a lucrative market in carbon credits because of this government’s refusal to ratify the Kyoto protocol?

Senator HILL—I understand that Senator Bolkus is a little ahead of himself in that draft legislation to establish an EU carbon trading scheme was recently the subject of a first reading in the European parliament. Nevertheless, there are two issues involved here. The first is how Australia can contribute to a better global greenhouse outcome and the second is whether the Kyoto protocol is the best mechanism to achieve that goal. Basically, Australia can contribute to a better outcome through its domestic policies. This government, as Senator Bolkus knows, has a whole suite of domestic policies to achieve the outcome of a better carbon profile in this country. We have put a large sum of public money towards it and we have passed legislation in this place to encourage renewable energy, with little help from those such as the Greens in this place. We have spent a lot of money on solar power, on small hydro schemes—and one can go on. That is con-
tributing to a better outcome from Australia, and a better outcome from Australia in a very minor way can contribute to a better global outcome. I say ‘in a minor way’ because we are such small contributors to the global greenhouse picture—only about one per cent.

The next question is: can the Kyoto protocol in its current form help achieve that better global outcome? Our argument, of course, is that it is not going to achieve that until the United States is brought within the loop, because the US is creating about 30 per cent of the world’s carbon. Therefore you have a choice: you either proceed with Kyoto without the United States and lock the United States out—and that will lead inevitably to an unsatisfactory outcome in terms of global carbon—or you seek to continue to encourage the United States to come on board towards achieving a protocol that can actually accomplish better real benefits.

As for politics, yes, you can play the politics on this issue if you like, but what the government is more concerned about is actually achieving a better greenhouse outcome, and the government’s policies have been directed towards that better outcome and already they are showing some modest successes towards that goal. This government will concentrate on reducing greenhouse gases per capita and per quantum of production in Australia and by doing so will be making a very significant contribution in the right direction.

Senator BOLKUS—Mr President, I ask a supplementary question. The minister had a good time answering his own questions but he refused to answer the question that I asked him, which was: what message does the government have for businesses cut out of a lucrative market? Is the minister aware that the Prime Minister said recently, ‘If we become convinced in the months ahead that it’s in Australia’s interests to sign the protocol, we’ll sign it’? Doesn’t the looming decision of the European parliament make it crystal clear where Australia’s interests lie? Will the government now cut through the gumf, reverse its position and ratify the Kyoto protocol?

Senator HILL—The government does support the goals of the Kyoto protocol and that is why we signed the protocol. We are committed to the target that Australia was given in Kyoto, a difficult target but an achievable target, and we are making significant progress towards it. By doing that we will be actually contributing to a better outcome, rather than just playing the politics. So if we can bring the United States back on board and if we can resolve the issue of leakage to developing countries, then I hope the time will come when we are able to ratify and we have a total global program in which each country shares an equal burden of the cost and of the weight towards achieving the outcome that we are all seeking.

Finance: Housing

Senator BARTLETT (2.20 p.m.)—My question is to the Minister for Family and Community Services, and it relates to this Friday’s meeting of state housing ministers. Firstly, does the minister agree that one of the primary purposes of the Commonwealth-state housing agreements has been to deliver affordable housing outcomes to low-income Australians? Does she agree that many state housing authorities are now no longer financially sustainable or are in danger of becoming financially unsustainable? Is the minister aware that funding for public and community housing has declined significantly, meaning less housing stock for low-income earners? Will the government commit to reversing this decline in housing stock or will it wash its hands of the issue and say that it is a problem for state governments?

Senator VANSTONE—I thank the senator for his question, which follows from his question to me yesterday or the day before—I cannot remember which. I am pleased to see he is not persisting with a view that Friday’s meeting is to finalise: it is simply the second meeting that the Commonwealth will have with the states to progress negotiations on a new Commonwealth-state housing agreement. Yes, Commonwealth-state housing agreements have had, as their main purpose, the provision of housing to low-income Australians—a particular category of that. We are now at the point where, as I understand it, some 90 per cent of recipients of
public housing are on income support and it would be about 87 per cent of those that are on some form of income support, not family tax benefit. It is only about four per cent that might be very low income earners—they are actually earning, they have a job but they are very low income earners—and the only government assistance they are getting is in fact the family tax benefit, the sort of payment back of tax that Senator Coonan was referring to yesterday. There is a very small proportion of people like that.

Senator Bartlett, as I indicated in my answer to you yesterday, there are other groups of low-income Australians who need assistance—those who are not on welfare who might find it much harder to get into public housing and those for whom it may not be appropriate to be in public housing because of its placement at the moment in relation to where the jobs are, its placement at the moment in relation to transport and the limitations that this puts on the flexibility of someone who is genuinely looking for work.

Secondly, you asked me about the financial viability of the state housing authorities. I do not think that is for me to comment on at this point. I would not welcome comment from the states on what they think about the Commonwealth and its financial arrangements. I would not agree with their competence to comment and I do not expect them to agree that we have the competence, or that it is our province, to be indicating whether we think their state housing authorities are viable.

You do invite me, however, to say that I think state and territory budgets are the least transparent in the community services and health areas, and probably all other areas. They are useful in terms of a bottom line, but, as for being useful in terms of telling a community sector group, any interested journalist or an interested bystander where the money is actually going, they are pretty close to useless. Insufficient attention has been paid to the transparency that ought to be in state budgets, which would then allow us to see them and make a competent comment as to the viability of state housing authorities.

The Commonwealth is, of course, committed to assisting low-income earners in two ways, as I told you yesterday—partly by contributions to the states to assist in the public housing stock and partly through rent assistance, which assists those other Australians for whom public housing is not appropriate or not available but who nonetheless need assistance and turn to the Commonwealth for it.

Senator BARTLETT—Mr President, I ask a supplementary question. Does the Minister for Family and Community Services agree with findings of the summit on affordable housing that was held in Canberra yesterday that among the measures that need to be explored is the measure of implementing solutions to increase the amount of private investment that is targeted at affordable housing for low-income earners? Will the minister be putting forward measures at this Friday’s meeting aimed at improving private sector investment in housing for low-income earners?

Senator VANSTONE—I have two responses to that question. I think it is a common view that we would like to see more private sector involvement in low-income housing. There is a range of difficulties associated with that, dealing with the sorts of returns that can go back to the private sector. Some proposals that I have looked at are not realistic, considering the sort of purchasing power you would expect housing tenants to have at the expiration of a long period in order to buy out that housing and considering that you have such dramatic rises in house prices in certain inner-city areas. It is not realistic to go into some of those plans and expect that those people will genuinely be able to buy that house at the end of the time. It is a very difficult situation, but I think it is one where there is common agreement that we should all be looking to see what we can do to increase private sector involvement in low-income housing.

Defence: Budget

Senator CHRIS EVANS (2.26 p.m.)—My question is addressed to Senator Hill, the Minister for Defence. Does the minister support the Prime Minister’s view that increased defence spending will be required in re-
response to the Bali bombing? What sort of increase will be required and what will this increased expenditure be used on?

Senator HILL—If we look at the experience of September 11, what did the government do after that? It increased domestic security in relation to key installations—that cost more money. It increased security in airports and on aircraft, and it significantly increased intelligence, particularly within our own region. It established a second counter-terrorism capability in the form of a second TAG on the east coast of Australia. It established a permanent regiment to deal with chemical, biological and radiological attacks. These are the sorts of responses that the government took after the September 11 experience to better protect Australia and Australian interests from terrorists.

Now, having experienced the horrible bombing in Bali, the government is obviously back at the table again, determining whether further actions should be taken. Obviously, any further actions in terms of protection will cost more money. At this stage, whilst the detail is being considered by the government—and there is no secret about that, because the Prime Minister said publicly that we were doing that—it would be inappropriate for me to speculate. But, looking at our responses on the last occasion, I think it gives some sort of indication of the types of options that are open to the government.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I thank the minister for his answer. In terms of the further actions that the minister says the government is considering, are those largely in the defence portfolio or are they spread across portfolios? In terms of funding any increased expenditure as a result of these measures, is it anticipated that it would require a new defence tax, or would these costs be met by just increasing general taxation revenue?

Senator HILL—The responses are, obviously, across portfolios. In many ways, the most effective response in this area is not a defence response. Defence has a contribution it must make, but it requires a range of other skills and capabilities to best protect Australia’s interests. In relation to how the money will be raised for any additional cost involved in these measures, that will be determined by the government.

Science: Human Cloning

Senator HARRADINE (2.29 p.m.)—My question is to the Leader of the Government in the Senate, Senator Hill. There is a proposed UN convention against human cloning. Given the Prime Minister’s public opposition to the cloning of a human embryo for any reason, is the government using diplomatic efforts to support at least that convention as proposed by the United States and Spain?

Senator HILL—I am advised that there are two resolutions in the Sixth Committee of the United Nations General Assembly on the banning of human cloning: a Franco-German proposal and a Spanish-USA-Mexican proposal. The Franco-German proposal seeks an immediate ban on reproductive cloning and a moratorium on other cloning pending further negotiations. The Spanish-USA-Mexican proposal calls for an immediate ban on all cloning, both reproductive and therapeutic. Australia is finalising its position in relation to those particular resolutions. However, the government will best ensure that any resolutions and negotiations for a UN convention on human cloning are consistent with its own legislation.

Senator HARRADINE—Mr President, I ask a supplementary question. Is not the proposed legislation to ban the cloning of a human embryo for any purpose? Is the minister aware of the fact that the Australian Health Ethics Committee condemned the use of the word ‘therapeutic’ as used by the minister, stating that it was a misleading term as it is not very therapeutic for a human embryo to be dissected of its stem cells? What is meant by the minister’s response to my question? Are the government leaving the door open for human cloning for that purpose?

Senator HILL—No, what I am saying is that the government will want to be consistent. The government has put legislation on this matter to the parliament and, as Senator Harradine has said, it would ban human cloning. It would seem that these proposed
resolutions before the United Nations deal with what could be described as other associated matters. All I said was that, in determining a final position on those resolutions, we would want our position to be consistent with the legislation that we are putting to the parliament and that we hope will be carried.

Centrelink: Breaching

Senator FORSHA W (2.33 p.m.)—My question is directed to Senator Vanstone, the Minister for Family and Community Services. Can the minister confirm that the social security breaching activity that saw 269,000 unemployed Australians lose some or all of their income support payments in the last financial year is factored into average income support payment rates and benefit outlays? Can the minister confirm that a change in the rate or the duration of breach penalties to reduce the number of unemployed people who are unfairly hurt by the current system would affect benefit outlays and, as a result, the budget bottom line?

Senator VANSTONE—I thank the senator for the question, which relates to the treatment of the consequences of increases or decreases in breaching for the budget bottom line. In a range of areas in the welfare sector—and I believe this includes breaching, in my portfolio at least, but I will go back and check that for you—it is largely done on broad movements, not on weekly or monthly changes. But, since you have raised the issue and I am interested in it myself, if you want an understanding from Finance and Treasury as to when the fortnightly and monthly figures match in with the overall annual estimates and changes, I will be happy to ask for detail on that, look at it myself and share it with you.

Senator FORSHA W—Mr President, I ask a supplementary question. I thank the minister for the answer. I note that she has not directly confirmed whether it does or it does not. I note that she will pursue that further. I then ask the minister: if it does not have an impact on the budget bottom line, will the government consider the merits of reforming the current rules to give effect to Professor Pearce’s inquiry’s suggestions about reform of the rate of breaches and the duration for which people are breached?

Senator VANSTONE—When I first took this job I indicated to this chamber that we would look very carefully at breaching—the last thing we wanted to do was unfairly breach people who had an intellectual disability, an alcohol problem, a drug problem or a range of other problems—but the people who did not show up for what they were meant to show up for and had no reasonable excuse could expect to be dealt with firmly. What you have seen since then, which you may or may not care to acknowledge, is a decline in the breaching numbers, an increase in programs designed to assist people in real need and a shift from the one, two, three breach—in one area, at least, significantly—to suspension with automatic reinstatement when someone provides a reasonable excuse. On the last survey that was done of 666 people, to whom this survey applied since the new system started in July, I understand that 25 per cent had their benefit absolutely cancelled because they did not show up. That tells you something about how the previous breaching system did not catch cheats—it just penalised them. (Time expired)

Drought

Senator PAYNE (2.36 p.m.)—My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Ian Macdonald. Will the minister outline to the Senate what actions the Howard government is taking to assist farmers who are facing hardship in drought-stricken parts of Australia?

Senator IAN MACDONALD—I thank Senator Payne for that question. I know that members of her family are experiencing the impacts of drought, as Senator Payne comes from a farming background. There are many Australian families who are paying an enormous price, both emotionally and financially, due to the drought. As we all know, drought is an insidious, creeping, heartbreaking event over which human beings have little control. It is even a more bitter pill to swallow when we know that last financial year was a record year for our agricultural produce. It was valued at something like $38 billion last year. Just as things were going so well in country Australia, the drought comes along and
wipes a massive $6 billion off farmers’ incomes in this financial year—that is half a per cent off the national GDP. One of the things that the government has been able to do to mitigate the impacts of drought is to implement its Farm Management Deposit Scheme. That is a cash management tool that complements on-farm risk management—strategies like developing fodder and water reserves, financial planning and diversifying the production system. This Farm Management Deposit Scheme allows farmers to put money into farm deposits in good years and draw it out in bad years. As at 30 June this year, 43,400 farmers had invested over $2 billion in farm management deposits. The government will forgo income revenue to the extent of about $510 million as a result of that scheme.

On the ground relief from the drought is principally a matter for the state governments around our country. They should be looking at things like transport subsidies and specific grants but, when the drought becomes so exceptional as to be beyond the capabilities of the state governments, the federal government comes in under its exceptional circumstances drought arrangement. Federally, we have an income support scheme through Centrelink, and Centrelink do a marvellous job in administering that efficiently and well—as with everything Centrelink do. We also have a business support scheme that provides interest rate subsidies. We did want a more generous business support scheme. We wanted to be able to provide cash grants of $60,000 to farmers, but Mr Truss put that to the Labor states and, regrettably, not one of the Labor states has been prepared to assist the federal government in this additional business support for those impacted upon by drought.

Labor has fudged its responsibilities. We have been trying to improve the EC scheme, and we have announced some additional enhancements but, regrettably again, the Labor Party governments throughout the states have not been prepared to come on board with the Commonwealth. They refuse to make more generous cash grants. Accordingly, farmers are left without the support that the Commonwealth thinks that they should have. For example, in New South Wales Labor made farmers wait for six months after declaring the Rural Lands Protection Board areas in drought before they were able to access state help. We want to avoid that. We have changed the rules recently, and in Bourke and Brewarrina the first impacts of our new arrangements are already having good results. (Time expired)

**Superannuation: Commercial Nominees of Australia Ltd**

**Senator SHERRY** (2.41 p.m.)—My question is to Senator Coonan, the Assistant Treasurer and Minister for Revenue. Can the Assistant Treasurer confirm that on 8 May this year she received an application for assistance on behalf of over 21,000 members of the Australian Workforce Eligible Rollover Fund who lost superannuation savings as a result of alleged theft and/or fraud when Commercial Nominees was trustee? Has the Assistant Treasurer sought advice from the prudential regulator, APRA, on this matter? Has APRA provided this advice and, if so, what was it?

**Senator COONAN**—I thank Senator Sherry for the question. The situation with respect to the recovery of funds arising out of the fraud of Commercial Nominees is ongoing. As I think I informed the Senate on an earlier occasion, there have been some determinations made by me and some money has flowed to those funds that otherwise were eligible for compensation under the Commercial Nominees investigation.

With respect to the ongoing recovery, I have decided to grant compensation to certain small superannuation funds formerly under the trusteeship of Commercial Nominees. There are 181 of those who have suffered eligible losses. With respect to outstanding applications for financial assistance, as I have explained before in some detail, the trustee of a superannuation fund can apply for financial assistance for a regulated fund under part 23 of the Superannuation Industry (Supervision) Act when that fund has suffered an eligible loss.

My current information is that 466 applications have been received for losses relating to Commercial Nominees. These losses re-
late to the ECMT, the Global bank account, the Enhanced Income Trust, the Enhanced Equity Fund and the Confidens Investment Trust. The total estimated losses for these funds are in the order of $30 million. ECMT losses account for 199 applications, and those estimated losses are in the order of $23.3 million. Determinations have been made in respect of 196 of these applications, and payment has been made to all 196 funds. There are three remaining applications relating to ECMT. Two relate to large public offer funds. These are the Australian Workforce Eligible Rollover Fund and the Wealthy and Wise Master Plan. APRA has informed me that these funds are outside the scope of the KPMG report that I had received. However, additional advice has been obtained by APRA on these applications and I expect to be in a position to make determinations in respect of these applications shortly. I can go on: GBA, EIT and EEF losses account for 179 applications, all of which are outstanding, with estimated losses in the order of $4.9 million. CIT losses account for 88 applications. These applications were, in fact, made on 30 July 2002. These remain outstanding, and I am waiting on advice in respect of those.

Senator SHERRY—Mr President, I ask a supplementary question. Minister, my question went specifically to the rollover fund and their application, which you have acknowledged that you have received. Can you indicate to the Senate, particularly for the 21,000 members of the rollover fund, when you anticipate being able to make a determination to provide assistance in regard to moneys lost and to fees in respect of compensation—particularly given that, in regard to the compensation determination which you have made to date, which you have mentioned, it took just over a year for moneys and compensation to be awarded.

Senator COONAN—I thank Senator Sherry for his questions. I really do think that they are reasonable questions. In respect of the matter taking a year, of course Senator Sherry would be well aware that, pretty well the minute I got the advice, I moved very quickly. I do not think anyone is suggesting that I have sat on anything in relation to this matter. I have no control over external accountants providing advice to APRA. But, in respect of the specific question about the Australian Workforce Eligible Rollover Fund, I have said that KPMG’s advice did not cover the point. APRA now has additional advice, and you, Senator Sherry, and all those people affected who may be listening to this, can be assured that I will make the determinations the minute they hit my desk.

Environment: Renewable Energy

Senator ALLISON (2.46 p.m.)—My question is to the Minister representing the Minister for the Environment and Heritage. Is the minister aware of the report prepared by Origin Energy which showed that the mandated renewable energy target legislation will deliver a 0.9 per cent increase in renewable energy by 2010, which is less than half of the two per cent this government promised the Senate? Does the government intend to fix this problem with the MRET? If not, why not?

Senator HILL—I was asked a somewhat similar question, perhaps from elsewhere in the Democrat community, on the issue of failure to achieve the target. In that instance, it was being put to me that it was because of a baseline issue related to hydro. I think the best I can say, without referring it back to Dr Kemp—which I will do for a detailed response—is that this was a significant contribution by this government to achieving a better greenhouse gas outcome. In fact, the form of legislation was unique in terms of the developed world. It was designed to provide an incentive for an additional take-up of renewable energy. As far as I understand, it is succeeding, but there are issues as to whether further changes need to be made in order that it might be even more productive in the future. That potential was written into the legislation. A review is to be undertaken, which no doubt others in this place will have an opportunity to contribute to, but, from the government’s perspective, we certainly want the measures to work because we believe in a better environmental outcome. That is why we brought these initiatives to the parliament in the first instance. I will seek a detailed response from Dr Kemp as to where we are
in delivering the target that we indicated and, if necessary, what further refinement needs to be made to the scheme.

Senator ALLISON—Mr President, I ask a supplementary question. I thank the minister for his answer. I want to clarify that this is nothing to do with the hydro baseline. In fact, the hydro baseline further reduces that target by just 0.9 per cent. Australia will fall short of its Kyoto target by around 14 million tonnes of CO₂ per year. The energy sector says that increasing MRET to 10 per cent is easily doable and will allow Australia to meet its target. Why does your government continue to resist this option? Isn’t it the case that this study shows that Australia’s relative competitive position would not be damaged at all by increasing renewable energy by 10 per cent?

Senator Brown—Because the coal industry is running the show!

Senator HILL—I remember the battle it was to get any decent environmental reform through this chamber. Why was it a battle? Firstly, it was because the Greens totally opposed it—extraordinary though that might seem. But of course we know why they are opposed to it: because it is an initiative of the Howard government. Any step taken by the Howard government towards a better environmental outcome has to be condemned on principle.

Senator Allison—I rise on a point of order. Mr President, I ask you to remind the minister that the question that was put to him was quite specific and to ask him not to debate the matter of another party’s response to environmental issues in this chamber.

The PRESIDENT—I hear your point of order. Senator Hill, please return to the question.

Senator HILL—I had said that the government is committed to a better environmental outcome, particularly in relation to renewable energy, and that we are prepared to work with those who are prepared to work with us. So I extend the invitation to the new Australian Democrats—who are now wanting to re-establish their place in the broader Australian political scene—to be cooperative, to come with us, to work through this process of legislative reform for renewable energy and to ensure that we are in fact maximising the potential that is out there. That is my invitation to the Australian Democrats, and, if they respond positively, together we can achieve a better environmental outcome. (Time expired)

Business: Executive Remuneration

Senator CONROY (2.51 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Is the minister aware of the call by the former CEO of BHP Billiton, Mr Paul Anderson, for a freeze on executive remuneration, following a period of obscene increases in executive remuneration? Does the minister support Mr Anderson’s call for a freeze on executive remuneration packages designed to ‘let the market settle down’?

Senator COONAN—Thank you, Senator Conroy. You can always tell when the opposition are starting to run out of questions: they always come back to executive options. The situation with options and executive remuneration is that it is a matter for the individual corporations and it is a commercial matter as to what remuneration somebody should receive. It is a very different matter if a company is insolvent. The government, as I explained very carefully yesterday, has introduced an amendment to the Corporations Law. In the circumstances where excessive remuneration has been paid to executives, or indeed where any unreasonable bonuses have been paid to executives, and a company subsequently becomes insolvent, there will be an action available to the liquidator to recover any unreasonable amount. That, of course, would be made available to the liquidator for distribution to creditors and for other purposes. It is a matter for the shareholders as to what is an adequate or inadequate amount to be paid to their executives. Most executives are paid, as you would expect, on performance. It is entirely then a matter for shareholders, if the company is not insolvent, as to whether or not that is adequate.

This is a very interesting matter. For 13 years Labor appeared to sleep through this as a problem. It is interesting that Mr David Murray’s remuneration was set for the Commonwealth Bank about 10 years ago. In
the last few weeks he managed to make himself available for about $7 million. For 13 years the Labor Party did nothing about this; they did nothing about employee entitlements. It is an absolute disgrace. Now they come into this chamber and, when they are running out of steam in question time, they bring up this old chestnut again. Even with the wreckage of economic disaster around them, the Labor Party did nothing for employees and nothing in respect of executive payment for 13 years. It has been left to this government to pick up the pieces of Labor’s mess, which is the usual style, and to bring in not only a scheme for employees but also an amendment to the Corporations Law to make sure that anything that is unreasonably paid to executives can be made subsequently available to a liquidator.

Senator CONROY—Mr President, I ask a supplementary question. I refer to the minister’s comment yesterday and again today that it was an absolute disgrace for the Labor Party to even raise a question in relation to executive remuneration. Is the minister aware of a recent survey by Ernst and Young and Orient Capital that found only 29 per cent of companies’ managements thought it was important to consult shareholders on executive pay, while 81 per cent of shareholders thought it was important? Isn’t it a disgrace that, while this government avoids any debate on the issue of executive remuneration, companies can ignore shareholders who want to be consulted on how much of their money is being siphoned into the pockets of greedy executives?

Senator COONAN—Thank you, Senator Conroy, for the supplementary question. Unfortunately it ignores the fact that shareholders have got every right at an annual general meeting to raise the issue of executive remuneration. Indeed, they have every right not only to raise it at annual general meetings but also to raise it independently with the chairman and the board of any corporation. To suggest that the issue is not adequately dealt with by a possible clawback if a company becomes insolvent really just begs the question.

Information Technology: Research

Senator MASON (2.56 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Will the minister please outline to the Senate the steps the government has taken to ensure that research and development in the information and communications technology sector continues to foster innovation, accelerate the commercialisation of new products and services and contribute to strong and sustainable economic growth?

Senator ALSTON—I thank Senator Mason for a very important question from a very innovative senator. The fact is that, for Australian ICT R&D, we have gone from something like $1.2 billion to $2 billion in the last five years, which is a very impressive performance. Just as we have already got runs on the board, I think we have made it fundamentally plain that we do not want to go down the tired old track that seems to be an endless fascination for the Senator Lundy’s of this world: the idea of building fab plants and vertical silo operations. We are much more interested in the high value added end of the market, where the intellectual property resides, where the margins are high and where you have something that sits—

Senator Conroy interjecting—

Senator ALSTON—I am not sure about that.

The PRESIDENT—Order! I would like to be able to listen to him, if you would keep quiet, Senator Conroy. I think everybody else would too.

Senator ALSTON—The fact is that innovation has always been very high on our agenda. We think it is much more important than noodles and spaghetti, and we demonstrated that some 18 months ago with our Backing Australia’s Ability program. The high watermark of that—

Senator Lundy—How high was it on your agenda when it really mattered and you could have given the industry a decent—

Senator ALSTON—The trick is to stay ahead of the game, Senator Lundy. That is really what it is all about. If you think you can wait until a couple of months before an
election and come out with a silly little cartoon like that and expect people to take you seriously, you still have a long way to go. We were actually well ahead of the curve. Nearly two years ago, we released Backing Australia’s Ability—a $2.9 billion initiative—

Senator George Campbell—You suspended most of it!

Senator ALSTON—It has been so successful, Senator Campbell, as you well know, that in some areas supply has not been able to keep up with demand. That is hardly a sign of a failed policy. The high watermark, I think, of the whole Backing Australia’s Ability program is the Centre of Excellence for ICT—$129.5 million. The contract for that has recently been signed and the funding arrangements have been put in place. Now that the NICTA consortium is up and running, it is going to be a tremendous asset for us because it will attract the best and brightest. It will provide critical mass. There will be up to 300 researchers. Just so that you understand that this is not passing unnoticed overseas, I can tell you that we had the CEO of Microsoft here last week. His comment was that this would constitute—

Senator George Campbell—Did we pay his fare?

Senator ALSTON—No, I do not think so. I think he arranged his own transport.

The PRESIDENT—Senator Alston, return to the question and do not respond to interjections from Senator George Campbell.

Senator ALSTON—What he said was that the Australian government is working on exactly the right kinds of things to leave the right kind of industry development ingredients around. He went on to say that building a centre of excellence such as this would be of much greater importance than providing higher R&D incentives for multinationals. So he was not talking to his own brief. He was actually saying it is in the national interest to have world-class research facilities, and that is what we are doing.

I hope that you will acknowledge that, Senator Lundy. Pay them a visit. They would be more than happy to take you on a familiarisation tour and explain all those important concepts which sound exciting but which you cannot quite get your head around. This is the big chance to do it and I think you will find that if you visit the ATP there is a high level of excitement about the prospects of this centre. When you combine it with all the other initiatives that we have announced in Backing Australia’s Ability—such as doubling the ARC funding over a period of five years, the 80 per cent increase in funding for the cooperative research centres and the major national research facilities—these initiatives are the vital ingredients that were lacking for so long under Labor. *(Time expired)*

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

**QUESTIONS WITHOUT NOTICE:**

**ADDITIONAL ANSWERS**

**Agriculture:** Agricultural Development Partnership Program

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (3.03 p.m.)—Yesterday Senator Buckland asked me about the Agricultural Development Partnership Program. I can tell Senator Buckland that in the 2001-02 budget the Commonwealth announced the program, which is designed to provide assistance for structural adjustment targeted to agricultural industries and regions experiencing significant problems affecting farm profitability and sustainability. A feature of the program is that the state governments are expected to provide matching funding to facilitate a genuine partnership approach.

The state governments’ responses have been, to put it politely, mixed. There have been a number of issues and points of difference, especially with regard to the shared funding responsibilities. In 2001-02, as the states had not come on board, $2.5 million was transferred from the program to fund other regional and industry priorities within the portfolio. A revised set of guidelines is now being prepared, Senator Buckland, and is being considered by the Minister for Agriculture, Fisheries and Forestry prior to dispatch to state ministers for their concurrence.

The Commonwealth is very eager for the partnership program to become operational
but it will depend on the future support and cooperation of the states. A number of preliminary proposals that may fit within the program either have been developed or are being developed in some states. I urge Senator Buckland to use his influence with the Labor states to get them to come on board with this program so that the money can start to flow.

**QUESTIONS WITHOUT NOTICE:**

**TAKE NOTE OF ANSWERS**

**Superannuation: Commercial Nominees of Australia Ltd**

Senator SHERRY (Tasmania) (3.01 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Revenue and Assistant Treasurer (Senator Coonan) to a question without notice asked by Senator Sherry today relating to superannuation and the Australian Workforce Eligible Rollover Fund.

The Workforce Eligible Rollover Fund was a subcomponent of a superannuation trust known as Commercial Nominees. Unfortunately within the structure and the various substructures of Commercial Nominees a level of alleged theft and fraud has taken place. My colleagues Senator Buckland and Senator Wong will be commenting on some specific matters in relation to the issues of Commercial Nominees and compensation in the event of moneys being lost as a result of theft and fraud. They will comment on the compensation payable in those circumstances and also on compensation for fees and charges that apply in those circumstances.

Superannuation is very important to Australians. It is compulsory and it is set at a level of a nine per cent contribution for all employees in this country. I think the last documentation I looked at showed that 8.8 million Australians are in superannuation, with approximately $530 billion in assets. It is compulsory and it is there to be preserved for retirement. So superannuation has a very special status in this country and plays a very important role in providing an additional retirement income over and above the relatively modest pension that Australia has for persons who have reached retirement age.

Superannuation deserves special consideration with regard to the protection that it is afforded. We cannot have the situation in Australia that has occurred in some other countries, and the UK comes to mind. I draw a distinction between theft and fraud in a superannuation fund and low returns. At the present time, unfortunately, we are in a low-return and generally negative-return environment with respect to superannuation. That follows a significant number of years of positive and generally very favourable returns. We have to draw a distinction between what to do when theft and fraud occur—when the money is literally stolen from a worker’s retirement fund—and the issue of lower returns.

The Labor Party argues that it is totally unacceptable in a society such as ours that, where a person’s retirement income is in part or whole stolen before the person reaches retirement, there should not be adequate compensation for the moneys that have been removed from the fund illegally and also in respect of the fees and charges that are part and parcel of the administration of the fund in those circumstances. It is totally untenable and totally wrong for Australians not to be fully compensated in those circumstances. If the theft or fraud occurs close to retirement it is obviously impossible for those people to make up the losses that have occurred as a result of that theft and fraud.

In a policy options paper I released approximately two months ago, I advocated much tougher protections for Australians’ superannuation in the event of theft or fraud taking place. Unfortunately, some in the media seem to be perpetuating a myth that the Labor Party has not put out any policy since the last election. This is incorrect and I urge them to read my 60-page superannuation policy options document. I think it is a very comprehensive document, and this is one of the issues that we focus on. The Labor Party has put forward the fundamental principle that where theft and fraud occurs in a superannuation retirement fund—fortunately, it is very rare in this country—full compensation, 100 per cent compensation, for both moneys lost and the costs of the fees and charges should be provided to persons in those cir-
circumstances because of the unique status of their savings as compulsory superannuation savings vested in the private sector. We have also outlined a range of very tough options for stronger protections on the fees and charges that apply to superannuation. (Time expired)

Senator WONG (South Australia) (3.09 p.m.)—It is interesting how much the government appears to want to debate the issue of superannuation. I rise to support Senator Sherry’s motion to take note of the answer provided by Minister Coonan in relation to the Commercial Nominees case and the failure by this government, as exemplified in her answer, to provide adequate compensation to employees who have been victims of the theft or fraud of their hard won superannuation savings which, as we all know, are supposed to be part of their retirement incomes. It really is indicative of this government’s failure to recognise problems in allowing the market to operate unfettered in the area of superannuation, its failure to regulate properly and its failure to ensure that consumers, ordinary Australians, have the opportunity to obtain compensation when their savings are taken away through theft or fraud.

This concern that the government appears to have with regulating the market is also shown when one looks at their position on fees and charges, in particular exit fees. We know that massive exit fees already exist amongst retail superannuation funds. While some of them are reasonable, in the unregulated sectors there are some extremely unreasonable examples of exit fees. These operate as a substantial disincentive to people who wish to leave funds. It is interesting that we have a government that propounds the concept of choice in superannuation but refuses to deal with a policy factor—that is, the imposition of unreasonable exit fees—that is clearly limiting the choices available to Australian consumers.

We are aware of many cases of excessive exit fees charged against superannuation savings, and I will advise the Senate of a number of these. We have one example where, after 12 years, a fund member had built up savings of $65,500. He attempted to transfer his money to another fund and was told that around 18 per cent, being $11,500, would be deducted as an exit fee. This was not explained to him when joining the fund. Other examples are an exit fee of $4,000 imposed on savings of $33,000, an exit penalty of $1,796 on an account of $2,635—around 68 per cent of the total savings—and, most disturbingly, a punitive fee of $3,324 on savings of $3,300, which left the member owing the provider some $24.

Minister Coonan, consistent with her approach today, has previously argued that making the government rather than the market responsible for setting or regulating fees and charges is inappropriate. However, this position of the government bears little logical analysis. It is saying that this should be left to the free market when clearly the free market in this situation is causing significant problems for consumers in this area—it is a disincentive to fund choice. It is extraordinary that the government is refusing to engage in any regulation where there is clearly market failure in some instances on the issue of exit fees. I do note that Minister Coonan did concede at a press conference on 19 September when she was discussing portability that some funds might increase exit fees to stop people withdrawing their money under a choice regime and going to another fund. Despite this, we still see no action from this government to regulate exit fees, just as we see today in the answer given by Minister Coonan no action on compensating adequately Australians whose retirement savings are lost through theft or fraud.

The minister has stated that the government will reserve the right to regulate exit fees but has so far failed to act, despite clear evidence that there is market failure in relation to a number of funds and that this is a massive disincentive to choice of funds for many Australian consumers. It seems that the government is more interested in a superannuation sector which benefits the big end of town who want to get their snouts into the superannuation trough rather than protecting Australian consumers. That failure of the government is exemplified, as I said, in relation not only to exit fees but also to the inadequate compensation of Australians who
are victims of superannuation theft or fraud.  

(Time expired)

Senator COLBECK (Tasmania) (3.14 p.m.)—I find it somewhat amusing that Senator Sherry gets up to talk about policy on superannuation given the record of the Labor Party over the last six years in this respect. In fact, looking at the Labor Party web site, I notice they mention policy discussion papers but there is nothing on their web site that relates to Labor Party policy. I am happy to concede that the policy papers exist, but I find that it is a little bit difficult to believe the Labor Party’s claim that they have specific policy with respect to superannuation when all the evidence suggests that they do not.

Senator Sherry—We set it up.

Senator COLBECK—Oh, good on you. In fact, they have had no policy since 1996. They went to the 1998 election without any policy and they went to the 2001 election without any policy. Go to the web site and have a look at that. It is amusing that, all of a sudden, the Labor Party seem to have found superannuation as an issue and that they have extensive policy credentials with respect to superannuation. They might have had some policy in a previous government but in the last six years there has been no policy activity whatsoever.

Senator Sherry—I am happy to go again if you have run out of things to say.

Senator COLBECK—I am sure you would be, Senator. The coalition has made superannuation a significant priority. Tax concessions provided to superannuation make it the single largest tax expenditure item amounting to approximately $9.5 billion in 2001-02. Measures contained in A Better Superannuation System will increase the attractiveness of superannuation by allowing couples to split their superannuation contributions, ensuring that single income families will have better access to two ETP tax-free thresholds and two reasonable benefit limits in the same way as dual income families. The superannuation termination payment surcharge rates will be reduced by a tenth of their current level in each of the next three years and this will lower the maximum surcharge rate to 10.5 per cent by 2004-05.

A co-contribution of up to $1,000 per annum will be introduced for personal superannuation contributions made by low-income earners in place of the current $100 rebate. The limit on full deductibility of superannuation contributions by self-employed persons will increase from $3,000 to $5,000 while retaining 75 per cent deductibility on any amounts above this threshold, subject to the age based deductibility limits. Also the tax on the excessive component of ETPs from superannuation funds will be reduced to lower the tax effective rate to no more than 48.5 per cent.

Other measures in the package will widen the accessibility of superannuation by extending the circumstances in which contributions to superannuation can be made. This will be achieved by allowing working individuals aged between 70 and 75 to make personal contributions to superannuation. This follows on from the government’s earlier increase from 65 to 70 years for voluntary contributions and to 70 years for employer contributions. Recipients of the baby bonus will be allowed to contribute it to superannuation and superannuation contributions up to $3,000 per child will be allowed over a three-year period. Other elements of the package announced will require all employers to make at least quarterly superannuation contributions on behalf of their employees from 1 July 2003 and reaffirm the government’s commitment to its policy of choice and portability of superannuation. This policy will give workers the freedom to decide who manages superannuation and the right to move superannuation benefits from one fund to another. The measures will allow temporary residents the option of accessing their superannuation benefits after they have permanently departed Australia, subject to tax withholding arrangements, and commit the government to examining whether market linked income streams also— (Time expired)

Senator BUCKLAND (South Australia) (3.19 p.m.)—I also rise to speak on the take note motion moved by Senator Sherry. In the last 18 months in this chamber we have witnessed the fallout of the Commercial Nomi-
nees debacle with all of its ongoing difficult issues. Senator Coonan, the Minister for Revenue and Assistant Treasurer, in her answer today did not give us any assurance and this issue remains a source of grave concern. We have been given no assurance that it is going to get any better and we have grave concerns, as do many Australians, waiting for the government to resolve the issue.

Commercial Nominees was a for-profit corporate trust. It acted as a trustee for a number of public offer superannuation funds and some 475 small funds. One of those public offer funds was the Australian Workforce Eligible Rollover Fund, AWERF. Commercial Nominees directed money from these funds into a number of unregulated investment trusts, where it was also a trustee, moving money from one pocket to another. Unbeknown to fund members, these trusts invested in business related to Commercial Nominees directors, including a mushroom farm. They moved money out of funds into their own pockets and into their own business enterprises. The Minister for Revenue and Assistant Treasurer has done nothing to redress this situation. Through these suspicious investments, Commercial Nominees lost millions of dollars worth of members’ retirement savings. These members are ordinary workers who have entrusted their money to a company that was using it for its own gain and that fraudulently took their money.

In December 2000 APRA replaced Commercial Nominees as a trustee of AWERF and two other public offer funds. In February 2001 it replaced Commercial Nominees as trustee of the 475 small funds. On 14 June this year, after a delay of over 12 months and not without significant pressure from Labor, Senator Coonan agreed to provide assistance to some 181 of these small funds that had suffered losses as a result of serious fraud by Commercial Nominees. Labor had every right to be critical of Senator Coonan for providing less than full compensation as permitted by the act. At least members of these funds have received something, but the act provides for full compensation—far more than what has been received by these funds.

Senator Coonan’s answer today shows that she has done nothing concrete to ensure that the 21,000 members of Commercial Nominees’ AWERF—who have lost superannuation savings at the hands of what is arguably the worst and most dishonest trustee in history—receive at least some of their losses back. The Australian Workforce Eligible Rollover Fund had around 40,000 members. The fund was divided into a number of pools, some of which were invested in Commercial Nominees’ own unregulated trusts. This translates to some of the members not having suffered losses through fraud, but around 21,000 of the members have. (Time expired)

Senator EGGLESTON (Western Australia) (3.24 p.m.)—We are talking about what happens to superannuation fund members who have lost money as a result of mismanagement of the super funds by directors and so on. That is certainly an issue, and one case which specifically comes to mind concerns the activities of Commercial Nominees of Australia Ltd. In that case the people who belonged to the superannuation fund were disadvantaged by the activities of directors. On 14 June the Assistant Treasurer announced that it had been decided to grant financial assistance to certain small superannuation funds formerly under the trusteeship of Commercial Nominees of Australia Ltd. This assistance was to be granted under part 3 of the Superannuation Industry (Supervision) Act 1993 to some 181 small superannuation funds formerly under the trusteeship of Commercial Nominees of Australia Ltd. This assistance was to be granted under part 3 of the Superannuation Industry (Supervision) Act 1993 to some 181 small superannuation funds that suffered loss in the Enhanced Cash Management Trust, or ECMT. In other words, these people were being looked after by the Howard government to ensure that their losses were redeemed.

Redemptions from the ECMT were frozen in November 2000 and applications for assistance for these funds were made by Oak Breeze, the replacement trustee, on 7 February 2002. The Assistant Treasurer was satisfied that the 181 small funds suffered eligible losses under the act; that is, that the losses were the result of fraudulent conduct or, in effect, theft, and the public interest required that a grant of assistance was made, and it was done. In this situation the safety net which is in place acted to support the 181
small funds which had suffered losses as a result of the bad management of Commercial Nominees of Australia Ltd.

Finally, with regard to the outstanding applications for financial assistance, the trustee of a superannuation fund can apply for financial assistance through a regulated fund under part 23 of the Superannuation Industry (Supervision) Act 1993 where that fund has suffered an eligible loss. As it happens, some 466 applications have been received for losses under that category. Again, these losses have been redeemed under the system which I have already referred to. The losses which overall related to the ECMT—the Global Bank Account, the Enhanced Income Trust, the Equity Enhanced Fund and the Confidence Investment Trust—came to an estimated total of some $30 million. The ECMT losses accounted for 199 applications with estimated losses in the order of $23.3 million. Determinations were made in relation to 196 of these applications and payment was made to all 196 funds. So the people who had been disadvantaged by the collapse of these funds due to fraud and other kinds of activities, which fell within the requirements for the assistance to be given, had their losses redeemed. This shows that the safety net which is in place has worked to support people in this kind of situation.

The federal government has supported the compulsory superannuation provisions which have been in place for some time now and, certainly with the ageing of Australia, it is necessary that we have an effective and strong superannuation industry and that people have the confidence to believe that their funds are secure. If, due to fraud or criminal mismanagement, the money is lost, then people in these superannuation funds need to know that their losses will be redeemed. (Time expired)

Question agreed to.

Environment: Renewable Energy

Senator ALLISON (Victoria) (3.29 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 Allison today relating to renewable energy.

The matter related to whether we are getting a two per cent increase in renewable energy as part of this measure. The short answer to that is, ‘No, we are not.’ In fact, we are not even getting half as much as two per cent. Honourable senators who were here at the time may recall that the two per cent was converted into a figure for electricity of 9,500 gigawatt hours. During the debate, several people in this place—myself included—warned the minister that to do so was to ignore the likely increase in the consumption of electricity over that period of time and that, inevitably, 9,500 gigawatt hours would be reduced in percentage terms from two per cent to something much less. That has, indeed, happened. It is much worse than we anticipated at the time of that debate and for this reason it is my proposition that the government ought to seriously reconsider this question and not just increase renewable energy targets to the full two per cent but to look seriously at increasing them now to 10 per cent.

A study, commissioned by Origin Energy, has recently been done. It is available on a web site. I will take the opportunity of mentioning it here so that people can look it up—www.originenergy.com.au. On that web site there is a report by McLennan Magasanik Associates. The report looks at whether Australia would be disadvantaged economically in terms of our industry by increasing our target from 0.9 per cent to a real 10 per cent. For some time, the renewable energy industry has been saying that that is possible and it is eminently doable and that Australia ought to do it. But now we have a report that categorically shows how we can do this and how it would have no effect whatever on our competitive relationship with countries with whom we do business.

I commend honourable senators’ attention to this report because I think it is an important one. It does give rise to serious questions about the government’s intention over Kyoto. We are likely to overshoot our commitment by some 14 million tonnes of CO₂ a year; that is the gap between what we are committed to achieve under Kyoto—eight per cent of the 1990 levels by 2010. It overshoots that by a long way and that gap could
be filled if we in this country were to commit ourselves to more renewable energy. So it is my contention that the minister, in fact, knew that this was going to be a problem at the time. He has not heeded warnings which have been given to him both in this chamber and subsequently. This report states categorically that it is possible for us to move to 10 per cent by 2010 and that it would fix our problem. It would stop Australia being a pariah to the rest of the world. It would stop us having the highest per capita emissions level of greenhouse gases and save us the huge embarrassment on the world stage of being a country which appears not to care about global warming.

In the last couple of weeks, I spent some time in the Pacific Islands, in Fiji, and talked with parliamentarians there who come from small island states in our immediate region and they are deeply worried about climate change. They are very, very critical of Australia’s position because it appears that we do not care about their interests. It appears that we are not prepared to take the steps which would put us on the right path to a properly sustainable future in terms of our energy consumption and where we get energy from. As we all know, Australia is well resourced in wind and solar energy. There is no excuse for us to continue to not provide the incentives and the initiatives that would allow that industry to blossom and to provide us with clean, green energy.

I was disappointed by the minister’s answer to my question. He was very well aware of the problem that I alluded to. To say that this is something to do with hydro schemes—(Time expired)

Question agreed to.

PETITIONS

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

Food: Irradiation

To the Honourable the President and members of the Senate assembled in Parliament:
The petition of the undersigned shows:
The residents of Australia are opposed to food irradiation and the building of the nuclear irradiation facility proposed for Narangba, in Queensland, as well as the Electron beam irradiation facility proposed for North Queensland.

Your petitioners request the Senate should

- Prohibit the establishment of a nuclear irradiation facility or X-Ray or Electron beam irradiation facility at any location in Australia.
- Ban the import, export and sale of irradiated food in Australia.
- Call on the Australia New Zealand Food Standards Council (ANZFSC) and the Australia New Zealand Food Authority (ANZFA) to amend Standards A-17 and 1.5.3—Irradiation of Foods in the Food Standards Code to ban food irradiation outright in Australia and New Zealand.

by Senator Brown (from 3,886 citizens).

Petition received.

NOTICES

Withdrawal

Senator GREIG (Western Australia) (3.35 p.m.)—Pursuant to notice of intention given on 22 October 2002, I withdraw business of the Senate notice of motion No. 1 standing in my name for 24 October 2002, relating to the disallowance of Therapeutic Goods (Charges) Amendment Regulations 2002 (No. 1), as contained in Statutory Rules 2002 No. 144 and made under the Therapeutic Goods (Charges) Act 1989.

COMMITTEES

Selection of Bills Committee

Report

Senator FERRIS (South Australia) (3.36 p.m.)—I present the 11th report of 2002 of the Selection of Bills Committee and move:

That the report be adopted.

I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 11 OF 2002

1. The committee met on Tuesday, 22 October 2002.
2. The committee resolved to recommend—That—

(a) the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 be referred immediately to the Eco-
nomics Legislation Committee for inquiry and report by 3 December 2002 (see appendix 1 for statement of reasons for referral);

(b) the order of the Senate of 15 May 2002 adopting the Committee’s 3rd report of 2002 be varied to provide that the provisions of the Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2002 be referred immediately to the Education, Employment and Workplace Relations Legislation Committee for inquiry and report by 12 November 2002 (see appendix 2 for statement of reasons for referral);

c) the following bills not be referred to committees:

• Australian Broadcasting Corporation (Scrutiny of Board Appointments) Amendment Bill 2002
• Higher Education Legislation Amendment Bill (No. 3) 2002
• Migration Legislation Amendment (Migration Advice Industry) Bill 2002
• Workplace Relations Legislation Amendment Bill 2002.

The committee recommends accordingly.

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

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

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

Bills deferred from meeting of 24 September 2002
• Inspector-General of Taxation Bill 2002
• International Tax Agreements Amendment Bill (No. 2) 2002
• Taxation Laws Amendment Bill (No. 6) 2002

Bill deferred from meeting of 15 October 2002
• Trade Practices Amendment Bill (No. 1) 2002

Bill deferred from meeting of 22 October 2002
• Corporations Amendment (Repayment of Directors’ Bonuses) Bill 2002.

(Jeannie Ferris)
Chair
23 October 2002
Appendix 1
Proposal to refer a bill to a committee
Name of bill(s):
Trade Practices Amendment (Liability for Recreational Services) Bill 2002

Reasons for referral/principal issues for consideration
• the role of the Trade Practices Act in personal injury claims
• the definition of recreational services
• waiver of gross negligence

Possible submissions or evidence from:
ACCC, Treasury, Insurance Council, Australian Consumer’s Association, Australian Plaintiff Lawyer’s Association

Committee to which bill is referred:
Economics Legislation Committee

Possible hearing date: Week commencing 25 November 2002
Possible reporting date(s): 3 December 2002
(signed)
Senator Sue Mackay
Whip/Selection of Bills Committee member

Appendix 2
Proposal to refer a bill to a committee
Name of bill(s):
Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2002

Reasons for referral/principal issues for consideration
• the adequacy of the employment protections contained in the bill for schedule 2A workers and outworkers having regard to the protections enjoyed by other Victorian and Australian workers and outworkers.
• The implications, including any constitutional implications, of the bill for alternative legislative approaches at the state level, including the Outworkers (Improved Protection) Bill and the Federal Awards (Uniform System) Bill

Possible submissions or evidence from:
Unions, employers, employees, outworkers, academics, legal experts
Committee to which bill is referred:
Education, Employment and Workplace Relations Legislation Committee

Possible hearing date: One day hearing in Melbourne in the week 11-15 November 2002

Possible reporting date(s): The week 2-6 December 2002

(signed)
Senator Sue Mackay
Whip/Selection of Bills Committee member

Senator LUDWIG (Queensland) (3.37 p.m.)—I move the following amendment to the motion that the Selection of Bills Committee report be adopted:

At the end of the motion, add “and, in respect of the Inspector-General of Taxation Bill 2002, the bill be referred to the Economics Legislation Committee for inquiry and report by 3 December 2002”.

I do not wish to take up much time of the Senate—I know that we have a packed program—but it is worth while stating the reasons for referral. Earlier today we denied leave for this legislation to be exempt from the cut-off to allow this bill to go to the relevant committee for inquiry and report. The bill should not be passed in the Senate until such time as the committee has had the opportunity to consider the wider governance issues relating to the Australian Taxation Office and tax policy involving the ATO, Treasury, the Board of Taxation, the Tax Ombudsman, the Auditor-General and the proposed Inspector-General of Taxation. Labor wishes to save taxpayers’ money and to ensure that the unnecessary duplication of Commonwealth administration in this tax area is dealt with. Those are the reasons for the referral, which will allow the Senate Economics Legislation Committee to have sufficient time to inquire into and report on the bill.

It is also worth while adding, procedurally, the Selection of Bills Committee sought to defer a recommendation that the matter go to the Economics Legislation Committee. However, five minutes or so after the committee had concluded we received a reference request. As we will not be sitting again for another two weeks, it was worth while ensuring that the Economics Legislation Committee had that reference so that it could inquire into that piece of legislation. That is the reason that we now propose to amend the report to allow the reference to the Economics Legislation Committee. It can now undertake that inquiry, get the appropriate processes under way and ensure that the bill receives proper scrutiny by the committee. The Selection of Bills Committee will not meet again until the next sitting week of the Senate—on the Tuesday at 4 p.m. Referral will allow the process to get under way now and it will allow proper scrutiny of the bill by the Senate committee in the terms that I have proposed.

The DEPUTY PRESIDENT—The question is that the amendment moved by Senator Ludwig be agreed to.

Question agreed to.

The DEPUTY PRESIDENT—The question is that the amended motion be agreed to.

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 11 November 2002.

General business notice of motion no. 222 standing in the name of Senator Allison for today, relating to the Gembrook Primary School, postponed till 11 November 2002.

Withdrawal

Senator ALLISON (Victoria) (3.40 p.m.)—I withdraw business of the Senate notice of motion No. 1 standing in my name for today relating to a proposed amendment to the Disability Discrimination Standards for Accessible Public Transport 2002.

DISABILITY DISCRIMINATION STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT 2002

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.41 p.m.)—Mr Deputy
President, I seek leave to make a short statement about the next step that it is necessary for the Senate to take in relation to the Disability Discrimination Standards.

Leave granted.

Senator IAN CAMPBELL—Although Senator Allison has withdrawn the proposed amendment, it is necessary for the Senate to approve the standard as tabled and to inform the House of Representatives so that the House may also approve the standard in the same terms. Only then will the standard take effect. I therefore seek leave to move a motion to approve the standard.

Leave granted.

Senator IAN CAMPBELL—I move:

That:

(1) In accordance with subsection 31(3) of the Disability Discrimination Act 1992, the Senate approves the Disability Discrimination Standards for Accessible Public Transport 2002, made under subsection 31(1) of the Act and tabled on 20 August 2002.

(2) A message be sent to the House of Representatives acquainting the House of this resolution.

Question agreed to.

COMMITTEES

Employment, Workplace Relations and Education References Committee

Extension of Time

Senator GEORGE CAMPBELL (New South Wales) (3.42 p.m.)—I move:

That the time for the presentation of reports of the Employment, Workplace Relations and Education References Committee be extended as follows:

(a) education of students with disabilities—to 5 December 2002; and

(b) small business employment—to 12 December 2002.

Question agreed to.

Employment, Workplace Relations and Education References Committee

Reference

Senator GEORGE CAMPBELL (New South Wales) (3.43 p.m.)—I move:

That the following matters be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by the last sitting day in June 2003:

(a) areas of skills shortage and labour demand in different areas and locations, with particular emphasis on projecting future skills requirements;

(b) the effectiveness of current Commonwealth, state and territory education, training and employment policies, and programs and mechanisms for meeting current and future skills needs, and any recommended improvements;

(c) the effectiveness of industry strategies to meet current and emerging skill needs;

(d) the performance and capacity of Job Network to match skills availability with labour-market needs on a regional basis and the need for improvements;

(e) strategies to anticipate the vocational education and training needs flowing from industry restructuring and redundancies, and any recommended improvements; and

(f) consultation arrangements with industry, unions and the community on labour-market trends and skills demand in particular, and any recommended appropriate changes.

Question agreed to.

Electoral Matters Committee

Meeting

Senator FERRIS (South Australia) (3.43 p.m.)—At the request of Senator Mason, I move:

That the Joint Standing Committee on Electoral Matters be authorised to hold public meetings during the sittings of the Senate on Monday, 11 November 2002, from 7.15 p.m., and on Monday, 2 December 2002, from 7.15 p.m., to take evidence for the committee’s inquiry into the conduct of the 2001 federal election.

Question agreed to.

Linow, Mrs Valerie

Senator RIDGEWAY (New South Wales) (3.44 p.m.)—as amended, by leave—I move the motion as amended:

That the Senate—

(a) notes that:

(i) Mrs Valerie Linow, an Aboriginal woman from New South Wales, was removed from her family at the age of
Question, as amended, be agreed to.

INDIGENOUS JUSTICE

Senator CROSSIN  (Northern Territory)  
(3.45 p.m.)—I move:

That the Senate—

(a) notes the signing of the 1997 National Communiqué to progress Indigenous Justice issues by the Northern Territory Government confirming its commitment to reducing the over-representation of Indigenous people in all stages of the criminal justice system;

(b) recognises that the 1997 communiqué commits all signatories to addressing customary law and its relationship with the criminal justice system;

(c) notes that, in accordance with Australian and international law, Aboriginal customary law should be recognised consistently with universally-recognised human rights and fundamental freedoms; and

(d) acknowledges that the Northern Territory Government is working in partnership with Indigenous people in moving to conduct an inquiry into Aboriginal customary law and its relationship with the criminal justice system.

Question agreed to.

KOREAN SOLIDARITY FOR HUMAN RIGHTS GROUP

Senator NETTLE  (New South Wales)  
(3.45 p.m.)—I move:

That the Senate—

(a) notes the rally in Sydney on 22 October 2002 of the Korean Solidarity for Human Rights Group, which is demanding an apology for the imprisonment in high security jails of two Korean asylum seekers who were neither convicted nor charged with any offence;

(b) condemns the transfer of asylum seekers into the regular prison system as contrary to the strong tradition in Australia of, and legal commitment to, civil and human rights that protect individuals from imprisonment without conviction or charge; and

2 years and placed in children’s homes in Bomaderry and then Cootamundra,

(ii) at the age of 14, Mrs Linow was placed on a rural property in New South Wales by the Aborigines Welfare Board and employed as a domestic worker,

(iii) Mrs Linow is the first member of the stolen generations to be awarded monetary compensation for the psychological trauma she suffered as a result of sexual assaults that occurred when she was employed as a domestic worker, and

(iv) by awarding Mrs Linow compensation of $35 000, the New South Wales Victims Compensation Tribunal is distinguished as the first judicial body in Australia’s history to award compensation to a member of the stolen generations for harm that occurred while in state care;

(b) acknowledges that the success of Mrs Linow’s case may give hope to other members of the stolen generations who suffered a similar fate and validate their conviction that the harm done to them does warrant and deserve compensation;

(c) regrets that the Government has provided members of the stolen generations no alternative to the adversarial, costly and protracted court system for the resolution of their claims, with the result that many claims will continue to be defeated because of the applicants’ inability to produce the necessary documentation or the witnesses to substantiate their claims; and

(d) calls on the Government to:

(i) reconsider its opposition to the establishment of a more humane and compassionate response, particularly for those members of the stolen generations who have suffered harm as a consequence of the act of removal, and

(ii) establish a reparations tribunal for the stolen generations, as recommended in the Legal and Constitutional References Committee report on the stolen generations, Healing: A Legacy of Generations, the Human Rights and Equal Opportunity Commission, the Aboriginal and Torres Strait Islander Commission, the Public Interest Advocacy Centre and the National Sorry Day Committee.
(c) calls on the Government to end this practice immediately, bringing Australia back in line with commitments under the International Covenant on Civil and Political Rights.

Question negatived.

Senator Brown—I ask that I be recorded as very definitely supporting that motion.

Senator Nettle—I do the same.

The DEPUTY PRESIDENT—That will be done. Senator Brown. The support of Senator Brown and Senator Nettle will be recorded.

MONASH UNIVERSITY: SHOOTING

Senator ALLISON (Victoria) (3.46 p.m.)—by leave—At the request of Senator Bartlett, I move:

That the Senate—

(a) extends its condolences and sympathies to the families of the people who died, and to those who were injured, in the shooting at Monash University on Monday, 21 October 2002; and

(b) expresses its support to the staff and students affected by this tragic incident and thanks those whose courage and effective intervention prevented more people from being harmed.

Question agreed to.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.47 p.m.)—as amended, by leave—I move the motion as amended:

That:

(1) On Monday, 11 November 2002:

(a) the hours of meeting shall be 9.30 am to 6.30 pm, and 7.30 pm to 11.40 pm;

(b) the routine of business from 9.30 am to 2 pm and 7.30 pm to 11 pm shall be consideration of the Research Involving Embryos Bill 2002 and the Prohibition of Human Cloning Bill 2002; and

(c) the question for the adjournment of the Senate shall be proposed at 11 pm.

(2) On Tuesday, 12 November 2002:

(a) the hours of meeting shall be 12.30 pm to 6.30 pm, and 7.30 pm to 11.40 pm;

(b) the routine of business from 12.30 pm to 2 pm, and 7.30 pm to 11 pm shall be consideration of the Research Involving Embryos Bill 2002 and the Prohibition of Human Cloning Bill 2002; and

(c) the question for the adjournment of the Senate shall be proposed at 11 pm.

(3) On Wednesday, 13 November 2002:

(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to 11.40 pm;

(b) the routine of business from 9.30 am to 12.45 pm, and 7.30 pm to 11 pm shall be consideration of the Research Involving Embryos Bill 2002 and the Prohibition of Human Cloning Bill 2002; and

(c) the question for the adjournment of the Senate shall be proposed at 11 pm.

(4) On Thursday, 14 November 2002:

(a) the hours of meeting shall be 9.30 am to 12.45 pm,

(b) the question for the adjournment of the Senate shall be proposed at 8 pm; and

(c) standing order 54(5) shall apply as if it were Tuesday.

(5) The Senate shall sit on Friday, 15 November 2002 and that:

(a) the hours of meeting shall be 9.30 am to 4.25 pm;

(b) the routine of business shall be government business only;

(c) the sitting of the Senate shall be suspended for 45 minutes from approximately 12.30 pm; and

(d) the question for the adjournment of the Senate shall be proposed at 3.45 pm.

I seek leave to make a short statement.

Leave granted.

Senator IAN CAMPBELL—The motion which we are seeking to amend has been the subject of long consultation at meetings today between leaders of parties, Independents and the whips and in discussions around the chamber. In effect, it seeks to facilitate a heavy legislative program. We effectively have three and a bit weeks left to complete the legislative program and, of course, amongst the bills on the list are the Prohibition of Human Cloning Bill 2002 and the Research Involving Embryos Bill 2002. These are obviously bills which are well known in the community and in the parlia-
ment, in respect of which all senators will be exercising a conscience vote, and we know, through talking to whips and colleagues, that most senators will be involved, so there will be a long debate. The government is trying to ensure, through consultation with all senators and interested parties, that the debate enables all senators to contribute in an adequate and thorough manner.

The hours may be subject to alteration and I may have to get leave to do that later, as we are waiting for one party to come back on a small outstanding issue. However, the motion involves sitting at 9.30 on a Monday morning, which is unusual. That will allow the commencement of a second reading debate on the Prohibition of Human Cloning Bill 2002 to commence on a Monday morning. That will allow senators who come in on Sunday night to commence the second reading debate. It certainly will not mean that other senators need to get here on the Monday morning. I will be seeking to ensure that, as far as possible, the second reading debates are done on a no divisions and no quorums basis. That will need a good amount of goodwill, which I think has been evident already in negotiations on how to handle these bills. The Senate will then sit until 11 p.m. on the Monday night. We will resume again at 12.30 on the Tuesday, which is an hour and a half earlier than normal, and again sit late on Tuesday night until 11 o’clock.

On Wednesday we will commence sitting at 9.30 and go, with normal breaks and so forth, until 11 o’clock at night. On the Thursday we will sit at the normal time and the debate on those bills will stop at 12.45 p.m., which is the normal time for what is known as non-controversial legislation. The bills I have referred to will not be considered again that week. That, Mr Deputy President, as you know personally, is to ensure that the greatest number of senators possible will be able to be here for votes on the committee stage of the Research Involving Embryos Bill. A number of senators are travelling on overseas delegations and ministerial delegations at that time, and we obviously want to facilitate as many people as possible.

The Senate will sit on the Friday to consider other government business, to make up for time we would have otherwise lost. It will sit from 9.30 a.m. to 3.45 p.m., which, as far as sitting on a Friday is normal, is a normal schedule for Friday. As for votes on any remaining stages, it may be possible that the bills are finished by lunchtime on Thursday. I certainly hope they are but if they are not the votes will be held over to 2 December. We have checked with the whips and we think there may only be one or two people from the entire Senate not here on that day, which is highly unusual. The government hope that perhaps with a late sitting on the Monday, if that legislation is still under consideration, we will be able to complete those bills on the Monday night. It may not be possible; it is very hard to tell at this stage. That lengthy explanation explains amended government business motion No. 1 in relation to those sitting hours.

Question, as amended, agreed to.

MATTERS OF URGENCY

Insurance: Medical Indemnity

The DEPUTY PRESIDENT—I inform the Senate that the President has received the following letter, dated 23 October, from Senator Ridgeway:

Dear Mr President,

Pursuant to standing order 75, I give notice that today I proposed to move “That in the opinion of the Senate the following is a matter of urgency: The need for the Federal Government to act to include midwives in the medical insurance rescue package, as by next week all agencies supplying contract and casual midwives—around one quarter of all working midwives—will be unable to obtain professional indemnity insurance cover precipitating an immediate crisis in the safe birthing of babies in both public and private hospitals”.

Yours sincerely,
Aden Ridgeway
Senator for NSW

Is the proposal supported?

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

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

Senator RIDGEWAY (New South Wales) (3.55 p.m.)—I move:

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

The need for the Federal Government to act to include midwives in the medical insurance rescue package, as by next week all agencies supplying contract and casual midwives—around one quarter of all working midwives—will be unable to obtain professional indemnity insurance cover precipitating an immediate crisis in the safe birthing of babies in both public and private hospitals.

I move this urgency motion because of a dramatic worsening in the professional indemnity insurance situation as it applies to midwives. We are now approaching a near-disaster situation in birthing and maternity care within Australian hospitals and birth centres. It is a developing disaster of which the government has been well aware for some time. It is also not the first time I have raised this matter in the chamber. I raised it as recently as yesterday—last evening in relation to the Senate Economics References Committee report that had been tabled—and in the last fortnight’s sitting as well as on a number of other occasions.

When the recent insurance crisis hit, the federal government was willing to assist doctors and specialists not only through the financial assistance that has been afforded to failed insurer United Medical Protection but also as a result of the recommendations of the first report on the law of negligence—the Ipp review. With UMP, the government has offered millions of dollars in support of an insurance company that operated with opportunistic business practices that essentially led to its inability to be ‘an ongoing concern’. Yet, in this particular case, the government rightly recognised that this was necessary to ensure that doctors were able to continue to practise. At the same time, around 200 independent midwives who were unable to obtain professional indemnity insurance were seeking a relatively small amount of money, which was not forthcoming from the government. Midwives were also not initially invited to participate in the Medical and Professional Indemnity Working Party that was established by the Commonwealth government. That particular situation affected not only independent midwives but also around 500 future midwives who are and will be discouraged from entering the field by being unable to undertake clinical placements as a part of their studies.

Today I come here with this urgency motion as this situation has since escalated. By the end of tomorrow, one of the largest agencies providing contract and casual midwives will have no professional indemnity cover. It will no longer be able to provide midwives to public and private hospitals. Other such agencies have already closed the books on midwives. By early next week, most agencies providing any other contract and casual midwives will have no professional indemnity cover. To put this into context, the crisis in professional indemnity insurance now means that approximately 3,000 contract and casual midwives—that is, 25 per cent of all working midwives in Australia—will not be able to work due to the lack of insurance cover. These 3,000 contract and casual midwives are an essential part of the operations of birthing in public and private hospitals, covering daily roster shortages.

In Australia there are currently around 12,000 midwives, who attend 98 per cent of the 250,000 births in Australian hospitals and birth centres. They are the ones that provide the constant care and commitment to women before, during and after childbirth while doctors, obstetricians and others attend the birth only when it is necessary. Based on recent figures, this dramatic removal of 3,000 midwives from the health system in the work force globally is exacerbated by the insurance crisis. I ask senators to contemplate the situation where you or your wife or your partner or daughter arrive at a hospital or birthing centre next Monday in an advanced stage of labour, only to be told, ‘Sorry, can you come back another day? We have no midwives available.’ You do not need me to tell you that the birth of a baby is not an elective surgery issue. When independent midwives and midwifery students
lost their insurance coverage, the government ignored their plight. That affected 200 midwives and around 500 students enrolled in universities across the country. It appears that in this situation the government is once again prepared to ignore midwives by not responding to the plight of the 3,000 midwives that are now subject to their own crisis. Yet had this week’s legislation program continued as planned, as the government would have wanted, we would have been voting on the government’s bill to prop up UMP to the tune of around $500 million.

We have to ask the question: where is the government when it comes to assisting midwives, those who are most responsible for the safe birthing of our babies and who support our women and our babies into the future? Having recently had a birth in my own family, I know the value of midwives. We did not see much of our obstetrician, but we certainly saw the bill when it arrived in the mail. In order to ensure that senators are aware of the contribution of midwives, some crucial information needs to be provided. Firstly, the World Health Organisation says:

Midwives are the most appropriate and cost-effective care provider for normal pregnancies and normal birth, including risk assessment and the recognition of complications.

In addition, midwives provide continuous care to women from the early stages of pregnancy until around four to six weeks after the birth of the child—the kind of care that is not readily available from any doctor or obstetrician. Midwives also make good economic sense, cutting hospital and health care costs. The recently launched national maternity action plan stated:

Normal birth is more likely to be achieved when a woman has access to ‘continuity of carer’ or ‘continuity of care’ from a midwife who is responsible for her care throughout pregnancy, labour and birth, and the postnatal period ... The ‘continuity of carer’ model of care has been proven to reduce the use of obstetric interventions in labour and birth, including the need for pharmacological pain relief, inductions, augmentations, instrumental deliveries, episiotomies and caesarean sections.

But all of this sounds very hollow when the agency representing these essential health care workers cannot find professional indemnity insurance, full stop. This is not a case of insurance premiums being too high; this is about blanket unavailability—the insurance is simply not available. One of the agencies involved described to me how they have ‘trawled the world’ looking for an underwriter but have been unable to find anyone who will accept the risk. That agency’s insurance cover expires tomorrow.

This morning, I heard the Prime Minister generously extending until the end of next year the insurance guarantee for doctors, and during question time Senator Coonan made her own announcement. This is a big deal, and we should provide certainty for doctors and those in high-risk specialties such as obstetrics. I want to commend the government for responding in the way that they have but, let us be quite clear, the Prime Minister’s rescue package is assistance for doctors facing unaffordable premiums. I remind the government that the professional indemnity crisis facing independent midwives, contract and casual midwives and students of midwifery is not one of soaring or unaffordable premiums but one of getting any cover, full stop.

It seems to me that the government was quick to offer short-term insurance—and will continue to do so on a three-monthly basis—to the aviation industry while they were unable to obtain war or terrorism insurance. If the government can help there, then why can’t they help in the case of midwives? This is a crisis of unavailability of cover, this is a crisis which has been building since July last year and this is a crisis of which this government has been too well aware. I now ask the government to take up the message in this urgency motion and put midwives in the insurance picture by extending to the 3,000 midwives who are likely to be out of work next week the rescue package announced by the PM this morning. I commend this motion to the Senate.

Senator KNOWLES (Western Australia) (4.03 p.m.)—Today we are debating whether or not midwives should be included in medical indemnity. It is interesting, because Senator Ridge has been offered, as recently as today, a full and comprehensive response from Senators Patterson and
Coonan. He chose not to go down that path but to move this urgency motion today. I really have to question the motive as to why one would move a motion of this kind if one was seeking definite answers and definitive responses when that was offered but this course of action was preferred. Its just begs the question of whether or not we are wanting an answer or whether or not we are just wanting to grandstand. I fear now, having listened to the debate and having heard what has been said previously, that the grandstanding option is the course of action that is now being taken.

We need to understand that midwives actually fall into three employment groups: midwives who are employed by hospitals, agency midwives contracted to hospitals and independent, self-employed midwives. I do not think anybody would underestimate the role of many of the midwives. But one of the things that I think Australia has to come to grips with is whether the government now has to step in for every group of people and provide cover, insurance and backup. I think we are heading to a very dangerous course. I said to group of people who were in my office a few days ago that it is starting to worry me, with all of this insurance and with people now wanting government to take responsibility for their own actions, that government—and, thereby, the taxpayer, remembering that government does not have any money other than what the taxpayer gives it—is now becoming more of a hammock than a safety net. That worries me. I think the attitude of many people could certainly develop so that they could lie back and say: ‘It does not matter what happens; the taxpayer will pick up the tab. It doesn’t matter, I don’t have to cover myself; the taxpayer will pick up that tab as well.’

I think we should be looking at this under very different circumstances. Some of these midwives have got no coverage not because of any lack of government initiative but because insurance companies believe many of the midwives are a high risk. We also have to understand that the overwhelming majority of midwives are directly employed as employees of hospitals and are therefore covered under the professional indemnity arrangements of their employers.

I know that many good independent midwives are having difficulty obtaining professional indemnity insurance. But we need to understand that this is quite different from the situation doctors face, since doctors are able to obtain medical indemnity insurance cover. What I am trying to say is that it is because of the policies of the insurance companies that midwives have not got that cover, not because of some government policy that we are going to discriminate against all independent midwives and are not going to allow them to have indemnity cover. It is quite a different kettle of fish. The package announced today by the Prime Minister is designed, firstly, to address the financial viability of the providers of medical indemnity insurance and, secondly, to ensure that insurance cover for doctors remains affordable.

It is interesting that there is basically nothing the Commonwealth can do to force an insurer to cover certain people; it is the decision of an insurance company whether or not to cover those people. Dare I say that we have seen such decisions being taken by the insurance companies only in the last week and a half in relation to the tragic events in Bali. It was the insurance companies that made the decision to cover many of those who had policies that specifically excluded acts of terrorism. The government did not say to the insurance companies, ‘You must do X, Y and Z’; the decision was taken by the insurance companies. As I said, there is nothing the Commonwealth can do to force the insurance industry to provide insurance to this group of professionals, but it is interesting to note that the governments of my state of Western Australia and of the Australian Capital Territory have extended insurance coverage to independent midwives by effectively bringing them under the umbrella of government employment.

Senator McLucas—So governments can do something.

Senator KNOWLES—The state and territory governments can. The point Senator McLucas has just raised by way of interjection—that governments can do something—is a very good point because, based on what I
was just saying, one could think that I meant all governments. What I am actually saying is that these people are working in the state and territory environment. They are working under state and territory auspices and they should be covered, if at all possible, under the umbrella of government employment in the states and territories. If Western Australia and the Australian Capital Territory can do that, I do not see any reason why the other states and the Northern Territory cannot do it as well. I encourage them to consider noting that they are responsible for the registration of midwives and for issues relating to midwives’ professional standards. Therein lies the important distinction which Senator McLucas quite rightly raised: it is the states that are responsible for licensing and registration of midwives and it is the states that set their professional standards.

The Commonwealth has an important role in encouraging our state and territory counterparts to assist the midwifery work force in this way. The comprehensive package of measures announced today to address the financial viability of the providers of medical indemnity insurance and to ensure that insurance cover remains affordable for the doctors is important. But I say to honourable senators that we are heading down a dangerous path where everyone is wanting the taxpayers to pick up coverage as a matter of course instead of as a matter of last resort. There are many ways out of this other than trying to bring this very important group of professionals under the same umbrella as doctors when, in fact, the states and territories have the responsibility for registration and professional standards with regard to midwifery. I in no way wish to diminish the importance of the role of midwives and I in no way wish to diminish the importance of their indemnity. But I think it is important to understand that the Australian Institute of Health and Welfare figures indicate that 1.6 per cent of the midwifery work force is self-employed, while the claim by recruitment agencies to represent 25 per cent of the midwifery work force may to all intents and purposes be an overestimate.

The package of measures announced by the Prime Minister today does not address the indemnity arrangements for midwives as these are professional indemnity arrangements not covered by medical defence organisations. MDOs are mutual societies of doctors and so are separate from general insurers. I wish to make that point very clear. It is a very separate subject, and people who try to bring them under the same net are just trying to complicate the issue in an emotive way. They are saying that the government has to pick this up, when it should in fact be looking at the source of the problem and how it can be resolved instead of trying to bring the midwives into an area where responsibility for them does not lie. There has been a recently escalating media campaign by and on behalf of midwives in response to media reporting on the expected medical indemnity package, and I think that this debate is now part of that. If he had really wanted to try to resolve this issue, it would have been much more sensible of Senator Ridgeway to accept the offer of a full and comprehensive update and briefing.

Senator McLucas (Queensland) (4.13 p.m.)—I also rise today to support the urgency motion moved by Senator Ridgeway. For the benefit of Hansard, I think it is important to read again the words of this motion. The matter of urgency is:

The need for the Federal Government to act to include midwives in the medical insurance rescue package, as by next week all agencies supplying contract and casual midwives—around one quarter of all working midwives—will be unable to obtain professional indemnity insurance cover precipitating an immediate crisis in the safe birthing of babies in both public and private hospitals.

The government must move to address the insurance crisis that midwives are facing and, in doing so, gain an understanding of the potential impact that the lack of action would have on women and families in this country. Having experienced childbirth myself, I know of the support that midwives can provide to a woman during that process. I was fortunate to be supported by a midwife during my delivery and also in prenatal and postnatal care. Midwives provide a service that obstetricians and gynaecologists just simply do not have the time to. They provide an enormous amount of support; they have
the time. They are often women, although there are some men, and they have a greater empathy with an expectant mother. As an older potential parent—as I was before the birth of my child—with no family close to me, the relationship between me and my midwife was a very strong one. Especially as a person coming from a regional area, I relied on her very much for support.

There is a real crisis facing our community when over 3,000 contract and casual midwives cannot get professional indemnity insurance—that is about one-quarter of all working midwives in Australia. Whether you have your baby in a hospital or at home, a midwife assists in almost every birth that occurs in this nation. Approximately 250,000 births occur in Australia every year and the vast majority of those births take place in a hospital assisted by a midwife. These contract and casual midwives are an important part of birthing in Australia, with midwives assisting in rostering and daily shortages. The involvement of midwives in the birthing process provides a positive health benefit for our community that we cannot overlook. The benefits are of course to the mother and the child, as I have explained from my personal experience. A good relationship between an expectant mother and a midwife statistically leads to reduced intervention in the birthing process. It has also been shown that bonding between the mother and the child is improved if that process is a more comfortable one.

We all know how much strain the health system is under because of the government’s attacks on public hospitals and the public health care system in general. The failure of the government to address the crisis facing midwifery is just another symptom of government mismanagement of health care in this country. Expectant mothers and their partners and families should not have to worry about whether or not our health care system can meet their basic needs. With the Americanisation of health care in this country, however, increasingly the quality of care you receive is based more on the size of your wallet than the need that you have. Whilst that is true, the actual reality that we are facing is the absolute unavailability of midwives. That, of course, will increase pressure on the obstetricians in the country. Senator Knowles suggested that the federal government had no role at all in supporting midwives in their need to obtain professional indemnity insurance. She said that there was nothing that we could do, nothing that the government could do. There was something the government could do when we had the crisis in the aviation industry late last year; there was something that we could do when Ansett collapsed. I am afraid that the reality is that the government is simply sitting on its hands.

There has been significant discussion recently about declining fertility rates in Australia and the need for government policy on balancing work and family. We have heard a lot from the Prime Minister about the need for this to occur. We have heard a lot of words but, unfortunately, we have seen very little policy. Providing quality services to mothers and their partners during and following the birth of their child is central to the debate about declining fertility rates. As I have said, midwives play an essential role in ensuring mothers receive the appropriate care and support that they need at that time. I suggest that women are more likely to want to have more children if their first birthing experience, and their prenatal and postnatal care during that time, is reasonable. You are certainly not going to come back happily if you have had a fairly difficult birth; you would have to think twice. I suggest that the crisis in midwifery could have an effect on women making choices about whether or not to have a second or third child. The issue is also about choice. Women should have the option to choose whether to have their baby in a hospital or at home. Women are increasingly wanting to give birth in a place of their choice, and that is often their home. They find that option suitable to their needs. Unfortunately, if midwives are not going to be able to gain professional indemnity insurance then that may not be able to occur.

The other concern that I have is for women in rural and remote areas. In the Senate Community Affairs References Committee inquiry into nursing, we were given very strong evidence about the lack of availability
of midwives. In fact, we noted in our report, *The patient profession: time for action*, that there are shortages of registered midwives across every state in Australia. We all know that this is exacerbated in regional and rural areas, with impacts on the women who live in those areas. But the other area of my concern is the impact that it has on Indigenous women who want to take the option not to travel. Many Indigenous women who live in remote areas do have to travel a long way from their community in order to have their baby. In North Queensland, women have to leave their community six weeks before the expected delivery date of their child and travel in most cases to Cairns but often to Thursday Island or Mount Isa. Six weeks of separation from one’s family is difficult.

There have been efforts by the state government in Queensland to encourage women who do not have a series of risks to deliver their children at home. This shortage of midwives will exacerbate that initiative enormously. If midwives cannot practise in rural and remote places, I would suggest that the opportunities for women to give birth in their communities will be almost zero. Indigenous women deserve choice; rural and regional women deserve choice. Women deserve to be able to choose where to have their child, whether it is in a hospital or at home. This crisis facing midwives will put enormous pressure on the ability of those women to actually make those choices.

The government has recognised today, in its statement about medical indemnity insurance, the important work that doctors and specialists, including obstetricians, do in providing health services to the community. It has extended its insurance protection to that sector. Unfortunately, the announcement today in no way goes to the issue of professional indemnity insurance for midwives. Maybe the Prime Minister just does not know or understand the crisis that faces midwives and women in our community, but he should have included them in his framework. Labor does recognise the crisis that midwives face. The press statement today from Stephen Smith, our shadow minister for health and ageing, says:

The medical indemnity insurance package announced today also fails to address the professional indemnity needs of health care professionals such as midwives who are also facing a crisis situation that may result in further withdrawal of services.

I commend the motion to the Senate.

**Senator HARRADINE (Tasmania)** (4.23 p.m.)—Mr Acting Deputy President, I have learnt that there is some arrangement that there will only be three speakers to the urgency motion. I was not made aware of that previously. With your consent and that of the chamber, I would like to make one comment. I would have liked to have said quite a deal about this question, as I believe it to be very important.

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—You can speak to the motion.

**Senator HARRADINE**—Thank you, Mr Acting Deputy President. I will respect the arrangements that have been made to limit the debate. I will just state that I too believe that it is very important to provide medical insurance for midwives. In the medical insurance rescue package, I am sorry to see that most midwives are not covered. As has been stated by the mover of the motion and the last speaker, it is very important that this be reviewed and that something be done to ensure that those working midwives are protected. Unfortunately, as the motion says, they will be unable to obtain professional indemnity insurance and that will precipitate an immediate crisis in the safe birthing of babies in both public and private hospitals. I suppose I should declare an interest. When I was born—out bush—there was a midwife present. Obviously I am grateful—as my mother and father and family were—for the help of that midwife. I congratulate Senator Aden Ridgeway for bringing this vital matter forward. At another stage I certainly will be explaining to the Senate how I feel about this matter, including some of the old boy type networking that goes on, where some doctors look down on people such as midwives. To be fair, other doctors are very keen on seeing that midwives are covered. I support the motion and I hope it is carried.

Question agreed to.
BUSINESS

Rearrangement

Senator KEMP (Victoria—Minister for the Arts and Sport) (4.27 p.m.)—I seek leave to move a motion relating to speaking times for debate on the report of the Select Committee on a Certain Maritime Incident.

Leave granted.

Senator KEMP—I move:

That so much of standing order 62(4)(b) be suspended as would prevent the debate on tabling and consideration of committee reports exceeding 60 minutes and each senator speaking for the time specified in the list circulated in the chamber.

Question agreed to.

COMMITTEES

Publications Committee

Report

Senator FERRIS (South Australia) (4.28 p.m.)—On behalf of Senator Colbeck, I present the fourth report of the Standing Committee on Publications.

Ordered that the report be adopted.

Scrubty of Bills Committee

Report


Ordered that the report be printed.

Senator McLUCAS—I seek leave to incorporate my tabling statement in Hansard.

Leave granted.

The statement read as follows—

The Committee’s Thirteenth Report of 2002 gives details of its continuing scrutiny of two bills, both of which illustrate significant aspects of its operation.

The Committee has previously reported on the Transport Safety Investigation Bill 2002, when it indicated that its concerns in relation to delegation and entry and search provisions were such that it would ask the minister to arrange a briefing by departmental officers. The Minister has now done this and the Committee thanks him for this prompt response.

At the briefing, the Executive Director and other officers of the Australian Transport Safety Bureau emphasised that the powers in question related to “no blame” safety investigations which are not designed for use in civil or criminal proceedings. The Executive Director suggested that, in weighing the object of the power against the degree of intrusion involved, the balance of proportionality was in favour of the proposed provisions.

The Committee, however, did not accept this proposition. It concluded that the provisions may breach personal rights even if their object is benign. In this case the powers are no less intrusive simply because they are intended ultimately to improve transport safety.

The Committee in its report on this bill has refined its concerns into three specific areas which are discussed below.

The first concern of the Committee was at the process of delegation. The bill provided for the delegation of power to enter to any person at all, limited only by the subjective opinion of the Executive Director that a person is suitable. There were no further criteria to define the power, in contrast to other related provisions, which provided such criteria either directly or by mandatory reference to the regulations. The Committee considers that delegates who exercise such important powers should have appropriate skills and experience expressed in objective terms. The primary legislation should either provide directly for this or expressly require the regulations to do so. The Committee has accordingly written to the Minister along these lines.

Another apparent difficulty with the bill was the defective nature of the provisions designed to inform members of the public of their rights. The view of the Committee is that a bill should provide not only adequate safeguards and protections when public officials exercise powers, but also proper notification of those rights to those affected. In the case of the present bill, however, there are problems on both these grounds.

In relation to the notification of rights the bill provides that a delegate exercising powers must be provided with a photographic identity card in the prescribed form, but does not require the delegate to produce the card unless the occupier of the premises about to be entered actually asks for it. This is a clear case of putting the cart before the horse. The problem is exacerbated by the power to use force to enter the affected premises. In this case, premises includes any vehicle wherever situated, as well as the site of an accident.

In addition, the bill does not provide for the proper notification of rights to the occupier. The
The Committee was also concerned at the practicalities of the operation of identity cards under the bill. The ATSB advised the Committee at its briefing that delegated powers of entry and search without a warrant were necessary for immediate action in the case of the crash of a large aircraft in remote northern Australia or a serious night accident in a foreign ship in a remote area. The ATSB told the Committee that such an aircraft crash would require substantial investigating assistance from the ADF, the police, Qantas and others. It will apparently be possible to issue delegations and identity cards for all these people but not to obtain a warrant from a magistrate. The Committee has therefore written to the Minister about these aspects of the notification of rights.

The last major matter which concerned the Committee was the arbitrary nature of the powers. The principal power in question is provided by clause 33, which is headed “Power to enter special premises without consent or warrant”. As mentioned earlier, special premises includes not only an accident site, but also any vehicle at all located anywhere in Australia. The power to enter without consent or warrant is not limited by the usual reasonable grounds limitation to control and define its operation. The only limitation on the power is that, while delegates are expressly authorised to enter premises by force, such force must be reasonable. This is not much of a comfort. Other key concepts in the bill are defined broadly.

The Committee has similarly written to the Minister in relation to these matters, suggesting that entry and search powers not involving an accident where loss of life has occurred, or which involve a vehicle away from an accident site, should be subject to a reasonable grounds requirement.

The other bill included in the report is the Trade Practices Amendment (Liability for Recreational Services) Bill 2002, which allows individuals to waive their contractual rights to sue in relation to injuries suffered when undertaking hazardous recreational activities. This clearly affects personal rights in this controversial area, but the question is whether the provision unduly breaches those rights. This bill is another case where the Committee has received a response from the Minister but has decided that it needs further advice. The Committee will therefore write again to the Minister. The report sets out the reasons for doing this and its areas of continuing concern.

Corporations and Financial Services Committee
Report

Senator CHAPMAN (South Australia) (4.29 p.m.)—I present the report of the Parliamentary Joint Statutory Committee on Corporations and Financial Services on the regulations and Australian Securities and Investments Commission policy statements made under the Financial Services Reform Act 2001, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CHAPMAN—I move:

That the Senate take note of the report.

I note that there is another report to be tabled which, I understand, the Senate desires to debate at length this afternoon. On that basis, I seek leave to have my remarks on the tabling of this document incorporated in Hansard.

Leave granted.


Both inquiries found a high level of support for the legislation. However, at the inquiry into the Financial Services Reform Bill last year, reservations were expressed about how the Bill would work in practice. The main concerns were that the mechanisms for the implementation of the new legislation—the regulations and ASIC’s policy statements—had not been finalised.

A widespread concern at the time was that the contemplated commencement date for the major regulatory provisions, namely, 1 October 2001, would not allow sufficient time for consultation in the drafting of the regulations. Although commencement was postponed until 11 March 2002, this still imposed a relatively tight timetable for the finalisation of the regulations, particularly given their fundamental role in the regulatory framework.

Another concern was that the legislation would place too great a responsibility on ASIC to provide the regulatory detail needed for implementa-
tion. It was considered this would produce too much uncertainty about the Act’s operation.

Against this background and, following the commencement of the Act’s major regulatory provisions on 11 March 2002, the Committee decided to hold an inquiry to ascertain the extent to which the regulations and ASIC’s policy statements made under the Financial Services Reform Act 2001 were consistent with the stated objectives and principles of that Act.

The inquiry was announced and submissions invited on 6 April this year. Altogether 40 submissions and 7 supplementary submissions were received. The committee is grateful to those who invested the time and effort to make sometimes very detailed submissions.

The committee held four days of public hearings in May, July and August. The committee thanks those who so generously made themselves available at these hearings.

The main objects of the Act which I adverted to earlier are stated in section 760A. These are to promote:

- confident and informed decision making by consumers of financial products while facilitating efficiency, flexibility and innovation in the provision of those products and services;
- fairness, honestly and professionalism by those who provide financial services;
- fair, orderly and transparent markets for financial products; and
- the reduction of systemic risk and the provision of fair and effective services by clearing and settlement facilities.

Based on evidence received, the Committee was able to conclude that, generally, the regulations and ASIC policy statements operated in harmony with the Act’s objects.

However, the Committee identified several issues which demonstrated quite serious divergence from the Act’s objectives, particularly those relating to the promotion of consumer protection and efficiency in the delivery of financial products and services.

I shall now turn to discuss these more compelling issues and the Committee’s recommendations in relation to these.

**Basic deposit products and non-cash payment facilities**

The first relates to the regulation of basic deposit products and non-cash payment facilities by the Corporations Act.

The Committee received very disturbing evidence from the Bendigo Bank Group, the Credit Union Services Corporation, the Australian Association of Permanent Building Societies, the Australian Finance Conference and the Australian Bankers’ Association all indicating that the inclusion of these basic banking products in the legislation has caused enormous disruption and cost to the industry just in terms of meeting the training requirements prescribed in ASIC’s policy statement 146.

On the costs front, for example, the Bendigo Bank estimates it will spend close to $1 million on training in the first year and an additional $630,000 in the following year. The Credit Union Services Corporation (Australia) Limited estimates its members will be paying between $440 to $900 per employee for 6,000 employees. In total, that works out to between $2.6 and $5.4 million.

These basic banking products are of low or no risk and are well understood by consumers. The Committee is unable to identify how consumers will benefit from the application of Policy Statement 146 training requirements to staff advising on basic deposit products. The Committee is also unable to identify any justification for the significant initial and ongoing costs and disruption that training will impose on ADIs.

One thing is certain. If basic deposit products continue to be regulated by the Corporations Act, consumers will be the losers. Small branches and agencies—particularly in rural and regional areas—will have to be closed. The costs of training staff to provide advice on these basic banking products will render these smaller branches and agencies commercially unviable.

Furthermore, rural and regional areas are often serviced by agencies, for example, the local pharmacist or newsagent. How many pharmacists or newsagents will have the resources, time or inclination to undertake the type of training to provide a service in these very basic banking products?

Just providing very basic advice on these products will involve logistical problems for small branches and agencies. What happens to the customer if the only person trained to tell them about a basic deposit product is at lunch, sick or absent for some other reason? What happens to a small branch or agency that loses a trained adviser and cannot find a replacement? Where is the benefit to consumers in this?

The Committee recommended in its two previous reports on the FSR legislation that basic deposit products should not be regulated by the Corpora-
tions Act. The Committee has not departed from this view and, for the third time, recommends that basic deposit products and related non-cash payment facilities not be regulated by the Act.

Should the Government inexplicably fail to do this, the Committee recommends that ASIC urgently review Policy Statement 146 to make the training requirements more in keeping with the type of financial product involved and to recognise the training challenges presented by rural and regional areas.

Licensing of accountants

Accountants and licensing was another major issue raised before the Committee. At present, there are two licensing exemptions regarding accountants’ activities:

1. the exemption for accountants who are registered tax agents regarding their tax agent’s work. This exemption has only a very limited coverage because tax advice often overlaps with other business advice.

2. the purported exemption provided by regulation 7.1.29. This exemption simply does not work.

Accountants will therefore have to be licensed to carry out their professional activities even though these might fall into what would be regarded as traditional accounting activities. Importantly, these activities do not involve the marketing of financial products for commission or similar benefit. Furthermore, sufficient consumer safeguards are already there:

- accountants must carry PI insurance;
- they must belong to professional associations which oversee their activities;
- they must satisfy continuing professional educational requirements;
- they must observe codes of conduct; and
- they must practise quality assurance.

The Committee heard from The Institute of Chartered Accountants in Australia, CPA Australia, the Taxation Institute of Australia, the National Institute of Accountants, the National Tax and Accountants’ Association, the Institute of Chartered Accountants of New Zealand and two practitioners that the licensing requirement will not improve efficiency but will add to costs which will be passed onto consumers.

Indeed, the costs involved in obtaining and maintaining a licence have been estimated by one of the industry groups as ranging from $12,000 to $15,000 on a cost recovery basis per accountant per year.

The Committee has been told that these costs will drive small suburban practices out of business. Importantly, these smaller practices currently deliver cost-effective services to the vast bulk of self-managed superannuation funds. Who will take over when these small practices have closed shop? Will costs increase as a result?

The Committee has been told that licensing costs will threaten the independence of accountants. Accountants who cannot afford to be licensed, are finding that authorised representative status may only be available if they agree to sell financial products for commission. In other words, if the accountant is prepared to flog certain financial products for a licensee, the licensee will appoint the accountant as an authorised representative.

Worldcom, Enron and HIH to name just a few, are glaring reminders of the crucial importance of auditor independence in financial market regulation. It would be ironic indeed if a mandatory licensing requirement compromised the independence of accountants at a time when independence has emerged as a significant corporate governance issue. But this is what the FSR legislation is doing. It is compromising accountants’ independence.

The Committee believes that urgent amendment of the legislation is required to provide accountants with a licensing exemption for their more traditional activities. In keeping with the recommendations of the Wallis Report, these activities would not include investment advice for which commissions or other benefits by parties unconnected to the client were payable.

The ongoing management charge

The specific disclosure requirements in the regulations regarding the ongoing management charge for superannuation funds attracted several submissions. These regulations were disallowed on 16 September 2002 following a motion by Senator Conroy.

The Committee notes that ASIC recently released a report, Disclosure of Fees and Charges in Managed Investments prepared by Professor Ian Ramsay. ASIC has indicated that the report is to be the starting point for ASIC’s consultation with industry and consumer representatives regarding the future directions for disclosure.

The Committee has recommended that the Department of the Treasury and ASIC build on the momentum generated by Professor Ramsay’s report to produce guidelines for a leading-edge, consumer-friendly model for disclosure of superannuation fees and charges that will facilitate comparability of funds.
Disclosure of unauthorised foreign insurers to wholesale clients

The Committee has recommended that the disclosure requirements applying for retail clients when insurance is placed with unauthorised foreign insurers also apply for wholesale clients. This merely continues what were the disclosure requirements under the now repealed Insurance (Agents and Brokers) Act 1984. The Committee is concerned that many small businesses—as wholesale clients—will be denied very pertinent information unless the same disclosure requirements apply to them as presently apply to retail clients.

The Committee has also recommended that the reporting requirements under the Insurance (Agents and Brokers) Act 1984 about unauthorised foreign insurers be re-instated. We believe it is important for the effective monitoring and regulation of the insurance industry that we have this sort of information available.

Offshore service providers—exemption from licensing

The Committee has recommended that the definition of custodial or depository services be amended to include offshore service providers to deal in financial products in the Australian marketplace on condition that the services are arranged by a person holding the requisite licence. It appears that there is overlap between ‘dealing’—which is allowed—and ‘market making’ and other activities which are not allowed.

We are concerned that problems with regulation pose significant difficulties in application. This regulation aims to allow offshore service providers to deal in financial products in the Australian marketplace under the Corporations Act. Many instances were given of the inappropriate application of the definition.

For the sake of brevity, I’ll mention just a couple of the types of activities that will be caught. There are the traditional or personal trustee corporation activities otherwise subject to State or Territory legislation. Here, we could be talking about the activities of a trustee appointed by the Court to act as the guardian or financial manager for a minor or a person with a disability.

Another activity that could be caught is the holding of shares or options to subscribe for shares by an employer as a trustee of an employee share scheme.

The Committee believes that the definition cast its net too widely. We have recommended that regulations be made to refine the scope of the definition.

Spread betting—licensing

During the inquiry, the Committee became aware that IG Index plc had obtained a licence to deal in spread betting and advise on a derivative. The derivative involves spread betting on financial indices.

Spread betting is not your typical financial product. It involves a form of high-risk gambling where losses can be open-ended. The Committee does not believe that activities such as spread betting should be licensed under the Corporations Act. The Act is supposed to be protecting consumers—certainly retail consumers. Instead, by allowing spread betting to be licensed, it is sending out the message that this high-risk gambling activity has the imprimatur of the Government.

Furthermore, it appears that some State and Territory gaming authorities do not want this activity conducted within their jurisdictions. Indeed, the South Australian gaming authority recently refused to licence a betting operation in relation to the 2002 Commonwealth Games.

The Committee urges joint action at Commonwealth and State level to ban spread betting on financial markets. At Commonwealth level, this can be achieved through amendment of the Corporations Act. At State level, governments would have to ensure that their gaming and wagering laws prohibited this type of gambling.

The spread betting issue alerted the Committee to a shortcoming in the Act’s licensing provision. It appears that there is no mechanism whereby a discretion can be exercised regarding the granting of a financial services licence. Currently, ASIC must grant a licence if the statutory criteria are satisfied, regardless of whether the financial activity to be conducted will undermine the consumer-protection or other objectives of the Act.

The Committee believes this shortcoming should be remedied. The Committee has consequently recommended that the Government set up an appropriate mechanism whereby ASIC may refer these types of applications—that otherwise meet
the statutory criteria—to an appropriate entity or person for a decision.

**Small business—insurance multi-agents**

At the two previous inquiries into the FSR legislation and again at this year’s inquiry, the Committee heard from a number of insurance multi-agents about the adverse effects the FSR legislation is having on their businesses. We heard that licensees are using the FSR legislation as a pretext for terminating agents’ contracts. We heard that multi-agents’ bargaining power has been weakened. We have been told that multi-agents are being forced to sign up as authorised representatives generally on much less favourable terms than was previously the case.

The Committee is aware that section 1436A of the Corporations Act was inserted specifically as a protective measure so that insurance agents could continue to operate under the Insurance (Agents and Brokers) Act 1984 for the full two-year transitional period notwithstanding that their principals might transition before then. We are also aware that the legislation provides for cross-endorsements to allow multi-agents to operate as authorised representatives for more than one principal under the FSR regime. However, evidence received by the Committee suggests that licensees are reluctant to enter into cross-endorsements because of liability issues. This has had serious consequences for multi-agents.

The Committee heard evidence that quite fundamental re-structuring is occurring in parts of the insurance industry largely as a result of the FSR legislation. We are concerned that the legislation may be placing a reputable industry sector at a significant disadvantage. The Committee would like corrective action to be taken to ameliorate the difficulties caused by the legislation. The Committee has recommended that legislative amendments be made:

- to provide for the development of a mechanism (for example, a trust fund) to protect payments owed to a multi-agent where the multi-agent’s principal becomes insolvent or bankrupt or where such is threatened. Protected payments would include those owed directly to the multi-agent by the principal or those payable to the principal by a product provider before they are drawn upon to pay the multi-agent.

In addition to the above recommendations, the Committee would strongly encourage the Department of the Treasury and ASIC to seek out non-legislative initiatives to redress the negatives that the FSR legislation has imposed on insurance multi-agents.

**Fine-tuning the Act and regulations**

Quite a number of submissions to the inquiry commented that the Act and regulations presented some quite significant ‘navigational’ challenges. Instances of inconsistencies and anomalies were highlighted. One submission suggested that the complexities in the legislation would lead to increased operational and regulatory costs which ultimately would be passed onto consumers.

The Australian Stock Exchange Limited said that the structure of the Act and regulations made ‘full comprehension of relevant concepts in the Act difficult’ and suggested that consideration could be given to including notes to the regulations with cross-references.

The FSR Act and regulations are extensive and complex, and it is inevitable that there will be teething problems. The Committee is satisfied that the Department of the Treasury is progressively attending to these. However, the Committee suggests that the Department of the Treasury consider ways in which the legislation might be made more ‘user-friendly’.

**Final comment**

I have not covered all of the matters raised during the inquiry. You will find most of these in the Committee’s report. On behalf of the Committee, I am pleased to say that, generally, the Committee’s findings are that the regulations and ASIC policy statements do meet the objectives of the FSR legislation which I spelt out earlier. Considering the volume and complexity of the regulations developed by the Department of the Treasury, and the range of policy statements issued by ASIC, this is quite an achievement.

I offer my personal thanks and, I am confident, that of all of the Committee members to the staff of the Committee Secretariat. They have worked hard and long on the Inquiry, which has involved
quite complex issues. My thanks therefore go to Committee Secretary, Kathleen Dermody and especially Bronwyn Meredith for their efforts, as well as to James Sampson from my own office.

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

Leave granted; debate adjourned.

A Certain Maritime Incident Committee Report

Senator COOK (Western Australia) (4.31 p.m.)—I present the report of the Select Committee on A Certain Maritime Incident, together with the Hansard record of proceedings, the report by S.J. Odgers SC—the independent assessor to the committee—and documents presented to the committee.

Ordered that the report be printed.

Senator COOK—I move:

That the Senate take note of the report.

Today as I present this report, Australia is grieving the senseless loss of life in Bali and bracing for the possibility that within weeks or months our troops may be at war in Iraq. When Australia as a nation is challenged, our values as a society are also challenged. When our military fights, they risk death and some make the ultimate sacrifice in the defence of our values. We may debate the wisdom of certain military conflicts, but we do not need to debate what it is we stand for. By our history and our practice as a democracy, a feature of our character as Australians is that we value honesty and truth. At election time, while voters may be cynical about political promises, they expect to honestly know the underlying facts. Mr Howard said this himself in 1995 on ABC radio:

“We want to assert the very simple principle that truth is absolute—truth is supreme, that truth is never disposable in political life.”

We want to assert the very simple principle that truth is absolute—truth is supreme, that truth is never disposable in political life.

The values which we embrace as a nation and which define what it is to be Australian are not fulfilled by words. They are made real by deeds. This report seeks to uphold those values by telling the truth. That is what the Senate asked us to do and, within the limitations imposed by the government, that is what we have done. Significantly, every senator that sat on this inquiry, except those from the government, agree on these findings.

This inquiry came into being by resolution of the Senate on 13 February this year. The Senate expanded its reference on 13 March, which led us to an examination of the SIEVX tragedy. Our reporting date was extended four times because of the complexity we encountered and because of a desire to conscientiously discharge the responsibilities delegated to us by this chamber. In all, the committee sat on 15 days, often from early morning until late at night. It heard 60 witnesses—all in Canberra—and generated 2,181 pages of transcript. Now, eight months and 10 days later, we table our report. It contains 49 findings and 16 recommendations.

The report comes in four parts: first, the main report endorsed by Senators Bartlett, Murphy, Faulkner, Collins and me—all the non-government senators, who are united in our findings; second, additional comments by Senators Bartlett, Faulkner and Collins; third, a minority report from government Senators Brandis, Ferguson and Mason; and, fourth, the report from the assessor, Mr Stephen Odgers SC.

These are the basic facts of the inquiry, but the significance of the inquiry is, of course, in its subject. This was an inquiry into an act of public duplicity on the eve of a federal election. The Senate asked us to investigate. We asked: what actually happened? Were children thrown into the sea? How was it that this story came to be commented on by ministers and the Prime Minister and made front-page news throughout Australia? Why was there a failure to correct the record when the truth quickly became known? How were photographs of a courageous rescue by naval ratings falsely used to prove a lie? What were the facts behind the tragedy of the deaths at sea of 353 men, women and children when SIEVX sank? What were the policy underpinnings of the Pacific solution, its background and circumstances?

But the significance of these events goes to an even deeper issue, to the very heart of our democracy—the right of voters to know the truth before they vote. I believe the inquiry has delivered on all of its obligations but, regrettably, I cannot stand here today
and say, ‘Mission accomplished.’ I cannot say that because, manifestly, our mission is incomplete. We have not been able to accomplish it because our path has been blocked by the cabinet—that is, the executive wing of government has used its power to prevent the parliamentary scrutiny of itself.

What do they have to hide? The pertinent questions we want ministers, the Prime Minister and their staff to answer are: what did they know, when did they know it, and what did they do about it? Today, we have incomplete answers to these questions, but not so incomplete however that there is not enough evidence for us to find that the then defence minister, Peter Reith, deliberately deceived the nation and not so incomplete that there is not enough evidence to raise serious questions about the Prime Minister’s probity.

It was always the case that we could not call serving members of the House of Representatives. That meant we could not call the Prime Minister and Mr Ruddock. We accept that, but there is ample precedent for calling their advisers and Mr Reith’s advisers, some of whom were at the time, and remain, public servants subject to estimates scrutiny. We would have liked to have had the sworn testimony of Mr Miles Jordana, Mr Mike Scrrafton, Mr Ross Hampton and Mr Peter Hendy. The public interest would have been served if we had had that evidence. We were unable to call them because the Howard government put them beyond our reach—deliberately.

We also wanted to hear from Rear Admiral Gates and Ms Liesa Davies, but they were blocked from giving evidence by Minister Hill. It was not an iron curtain that fenced these witnesses off; it was a curtain of executive privilege that descended to thwart this Senate inquiry and deny the right of the parliament to thoroughly scrutinise the actions of the government at the time of a critical election, when border protection and asylum seekers were lively issues. Some may say that blocking our inquiry was smart politics. Some may even contend that we have no right to inquire into the actions of ministers. Whatever arguments are put, one thing is for sure: this is not open, transparent government—the kind of government, it should be noted, that Mr Howard promised Australia. Surely those arguments do not count alongside the right of the public to know the truth, and the fact that Australia was lied to at election time when the nation was in caretaker mode.

The Senate Select Committee on A Certain Maritime Incident quickly became known, for commonsense reasons, as the ‘children overboard’ inquiry. For the same ease of reference, the document I table today should be known as the ‘truth overboard’ report, because that is what it finds happened to the truth. Our first finding is that no children were thrown overboard from SIEV4. Other findings are that photographs released to the media on 10 October as evidence of children thrown overboard on 7 October were actually pictures taken the following day, 8 October, whilst SIEV4 was sinking. We find that by 11 October 2001 the naval chain of command had concluded that no children had been thrown overboard from SIEV4. The Chief of Defence Force, Admiral Chris Barrie, was informed at the very least that there were serious doubts attaching to the report.

We find that on 11 October 2001 Minister Reith and his staff were separately informed that the photographs were not of the alleged children overboard events of 7 October; they were of the foundering of SIEV4 on 8 October. We find that, on or about 17 October 2001, Admiral Barrie informed Minister Reith that there were serious doubts about the veracity of the report that children had been thrown overboard from SIEV4. We find that, on 7 November 2001, the then Acting Chief of Defence Force, Air Marshal Angus Houston, informed Minister Reith that children had not been thrown overboard from SIEV4. We find that on four other occasions the lack, or dubious nature, of evidence for the ‘children overboard’ report was drawn to the attention of the minister or his staff by officers from Defence. We find that, on 7 November 2001, Minister Reith informed the Prime Minister that at least there were doubts about whether the photographs represented the alleged children overboard
The findings go on to note that, despite all this advice, no correction or retraction was made by any member of the federal government before the election on 10 November 2001. The committee goes on to conclude this section of its findings by saying:

Minister Reith made a number of misleading statements implying published photographs and a video supported the original report that children had been thrown overboard well after he had received definitive advice to the contrary.

And:

The Committee finds that Mr Reith deceived the Australian people during the 2001 election campaign concerning the state of the evidence for the claim that children had been thrown overboard from SIEV 4.

Perhaps the most insidious issue that the inquiry highlights is that in August last year, when the government was gearing up to play the border protection card, Minister Reith quietly ordered that all important ADF press communications be centralised and coordinated through his office. This broke a century of tradition. It trespassed on the autonomy of the Australian military, an autonomy that has been exercised even in wartime. It meant that defence force issues could be manipulated for political purposes. This was a breathtaking intrusion into the independence of the military, and marked a new nadir in the politicisation of the Public Service.

Countries that do this sort of thing typically are not democracies. I note Senator Hill has changed this instruction, but that is not enough. If only one reform flows from this report then it should be that set out in recommendation 9. If that recommendation is adopted it will go some way to preventing the manipulation of the armed forces of this country from ever occurring again.

It is salutary to remember that the truth in this case may never have surfaced if Commander Banks had not inadvertently spoken to a Channel 10 research assistant, and the Australian had not reported leaks from disgruntled Adelaide crew members on Christmas Island. These were accidents in breach of the Reith media mandate. If the order had remained strictly enforced, we may have never learnt the truth of this case.

Senator Faulkner and Senator Collins will say a lot more about SIEVX, and I expect that Senator Bartlett will also speak about the Pacific solution part of our reference. SIEVX was a genuine tragedy. Many of the issues we are concerned about have not been fully resolved, but they need to be. We recommend that there be an independent inquiry into all the events surrounding SIEVX, including the extent of the so-called ‘disruption activities’. Since our inquiry concluded, more information has come into the public domain through media reports. Senator Faulkner has spoken about this in the Senate. To do the job properly a full judicial inquiry is necessary.

I reject the findings of the minority report. It is long on name-calling and political rhetoric. It is wafer-thin on facts or analysis. Unfortunately, it seems to take its theme from efforts by the government to discredit the inquiry. Ironically, the greatest compliment the inquiry has received is from the government. Yesterday, Senator Hill released a statement announcing steps the government was taking to make sure the children overboard affair could not be repeated. He has not gone far enough, but that is not the point I make. He did not choose to make these changes earlier when the government’s in-house reports came down. He did it yesterday, maybe in an effort to pre-empt our report, certainly to provide a fig leaf to cover the government’s embarrassment and, obviously, because it was necessary. If there had been no inquiry it is very likely no changes would have been made.

As a nation, we are keen to distinguish ourselves from those types of countries that are not democratic. They do not have our good human rights records, our free media or our non-partisan defence forces. They have government owned media with totalitarian control of public information, and the military is used as a political arm of the state. What distinguishes us is that we like to believe that this could not happen here. The only thing we need to do to make it happen here by stealth is to pretend that somehow the truth of what happened in the children
overboard affair is not really important. After all, they were only asylum seekers and, anyway, the government members say it is sour grapes by us.

But the truth matters—of course it matters. We all know it matters. This report says it matters. And if we pretend it does not matter or that the children overboard lies were just some smart political game, we do that at our own peril and the peril of our democracy, our political processes, and good government, whichever party is in power. I thank the secretariat for the work that they have done in supporting us in this inquiry. Their efficiency helped us considerably. They operated at a high level of competence and I thank them.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! The honourable senator’s time has expired.

Senator Cook—Mr Acting Deputy President, now that I have made my speech I rise on a point of order and seek your ruling on it. The minority report of the government senators on the committee refers to other members of the committee in terms which I believe are contrary to standing order 193. The terms to which I particularly refer are ‘hypocrisy’, ‘insidious intellectual dishonesty’ and ‘selective and misleading reference to the evidence’ used with application to the majority senators. Past rulings have indicated that it is not in order for senators to breach standing order 193 by quoting documents containing language contrary to the standing order. I ask that you rule that it is also not in order to use such language in a committee report or to repeat such language in a debate. Because the report has now been tabled it is automatically ordered to be published with parliamentary privilege. There is, therefore, no effective remedy for future reference and would also prevent the debate on the report from degenerating.

Senator Kemp—Mr Acting Deputy President, on the point of order—

The ACTING DEPUTY PRESIDENT—Senator Kemp, if I rule on the point of order first it may be irrelevant for you to speak to the point of order.

Senator Kemp—I thought you might like to hear two sides before you rule.

The ACTING DEPUTY PRESIDENT—I am happy to acquiesce to that. I will hear your response to the point of order, Senator Kemp.

Senator Kemp—Mr Acting Deputy President, I point out to you that Senator Cook has used very extreme and strong language in relation to his descriptions during his speech on Mr Peter Reith, a former distinguished minister. It is excessively precious for Senator Cook, who has spent 10 minutes defaming and vilifying a former distinguished minister of the Howard government, to worry about the comments that have been made by my colleagues about him.

Senator BRANDIS (Queensland) (4.49 p.m.)—Before I address the issues which Senator Cook has addressed concerning the SIEV4 episode, it is very important that those who hear the broadcast today realise that in relation to SIEVX, there is no significant difference between government and opposition senators—I cannot speak for Senator Bartlett. Those who heard Senator Cook’s remarks a few moments ago may have thought that the government and the opposition were of a different view on SIEVX. That is not so. SIEVX is dealt with in chapters 8 and 9 of the report. The government senators address it in paragraph 13 of the first chapter of our report. We say:

In regard to SIEVX, Government Senators support the general conclusions and findings in Chapters 8 and 9. In particular we agree with the finding in paragraph 9.142, which states “On the basis of the above, the Committee cannot find grounds for believing that negligence or derelic-
tion of duty was committed in relation to SIEV X.”

That is all I propose to say about that. The government senators’ report appears between page 477 and the conclusion of the volume. When I speak of ‘the report’ I speak of the majority report. The government senators’ report critiques the majority report. Paragraph 4 of the first chapter of the government senators’ report says that the majority report is a document which is corrupted by intellectual dishonesty—

Senator Cook—Mr Acting Deputy President, I rise on a point of order. The point of order goes to the one I raised earlier. These are exactly the terms I rejected. We never saw this report before it was tabled, as promised. This is unparliamentary language and you should rule it out of order. It is a liberty.

Senator Ferguson—You did. Yours wasn’t finished when it was adopted. Your report wasn’t even finished.

Senator Cook—That’s a lie and you’re a liar!

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Senator Cook, that is unparliamentary. You will withdraw those remarks.

Senator Cook—I withdraw my remarks.

Senator Kemp interjecting—

The ACTING DEPUTY PRESIDENT—Order! I would like some quiet, please, Senator Cook and Senator Kemp. Senator Brandis, you know as well as anyone in this chamber that you cannot use that sort of language if it is directed towards any of the honourable senators here. Insofar as it may not be, then I ask you to proceed.

Senator BRANDIS—Mr Acting Deputy President, I abide by your ruling, of course. I do not speak of any individual senators and I do not speak of senators corporately. I speak of a document—that is, a report. The report is a document corrupted by intellectual dishonesty. It is based on findings, or what are described as findings, which are unsupported by the evidence.

The ACTING DEPUTY PRESIDENT—Senator Brandis, resume your seat again.

Senator Cook—Mr Acting Deputy President, on a point of order: the report that Senator Brandis refers to is a report signed by me and several other senators in this place. We are the authors of that report, and if there is an allegation of the character that the senator opposite knows is unfair and untrue—but it is also against standing orders—it is an allegation against us and he should be asked to withdraw it.

The ACTING DEPUTY PRESIDENT—There is no point of order because Senator Brandis, in my view, is not referring to individual senators. However, Senator Brandis, I ask you to continue but to desist from the ambiguity that is in this chamber this afternoon when you use such language like that.

Senator BRANDIS—I will be unambiguous, Mr Acting Deputy President. The majority of the report is based on findings, or what it is pleased to describe as findings, which are unsupported by evidence and, in particular, it makes loose and unsupported allegations of dishonesty against an individual, Mr Reith. It ignores vital evidence which explains the sequence in which events took place and then casts doubts on the motives of those involved which could not be cast if the evidence had not been ignored. It indulges in innuendo and allows doubts to linger in the air when none exist. It engages in conspiracy theories of the most Kafkaesque hue. It reflects upon the reputations of distinguished Australians, in particular the former Chief of the Defence Force, Admiral Chris Barrie, who at the time these events took place had one thing and only one thing on his mind and that was concern to protect the Australian people during the war against terror. Why? Because the entire ‘children overboard’ inquiry was nothing more and nothing less than an orgy of self-pity and misplaced outrage engaged in by the Australian Labor Party because they lost the federal election. For 15 hearing days, through 56 witnesses, for 138 hours, the Australian Labor Party engaged in an orgy of self-justification. And to what end? To no end, because the evi-
dence, unfortunately from the point of view of the Australian Labor Party, did not produce the conclusions that they were seeking.

I said at the start that the report was corrupted by intellectual dishonesty. There are two particular techniques that are used in the report about which I make that charge. The first of them is the use of open findings—language to the effect ‘the committee is unable to determine such and such a proposition’—where there is no evidence whatsoever to suggest that there is even a question, thus leaving doubt lingering in the air. The innuendo to be found in open findings leaving doubt lingering in the air is dishonest and disgraceful. The second technique in which the majority report indulges is to arrive at what it is pleased to call ‘findings’ which are not findings at all—at least not findings having any bearing on the evidence; they are findings based on conjecture and surmise.

There are many people who are attacked in the majority report, but there are three in particular about whom I wish to speak. The first is the Prime Minister. The majority report alleges at paragraph 6.97:

The Committee is unable to conclude with any certainty whether the advice given to Minister Reith, which overturned the report of the incident itself—and I interpolate that that itself is a misstatement; that is not what the evidence showed—and the photographs as evidence of it, was communicated fully to the Prime Minister ...

At paragraph 6.101, it goes on to say:

The Committee is unable to determine whether on 7 November Mr Reith, in telephone conversations with him, informed the Prime Minister that there was no other evidence supporting the claim, and that he had been informed by the Acting CDF that the incident did not take place.

That is an example of that dishonest technique of open findings, thus leaving a question lingering in the air. But the fact is that there was no question in the first place. There was a telephone conversation on 7 November between Mr Howard and Mr Reith. Both of them are on the public record as to what was said during that telephone conversation. The innuendo left lingering in the air against the Prime Minister is utterly dishonest. There is not a scintilla of evidence, whether direct, hearsay, circumstantial or otherwise, which could support the proposition that there was any question at all involving the Prime Minister. That is an example of the dishonesty in which the majority report has so freely engaged.

**Senator Mason interjecting—**

**Senator BRANDIS—** It is Orwellian, Senator Mason; you are quite right. Let me turn to the outrageous treatment of Mr Reith in this report. In what the majority pleases to call ‘findings’ at page xxiv of the report, this is what is said:

The Committee finds that Mr Reith deceived the Australian people during the 2001 Federal Election campaign concerning the state of the evidence for the claim that children had been thrown overboard from SIEV 4.

The majority also purports to find:

Mr Reith engaged in the deliberate misleading of the Australian public concerning a matter of intense political interest during an election period. Mr Reith failed to provide timely and accurate advice to the Prime Minister concerning the matters associated with the ‘children overboard’ controversy.

Then it goes on to find:

Mr Reith failed to cooperate with the Senate Select Committee established to inquire into the ‘children overboard’ controversy, thereby undermining the accountability of the executive to the parliament.

Those are the findings. The first point to be made about those findings is that they are entirely unsupported by the evidence. There are more than 2,000 pages of *Hansard* transcript of this inquiry, and one will not find anything in them to support the finding of deliberate dishonesty by Mr Reith. I will turn in a moment to what the evidence does show. But it is a bit rich, it must be said, for the Australian Labor Party to attack Mr Reith for failing to cooperate with the Senate inquiry, because for months on end Senator Faulkner, Senator Cook and other Labor Party politicians demanded that Mr Reith appear. There was no reason why the Senate’s subpoena powers could not have been used against Mr
Reith. If they had wanted to put him on the spot, they could have done so, they could have subpoenaed him, but for week after week and month after month the Labor Party senators delayed.

Eventually, on 22 May—I have the minutes with me—not the Labor Party but Senator Andrew Bartlett from the Democrats moved that Mr Reith be subpoenaed and, when Senator Bartlett moved that motion, Senator Ferguson, Senator Mason and I told the Labor senators that we would not stand in their way. Mr Reith was their witness and they wanted to put him on the spot, so we told them we would not stand in their way and we would abstain from voting on Senator Bartlett’s motion.

Mr Acting Deputy President, do you know what happened? I will tell you what happened. The Labor senators voted not to subpoena Mr Reith. They voted against the motion that they had, in the public arena, demanded. On the airwaves, on the TV channels and in this chamber they demanded that Mr Reith appear. When Senator Bartlett moved a motion on 22 May that he be called, Senator Faulkner, Senator Collins, Senator Cook and Senator Murphy raised their hands to defeat the motion. The minutes show: those in favour, 1; those against, 4; and abstentions, 3.

Senator Mackay interjecting—
Senator Jacinta Collins interjecting—

The ACTING DEPUTY PRESIDENT—Order! Senator Mackay, you will come to order! Senator Collins, you will come to order!

Senator BRANDIS—Mr Reith’s credibility has been attacked savagely in this report.

Senator Faulkner—He’s a liar!

The ACTING DEPUTY PRESIDENT—Order! Senator Faulkner, you will come to order!

Senator Ferguson—That’s unparliamentary!

Senator Faulkner—It is not unparliamentary. He is not a member of parliament.

The ACTING DEPUTY PRESIDENT—Order! You will come to order, Senator Faulkner. It is not unparliamentary for someone in this chamber to speak of a person outside this chamber in those terms. It is, however, unseemly and it brings no credit to this chamber.

Senator BRANDIS—The gravamen of the charge against Mr Reith is that he was in possession of information which falsified a public report that asylum seekers on the vessel SIEV4 had behaved badly. The gravamen of the charge is that he concealed that information to attempt to gain a political advantage for the government. What the majority report does not mention—there is not so much as a reference to it in 550-odd pages—is the fact that the committee heard a range of evidence from several witnesses that Mr Reith was in possession of knowledge of much more severe and significant and disgraceful behaviour by asylum seekers which never reached the public arena. If that was Mr Reith’s motive, why was that information not made a matter of public record?

In an article in the *Sydney Morning Herald* on 31 March 2002, the journalist Alan Ramsay wrote:

Like much of the media coverage, they were little interested in anything other than the one “certain maritime incident” on October 7. Yet imagine what Howard could have made of them during the election campaign had he known the detail of those six other boardings? The navy never told the Government. The October 7 disclosure was a communications cock-up. Just like [almost] everything else about this futile political pursuit.

Mr Acting Deputy President, that is what a journalist observed after two days of hearings. But do you know what? He was wrong, because the government did know. The government did know about the behaviour of asylum seekers on all of the other nine SIEV boats that were intercepted before the 10 November election—SIEV1 through to SIEV10. Admiral Barrie told Senator Mason in his evidence when this proposition was put to him—and this evidence is quoted in the minority report:

I think the minister was in possession of the knowledge. Certainly on a few occasions I can attest to that personally.

Ms Halton, the Deputy Secretary of the Department of the Prime Minister and Cabinet,
gave evidence to the same effect; so did Rear Admiral Ritchie, so did Brigadier Silverstone, so did Rear Admiral Smith, so did the Chief of Navy, Vice Admiral Shackleton, and so did Air Vice Marshal Titheridge.

So if that is the Labor Party case against Mr Reith, that he forbore from interfering to correct to the public record in order to maintain a political advantage for the government, the case falls at the first hurdle. He was in possession, he had been told by his military officers, of other information of a much more prejudicial character and not a word of it came into the public arena.

The third piece of evidence in relation to Mr Reith’s conduct is the question of what has been called ‘the video’, a video taken from the bridge of the *Adelaide* that showed asylum seekers on the bridge of SIEV4 but did not show any children being thrown overboard. That video evidence is both spatially and temporally limited. It is limited to a part of the incident and it is limited to one side of the ship. But, nevertheless, as far as it goes, that video did not support the view that the government had expressed publicly. Mr Reith was told of that on 7 November by Air Marshal Houston. Mr Reith rang the Prime Minister and mentioned the video to him. What was the reaction of Mr Reith when he was told there was a piece of evidence that did not assist the government’s case? If Mr Reith were motivated by the malign conduct alleged against him by Labor senators, he would have suppressed it—of course he would have. What did he do about this piece of unhelpful evidence that told against his own case? He ordered that it be released immediately. Air Marshal Houston’s evidence was that, when he told Mr Reith about the video, Mr Reith said, ‘Well, we’d better release it then.’ It did not help the government’s position, yet the immediate reaction was to put it out there into the public arena.

This has been an argument, essentially, about a sequence of events. It has been politicised by the Labor Party and all sorts of extravagant innuendoes have been made, but it has been an argument about a sequence of events. Let me quickly summarise them, because this is what the evidence in truth shows. You did not hear Senator Cook talk about the evidence and you will not hear Senator Faulkner do so either, and Senator Collins would not be able to understand it if she tried. The evidence shows in the first place that there was a report to the joint task force commander from the bridge of the *Adelaide* that a child or children were thrown overboard. The evidence shows that three days later, on 10 October, the Commander, Australian Theatre, Rear Admiral Ritchie, who in the command structure was the officer immediately below the Chief of the Defence Force, told Mr Scrafton from Mr Reith’s office at 12.42 that he still believed the accuracy of that report. He still believed it to be true; that is the evidence.

The evidence is that doubts were growing in the mind of Admiral Ritchie and others and that at 10 o’clock on the morning of 11 October Admiral Ritchie had a conversation with the Chief of the Defence Force, Admiral Barrie. He told him that there were doubts about the accuracy of the report. Admiral Barrie said to Admiral Ritchie, and I will paraphrase his words, ‘I am not sufficiently persuaded by what you have told me to change my initial reliance on the report of the commanding officer.’ All of this evidence is set out chapter and verse in the government senators’ report. Admiral Barrie went away from that conversation, as he put it, ‘inviting Admiral Ritchie to fight a repêchage’. He said to him, ‘If you have any further evidence to put before me, you should come to me and give it to me, but until you do I am not sufficiently persuaded to change my initial reliance on the report of the commanding officer.’

That was at 10 a.m. on 11 October. Three-and-a-quarter hours later a signal came in, received by Admiral Ritchie, which was the evidence that Admiral Barrie had asked for. That was never brought to Admiral Barrie’s attention. Admiral Barrie briefed Mr Reith on 17 October and he told him two things: ‘Minister, there are doubts among the chain of command about the accuracy of this report; however, my advice to you as your chief defence adviser is that there is not sufficient evidence available to persuade me that the original report was wrong and I adhere to it.’ It is as simple as that. That was
the advice to Minister Reith from the Chief of the Defence Force, Admiral Barrie: that although doubts had been expressed along the chain of command he, Admiral Barrie, was not persuaded that the first report was wrong and his professional advice to his minister was that the report should be supported. When you get into the evidence it tells a different story from the rhetoric we have heard from the Australian Labor Party. The case is closed.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.12 p.m.)—We are debating today the report of the Senate Select Committee on a Certain Maritime Incident, better known now as the CMI or ‘children overboard’ select committee, and the opposition welcomes the report. We would like to recognise the efforts of the committee secretariat for their hard work and diligence on this difficult and complex reference. I want to begin my contribution by being generous. I would like to thank Senators Mason and Brandis for their helpful suggestion to extend the terms of reference of the committee—one of the greatest own goals in Australian politics. Without this extension we could not have explored the knowledge that Australian authorities had about the vessel SIEVX and we could not have explored the government’s people-smuggling disruption program.

Through many hundreds of hours of hearings and hundreds of pages of documents that were brought before the committee, we now have a greater understanding of the lies and the misinformation that the Howard government dishied out to the Australian people during the 2001 federal election campaign. Despite the ban on ministerial staffers attending committee hearings, despite the cabinet ban on submissions from departments and agencies, the committee has still managed to find mountains of material indicating that the government either lied or deliberately ignored and covered up the truth that children were never thrown overboard on 7 October 2001. Earlier this year, the Prime Minister, Mr Howard, told Neil Mitchell on 3AW:... as far as I’m concerned I have nothing to fear in relation to the truth on this matter. I don’t have anything to hide.

That is what Mr Howard said. But of course he did have something to hide. If he did not, he would not have banned the key witnesses Hampton, Hendy, Scrafton and Jordana from coming to the committee and giving evidence.

Let me outline for the Senate what was uncovered at the CMI committee. From 7 October 2001, the Prime Minister, his office and senior members of PM&C received on at least 13 occasions written or oral reports that there were serious doubts that children had ever been thrown overboard. From 7 October, Mr Reith, the then Minister for Defence, and his office received on at least 14 occasions written or oral reports that either indicated serious doubts that children were thrown overboard or contained categorical advice that no children had been thrown overboard.

From 7 October, Mr Ruddock’s department never received any advice from defence indicating that children were thrown overboard. Furthermore, Mr Ruddock’s office received at least two reports based on defence advice that did not mention that children were thrown overboard from SIEV4. We now know that not only did this event never occur but the original information was based on fifth-hand verbal advice—it is a sort of Chinese whisper. Commander Banks from the HMAS Adelaide told the CMI committee that he believed he never said a child was thrown overboard. If the Prime Minister had simply picked up the phone and spoken to Commander Banks, of course he would have learned the truth very quickly—but it did not suit the election campaign.

The allegation that asylum seekers threw children overboard suited Mr Howard’s divisive approach in his election campaign tactics at the time. It was not an allegation that the government would have wanted to correct in a hurry in the campaign; it suited the political purposes of Mr Howard and the government. They shamefully used and abused the defence forces, and they abused and used the asylum seekers, to progress
their campaign strategy. You just have to listen to what Mr Howard and Mr Ruddock said about the asylum seekers on SIEV4, once they had made the allegation that children were thrown overboard. They could not get in quick in enough. Mr Ruddock said: I regard these as some of the most disturbing practices I’ve come across in the time that I have been involved in public life.

And Mr Howard said:

Quite frankly, Alan, I don’t want in this country people who are prepared ... to throw their own children overboard.

They could not get in there quickly enough to condemn them. Commander Banks told the CMI committee of his frustration during the election campaign. He said:

I then felt, in the ensuing period, that the issue of children being thrown overboard was now a media and political stunt and that if anybody wanted to verify the veracity of the information perhaps I should have been questioned ...

Precisely. Commander Banks described HMAS Adelaide’s efforts during the rescue of people on SIEV4 when their boat began to sink as ‘superb’. The justifiable pride that Commander Banks felt for his crew members was evident in the many photos he sent back to the Department of Defence. To their great shame, the government chose to use two of those photos for political gain, to misrepresent the facts and to cover up again. The political cover-up continued until the first parliamentary sitting day this year, when the Prime Minister tabled the PM&C report into the ‘children overboard’ matter. It was clear from the PM&C and defence reports that not only were the claims wrong but the behaviour of certain ministerial advisers and ministers in covering up the claims was outrageous.

But the opposition said that there was more to the story, there was a web of deceit, it was time to unravel the truth. In the week of the estimates committees of the Senate in February, with no assistance from the government at all, we began to get to the truth of this matter. Very important questions were asked of Air Marshal Angus Houston about categorical advice to Reith on the fact that children were not thrown overboard. We also learned that the Prime Minister’s international adviser, Miles Jordana, received on 7 October two reports—DFAT sit rep 59 and Defence Headquarters Operation Gaberdine/Op Relex 8 October—which did not mention children being thrown overboard.

The other crucial piece of evidence found at the Senate estimates committee was that Miles Jordana rang Mr Jones from ONA, asking if there were any reports indicating that children had been thrown overboard on 7 October. Mr Jones sent Jordana ONA report 226-2001 dated 9 October but warned the Prime Minister it should not be used as definitive advice, given that it had been based on ministerial statements. The ONA report had been based on press reports. But did it stop Prime Minister Howard? Of course not. He went straight in to the National Press Club, using this highly classified ONA report based on media reports as justification and false proof that children had been thrown overboard. That is what the Prime Minister of Australia is like.

I will now tell the Senate of some of the key pieces of information that this very effective select committee found out. We know that on 7 October defence told Peter Reith’s media adviser, Ross Hampton, that there was no information of children being thrown overboard. He was also sent a fax summary with no mention of children. On 7 October, the evening of the People Smuggling Task Force meeting, Group Captain Walker told the meeting that he could find no documentary evidence to prove children were thrown overboard, and that was verified by the task force note-taker, Katrina Edwards.

On 8 October, two written reports that did not mention that children had been thrown overboard on SIEV4 were sent to ministers and senior officials. One of those reports, DFAT’s sit rep 59, was sent to the Prime Minister, the Minister for Immigration and Multicultural Affairs, the Minister for Foreign Affairs and to the office of the Minister for Defence. DFAT sit rep 59 concerned Katrina Edwards from PM&C so much that it triggered her to make ‘vigorous inquiries’ with defence. Over the next few days, as Katrina Edwards told the CMI committee:

Strategic Command had been telling us a very similar message for the previous couple of days,
which was that they had no evidence within their holdings ...

By 10 October, defence sent a chronology to PM&C and Reith’s office based on HMAS Adelaide’s signals; it did not mention kids being thrown overboard. Katrina Edwards confirmed she showed the chronology to Jane Halton, the head of the task force. PM&C drafted talking points based on the chronology, Halton requested they be emailed to Minister Ruddock, Minister Reith and Minister Downer. Katrina Edwards says that Miles Jordana also received a copy—once again, no mention of children being thrown overboard.

But the evidence does not stop there: from 10 October, Peter Reith and his office misused photographs to reinforce the original great lie. We now know as a result of the CMI committee that Peter Reith and his staff were told on at least three occasions that the photographs were not taken on 7 October. Peter Reith continued to propagate this downright lie, despite the testy conversation he had with the then CDF, Admiral Barrie, on 11 October, when Reith was told by Admiral Barrie that the photographs proved nothing. Peter Reith also told the media that there was a video that could prove the claim made by the government. We know now that Reith’s office knew that that video was inconclusive and, according to one defence official, Reith’s response to this was, ‘Well, we had better not see the video, then.’ That is what he said. What a disgrace.

What has now come to light is the so-called tearoom gossip—another thing not mentioned by the Liberals—that the photos were not of the incident that they purported to be. That was original advice from the DLO in PM&C, Commander King. He passed that advice on to the PM&C senior officer Harinder Sidhu and then to the branch head, Brendon Hammer, on 11 October. Dr Hammer says he told no-one else, but in early November when Harinder Sidhu passed on the same advice about the photos, the advice was seen as so significant it was relayed to Miles Jordana in the Prime Minister’s office.

Finally, you have got to ask yourself: what did the Prime Minister know? We know that the briefing material the Prime Minister and his office received indicated very serious doubts about the original claims. We know that Peter Reith told the Prime Minister on 7 November that the photographs were probably not taken on 7 October but when the boat sank on 8 October. The Prime Minister has also suggested in his own interview with the Four Corners program that one of Reith’s staffers told him about these doubts regarding the photographs. Despite this, the Prime Minister deliberately avoided answering the question—avoided and evaded the truth—when asked the next day at the National Press Club by 7.30 Report journalist Fran Kelly:

Defence sources are saying today that the photos released by the Defence Minister’s office some weeks ago of the people in the water from that sinking boat were captioned when they were handed to the Government and that those captions clearly showed that the people were in the water because the boat was sinking, not because ... children had been thrown overboard. Will you now ask the Minister of Defence to release those photos with captions as originally provided by the Navy?

But that is how he operates. In February this year Mr Howard told the Insiders program:

What I’m saying is that if I had done something deliberately misleading I would owe people an apology, I haven’t.

Isn’t the failure of the Prime Minister to tell the National Press Club, in the last major event of an election campaign, that the photographs were wrong downright misleading and, I would say, downright dishonest? What else? What about—

Senator Brandis—I raise a point of order, Madam Acting Deputy President. I direct your attention to standing order 193(3).

The ACTING DEPUTY PRESIDENT (Senator McLucas)—Senator Faulkner, I request you to withdraw those words.

Senator FAULKNER—I will withdraw them. But what else? What about Scrafton and the Prime Minister? The Prime Minister admitted in a press conference that Mike Scrafton might have a different recollection of their conversation on 7 November but, as a result of the gag on ministerial staffers, we could never get to the bottom of that.
It is hard to believe that no-one in the government is willing to stand up and be accountable for the lies and the misinformation that were perpetrated during the election campaign. Australians were grossly deceived by this government. No-one has been shown the door for the breach of trust in the election campaign—no politicians, no political staffers, no public servants. It appears, of course, that ministerial advisers have gone beyond their traditional role; they have exercised executive authority for which they are accountable to no-one. We believe that absence of accountability is unacceptable and needs to change.

We have heard astonishing evidence right through this, from the then Chief of the Defence Force, Admiral Barrie, and the then Secretary of the Department of Defence, Dr Hawke, offering resignations. We heard about the comfortable conversations held at the Hotel Kurrajong between certain witnesses. We heard the Prime Minister’s office instructing defence that no humanising images should be shown of asylum seekers, the defence instructions requiring that all defence information go through defence minister Reith’s office, enabling him to control all the information that the media received on this.

The committee also spent a considerable amount of time on the issue of the vessel now know as SIEVX. During the election campaign, the Prime Minister told the Australian people that nothing could have been done by Australia to save the people who drowned when that vessel sank, because it sank in Indonesian waters. We now know that the advice the government received did not support that claim. The People Smuggling Task Force notes on 23 October state that the vessel was likely to have been in international waters south of Java. The DIMA intelligence notes on 23 October noted that SIEVX sank in international waters and well within Australia’s air surveillance zone, at approximately 60 nautical miles south of the Sunda Strait. Have we ever had a correction or an apology from the Prime Minister on that matter? Of course we have not. We have looked into the intelligence side of SIEVX and at how much Australian authorities knew about its departure and its condition.

But there are broader concerns that go beyond just those issues, go to the whole heart of the people-smuggling disruption program in Indonesia. Who exactly was involved? What accountability was there? Who funded this? How much was provided? Who was responsible for ensuring that this program was operated within reasonable constraints? What sorts of activities were involved in stopping those particular vessels from departing? I am pleased that the CMI committee recommends that a full and independent inquiry be held into those matters.

I hope the government does that; I hope the government takes up that recommendation and acts upon it. But if they do not, I can promise senators and the Senate that the Labor Party senators, at those forums available to us, will progress those issues. We will ask the questions. We will attempt to get to the truth of those particular matters and also find out why the MOU between the AFP and the Indonesian police collapsed. I have still been unable to establish that, but I will work on it; we will keep going.

In relation to the other terms of reference about the Pacific solution, we examined that issue. What is clear about the Pacific solution now, as a result of the efforts of this committee, is that half an hour before the caretaker conventions were in place, on 8 October, a $54 million deal was struck between the Australian government and the former PNG government over the Manus detention centre arrangement. That is not good enough, and that is another area where more transparency is required.

I believe that the CMI committee is a very good example of the Senate committee system working at its best—getting to the facts, exposing the lies and deceit of the Howard government, maintaining the spotlight on the accountability of government, demanding higher standards from the Howard government and from future governments. This affair has served to highlight the political lengths that the Liberal Party and Mr Howard and his team of ministers will go to in order to spread disinformation at the most sensitive time of the electoral cycle—during
It is crystal clear that Mr Howard and his ministers and his government were prepared to lie and deceive and cover up to save their political hides. This is a most contemptible action from a contemptible government.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (5.32 p.m.)—The report of the Senate Select Committee on a Certain Maritime Incident is important, despite a lot of the political heat and bunfights surrounding it which have led some to dismiss it as just political. There is a lot of important information contained in the report. Even more important information came through the hearings and the evidence tabled in this inquiry which would never otherwise have become public. That is why I believe this to be an important inquiry which provides a valuable resource for people that are interested in this policy area.

The report basically has three key components. There is the ‘children overboard’ incident which initiated it and is a source of a lot of the political heat. My view and the Democrats’ view in relation to that is that, clearly, former Minister Reith knew the reports were false, knew the photographs did not depict what he said they did, and chose not to correct the record. It is not the first time that a minister has chosen to not correct the record or to allow a mistaken picture to go out to the Australian community, and unfortunately it will not be the last; it should be condemned nonetheless. But the much bigger issues for the Democrats are the broader information about the operation of the Pacific solution and also the inquiry into the sinking of the SIEVX.

I was instrumental in ensuring, when this proposal was first put forward, that the inquiry would expand its focus beyond just the ‘children overboard’ incident. Whilst that is important, the Democrats believe it pales into insignificance beside the policy ramifications and the human ramifications of the broader Pacific solution. In that area I think the inquiry has been most valuable. It got more information out about the amount of money that is spent on that solution, more information out about the extent of military resources and the human impact, the human reality of how that works.

With the SIEV4—that is, the ‘children overboard’ boat—incident, what I found most valuable was the information that came to light about what happened there, what the reality was, what it actually means and what the boat people are going through. The most absolutely scandalous thing about that incident, in my view, was not about the confusion and then the misleading thing about whether a child was thrown overboard but that the Australian Navy personnel were forced to intercept a boat and then leave it out there in the middle of the ocean despite their commander’s own assessment—and this was from the valuable documents that the committee got—that the boat was marginally seaworthy and significantly overcrowded. That would never have happened in the past, before the government changed its policy in relation to the arrival of asylum seekers by boat. That scandal, which was repeated time and time again with all the boats that were intercepted, is what I find most disgraceful about that incident.

This comes into stark relief when you look at the SIEVX incident, where 353 people tragically drowned just over a year ago. The Navy were not able to find that boat; they were not able to intercept it. I accept that they were not aware that it was where it was. But the key thing is that undoubtedly, on the evidence that was provided of everything that had been done in the past, if the Navy had found that boat before it sank and intercepted it, they would not have taken off the women and children and tried to look after their safety; they would have tried to turn it around and make it sail back to Indonesia.

Safety of life at sea obligations only kick in—and we had evidence confirming this—once a boat is sinking. Until then, the paramount priority that our Navy are forced to operate under, under direction from the government’s policy, is to deter and deny entry and to try and turn the vessel around. We did have vessels that were intercepted, turned around and sailed back to Indonesia, including one that was so overcrowded that, for defence personnel to get on the boat to take...
control of it and turn it around, they actually had to take people off so the defence personnel could fit on. That is a disgrace, and our defence personnel should not be put in that situation.

I support the recommendations and general findings of the committee. I have made some additional comments.

Senator Ferguson—Have you read it all?

Senator BARTLETT—I have read it. It took a long time. I have not read your stuff yet—I cannot wait for that. It is clear that Defence should not be held to blame. It is government policy and the actions in deceiving the Australian public were government actions. The defence personnel were very cooperative with the inquiry and should not be held to blame. The Democrats agree with the concerns expressed by Senator Cook about the many unanswered questions surrounding the SIEVX. Some of those questions could not be answered because of deliberate decisions by Minister Hill to prevent the committee from having access to key witnesses. There needs to be a further independent inquiry into some of those questions, and they are particularly crucial. This report is not only important but also timely because, as I detail in my own comments on page 448, some of the key things about SEIVX go to failings in our intelligence system and mirror concerns that are being expressed now about what may or may not have gone wrong in intelligence operations leading up to the tragic bombings in Bali—in another tragedy in which hundreds of lives were lost. The Australian National Audit Office detailed manifold significant problems in the management framework for the inter-agency intelligence systems that are in place.

In the Democrats’ view, the extra absurdity and outrage is that the whole Pacific solution policy has meant that all of those intelligence resources and military resources supposedly provided in the context of security for Australians have been diverted towards detecting terrorists and assessing terrorist threats—which, tragically, we now know are a very real threat to the security of Australians. The Treasurer talked today about possibly needing to increase defence spending and even increase the tax burden on Australians as a consequence, yet the government is continually willing to throw away hundreds of millions of dollars on something with no security implications whatsoever, purely because it is electorally beneficial. That is a disgrace.

In our comments in this report the Democrats call for the immediate abolition of the Pacific solution. The reason why so many women and children were on that SIEVX boat—hundreds of women and children who drowned—is that the temporary protection visa, which is a significant component of the government’s Pacific solution policy, denies family reunion. The only way now for women and children to reunite with husbands and fathers who are already in Australia is to take that option of the boat. That is why so many of them lost their lives. The policy should be scrapped straightaway, and there needs to be an immediate independent investigation into the ongoing questions surrounding our intelligence operations in Indonesia and leading up to the SIEVX sinking.

I would like to pay tribute to Mr Tony Kevin, who has come in for a fair bit of flak—including in this chamber—for his persistence in bringing these concerns to the committee inquiry. I do not agree with some of the allegations he made. I do not believe there is any substance to the suggestion that Australian authorities knew precisely where the boat was but decided to let it sink to make an example; I think that is clearly wrong and that Defence should not be hit with such an allegation. But many issues were raised that clearly would not have been examined—and this issue would not have been examined—without Mr Kevin. There is no doubt about that. I have to say with regard to the government’s response that each time we got a little bit further they had to correct their evidence from before. I would have thought that it was in the government’s interest to clear up the questions about this, yet the committee had to drag it out piece by
piece, correction by correction, and we still had huge numbers of pages provided to us with acres of black lines through them. So I think Mr Kevin’s actions need to be acknowledged.

Whilst I am acknowledging people, another group that really needs acknowledgment and thanks is the committee secretariat, because this was a fairly heated inquiry and a lot of demands were placed on them. As we can all see, this is a very large report that they had to put together under very tight time frames. All of them—Brenton Holmes, Alistair Sands, Sarah Bachelard, Judith Wuest and Kerry Olsson—need to be thanked for their efforts. As I say, it is a valuable report and their efforts have contributed to this useful document that will, I think, be significant in assisting further policy development. The Democrats believe that we are clearly breaching our human rights obligations. This inquiry has demonstrated beyond doubt that the government’s policy means that people cannot access their fundamental legal rights. Its downgrading of the basic values of human life and human rights clearly demonstrates why we need a change in policy. I should quickly note that there was a submission from the press gallery calling on governments to correct their mistakes. I agree with that, and I have noted in my additional report that it would be handy if the media corrected their mistakes when they make them as well. (Time expired)

**Senator FERGUSON (South Australia)**

(5.42 p.m.)—I would like to say at the outset that I am pleased for Senator Cook in at least one regard tonight: at least he did not suffer the humiliation of not being able to table his own report as chairman. When I saw the first speakers list it had Senator Faulkner, 20 minutes; Senator Brandis, 20 minutes; and Senator Cook coming on at some later stage. So, Senator Cook, I am very pleased for you that you were able to table your own report. Because, in fact, it is your report. It is your report and yours alone, because this is not a committee report; it is a Labor senators’ report.

**Senator Jacinta Collins**—On a point of order, Madam Acting Deputy President: Senator Ferguson is deliberately misleading the Senate. This is a majority report and he knows it, despite having tried to organise otherwise.

The ACTING DEPUTY PRESIDENT (Senator McLucas)—There is no point of order, Senator Collins. I request you to withdraw that comment.

**Senator Jacinta Collins**—Withdraw what?

The ACTING DEPUTY PRESIDENT—Saying that Senator Ferguson was deliberately misleading.

**Senator Jacinta Collins**—Madam Acting Deputy President, if you are suggesting that I called Senator Ferguson a liar, I withdraw.

**Senator FERGUSON**—This is a Labor senators’ report, because there was no contribution from anybody other than Labor senators, except in the smallest way. It is one of the worst abuses of the Senate processes for adopting committee reports that I have seen in my 10 years in the Senate. It took 2½ months for the chairman to present a draft and it was presented incomplete—there were still changes to be made—at approximately 11.30 last Monday morning for formal adoption some three-quarters of an hour later. That is not too bad. I suppose we should be expected to peruse 380-odd pages and consider the changes that were made, some of which we were unaware of at the time because they had been slipped in during the last week. So 2½ months of preparation passed, with no discussion whatsoever, before the report was complete and the chairman was asking for an adoption. Senator Cook says that all the other senators agreed. Maybe Senator Murphy agrees—I do not know—but he scarcely attended one meeting of the committee. I would be surprised if he has read the whole 383 pages; he may have. But the only evidence he could base his support for this report on was the evidence that was supplied in this report by Senator Cook and the Labor Party. The sins of omission in the Labor Party report are certainly more than those things which were included from evidence.

So we have 2½ months of preparation of the chairman’s draft. Some three months ago, this committee was asked to spend $38,500
to get expert opinion because the Labor Party members were not capable of dissecting the information themselves, or so they thought. But then, of course, the Odgers report came much later. They did not wait for that and they went ahead and wrote a report anyway.

Why on earth that money was ever spent in getting a report from somebody outside of the committee I will never know. I opposed it at the time. I think it was an abuse of the committee process and it should never have been done in the first place. Then we have the matter of additional comments by Senator Faulkner and Senator Collins. It must be Senator Cook’s report because, they being Labor senators, Senator Cook obviously did not want their comments included in the main body of the report. For some reason or other, he did not want Senator Faulkner’s or Senator Collins’s additional comments included. I can only assume that it was Senator Cook who did not want those included. Otherwise, why wouldn’t the Labor Party senators’ comments be included in the main body of the report? That I cannot understand.

No doubt, the senators opposite are well acquainted with the show trials of Stalinist Russia. They seem to be because in all of those show trials you firstly determine the verdict that is required and you then set up a trial using as many witnesses as necessary to obtain tenuous evidence which is subsequently used to ratify the predetermined verdict. Senator Cook, you have done it to perfection—this is a Stalinist show trial if ever I have seen one. Comrades, you learnt well in your Stalinist show trial.

The ACTING DEPUTY PRESIDENT—Senator Cook, there is no point of order.

Senator Brandis—You were happy to cast reflections on a distinguished Australian: Admiral Barrie.

Senator Cook interjecting—

Senator FERGUSON—You cast your reflections on Admiral Barrie, who is a contemporary military officer. Comrades, you learnt well in your Stalinist show trial.

The ACTING DEPUTY PRESIDENT—Senator Ferguson, I request you to direct your remarks through the chair.

Senator FERGUSON—Madam Acting Deputy President, I rise on a point of order. We can take the usual abuse from Senator Ferguson but is it in order to describe a Senate committee as being a Stalinist show trial?

Indeed, as it says in our report, the only person with senior military experience that the Labor Party could wheel out to criticise the handling of the issue was Sir Richard Peek—a gentleman who may have had a distinguished military career; I do not know. It was so long ago, nobody would remember—because Sir Richard Peek began his career in the Royal Australian Navy in 1928 during the prime ministership of Stanley Melbourne Bruce. It was just a few years after the sinking of the Titanic. He retired some 30 years ago and he could hardly be regarded as an authoritative commentator on contemporary military decisions or systems. This is the only person from the military—an armchair academic—that the Labor Party could wheel out to give evidence before this inquiry.

Senator Cook—Madam Acting Deputy President, I rise on a point of order. I think that is a reflection on a distinguished Australian. I invite the senator to go outside and say it. Go outside and say that about Sir Richard Peek.

The ACTING DEPUTY PRESIDENT—Senator Cook, there is no point of order.

Senator Forshaw—Madam Acting Deputy President, I rise on a point of order. We can take the usual abuse from Senator Ferguson but is it in order to describe a Senate committee as being a Stalinist show trial?
I would say that is a breach of the standing orders because it is a reflection upon a committee of this parliament.

The ACTING DEPUTY PRESIDENT—Thank you, Senator Forshaw. I suggest that Senator Ferguson selects his words wisely.

Senator FERGUSON—I will select them as wisely as I can, Madam Acting Deputy President. On 14 February, Mr Crean made that statement. On 13 February, as Hansard records, Senator Faulkner said:

There is no doubt that the Howard government deceived the Australian people on this issue ...

That was on 13 February, more than six weeks before we had taken a single word of evidence. If there was no doubt, why the need for this political farce and political witch-hunt? The verdict was predetermined by the Labor Party and they decided that they would have to have some sort of inquiry in order to gather some evidence so that they could justify their predetermined verdict. I can understand what a state the ALP must have been in when they set up this inquiry. In 1996 they were slaughtered at the election. In 1998, with no forward vision—and they have shown no forward vision since 1996, because they have scarcely had a policy; they do nothing but look backwards—they were defeated in spite of their negative, fraudulent campaign against the GST.

Senator Crossin—We got the majority of the vote in 1998.

Senator FERGUSON—You lost again in 1998. In the year 2001, what did we have? More negativity. Roll back the GST—that is the negative side. Those senators opposite know that they were deserted by the Australian people, who after 5½ years knew and trusted Prime Minister John Howard. They cannot stand it that, after 5½ years, their backward looking, would get them nowhere.

It has now got even worse. Last Saturday the Australian voters deserted you in Cunningham. Even your own supporters are now deserting you. You find yourself in a situation where you simply have to use red herrings to try and somehow divert attention away from the wonderful progress that is being made in this country. You try to look backwards; you never look forwards. Even after two days of hearings, respected journalists were starting to realise that this was blowing up in the Labor Party’s face. I quote from an article that appeared on Monday, 1 April in the Australian—

Senator Forshaw—Who is it by?

Senator FERGUSON—It is by Glenn Milne, chief political correspondent for the Seven network—a great journalist. The article says:

Unless federal Labor can come up with the smoking gun that directly implicates John Howard in deliberate deception over the children-overboard affair, the Senate inquiry into the matter is halfway to blowing up in the Opposition’s face.

This was after two days. It is a lot more than halfway now. After four days, it had totally blown up. The article goes on:

With two days of hearings already complete in the so-called Senate Inquiry Into a Certain Maritime Incident, it’s Labor that’s taking political water, not the Government.

That is a fair assessment of exactly what happened to you throughout the whole 15 days of hearings. You continued to get witnesses to come along and not one of them supported what you said, because in fact you could never—

Senator Cook interjecting—

Senator FERGUSON—You said in your initial remarks that truth is absolute. Why doesn’t your report tell the truth? Why doesn’t the Labor Party’s report tell the truth?

Senator Cook—I rise on a point of order, Madam Acting Deputy President. I am not going to have someone say in this place that we do not tell the truth, because we do. That remark should be withdrawn. You know better.

Senator FERGUSON—The report does not tell the truth.

Senator Cook—It is my report—

The ACTING DEPUTY PRESIDENT—There is no point of order.
Senator FERGUSON—It is your report. I am glad you said so, Senator Cook. I am pleased you said it is your report.

Senator Cook interjecting—

Senator FERGUSON—You said it was your report.

The ACTING DEPUTY PRESIDENT—Order!

Senator FERGUSON—You are intellectually dishonest.

Senator Cook—I rise on a point of order, Madam Acting Deputy President. I was just accused in an unparliamentary way. That should be withdrawn.

Senator FERGUSON—I withdraw it.

Senator Cook—The earlier remark that this report does not tell the truth should be withdrawn. It is my report and the report—

Senator FERGUSON—It is his report!

Senator Cook—of the other senators in this chamber, and that is a reflection on me and all of them about honesty. That remark should be withdrawn.

The ACTING DEPUTY PRESIDENT—Senator Ferguson, I understand you have withdrawn those unparliamentary comments.

Senator FERGUSON—If your report contains so much truth, why is there no mention in your report of the pattern of conduct that took place over the whole of the period of the election campaign?

The ACTING DEPUTY PRESIDENT—Senator Ferguson, I request again that you address your remarks through the chair.

Senator FERGUSON—I apologise. Why is it not included in the report simply because it does not suit your purposes? If the Australian government wanted to use the treatment of asylum seekers in order to win an election, it would have put out to the public the treatment of people on SIEV5, SIEV6, SIEV7, SIEV8, SIEV9, SIEV10, SIEV11 and SIEV12. That is what would have happened. It would have put all of those things into the public arena. But Mr Reith chose not to.

Senator Cook—There is no hard evidence.

Senator FERGUSON—There is hard evidence, because a child was dropped overboard on SIEV7 and Senator Cook knows it.

Senator Cook—There is no proof.

Senator FERGUSON—It is in the evidence.

Senator Cook interjecting—

Senator FERGUSON—It is in the evidence and the report simply does not tell the whole truth. It is Senator Cook’s report, as he said. Senator Cook said, ‘It is my report,’ and it is your report, Senator Cook, because nobody else had the opportunity to put anything into it, because you did not finalise it in time for the rest of the committee to consider it in ways that reports are always considered whenever they are brought to this committee.

(Time expired)

Senator JACINTA COLLINS (Victoria) (5.57 p.m.)—I will not grace the contribution made by Senator Ferguson just now in relation to the process of this inquiry with further comments in the small amount of time that I have. Anyone who has followed this inquiry is able to see the manner in which it was conducted quite fairly and openly by the chair, Senator Cook. But let me go to the one reference from the media that Senator Ferguson referred to, because it is my opportunity to correct for the record the inaccuracy of the garbage that this government has been feeding the media. In that same article, Glenn Milne accused me of vainly seeking to do something that simply was not the case. There is no substance for his claim. There is nothing on the record that can sustain it and he must have been misled by government senators feeding him tripe. Let me go further, though, to the issue of the pattern of behaviour, because it will be relevant—if I get the time—to a theme that I have explored in my additional comments.

The pattern of behaviour record that this government refers to was provided to the government on request by the government in a fashion designed by the government to suit the government. When in our hearings we were able to prove that one of the perceptions reported in that report had not in fact
occurred, the poor hapless defence officer involved could not even see the distinction between perception and fact. He basically indicated that what he had put to this committee was a table of perceptions. Senator Brandis knows, on the evidence, that the purported strangulation incident that he trotted out to the *Australian* to demonise asylum seekers—and that was front page news—did not occur.

**Senator Brandis**—I rise on a point of order, Madam Acting Deputy President. That is unparliamentary. I have been accused of attempting to demonise asylum seekers. I have attempted to do no such thing. I have simply, in a clinical way, called attention to the facts. I ask you to insist that it be withdrawn.

**Senator Cook**—Madam Acting Deputy President, I rise on the point of order. The remark made is not unparliamentary. Senator Brandis knows full well that it is not unparliamentary. The point of his point of order was to interrupt Senator Collins.

**Senator Ferguson**—Hang on: how many times did you interrupt us with points of order?

**Senator Cook**—But I was justified; you’re not! I have made my point of order.

**The ACTING DEPUTY PRESIDENT (Senator McLucas)**—There is no point of order.

**Senator JACINTA COLLINS**—In relation to Senator Brandis’s claim, his report—and he is joined by the other government senators—purports to represent the facts. Let us just take pause for the moment and see precisely what it does. Senator Ferguson has already said that he did not look at the Ogders report. The Ogders report, which I did refer to in my report, is quite clear on the matter. On page 39, it says:

> In my opinion, it was misleading of Mr Reith not to refer in the interview on 14 October to the doubt he knew existed in relation to the attribution of the photographs.

I am not surprised that this component and other references in the Ogders report do not appear in the report of the government senators because, as Senator Brandis has already gloated, rather than providing a forensic and balanced approach to the evidence, he really has been—as he has gloated in the media—defence counsel to Howard and Reith. He cannot pretend to be both defence counsel and judge at the same time, and he knows that well. Rather than a forensic and balanced position, he has presented a selective representation of the evidence aimed at a target. This target I am referring to now is the one I find most offensive. For him to have targeted Commander Banks in his selective representation of the evidence is outrageous. For him to then be here claiming this tactic about open findings is absolutely outrageous. There is no other conclusion in relation to Commander Banks and Brigadier Silverstone—

**Senator Brandis**—Mr Acting Deputy President, I rise on a point of order. I have been accused of something which is false. I have been accused of targeting Commander Banks. I have not done so.

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—What is your point of order, Senator Brandis?

**Senator Brandis**—My point of order is that the allegation is false. I believe Commander Banks told the truth to the committee at all times, and there is nothing in the minority report that suggests to the contrary.

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

**Senator JACINTA COLLINS**—I have not suggested that Senator Brandis has suggested that Commander Banks lied. We all know that he did not. We all know that both Commander Banks and Brigadier Silverstone demonstrated the finest of our Defence Force integrity, as did many others. However, Commander Banks has been set up by the government as the target for blame. He has been scapegoated in this report, but any reasonable person who looks at the evidence fully—and I stress fully—set out in the majority report would conclude that there is no way we can ever conclude what occurred, unless, as the witnesses said, the incident had been taped, and it had not. We found that both officers have the highest of integrity but, again, as they said to us, that is not the point. The point is that, when that misunderstanding occurred, what happened? It is that
that the government is culpable for. Let me go to that particular point: why did John Howard on 18 February on the John Faine program say:

... I never received any written contradiction of that, nor did I receive any verbal contradiction of that.

When asked in his office, the answer was no. The facts are that on 13 occasions it did occur. I am not bothering to go to the detail of the 14 occasions when it did with respect to Peter Reith and his office; I think you are just in absolute denial there.

The ACTING DEPUTY PRESIDENT—Senator Collins, are you saying that I am in denial?

Senator JACINTA COLLINS—No, I am sorry.

The ACTING DEPUTY PRESIDENT—I would appreciate it if you would address your remarks through the chair.

Senator JACINTA COLLINS—I will refer my remarks through the chair. However, Mr Acting Deputy President, you may be, in part, if you accept the government senators’ response on this issue.

Senator Ferguson—Mr Acting Deputy President, I rise on a point of order. That is a reflection on the chair and I ask that it be withdrawn.

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

Senator JACINTA COLLINS—I have not bothered going to the detail of the case against Peter Reith because our independent assessor has done that quite well. It is just interesting that the government did not refer to that. In my remarks, I have looked at the detail of what John Howard, his office and the Department of the Prime Minister and Cabinet did do. That is where the principal concern is. As I reflected in my comments, a couple of months before the election—

Senator Ferguson—Why didn’t you put them in the main report?

Senator JACINTA COLLINS—Because they are my personal reflection of some issues.

The ACTING DEPUTY PRESIDENT—Senator Ferguson, I feel obliged to hear Senator Collins.

Senator JACINTA COLLINS—Some senior defence officers privately raised concerns with the culture and agenda which was developing in PM&C. I will comment on this later tonight in relation to the conduct of the Prime Minister’s task force and Jane Halton, but the blame in this very circumstantial case goes directly back to John Howard.

The ACTING DEPUTY PRESIDENT—The Prime Minister or Mr Howard.

Senator JACINTA COLLINS—The Prime Minister. Some excerpts from the ship’s logs had not been made fully public, but there are some excerpts of those logs in my comments. Who, for instance, was intruding between a request from the boarding party at 0751 zulu that women and children be moved off the SIEV, a request, at 1009 zulu, that people be put in the water on the double and then, at 1036 zulu, the comment ‘contacting parliament on the crisis’? Why on earth would you be contacting parliament between people being put in the water and being put somewhere safely? The time gap between those poor people being put in the water at 1009 and the final instruction that they could go onto the Adelaide was at 1100 zulu. Why did it take 51 minutes for the Prime Minister’s office to intrude in this situation rather than just let the Navy get on with their job and the principal imperative relating to safety of life at sea?

I encourage people to look at these logs with this in mind, because there are countless incidents where the Prime Minister’s office needed to be consulted, or the Prime Minister responded, when the principal objective—on which the Navy should have been allowed to do their job— was to treat these people with dignity and safety. But this did not occur, because of the much broader agenda of the Howard government and its border protection plan—one that it did not consult the public on and that it implemented during an election period. During a caretaker period, it made a fundamental change in policy. (Time expired)
On behalf of the government senators I would like to thank the secretariat for all their work on the preparation of the report, in particular over the last couple days where they went above and beyond the call of duty. I agree with what Senator Cook and Senator Bartlett said: this report will stand the test of time. But not for the reasons they gave. This report is perhaps the longest—and certainly the weightiest—testament to sour grapes in Australian political history. This committee inquiry was supposed to be the vehicle for revenge for the Labor Party’s crushing defeat in November 2001. This was the vehicle for their vendetta. If you want to know about Labor Party motivation for this report, Mr Acting Deputy President, the motivation can quickly be calculated from having a look at what Senator Faulkner said to Admiral Barrie. This was Senator Faulkner in intimate mode, sounding positively Clintonesque. He said to Admiral Barrie:

... I know what you feel ... But I hope you understand the way that some of us on our side of the parliament feel when we see some of our colleagues who are not returned in a federal election.

The motivation, as I say, was defeat at the general election. There was no search for truth. This was simply a vehicle for a vendetta. Ms Macklin, now Deputy Leader of the Opposition, said to Young Labor in Queensland on 24 February:

In Parliament over the past two weeks, day after day we have seen further damning evidence that this Government will sacrifice all pretence of truth and honesty to achieve its political ends. The children overboard affair has revealed the magnitude of their deceit. And so it went on. Make no mistake: when this inquiry was called together and the Senate commenced its inquiry, the Labor Party thought they were on a winner. They thought they would gain some political mileage out of this. But, oh dear, in the end this inquiry was not about children going overboard; it was about Labor going over the top. It was not about lost accountability; it was about a lost election. It was never about finding the truth; it was simply about finding a hammer or a vehicle to belt the government. That is what this inquiry was about. It was a political vendetta of the highest order, a payback, indeed, a witch-hunt or a show trial. The truth is—this is the hardest thing for the hardheads of the Labor Party, and this is what they do not like—that Labor misjudged it. They misjudged public sentiment before the election. They did not realise that the Australian public would back the Howard government’s strong border protection policy. After the Labor Party were so crushingly defeated, the bourgeois left that run the Labor Party these days thought, ‘We will run the issue again.’ Really clever! The bourgeois left said, ‘We will run the issue again in the inquiry, but this time we will win.’ What has happened six months later? An ignominious and absolutely pathetic backdown and defeat. They set up this inquiry to embarrass the government, and in the end they embarrassed themselves.

The inquiry has totally backfired on the Labor Party for two reasons. Firstly, as Senator Brandis said, Labor were not able to find evidence to smear the government, public servants, the military or senior ministers. They tried hard. They tried hard but they failed. Secondly, instead the inquiry unearthed more and more evidence about the behaviour of illegal boat people and the people smugglers. This stream of information, which was adduced by Senator Brandis, in fact convinced the people of Australia that the Howard government had the right policies. And every time a new bit of information came out, the Labor Party just hated it.

The pattern of conduct that was exposed during the inquiry makes for startling reading. Most of the dozen interceptions by the Royal Australian Navy involved behaviour on the part of boat people and people smugglers that most Australians found really disturbing and also quite appalling. It included, amongst many other things, the destruction of navigational equipment and threats of violence against Navy personnel and other illegal immigrants, particularly women and children. The pattern of conduct also included threats of suicide or self-harm, hunger strikes, the lighting of fires, sabotaging the vessels and, finally, scuttling the boats so that the Royal Australian Navy would have to succumb to moral blackmail, pick up the
refugees and take them back for onshore processing here in Australia. That was the aim of that pattern of conduct.

We put the facts out to the Australian people, and more heartily than ever they endorsed government policy. And didn’t the Labor Party hate that! Establishing the pattern of conduct did three things. First, it vindicated Australia’s tougher border protection policy, including the Pacific solution. Scuttling your boat in Australian territorial waters no longer pays dividends and no longer means you will be taken to Australia. The first thing the pattern of conduct did was justify that policy. Second, it established the context in which this entire event occurred. When the call came from Commander Banks through to Brigadier Silverstone and right up through military high command to public servants and senior ministers people were concerned about the report that a child had been thrown overboard. They were concerned, but no-one was particularly surprised. That is the point. The atmosphere at the time lent itself to the distinct possibility that a child may have been thrown overboard. That is why government senators went to so much trouble to adduce all this evidence before the inquiry. It established the atmosphere and the context in which the military was operating at that time. Third, and more importantly, it explodes the entire Labor case that the children overboard affair was motivated by the government’s determination to use the affair for sordid political purposes.

Mr Reith knew about the other illegal entry vessels. He knew about SIEV1 right through to SIEV12. He knew all about the pattern of conduct—the sabotaging of the navigation equipment, the lighting of the fires, the pouring of petrol on the vessels, the threats of violence against Royal Australian Navy staff and so forth. He knew about that. He knew that a child had been dropped overboard from SIEV7—he knew that as well. But did he use any of that information for political purposes in the lead-up to the election? Did he? No, he did not. And that explodes the entire Labor Party case. They say this entire matter was manicured for political purposes. In fact, what happened was that Mr Reith did not use the information he knew about. That, more than anything, explodes the Labor Party case. He did not need to make anything up because he knew of far more significant and far, far more serious events.

In the end, Senator Brandis is right. This was a waste of taxpayers’ money—thousands of pages, hundreds of hours of testimony, thousands of taxpayers’ dollars spent on this inquiry. After weeks of hearing scores of witnesses there is still no smoking gun despite the very, very best efforts of the Labor Party to find one. I found it quite interesting that the Labor Party started off going after the Prime Minister to skewer his credibility. Before long, they moved off the Prime Minister. They thought, ‘No—a bit hard. We’ll go after Mr Reith.’

Senator Brandis—No evidence there either.

Senator MASON—There was no evidence there either. ‘We’ll go after Admiral Barrie instead,’ they said. And then of course Air Vice Marshall Titheridge, Rear Admiral Smith and Rear Admiral Ritchie—no evidence against them. What did the Labor Party do then? They lowered their sights again and went after public servants like Ms Halton—no evidence against her either. And in the end the best shot they had was in this context quite a junior public servant. Poor old Dr Hammer allegedly inappropriately interfered with a witness over a cup of coffee at the Kurrajong Hotel. Of course that is the site of the death of the Labor Party’s dreams in contexts other than just this one.

The Labor Party had their sights set on the Prime Minister at first but in the end the guns were sighted on Dr Hammer. Dr Hammer was examined up hill and down dale for hours about his conduct, how he had inappropriately dealt with Commander King and tried to influence him. So what happened? He went to the Senate Privileges Committee. And what did the Senate Privileges Committee find? What it found was that there was no evidence to support any allegation against Dr Hammer. That was the Labor Party’s big hit. They couldn’t get the PM, they couldn’t get Minister Reith, they couldn’t get
the senior public servants so they thought, ‘We’ll go after a middle-level public servant.’ They couldn’t even get him! There simply was not the evidence they thought there was.

This example is far from exceptional. The whole inquiry is littered with similar failed attempts to implicate the government, the Public Service and the military in this pathetically imagined grand conspiracy. Senator Ferguson and Senator Brandis are right that they had conclusions they wanted to reach and they did everything they could to contort and distort the evidence to reach those conclusions. Guesswork, speculation, misinterpretation—in fact, a grand theory that would have made Oliver Stone very proud. Admiral Barrie, Ms Halton, Dr Hammer and the Prime Minister all came under the gun in a really pathetic attempt to discredit the government. It is no wonder that in the end this inquiry embarrassed the Labor Party. The only smoking gun in this case was the one they held to their own heads.

As I mentioned before, not only did the inquiry not embarrass the government but quite the opposite. It uncovered a pattern of conduct on the part of the illegal boat people and the people-smugglers, a pattern of conduct that until recently was unknown to the public. Mr Reith and the government never used the information they had available to them for political purposes. Labor said they wanted to find the truth. They have claimed that from the word go. In the famous words of Jack Nicholson in the film A Few Good Men, ‘You want the truth? You can’t handle the truth.’ The truth is—sadly for the Labor Party—that people in all the circumstances acted reasonably and conscientiously. There was a failure to correct information in the military chain of command, but there was no grand conspiracy—no material for Oliver Stone at all. Case closed.

Question agreed to.

DOCUMENTS
Auditor-General’s Reports
Report No. 13 of 2002-03

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—In accordance with the provisions of the Auditor-General’s Act 1997, I present the following report of the Auditor-General: Report No. 13 of 2002-03—Information Support Services—Benchmarking the Internal Audit Function: Follow-on report: Benchmarking Study.

Joint House Department

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—I present the annual report of the Joint House Department for 2001-02.

COMMITTEES
Membership

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—The President has received letters from party leaders seeking to vary the membership of various committees.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (6.23 p.m.)—by leave—I move:

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

Economics Legislation and References Committee.
Appointed—Participating member: Senator Buckland

Environment, Communications, Information Technology and the Arts Legislation Committee

Question agreed to.

ASSENT

A message from His Excellency the Administrator of the Commonwealth of Australia was reported informing the Senate that he had assented to the following law:

Higher Education Funding Amendment Act 2002 (Act No. 87, 2002).

BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2002

First Reading

Bill received from the House of Representatives.
Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (6.24 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (6.25 p.m.)—I table a revised explanatory memorandum relating to the bill and 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 communications environment is experiencing a period of rapid change. Existing and potential media operators are forging innovative commercial strategies to secure their position in the new market place. Consolidation and diversification have created substantial global communications groups. Consumers are no longer confined to the traditional media of radio, free-to-air television and newspapers available in their local area.

The regulatory framework in relation to the ownership and control of Australian media assets is anachronistic in such a dynamic environment. The current restrictions impede commercial flexibility and access to capital for infrastructure and content investment. They hinder the ability of Australian media organisations to succeed in the new market environment.

The Government is committed to reforming the regulatory framework governing foreign and cross-media ownership of media assets. This bill seeks to give effect to this commitment and allows Australian media organisations to take greater advantage of the rapidly evolving communications environment.

When the Government introduced this legislation, it invited sensible debate on these important media ownership issues. The bill was immediately sent to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee for consideration and to enable public input into the proposed changes prior to debate in either House of Parliament.

The Government welcomed the Committee’s inquiry and report, and adopted their recommendations concerning the introduction of an obligation to disclose cross-media relationships, and restricting regional cross-media mergers to two of the three types of media covered by the cross-media rules. The remaining recommendations are also under consideration.

I turn now to the specific measures contained in the bill.

Like other sectors of the economy, Australia’s media industries are under pressure to become more global in their technology and equity links. These business strategies are necessary because technological convergence in the communications sectors has placed pressure on media operators to invest in digital technologies. Digitisation of production and transmission could enable new types of interactive services to be offered and reduce the cost of producing content. However, investment in digital technologies requires large capital outlays.

The current foreign ownership and control restrictions in the Broadcasting Services Act 1992 (the BSA), which apply to free-to-air and subscription television services, serve as a major deterrent to investment in Australian media organisations.

The bill therefore repeals the media-specific foreign ownership and control restrictions contained in the BSA. Foreign ownership of Australian media assets will continue to be regulated by the Foreign Acquisitions and Takeovers Act 1975 and Australia’s general foreign investment policy. These provisions have the ability to address national interest concerns that might arise in relation to a particular investment.

Repealing these restrictions will improve access to capital, increase the pool of potential media owners and act as a safeguard on media concentration.

I turn now to measures to reform the cross-media rules.

Technological progress and globalisation are changing the structure of the Australian media market, and patterns of media consumption. Increasingly, Australian media organisations are responding to these changes by investing in new technology, developing new business models and forming broader strategic partnerships. Despite this, the regulation of ownership and control of Australian media has remained largely static.

Reform of the cross-media rules will clear the way for renewed market interest in Australian media assets and will allow media companies to take greater advantage of investment opportunities as they arise.
The Government is committed to ensuring ongoing diversity of opinion and information in the Australian media. It does not believe that diversity of ownership is necessary to achieve this. Nevertheless, the Government recognises the need to ensure that media owners do not exploit their co-ownership of media organisations in a way which prevents those organisations from exercising separate editorial judgements.

To this end, the bill provides for a transparent and effective public-interest test in relation to maintaining separate editorial decision-making responsibilities in cross-controlled media organisations.

Diversity of opinion is further protected by existing provisions in the BSA relating to limitations on the number of licences able to be controlled by an individual organisation, and on the percentage of audience share able to be controlled by a person or organisation. These provisions will be preserved.

The Trade Practices Act 1974 will continue to apply to proposed media mergers and acquisitions. Any such proposals will be subject to a test for the effect on competition, which is administered by the Australian Competition and Consumer Commission (ACCC).

The bill provides for a process whereby exemption certificates are issued to applicants who would otherwise be in breach of the cross-media provisions. Holders of exemption certificates will not be in breach of the cross-media rules in relation to media entities which they control, provided the conditions of the certificate are satisfied. Certificates become active upon a person assuming control of two or more media entities in a way which would otherwise breach the cross-media rules.

Consistent with a recommendation of the Majority Report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, the bill provides that a cross-media exemption in regional areas could only authorise cross-ownership of two of the three types of media (television, radio and newspapers) covered by the cross-media rules. This acknowledges that regional areas frequently have comparatively fewer choices of media outlets than in metropolitan Australia. This provision is an appropriate means of addressing the differences that exist in the metropolitan and regional media environments, and the different economic circumstances experienced by regional media.

The Australian Broadcasting Authority (ABA) must maintain a Register of active cross-media exemption certificates which is to be available on the Internet.

The certificate must be issued if the ABA is satisfied that the conditions included in the application will meet the objective of editorial separation for the set of media operations concerned. This objective is that separate editorial decision-making responsibilities must be maintained in relation to each of the media operations.

Three mandatory tests are prescribed for the objective of editorial separation to be met. They are the existence of:

(a) separate editorial policies;
(b) appropriate organisational charts; and
(c) separate editorial news management, news compilation processes and news gathering and interpretation capabilities.

These requirements will not preclude the sharing of resources or other forms of co-operation in newsgathering between organisations that could assist owners seeking to realise efficiencies from jointly owned organisations.

The conditions for exemption included in the bill are straightforward, reasonable and transparent. They provide certainty for industry by clearly setting out expectations for editorial separation.

It is important that there be adequate monitoring and compliance measures to ensure public confidence in the new provisions.

The bill provides that once an exemption certificate is active in relation to a set of media operations, those media operations must meet the objective of editorial separation as a condition of their licence.

The BSA gives the ABA the ability to investigate bona fide complaints of failures to adhere to licence conditions, and to publish the outcome. If the ABA determines that a licensee has failed to comply with the editorial separation condition, it may issue a notice requiring the licensee to address the contravention within a specified timeframe. Failure to comply with the ABA notice is a criminal offence, which can result in a large fine being imposed. The ABA is also able to suspend or cancel a licence if a licence condition is breached. Such action may be appropriate in the case of repeated or severe breaches of the editorial separation condition.

Enforcement options are also available against controlling parties. When an undertaking is not adhered to, the exemption certificate will cease to apply and the controlling party will therefore be in breach of the cross-media provisions. In these circumstances the BSA allows the ABA to require the controlling party to divest.

In line with another recommendation of Majority Report of the Senate Committee, the bill imposes
a general obligation to disclose a cross-media relationship on media outlets subject to the same exemption certificate.

The bill details two means of disclosure:

- the ‘business affairs’ model, which will apply to commercial television broadcasters and newspapers, and which will be the default disclosure model for commercial radio broadcasters; and
- an alternative ‘regular disclosure’ model which will only be available to commercial radio broadcasters.

The business affairs model requires that media outlets disclose a cross-media relationship at the time that they broadcast or publish matter that concerns the business affairs of a cross-controlled media organisation, including cross-promotional material (other than clearly identifiable advertising material).

Exemptions are also provided for TV/radio program guides, journalistic acknowledgment of sources, and unanticipated comments in live broadcasts. Further material may be exempted from the business affairs disclosure requirement by Ministerial determination.

Alternatively, commercial radio broadcasters may adopt the regular disclosure method by written notification to the ABA. The regular disclosure method requires a radio broadcaster covered by a certificate to regularly disclose the cross-media relationship in such a way and with such frequency that the prime-time audience of the broadcaster would be reasonably likely to be aware of the cross-media relationship.

It will be sufficient for the regular disclosure method if a statement that there is a cross-media relationship is broadcast by the radio broadcaster once a day during prime-time.

The intention of the regular disclosure model is to establish a general level of audience awareness about the cross-media relationship. This is a viable alternative to the business affairs model for radio broadcasters, given the largely unscripted nature of radio and the variation in size and resources of radio entities.

For both models (business affairs and regular disclosure), alternative means which satisfy the disclosure requirement may be specified by regulations.

The requirement for disclosure of cross-media holdings protects the public interest by ensuring that audiences and readers are made aware of the ownership structures of the media outlets from which they access information.

The Government recognises public concern about declining levels of local and regional news and information programs on both TV and radio. Local services are important for developing community identity, and ensuring that important information is relayed in a timely fashion. The Government’s election commitments stated that organisations seeking exemptions from the cross-media rules would be required to give undertakings in relation to minimum levels of local TV and radio news and current affairs. This bill strengthens the nature of that commitment to ensure that substantial measures are taken to ensure the continuation of local news services.

The bill amends the BSA to impose a condition on broadcasting licences in relation to which cross-media exemptions have been granted that requires broadcasters to comply with prescribed minimum levels of local news and information services, or to retain existing levels of local news and information where these are higher than the prescribed minimum.

The prescribed minimum levels include at least five news bulletins per week containing matters of local significance, broadcast of local community service announcements and the ability to broadcast emergency warnings if and when required.

Whilst the Government is predisposed to implementing a broader local news requirement, further consideration of the Senate Committee’s recommendations on local news will occur once the ABA has made its final determination in relation to its recent investigation into the adequacy of local news and information services on commercial television.

The Government is concerned to maintain a diverse range of commercial radio services of broad general appeal, especially in regional areas. Therefore, the bill prohibits contracts and arrangements that attempt to restrict the program format of commercial radio broadcasting services.

These provisions address a situation where contractual or other arrangements limit the program format of a commercial radio service, reducing the diversity of radio services and competition for audience and advertisers, particularly for the benefit of an incumbent commercial radio broadcaster.

The bill prohibits contracts and arrangements for the transfer of control of a commercial radio broadcasting licence, where the contract or arrangement restricts the program format of the service provided under that licence.

The bill also prohibits other contracts or arrangements that restrict the program format of a com-
mercial broadcasting radio service, where the purpose or effect, or likely effect, of the contract or arrangement is to confer a commercial advantage on another commercial radio broadcasting licensee in the same licence area.

Civil penalties, including fines of up to $275,000 for a body corporate, will apply for entering into such contracts or arrangements. Furthermore, the bill renders the contract or arrangement void.

As well as written contracts, the prohibition will also apply to agreements or understandings that do not constitute legally binding contracts. An arrangement of this sort could be formal or informal, written or unwritten.

The prohibition will not apply to contracts or arrangements exempted by regulation. The ABA will also have the power to exempt particular contracts or arrangements. This is intended to allow some flexibility once the provisions commence, where there are legitimate types of transactions that should not be prevented.

The proposed changes will not affect the ability of the ACCC to scrutinise both existing and future arrangements that might have the effect of limiting competition. However, the Trade Practices Act generally only addresses competition issues, rather than effects on diversity, which are the primary concern of these provisions.

This bill provides for the timely reform of the regulatory framework governing the ownership and control of Australian media organisations, ensuring that Australian media organisations, as well as the Australian public, are positioned at the forefront of an exciting new communications era.

Debate (on motion by Senator Mackay) adjourned.

GREAT BARRIER REEF MARINE PARK AMENDMENT REGULATIONS 2002 (No. 5)

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.25 p.m.)—I move:


This is an important issue that needs extensive examination and explanation, and because of the time and a desire to have a decision on this before 6.50 p.m. I will truncate my remarks rather severely, which is unfortunate, but I will put some things on the record. The Great Barrier Reef Marine Park Authority recently completed their rezoning of the far north section of the marine park, the most northerly of four zones. It has been a lengthy process, extending back to the mid-1990s, which has resulted in some relatively small changes in the zoning plan.

Despite some early optimism, the far northern section zoning plan was unfortunately not used as an opportunity to ensure that protection and conservation were implemented as primary objectives of the Great Barrier Reef Marine Park Act. In early discussions for that zoning plan, the Great Barrier Reef Marine Park Authority recommended that Princess Charlotte Bay—a major dugong habitat, which is what this regulation applies to—be designated as a green or no-take zone. As a result of pressure from the commercial fishing industry, the subsequent draft and the final draft recommended a lesser designation of a conservation park zone equivalent to a yellow or marine park A zone under the zoning plans in other regions of the marine park. This permits line fishing and collecting. It does not permit trawling and netting and is intended to provide for conservation of the bay in perpetuity. It is not an ideal solution in the Democrats’ view, and many felt that the conservation values of Princess Charlotte Bay justified, and still justify, stronger protection. Nonetheless, that is the level of protection provided to it. A number of activities are permitted in the conservation zone only with a permit. Commercial netting and trawling activities are not included as activities that could be permitted. However, the federal government added a new clause to the zoning plan that provides that a person may also use or enter the Princess Charlotte Bay area of the conservation park zone for commercial netting or crabbing if the person has the permission of the authority to use or enter the area for that purpose.

There is a requirement that certain conditions are met before such a permit is granted. These non-conforming uses are permitted as a result of legislation created through the Great Barrier Reef Marine Park Amendment Bill 2001, which was intended to strengthen the capacity of the marine park authority to make changes to fishing practices in a timely
fashion. Prior to that amendment, the authority, for instance, could not remove legal commercial fishing from a high conservation area except by amending the zoning plan, a process that can take several years. The amendment that went through last year allowed the making of regulations so that the authority can require a permit for commercial fishing in certain zones that were previously open to commercial fishing without regulation. In other words, it allowed a speedier management decision for conservation purposes to be made.

As a result of continuing pressure from the fishing industry, there was consideration given to a phasing out of fishing activities in Princess Charlotte Bay rather than an immediate prohibition. That would have permitted all existing commercial fishing in the bay to continue until the licence holders died, which is a very long phase-out indeed. That was never implemented. Instead, after the most recent federal election and renewed industry pressure, these regulations were devised. These regulations, which the Democrats and Labor are aiming to disallow today, effectively reinstitute commercial fishing in Princess Charlotte Bay, in what is supposed to be a conservation zone. The claim in the explanatory memorandum that this is a capping effort in the bay is simply nonsense. The claim that permits are conditional is also a nonsense, as the only condition precedent to acquiring a permit for commercial fishing is that the applicant be a commercial fisher who has previously fished in the bay. In other words, all the commercial fishers who currently fish, and in the past have regularly commercially fished, in Princess Charlotte Bay will be allowed to continue to do so despite the zoning of the bay. That regulation makes a mockery of the entire zoning structure.

The zones are intended to set out the types of uses that can occur in each of the six zones regularly used in the Great Barrier Reef Marine Park. The regulations are not designed to circumvent the restrictions contained in the zoning plan; they are intended to elaborate on the requirements associated with permitted uses in each zone or to outline the criteria for permitting an activity that is not expressly prohibited in the zoning plan. Passing a regulation that allows rapid response for the purposes of conservation is an entirely legitimate exception to this broad zoning and regulatory structure. Tabling a regulation such as this, which is intended to circumvent the zoning plan and circumvent the entire rezoning process, is simply not acceptable and the Democrats do not support such efforts. There is no excuse for such a regulation, especially considering the conservation values of Princess Charlotte Bay and the minimal number of highly protected areas in the marine park—fewer than five per cent.

Damage can be caused by fishing, and the need to ensure that the representative areas process is capable of succeeding without interference at every step of the way is crucial. This may be the most dangerous consequence of these regulations. If zones that ostensibly exclude commercial fishing can now allow commercial fishing by regulatory stealth, then the entire purpose of the zoning plans and the representative areas process is called into question. It is a threshold issue. The representative areas process, which the Democrats have repeatedly supported, is the largest and most important initiative undertaken by the Great Barrier Reef Marine Park Authority since the marine park was declared over 25 years ago. It is an attempt to rezone the entire marine park, and one of its objectives is to significantly increase the number and size of highly protected areas.

That increased protection is critical if we are going to ensure the long-term survival of the marine park—and that is for the benefit of commercial fishers, recreational fishers, the tourist industry and others as well as the general public. The representative areas process has been in preparation for a number of years now. In the last two to three years it has started to take shape and the entire marine park has been mapped according to bio-regions. There is no doubt in the scientific community that a significant increase in the number and size of green zones is necessary. These will not protect the park from all threats of course, but it will be a significant advance. The representative areas process must succeed, as the current prognosis for
the marine park is not good. This regulation must not succeed, in the Democrats’ view. To allow this precedent to be set would create a dangerous future prospect for similar moves by governments down the track that would undermine months and years of work by the entire community and the marine park authority in ensuring adequate protection of the environmental values of the marine park.

I urge all senators to support this disallowance motion. It is a crucial one for protecting the conservation values of Princess Charlotte Bay—conservation values and protection that were put in place after a long process of evaluation and consultation. That protection should not be reversed overnight by regulation that would effectively allow the reintroduction of trawling and commercial fishing in that marine park. I commend the disallowance motion to the Senate. I thank Senator McLucas, in particular, for her support and her commitment to the protection of the ecological values of the marine park.

Senator MCCLUS (Queensland) (6.34 p.m.)—The history of the zoning in the Great Barrier Reef Marine Park far northern section zone is a long and complex one. It is a story that unfortunately is littered with episodes of political intervention in what should be, but has not been, a process driven by a goal of protecting and presenting the values of the marine park. Management of the marine park should be delivered through a rigorous evaluation of the science and analysis of the environmental, social and economic values attached to the area.

In the development of these regulations, this fundamental principle has not been adhered to. In fact, the reality is quite the reverse. The development of this set of regulations has been a long and complex process. I want to take the opportunity to ensure that the record is clear about what has happened to bring us to this point. The far northern section was incorporated into the marine park in late 1983, and its first zoning plan came into force in 1986. In 1996, in recognition of the fact that Princess Charlotte Bay, on the east coast of Cape York Peninsula, is well known as a dugong habitat area, the Great Barrier Reef Ministerial Council suggested that the bay be declared an interim dugong protection area. In 1997 a decision was made to address measures for dugong protection through a review of the zoning plan.

GBRMPA undertook a review of the plan in the mid to late 1990s, and the far northern section zoning plan came into effect in April this year. Zoning areas of the Great Barrier Reef is the management tool used by the authority to protect and preserve the reef. Zoning separates activities that may be in conflict with each other. It also allows areas that need a higher level of protection to have different levels of activity permitted. There are 14 types of zones used by the authority to manage the region. The consultation process on the revision of the plan started in November 1994, the second consultation draft was out in 1997 and the plan was tabled, as I said, on 6 March 2000.

When the draft zoning plan was released during that consultation process, Princess Charlotte Bay was zoned as a habitat protection zone, marked dark blue on maps. A habitat protection zone has objectives that provide for the protection of the area, but they do allow certain fishing activities to occur. In the case of Princess Charlotte Bay, commercial netting was a permittable activity. However, around 1999 the then Minister for the Environment and Heritage, Senator Robert Hill, intervened in that process and declared that Princess Charlotte Bay would be zoned as a conservation park. A conservation park zone, or yellow zone as it is known by North Queenslanders, does not allow commercial netting. One can ask: where was the science that Senator Hill used to inform his decision on this unilateral measure? The answer is that there was none.

In 2001, the election year—an important fact to note—Senator Hill once again intervened and, without consultation with all interested parties, offered a compromise that essentially grandfathered or phased out the permits for commercial netting in Princess Charlotte Bay. This was to be delivered through a set of regulations. Again, where was the science to inform that decision? The reality is that there was no science; there was only politics. The other reality is that the
member for Leichhardt, Mr Warren Entsch, agreed to that compromise. That fact needs to be understood, even though he is trying to rewrite the history books as we speak. The Queensland Seafood Industry Association advise me that they did not agree with the compromise at that time and continued to lobby for change. The environment sector was not consulted, nor were the recreational fishing groups or tourism industry. Once again, a unilateral decision was made that was not backed up by science or consultation.

The promised regulations, though, did not eventuate. They were obviously not prioritised by Senator Hill and the promise was not actioned by GBRMPA. Following the election, and the appointment of Dr Kemp to the environment portfolio, another intervention occurred. Dr Kemp, again without the support of any consultation or any scientific advice, once again changed the policy on Princess Charlotte Bay. This time it was to permit commercial netters with history in the area to apply for a permit to continue to operate in the bay. This regulation, the one that Dr Kemp promoted earlier this year, amends a conservation park zone to allow a specifically prohibited activity in that same zone. The regulation-making power, which was ostensibly to increase protection for the Great Barrier Reef, has effectively become a power to achieve the opposite. It is a breach of process and it was undertaken without consultation with the broader community.

It is a process which has been tainted by political intervention that has left 16 fishing families in limbo, without direction, for over two years. This decision has not been made properly, and I am concerned that there could have been the potential for an individual or a group to take legal action questioning the validity of the decision. It is a decision that has politicians’ fingerprints all over it. This is not the way to manage the world’s most significant coral reef system; in fact, it is not even the way to manage a fishery. GBRMPA has consistently argued that it is a manager of a marine park, not a fisheries manager, and I must say that the way in which this regulation has come to this place certainly suggests that it does not have the ability to advise its ministers when they are acting outside accepted natural resource management principles.

The regulations also have implications for the community’s acceptance, or lack of acceptance, of the current development of the representative areas program. GBRMPA has consistently said that RAP is an open and accountable process. The community is sceptical at this point in time and the introduction of this regulation without consultation will call into question any trust at all that the community has in GBRMPA being able to deliver an open and accountable process. The introduction of the regulations while this process is under way is inappropriate. Over 10,000 submissions have been received through the representative area program process, and these people will be sceptical of the commitment of GBRMPA to that process if they think that all they have to do is start banging on their politician’s door to get a different outcome.

The impact on the fishers who operate in Princess Charlotte Bay is real, and they are angry. But their anger needs to be directed at Mr Entsch, Senator Hill and Dr Kemp for the contemptuous way they have treated them. The Queensland Seafood Industry Association says there is no evidence that the retention of a net fishing industry in the area will have any impact on environmental values. Other stakeholders, notably the environment sector, have a different view. That of course is predictable. But the reality is that the people who should be making the decision are not the politicians who sit in this place and in the other place but the natural resource managers who have the skills and experience to make decisions based on sound science and on social, economic and environmental values.

We should be looking for a scientifically based decision-making process that relies on science, not politics, to make appropriate decisions about the management of the reef and the management of fishers. I say to the government that it is time they went back to the drawing board to truly look at Princess Charlotte Bay: look at the environmental values, look at the need for dugong protection, recognise that there are 16 fishing
families that have history in the area, and do the work properly. Do not bring in a yellow zone and then amend it to allow an activity that is specifically excluded in the description of that conservation park zone. The ball is now back in the government’s court. If they want to do this process properly, they should consult with the community, consult with the fishers, consult with the environment sector and treat the people in North Queensland properly.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (6.44 p.m.)—I move:

That the debate be adjourned.

Question negatived.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (6.44 p.m.)—In spite of Senator McLucas’s fine words, the Labor Party and the Democrats have just prevented the government from having any response to this most ridiculous and unfortunate motion to disallow Great Barrier Reef Marine Park regulations. Effectively, the Democrats and the Labor Party have had their say. The government are going to be denied that opportunity, because a number of very important pieces of legislation have to be dealt with tonight. I am constrained by an agreement to finish this debate prior to 10 to seven. That is what the government have agreed to and that is what we will do: we will stop before 10 to seven. But it means that I now have three minutes to answer Senator McLucas’s 10-minute speech and Senator Bartlett’s 15-minute speech on this very important issue. I can well understand why Senator McLucas and the Labor Party do not want us to deal with this.

Senator Mackay—Mr Acting Deputy President, I rise on a point of order: I understand the frustration of Senator Ian Macdonald; however, I would like to make this point—

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—No, it is a point of order that you should make, Senator Mackay.

Senator Mackay—My point of order goes to relevance. The opposition have given up the time that we normally use to debate documents in order to progress a number of bills that the government want to go through. I would caution the minister—I understand his frustration—to please be a bit more judicious in his use of language.

The ACTING DEPUTY PRESIDENT—That is not a point of order.

Senator IAN MACDONALD—Mr Acting Deputy President, I now have 120 seconds to deal with this very important issue. This is all about not having the full story told. Senator McLucas is having all sorts of problems up her way. We have consulted with everybody: we have consulted with the fishermen, we have consulted with EcoFish, we have consulted with the Cape York Marine Advisory Group, we have consulted with Indigenous people—all of these people have been consulted.

Senator McLucas—Mr Acting Deputy President, I rise on a point of order that goes to relevance. I suggest that the minister is misleading the Senate.

The ACTING DEPUTY PRESIDENT—That is not a point of order.

Senator IAN MACDONALD—The consultation has been wide. The arguments against this motion are so telling that it is a disappointment to me that the Senate will not be able to hear the arguments against it and make a decision based upon those arguments. We have done everything that needs to be done. It is a great conservation outcome, and it is an outcome that looks after the livelihoods of some of Senator McLucas’s constituents. I am absolutely amazed that Senator McLucas would be supporting this motion which is an attack on the working people of Cape York. I would love to develop that argument. I would love to be able to point out to Senator McLucas’s constituents just how much she has acted in their worst interests by, first of all, ensuring that there is no debate.

Senator Mackay—Mr Acting Deputy President, I rise on a point of order: that is a reflection on Senator McLucas; I ask that it be withdrawn.

The ACTING DEPUTY PRESIDENT—I do not think that is right. There is no reflection on Senator McLucas.
Senator IAN MACDONALD—The Labor Party will take every single opportunity to make sure that the truth about this disallowance motion is not heard. The motion is ill-conceived. It is not appropriate—

Senator Mackay—Do you want another point of order?

Senator IAN MACDONALD—I will not buckle under your threats, Senator Mackay.

Senator Mackay—We are trying to get your bills through!

Senator IAN MACDONALD—Would you keep quiet and let me have my two minutes without interruption. Your speaker has had 10 minutes and Senator Bartlett has had 15 minutes. The motion is ill-conceived, it is against conservation outcomes, it is against the local people, it is against working people, it is against the Indigenous people of this country. Unfortunately, I can say no more.

Question agreed to.

EGG INDUSTRY SERVICE PROVISION BILL 2002

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

Report of Rural and Regional Affairs and Transport Legislation Committee

Senator EGGLESTON (Western Australia) (6.49 p.m.)—On behalf of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I present the report of the committee on the provisions of the Egg Industry Service Provision Bill 2002 and a related bill, together with the Hansard record proceedings and documents presented to the committee.

Ordered that the report be printed.

BUSINESS

Consideration of Legislation

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (6.50 p.m.)—I move:

That the provisions of standing order 111 not apply to the Criminal Code Amendment (Terrorist Organisations) Bill 2002.

I table a statement of reasons justifying the need for this bill to be considered during these sittings. I seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—

CRIMINAL CODE AMENDMENT (TERRORIST ORGANISATIONS) BILL 2002

Purpose of the Bill

The Criminal Code Amendment (Terrorist Organisations) Bill 2002 will amend the Criminal Code so that regulations made from the commencement of this Act specifying organisations for the purpose of the definition of terrorist organisation in Division 102 take effect in accordance with section 48 of the Acts Interpretation Act 1901.

The bill will also ensure that the existing regulation specifying Al Qa’ida/Islamic Army as a terrorist organisation takes effect on 21 October 2002, the date the regulation was notified in the Gazette.

The Criminal Code currently provides that regulations specifying organisations as terrorist organisations do not come into effect until after the end of the Parliamentary disallowance period. Division 102 of the Criminal Code contains a number of offences relating to terrorist organisations. These offences include directing activities of a terrorist organisation, membership of a terrorist organisation, recruiting for a terrorist organisation and providing training to, or receiving training from, a terrorist organisation.

Terrorist organisations for the purposes of Division 102 are organisations that are engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act or organisations specified in regulations. Organisations may be specified in regulations if the Minister is satisfied on reasonable grounds that the organisation is identified in a United Nations Security Council decision relating to terrorism and that the organisation is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act.

Reasons for urgency

Urgent amendments to the Criminal Code are required to ensure that regulations specifying terrorist organisations take effect immediately on notification in the Gazette in accordance with section 48 of the Acts Interpretation Act 1901.

This will enable immediate action to be taken by law enforcement authorities against specified terrorist organisations, including any terrorist organisation believed to be responsible for the Bali bombings on 12 October 2002.

(Circulated by authority of the Attorney-General)
Question agreed to.

CRIMINAL CODE AMENDMENT (TERRORIST ORGANISATIONS) BILL 2002

First Reading

Bill received from the House of Representatives.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (6.50 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (6.51 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Howard Government is committed to the war against terrorism and to ensuring that our law enforcement and intelligence agencies have the best possible tools to fight that war.

In June 2002 we passed a package of counter-terrorism legislation designed to bolster our armoury in the war against terrorism and deliver on our commitment to enhance our ability to meet the challenges of the new terrorist environment.

The Security Legislation Amendment (Terrorism) Act was an important element of that package.

That Act introduced a number of criminal offences relating to terrorist organisations.

Those offences include an offence of intentionally being a member of a terrorist organisation; directing the activities of a terrorist organisation; and providing training to or receiving training from a terrorist organisation, among others.

An essential element of each of those offences is that they relate to or involve a “terrorist organisation”.

The Act defines a terrorist organisation as:

- an organisation directly or indirectly engaged in, preparing, planning etc a terrorist act; or
- an organisation specified in regulations made under the Act.

Listing of organisations sends a clear and unequivocal message to those who might involve themselves with those organisations that if they do so they will face the full weight of the law.

Listing also facilitates the investigation and prosecution of those engaged in supporting or carrying out the activities of terrorist organisations.

Given the delay and uncertainty that could be involved in waiting to prove an organisation’s engagement in a terrorist act in court, listing organisations by regulation is a more effective method of specifying terrorist organisations in most cases.

Listing of organisations serves a number of purposes.

It puts people on notice not to deal with the listed organisation.

And it provides certainty to law enforcement agencies that they can act against the organisation immediately, without the significant delay that is likely in completing a criminal prosecution.

The procedure for making regulations is set out in the Act.

In broad terms, before regulations can be made, the Attorney-General must be satisfied that:

- the Security Council of the United Nations has made a decision about terrorism that identifies the organisation; and
- the organisation is directly or indirectly engaged in terrorism.

Under the Act in its present form regulations made now that list an organisation as a terrorist organisation will not come into operation until after the Parliamentary disallowance period has ended, in 2003.

This is because there are insufficient sitting days in the remainder of the sitting schedule to satisfy the required waiting period.

This means that the Government cannot, under the existing law, complete the listing of a terrorist organisation—such as a terrorist organisation believed to be involved in the Bali bombing—until next year.

As a result, even though there may be known members of a terrorist organisation here in Australia, this will limit the ability of authorities to investigate them and, if there is enough evidence, to prosecute them, until well into 2003.

This is totally unacceptable.

We need to be able to act swiftly against the perpetrators of terrorist acts.
Currently the Act provides that regulations cannot come into force until the end of the 15 parliamentary sitting day disallowance period in both Houses of Parliament.

This is an unusual provision, and one that does not apply to regulations made in the ordinary manner.

Normally, regulations come into effect immediately they are signed and gazetted but they can be disallowed by Parliament if a notice of motion of disallowance is given in either House of Parliament within those 15 days.

This bill removes the provision that prevents terrorist organisation regulations coming into operation straight away.

It does not remove the preconditions to making the regulations in the first place.

The Attorney-General still needs to be satisfied of the matters set out in the Act before he can make a regulation, and that decision is still subject to parliamentary scrutiny and judicial review.

This bill merely changes the day on which such regulations come into effect.

The bill amends the Act to provide that regulations made under the Act will come into operation immediately in the usual way, but they will also be subject to disallowance by Parliament in the usual way.

When the bill is enacted, our intelligence and law enforcement agencies will then be able to take immediate action now against specified terrorist organisations and their members for their criminal conduct.

The events in the United States on 11 September 2001 demonstrated the enormous loss of life and devastation to communities that terrorist acts can cause and highlighted the need for measures to be taken to prevent future attacks.

The events in Bali on 12 October 2002 brought that reality tragically close to home.

Australia cannot afford to be complacent about the threat that terrorism poses to our community.

The Government has a clear responsibility to cooperate with global counter-terrorism measures and to provide our security and law enforcement agencies with the tools they need to combat terrorism.

The Howard Government is committed to the war against terrorism and ensuring we have the best possible tools to fight that war.

This bill will allow our security and law enforcement agencies to act swiftly against perpetrators of terrorist acts uncovered in the course of investigations and enable no stone to be left unturned in bringing them to justice.

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (6.51 p.m.)—Notwithstanding the very short notice we have been given of the Criminal Code Amendment (Terrorist Organisations) Bill 2002, the opposition have carefully considered the bill, and we will support the bill. We are of the view that the Criminal Code Amendment (Terrorist Organisations) Bill 2002 is uncontroversial and will improve the operation of Australia’s antiterrorist laws. As the Senate knows, following the commencement of the Security Legislation Amendment (Terrorism) Act 2002 on 6 July 2002, terrorist organisations can now be proscribed under Australian law by way of regulation.

Before the Governor-General can make a regulation specifying a terrorist organisation, the minister must be satisfied that the organisation is identified in a UN Security Council decision relating wholly or partly to terrorism and that the organisation is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act. The act stipulates that these regulations take effect after the last day on which they can be disallowed—that is, 15 sitting days after tabling.

The consequences of being proscribed as a terrorist organisation in Australia are severe. If someone directs the activities of, is a member of, recruits for, provides training to or receives training from, receives funds from or gives funds to, or provides support or resources to a listed terrorist organisation, they commit very serious criminal offences, with penalties ranging from 25 to 50 years in prison. The offence occurs whether or not the conduct, or result of the conduct, occurs in Australia. If an organisation is listed, it is deemed to be a terrorist organisation and prosecuting the relating offences is easier.

Without a listing, all of the terrorist organisation offences are still in play; however, the prosecutor would have to prove that the organisation was a terrorist organisation rather than rely upon the listing.

The first regulation made under this legislation was made on Monday, 21 October
this year—that is, the sitting day after the Attorney-General was asked a question in the House of Representatives about listing al-Qaeda. The 21 October 2002 regulation listed al-Qaeda and seven related terrorist organisations that had been listed by the Security Council. Under the legislation as it currently stands, the regulation to ban al-Qaeda would not take effect until the end of the disallowance period. This means al-Qaeda would not become a listed terrorist organisation in Australia until 13 December 2002—that is, 15 sitting days after tabling.

The Australian government has asked the Security Council to as a matter of urgency list Jemaah Islamiah as a terrorist organisation. As everyone would know, this is the organisation suspected of being responsible for the Bali bombings and other terrorist violence in South-East Asia. Under the legislation as it currently stands, even if the Security Council listed Jemaah Islamiah today and the consequential regulations were made immediately, the organisation could not be proscribed in Australia until the end of the second sitting day in 2003.

The Criminal Code Amendment (Terrorist Organisations) Bill 2002 will rectify this situation and ensure that regulations relating to the listing of terrorist organisations come into effect in the normal way, namely upon tabling. Specifically, this bill will remove the provisions of the current act preventing terrorist organisation regulations coming into operation straightaway and ensure that the regulations made on 21 October 2002 proscribing al-Qaeda and related organisations come into effect on that date—in other words, do not have to wait until the end of the disallowance period.

The opposition consider that this bill is consistent with the clear and balanced principles insisted upon when the package of security legislation was debated and considered at some length in this chamber earlier this year. We believe that the bill before the Senate is sensible and an improvement and, accordingly, the opposition support it.

Senator GREIG (Western Australia) (6.58 p.m.)—When the Democrats first approached what was the suite of antiterrorism bills, some five or six bills, the bill to which the Criminal Code Amendment (Terrorist Organisations) Bill 2002 refers was one which we ultimately did not support. We argued at the time, amongst other things, that fundamentally and philosophically we had grave concerns about the notion of proscription itself and the way in which the bill proposed to do that. Philosophically we believe that proscription must essentially be based around the notion or the identity of behaviour rather than belief—a concern that we maintain.

Having said that, we acknowledged at the time and I acknowledge again that, having been through the comprehensive committee process, through the Senate Legal and Constitutional References Committee, the proposed ways in which proscription was deemed were significantly watered down and there were greater and stronger safeguards ultimately constructed within the bill—most particularly in ensuring that the Security Council of the United Nations was involved in the decision-making process about proscription and not, as the bill as it was then was designed to do, leaving that power in the autonomous hands of the Attorney or his or her nominee.

We acknowledge, however, that the legislation, although we opposed it at the time, is now law and we acknowledge also that it should therefore be given reasonable opportunity to work properly and effectively. It is very important to spell out exactly what the bill means. Senator Faulkner has done that for the most part, and others will too, I guess. There are many people in the community who would be very anxious—and I have taken some phone calls and emails already on this—to receive or to hear the perception that at the last minute, on a last day of sitting, late in the day, another antiterrorism bill is being pushed through. That is the perception, and it is very important that we take time to explain to those people that that is not exactly what is happening here and that the amendment bill before us is reasonable and does not fundamentally change the existing antiterrorism laws but for what might be described as a loophole in the timing of its operation.
Let us be clear, then, that the legislation we have before us provides for regulations which cannot come into force until the end of the 15 parliamentary sitting days that a disallowance period in both houses of parliament provides for. Let us also be clear that normally regulations would come into effect immediately they are signed and gazetted but that they can be disallowed by parliament if a notice of motion of disallowance is given in either house of parliament within these 15 days. The Attorney’s office advises that, under the act in its present form, the regulations made now that list an organisation as a terrorist organisation will not come into operation, as Senator Faulkner has said, until 2003—that is, next year. That would mean—again referring to the Attorney’s advice—that the government could not complete the listing of a terrorist organisation, such as one perhaps involved in the Bali bombings, until next year. As a result, even though there may be known members of the terrorist organisation here in Australia, that would limit the availability of authorities to investigate and prosecute them, if there were enough evidence, until well into 2003.

So in the spirit of goodwill and in cooperation, given recent events, we Democrats are happy to support this amending legislation, notwithstanding our original opposition to the initiating bill. We understand the need and urgency for this. There is no reason why members of the community ought to be particularly concerned about this. As I say, it does not fundamentally change the existing legislation; it merely facilitates it more appropriately, and so we are happy to lend our support to it.

Senator BROWN (Tasmania) (7.03 p.m.)—The Greens also support the Criminal Code Amendment (Terrorist Organisations) Bill 2002, which reverses the imposition of the effective regulations in this matter to the day on which they are tabled rather than at the end of the 15 days of the parliamentary wait. That brings them into line with the usual way in which regulations work. It also allows that we retain the right to be able to disallow regulations as soon as they hit the table. The Senate majority has the ability to do that if we see this regulation being abused.

The government is clearly indicating here that it will not be moving, under the provisions of the legislation, to proscribe organisations as terrorist organisation unless the United Nations has listed such organisations and proclaimed that they are terrorist organisations. That is effectively what the government is saying here. We believe that a watch needs to be kept on that United Nations process, because it does mean that organisations can be proscribed by a member nation of the United Nations—be it Iraq, China or North Korea, for that matter. Without a trial or without evidence coming from the organisation, the United Nations can then decide that the organisation should be proscribed.

We have got checks and balances much better than that in this parliament, and we believe that this legislation should be supported. It will move rapidly to effectively proscribe the al-Qaeda organisation as a terrorist organisation in this country, as has happened in many other places around the world, rather than the situation under existing legislation, where that could not happen until some time early next year. We support it.

Senator HARRADINE (Tasmania) (7.05 p.m.)—I want to indicate that I, too, support the Criminal Code Amendment (Terrorist Organisations) Bill and am appreciative of the briefings the Minister for Justice and Customs has given us. As you know, Mr Acting Deputy President, I have always maintained that responses to terrorist attacks and terrorist organisations should not be aimed at those organisations and at the individual rights of innocent citizens, albeit that those rights have been breached, taken away and drastically curtailed by the actions of the terrorists. But here we have, I believe, a piece of legislation that enables regulations to name terrorist organisations on the basis that the Attorney-General is satisfied that the Security Council of the United Nations has made a decision about terrorism that identifies the organisation and that the organisation is directly or indirectly engaged in terrorism.

I think we must bear that in mind, together with ensuring that the parliament has the
power to disallow the instrument within 15 sitting days but that it comes into operation immediately. I feel that this legislation is consistent with the rights of citizens and is in no way besmirching the principles of human rights, and therefore I support it—as also in the war against terrorism.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.08 p.m.)—I thank the opposition for its cooperation in relation to the Criminal Code Amendment (Terrorist Organisations) Bill 2002, which is an extremely important bill for the security of Australia. I also thank the Greens, the Democrats and Senator Harradine for their contributions to the speedy passage of this bill. Senator Faulkner outlined the rationale for the bill and the way it operates quite clearly. If the United Nations sees fit to list an organisation as a terrorist organisation, Australia needs to be able to act quickly and to put into place regulations which empower us to act in Australia’s best interests. This is precisely what the bill does and why it is being treated as urgent—because of the emerging threats to Australia. The fact that this bill is in the national interest has been touched on by other senators who have spoken on it tonight. I thank them again for their cooperation. I commend to the Senate this very important and urgent bill which is in the interests of this country.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Bolkus)—The President has received letters from a party leader seeking to vary the membership of various committees.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.10 p.m.)—by leave—I move:

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

Economics Legislation and References Committees

Appointed:—Participating member: Senator Ludwig

Employment, Workplace Relations and Education Legislation Committee


Question agreed to.

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT BILL 2002

Second Reading

Debate resumed from 17 October, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator CROSSIN (Northern Territory) (7.11 p.m.)—I realise that time is short this evening, so I may have to leave for an adjournment debate in the weeks before Christmas a number of comments that I would like to make about recent statements in regard to the Aboriginal Land Rights (Northern Territory) Amendment Bill 2002, but let me provide the Senate with some of the background to this bill. The bill will add five new parcels of land to part 4 of schedule 1 of the Aboriginal Land Rights (Northern Territory) Act. These additions are the result of two separate agreements that have been reached between the Northern Territory government and the relevant traditional owners and land councils.

The effect of the scheduling will firstly be to enable the grant of four parcels of land in the Northern Territory that were the subject of the Upper Daly repeat land claim. This land will be given to an Aboriginal trust established under the land rights act for the purpose of being able to manage the land. This land will be granted to the land trust to hold on behalf of the Aboriginal traditional owners. The land we are talking about is situated some 250 kilometres south-west of Darwin.

The scheduling will also enable the grant of a smaller portion of land, about 450 hectares in size, located some 40 kilometres north of Alice Springs. This will be for the benefit of the members of the Harry Creek East community. This scheduling has come
about through the need to relocate land previously owned by the community—a relocation to which the community has agreed. This transfer of land is to accommodate the Darwin to Alice Springs railway corridor. The existing land has been rendered unfit for human occupation because it will be too close to that railway corridor. The new parcel of land is situated only a few kilometres south-east of the community’s previous location.

The passage of this bill and the scheduling of these new parcels of land will bring to 69 the number of parcels of land scheduled under the land rights act since 1977. I want to quickly make a number of comments about the land rights act. There have been many comments in recent weeks, if not months, about the need for this act to be reformed. It was started many years back by the Northern Territory CLP government when John Reeves was commissioned to do a review of the act. Since then there has been a response to that by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs.

Following on from that, we saw an options paper produced by Minister Ruddock earlier this year. However, in his speech in relation to this bill, Minister Ruddock said that the land rights act is in need of urgent reform. He is probably right about that—there are recognised areas of that act that need to be improved. But he went on to say that only one new mine had been created on Aboriginal land in 25 years. It was a claim that he also made in an article in the Sunday Territorian on 8 September. Those claims are wrong, as are the claims by Mr David Toller, the member for Solomon, that the current Chief Minister has refused to take control of 55 per cent of the land—not that it is land for her to take control of. So what we see is a government that on one hand wants to reform the land rights act but on the other hand is starting to promulgate untruths and misconceptions about the way in which this act operates. In fact, as my colleague in the House of Representatives said in his contribution to this bill:

It is not in fact the act that is at fault. It is the actions of the previous CLP government in holding up and sitting on exploration licensing applications that have been the problems.

It is actually the inaction of a previous conservative government that has created the problem—the perception that the act is not working—rather than the act itself.

As I said, there is a need for this act to be reformed but with two things in mind. We will always point to the recommendations in the House of Representatives report that said, firstly, that no changes to this act should occur unless there is the consent of the traditional owners and, secondly, that no changes to this act should occur that would be to the detriment of Aboriginal people and traditional owners in the Northern Territory. I realise time is short and I will conclude my comments there, perhaps taking up at some other time a speech that dispels the myth that certainly this current federal government would want to promulgate about the land rights act.

This bill is another example of where this land rights legislation is working. It is another example of where Aboriginal people in the Northern Territory get the title to their land and get to reclaim the land, to their benefit, in the legal way in which we perceive land ought to be held.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (7.16 p.m.)—The Aboriginal Land Rights (Northern Territory) Amendment Bill 2002 reflects the continuing commitment of the Howard government to securing legitimate title to traditional lands on behalf of the Aboriginal people of the Northern Territory. While supporting the return of traditional lands to 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 landowners. There is much more I wanted to say but time has beaten us. I thank senators for their support for this bill and urge its adoption.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.
DOCUMENTS
Parliament: Administration

The PRESIDENT (7.18 p.m.)—Earlier this year the Speaker and the then President of the Senate commissioned the Parliamentary Service Commissioner, Mr Andrew Podger, to inquire into certain aspects of the administration of the parliament. On 30 September 2002, the commissioner provided his report to me and the Speaker. Before the Speaker and I make decisions in relation to the recommendations made in the report, we felt it important to provide it to all senators and members for their consideration. Accordingly, I will table the report, together with a copy of the commissioner’s covering letter and a draft research paper prepared at the commissioner’s request tracing the history of previous attempts to make structural changes within the parliamentary administration.

The Speaker and I intend to consider the matter further at the end of November, and I would welcome any written comments from senators by 22 November 2002. The Speaker and I have also written to the heads of the parliamentary departments asking them to circulate the report to all their staff. We would welcome written comments on the report’s recommendations from those who serve the parliament as well as from any other interested parties by the same date, 22 November. Electronic copies of the documents I have just tabled will be made available shortly on the parliament’s Internet site and can be found by going to the publications link on the parliament home page. My predecessor and I have kept the Senate Standing Committee on Appropriations and Staffing informed of progress with this review and I will send a copy of this report to the committee for its information. I table the report and other documents.

BUSINESS

Rearrangement

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (7.20 p.m.)—by leave—I move:

That the question for the adjournment of the Senate today not be proposed today till after a motion for the adjournment is moved by a minister.

Question agreed to.

INSURANCE AND AVIATION LIABILITY LEGISLATION AMENDMENT BILL 2002

Second Reading

Debate resumed from 21 October, on motion by Senator Ellison:

That this bill be now read a second time.

Senator O’BRIEN (Tasmania) (7.20 p.m.)—Having consulted with the government in relation to this matter, I propose to incorporate the opposition’s contribution to this debate on the Insurance and Aviation Liability Legislation Amendment Bill 2002 in the form of a document which does, I must admit to Senator Ian Macdonald, criticise the minister from the previous parliament.

Leave granted.

The document read as follows—

The Opposition supports of the Insurance and Aviation Liability Legislation Amendment Bill 2002

The bill proposes minor amendments to three pieces of legislation. Two of the amendments arise from the events that shook the world on September 11 last year.

There are a number of key parts of this bill. The first part is the amendment to the Civil Aviation (Carriers’ Liability) Act 1959.

This bill amends the act to correct an error that imposes a liability on foreign charter operations that is inconsistent with Australia’s international obligations.

The amendment has been mooted for some time. It actually formed part of the lapsed Aviation Legislation Amendment Bill (No. 1) 2001.

This was a bill that lapsed mainly as a result of the incompetence of the Minister when the parliament was prorogued.

The amendment to the Civil Aviation (Carriers’ Liability) Act 1959.

The bill proposes changes to two other pieces of legislation. As I said the changes arise from the events of September 11.

The first is an amendment to the Damage by Aircraft Act 1999.

The bill proposes to exclude passive owners, such as lessors, from absolute liability for damage on the ground.
The events of September 11 last year threw the aviation and airport insurance industries into chaos.

Initially it was thought that Australia’s fairly unique protection for industry against insurance companies withdrawing cover was a major benefit to the aviation industry; however, it soon became clear that the unique provisions hampered reinsurance processes.

This in turn impacted on the leasing and financing arrangements negotiated for aircraft operators in Australia.

Following September 11, the insurance and finance industries raised concerns about the liability of passive owners for damage on the ground, noting that the Australian practice of having owners and operators jointly and severally liable was not common international practice.

The amendment removes the liability of passive owners who do not have an active role in the operation of the aircraft immediately before the impact occurred and where another person or organisation has the exclusive right to use the aircraft, and finance or other arrangements are in place.

The amendment does not affect the strict and unlimited liability of aircraft operators.

The amendment to the Insurance Contracts Act 1984 allows for the exemption by regulation of war and terrorism risk insurance from the cancellation and variation provisions of the act.

The protection offered by the current act against cancellation simply meant that the bulk of Australia’s aviation industry was not able to obtain cover once the existing contracts came up for renewal.

This industry relies on the global insurance market for cover.

Exempting war and terrorism cover from the cancellation and variation provisions of the act will place this class of insurance in the same position as the rest of the international aviation world.

It will thereby enable Australian operators to have access to global markets for insurance.

Australia is now part of a global alliance of countries pursuing a global, coordinated solution to terrorism insurance for airlines, airports and associated organisations and operations.

In the meantime, the government is correctly offering war risk indemnities to those aviation industry participants who have not been able to obtain sufficient war risk cover.

This bill is a timely response to events beyond our control and beyond the control of the industry.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (7.21 p.m.)—In the same spirit, I will not relate the quite voluminous speech I had for this debate on the Insurance and Aviation Liability Legislation Amendment Bill 2002, except to say that I am sure the criticism that Senator O’Brien has spoken of is completely unwarranted and unjustified. I do thank senators for their cooperation in dealing with this bill.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (BUDGET INITIATIVES AND OTHER MEASURES) BILL 2002

Second Reading

Debate resumed from 21 October, on motion by Senator Ellison:

That this bill be now read a second time.

Senator MACKAY (Tasmania) (7.22 p.m.)—On behalf of Senator Bishop, I seek leave to incorporate his speech on the second reading.

Leave granted.

The speech read as follows—

We are happy to support the two separate measures contained in today’s bill.

The measure to codify arrangements relating to nominees in the social security system is, on the whole a welcome one.

So too is the measure that assists children with disabilities with terminal conditions and their families.

However, our support on this occasion should not be taken as ringing endorsement of the nominee arrangements in the social security system.

Nominees

The legislative formalisation of nominees of Schedule 1 and Schedule 2 of the bill are primarily administrative initiatives that provide specific guidelines for the role and obligations of nomi-
nees under the social security and family assistance laws.

The amendments grant the Secretary the authority to appoint a nominee to be responsible for correspondence and the necessary action and, participation of a social security payment recipient (principal).

Under these amendments, the role of the nominee will vary from bearing the responsibility of receiving principal correspondence to receiving a social security benefit and other payments on a principal’s behalf.

A correspondence nominee has a fairly straightforward role of being responsible for ensuring that the principal will receive any notifications, requests and information from relevant government agencies. The amendments are clear on this.

The amendments however, do not provide clear protection for a nominee in relation to their obligation in ensuring a principal’s compliance with requests for government required information and appointments.

Proposed section 123J outlines the responsibilities of correspondence nominees in advising principals of social security requests for information and appointments.

The amendments strongly outline a correspondence nominee’s duty to notify principals of such social security requests. There is a concern however that based on available information, it is difficult to ascertain the ramifications of a nominee’s continued suitability should the principal not comply with a request.

On the surface the amendments imply that a nominee can be considered fully responsible for a principal’s non-compliance to social security requests. However, the amendments appear inflexible in accounting for a principal’s capacity to comply with requests and a nominee’s ability to ensure compliance.

Based on the amendments being considered, the onus for failing to comply with social security requirements are primarily the responsibilities of the nominee.

The nominee may therefore have to rely heavily on a good working knowledge of the social security system and an awareness of the flexibility that can sometimes be accommodated for special individual cases.

The Government has advised that each appointed nominee under these amendments will be assessed by a social worker and advised of their rights and obligations. They will also be given the opportunity to discuss and negotiate any problems that arise out of the non-compliance of a principal.

The Government has also assured that comprehensive information material will be made available to existing and potential nominees.

As it is envisaged that with an ageing population the use of nominees will increase, there also needs to be the assumption that many nominees may be new to the social security system.

A person who is naive to agencies such as Centrelink, will no doubt find the internal hostility, lack of genuine support and understanding within such agencies, can make a simple exercise quite daunting.

While there is no obligation from the Government to implement designated case workers for new nominees, it is recommended that individuals be encouraged to quickly establish a sound working relationship with an individual staff member (perhaps a Social Worker), who can at least provide continued guidance for the Centrelink novice.

Under these amendments, nominees can also receive a Principal’s social security benefit directly into a designated bank account, with the understanding that any financial obligation a principal may have, such as rent, bills and daily living would be undertaken by the nominee. Existing nominees have this current ability.

There is a concern however, that a principal may be vulnerable to exploitation from a nominee who does not have the principle’s interest at heart.

Proposed section 123E of the amendments grant the Secretary the ability to review and revoke a nominee’s status when it is found that the nominee is unable to fulfil their obligation.

Current information does not however, provide sufficient guidance on what circumstances can trigger a review and what matters are taken into account. There is an assumption that current review processes, such as investigation based on information from another interested party, would comply with the ongoing suitability of a nominee.

This assumption however, is not clearly indicated in the amendments.

The Government has advised that a significant amount of anomalies with nominee payment arrangements are usually found through administrative processes; such as returned mail or failure to comply with Centrelink request.

There is also an arrangement that Centrelink will investigate an allegation of nominee misuse from an interested party.
Although, the interested party is usually another family member and are often considered hostile to the nominee.

The government has assured us that the current process to investigate the suitability of a nominee is sufficient to sustain the new formal nominee arrangements.

We are going to revisit this issue over the next twelve months. As I said at the outset we do have some nagging concerns about the new arrangements.

However, we accept that this legislation represents a genuine attempt to codify the current administrative arrangements.

**Children with disabilities who have terminal conditions**

In December 1999 the Department of Family and Community Services completed a review of measure relating to carer payment in respect of parents of children with profound disabilities. That review made a number of recommendations to address inadequacies in the original legislation. Amongst those was the one before the Parliament today. I commend the government for bringing it forward.

The proposed amendment maintains Carer’s Allowance for parents who maintain active treatment for a profoundly disabled child, even if the child is medically considered to have a terminal condition.

The addition of new subsection 197(2) also allows a less intrusive diagnostic and restrictive criteria process for a medical practitioner to advise of a change in the status of a profoundly disabled child.

Put simply this means that a person caring for a terminally ill child with a profound disability will not have their payment jeopardised.

I just want to record my disappointment that this amendment was not accompanied by a further one to address the situation of children with disabilities who have high support needs, who do not meet the qualifications to enable their parents to receive carer payment.

There are a group of children identified in the 1999 review in this category.

While the objective of the payment is to recognise the needs of those parents whose caring responsibilities to a disabled child prevent them from working, it is so narrowly drafted, the parents of many children whose disabilities are not as severe, but whose support needs are very high, miss out.

Families caring for children with chronic illnesses such as cystic fibrosis, diabetes, epilepsy and phenylketonuria continue to miss out on the payment.

Assessment for the Carers Payment should take into account the financial, social and emotional cost borne by families caring for children with severe disabilities.

The problem is that the Child Disability Assessment Tool which is used to determine the functional ability of the child does not measure the care and attention demanded of the carer.

As a result, many more families are failing to qualify for financial support.

Since the new assessment tool was introduced in July 1998 the Labor Party has received a constant stream of letters and phone calls from concerned and distressed parents struggling to care for children with severe disabilities.

These parents caring for children with disabilities such as cystic fibrosis are struggling to keep their heads above water.

Without the Carers Payment they are forced to meet the costs of pumps, masks, sterilising equipment, special diets, exercise programs and equipment out of their own pockets.

These are substantial costs.

It is often the case that the extraordinary efforts and care provided by parents is the very reason that children are able to function day-to-day even when their life-span is limited.

Ironically, these efforts may also disqualify them from receiving financial support.

These families want an assessment tool that recognises the cost and time involved in providing care for their children.

I urge the Government to expand on what it is doing for terminally ill children today.

**Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation)** (7.22 p.m.)—Again I thank the Senate for its cooperation in dealing with this bill, and I urge support for it.

Question agreed to.

Bill read a second time.

**Third Reading**

Bill passed through its remaining stages without amendment or debate.
Debate resumed from 25 September, on motion by Senator Patterson:

That this bill be now read a second time.

Senator MACKAY (Tasmania) (7.23 p.m.)—On behalf of Senate Kirk, I seek leave to incorporate her speech on the second reading.

Leave granted.

The speech read as follows—


The Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001 recognised the importance of superannuation funds as a source of family wealth in Australia. Compulsory membership of superannuation funds has meant that superannuation represents an increasingly significant proportion of the personal wealth of all Australians, and is now second in value only to the family home.

The Australian Bureau of Statistics released its report “Superannuation: Coverage and Financial Characteristics” last year, in which it identified that three quarters of the pre-retired population aged 15 to 69 years had some superannuation. Approximately 78% of males in this group had some superannuation, and 71% of females. Of these, however, the median total amount was $13,400 for men, more than double that of the median $6,400 for women.

These disparities reflect the substantially different employment experiences that face men and women. Men in work are far more likely to hold full-time positions, while almost half of all female jobholders are part-time workers. Women are also much more likely to punctuate their working life with periods out of the workforce to care for children, the elderly and disabled. This not only tends to slow their career path, and progress toward better wages, it also means that little or no superannuation contributions are made during these periods.

In general, women have less superannuation than men, and those who do have superannuation have significantly smaller amounts than their male counterparts. These differences are evident in the statistics for retired Australians under 70 years of age who receive income from superannuation, with the relevant figure for men being 55% while the correlating percentage for women is only 28%.

Thus, the significance of the Family Law Legislation Amendment (Super) (consequential provisions) Act 2001 was to ensure that superannuation, as a substantial part of Australians’ wealth, could be divided as part of a property settlement in the event of divorce. This was a step toward enabling more equitable and just settlements at the end of a marriage. The statistics I have given you above paint a picture of the superannuation situation for many Australians, and why it is so crucial that these benefits can be divided. The Labor party also supports the Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Bill 2002.

It is important that we have legislation in place that ensures that disadvantage does not become entrenched. Taking into account the vulnerable position of women from low asset marriages and allowing for superannuation payments to be divided is one way that we can do this.

However, it is also important that our legislation keeps pace with a rapidly changing Australian society. The Act does recognise the growing importance of superannuation as a family asset. It does not, however, recognise the need to rectify the current lack of legal provisions for same sex couples, who face the same difficulties, and should be afforded to same rights as, heterosexual couples.

The Senate Select Committee on Superannuation and Financial Services recommended that the Commonwealth discuss with the States how to achieve similar superannuation provisions for same sex couples that separate. The Government has refused to accept the States’ referral of powers in this area.

The Opposition believes that the Government must act in this area. The law should not discriminate on the basis of gender, ethnicity or sexual preference. The Government’s inaction on the issue of ensuring consistent superannuation and family law legislation for both heterosexual and homosexual Australians shows it to be unresponsive and unreasonable.

We should do all that we can to ensure that the Law itself does not discriminate. The Govern-
ment, despite having been given the opportunity, has done nothing.

This Bill basically makes three minor amendments to the Family Law Act to clarify aspects of the 2001 Act.

Firstly, under the 2001 Act, a splittable superannuation interest included a payment to a reversionary beneficiary, but this term was not defined. This Bill defines a “reversionary beneficiary” as any person who becomes entitled to a benefit in respect of a superannuation interest of a spouse, after the death of that spouse. This is a broader definition than the one used in the superannuation industry but it reflects the intention of the original bill that most death benefits constitute splittable payments.

Secondly, this Bill rectifies an inconsistency that arose from the 2001 Act, in that successive splits could be made if a person divorces more than once, but this principle did not apply where the same couple divorces, remarries and divorces again.

Thirdly, under the 2001 Act, the entitlement of a spouse under a split was subject to preservation requirements if it was paid to a regulated superannuation fund of Retirement Savings Account. This Bill clarifies that the preservation requirements also apply to interests paid to an approved deposit fund or an exempt public sector superannuation scheme.

This Bill also make one amendment to the Judges’ Pensions Act to authorise the making of regulations to set out factors for use in calculating the proportion of a judge’s pension had “accrued” at the time of a judge’s marriage breakdown. This amount can then be used to determine superannuation interest under the Family Law Act.

This Bill makes amendments to the Social Security Act and the Veterans’ Entitlement Act, essentially to ensure that payments from a family law superannuation interest split can be consistently assessed with other income and assets under the social security and veterans’ entitlement means tests. The bill authorises the Secretary of the Department of Family and Community Services, in the case of the Social Security Act, and the Repatriation Commission, in the case of the Veterans’ Entitlements Act, to make guidelines for income testing of different kinds of income streams under the superannuation splitting regime. This is important as it provides consistency between the guidelines produced by the Department of Family and Community Services and those produced by the Repatriation Commission.

My South Australian colleague in the House of Representatives, the Member for Kingston and Assistant Shadow Treasurer, the Hon. David Cox MP, has outlined some technical concerns relating to the implementation of this Bill, which I will briefly relate to you.

In general, the Government has handled the implementation of this Bill very poorly. The complexities of family law and super and that together this new legislation is very complicated. Government bungling has made this even more difficult for those who must operate under the altered legislation.

A particular issue is the commencement provision in the original Bill allowed for an earlier commencement date by proclamation. It now seems certain that no such proclamation will be made and the legislation will commence the full 18 months after receiving royal assent. If this was always the government’s intention, they should have made this clear from the beginning.

The inadequacies of the initial legislation have made the implementation of the Act particularly difficult for the superannuation industry, who had initially been promised a transition period of at least twelve months from the tabling of the new regulations. However, the government made an additional 102 pages of regulations on 25 July this year, largely to make up for drafting deficiencies in the Act. This is in addition to the amendments made by this bill. Most of the announced amendments to the regulations, made on 25 July, were of a minor and technical nature. However, the treatment of allocated pensions for the purposes of payment splits was substantially revised. Altering rules applying to an entire class of superannuation benefits so tardily points to a government that is inefficient, and out of touch with the real work that needs to be done in implementation.

It is crucial that both industry and the general public are informed of these changes, so that advisers and super funds are able to best inform their clients. It is also crucial that the public are aware of these changes and their intricacies so they are able to make informed and wise decisions.

Despite the importance of clarity in fostering an understanding of legislation, confusion reigns in the interpretation of some areas of this Act. One is the extent to which superannuation benefits transferred from one partner to another are subject to preservation. Apparently, it is the government’s intention that preserved and non-preserved components of an interest be transferred on a pro rata basis. Despite the fact that Peter Costello has prematurely foreshadowed plans to increase the preservation age the Government needs to act now to clarify this aspect of the new law.
Another area of uncertainty is what is commonly called the ‘clean break’ principle. This refers to whether members of defined benefit schemes will be able to transfer a proportion of their benefit, as required by a court order or financial agreement, to their former partner straightaway or whether they will need to wait until their benefits become payable. Amendments to the Superannuation Industry Supervision Regulations provide for the immediate transfer of accumulation interests to another account in the same fund or a different fund, depending on the rules of the fund or the receiving partner’s preference.

The Attorney-General’s Department has indicated that there are constitutional difficulties in applying this ‘clean break’ principle to certain funds, and in particular, state public sector funds. This needs clarification. I believe the government must ensure that we have a national approach to superannuation regulation, and they should act expeditiously in this area for consistency and conformity.

The government’s lack of attention to detail in ensuring that the general public is able to understand and operate within the new legislation shows a government out of touch with the people. Everyday Australians should be uppermost in the mind of the government when drafting and implementing any new legislation regime. Unfortunately, this government seems to have forgotten the very people who elected them.

An area of ongoing concern to the Opposition is the resources provided to the Superannuation Complaints Tribunal. The original bill conferred new powers on the tribunal to deal with complaints against superannuation providers from prospective members of superannuation funds—that is, spouses or former spouses who are party to, engaged in or considering a property settlement involving superannuation. It seems likely that a number of disputes will arise in relation to the splitting of superannuation interests and payments and the Superannuation Complaints Tribunal will need more funding to cope with these.

The exceptionally complex provisions and the government’s lack of action to clarify them means that the number of disputes is also likely to be higher than expected. The tribunal’s workload will most certainly increase after December 28th. Labor’s concerns have been noted by the Senate inquiry, but as yet we have seen no indication from the government that it intends to act on this matter.

Senator Coonan should commit to providing more resources to the tribunal and begin to take appointments more seriously than her predecessor Mr Hockey, former Minister for Financial Services and Regulation, did when he appointed former Liberal Senator Michael Baume to this supposedly independent tribunal. Labor supports this bill as part of the necessary reforms to superannuation and family law. The number of outstanding issues that remain unaddressed by the government is testament to their lack of regard for all Australians who must contend with this new legislative regime. The government has an obligation to clarify the remaining ambiguities and attend to the task of creating consistent superannuation legislation that does not discriminate. I commend this Bill to you as a small step in this direction.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (7.23 p.m.)—Again I thank the Senate for their cooperation in dealing expeditiously with this important bill.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (7.25 p.m.)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 22 October. I also seek leave to move government amendments (1) to (4) together.

Leave granted.

Senator IAN MACDONALD—I move:

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

1AAA Section 90MD (at the end of paragraph (b) of the definition of operative time)

Add “or paragraph 90MLA(2)(c) as appropriate”.

(2) Schedule 1, page 3 (after line 9), after item 1, insert:

1AA After subsection 90ML(4)

Insert:

(4A) Subsection (4) does not apply if the splittable payment is made in circum-
stances in which section 90MLA applies.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4A) (see subsection 13.3(3) of the Criminal Code).

**1AB After section 90ML**

Insert:

**90MLA Some splittable payments payable if payment flag operating**

(1) This section applies if:

   (a) a superannuation interest (original interest) a person has in an eligible superannuation plan (old ESP) is identified in a superannuation agreement; and

   (b) a payment flag under section 90ML is operating on the original interest; and

   (c) a splittable payment is made by the trustee of the old ESP to the trustee of another eligible superannuation plan (new ESP) in respect of the original interest as part of a successor fund transfer.

(2) If this section applies, then:

   (a) the new interest in the new ESP is taken to be the original interest identified in the superannuation agreement; and

   (b) the payment flag operates on the new interest; and

   (c) despite section 90MK, the operative time for the payment flag in respect of the new interest is the time that the payment to the trustee of the new ESP is made.

(3) In this section:

  *successor fund transfer* means the transfer of a person’s superannuation interest in the old ESP in circumstances where:

   (a) the new ESP confers on the person, in relation to the new interest, equivalent rights to the rights the person had in relation to the original interest; and

   (b) before the transfer, the trustee of the new ESP had agreed with the trustee of the old ESP to the conferral of such rights.

(4) Schedule 1, page 3 (after line 31), at the end of the Schedule, add:

**5 Subsection 90MZD(2)**

Omit “on any person who subsequently becomes the trustee of that eligible superannuation plan.”, substitute:

on:

   (a) any person who subsequently becomes the trustee of that eligible superannuation plan; or

   (b) in a case where section 90MUA applies—a person who is the trustee, or any person who subsequently becomes the trustee, of the new ESP.

I am sure every honourable senator knows well the reason for these amendments. I un-
understand that neither the bill nor our amendments to the bill are contentious. I think they are very sensible. I think all parties have indicated that they support both the bill and the government amendments to the bill.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (7.27 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

ADJOURNMENT

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (7.28 p.m.)—I move:

That the Senate do now adjourn.

Victoria: Bracks Government

Senator TCHEN (Victoria) (7.28 p.m.)—A few weeks ago I spoke in the Senate about the mismanagement of Victoria by the Bracks Labor government. A few days later, I was very pleased to hear that Senator Marshall responded to my comments. I am particularly pleased to see Senator Marshall here today. I welcome Senator Marshall’s contribution, especially because it came with some very impressively crafted statistics. But I was rather bewildered when I realised that Senator Marshall’s theme was an attack on the Kennett government. Surely Senator Marshall, as a Victorian senator, should be more interested in the current perilous situation of his home state.

Let me quickly deal with Senator Marshall’s criticisms of the record of the Kennett government. It is a very curious collection of choices, since in each category that Senator Marshall has chosen the Bracks government’s record has been far worse. Senator Marshall started with major projects and drew the interesting conclusion that the Kennett government had failed because statistics show that all the major projects undertaken by the Kennett government were in the metropolitan area and that the majority of building investment in 1998 was in metropolitan Melbourne as well, thus demonstrating a neglect of regional Victoria.

The simple fact that seems to have escaped Senator Marshall’s notice is that the Bracks government has initiated no major project at all. If Senator Marshall cares to check Victorian building statistics for, say, 2001, he will find the pattern of building investment has not changed since 1998. So his statistics are meaningless. Kenneth Davidson—no friend of Kennett or the Liberal Party—writing recently in the Age about the difference between Jeff Kennett and Steve Bracks, said:

What’s different is style. Jeff Kennett was in your face ... Steve Bracks tries to sugar-coat the same pill with phoney consultative processes and documents in warm, earthy colours ... with lots of pictures of happy people enjoying cafe latte society ...

Let us have a look at some of the specifics. I will start with gaming. Ewin Hannan, writing also in the Age, on 28 September 2002 said:

After relentlessly attacking Jeff Kennett for promoting a casino culture, Labor came to office promising to reduce the state’s reliance on gaming revenue ... In fact, they—that is, the pokie losses—ballooned by $460 million over two years. Jeff Kennett had to rely on gaming revenue because he had no choice. After 10 years of Labor mismanagement, Victoria was broke in 1992—flat broke. In 1992, the Kirner government was borrowing money on the short-term market to pay public servants. In 1992, Jeff Kennett was given the task of rescuing Victoria from financial ruin, and he succeeded. Let me quote this assessment of his performance by Dr David Hayward, the executive director of the Institute for Social Research at the Swinburne University of Technology—another certified ‘non-friend’ of Jeff Kennett. In an unashamed apologia for the Bracks government in the Age on 26 September 2002, Dr Hayward said that Kennett did so well that:

The budget turned from deep red to thick black 10 years ahead of schedule.
Not so the Bracks government. Not only did it inherit a full treasury, it inherited a blooming economy so well set up that even the kind of incompetence exemplified by the saga of the Federation Square—the uniquely post-Federation Square—cannot stop it from performing well.

Senators may be interested to note that the Victorian state budget brought down in May 2002 estimated a surplus of some $765 million, which has since been reduced to $250 million after losses incurred in currency trading by the Victorian government. The same budget revealed revenue from stamp duties to be almost 50 per cent higher than forecast, providing a $773 million windfall. It also showed that land tax revenue would be $611 million, up 66 per cent since 1999, and that police fines would be a staggering $337 million, up from $99 million in 1999. So there is no reason for the Bracks government to rely on gaming revenue. Surely there is no reason why the Bracks government could not keep its promise to reduce the state’s gambling culture. Yet there has been no action—none.

Senator Marshall then picked education as an area of Kennett failure because 350 schools were closed and teachers were ‘removed from schools’. These were Senator’s Marshall’s words; I am sure that is because the number who actually left the education sector was far less impressive. But what about the quality of education that Victorian children receive? Surely the quality of education provided by the schools and the teachers is far more important than the quantity of schools and the number of teachers who turn up for work between 9 a.m. and 3 p.m.?

Let me cite an example. Once upon a time, there was a school in Melbourne called the Richmond Secondary College. It had no building more recent than 1950, it had no facilities more modern than the 1980s and, on a good day, it had about 100 students attending. It was one of the schools that was closed, and its closure provoked considerable public protest and disorder, lockout and arrests. On this site, the Kennett government established a new school in 1994—the Melbourne Girls College. Recently, I had the great privilege of visiting the Melbourne Girls College to attend the opening of the $3.3 million stage 3 of the school’s capital works project, to which the school community contributed close to $1 million. The Melbourne Girls College has an enrolment of approximately 1,180 students, and it prides itself as a model girls school for the 21st century, aiming for exemplary standards of achievement and conduct. The curriculum places a special emphasis on science and technology and aims to be the leading edge of technological innovation in teaching and learning, providing innovative and challenging learning experiences. It stands as an illuminating example of the education vision of the Kennett government. Senator Marshall should visit it to experience it himself before he again criticises the Kennett achievement in education.

In the time left to me, let me quickly touch on two other areas of government services that Senator Marshall has nominated as Kennett failures and, by implication, Bracks successes: public hospitals and WorkCover. Since Senator Marshall shows such a preference for statistics, let me provide him with some more. According to the Victorian hospital services report for the June 2002 quarter, in the 15 major Victorian hospitals the number of people waiting on trolleys for more than 12 hours in emergency departments has gone from 2,245 in 1999 to 6,887 in 2002—that is a 207 per cent increase. The number of people on waiting lists for elective surgery has increased by 4,425 people in three years. The number of people on waiting lists for ‘longer than ideal’—I do not know what that means exactly; I have quoted that from the report—has increased from 3,623 to 6,252. That is an increase of 73 per cent in three years. The number of ambulance bypasses has gone from 130 in 1999 to 416 in 2002. These statistics speak for themselves. Senator Marshall should study them carefully before he sings the Bracks government’s praises again.

On WorkCover, in 1992, Victoria had unfunded liabilities amounting to $2.1 billion. By 1999, this had been reduced to $295.6 million, representing a deficit of just 6.8 per cent, and the premiums were 1.9 per cent of wages. At the end of 2001, the unfunded li-
abilities had again blown out to $533 million or a deficit of 10 per cent, notwithstanding an increase in the rate of the premium to 2.22 per cent. In 1998-99 there were 31,242 reported claims and in 2000-01 there were 32,539 reported claims—a small increase. The number of staff increased from 709 to 828 during this period. But, Senator Marshall, the return to work rate has decreased by eight per cent.

Let me conclude by once again quoting Kenneth Davidson’s comment on the Bracks government:

... what we have got is pre-election spiel that attempts to hide three wasted years of government with more spin.

A Certain Maritime Incident Committee Report

Senator COOK (Western Australia) (7.38 p.m.)—Earlier today the report of the Senate Select Committee on a Certain Maritime Incident was tabled. That inquiry, of course, is colloquially known as the ‘children overboard’ inquiry. I had the opportunity to make some remarks then about the report of the committee that I had the pleasure of chairing, and I now want to add to some of those remarks because I have had the benefit of the debate contributions by other committee members. Their contributions open up the need to ensure that the record is kept straight on this inquiry.

The government members on the inquiry told the rest of us that we would see their minority report in time for us to digest it, so that all of us would come into this chamber without any unfair surprise and be able to debate the issues based on a full knowledge of each other’s case. Unfortunately, the rest of the committee did not see the government members’ report until after the report was printed. You may recall, Mr President, that I raised a point of order about some unparsimonal language in the report that, if it were ruled unparliamentary, would have been given parliamentary privilege—and I still think that is a matter for the Senate. If language is included in a report that other senators have not seen but which is objectionable in parliamentary terms, there ought to be a device to prevent that language from being given privilege and thus being able to be broadcast, because it reflects unfairly and improperly on senators under the standing orders. But I do not wish to labour that point; that is not the main one.

The main argument that the government senators made is, in my view—and I expressed this forthrightly in my remarks earlier—long on the criticism or abuse of senators and long on political rhetoric. One would even say it is windy. But it is very thin, in fact wafer thin, on the evidence. The evidence purported to be adduced by government senators is best exemplified by the attachment to their report of documents that were put before the committee as exhibits. They purported to show what happened in all of the other SIEVs and purported to make the case that there was somehow a pattern of behaviour. In other words, the defence being promoted here was: ‘Okay, you did not get us on SIEV4; you did not catch us that children were thrown overboard there; the evidence is conclusive that they weren’t. But look at all of these other events where equal or worse things’—they allege—’did occur. Isn’t that justification for the misleading and outright lying by Minister Reith that went on within the election context?’

Of course, it is a classical fallacy to argue in that way, and I am sure someone with a classical education, such as Senator Brandis, would be fully aware of the fallacy of that argument. The truth is, too, that the document they have relied on is not evidence. I said that by way of interjection, and Senator Collins referred in her remarks to this document at some length as well, but it does to reiterate some of these points. The document they have published in the report as part of the evidentiary foundation upon which they rely is a document that was obtained at the request of the government through Admiral Smith. He had made a broad request to all naval officers on all naval vessels that had intercepted SIEVs at the relevant time to report anything in a series of categories he had set, which was designed at the request of the government to try and establish whether any ‘improper behaviour’ had occurred at all.

That document came forward. It was never fully tested in the inquiry, and I am sure the government senators will admit that
fact. But, to the extent that it was, there was a reference in it that a suspected asylum seeker was seen on the deck of a vessel attempting to strangle a child. That question was tested and, when it was put under scrutiny in the committee, it was admitted that that may not at all have been true, and that the more likely explanation was that a parent was trying to pacify a child by shaking them or by rubbing their shoulders, and containing a child who, in the face of a catastrophe at sea, was frightened of the imminent possibility of being in the water and at risk of their life. Any parent in a similar circumstance would have taken parental responsibility and would have done just what that parent did. For that now to be adduced as some sort of proof of a ‘pattern of misconduct’ is quite scandalous, and shows the depths to which the argument has sunk in trying to defend this whole imbroglio concerning asylum seekers in Australia.

The other point I want to make, which is quite extraordinary in my experience—which regrettably next March will be 20 years in this place—is that, for the first time—

Senator McGauran—Why regret it?

Senator COOK—Because it is a hell of a long time, Senator, and it just seems like yesterday that I arrived.

Senator Boswell—you and I came in together.

Senator COOK—we did indeed, Senator. In all of that 20 years I have sat on many Senate committees and I have never sat on a committee on which a senator has said, for example, as Senator Brandis did to the Canberra Times just recently, that he interpreted his task on that committee to be defence counsel for the government—he prided himself in it. I would have thought that from time to time senators do take on the roles of advocates for their party and that that is exceptional, but I do not think any senator regards it as their sole role. In this place there is, if you like, a tradition that ought to be preserved that when we are on committees we try and do the work of the committees and conduct inquiries as senators dealing with the facts to try and arrive at a conclusion. We do not set out to argue against the facts on the basis—self-admitted in this case by Senator Brandis—that they are defence counsel. He was not, and he should not have conducted himself in such a manner.

The other point I want to make is about the forgotten people in this whole affair, the asylum seekers themselves. I always think it is odd that in Australia when we talk about asylum seekers we are talking about people fleeing persecution in Afghanistan, in Iraq, in Iran and in some cases in parts of Pakistan and that somehow we regard those people as questionable individuals because they seek safe haven in a stable democracy like Australia. I do not know of too many Australians who, if they lived under the dictates of the reprehensible regimes in those countries, would want to remain in those countries and not leave. I certainly admit there is a big question about how you gain access to Australia, but the motives of trying to escape persecution and tyranny are motives that all Australians can identify with and empathise with. It is partly the reason why we are now talking about military action in that part of the world and why Australian military personnel have already conducted military action in Afghanistan. These were the people trying to make it across the Timor Sea in boats. Whatever view you take, you have to say that what they were escaping from was reprehensible and deserving of our greatest condemnation. Even if you do not approve of them, at least their motives are understandable.

They are innocent of the charge that was made. People will remember that the Prime Minister in the election campaign said words to this effect: no Australian would like people that do these things coming to Australia. The truth is that they did not—they never did those things—and there is no evidence anywhere in this inquiry to suggest that they were other than caring and responsible parents. Somebody has got to say that these people have been defamed or misrepresented or subject to an electoral scam for political purposes in which their reputation is in tatters. They have not had an opportunity—because they are out of our jurisdiction and we cannot afford them protection—to speak for
themselves in this inquiry. I think it is a shame that that is not on the record, because they were there too and they were witnesses to these events. I conclude on the point that 14 different sources of information went to Minister Reith and 13 to Prime Minister Howard about this event that indicated that the—(Time expired)

Foreign Affairs, Defence and Trade Committee Report

Senator PAYNE (New South Wales) (7.48 p.m.)—I rise this evening to make some reference to a report—another report—which was also tabled this week, on this occasion by the Joint Standing Committee on Foreign Affairs, Defence and Trade on the visit to Australian forces deployed to the International Coalition Against Terrorism in July and August of this year. That visit included Kuwait, the Gulf, Kyrgyzstan, Afghanistan and Dubai. The report was tabled in the Senate by the chair of the joint committee and in fact the leader of the delegation, my colleague Senator Alan Ferguson. I want to thank Senator Ferguson particularly for noting at the time of the tabling that I was absent from the chamber because I was chairing a session of the Women and Policing Globally 2002 conference, that session being on peacekeeping, the timeliness of which in many ways was interesting.

Other speakers both in this chamber and in the other place have indicated that this visit was extraordinarily valuable to all members of the delegation to enable us to appreciate—and in some cases that appreciation was felt quite acutely—the extreme conditions in which our defence personnel are serving in the region. The committee is undertaking a range of activities as part of our watching brief, as it is described, on the war on terrorism. This visit was particularly important to that in terms of monitoring, considering and reporting on Australia’s ongoing commitment to this effort. Its particular purposes were to give the committee a comprehensive understanding of the nature and effectiveness of our commitment, an understanding that then enables us to report that to the Australian community. This report, its tabling and members’ responses to it in this place and in the other place are very fundamental to that process, most particularly to demonstrate the parliament’s bipartisan support for the Australian defence forces currently deployed in the area.

It is particularly important to acknowledge the extraordinary work of the Army, Navy and Air Force personnel deployed in the region. They work under very onerous physical and climatic conditions, never more so than at the height of summer when this visit took place. Australians, as we all know, are normally used to extremes of temperature, but temperatures in excess of 50 degrees Celsius in Kuwait and in the Gulf test even the hardest soul. Our soldiers and sailors in those two instances carry out their roles without complaint, notwithstanding those conditions.

This particular delegation gave senators and members a chance to see our troops on active deployment. It is an opportunity that is not often available to members and senators of this place, so I regard it as both an honour and a privilege to have participated. It is particularly not easily available in a key region such as this, such an enormous distance from our own nation, and particularly not at a time of such heated debate on Australia’s role in any future involvement in the area. On a personal basis, I really feel that this is an opportunity that enabled me to see with much greater clarity the aspects of this debate. I have used this experience in discussions with the many experts, academics and defence personnel that one talks to on these issues.

As the report notes, and as I am sure my colleagues did not miss the opportunity to also note, the delegation travelled as our forces do: from Perth to Kuwait in an Ilyushin 76 Defence resupply aircraft, between Kuwait and Kyrgyzstan, Kyrgyzstan and Afghanistan and Afghanistan and Dubai on a Hercules C130 and on Seahawk helicopters. We also had the occasional very real-life experience of climbing ladders up and down the sides of the USS Hopper and the Australian frigates the Melbourne and the Arunta. The delegation made the effort to travel as our troops do, rather than choosing the alternative of first-class commercial flights—something for which parliamentarians are often derided—and I think those decisions were well received by the troops that we vis-
ited. In fact, I venture to say that in some cases they just stood there in horror and disbelief saying, 'You can’t be serious; you came here on an Ilyushin 76!' But we did indeed and we all survived the journey.

I want to comment briefly on some of the key aspects of the delegation’s visit, starting with our time in Kuwait. The delegation made official calls on both the Speaker and the Minister for Foreign Affairs, and they are well recorded in the report. But most particularly in relation to our troops we visited Camp Doha in Kuwait City, where the presence of an Army logistics support element and the Australian national command headquarters enabled us to make some very valuable inspections. Initial briefings provided to us by Brigadier Garry Bornholt and his team noted, amongst other things, the very good impression that Australian personnel have made, and the report notes particularly their reliability and their competence. They were comments that were echoed throughout the delegation’s entire visit, not just by the Australian national command representatives but most particularly by representatives of the United States and other forces present in the international coalition.

We had initial discussions in Camp Doha on command and control elements, which are referred to more broadly in the report itself. I want to record my appreciation of the assistance of the United States in the visit to and inspection of the US helicopter flight line, the AH64 Apache attack helicopter and the terrain flight that they provided to members of the delegation on US Army Black Hawks. It was an absolutely unforgettable experience—indescribable in the extremes of heat and those climatic difficulties that I referred to earlier.

I want to thank the Australians at Camp Doha who looked after us so well on this initial meeting. I can only imagine how difficult it is to sustain, entertain and brief nine parliamentarians who drop into, if you like, a high level of operational activity and seek briefings and information. It cannot be easy to interrupt very important daily activities, but in every single instance, in every single aspect of our visit, that was done by Australian troops deployed in this area. We have much to thank them for. The report notes the very clear sense of purpose and strong commitment to duties of these troops and, most importantly, their high morale, which was evidenced in every activity we enjoyed.

In relation to the Gulf, the Maritime Interception Force has been in operation since August 1990. Australia has been involved since its inception. These are the patrol and boarding operations in the central and northern Persian Gulf and in the Gulf of Oman. We began with a visit to the USS Hopper, a US Navy guided missile destroyer. It is notable for one particularly interesting reason, I thought. It is not just an extraordinary ship; the USS Hopper carries the largest percentage of female naval crew in the United States Navy. It was in fact named after Admiral Gladys Hopper, who was the first female admiral in the US Navy. Her formidable visage surveys the wardroom, and I feel that all those who are viewed by Admiral Hopper would be reasonably intimidated. We received very high level and, in some cases, classified briefings on the Hopper, and an Australian crew is embarked there. It was quite clear to us that the Australian crew and the crew of the American guided missile destroyer are working together very well.

We observed a particularly interesting boarding at the time, and I commented to the intelligence officer of the Hopper that technology has made amazing advances for troops deployed in such instances. For example, to see a naval crew board a suspect illegal ship, a dhow, and bring back to the Hopper by an inflatable boat the documents from the suspect dhow, have those scanned and registered on the Hopper and return the original documents to the suspect boat in a matter of minutes is quite an extraordinary performance in that environment, and I was very impressed by that.

We transferred in two groups to the Melbourne and the Arunta Australian frigates deployed in the Gulf as part of the Maritime Interception Force. I was in the small group that overnighted on the Melbourne. We took the opportunity to do a full tour of the ship and to talk to the crew and observe their high morale and the very positive experience they were able to relate to us. Our 3 a.m. transfers
from the Melbourne to the Arunta by RHIB gave us another equally valuable experience on the Arunta, and I want to thank the captains on both of those ships.

In Kyrgyzstan we met relatively briefly with the RAAF 84 Wing Detachment—in fact, from Richmond RAAF Base in my own constituency—at Manus International Airport near Bishkek in Kyrgyzstan. Those valuable briefings that we had there on air operations were ones which I will certainly never forget. The support of the air operations from the RAAF 707s were absolutely extraordinary. I will not have time to finish my remarks this evening, so I will continue them on another occasion.

A Certain Maritime Incident Committee Report

Senator JACINTA COLLINS (Victoria) (7.58 p.m.)—It is a pleasure, in returning to the report of the Senate Select Committee on A Certain Maritime Incident, which was tabled earlier today, to follow Senator Payne with her references to the admirable behaviour of our Defence Force personnel. She has relayed her experience akin to the experience that I had in the previous year of our new parliamentary program on the HMAS Adelaide.

I want to return briefly to the additional comments that I added to our report, where I highlighted that one of the very clear findings of this report, one of the very clear things proven in this report, is the absolute integrity of our Defence Force personnel. The many sad reflections that have been made in a number of other areas can be dealt with another time. However, I want to extend the comments that I made on the culture that had been reported to me from some defence personnel which had been developed in the Department of the Prime Minister and Cabinet and focus tonight on just one small element of how that culture developed. Looking at the government’s People Smuggling Task Force, which was headed by Ms Jane Halton, I would like to go to the findings that the committee made in relation to that task force. We found:

The Taskforce failed to observe certain key principles of best practice in the conduct of its operations, thereby exposing itself to inappropriate levels of risk in the management of information. The Taskforce failed to establish at the outset a control structure appropriate to the nature of the activities upon which it was embarked. Overall, it lacked a clear governance framework defining accountability and reporting arrangements and the roles and responsibilities of the various participants. In particular:

Copies of advices to the government prepared by the Taskforce and other outcomes of Taskforce deliberations, were not distributed to the participating agencies that contributed to those deliberations, thereby denying agencies the opportunity to correct errors or to clarify misleading information.

The Taskforce’s proceedings and decisions were not sufficiently well minuted, thereby preventing a reasonable record of the Taskforce’s activities from being available to its many participants, and rendering the activities of the Taskforce largely inaccessible to subsequent scrutiny.

There was considerable variation in the manner of ‘reporting back’ by participants to their home agencies. In many instances it was insufficient to ensure a coherent engagement of the agencies with the Taskforce and inhibited the adequate ‘hand over’ of advice between the various representatives from the same agency who attended Taskforce meetings on different occasions.

Within the Taskforce and between the Taskforce and agencies and/or ministers, information flows were often poorly managed with inadequate attention being paid to risk mitigation and the detection and correction of errors in information.

The Committee is not questioning the integrity of the individual participants on the Taskforce, but finds substantial weaknesses in its basic administrative operations, including record keeping, risk management and reporting back.

Beyond that statement, tonight I would like to reflect on the management of the People Smuggling Task Force and of course its manager, Ms Jane Halton. Ms Halton was involved in a policy that was playing chicken with people’s lives. One might question the full role of her behaviour in this, but it is clear from examples such as the one I highlight when I show excerpts from the log of the HMAS Adelaide that this is what in fact transpired.

I take the Senate again to the log references that are part of the additional comments that I made to the report. In respect of SIEV4, at 7.51 zulu time the boarding party
But at 10.09 zulu they are still on the ship, and we have the recommendation to ‘put people in the water’ on the double. At 10.36, the ship is ‘contacting parliament on the crisis’. We have people in the water and we are contacting parliament on the crisis, according to this log. Finally, at 11.00 zulu—which is 51 minutes after these people were put in the water—HMAS Adelaide’s RHIBs were instructed to bring children on board the Adelaide.

How can it be that the discussions that were going through the task force and through PM&C in relation to how to manage these asylum seekers allowed people to be put in the water for 50 minutes? Compare that with Ms Halton’s statements that she was concerned about women and the garb that they were wearing—I think she referred to it as the Hajib, although it is probably better described as the Burqua—and how they might survive in the water in such garb. People were in the water for 51 minutes.

If we go to SIEV10, we know two women died. We still do not know the full details about how or why they died, but we know that they died and they were in the water. Yet, if you look at this log reference from the HMAS Adelaide, you can see that the servicemen involved—the people who were in the boarding party—were saying at 7.51, almost three hours earlier, ‘Take these women and children off.’ And we need to know who stopped them. Who was playing chicken with these people’s lives? A concern expressed by Ms Halton that she was concerned about women in this sort of garb being in the water beggars belief when you read things such as these logs and see what happened to people.

But that is not the only problem with Ms Halton’s evidence. If you look at her evidence, you will see 53 occasions when she just cannot recall. There are another 10 occasions when she cannot remember. There is a strange element to her evidence. When she is explaining something that works in the favour of the position that she is trying to maintain for the government, her memory is crystal clear, but when she is being questioned on conflicting or damaging evidence you observe memory loss, lack of recall, fidgetiness and like behaviour.

If we look today at what the reward has been for what I would describe as a very convenient memory, Ms Halton has been well rewarded. She is now the secretary of one of the biggest Commonwealth departments. But what I think is worse, and what I think has been a slap in the face for these asylum seekers whom she played chicken with to some degree, is that she received the Public Service medal for policy reform on illegal immigration. I say tonight that she should hand that medal back! What this committee report states about the behaviour of the task force and the culture in PM&C indicates quite clearly that she has no right to claim that medal. She has been involved in some degree in playing chicken with people’s lives and she should return that medal to the Australian public.

Senate adjourned at 8.07 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Australian Broadcasting Corporation (ABC)—Report for 2001-02.
Australian Communications Authority—Report for 2001-02.
Australian Institute of Criminology and Criminology Research Council—Reports for 2001-02.
Australian National Training Authority—Australian vocational education and training system—Report for 2001—Volumes 1, 2 and 3.
Australian Postal Corporation (Australia Post)—Report for 2001-02.
Australian Prudential Regulation Authority—Report for 2001-02.
Australian War Memorial—Report for 2001-02.
Cotton Research and Development Corporation and Cotton Research and Development Corporation Selection Committee—Reports for 2001-02.
Department of Agriculture, Fisheries and Forestry—Report for 2001-02.
Department of Family and Community Services—Report for 2001-02—Volumes 1 and 2.
Department of Foreign Affairs and Trade—Reports for 2001-02—Volume 1—Department of Foreign Affairs and Trade.
Volume 2—Australian Agency for International Development (AusAID).
Department of Veterans’ Affairs—Data-matching program—Report for 2001-02.
Director of Public Prosecutions—Report for 2001-02.
Family Court of Australia—Report for 2001-02.
Forest and Wood Products Research and Development Corporation and Forest and Wood Products Research and Development Corporation Selection Committee—Reports for 2001-02.
Health Insurance Commission—Equity and diversity program—Report for 2001-02.
Public Service Commissioner—Report for 2001-02, incorporating the report of the Merit Protection Commissioner.
Repatriation Commission, Department of Veterans’ Affairs and the National Treatment Monitoring Committee—Reports for 2001-02, including reports pursuant to the Defence Service Homes Act 1918 and the War Graves Act 1980.
Special Broadcasting Service Corporation (SBS)—Report for 2001-02.

**Tabling**
The following documents were tabled by the Clerk:
Australian Meat and Live-stock Industry Act—
Class Ruling CR 2001/1 (Addendum).
Goods and Services Tax Ruling GSTR 2002/5.
Health Insurance Act—
  Taxation Determination TD 2002/24.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Commonwealth Heritage Properties
(Question No. 408)

Senator Crossin asked the Minister for Finance and Administration, upon notice, on 27 June 2002:

(1) What is the amount of revenue generated from the sale of Commonwealth heritage properties over the past 3 years.

(2) What is the Government’s current position with respect to the disposal of heritage property.

(3) Is it a fact that decisions about the disposal of heritage properties are made on an agency by agency basis; if so, how does the Government ensure that heritage values are not compromised under these arrangements.

(4) Does the Government have any plans to establish a whole of government policy which balances considerations of financial return to the Government with environmental or heritage values to the community.

(5) Does the department have any system for identifying heritage-listed properties when it is planning to dispose of property.

(6) Did the department notify the Australian Heritage Commission (AHC) in relation to the proposed sale of two properties listed on the Register of the National Estate at Myilly Point in Darwin; if so, on what date did this notification occur.

(7) Did the department seek advice about the proposed sale; if so, what advice was given.

(8) In the case of a tendering or expression of interest process, does the department involve the AHC in selecting the successful bid when disposing of a property listed on the Register of the National Estate; if not: (a) how does the department use the advice of the AHC in relation to disposal of these properties; and (b) is there any system for weighing heritage considerations against the financial gain to be made.

(9) Why is the disposal of the Myilly Point properties being done by an ‘expressions of interest’ process while the heritage-listed property in Hartley Street Alice Springs was granted in freehold title to the National Trust in 1998.

Senator Abetz—The answer to the honourable senator’s question is as follows:

(1) Over the past three years (1999/2000 to 2001/02) the Department of Finance and Administration has sold properties with heritage values recognised by listing in a heritage Register by either the Australian Heritage Commission (AHC) or a State/Territory heritage authority, for sale revenue totalling some $37 million ($30 million of this total was from the sale of one property - the Cameron Offices at Belconnen ACT).

(2) The Government’s position is that the Commonwealth should own property only where there is an efficient economic reason for doing so, or where it is otherwise in the public interest. This reflects the Government’s view that the Commonwealth should not be a property investor, and should focus its scarce resources on core functions. At the same time, the Government acknowledges the importance of heritage issues generally, and is particularly sensitive to the heritage values inherent in some of its own Commonwealth properties. The ongoing protection of heritage values is an important public interest consideration in divestment decisions.

(3) There are several portfolios of Commonwealth owned properties managed by different agencies, including the Departments of Defence, Foreign Affairs and Trade, and Finance and Administration, as well as individual buildings, such as the National Library and Gallery, which are controlled by the user agency. Divestment decisions are made by the agency responsible for the property portfolio, its Minister and/or the Government depending on the significance of the divestment. The environmental and heritage values of Commonwealth properties are protected by the Australian Heritage Commission Act 1975 and the Environment Protection and Biodiversity Conservation Act 1999 which bind Commonwealth agencies and Ministers in their decision making.

(4) The current legislative framework will be further enhanced by the environment and heritage legislation amendment bills currently in passage through the Parliament. The primary responsibility
for this legislation rests with my colleague the Minister for the Environment and Heritage, the Hon Dr David Kemp MP.

(5) Yes.

(6) Yes. The formal notification occurred on 6 December 1999.

(7) On 30 December 1999 the AHC wrote to the Department of Finance and Administration indicating that it appreciated the Department’s commitment to the heritage values of the Myilly Point houses, ensuring their long term protection through preparation of a conservation management plan, investigating appropriate contractual mechanisms and consultation with the Northern Territory Government to ensure its commitment to the protection of the properties.

(8) No. (a) AHC advice is obtained, accepted and implemented to ensure the ongoing protection of heritage values via mechanisms that include conditions of sale, conservation management plans, restrictive covenants and State and Territory heritage legislation. (b) Yes.

(9) Transfer of the heritage house at 86 Hartley Street, Alice Springs to the National Trust was negotiated in 1997. Since that time, the Government has implemented major reforms to the ownership and management of Commonwealth property because it is committed to strong financial management, full accountability and value for money for the Australian taxpayer. The Government is also committed to ensuring the preservation of the Myilly Point heritage houses, and the ‘expressions of interest’ process will assist development of a strategy for their long-term ownership and management.

Forestry: Regional Forest Agreements

**Senator Brown** asked the Minister for Forestry and Conservation, upon notice, on 30 July 2002:

1. Is the Minister aware that, according to the latest Tasmanian Forest Practices Board report, 11.8 per cent (9,040 hectares) of the Regional Forests Agreement area’s Eucalyptus regnans remaining in 1996 was logged by 2001.

2. Does the Minister recognise that, at this logging rate, 100 per cent will be lost by 2044 and that logging is not sustainable.

3. Will the Government move immediately to reduce this rate to a sustainable level.

4. What, in the Minister’s estimate, is the sustainable rate of Eucalyptus regnans logging in Tasmania for: (a) sawmills; (b) veneer; and (c) woodchip purposes.

**Senator Ian Macdonald**—The answer to the honourable senator’s question is as follows:

1. I am advised by the Honourable Paul Lennon, Deputy Premier and Minister for Economic Development, Energy and Resources, that the Tasmanian Forest Practices Board Annual Report for 2000-01 does not provide data on how much Eucalyptus regnans has been logged since 1996.

2. Given that the Tasmanian Forest Practices Board Annual Report for 2000-01 does not provide data on how much Eucalyptus regnans has been logged since 1996, as stated in the preceding answer, the proposition behind this question is incorrect. Nevertheless, I would add that the Tasmanian Regional Forest Agreement (RFA) provides the basis for sustainable management of Tasmania’s forests, including a comprehensive, adequate and representative (CAR) reserve system that protects 40 per cent of Tasmania’s forests, including 16,330 hectares of Eucalyptus regnans forests. Most native forests are regenerated to the same forest community after logging, ensuring their sustainability.

3. In light of the answers provided previously, I cannot see how you can maintain that the level of Eucalyptus regnans harvest is unsustainable. Therefore, I will not be seeking for Tasmania to change how it manages this forest type.

4. The Commonwealth does not have the responsibility for calculating sustainable yield from Tasmania’s forests. The Commonwealth has accredited the methods used by the Tasmanian Government for calculating sustainable yields of wood products. Tasmania publishes five yearly reviews of the wood resource in public and private forests and plans the harvest of its public forests on a sustainable basis.
Senator Chris Evans asked the Minister for Defence, upon notice, on 19 August 2002:

(1) Can a summary of the activities undertaken by the Fremantle Class Patrol Boat (FCPB) fleet be provided for each of the 2000-01 and 2001-02 financial years, including the following information: (a) how many days each of the FCPBs and/or the fleet as a whole spent on seagoing days; (b) of those seagoing days, how many days were spent on activities tasked by Coastwatch; (c) with reference to seagoing days of the FCPBs not spent on civil surveillance patrols, specify (as a proportion of the fleet) what activities they were engaged in and for how many days (eg. in the 2001-02 financial year, 20 per cent of the seagoing days of the total fleet, not including days tasked by Coastwatch, might have been spent doing military training exercises); (d) of the days any or all of the FCPBs were not at sea, what use was made of them (eg. work-up or evaluation periods, port visits, maintenance and leave periods, etc); and (e) with reference to their use on non-seagoing days, can a breakdown be provided of how many days the FCPBs (or a proportion of the fleet) spent in each different use.

(2) (a) In what Australian Defence Force exercises did the FCPBs participate in each of the 2000-01 and 2001-02 financial years; and (b) can the following information be provided: (i) how many boats, or what proportion of the fleet, participated in these exercises, (ii) the number of days they did so, and (iii) which of these days were international, joint or single service exercises.

(Note: The question does not seek information that would prejudice operational security, ie. information regarding where particular FCPBs have been used or when, but on use patterns of the fleet. The tender documents for the replacement patrol boats included a summary of the activities of three individual FCPBs over a year.)

(3) What are the costs associated with the following aspects of the FCPBs: (a) initial value (ie. purchase price paid for each FCPB); (b) average annual maintenance costs for each boat in each of the 2000-01 and 2001-02 financial years (include any automatic payments made to contractor for ongoing maintenance, as well as additional costs for any irregular or extra repairs that have been needed); (c) average daily running costs (on a seagoing day); and (d) average daily crew costs (ie. a breakdown of salary, on-costs, training etc.)

(4) What is the patrol range of an FCPB.

(5) Please describe what sea state the FCPB fleet: (a) usually operates in; and (b) is capable of operating in, and what this means in laymans terms.

(6) Can the Minister confirm that the FCPBs are not capable of operating in all parts of the Australian Exclusive Economic Zone (FEZ).

(7) Please describe in general terms where the parts referred to in (5) are (eg. Torres Strait, Heard and Macdonald Islands, the Australian Antarctic Territory etc).

(8) When were the last three occasions (or the month) in which any of the FCPBs conducted civil surveillance patrol south of Geraldton.

(9) Has Defence reached any agreement with Coastwatch on P3-C Orion use that includes documented criteria for their use.

(10) How many flying hours were provided to Coastwatch by Royal Australian Air Force in each of the 2000-01 and 2001-02 financial years.

(11) Were all of these hours provided by Orions; if not, please specify what other aircraft have contributed.

(12) How many hours does an average civil surveillance patrol by an Orion take.

(13) What is the total full cost per hour of using an Orion for civil surveillance.

(14) What is the southern-most point the Orions operate to in civil surveillance patrols. (ie. the most southern latitude that they fly to.)

(15) Has Defence given any consideration to entering into formal arrangements with Coastwatch on training, certification or exchange of staff involved in air activities; if not, why not; if so: (a) have any arrangements been agreed to in principle, or made; and (b) can details be provided of the progress made to this point.
(16) For how many hours in total did the Orion fleet collectively fly in the 2000-01 and 2001-02 Financial years.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) (a) FY 2000-01 - 2690 sea going days programmed.
      FY 2001-02 - 2632 sea going days programmed.
(b) FY 2000-01 - 1688 patrol days.
      FY 2001-02 - 2103 patrol days.
(c) FY 2000-01 - 27% of sea going days were used to support workups, military exercises and deployments.
      FY 2001-02 - 21% of sea going days were used to support workups military exercise and deployments.
(d) When not at sea FCPB’s conducted assisted maintenance periods (AMP), leave, maintenance and training (LMT).
(e) FY 2000-01 and 2001-02 non sea going days breakdown:
      (i) AMP 49%.
      (ii) LMT 51%.

(2) (a) FY 2000-01 - Penguin, Lumbas and Minor War Vessels Concentration Period.
      FY2001-02 - Minor War Vessel Concentration Period.
(b) (i) FY 2000-01 - Penguin (2 FCPBs), Lumbas (2 FCPBs) Singaroo (2 FCPBs) and Minor War Vessels Concentration Period (9 FCPBs).
      FY 2001-02 - (8 FCPBs).
      (ii) FY 2000-01 - Exercise Penguin 20 Days.
           Exercise Lumbas 22 Days.
           Exercise Singaroo 4 Days.
           Minor War Vessel Concentration Period 108 Days.
      FY 2001-02 - 82 Days.
      (iii) International Exercises conducted were: Penguin, Lumbas and Singaroo.
           Single Service Exercise conducted was the Minor War Vessel Concentration Period.

(3) (a) $28.3 million.
(b) FY 2000-01 - $26.606 million for FCPB maintenance, divided by 15 boats equals $1.773 per boat average annual maintenance cost.
      FY 2001-02 - $26.793 million divided by 15 boats equals $1.789 million per boat average maintenance cost.
      No personnel costs or fleet intermediate maintenance cost savings are included in the above figures. All contractor costs are included, as are consumables, but these consumables are in direct support of maintenance.
(c) and (d) As provided in the response to Senate Question on Notice No 343 (Senate Hansard Monday 19 August 2002), advice was given that the past practice in answering questions of this nature has been for Defence to provide daily, hourly, full-cost recovery rate for ADF assets.
      The full-cost recovery rate methodology is used to calculate the recovery or waiver costs of using a particular asset when Defence is asked to perform a non-Defence activity. The rate includes all the embedded costs that Defence would be paying whether or not the assets had been deployed.
      The underlying assumptions in recent questions and debate, that the full cost recovery rate can be extrapolated to estimate the cost of operations is, quite simply, misleading.
      The true cost to the taxpayer is the net additional cost. The net additional cost of a particular asset in an operation, in terms of extra fuel, rations and allowances would depend on the particular operation. It would also take account of the offsets within the overall budget De-
fence would make in absorbing some of that cost; for example, cancelling or postponing exercises or seeking additional efficiencies to help offset the additional costs.

The net additional cost is consistent with the approach taken by successive Governments in providing supplementation to the Defence budget for operations. It is this method the Government intends to use for its own costings and to employ when answering questions about the costs of operations.

(4) 2,360 Nautical miles.

(5) (a) Varies up to sea state 5.

(b) Up to sea state 5. In layman’s terms, seas generated from a fresh breeze 17-21 knots of wind with probable wave height of 2.0 metres and with a maximum probable wave height of 2.5 metres. Note: FCPB capability is greatly reduced above sea state 3.

(6) Yes.

(7) The FCPB’s do not operate at Heard, McDonald or Macquarie Islands, the Australian Antarctic Territory, Cocos and Christmas Islands, due to sea state limitations and the extreme range from mainland Australia.

(8) During the months of June, August and September 2001.

(9) There is no formal agreement between Defence and Coastwatch that documents criteria for their use. However, the Government has directed 250 Orion flying hours be made available in support of the civil surveillance program. Coastwatch may request Orion tasking for any civil surveillance related purpose they desire, within the capabilities and limitations of the aircraft. A process has been arranged whereby Coastwatch tasking requests are reviewed and prioritised with other operational and non operational tasking by Defence, who in turn inform Coastwatch which tasks can be undertaken.

(10) Defence provided 256.0 hours in 2000-01 and 100.3 hours in 2001-02.

(11) Yes.

(12) Eight to ten hours.

(13) The full-cost recovery rate methodology is used to calculate the recovery or waiver costs of using a particular asset, usually when Defence is asked to perform a non-Defence activity. A comprehensive set of cost factors, including management overheads, capital costs and depreciation, salaries and accrued superannuation, is used to calculate the recovery rate. In the case of support to Coastwatch, the associated costs have been absorbed within the Defence Budget.

(14) Orions on normal civil surveillance patrols will fly to 46S; the fisheries zone south of Tasmania. Orions have operated to approximately 57S, Macquarie Island EEZ.

(15) There is no extant formal arrangement with Coastwatch on the training of staff involved in air activities.

Coastwatch aircraft perform a narrow spectrum of roles performed by Orion aircraft and little benefit would be gained by cross-training Defence personnel in Coastwatch duties. In addition, security issues preclude the cross-training of Coastwatch observers for Orion duties.

In regard to the exchange of personnel, the Coastwatch Director General, Chief Of Staff and Operations Officer are military personnel and a Coastwatch Officer serves in Northern Command (NORCOM). In addition, Customs Officers have free access to NORCOM.

(16) The P-3C Orion flew 8,216 hours in 2000-01 and 9,624 hours in 2001-02.

Political Parties: Non-Electorate Staff

(661)

Senator Murray asked the Special Minister of State, upon notice, on 19 September 2002: Can the following details be provided for each parliamentary political party for each of the following financial years: (a) 1998-99; (b) 1999-2000; and (c) 2000-01:

(1) The total number of non-electorate staff provided by the Commonwealth to parliamentary representatives of the party.

(2) The aggregate amount spent on airfares and travel allowance by the Commonwealth on the non-electorate staff of the party.
Senator Abetz—The answer to the honourable senator’s question is as follows:

| (1) | (a) 1998-99 | Government: 339 |
|     |            | Australian Labor Party: 71 |
|     |            | Australian Democrats: 12 |
| (b) 1999-00 | Government: 346.9 |
|     | Australian Labor Party: 73 |
|     | Australian Democrats: 15 |
| (c) 2000-01 | Government: 358.5 |
|     | Australian Labor Party: 75 |
|     | Australian Democrats: 15 |

| (2) | (a) 1998-99 | Government: $6,019,183.95 |
|     |            | Australian Labor Party: $1,371,264.28 |
|     |            | Australian Democrats: $390,065.35 |
| (b) 1999-00 | Government: $5,182,910.60 |
|     | Australian Labor Party: $1,371,709.10 |
|     | Australian Democrats: $388,397.19 |
| (c) 2000-01 | Government: $5,838,350.25 |
|     | Australian Labor Party: $1,531,102.08 |
|     | Australian Democrats: $401,121.17 |

Note: The airfare and travel allowance amounts included in (2) parts (a) and (b) contain archived data that has been derived from the entitlement management system that was in place within the Department until September 1999. Due to the nature of the archiving process and its technical limitations, the Department is unable to guarantee the exactness of this information.

Defence: Naval Shipbuilding and Repair Sector Plan  
(Question No. 662)

Senator Chris Evans asked the Minister for Defence, upon notice, on 23 September 2002:
Can a copy of the presentation given at the Defence Industry Conference in Canberra on 26 June 2002, concerning the Naval Shipbuilding and Repair Sector Plan, be provided.

Senator Hill—The answer to the honourable senator’s question is as follows:
(1) Yes. A copy has been forwarded separately to your office.

Education: Cultural Heritage  
(Question No. 703)

Senator Greig asked the Minister representing the Minister for Education, Science and Training, upon notice, on 26 September 2002:

(1) Have enrolments into the Conservation of Cultural Materials and Cultural Heritage Management programs, offered at the University of Canberra, been cancelled for 2003.
(2) What is the reason for ceasing enrolments into these courses.
(3) Is it true that this program of study is unique in Australia.
(4) What other programs exist in south-east Asia and the Pacific that could train conservators in our cultural heritage.
(5) Is lack of government funding the reason these courses are being threatened.
(6) Does the Government believe that a scientifically-trained profession is important in the preservation of Australia’s cultural heritage; if so, where will such professionals now be trained.
(7) How many countries have had students trained at this University of Canberra course.
(8) (a) Which government initiated the funding for this course; (b) in what year was it initiated; and (c) was it a result of the Pigott Report.
(9) How many students have graduated from these programs since its inception.
(10) If universities are to be encouraged to diversify and not replicate programs (as discussed in the Crossroads issues paper by the Minister for Education, Science and Training), why is the University of Canberra suspending a unique program.
Senator Alston—The Minister for Education, Science and Training has provided the following answer to the honourable senator’s question:

(1) The University of Canberra (UC) has advised that the following courses will not be open for new admissions in 2003:
   365AK BAppSc Cultural Heritage Studies
   624AA BAppSc/BComm CHS/Information
   151AL GradDipAppSc Conservation of Cultural Materials
   305AD MAppSc Cultural Conservation Studies
   Cultural Heritage Management will be available as a major to new entrants within the Resource and Environmental degree. Further to this, the following courses will remain open for admission and enrolment:
   589AD GradCertAppSc Cultural Heritage Studies
   151AB GradDipAppSc Cultural Heritage Management
   305AA MAppSc Cultural Heritage Management
   (the Masters consists of the GradDip plus 24cp thesis - ie no additional subjects).
   The University indicates that all current commitments to students in the relevant awards will be honoured.

(2) The University indicates that it has been cross subsidising these courses for many years and that it cannot continue to do so. The University is seeking further external support to allow these programmes to continue in subsequent years.

(3) The University of Canberra has advised that while its conservation course has unique features, related courses are taught at Curtin University of Technology, Deakin University, James Cook University, Melbourne University and the University of Western Sydney.

(4) The University advised that it is not aware of many similar programs in south-east Asia and the Pacific, but stated that there are many similar programs in Europe, for example, in Florence, Rome, Vienna and Northumbria.

(5) The Commonwealth does not fund universities for particular courses but provides block grant funding to universities for a specified number of student places consistent with each institution’s teaching and research activities. As universities are autonomous institutions, generally established under State legislation, the allocation of funding to support various programs of study is an internal matter for the university to determine on the basis of its own assessment of needs and priorities.
   The University advises that these courses cost many times more than the average course to run. An additional problem is the low take up rate, and a lack of precise information as to professional demand and its future.

(6) The Government has demonstrated the value it places on the preservation of Australia’s cultural heritage by working cooperatively with State Cultural Ministers at the Cultural Ministers Council. The Council established a National Collections Advisory Forum to provide strategic advice on the future directions, needs and priorities of the heritage collections sector and to identify priorities for government in addressing these issues.
   Related courses are currently taught at Curtin University of Technology, Deakin University, James Cook University, Melbourne University and the University of Western Sydney. If there is sufficient demand from students, employers and the profession, education institutions will respond by offering appropriate training and education.

(7) The University advises that students from at least 10 countries have undertaken its programmes.

(8) (a) The Federal Government provided funding for the Canberra College of Advanced Education (became the University of Canberra in 1990).
   (b) The University advises that the course was established at the then Canberra College of Advanced Education in 1978 and that (c) the course was established as a result of the Pigott Report.
(9) The University advises that around 340 students have graduated from the programmes.
(10) The Government encourages universities to diversify their offerings to provide wider student choice and to meet the changing demands of industry and the professions, however the current funding arrangements have encouraged duplication across some university activities. The Higher Education Review Issues Paper, Varieties of Excellence: Diversity, Specialisation and Regional Engagement included a range of issues for debate, including possible options to facilitate further diversity and specialisation in higher education. However, as discussed under answer (5) above, decisions relating to specific course offerings are matters for universities to decide. The Government does not dictate to universities what decisions they should be taking in relation to course offerings.