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

COMMITTEES
Legal and Constitutional References Committee
Meeting
Senator MACKAY (Tasmania) (9.31 a.m.)—by leave—At the request of Senator Bolkus, I move:

That the order of the Senate of 12 November 2002 authorising the Legal and Constitutional References Committee to hold a public meeting during the sitting of the Senate today be varied to provide that the committee be authorised to meet from 3.15 p.m.

Question agreed to.

LEAVE OF ABSENCE
Senator NETTLE (New South Wales) (9.31 a.m.)—by leave—I move:

That leave of absence be granted to Senator Brown for the period 13 November 2002 to 15 November 2002, on account of ill health.

Question agreed to.

PROHIBITION OF HUMAN CLONING BILL 2002
In Committee
Consideration resumed from 12 November.

Bill—by leave—taken as a whole.

The CHAIRMAN—Order! The committee is considering the Prohibition of Human Cloning Bill 2002 and amendments (2) to (13) and (16) on sheet 2695, moved by Senator Abetz. The question is that the amendments be agreed to.

Senator ABETZ (Tasmania—Special Minister of State) (9.32 a.m.)—I have already spoken but I seek to draw the attention of the committee to the running sheet. My clause 22 amendment has been described as a strict liability offence. In fact that amendment deals with possession, not strict liability. When honourable senators move to vote at a later stage, it would be misleading for them to think they are voting on strict liability when in fact they would be voting on possession. Without putting too fine a point on it, discussions last night suggested to me that my amendments on strict liability would not necessarily get the numbers, but I understand there is some degree of sympathy for the issue of possession. So I think it is important at this early stage to point that out.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—Thank you, Senator Abetz. I am sure the committee will note that.

Senator ABETZ—Rather than just noting it, I would like a new schedule to be circulated with that amendment on it. We have only a dozen or so senators in the chamber at the moment; if the staff could assist in that regard I would be much obliged.

The TEMPORARY CHAIRMAN—Senator Abetz, I understand a new running sheet will be prepared.

Senator HOGG (Queensland) (9.34 a.m.)—This seems to be the appropriate time to ask a question that I raised in my contribution to the second reading debate, as Senator Abetz’s amendments cover the offences under part 2. Minister, that question was in relation to clause 10, which states:

A person commits an offence if the person places a human embryo clone in the body of a human or the body of an animal.

It seems to me that, while it is very good to make it an offence if that happens, it takes two to tango. There needs to be a person who is going to receive the human embryo clone, but that person is not subject to any offence whatsoever under this proposed act. Is there a reason for that and, if so, can the minister elaborate?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.35 a.m.)—Senators have asked questions about the issue of strict liability offences in relation to prohibited practices. Senator Abetz’s amendment proposes to introduce strict liability in relation to each of the prohibited practices. Strict liability offences are entirely inappropriate for offences that carry penalties of 10 to 15 years imprisonment. The Criminal Law Division of the Attorney-General’s Department has a general rule that any offences that carry a penalty of more
than 50 penalty units—that is, $550—should not be strict liability offences.

This general rule is based on the Senate Scrutiny of Bills Committee standing order No. 24, which draws attention to provisions where strict liability is imposed and, in particular, ensures that the provisions do not unduly trespass on personal rights and liberties. On the basis of this standing order—and I would not want to pre-empt what the Senate Scrutiny of Bills Committee would say—it is likely that the Scrutiny of Bills Committee would be extremely concerned to see offences in legislation that are strict liability offences which carry a penalty of 10 to 15 years imprisonment. I have been advised that this is entirely unprecedented in Commonwealth legislation and, therefore, we will be opposing Senator Abetz’s amendment. I can go into that in more detail if required.

Senator HOGG (Queensland)  (9.37 a.m.)—I raised with the minister the question of a penalty for those who intentionally place—and I want to come to back to that in a moment—the human embryo clone in the body but that there seems to be no offence committed by the person who receives it. It seems to me that it would be quite a deliberate act on the part of the person receiving it. There would have to be complicity on the part of the person receiving it. It is not something that would be just a one-off, unfortunate incident that took place. Minister, the bill seems to be deficient in that area. Could you respond to me on that, please.

Senator PATTERSON (Victoria—Minister for Health and Ageing)  (9.38 a.m.)—I am going back to do law, Senator Hogg. The reason the legislation does not target the receipt of possession—which is the argument you are putting—is that COAG decided to target the more serious, high-level offences such as creating or implanting prohibited embryos. The significant penalties attached to these offences indicate that the Australian community views these sorts of crimes extremely seriously. If it is an offence to create and develop certain types of embryos and it is also an offence to implant, import and export those embryos, it is unlikely that people will be in a position to ever be in possession of those embryos.

The aim of the bill is to deter those people who have the greater capacity to commit the offence—namely, scientists and others with the technological knowledge to create prohibited embryos. It was not considered appropriate or necessary, for example, to create a separate offence to punish a woman in whom a cloned embryo was implanted. I note, however, that the Criminal Code extends criminal responsibility to other forms of action such as aiding, abetting, procuring the commission of an offence and conspiracy. Persons engaging in this sort of activity may be found guilty of an offence. These provisions should go some way towards satisfying members of this chamber that people who deliberately participate in the commission of an offence will still be subject to criminal sanctions.

Senator ABETZ (Tasmania—Special Minister of State)  (9.39 a.m.)—At a later stage we will move an amendment to the amendment that I have moved in relation to possession. But I respectfully suggest that the advice given to the committee be somewhat more robust. If the explanation that has just been provided is to be accepted by this place, can the government tell us why it is a crime to be in possession of narcotics? Having regard to the reasoning that has just been given, there should be no offence of possession in relation to a whole range of crimes, be they involving narcotics or, indeed, as simple as the offences of unlawful possession under the Excise Act 1901, section 117C. For example, a person must not without permission possess or have custody or control of tobacco seed, tobacco plant or tobacco leaf.

For simple offences like those involving tobacco, mere possession is an offence. If the rationale that was just provided is to be sustained, then one wonders why we have ‘possession’ littered throughout our legislative regimes, be it in narcotics, tobacco or, indeed, in a range of other areas such as forged banknotes. You are not allowed to be in possession of forged banknotes. You could run the line: ‘Well, it’s a crime to make them, it’s a crime to export them and it’s a crime to import them; therefore, we do not need the crime of possession of forged banknotes.’ If
that is the approach that is being taken in this debate, I think we will have to have a rewrite of all our criminal legislation. I say this now because I think this is pre-empting the debate on possession, but I would expect that when we do come to that amendment there would be some more rigour involved.

In relation to penalty units et cetera and the Attorney-General’s approach to these matters, I have a discussion paper titled ‘Model criminal code’ of 1998—not all that long ago—which deals with offences against humanity. There is an offence here relating to sexual servitude. It states:

A person who causes a person to enter into or remain in sexual servitude is guilty of an offence.

Maximum penalty: seven years.

There is no requirement for intention in this draft discussion paper circulated with the authority of the Standing Committee of Attorneys-General. All of a sudden we are told that intention is absolutely required if the penalty unit is above $550, yet here is an example of a crime against humanity where a seven-year prison sentence was being suggested. I do not mind sound arguments being put up, but not ones that are so easily blown out of the water. I know there is not support for strict liability, so chances are I will not speak on this again, but I would have expected that the arguments that were put up would have been treated with some greater degree of rigour and with more respect rather than their being dismissed in such a manner that, if I were so minded, I could have embarrassed those who are providing this advice by indicating that what they were saying is in fact contradicted by numerous documents circulated by the Standing Committee of Attorneys-General.

Senator HOGG (Queensland) (9.43 a.m.)—Minister Patterson, I heard your explanation on the issue that I raised. When I sat down to prepare my notes for this debate, I envisaged that there would have been a wider range of people speaking in the second reading debate on this bill to flesh out some of the more contentious issues than has actually taken place. It really seems to me that the explanation that you have given, whilst I understand where you are coming from, nonetheless leaves what I would consider to be a flaw in the bill.

I have no intention of moving an amendment to the bill; but, if this issue is placed on the public record, then, when it is revisited somewhere down the track, as it undoubtedly will be, people will be able to look back and say that it was an issue at this point in time. Minister, I heard the advice you gave in respect of people aiding and abetting a crime, but we are dealing with probably one of the most serious issues that people are going to be confronted with—that is, the creation of a human embryo clone and its implantation into a human person. Whilst I hear your explanation, I do not think that the bill goes far enough.

Having said that, I also raised in my speech in the second reading debate the issue of the word ‘intentionally’. I understand that Senator Abetz is going down a different path, but it seems to me that there is an inconsistency in the bill as well—not a great inconsistency but an inconsistency—in that the word ‘intentionally’ is used in some places but that clause 22(3) of the bill says:

A person commits an offence if the person intentionally places an embryo in the body of a woman knowing that, or reckless as to whether, the embryo is a prohibited embryo.

I know that the issues of recklessness and negligence were raised in the Senate Community Affairs Legislation Committee hearings on this matter. So why have we seen in this bill the word ‘intentionally’ inserted in all of these various clauses yet a reference at one stage to recklessness? Why haven’t recklessness and negligence been included as part of the drafting of this bill? If they have not been included, is there some reason why they have not been included? Will those who sit down later on and interpret the meaning of this bill say, ‘They didn’t include recklessness and they didn’t include negligence or other similar terms; they only sought at that stage to include the word “intentionally”? Can the minister enlighten us as to why only ‘intentionally’ has been included?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.47 a.m.)—Some senators have asked why the bill requires that the prosecution establish that a
person has intentionally done something before an offence can be established. Last year the Commonwealth introduced a Criminal Code which attempts to codify criminal laws. The code makes it clear that in relation to conduct that gives rise to an offence the prosecution must establish that the person intended to engage in the conduct that gave rise to the offence. Thus, even if the Prohibition of Human Cloning Bill 2002 had not included the word ‘intentionally’ in relation to the conduct leading to prohibited offences, this would have been implied by the Criminal Code.

It was also thought prudent to include the word ‘intentionally’ in the offences because the Commonwealth Criminal Code does not apply in the states and territories. Even if the Commonwealth did not include the word ‘intentionally’ in the offences, the states and territories would have had to have included it in their legislation because they do not have a code that outlines the default provision. If this had occurred, Commonwealth, state and territory legislation would have looked different even though it would have had the same effect. This was not considered desirable in the interests of promoting perceptions of national consistency.

While a notion of recklessness could have been introduced into some of the offences in order to describe the circumstance of the offence rather than the conduct of the offence, this was not considered to be appropriate, because of the very high penalties that attach to the offences. In these circumstances, it is important that the prosecution bear the evidential burden in terms of establishing the guilt of a defendant.

It is very straightforward to say that it is an offence to ‘intentionally create a human embryo clone’. To recast the offence as ‘intending to create a human embryo knowing or reckless as to whether the embryo is a human embryo clone’ would be to complicate the offence. It is also somewhat unnecessary in this example because the technology and procedure required to clone a person mean that it is very unlikely that a person would commit the offence without having the requisite intention. Knowledge and recklessness have been included in clause 22 on the basis that it is easier to separate the different elements. It is one thing to engage in the conduct of importing an embryo and it is another as to whether the person knew the embryo was prohibited. The same cannot be said in relation to all of the other offences.

Senator HOGG (Queensland) (9.50 a.m.)—Minister, whilst that is implied, and I understand the explanation that you have given—it would seem to me that it really is superfluous in terms of the Commonwealth’s considerations—am I correctly understanding you to be saying that that needs to be mirrored in the complementary legislation of the various states?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.50 a.m.)—We are attempting to achieve as much national consistency is possible. As I said, the states do not have a criminal code. They will have to bring their legislation as closely into line with ours as possible.

Senator HOGG (Queensland) (9.51 a.m.)—Minister, I am trying to get to the point where there is no confusion about the inclusion of the word ‘intentionally’ in here when this legislation is read, and at this stage you have clarified that matter for me.

Senator ABETZ (Tasmania—Special Minister of State) (9.51 a.m.)—Can I have clarified that we were just told that the word ‘intentionally’ does not add anything to the provisions.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.51 a.m.)—I will repeat what I said, because the answer to the senator’s question is, I believe, in there. Last year we introduced the Criminal Code, which attempts to codify criminal laws. The code makes it clear that, in relation to conduct that gives rise to an offence, the prosecution must establish that the person intended to engage in the conduct that gave rise to the offence. Thus, even if the Prohibition of Human Cloning Bill 2002 had not included the word ‘intentionally’ in relation to the conduct leading to the prohibited offences, this would have been implied by the Criminal Code. It was thought prudent to include the word ‘intentionally’ in the offences, because the Commonwealth Criminal
Code does not apply in the states and territories. Even if the Commonwealth did not include the word ‘intentionally’ in the offences, the states and territories would have to include it in their legislation, because they have no code which outlines the default provision. If this had occurred, Commonwealth, state and territory legislation would have looked different, even though it would have had the same effect. I can go on, but I did actually refer to the issue of why ‘intentionally’ was used in one case and not in another.

Senator ABETZ (Tasmania—Special Minister of State) (9.53 a.m.)—The minister’s response does not add anything. I make the very simple point that, on the basis of this word not adding anything to the bill, and given the logic that was provided to us last night that my amendment did not add anything to the bill and therefore had to be opposed and voted down, it will be very interesting to see what the attitude is in relation to this word, which has been described in exactly the same terms as the very simple amendment that I moved last night. There are inconsistencies coming out in the approach. You run one argument to knock something down and you then run exactly the same argument to try to support something which is being opposed. We need some rigour in this debate. Quite frankly, I do not think the advice that is being provided shows that rigour.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.54 a.m.)—With all due respect to the honourable senator, the arguments are totally different. The argument last night about whether ‘particular’ would go in before ‘woman’ in that clause was totally different from the argument here. The argument here is that it is prudent to put ‘intentionally’ in to ensure—

Senator Abetz—Why?

Senator PATTERSON—Senator Abetz asks why. For the third time, I will say why. It was thought prudent to include the word ‘intentionally’ in the offences, because the Commonwealth Criminal Code does not apply in states and territories. Even if the Commonwealth did not include the word ‘intentionally’ in the offences, the states and territories would have to include it in their legislation, because they have no code which outlines the default provision. In order to make the legislation across the nation look as consistent as possible, although it would have the same effect, it was thought desirable in the interests of promoting that national consistency to have things the same. It is a totally different argument from last night. Do not come in here and argue that I am not being consistent. I am being consistent. The argument last night was a totally different argument.

Senator MURPHY (Tasmania) (9.55 a.m.)—Minister, if the word ‘intentionally’ did not appear in the bill in the form that it appears in these clauses—and I listened to what you said about the states not having the same application of the default provisions of the Criminal Code—would it not be the case then that the Commonwealth law would be the applicable law and that the default provisions of the Criminal Code and other prosecuting law would still apply to a person who was found, or at least alleged, to have committed an offence under this proposed legislation?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.56 a.m.)—What we are attempting to do is ensure that we have an appearance of consistency, because the states do not have a criminal code. What I said before is that we have included the word ‘intentionally’ prudently to ensure that we get legislation across the nation—when the states bring in their complementary legislation—that looks the same. It might not have been necessary for us to put it in but because, following the Criminal Code, the states need to put it in we have put it in to be prudent—to make sure that we have consistency.

Senator MURPHY (Tasmania) (9.57 a.m.)—Thank you, Minister, but I do understand that. Maybe I can put my question this way: if a person is alleged to have committed an offence and we did not have the word ‘intentionally’ in there, would they still be subject to the same prosecution applications that exist now?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.57 a.m.)—If the word ‘intentional’ were not there, the
Criminal Code would apply. We have put the word ‘intentional’ in, prudently, because it will then enable the state legislation to look like our legislation.

Senator ABETZ (Tasmania—Special Minister of State) (9.57 a.m.)—But the states have not legislated as yet, as I understand it. If our legislation does not have the word ‘intentional’ in it, it will therefore be very easy for them to pass legislation mirroring ours without the word ‘intentional’ in it. I find these arguments that are being put forward quite amazing. We have also heard that the states do not have criminal codes. I am not sure what is meant by that, because I know my home state of Tasmania does and I understand that Queensland does—the Griffith code—et cetera. But coming back to the point, can we have it clarified that none of the states have as yet legislated to mirror this legislation and, if so, the argument cannot be run that we have to have wording that mirrors the state legislation, as that state legislation is not in place.

Senator CHRIS EVANS (Western Australia) (9.58 a.m.)—Mr Temporary Chairman, can I seek your guidance on a matter? I know we have wide-ranging debates at the committee stage, but we are actually still on Senator Abetz’s amendments (2) to (13) and (16), aren’t we?

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—Yes.

Senator CHRIS EVANS—Senator Hogg and others seem to be contributing to a debate on some of the later amendments that Senator Abetz is going to move. This will involve important debate, but I suspect that if we do not concentrate on the actual amendments then we are going to be here for a very long time and not make much progress. I am just clarifying that for myself, but I think it is important to try and concentrate on the actual amendments moved on each occasion. We all therefore need to concentrate our minds. Senators trying to follow the debate on their TV screens might also be confused as to which amendments we are actually debating.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.59 a.m.)—Senator Abetz has pointed out that Tasmania has a criminal code. Not all states have a criminal code. The states have not actually introduced their legislation, because they are waiting for Commonwealth legislation to be passed to ensure that we have national consistency across the legislation.

Senator MURPHY (Tasmania) (10.00 a.m.)—I do not want to take up the time of this chamber with regard to the progress of this bill, but I am curious about something the minister said. She said that the states are waiting for us to put through this parliament the legislation at a Commonwealth level, and they will then proceed to mirror that legislation. If the word ‘intentionally’ were not in there, would it breach any agreement that exists between the states and the Commonwealth with regard to the form the legislation must take? Would it cut across states prosecuting law in relation to their arrangements? As I understand it, they are different in many cases. I am not sure why there seems to be a technical problem with regard to this word. The minister said that the states are waiting for the Commonwealth to pass the law and then the form of the law will be mirrored at a state level.

If there is a reason why the word ‘intentionally’ might from a technical legal point of view cut across the objective or meaning of a law at a state level, I would like to know it—because, if that is the case, I can understand what the minister is saying. But, otherwise, when she says, ‘We are putting it in there to be prudent,’ I accept that you might be putting it in there to be prudent, but I would suggest that it could probably create some very serious arguments within the courts in the longer term. I am sure some very smart lawyers, barristers or QCs will look at this and think, ‘How do we determine “intentionally”?’ I am not a legal practitioner, but I have found that in some of the cases that I have read the excuses that have been used to avoid or get people off a conviction have been very spurious, to my mind. I am loath to put anything in law that would offer an opportunity for that to occur. I am just curious if the word ‘intentionally’ is being put in there to assist the states. If it is not, I do not see the problem.
Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.02 a.m.)—I will have no more to say on this after I have made the following comments. I appreciate that Senator Murphy now accepts that it is prudent to put in the word ‘intentionally’. This legislation has been through the Attorney-General’s Department. It complies with criminal law drafting. I believe that it is appropriate for the word ‘intentionally’ be put in there for the purposes that I have outlined—that is, because some states do not have criminal codes and we want to have the legislation looking as consistent as possible nationally.

Senator STOTT DESPOJA (South Australia) (10.03 a.m.)—I acknowledge that that will be the minister’s final contribution on this matter. On behalf of the Democrats, I rise to say that we support the arguments that have been put forward by Senator Patterson. I think it is prudent. Through you, Mr Temporary Chairman, I will do Senator Abetz the courtesy of advising him of the Democrat position. Obviously, as you know, my personal—

Senator Harradine—No conscience vote in the Democrats?

Senator STOTT DESPOJA—There is absolutely a conscience vote.

Senator Harradine—There is no conscience vote in the Democrats—because you said on ‘behalf of the Democrats’.

Senator STOTT DESPOJA—Mr Temporary Chairman, I did not interrupt while Senator Harradine made his contributions. I make it very clear, given that he has made this interjection, through you, Mr Temporary Chairman to Senator Harradine: all votes in the Australian Democrats are a conscience vote. We discussed this issue in our party room this morning—as we do all issues—and my colleagues can vote as they please on this. However, on the issue of the strict liability provisions, which we have discussed as a group, you will find that the seven Democrat senators share this opinion—and this is the one that I offer on their behalf; it is not a personal opinion. As you would know from our legislative record in this chamber, the Democrats are often wary of strict liability in relation to legislation. In this place you have seen that record; you have seen us debate these issues.

We recognise the intent—bad pun!—of Senator Abetz’s amendments. You would recognise that we share the abhorrence of the notion of human reproductive cloning, but we think that it quite a strong and perhaps inappropriate move to remove that terminology in the case of this legislation. We believe it has a legal impact; otherwise I do not think that Senator Abetz would put it forward. But it is a significant one that we are quite wary of. For the benefit of the chamber, I ask if Senator Abetz has perhaps a legal precedent to which he would like to refer—for example, there are laws where strict liability is in place—which might be of interest to other senators.

I make this contribution so that people know where we stand. It was not to provoke debate. I am sorry that Senator Harradine does not accept the fact that all the Democrats are entering into this debate in good faith. You will notice that my colleagues are going to join me in this chamber to hear the arguments, and people are free to vote as they choose. My work and my particular views on this issue are well documented and well known. I do not expect anyone to follow me blindly, in that sense. It may come as a surprise to some other individual members in this place that the Democrats actually debate the issues of biotechnology quite regularly in the party room, and we have done so for seven years. That is why you have seen amendments put forward not only in my name but in the names of Senators Ridgeway and Murray: look at the second reading amendment that was passed last night.

Let us not get distracted in this debate with personal or party political attacks, because this is one time when that kind of debate is needless. If people cannot rely on their own arguments, I feel sorry for them. In this case, however—as you know, Senator Abetz—last night I was quite happy to ask for time to contemplate your amendments. We did that. We discussed them as a group. We looked at other precedents, and, as I said, we have concluded that on this occasion we will not support the strict liability provisions.
that you have proposed. And, given Senator Evans’s comments, that also relates to the possession amendment—obviously we want to be conscious of the amendments before us. I recognise what you are trying to achieve; and, if there is a case that we are aware of under this legislation where there are problems, then clearly this has to be part of the review. I look forward to seeing how this legislation operates with the current provisions in place. I am happy for you to add anything else that you think might sway us or anyone else in the chamber in relation to these amendments.

Senator ABETZ (Tasmania—Special Minister of State) (10.07 a.m.)—I do not think the powers of oratory of anybody would necessarily sway the Democrats in relation to this particular amendment, seeing that they have made up their minds and that has been broadcast, but I would not wish to have any senator think that the national criminal code does not provide for strict liability offences. In fact, in section 6 there is a whole regime dealing with strict liability offences—what that actually means—and in section 9 it continues to tell us about mistakes, ignorance et cetera also being part of a defence regime even if it is a strict liability offence. So the fact that it is strict liability does not mean that you do not have any defences available to you. What it does mean is that the burden that is placed on the prosecution to prove beyond reasonable doubt the intention in relation to these offences is, I have to say to you, virtually impossible. As a result, whilst huge imprisonment terms make it sound tough and rigorous, the simple fact is that the prosecution will never, in my opinion, be able to prove intention unless the person who is being investigated voluntarily acknowledges and admits that it was his or her intention to do the particular act that is being prohibited.

I happen to think that the people we are dealing with in this situation will be relatively intelligent people—in fact, highly intelligent people—and they will know their rights. They will exercise their right to remain silent—as a result of which this whole regime, quite frankly, is worthless: how the Crown could prove intention when all that they have is silence from the person being investigated is beyond me. I have a funny feeling that some of the drafters of all this know that and there is support at the end of the day by some for human cloning. We had a bit of a discussion last night about whether products of human cloning ought to be allowed in. Whilst that is still out with the umpire, there does seem to me to be a bit of a tendency, as it is now coming forward with the discussions on the bill, that this so-called rigorous regime will not be as rigorous as we were told. I think it is time to put it to the vote.

Question negatived.

Senator ABETZ (Tasmania—Special Minister of State) (10.11 a.m.)—by leave—

I move:

(14) Heading to clause 22, page 11 (line 1), omit the heading, substitute:

22  Offence—importing, exporting, placing or possessing a prohibited embryo

(15) Clause 22, page 11 (after line 13), after subclause (3), insert:

(3A) A person must not possess or have custody or control of a prohibited embryo.

Maximum penalty: Imprisonment for 10 years.

(3B) Strict liability applies to subsection (3A).

Note: For strict liability, see section 6.1 of the Criminal Code.

I urge honourable senators—especially those who, I trust and hope, are listening in to this debate in their rooms—that very serious consideration be given to these two amendments, which are designed to make possession of a prohibited embryo an offence, as these are very important amendments. For any regime to work, you have to try to cover as many loopholes as possible. It seemed to me, reading the Prohibition of Human Cloning Bill 2002, that there was a glaring loophole in not making possession an offence. Once again, we are told that we are against human cloning and other unacceptable practices. We even legislate what prohibited embryos are—it is in the act. We allegedly all agreed that they should be prohibited and that they are the result of unacceptable prac-
tices. But it seems that being in possession of them somehow should not be treated as an offence.

We have already had the preliminary argument put to us that, because creating the embryo or importing or exporting the prohibited embryos was already an offence, that of itself was enough not to require possession of them to be criminalised. Why do we have possession of narcotics as a separate crime? There is a crime against making them, there is a crime against importing and exporting them, and there is also a crime against possession. Why do we have that in the law? I can similarly ask, as I did before in relation to the excise laws: why is the mere possession without permission or having custody or control of tobacco seed, tobacco plant or tobacco leaf an offence?

Our legislation is absolutely littered with offences of possession. Under section 223B(1) of the Customs Act, we are told that any person who, without any reasonable excuse, has in his possession, on board any ship or aircraft, any prohibited imports to which this section applies shall be guilty of an offence—another example of possession. I trust I do not have to go through any more to make the point that possession in relation to prohibited items has been criminalised and outlawed in a whole range of areas.

If we are concerned about state legislation, can I indicate that mere possession is an offence in relation to drug laws, in the Drug Misuse and Trafficking Act 1985 of New South Wales, the Misuse of Drugs Act of the Northern Territory and the Misuse of Drugs Act of Western Australia. Laws that allow courts to presume possession from proof of occupation or ownership of premises where drugs are found or from other evidence suggesting that the accused might have been in possession of drugs seized by police are not uncommon in Australian law. In relation to that, you can go to the Victorian Drugs, Poisons and Controlled Substances Act, the Poisons Act in my home state of Tasmania or the Misuse of Drugs Act in the Northern Territory. There are a host of examples in our laws indicating that possession ought to be a crime. I have just been provided a note, I am not sure from whom, that indicates that you are not allowed to make, import, export or be in possession of certain firearms. For heaven’s sake, we have it for firearms, drugs and tobacco seed. If it is important enough for tobacco seed, what about human embryo clones that we allegedly are all agreed should not be allowed to be created, imported or exported?

The scenario could very easily arise where—I will once again malign that poor mad professor that I have been using as an example in this debate—a mad professor creates a human clone and then passes it on to a laboratory technician for safekeeping in the deep freeze. In that case, where is the offence? The laboratory technician has a right to remain silent. If he is discovered in possession of the clone, he does not have to say anything. That is his right by law, as it should be, but he himself has not committed an offence. So we have a human clone without anybody being charged. It seems to me that, if we are genuinely serious about abolishing human cloning, we should close this quite substantial loophole in the legislation.

The suggestion has been made to me that the penalty that would apply for possession is somewhat harsh. If that stands in the way of any honourable senator—and I am not trying to embarrass anybody by saying this, Senator Stott Despoja; I know we are having discussions, and they are acceptable—if the concern is that the penalty regime that applies to the possession is too harsh, I am willing to look at a lower penalty provision so that the term of imprisonment might be lowered. As I understand it, in the drafting the penalty provision was the lowest in the regime of the bill but, if honourable senators believe that mere possession should not be treated quite as harshly, then I am happy to countenance any discussion on lowering that. The penalty provision was chosen on the basis of a degree of consistency with the legislation, but I would be happy to look at any other suggestions in relation to the penalty that might appropriately apply to this new provision, which I recommend to the chamber most seriously. I look forward to support from senators on all sides for what I think is a very important requirement to make this regime as tough as we have been
led to believe is wanted. Also, it will make a very firm statement by this place that we are genuinely tough when it comes to the issue of human cloning.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.20 a.m.)—I will not be advocating the support of the inclusion of an additional offence relating to a person possessing or having custody of a prohibited embryo. As I mentioned before, COAG decided to target the more serious high-level offences such as creating or implanting prohibited embryos. The significant penalties attaching to these offences indicate that the Australian community views these sorts of crimes extremely seriously. If it is an offence to create and develop certain types of embryo and it is also an offence to implant, import and export those embryos, then it is unlikely that people will ever be in possession of these embryos. That is where this differs from the situation regarding cigarettes and firearms and all the other things that were mentioned.

The aim of the bill is to deter those people who have the greater capacity to commit the offence, namely scientists and others with the technological knowledge to create prohibited embryos. It was not considered appropriate or necessary, for example, to create a separate offence to punish a woman in whom a cloned embryo was implanted. But I note—and I have said this before—that the Criminal Code extends criminal responsibility to other forms of actions such as aiding, abetting, procuring the commission of an offence and conspiracy, and persons engaging in this sort of activity may be found guilty of the offence itself. These provisions should go some way towards satisfying members of this chamber that people who deliberately participate in the commission of such an offence will still be the subject of criminal sanctions.

Senator ABETZ (Tasmania—Special Minister of State) (10.22 a.m.)—I fully accept that COAG decided to target the more serious offences and on that I congratulate them. As I have said previously in this debate, I am not sure that COAG gave the same detailed consideration to this regime as we are giving it in this chamber. I would like to know whether COAG deliberately decided not to make possession an offence.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.23 a.m.)—Honourable senators know that some years ago—most probably in the late 1980s, when I first came into this chamber—the Senate actually put in place a process to establish legislation committees, because the family law bill had taken four days to go through the chamber. They were not legislation committees then; they were combined committees of legislation and we separated them. A bill went to a committee in order that detailed questions could be answered.

The Prohibition of Human Cloning Bill 2002 went to the Senate Community Affairs Legislation Committee, under the chairmanship of Senator Knowles, and opportunity was given for honourable senators to ask detailed questions and to have detailed questions answered. I am concerned that, given that process—and that has worked reasonably well, although it has expanded—we are now in a situation where we are going over details and many of the questions that are being asked are the same questions that were asked in that committee. All I am going to say—and people will have to make a decision, because it is a conscience vote—is that I will not be supporting the amendment. I say to honourable senators who have been listening to the debate that they will have to make their decision on the basis of the arguments they have heard.

Senator ABETZ (Tasmania—Special Minister of State) (10.24 a.m.)—With great respect, it was a very simple question. We were told COAG decided to target the serious offences that are in the bill. I asked a very simple question: did they deliberately decide not to make possession a crime? We were told about the committee system. I think it is a good system. There has been criticism that the committee did not have sufficient time et cetera. The simple fact is that this bill is different. We are dealing with a conscience vote on this and I think it is quite appropriate for honourable senators to raise questions, because as time goes by more questions do arise. I regret that, because of other duties et cetera, I was not able
to participate in the committee and I was not able to give this bill the sort of attention that I would have liked to up until the middle of last week. Reading through it, there have come to mind a number of amendments and this one of possession leaves a gaping hole in the regime. I am interested to know if COAG deliberately decided not to make possession a crime. If so, why? I think the chamber is entitled to an answer.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.26 a.m.)—I understand that Senator Abetz is very busy; we all are. Senator Abetz, with all due respect, had time to read the bill when it was coming up, although often the adrenaline starts running when the clock is ticking. But the committee met, and every senator in this chamber has the right to put questions on notice if they cannot attend the meeting. There is a process whereby detailed questions can be answered. All I am saying is that it would have been very helpful and appropriate for that to happen. Senator Abetz can say that he did not have time to go, and I understand that, but there are other processes.

All state and territory leaders were provided with a copy of the legislation prior to its introduction in the parliament. None of them have raised concerns. Premiers Bracks, Carr and Beattie wrote to the Prime Minister urging that there not be any amendments and the New South Wales and Queensland governments made submissions to the Community Affairs Legislation Committee inquiry indicating that they considered the provisions of the bill fulfilled the requirements for national consistency as agreed through COAG. Indirectly, that answers the question that Senator Abetz asked.

Senator HARRADINE (Tasmania) (10.27 a.m.)—Through you, Mr Temporary Chairman, I point out to the Minister for Health and Ageing that we repeatedly asked for the details which influenced the premiers and chief ministers in the way they were going. We wanted the details in the committee; we wanted the details about which you say, ‘You were there, you could have asked for them.’ We wanted them, but they were refused to the committee. We specifically formally requested that the state premiers and the Prime Minister, the COAG members, give us the papers and the details upon which they based the legislation.

This is the problem that we are faced with, particularly with cases like this. COAG says, ‘No, that is our property,’ and of course the Prime Minister’s office—with due respect to him—could not presumably give them to the committee because they could not get the permission of the other parties. So we are flying blind. It is very tragic if in a democracy we are refused a simple request to COAG to provide the basis for its decisions—not only the decision on this matter but decisions in respect of experimentation on human embryos.

We wanted to see what proof they had, if any, that stem cells could be used for successful therapies. They did not give it to us. In that case, they could not give it to us because there was none. That is the real problem that we in the chamber faced in the committee. I understand what Minister Patterson is saying. This is the first time I have spoken. I do not want to speak too much, other than when it is absolutely necessary, but I really should put it on the record that the committee formally requested the documents and was not given them; we were actually refused.

Senator CHRIS EVANS (Western Australia) (10.30 a.m.)—Can I say at the outset that I understand what Senator Harradine is saying. I think it is an important point because it generally raises the issue of the role of COAG. In this debate, that provides us with some strengths and weaknesses. The strength of the legislation is that it represents a view arrived at by the states and territories for a uniform response. It brings in national uniform legislation dealing with these matters arrived at in a cooperative manner. That is a very rare thing these days in Commonwealth-state relations, whoever is in power. That is one of the great strengths of the legislation. One of the weaknesses that Senator Harradine has pointed to is the fact that the chamber is now responding to a process that it was not intricately involved with and does not have the full information about. That is a fair point. I think it has affected all senators
in wanting to understand what the thinking
was. As I say, I think we have to balance the
strengths and weaknesses in the argument.
While it creates some frustrations, it is also
one of the really strong suits of the bill.

In making a couple of comments on
Senator Abetz’s amendment, I indicate to
those who are listening that we are in furious
agreement on this bill. For those who might
have got the wrong impression, there is no
opposition to the second reading and I sus-
pect there will not be any to the third reading
of this bill to ban human cloning. While
Senator Abetz in particular has a rhetorical
flourish on some of his amendments, it is
important to point out that, in effect, we are
arguing about nuances in a bill that has wide
support in the chamber.

Senator Abetz’s amendment comes down
to the issue of whether we ought to create the
additional offence of custody or control over
a prohibited embryo. I have listened to the
arguments and I am not convinced that we
need to create that separate offence. It seems
to me that the legislation properly targets the
more serious offences and that other aspects
of the Criminal Code allow for us to prose-
cute, if required, a woman who might be in
control or custody of a prohibited embryo
through those provisions. I am not sure that
we need to create the additional offence. I
understand the point Senator Abetz is mak-
ing. It is a concern all of us have.

As I say, this is a question about whether
you think his amendment is necessary within
the framework of the bill or whether the
other provisions appropriately cater for it. It
seems to me the bill does target the more
serious provisions. It does make it unlikely
that we would have to deal with that, but it is
certainly not impossible. I am not for a min-
ute suggesting that that may not be an issue
that the legislation has to deal with, but the
advice I have received is that the other provi-
sions of the bill and the Criminal Code more
generally relating to aiding and abetting,
conspiracy et cetera provide for successful
protection against that offence. Therefore,
the amendment is not necessary. Formally,
on behalf of the Australian Labor Party, I
indicate that we will not be supporting the
amendment. I also indicate that that is the
subject of a conscience vote. I put the formal
Labor Party position but indicate that of
course Labor senators will be entitled to a
conscience vote on the matter.

Senator MURPHY (Tasmania) (10.34
a.m.)—Firstly, I would like to pick up the
point—and I think I have to—made by
Senator Patterson with regard to senators’
opportunities to participate in some commit-
tee processes. Senator Patterson understands
that it is very difficult for senators on many
occasions—I think she would be the first to
admit that—to do so. Because we have so
many committees and there are so many
things being dealt with, it is often impossi-
ble. Also, it is often impossible for senators
to actually write questions. Indeed, I wrote
many questions directly to Biotechnology
Australia seeking answers in respect of many
matters and I found it very difficult to get
answers. When I got answers, sometimes the
answers were wrong.

With regard to what Senator Abetz is pro-
posing in terms of creating a separate offence
of possession, listening to what has been said
and looking at the bill itself, I think it is
probably unnecessary to create an additional
offence of possession because of all the other
offences that exist within the bill. It is not
difficult to see that if it is an offence to cre-
ate, if it is an offence to place or if it is an
offence to import or export, somehow you
would have to be in possession to be com-
mitting those offences anyway. I understand
the logic of suggesting an amendment to cre-
ate an offence of possession, but I feel that
maybe it is covered. I would not be opposed
to the additional provision, but I think that it
is probably sufficiently covered. It will be a
matter of time to see whether that is proven
to be the case, but I think at this point in time
the bill has a sufficient capacity to cover the
issue of possession.

Senator ABETZ (Tasmania—Special
Minister of State) (10.36 a.m.)—Firstly, I
would be very interested to know when the
letters were received from Premier Bracks,
Premier Carr and Premier Beattie in which it
was urged that the legislation be passed
without amendment. I think that is a very
important point. Secondly, I would like to
know whether those letters were received
prior to the House of Representatives dividing the bill. If those letters were received prior to the House of Representatives dividing the bill, that was an amendment to the then legislation, and I note the Prime Minister voted for the separation of the bills. He, of course, is a member of COAG, which makes an interesting point. I would also like to know whether the letters were received from the three premiers prior to the Senate committee investigating and reporting on the bill.

If that is what is driving this legislation—that it was set in concrete way before, that nothing the Senate committee might have suggested and that no debate in this place would be allowed to be presented on its merits—then I have to say that I am disappointed. I think a lot of meritorious arguments have been put and simply knocked down because it is inconvenient and because a particular regime has been decided upon. If three people in COAG wrote, I would assume, quite some months ago saying, ‘Pass this legislation without amendment,’ and if that is now the rationale for denying good commonsense amendments to get through, then it would be a matter of great concern, because, quite frankly, we should not be debating any amendments at all in that case; it ought to be a case of take it or leave it as a whole, as the bill has been presented. If that is the attitude—

Senator Chris Evans—that is how the Liberal government generally does it!

Senator ABETZ—Yes, I have been in opposition, Senator Evans, when that has happened on your side. But could I suggest that this is in fact not so much one of these Liberal-Labor debates. It is in fact a conscience vote. I would have thought that the exercising of individual consciences on matters as grave as this might at least lend themselves to the attention of Premiers Carr, Beattie and Bracks and that they would say, ‘We like the regime, but if anybody can come up with something to make it better or improve it then, of course, we would be in favour of that.’ I would doubt that the letter could or should be interpreted as being so intransigent that, no matter what the overwhelming evidence might be, they do not want to know about it and they want to pass it as it is. That would be, for us, legislatively irresponsible.

In relation to the suggestions made that this legislation has sufficient clauses in it not to require possession and that other laws like aiding and abetting would also come into play, I would like to hear from those who actually believe that to be the case. Why on earth do we have offences of possession littered throughout a whole lot of legislation? It would be just as easy to argue that possession of a firearm does not need to be an offence, because, to get a firearm, you would have to have made it somewhere or bought it somewhere. By taking it off the maker or by receiving it from the maker or vendor, you are aiding and abetting the manufacture or sale of the firearm and therefore mere possession does not have to be a crime. That is the rationale. But nobody in this debate has knocked that down in relation to the suite of legislation that I have previously referred to.

It has been in the minds of legislators for decades now—if not centuries, indeed. It is like possession of stolen property. Mere possession of stolen property is also an offence. Why have the courts, the prosecutors and the legislators not said, ‘By receiving stolen property you are aiding and abetting stealing, therefore we do not need the crime of possession of stolen property’? It does not make sense. What is being asserted—that this regime covers it—is not logical, because if it were the case, as has been asserted, that you could overcome this or that possession is not needed, then why is it in all of the other pieces of legislation? Until that is answered, it seems to me that the response is a particularly soft one and that people are simply saying, ‘We do not want to make any changes, because our position was set in concrete months before the Senate even decided to look at this legislation.’ Coming back to the very first point, I would be interested to know when those letters were received and the dates of those letters.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Jacinta Collins)—Where does the committee wish to proceed to now? The run-
ning sheet has Senator Harradine moving an amendment next.

Senator Chris Evans—Madam Chair, I draw your attention to the state of the chamber.

The TEMPORARY CHAIRMAN—Is a quorum required?

Senator Abetz—Madam Chair, to save us going through the difficulty of calling a quorum, can you just advise us as to which amendment we are up to at the moment?

The TEMPORARY CHAIRMAN—The running sheet—which we have strayed from, as I understand it—shows Senator Harradine on amendment (R6) after the amendment just dealt with.

Senator Abetz—Thank you, that advice has been most helpful.

Senator HARRADINE (Tasmania) (10.44 a.m.)—My apologies to you, Chair, and to the other members of the Senate. I went out for only 1½ minutes, having been here all last night and all today.

Senator Patterson—Join the club, Senator Harradine.

Senator HARRADINE—Thank you. I seek leave to move amendments (1) and (2) on sheet 2719.

Leave granted.

Senator HARRADINE—I move:

(1) Heading to clause 22, page 11 (line 1), omit the heading, substitute:

22 Offence—importing or exporting a prohibited embryo

(2) Clause 22, page 11 (lines 10 to 13), omit subclause (3).

These amendments are to clause 22 of the Prohibition of Human Cloning Bill 2002. Clause 22 of the bill has as its heading: ‘Offence—importing, exporting or placing a prohibited embryo’. I am proposing to omit that particular heading and just have: ‘Offence—importing or exporting a prohibited embryo’. The essence of what I am proposing is to delete also 22(3), which provides that:

A person commits an offence if the person intentionally places an embryo in the body of a woman knowing that, or reckless as to whether, the embryo is a prohibited embryo.

Again in the spirit of wanting to make sure that this bill covers all situations in accordance with what was desired, I believe that the clause as it now stands could have unintended consequences in penalising those who may become involved in placing embryos in women through possible embryo adoption programs in the future—for example, a doctor with certain ethical views who may feel obliged to try to save an embryo grown to 14 days by placing it, at the request of the woman, in the body of a woman who wishes to adopt that embryo. Bear in mind that, in clause 22(4) on the meaning of ‘prohibited embryo’, only line (a) involves the cloning procedure. I draw the attention of honourable senators to page 11 of the bill, which defines what are prohibited embryos. I do not believe that either the woman or the practitioner should be punished if the woman wishes to adopt such an embryo. As the minister has been saying, the problem is the issue of creating the embryo in the first place. But you have also got this other situation that I am describing, which I think is important. Where the embryo has been created, even with the wrong intention, the placing of that embryo on the basis of adoption into the body of a woman who so requests that adoption should not mean 10 years imprisonment.

A doctor could inherit—and I use that word because I cannot think of another at the moment—a stockpile of embryos in a medical practice which includes IVF. He or she would then have to ascertain whether there were any prohibited embryos. Some may be discovered, including embryos grown to two weeks. The woman may wish to receive them and the doctor may wish to place them in the body of the woman. The person who does the placing may have had nothing to do with the creation of the embryo in the first place. The person who has taken over the practice may not want to treat the embryo created with the wrong intention differently to embryos created to achieve a pregnancy. Unless this amendment is carried, we may have inadvertently created an incentive to destroy the embryo. As the minister has mentioned, the real offence is the creation of the prohibited embryo. But, if the embryo has been created, it ought not to be a legal offence for a woman to want to rescue the
embryo, even if many of us, for a variety of reasons, would have moral concerns about that event. It ought not to be a legal offence to try to save the life of an embryo.

I do apologise to the minister that this matter has been brought to my attention late in the piece. The minister has pointed out that the creation is the real offence but, once that has occurred, to then, in effect, penalise persons who want to save that embryo’s life by adopting it would not have been in the minds of COAG to agree to. Again, Minister, I apologise to you for being in this position, but the whole debate folded last night and we have found ourselves in this situation.

Senator CHRIS EVANS (Western Australia) (10.53 a.m.)—I want to ask Senator Harradine a question to be clear that I followed this correctly. Senator Harradine, do I take it now that this is the only amendment you will be moving to clause 22? I have two previous incarnations, and I want to check that this amendment actually replaces those two and that this is the only amendment you intend moving on clause 22 for the purposes you have just outlined.

Senator HARRADINE (Tasmania) (10.53 a.m.)—Actually, I will be proceeding to amendment (R6) in the revised document, which proposes a new clause, 22A. So this amendment is in addition to what you otherwise have on your desk.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.54 a.m.)—Now I wish I had not only completed law but a PhD in medical ethics to boot! From my bush lawyer, bush medical ethics point of view, I can see the argument that if an embryo were to be created illegally through cloning, you would have a potential human life—that is what you are arguing—and that a person may wish to rescue that embryo by having it implanted. I believe that is the import of what you are saying. My concern is, and another argument could be, that by supporting your amendment there will be an unintended consequence—and this is most probably as extreme as the concept you are putting—of an incentive in the future for someone who is unable to have a child and is prepared to wear the penalty to knowingly be involved in, or encourage the production of, cloning an embryo because they are able to have it implanted. I hope you can get the drift of what I am trying to say.

There we are in the horns of a moral dilemma by taking that clause out. That is only my bush lawyer interpretation; I have not talked to the advisers in the box. But that is my interpretation of what could happen, particularly if someone is driven to have their own genetic material implanted. Who of us would have thought that some of these things were possible? But an adult cell could be taken from a person and cloned. They could be keener to have their own genetic material implanted and give birth to that, and be prepared to wear the consequences, than they could be to be a host to someone else’s genetic material. So there could be an unintended consequence of opening that up, with people prepared to wear the consequences of the penalty to have their own genetic material. If that embryo cannot be implanted, that takes away that remote but possible incentive.

Senator JACINTA COLLINS (Victoria) (10.57 a.m.)—Senator Patterson is correct, and I think that is quite implicit in what Senator Harradine said about this amendment. The impact of removing this potential penalty does create a moral dilemma. It is obvious that this penalty is designed to deal with the cloning aspect of prohibited embryos but, as Senator Harradine points out, it is not actually a potential dilemma. In a sense, it is a real dilemma, because we know there are cases of embryo-rescue adoptions occurring internationally. We are talking about a real dilemma in the sense that we know that this is occurring internationally and that there are couples who become aware of what we would regard under this bill as prohibited embryos—for example, an embryo that has been developed in the laboratory beyond the 14 days. On the issue Senator Harradine is running, I think if we had more time we could probably deal with it more carefully and differentiate between the cloning example and the other prohibited embryos. But, the way the bill is drafted at the moment, we have quite a number of prohibited embryos, not just the cloned ones that Senator Patterson is raising a legitimate con-
cern about. In one sense Senator Harradine is saying, ‘Yes, perhaps on this occasion we should weaken the penalty because it has unintended consequences for the other types of embryos that are covered by this bill.’

I support the view that the real way to capture the behaviour is through the issue of the creation so that, even in the case that Senator Patterson mentions of someone attempting implantation, there is the earlier step of the creation of the embryo that can be captured for penalty. But in a case where an embryo has been created for whatever purpose—and we know this has occurred internationally—if there is a couple who wishes to maintain that embryo and bring it to the world, then surely those circumstances should not mean that they are penalised, and that is what does currently occur. I think Senator Harradine is saying that he is prepared to bear the weaker penalty that was designed to try to pick up the potential future cloning instances, because they could still be captured by the creation penalties. I think we all understand that that slightly stronger penalty is going to be removed in relation to what might potentially occur with cloning, but I am prepared to wear it on the basis that we know that this behaviour is occurring internationally and we would not want to ban it here.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.59 a.m.)—The embryos about which we are talking, other than cloned embryos, are hybrids and chimaeras in the bill.

Senator Jacinta Collins—No.

Senator PATTERSON—I am having to do this on the run as Senator Harradine said that it has just been brought to his attention—and I think I know where Senator Harradine is coming from: if he had his druthers he most probably would not support IVF and the production of excessive embryos for IVF.

I do not know and I have not heard him speak on that, but I would presume that may be the case. But we do have IVF and there are embryos that are left to, as I said last night, die—I do not really like the word ‘succumb’. In this case my view is that if an embryo is created illegally from cloning—and I am weighing this up for myself; other senators will have to make their own decision because this is a conscience vote—the unintended consequence of enabling a person to wear the consequences of creating a clone in order to have it implanted is greater than having them create it and letting it die. That is a decision people will have to make. On that basis I will not be supporting the amendment.

Senator JACINTA COLLINS (Victoria) (11.01 a.m.)—For Senator Patterson’s benefit, turning to page 2 of the bill, I think we need to go through clearly which embryos are actually covered by this bill, because we are not talking about just cloned or hybrid type embryos. Clause 13 talks about ‘creating a human embryo other than by fertilisation, or developing such an embryo’, and in clause 16 we are talking about ‘developing a human embryo outside the body of a woman for more than 14 days’. So if the developmental process has been allowed to go to day 15, the implantation of that embryo is ruled out by this provision, because of the nature of this penalty. While science might say to us at the moment that day 14 or 15 is the stage at which an embryo will not survive if it is unattached, I think all of us here understand that this could quite easily change in the future so that, with developments in culture medium and other areas, later attachment will be possible in relation to IVF embryos.

There is the hybrid example that Senator Patterson referred to and there is clause 14, which says ‘creating a human embryo for a purpose other than achieving pregnancy in a woman’. The point here is that, regardless of the purpose for which the embryo was created, and I am sure that strong penalties should be associated with inappropriate purposes, if beyond that purpose the embryo exists and implantation relates other than to I think the abhorrence any of us would attach to the cloning or even potentially the hybrid type example, and within this list of other prohibited practices there are quite a number—and as I said there are examples internationally of where these types of embryo adoption schemes are operating—it would be most unfortunate if the way in which this provision is currently phrased excluded those possibilities.
Senator Harradine has said that, essentially, he is prepared to wear a weakening of the penalty for the one example of all of these prohibited practices that Senator Patterson has talked about, which is the cloning. I think Senator Patterson is right: we in this chamber will ultimately have to make our own ethical judgments on that issue. But I think senators should have very clear in their minds that there are quite a number of prohibited practices we are dealing with here; it is not just cloning that this issue pertains to. It pertains to an embryo that, for quite legitimate purposes, may have been developed in IVF and because of a simple administrative error might have gone beyond 14 days. If a couple want to have that embryo implanted, they could fall foul of this penalty.

Question negatived.

The TEMPORARY CHAIRMAN (Senator McLucas)—We now move to Senator Harradine’s amendment (R6) on sheet 2697 revised.

Senator HARRADINE (Tasmania) (11.05 a.m.)—I propose to include an offence provision under a new clause 22A, after clause 22, which is on page 4—and I invite honourable senators to look at page 4. I propose to insert a new clause related to the importing or exporting of a human embryo. Proposed clause 22A would read:

(1) A person commits an offence if the person intentionally or recklessly imports a human embryo into Australia except for the purpose of placement in the body of the woman for whom it was created or for adoption.

Maximum penalty: Imprisonment for 10 years.

Proposed clause 22A(2) is to do with the exportation for those reasons. I move my amendment (R6) on sheet 2697 revised:

(R6) Page 12 (after line 4), after clause 22, insert:

22A Offence—importing or exporting a human embryo

(1) A person commits an offence if the person intentionally or recklessly exports a human embryo from Australia except for the purpose of placement in the body of the woman for whom it was created or for adoption.

Maximum penalty: Imprisonment for 10 years.

It is self-explanatory. It does intend to impose a penalty for the export or import of embryos. That is an important matter which has been referred to previously. Frankly, I do not believe that it was the intention of the COAG to allow for the export of embryos from Australia or the import of embryos to Australia, for example, from Singapore. I was proposing to put a blanket ban on that practice when it occurred to me that a woman who has frozen embryos here might want to live overseas, for example. Under those circumstances, clearly, she ought to be able to export those human embryos—and, vice versa, involving a woman coming from another country to Australia. In addition to that, there may be the situation of somebody who wants to adopt. For example, if an accident were to occur to the mother of those embryos, her sister may at some stage wish to adopt those embryos. Under those circumstances, adoption should be permitted. Therefore, importation or exportation of those embryos should be exempt, as I am proposing in this amendment.

The amendment is self-explanatory. You are either for it or against it. But again I say that it would be very unfortunate with regard to the importation or exportation of a human embryo. I am aware of what the minister said about the proposal for an amendment to the Customs (Prohibited Import) Regulations. I do not know whether the minister will elaborate a little further on that. But, having moved my amendment, I do not believe that I need to expand further on it at this stage.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.10 a.m.)—I indicated in my second reading speech that I would oppose amendments to the Prohibition of Human Cloning Bill 2002. As I said, the Prime Minister indicated that we are proposing that the Customs (Prohibited Exports) Regulations 1958 be amended to provide for
a 12-month prohibition on exporting excess ART human embryos. This prohibition will be reviewed after 12 months. I will ask the National Health and Medical Research Council to work with the Department of Health and Ageing and Customs in order to explore the changes that will be required to the customs regulations.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.11 a.m.)—I am very interested in the position that the minister has put. Minister, you said that you would be taking certain action regarding this matter. When is that likely to occur?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.11 a.m.)—The Prime Minister has made a commitment, and I believe action will be taken by regulation as soon as possible. I presume that the regulation will be drawn up as quickly as possible in conjunction with the NHMRC, the Department of Health and Ageing and Customs, and obviously in consultation with the Prime Minister. I think it is a reasonable stopgap for us to be able to look at this issue in more detail. I have nothing more to add because I will be opposing the amendment. However, I believe it will be done as quickly as possible.

The TEMPORARY CHAIRMAN (Senator Jacinta Collins)—Senator Harradine, your amendments (3) and (4) are at this stage deferred. Can I just clarify whether this amendment fits within the same class of issues? As I understand it, we are still waiting for Senator Patterson to come back to the committee on the matters raised in the discussion on amendments (3) and (4).

Senator Harradine—Yes. I think you are perceptive in your remarks, Madam Temporary Chairman, and I would agree with you that it is part of what is being dealt with.

The TEMPORARY CHAIRMAN—Can I clarify whether you seek to defer dealing with those amendments consistent with Senator Patterson’s request to the committee to defer the two earlier amendments?

Senator HARRADINE (Tasmania) (11.13 a.m.)—Not as such. I would rather deal with these amendments as they are now. The minister is taking further advice on the other matters which are to do with the export and import of cloned embryos and stem cells from, say, cloned embryos, and I believe that issue ought to be determined in this legislation because the government has in the bill itself placed a ban on the export and import of cloned embryos but it has not provided in the bill for a ban on the exportation of embryos developed through the assisted reproductive technology process. So I would prefer to deal with this amendment now.

Senator BARNETT (Tasmania) (11.14 a.m.)—I seek clarification from the minister of her comment, as I recall it, that the Prime Minister is committed to regulations to ban the export of human embryos. I seek clarification as to whether there is a ban on the import of human embryos, because I thought I heard her say that there was a ban on just the export of human embryos, and we are missing, obviously, the import of human embryos. I seek clarification of that advice from the minister. I thought I heard the minister say that only the export was banned, and therefore you are going to have imported human embryos coming in, based on the debate we had last night. There is a ban on the intentional import or export of human embryo clones—and that is in the bill, as Senator Harradine has just indicated—and we were advised late last night that there is a ban on the export of human embryos. I seek confirmation that there is no ban on the import of human embryos. If the minister has the chance to clarify that for the committee in advance of the discussions that we will shortly be having on this bill, that would be helpful.

Senator HARRADINE (Tasmania) (11.16 a.m.)—I would also like to hear from the minister precisely what has been undertaken by the Prime Minister in respect of the issue of the export and import of human embryos. Was it undertaken by the Prime Minister to amend the Customs (Prohibited Imports) Regulations? What regulations are proposed by the Prime Minister to be
amended to cover the export and import of human embryos?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.17 a.m.)—With all due respect, I remind Senator Harradine that I have said that, following discussion with the Prime Minister, we are proposing that regulation 8 of the Customs (Prohibited Exports) Regulations be amended to provide for a 12-month prohibition on exporting excess ART human embryos. That is what we are intending.

With regard to the question that Senator Barnett asked, in my discussion with the Prime Minister that was the only thing being considered. There are, of course, quarantine issues about the importation of embryos. Leaving that aside, an imported embryo cannot be used without a licence being provided, so there is a mechanism of control that way. For all intents and purposes, imported embryos are treated the same as embryos that are created here and are subjected to the same rules and regulations. My advisers are nodding, and I hope they are right, because that is the advice I have been given. The exportation is the issue that the Prime Minister agreed to look at. The importation is dealt with: an imported embryo is no different from an embryo that is created here.

Senator HARRADINE (Tasmania) (11.19 a.m.)—There are any number of things that could happen to an imported human embryo. It is like buying a pig in a poke to say that they have to get a licence. They would get a licence, would they not? They would get a licence to get the stem cells from such an embryo. A scientist may wish to examine how different the stem cells are from, say, an Indian human embryo and import an Indian human embryo. They could trot along to the licensing committee, and the licensing committee could give approval for the extraction of stem cells from that Indian embryo, could it not?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.20 a.m.)—Callithumpian or whatever sort of embryo, the use of human embryos imported into Australia is covered by the Research Involving Embryos Bill 2002—that is, it is not an offence to import an embryo. You are using one example; I would prefer to use ‘Callithumpian’ in order to not offend anybody. It is not an offence to import an embryo into Australia; however, if a researcher wants to use that embryo for any purpose other than achieving pregnancy, they would have to apply for a licence from the NHMRC Licensing Committee and would be subject to conditions under the legislation. So an embryo can be imported for the purpose of having IVF, but if a researcher wants to use it for any purpose other than for achieving pregnancy they would have to apply for a licence.

Senator HARRADINE (Tasmania) (11.21 a.m.)—That is precisely what I am saying—that is buying a pig in a poke, because this committee does not know. I will have something to say later about the appropriateness or otherwise of the NHMRC, who are pro experimentation and have been for a number of years, with the payment of money as far back as 20 years ago for the purposes of dissecting human embryos. Our money was used by the NHMRC, and so they are not a disinterested party. The licence would be issued by an NHMRC principal committee. With an organisation which has a pro-experimentation objective, anything could happen. I am asking why we should not do the same with the importation of human embryos as is proposed by the Prime Minister with the exportation of human embryos. I cannot see the difference other than that it might be said that you may not know, with regard to some countries, what might occur to those human embryos. I will not argue the point any further, because I think it is a bit futile to do so.

Question negatived.

Senator HARRADINE (Tasmania) (11.24 a.m.)—by leave—I move amendments (7) and (8) on sheet 2697 together:

(7) Clause 23, page 12 (line 9), omit “or a human embryo”, substitute “, a human embryo, human embryonic stem cells or any other product derived from a human embryo”.

(8) Clause 23, page 12 (line 13), omit “or a human embryo”, substitute “, a human embryo, human embryonic stem cells or any other product derived from a human embryo”.
These amendments raise the same sort of argument that we have just been having. They propose to prohibit the export and import of human embryonic stem cells or any other product derived from a human embryo. The export and import of those stem cells would be opposed.

Let me make it very clear to not only myself but everybody in this chamber: there is absolutely no regulatory regime for the use of human embryonic stem cells—they can be sold to the highest bidder internationally. That was put to the NHMRC in the committee hearings, and reluctantly the NHMRC agreed with me that there is absolutely no control over what happens to human embryonic stem cells and that they could be sold to the highest bidder internationally. That is to say, an Australian human embryo has been killed—the stem cells have been taken from that human embryo and that has destroyed the embryo—and those embryonic stem cells can then be sold to the highest bidder, whether the highest bidder be in Australia or overseas. We will come to the matter of the highest bidder at some later stage and, frankly, if we are going to have a strict regulatory regime, to the need to do something about that, if we are talking about the commercialism of this—which is what it is all about. I simply say that this is needed. So far as the Customs regulations are concerned—and I quote from the Hansard—last night the minister said:

... the Prime Minister had indicated that we were going to move an amendment to the Customs regulations to have a 12-month moratorium on the export of human embryos—not on embryonic stem cell lines, but human embryos. So what is being proposed in these amendments, unless the minister has something else to say today—and maybe this is something that she and the Prime Minister might take into account—is a ban on the export and import of human embryonic stem cells. The minister might enlighten the committee on whether in fact that is a possibility that could be taken on board to prevent, among other things, the likely trade in Australian human embryonic stem cells and their exploitation overseas.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.29 a.m.)—I believe this debate has been conducted in a very civil way, but Senator Harradine did actually say that human embryos will be ‘killed’ to create stem cells. Let me say—and I said last night that I did not want to use the euphemism ‘succumb’—that human embryos are killed when they are excess embryos, and so those embryos would have been killed whatever. We do not want to use euphemisms like ‘succumb’—I said ‘die’—but defreezing them kills them. These embryos would have died—would have been killed—anyway. I am just making that point.

I will be opposing any amendments which seek to ban the offering or receiving of valuable consideration for human embryonic stem cells or any other product derived from the human embryo. The effect of the proposed amendments is quite far-reaching. I believe it goes well beyond the COAG decision and also acts as a serious disincentive for research in Australia—something which is contrary to the Research Involving Embryos Bill 2002. I understand that some people in this chamber are totally opposed to embryonic stem cell research—and that is the difficulty in having this debate, because people are coming from a totally different premise. The proposed amendments would ban the receipt of any valuable consideration for the offering or receipt of embryonic stem cell lines and any products of embryonic stem cell lines. This means that not only can money not be exchanged but no inducement of any kind can be offered in relation to stem cell lines.

It is inconsistent with current international practice, whereby researchers who have embryonic stem cell lines are making those lines available to others for valuable consideration. For example, I am aware of an Australian company that have an agreement with the Public Health Service of the US government to make embryonic stem cell lines available to the Public Health Service or researchers funded by them. While the agreement does not provide for exchange of money for stem cell lines, it does provide that the Australian company can enter agreements for commercialisation of materials developed by the Public Health Service or its researchers, using ES Cell International
stem cell lines on terms not less favourable than other similar commercial agreements granted by the company. As the proposed amendments ban any ‘valuable consideration’ from being offered or received for stem cell lines, these existing arrangements with the US government would be illegal.

Another consequence of Senator Harradine’s proposed amendments is that no valuable consideration could be offered for any therapies that may be derived from the use of human embryos and embryonic stem cells. One of the major issues that has been discussed during the debate on the Research Involving Embryos Bill 2002 is whether the use of embryonic stem cells may give rise in future to potential therapies to treat life-threatening illnesses. If we ban payment for any therapies that may be developed from stem cells, we are effectively saying that Australian patients may be denied access to any such future therapies. The legislation would prohibit payment for any therapies that were developed overseas and imported into Australia. Australians could not even buy any therapies that were developed by Australian companies.

As I mentioned, I consider that the proposed amendments have far-reaching, undesirable effects and go beyond the scope of the COAG decision, which expressly excluded the regulation of embryonic stem cells. I therefore oppose Senator Harradine’s amendments (7) and (8) in relation to clause 23.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.35 a.m.)—I understand the incredible intensity of people’s beliefs about this issue, but I have to say one thing in response to Senator Boswell’s saying that this would create medicines to which only the rich have access. I do not think that many people in this chamber would realise—I did not realise it until I became health minister—that we have a very limited number of people in Australia who have a very serious disease for which there is a treatment. As health minister, I am able to sign off for people to have access to this treatment. I will stand corrected as to the exact dollar amounts but, depending on how much treatment is needed, for one person it costs $457,000 and for another person it costs $214,000—that is the range. What a fantastic country we live in, that we are able to do that! I find it difficult when people come in here and emotionally say that only the rich can afford it and that the poor will not be able to. In this case, irrespective of your means, it is a treatment which is available to people. It is an example of a treatment—not from embryonic stem cell lines; let us not get it confused—which is very expensive but to which people have access because it has been shown to be clinically effective and cost-effective. So it has been through the test.

Only the other day we approved a treatment for macular degeneration—and I cannot remember whether it was a commitment in the last election; I will not say it was—
which had presented a difficulty because it did not fit with the PBS and it did not fit with the MBS. It is an inert substance which requires cold laser to activate it, and so it fell between the two. It costs about $2,000 per treatment, and for people who need the whole treatment it costs $10,000. People who need it and for whom it has been shown to be clinically efficacious have to be assessed after they have had one or two treatments. They are able to have that treatment up to $10,000.

We need to get a little perspective into this debate. I know the emotions are running high. We do have treatments that are very expensive. Gleevec, for example, has just been extended within the prescribing guidelines as put out by the PBAC. There are some initial treatments, but, as a second line of treatment for chronic myeloid leukaemia, Australians for whom it is clinically appropriate now have access to Gleevec. It costs approximately $50,000 a year. So I do not accept the argument that it will be available only to the rich, because we do have an incredible system in Australia. Hopefully, we can keep supporting it—and we will have that debate later when the other bill comes before us. But I do think that we need to get a bit of perspective in what is a very difficult debate.

Senator MURPHY (Tasmania)  (11.38 a.m.)—With regard to what Senator Boswell is saying in terms of the patenting of particular drugs, that is the case. It has happened in Australia—and I stand to be corrected, but I think it has happened. In many respects, it is because of patenting that we as a country and the government confront a serious problem with regard to the burgeoning cost of the PBS. Minister Vaile is attending the WTO, and I noted in today’s Financial Review that one of the most important issues coming out of those discussions is about providing cheaper medicines to developing countries. By the end of the debate, if this legislation passes through—not particularly this part of the legislation but certainly the Research Involving Embryos Bill 2002—we need to be in a position to ensure that we will not, in the longer term, see patenting of treatments or medicines that have been developed from research using embryonic stem cells.

We do not want to see these drugs and cures made very expensive by giving control of them to major drug companies around the world. I think Senator Patterson herself highlighted a very good example. We know that pharmaceutical companies do patent things to stop generic production, and sometimes they have good reason for that. But these are issues such that, because there is going to be a significant change in research for pharmaceutical solutions in respect of cures in the future, we have got to get this legislation right. With regard to the particular amendments that Senator Harradine is moving at this time, I do understand the difficulty in making it an offence, and I hope I am dealing with the right amendment here, in commercial trading in human eggs, human sperm and human embryos—

Senator Harradine interjecting—

Senator MURPHY—My apologies; I am dealing with the wrong amendment. Is it Senator Harradine’s amendment 22A ‘Offence—importing or exporting a human embryo’?

Senator Harradine—Yes.

Senator MURPHY—With the changes that are proposed, I can understand some of the arguments that have been put by the minister but, at the end of the day, as I have said earlier, anytime we can improve the legislation we should seek to do that. But I do reiterate, in respect of the cost—and I am interested in the minister’s comment, given the arguments that I have heard from the minister before with regard to the PBS—that this is a very significant piece of legislation. If we do not get this right, we will rue the day from a financial and budgetary point of view. By allowing this legislation to pass through this parliament, in fact we will be funding research to enable the development of certain therapies and even medicines which will then place a burden upon the taxpayers of this country because those treatments will have been locked up by a number of large pharmaceutical companies from a global point of view. That is a very serious problem.
Senator STOTT DESPOJA (South Australia) (11.43 a.m.)—I do not want to get too distracted by the issue of commercialisation and patents, at this stage. I seek clarification here from either the minister, the government, the advisers or Senator Boswell. From Senator Boswell’s remarks relating to intellectual property and patents, he seemed to be suggesting that this is new ground, not in a biological or biotechnological sense but in terms of patents and pharmaceutical companies benefiting from their research and, to use the word he used, cures. I am sure that he and others of us realise that the patents law allows that, not only in this country but across the world. I am sure there are a number of people in the chamber who share the concerns to which he alluded. I did not agree with all his contributions, but I think we had better be very clear that it is not breaking new ground in enabling researchers, scientists and doctors to benefit in a commercial sense from the application of their research. I happen to have a very strong view that people should not, for example, be able to patent genes or gene sequences and that that should be outlawed, and I am glad to hear that we are having a debate about some of these issues.

I know this does not relate exactly to the amendment but, because it has been brought up, I want to acknowledge the importance of some of those issues. If we feel so strongly, as a group or as individuals, then let us amend the patent laws in this country. Let us stop allowing governments, including our own, to extend patent laws. It has been a very difficult and lonely road for some senators who have tried to do so. The Democrats have tried amendments to the Patents Act on many occasions—1995, 1996—and, indeed, we have a private member’s bill, as I said, in relation to this specific issue. Do not allow people to own the genes and gene sequences. By all means allow them to own the processes by which they derive information about those genes, or own the applications of that information and that technology, but not the genes themselves.

I am not moving amendments to that effect in this bill, for the many reasons that have been put forward, including by Senator Patterson and others. Through you, Chair, to Senator Boswell, we are cognisant of the issues. We are looking at inquiries that will canvass these issues, because they are important, but let us not pretend that this is new ground in a patents law sense, in the sense that medicos—or, specifically, researchers and research scientists—are benefiting in some way that they have not benefited in the past. Certainly, the technology is different and is advancing at a rate of knots but, by the same token, if anyone wants to have a debate about patents law, bring it on! The Democrats have been waiting for that for many years. In the interim, look at how we can amend this legislation in a way that enables us to have a comprehensive debate and discussion about those issues, which we cannot do in this committee stage.

Senator HARRADINE (Tasmania) (11.47 a.m.)—I do not know where we were going to there. This amendment is to prevent the exportation or the importation—and particularly the exportation—of human embryo stem cells. The reason the money came into it was that the NHMRC agreed in the meeting of the community affairs committee that there is no regulation governing what might happen to human embryo stem cells derived...
from Australian human embryos—none. That is what this debate is about. If you do not vote for my amendment, you will be allowing the stem cells to be sold to the highest bidder. That is what I am talking about. You will have absolutely no control over what experimentation is going to take place utilising those human embryonic stem cells. That gets very far away from what I understand was the COAG situation. I would like to ask—and I think I am wasting my time—whether or not this issue of the import and export of human embryonic stem cells is going to be part of the consideration given by the Prime Minister in respect of his undertaking to the Senate. I ask that the minister take that on board and raise that issue at the same time as she raises the issue she has mentioned, about the preparation of amendments to the Customs (Prohibited Imports) Regulations and Customs (Prohibited Exports) Regulations being considered. I am asking that at least that be done.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.50 a.m.)—Maybe I need a break, but I thought we had actually dealt with that and were now talking about the commercialisation issue—Senator Harradine’s amendments (7) and (8). Senator Harradine will be aware that the Prime Minister is taking a very keen interest in this debate and I will ask that the issue that you have raised be brought to his attention. But—as I said to you—I cannot be in two places at once, although I would like to be omnipresent. In this job, very often I would like to be in four places at once. In fact, I said recently that only identical twins should apply to go into parliament now, because the demands on our time are so great. Dare I mention that we should be cloned! The Prime Minister has, up to now, in my discussions with him, talked about amendments to the customs regulations with regard to export. That is as far as we have had discussions, but I will make sure that Senator Harradine’s comments are brought to his attention.

Question negatived.

Senator HARRADINE (Tasmania) (11.52 a.m.)—by leave—I move amendments (1), (2) and (3) on sheet 2715:

(1) Clause 8, page 4 (after line 31), after the definition of human sperm, insert:

human tissue includes a cell, cells or cultured cells that have a human genome or an altered human genome.

(2) Heading to clause 23, page 12 (lines 5 and 6), omit the heading, substitute:

23 Offence—commercial trading in human tissue, human eggs, human sperm or human embryos

(3) Clause 23, page 12 (after line 14), after subclause (2), insert:

(2A) A person commits an offence if the person intentionally receives, or offers to receive, valuable consideration from another person for the supply of:

(a) human tissue (including the person’s own tissue); or

(b) the right to take human tissue from a person’s body, or from an embryo or fetus.

Maximum penalty: Imprisonment for 10 years.

(2B) A person commits an offence if the person intentionally gives or offers valuable consideration from another person for the supply of:

(a) human tissue; or

(b) the right to take human tissue from a person’s body, or from an embryo or fetus.

Maximum penalty: Imprisonment for 10 years.

Oppose schedule 1 in the following terms:

(4) Schedule 1, page 17 (lines 1 to 5).

We are dealing with a very important issue: the question of the commercial trade in human tissue, human eggs, human sperm and human embryos. These are extraordinarily important amendments, although that is not to say that all of my amendments are not necessary—of course they are. They are something that I think would be acceptable all around the chamber, because they provide for an offence which is the commercial trading in human tissue, human eggs, human sperm or human embryos. The amendments were distributed to the desk of every senator. I hope that those who are otherwise engaged in their rooms are listening to this, because it is a vital issue and I think quite a reasonable one as well.
The rationale for these amendments is as follows. The trade in human tissue is prohibited in all Australian states. The production of human cell cultures derived from human cells or cultures, especially stem cell cultures, would provide alternative ways of deriving human cells and tissues that may not be considered human tissue in state law because they were not obtained by removal from a human body. So an anomaly would arise. There is a need to ensure that the medical procedures made lawful by the act do not serve to avoid this important element of existing state law. As I understand it, all states have these particular laws regarding human tissue.

The prohibition of trade in human tissue is important. It has facilitated the existence of a relatively inexpensive, efficient and universally available blood bank and of organ transplantation services. The creation of the lawful possibility of trade in human cells and tissues, and thus a market for them, would prevent a similar development occurring in relation to human tissues and human cells derived by culturing human cells. That commercialisation would restrict access to human tissues and cells arising from cell cultures to those who could afford them.

The prohibition on trade in human tissues has been an admirable feature of Australian society. We have all experienced that and we have all benefited from it. The blood bank and organ transplantation services are part of Australia’s social capital and indeed the envy of the world for their low cost, high standards, efficiency and universal availability. Trade in human tissue and body parts is felt by many to involve disrespect for the social and moral significance of human bodies. I hope that by building upon the existing legislation in the states we may be able to ensure that those items that are mentioned in the heading—‘commercial trading in human tissue, human eggs, human sperm or human embryos’—are in effect dealt with in a similar fashion as they are in the states.

That is the essence of my amendments. They are not radical amendments at all. They are reasonable amendments and they deserve the support, I believe, of all honourable senators. On this important matter I hope it will not be necessary to divide. I hope that the minister will see their importance and significance and approve of the amendments. I cannot imagine that the premiers would go against the legislation and the legislative precedent and principle contained in their statutes in regard to tissues and the trade therein.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (12.00 p.m.)—I will be opposing the amendment proposed by Senator Harradine which establishes a new offence for offering or receiving valuable consideration for the supply of human tissue or the right to take human tissue from a person’s body or from an embryo or foetus. As all senators are aware, the focus of this legislation is on prohibited embryos and prohibited practices involving embryo, sperm and egg, such as commercial trading. To extend the legislation to all human tissue is to go way beyond the scope of this legislation. That is not to say that I do not recognise, acknowledge and agree with Senator Harradine that the trade in human tissue is an important issue. It is one that is currently being dealt with through state legislation in a way that is not entirely consistent. I appreciate that this is an area that may require further consideration, but it is not really within the context of this bill. The scope of the bill is much narrower. It is focused on embryos, not on human tissue. This is a very complex issue which needs to be dealt with in a much more detailed way. I believe there is some work already being done. In some of the states there are bills on human tissue, but there is not a nationally consistent approach. It is an important issue to raise, but I do not think this is necessarily the appropriate place to do so in the form of an amendment to this bill.

Senator HARRADINE (Tasmania) (12.02 p.m.)—This issue being of such importance—and I hear what the minister has said—it may not be appropriate to deal with the amendment now. In fact, it should probably be an amendment proposed to the next bill rather than to this bill, because it does not specifically deal with cloned human embryos. I seek leave to withdraw amendments (1), (2) and (3) on sheet 2715. I forewarn the
minister and honourable senators that I propose to move those amendments to the next bill.

Leave granted.

Senator McLUCAS (Queensland) (12.04 p.m.)—I move amendment (1) on sheet 2703 by the Democrats and the opposition:

(1) Clause 25, page 14 (after line 23), at the end of subclause 4, add:

(d) the applicability of establishing a National Stem Cell Bank.

I would like to speak briefly to the amendment, which is about the applicability of establishing a national stem cell bank and asking that the review which will occur after two years of operation of the act include that issue as one of its terms of reference. I referred to this issue in my speech in the second reading debate, so I will not speak at length. I note that the same amendment will be moved to the Research Involving Embryos Bill 2002 so that we have a level of consistency in the terms of reference that will be undertaken as one operation but are reflected in the two bills. Senator Stott Despoja and I move the amendment jointly.

It is a recommendation of the report that we wrote in favour of the legislation following the committee inquiry. It follows from the small amount of evidence that was provided by only one witness who came to the hearings. We believed that the notion of the UK stem cell bank did have some merit and that is why that occurred.

This issue fits very well with the second reading amendment that Senator Stott Despoja moved which was carried by the Senate as an amendment to this bill. The issues of intellectual property and access to embryonic stem cell lines are very connected. The other part of that story is that we in Australia have not made significant decisions up to this point on what we think about intellectual property on embryonic stem cell lines and whether that will affect the access of researchers to those lines. The National Stem Cell Bank was established in the United Kingdom on 9 September 2002. We were advised by Mr Ilyine of Stem Cell Sciences at the inquiry that such an entity in Australia could in fact minimise the number of embryos that are required for use. I think all of us would agree that that is a desirable outcome. The second point he made was that a national stem cell bank, if introduced into Australia, could provide to qualified researchers free and unencumbered access to those embryonic stem cell lines. That goes to the issue of commercialisation that many people in this chamber have raised as a significant issue.

I recognise that various senators have said that the concept or the amendment as it stands does not go far enough and that the time frame is too long. I understand the desire of senators to limit the commercialisation opportunities, but I also understand the desire for and of researchers to access embryonic stem cell lines and at the same time maintain intellectual property over the work that they are doing. To those people who say that the time frame is too long, I put the following points. The UK model has been in operation for less than two months. I think it is too early at this point to carefully evaluate the effectiveness of its operation, even in the UK, and much less to say that we can transplant that model directly into Australia. The two countries have completely different IP laws and they also have different laws that manage the use of embryonic stem cells.

I believe that there might be applicability for a stem cell bank in Australia. That is why we have done this. But I think to say that we should just pick it up out of the UK and put it into Australia is a simplistic solution to what is a very complex issue. As I said before, we need to fully understand how intellectual property issues will be applied to the use of embryonic stem cell lines, because there is a relationship between that and the operation of a national stem cell bank. The bill has a mechanism for review built into it so that there will be a review of the operation of the legislation after two years. So I think it is useful to simply ask that review to extend its terms of reference to include an assessment of the applicability of the UK model in Australia.

Finally, I believe this amendment does not compromise the communique of COAG. It simply adds an extra term of reference to the review. I think it adds to rather than compromises it. I do not think COAG could be
too upset with this amendment. It is a conservative measure, but I think it is a sensible solution. It starts a process of evaluation of the establishment of the UK model for a national stem cell bank in Australia. I believe it will lead us to a situation where we could have fewer embryos used, and access and IP holding by qualified researchers to embryonic stem cell lines.

Senator STOTT DESPOJA (South Australia) (12.10 p.m.)—I rise to speak in favour of the amendment moved in my name and that of Senator McLucas. The amendment arises as a consequence of the information we gleaned during the Senate Community Affairs Legislation Committee inquiry into the Research Involving Embryos and Prohibition of Human Cloning Bill 2002 and our respective knowledge of developments in the UK, which some of us have followed with interest and relatively closely. Senator McLucas is spot-on to acknowledge the fact that the UK stem cell bank idea is in its very early or embryonic stages—I am sorry; there are so many bad puns in this debate—Senator Chris Evans—That is two in two days!

Senator STOTT DESPOJA—It is actually three; I am glad that you missed the other one. It was established on 9 September this year as a consequence of the UK Medical Research Council’s announcement on the establishment of a national stem cell bank. As to the purpose of this bank, perhaps I should quote from the person who provided the evidence to us in the Senate committee, Mr Ilyine, the General Manager of Stem Cell Sciences, to whom Senator McLucas has already referred. When I asked him about this in the Senate committee, his comment was that it was:

… to hold all of the stem cell lines in a central point where there would be free and unencumbered access to those stem cell lines to qualified researchers.

It was suggested, among other things, that such a facility might minimise the number of embryos that would be required to create new stem cell lines. However, I think it is important for us to note that the committee was not provided with specific evidence or legal opinion on the status of the United Kingdom law in relation to this proposal. Nevertheless, on face value we believe that the idea has merits and certainly warrants further careful consideration and investigation by the persons responsible for the independent review of the act, as Senator McLucas has explained; hence the amendment to this bill as well as to the other legislation.

The purpose of this amendment is to provide an additional term of reference for the independent review of the act. Senator McLucas has explained why the time line is such as it is. It is because we recognise that, as I pointed out with the second reading amendment that was passed last night, it is more important to get it right. We have to recognise that the UK’s model may not be applicable to Australia, that Australia’s model may be very different from that in the UK. We may discover over the course of the early operations of the stem cell bank in the UK that there are different issues that we have to take into account.

Let us face it, the legislation that is before us—not so much the Prohibition of Human Cloning Bill 2002 but the Research Involving Embryos Bill 2002 that we will be debating next in the committee stage—is different law from that in many other countries in the world. We have looked at Israel and Taiwan. We have talked about the UK and the US. The UK legislation is different from this bill. It allows many other aspects and different types of research. So this may be one example where the different laws do not necessarily give rise to a stem cell bank that works in the same ways. Nonetheless, it is an important area which we should investigate.

I suppose that, strictly speaking, this amendment goes to matters relevant to the Research Involving Embryos Bill 2002. However, as the Prohibition of Human Cloning Bill 2002 and that other bill effectively share the same terms of reference, for the sake of consistency this amendment should apply to both bills. As you would know, Chair, Senator McLucas and I have circulated an amendment to the other legislation. In our supplementary report in favour of the legislation, we made a specific recommendation to the effect that this addition to the independent review should take place.
I am aware that a number of senators in this chamber have indicated their support for such a proposal and that at least one senator has informed the media that he, too, wishes to move a comparable amendment. I thank those senators for their support and I hope that the government will consider this amendment favourably.

I make the point, however, that it is a little naive at this point to pluck an entity from one jurisdiction and simply appropriate it for Australia. That is not what we are intending to do; we are simply talking about investigating the applicability of this particular idea from the UK. Clearly, there are differences not only in the legislation that we are debating and potentially passing but also in Australia’s IP and patent laws. In patent law, for example, the current Australian definition of ‘patent’ is contained in schedule 1 of the Patents Act 1990 and remains essentially unchanged since the introduction of the first Australian federal patents legislation back in 1903. For the purposes of Australian law, within the meaning of the Statute of Monopolies 1623, an invention is:

... any manner of new manufactures ... not contrary to the law, nor mischievous to the state by raising of the prices of commodities at home or hurt of trade, or generally inconvenient ...

By contrast, the UK system introduced with the Patents Act 1977 is based on the Convention of the Grant of European Patents. It replaces the expressed definition of ‘invention’ by reference to section 6 of the Statute of Monopolies with a list of specific exclusions from patentability. The exclusions include ‘a scientific theory or mathematical method’, ‘an aesthetic creation such as a literary, dramatic or artistic work’, ‘a scheme or method for performing a mental act, playing a game or doing business’ and ‘the presentation of information, or a computer program’. Probably the most significant exclusion, set out in section 4(2) is:

... a method of treatment of the human or animal body by surgery or therapy or of diagnosis practised on the human or animal body ...

In respect of universities and patents, the UK has a statutory provision—sections 39 and 43 of the Patents Act 1977—for compensation of employees for certain inventions created in the course of employment. The Australian Patents Act 1990 has no statutory provision for compensation of employees. The UK, like several European countries, has a specialist Patents County Court. Australia has no specialist court, although there have been proposals suggesting the establishment of such a court. The point I make is that we should not assume that what is appropriate for the UK is automatically appropriate for our country. A stem cell bank is but one possible solution to the problems that we confront. However, this needs to be evaluated within the parameters of a broader consideration of these issues. There may be other solutions and, indeed, there may be other problems. That is why we believe our approach of adding an additional term of reference for the independent review to examine the applicability of the solution is the prudent and appropriate way to approach this issue.

Senator MARK BISHOP (Western Australia) (12.18 p.m.)—The amendment moved by Senator McLucas and Senator Stott Despoja foreshadowed some comments I was going to make later on in the discussion on the Prohibition of Human Cloning Bill 2002 and the Research Involving Embryos Bill 2002 in the context of seeking the deletion of this particular review provision and the insertion of a parliamentary review provision. I have listened to the discussion and read the notes that have been circulated and I am happy to indicate at the outset my support for this amendment, but I want to put a couple of points on the record.

My memory is that the minority report signed by Senator McLucas, Senator Webber and Senator Stott Despoja made some comments about the desirability—perhaps the absolute desirability—of minimising the number of embryos that might be accessed or used for whatever purpose. Senator McLucas used that point as a justification for this amendment. It will be interesting in due course, if this review is undertaken, to see the economic analysis of supply and demand for human embryos. My preliminary view is that, if you have a public agency tasked with the job of making embryos available to those researchers who are given authority to have access to them and if the price of the em-
bryo—the commodity, if you like—does not reflect market signals, a simple supply and demand analysis would suggest that demand would be greater than would otherwise be the case. So, if you create a public agency to regulate the disposal of or access to human embryos for particular research purposes and if market signals are not involved in the pricing, you could get the perverse result of increasing the demand—and hence the need—for access to, and availability of, embryos. That would defeat the purpose, as I understand it, of both the mover and the seconder of this amendment. I draw that to their attention and put it on the record for consideration.

The other matter I wish to draw to the attention of both the mover and the seconder is clause 25 of the bill, ‘Review of operation of Act.’ When one reads that clause, one sees that it is extraordinarily narrow. Clause 25(1) refers to ‘an independent review’, and Senator Stott Despoja repeatedly referred to it as such. On preliminary examination, that is a fine thing. But when you look at 25(2) to 25(6), you will note that the ‘independent review’ is a written report only to COAG, not to other bodies or other parties. It has regard to a limited number of matters, set out in 25(4), paragraphs (a), (b) and (c)—and perhaps (d), if this amendment is carried—so there is a limited range of possible amendments. When you look at subclauses (5) and (6), you will see that the requirement is to consult with a very limited number of persons—the Commonwealth and the states, obviously, and ‘a broad range of persons with expertise in or experience of relevant disciplines’. That is a limited set of afficionados and experts—those who have particular knowledge in this area.

Then when you look at the final part of 25(6), the obligation on the report writers is to set out the views of those consulted in the report ‘to the extent that it is reasonably practicable to do so’. So there is no obligation in this independent review to seek submissions, to analyse submissions or to ask for public comment on submissions. There is no obligation in the independent review to go to a range of church, community, welfare or ethical organisations, who might have a view, a different view, an opposing view or a combination of views. In my preliminary thoughts, clause 25 in this bill and clause 47 in the latter bill provide a Clayton’s type of review. The experts are going to be involved and they are going to have regard to a limited number of people and a limited number of issues—and it can be done in secret; there is no requirement to publish the transcript or seek evidence—and the report is going to be one for the afficionados. It strikes me as going to the heart of some of the problems under discussion in this whole exercise that you do not have the ability in an internal, possibly closed, review—however well minded, well intentioned or independent—to test the arguments and the submissions, to engage in debate and to challenge those who have a particular point of view.

My thoughts are that, if you are going to have an independent review, it should be fully open, fully public and anyone who has an interest in it, whether it be the most humble person up to major corporations, should be required to put their submissions in public, give public evidence, justify their position and be open to challenge and testing by those who have an interest. I foreshadow those comments, which will come later on in the debate on both the Prohibition of Human Cloning Bill 2002 and the Research Involving Embryos Bill 2002, and draw them to the attention of both Senator Stott Despoja and Senator McLucas in the context of their seeking to, (1) minimise access to the number of embryos and, (2) make the act and its eventual review process more effective.

Senator JACINTA COLLINS (Victoria) (12.25 p.m.)—I want to take a brief moment to support the establishment of a stem cell bank. I would like to bring to the attention of the chamber some of the discussion that occurred at the Senate Community Affairs Legislation Committee inquiry into the Research Involving Embryos Bill 2002. Hopefully I will track down the detail of this a bit further before we get into a more detailed discussion of this issue in the Research Involving Embryos Bill 2002, but we had evidence before the committee regarding the UK model. There was one component of that model that
attracted me to going down this path. That was that the NHMRC guidelines from 1996 and the COAG communiqué both refer to the objective that we should limit the number of human embryos used in this endeavour. Whilst I oppose their use, obviously a sensible fall back position is that, if it is going to occur, we should limit it as much as possible.

The limitation objective is missing from the Prohibition of Human Cloning Bill 2002, and that is one amendment I will be proposing. The British, it seems, have implemented that objective through their view about establishing a stem cell bank. The view is that if you eliminate competition as one of the factors involved in the number of human embryos that are destroyed to extract stem cells, that is one way of limiting the overall numbers that will be utilised. A public stem cell bank that makes the stem cells and the results of the research on stem cells publicly available is obviously quite a sensible means of ensuring that you are not simply duplicating work because of scientific competition. I will support what hopefully will be the strongest possible proposal for the establishment of a stem cell bank.

I will support this amendment to this bill but indicate that my position on the next bill may well be inconsistent, which may create further problems when these bills go back to the House—perhaps it can be rectified in the House of Representatives. It is obviously desirable that both bills have consistent provisions in relation to a stem cell bank. My view will be that it is something that should be done sooner rather than later. I have some concerns that this current proposal allows the elapse of too much time. Whilst I accept the concern that we do not want to simply mirror the British model, I bring to the committee’s attention that what we learnt about the British model was that it was not introduced when they first introduced their legislation; it was a second phase, so to speak. The British have the public policy experience of reflecting on their legislation and designing their own stem cell bank to suit their circumstances, so I think the period of somewhere between six to 12 months is sufficient for us to be able to learn from their public policy experience and adapt that to suit our particular circumstances.

In that light, I do not think there is any problem with us requiring that there should be a stem cell bank established and chartering the NHMRC, for instance, to undertake the task of learning from the public policy experience in the UK and looking at how best to implement such a system. There can obviously be appropriate reporting mechanisms to the parliament, to give them that flexibility, but I do believe that at this stage we should be making such a requirement. I do not believe it is necessary for us now, after there have been various international experiences, to say, ‘No, it has to be done at a second stage.’ The risk, if we go down that path, is that the horse will bolt. If we simply say, ‘Yes, this is something we may do in the future or in the never-never’—or it may become the never-never—the horse will bolt now. Certainly the technology has developed adequately that the horse can bolt in a number of areas in relation to commercialisation, and we may regret it if we do not seek to harness the horse at this stage rather than just say that we will analyse the situation and find a way to deal with it somewhere in the future. I am attracted to the notion that, in the debate on the next bill, where I know the Greens have proposed a version of how to deal with this issue as well, perhaps we can spend a bit more time analysing the detail of those matters and find a flexible way to require that we establish a stem cell bank at this stage of the process rather than at stage 2. I think that is probably all I need to say at this stage.

Senator BARNETT (Tasmania) (12.30 p.m.)—I stand to indicate my support for the amendment put by Senators McLucas and Stott Despoja and also to indicate that my views are similar to those of Senators Bishop and Collins, who have just spoken, interestingly. I think the concept of a national stem cell bank is worthy of consideration and careful analysis. That will obviously be achieved at least to some degree under this review; albeit, as Senator Bishop indicated, the review is very narrowly defined. It will be an independent review, but I am not sure exactly how it will be conducted and by
whom. The persons who will undertake the review will obviously consult only a narrowly defined group of people; they are not opening it up to the public to put their views and considerations. Those areas do need further thought but I certainly indicate my support for the review.

I noted specifically the comments by Senator Stott Despoja and Senator McLucas, and I thank them for the contributions they have made and the manner in which they have brought forward this amendment; it was done in a very good and cooperative way and I put my thanks to them on the record. I noted their comments that, wherever possible, we should minimise the number of human embryos to be used. They set out their views on page 178 of the committee report. I have read those views and, as I say, I am willing to support the recommendation they made and the amendment before us. In paragraph 7.12 of their supplementary report in favour of the legislation they say:

It was suggested that such a facility might minimise the number of embryos that would be required to create new stem cell lines.

They both indicated in speaking today that that is a good objective, and it is certainly an objective I support. They also indicated that Mr Ilyine, who came before the committee, talked about free and unencumbered access to the stem cell bank. That poses a whole range of issues and concerns that I simply flag now, and maybe they will be dealt with during the review. They are obviously based in part on the submissions we had in relation to the UK experience. That stem cell bank was set up on 9 September this year and I certainly do not indicate my support for the regime in the UK with respect to the research and destruction of human embryos, but I think a national stem cell bank is worthy of consideration.

Another reason I support the stem cell bank is that it will provide an open and transparent process. That is what Senators McLucas and Stott Despoja are trying to achieve to some degree in having a national stem cell bank. If it does proceed, I would hope that we would have access to information such as the number of human embryos being used for research in the stem cell bank, the type of research and the types of outcomes from that research. In saying that, I foreshadow that those arguments are consistent with an amendment that I will put in relation to the Research Involving Embryos Bill 2002 to make sure there is some accountability in the public arena for the number of human embryos, the type of research and the outcomes of that research. I hope that argument, which is consistent with support for the stem cell bank, will flow through to that amendment when it comes before the committee shortly.

I also want to indicate, as Senator Bishop did, that this is a narrowly defined review. It is not an open review in terms of a joint parliamentary committee review and I indicate my support for a joint parliamentary committee review, as indicated by Senator Bishop in an amendment that will be before the committee shortly on both this cloning bill and the human embryo bill. Why not have a public and open process where we can assess the review of the act, the operation of the act, the research conducted under the act and the number of human embryos, or so-called excess human embryos, that are being used for research purposes? I think they are laudable objectives. I put on the record my support for those objectives and for this amendment.

Senator CHRIS EVANS (Western Australia) (12.35 p.m.)—I briefly indicate on behalf of the Australian Labor Party that we will support the amendment. We think it is a useful addition to the bill. It provides for consideration of a national stem cell bank for the reasons outlined by the speakers, which I will not repeat. As I say, the formal view of the Australian Labor Party is to support that amendment; although, as I have indicated on previous occasions, the Labor Party senators will be exercising conscience votes when it comes to the vote.

Senator HOGG (Queensland) (12.35 p.m.)—I want to speak briefly on this matter. I spoke earlier with Senator McLucas about it and I admitted my surprise to her that this was to form part of the review. I must say that I echo some of the sentiments you made, Madam Temporary Chairman Collins, that if there is some value in this and a review is
held, as I understand it, two years down the track, the horse may well have bolted.

I would urge caution about the concept; nonetheless, I would support it, provided it were not put off too far into the future—and I think two years is clearly too far into the future. If there were a real value and need for the establishment of a national stem cell bank, I would urge that, given that the English model is up and running, any investigation be made as quickly as possible, post the passing of this legislation, and that that matter be referred back to the Senate for further deliberation. I believe it is something which we need more evidence on; we need to know more about its operation. As far as I am concerned, if it takes two years and then another six or eight or 12 months before there is legislation and if there is a useful purpose to be served in having a national stem cell bank, the horse will have bolted. So, if this legislation is adopted—and from the debate there seem to be the numbers to carry it—I urge the government not to let any review pertaining to this matter drag on too far into the future.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (12.38 p.m.)—I thank honourable senators for their contributions. I actually referred to this matter in my seconding reading speech. The NHMRC has been given the responsibility of reporting back to COAG by April 2003 on supply of embryos, and one of the issues surrounding supply of embryos is the embryonic stem cell bank. That process will address this issue faster than this amendment will. We are aware that the UK has established a publicly funded stem cell bank to provide to researchers unencumbered access to cell lines. Access to such a stem cell bank reduces the need to extract additional stem cell lines from embryos. As I said, the analysis of the issues on the adequacy of supply, and availability for research, of excess ART embryos will be included in the NHMRC report to COAG, and that issue will also be examined. The appropriate mechanism and how it would be progressed would best be determined once that report goes to COAG. Whether and how it will be considered by governments—for example, through the Australian Health Ministers Conference or the Council of Australian Governments—has not been determined. But once the report goes to COAG, COAG will make a decision as to whether the Australian Health Ministers Conference or the Council of Australian Governments will consider it. So it is going ahead, despite or in spite of this amendment. I believe this amendment is superfluous, because the issue is being addressed.

The TEMPORARY CHAIRMAN (Senator Jacinta Collins)—Senator Harradine, just before you commence, can I indicate that we are about four minutes away from Matters of Public Interest and that it might further the debate if we were able to conclude this amendment by that stage.

Senator HARRADINE (Tasmania) (12.40 p.m.)—I want to indicate that other matters will be included in the review and that there will be amendments to ensure that that takes place. I was very impressed with what Senator Bishop said about the matter. Having flagged that I will be seeking further amendments of necessity, I will allow the vote to take place before Matters of Public Interest are brought on.

Question put:
That the amendment (Senator Stott Despoja's and Senator McLucas's) be agreed to.

The committee divided. [12.46 p.m.]

The Chairman—Senator J.J. Hogg

Ayes........... 53
Noes........... 9
Majority....... 44

AYES

Aberz, E. Allston, R.K.R.
Altlett, A.J.J. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Carr, K.J.
Chapman, H.G.P. Cherry, J.C.
Collins, J.M.A. Cook, P.F.S.
Crosin, P.M. Denman, K.J.
Ellison, C.M. Evans, C.V.
Faulkner, J.P. Ferguson, A.B.
Forshaw, M.G. Greig, B.
Harradine, B. Hogg, I.J.
Hutchins, S.P. Kirk, L.

Allison, L.F. * Barnett, G.
Bishop, T.M. Brandis, G.H.
Calvert, P.H. Carr, K.J.
Cherry, J.C. Cook, P.F.S.
Denman, K.J. Evans, C.V.
Ferguson, A.B. Greig, B.

NOES


* denotes teller

Question agreed to.

Progress reported.

MATTERS OF PUBLIC INTEREST

The PRESIDENT—Order! It being past 12.45 p.m., I call on matters of public interest.

Health: General Practice

Senator EGGLESTON (Western Australia)  (12.50 p.m.)—I would like to talk about changes which have occurred in GP medicine in recent times, particularly the corporatisation of medical practices. Many people may have noticed a difference in their local medical practice in recent times and found that their small, local surgery may have been replaced by a multidoctor, multiservice corporate practice.

Over the past 20 years, there has been a trend towards corporatisation of general practice, and in the past few years it has rapidly increased. What, you may ask, is meant by corporatisation of general practice medicine? Corporatisation of general practice medicine basically involves doctors entering into agreements with companies whereby they have use of their consulting rooms and practice management services in exchange for a percentage of their incomes, usually 50 to 60 per cent. In some cases, corporatisation of general practice has gone hand in hand with vertical integration of medical services, so that the corporations also have interests in specialist and diagnostic services, including radiology, pathology and, sometimes, physiotherapy and pharmacy. All of these services are generally located in the same large medical centre.

Western Australia has been very much at the vanguard of the corporatisation of medicine, with many independent general practices being purchased by corporations. Nearly 50 per cent of general practitioners in Western Australia are involved in corporate medicine. Other states have not experienced such a rapid rate of corporatisation. GP medical practices have been aggressively targeted by these corporations, and doctors have been offered large sums of money to sell their practices to them. I have heard of offers of more than $1 million being made to some general practitioners, and in other cases combinations of cash and equity have been offered.

Major companies involved in corporate medicine include Foundation Healthcare, Endeavour Healthcare, Primary Healthcare, Gribbles, and Mayne Health. An April 2001 article in Australian Doctor cited estimates that around 2,500 GPs—about 10 per cent of the total number of general practitioners in Australia—have been contracted to one of the five large medical companies. Also, a newspaper article in March of that same year referred to a prediction that up to 50 per cent of GPs will work in a corporate medical practice within the next three to five years. However, this prediction now looks unlikely to be fulfilled, for several reasons. Medical company earnings have generally not met expectations, share prices have fallen and amendments to the Privacy Act now require a patient’s consent for the transfer of medical records—all putting a break on further acquisition of general practices by corporations. Some writers, such as Paul Fitzgerald, writing in the Medical Journal of Australia in July 2002, believe:

Although corporations have a large share of the Perth market ... it is unlikely they will achieve more than 20% of other metropolitan markets, such as Sydney or Melbourne.

Corporate medical practices have been lauded as having benefits for consumers and
doctors alike. For doctors, it is said that they can concentrate on what they do best—that is, practising medicine. For patients, corporate practices are being promoted as being customer friendly, offering good customer service. Because they employ a large number of doctors, corporate practices, unlike the traditional family doctor or sole general practitioner, are able to operate seven days a week and for extended hours. Corporations are building new large medical centres which offer the most up-to-date facilities. Patients are thus saved the inconvenience of having to travel elsewhere for specialist and diagnostic services, because they are all offered under the same roof.

For all of this, the advent of corporate medicine has been greeted with suspicion and even outright hostility in some quarters. The Australian Medical Association has expressed reservations about corporate medicine, in its scoping paper on general practice corporatisation. The most prominent concern is the vertically integrated nature of corporate medical practices. Corporations impose a third party on the doctor-patient relationship and there is a fear that GPs will be pressured by the management of these corporations to refer patients to the corporations’ own in-house services, thereby eroding patient choice and the doctor’s own clinical autonomy.

General practice in and of itself is not overly profitable. In 1999-2000, the average Medicare payment to general practitioners, including those working part-time, was approximately $110,000, out of which gross income the GP has to meet the expenses of running his practice. A bulk-billing general practitioner wanting to generate an after-expense but pre-tax income of $130,000 needs, it has been estimated, to conduct 37 standard consultations a day, five days a week, 48 weeks of the year. By way of contrast, the average Medicare payment to radiologists was $650,000 per annum, and the average to pathologists was more than $600,000.

This raises the question of why corporations have been willing to pay relatively large sums of money for general practices. The answer perhaps lies in the general practitioners’ role as gatekeepers to the health care system, in that it is they who prescribe the medications, order diagnostic tests and refer patients to specialists. As Dr Paul Fitzgerald, who contributed to the AMA’s position paper on the corporatisation of general practice, said on Radio National:

You don’t buy general practices because general practices are good business, you buy general practices because you want to buy their referrals.

Beth Quinlivan, in an article on corporate medicine, cites the KPMG report entitled ‘Corporatisation of general practice’ when she says:

... for every dollar of Medicare income paid to a general practitioner, $1.60 is paid by Medicare for a specialist service. If a doctor’s referrals can be controlled—or directed—a large slice of that specialist market can be tied in. If a medical centre has, for example, 10 full-time general practitioners, each generating $200,000 of Medicare income a year, they are also generating on average $3.2 million a year in downstream specialist billings. If a substantial part of that is picked up by businesses or specialists who work in the same corporate group, it is a good income stream. Obviously this may raise concerns about the independence of GPs in corporate medical centres. In its scoping paper, the AMA has said that GPs in some corporate medical centres have complained of pressure to turn patients over rapidly, loss of personal relationships with patients, and professional compromises to meet the requirements of the owners. Associated with this are concerns that doctors in corporate practices will come under pressure from management to over-service. However, on Radio National in August last year the then Minister for Health and Aged Care, Dr Michael Wooldridge, said that there was no evidence that corporatisation of general practice had resulted in over-servicing and that, if the government did get information that this was leading to a blow-out of costs in medicine, it would act very quickly.

As is well known, all medical practitioners are under constant computer surveillance of their practice modus operandi, referral and prescribing patterns, so any variation is quickly noted. However, the other side of the coin is that many GPs working in corporate practices report that consultation times
are often longer—15 minutes instead of 10 minutes or less—so that they practice better medicine and also enjoy being free of the responsibilities for the business management and administration of medical practices.

Mr Ed Bateman of Primary Healthcare has said that most of the general practitioners there run their own practice and the people who come to see them come to see their family doctor. He said that doctors have accepted corporatisation because of economic forces, stating that for more than 20 years there has been a ‘cost squeeze on general practitioners’. Initially, he said, they worked harder, but they get to the point where they have to look at alternatives. The alternative many have chosen is to be involved in a corporate medical practice. Doctors also report enjoying access to the more technologically sophisticated equipment which the big medical practices usually provide, and they enjoy having ancillary staff available such as treatment room nurses, which a solo GP usually cannot afford. A further matter of longer term concern over the corporatisation of medicine is that it will provide an impetus towards managed care as per the American model, whereby referral and treatment decisions are made by protocol and the management choices of doctors are thereby circumscribed.

Corporate medicine appears now to be well established. But there is a series of questions I think which we as a community need to ask ourselves about corporate medicine and about whether it is in the best interests of the community as a whole. Firstly, is it in the public interest that general practices be vertically integrated with specialist and diagnostic services? If it is, should there be a requirement that GPs must disclose the company’s interests as well as any personal interest that they may have in the service when seeking to refer a patient so that the patient can make an informed choice? Has vertical integration resulted in higher use of specialist and diagnostic services or will it in the future? Other questions are whether professional bodies and universities should pay a greater role in educating doctors about their ethical duties and whether uniform legislation should be introduced in all states and territories to seek to guarantee clinical autonomy of medical practitioners. These are just some of the issues which might eventually have to be addressed and resolved.

In conclusion, overall the format of general practice medicine appears to have changed and, just as 30 years ago corner stores and small owner-operated stores gave way to supermarkets and shopping malls, so now the same has happened in general practice medicine. There is a large well-appointed multi-doctor corporate medical centre to be found in many a suburb around this country where a small local independent solo practitioner’s rooms have been replaced.

Drought

Senator O’BRIEN (Tasmania) (1.03 p.m.)—Today I will address the matter of drought for the fourth time this week in the Senate. Properly responding to Australia’s growing drought crisis has been a priority for Labor for many months. Regrettably, the same cannot be said about the Howard government’s commitment to addressing this issue. After months of doing little more than attacking the states for their drought assistance measures—but doing nothing itself—we are now seeing a flurry of activity from the government.

Yesterday, the Minister for Agriculture, Fisheries and Forestry attacked the Queensland government for the level of assistance it was providing farmers in the Peak Downs area—farmers who are clearly suffering from the consequences of severe drought. This attack was galling, even by Mr Truss’s standards, because it was the minister himself who was sitting on his hands in respect of the Peak Downs exceptional circumstances application. That application was lodged on 28 October, but incomplete interim assistance measures were not announced until today—a clear indication that the application has merit but an even clearer indication that the minister is not giving drought assistance the attention it deserves.

The fact is that the prima facie merit of the application should have been assessed within seven days of its lodgment. Clearly, the Prime Minister has now had enough of Mr Truss’s bungling and has directed him to
act. It is a shame that the Prime Minister did not take a direct interest in the drought earlier. I ask the Prime Minister to require Minister Truss to look again at the current Queensland exceptional circumstances application and to grant comprehensive interim relief. Until now, the Prime Minister has allowed Mr Truss to direct his energy to battling the states rather than dealing with what is emerging as the worst drought in 100 years.

I note the Prime Minister’s comments to the National Farmers Federation last night that he wants to end Commonwealth-state bickering over drought assistance. But while he was acting like a statesman at the National Farmers Federation, his minister was issuing a statement attacking the New South Wales Premier, Mr Bob Carr, and his government for their drought program. Yesterday the minister also used a debate in the other place to debase the drought assistance packages currently offered by the New South Wales, Queensland, Victorian, South Australian and Western Australian governments. Despite the Prime Minister’s rhetoric, his government has done nothing to focus on the delivery of better drought assistance.

The government has this morning announced the approval of the exceptional circumstances applications for Bourke and Brewarrina in New South Wales. This announcement also highlights the minister’s failure to do his job. He has forced the farmers in these regions to wait 64 days to know their fate. Today we have an announcement that the application has been successful. We still have no idea when the money will actually flow to those farmers—and neither do they. The federal government has now received more exceptional circumstances applications from New South Wales. The farm families in these areas should not be forced to wait for months for urgently needed assistance. The Prime Minister must acknowledge his minister’s incapacity to do the right thing by drought stricken farmers and instruct that interim assistance be made available within the next seven days.

So far government action has been motivated only by the pressure that Labor, farm organisations and media commentators have brought to bear, and it should not be this way. The government should be motivated by the needs of farm families. The Prime Minister must also ensure that these new applications are assessed within four weeks.

The government has focused on the impact of the drought on broadacre farming. It has given no consideration, might I say, to the devastating impact the drought is now having on the intensive industries such as poultry and pork and the beef feedlot sectors. An audit of all feedstocks must be undertaken immediately. That audit must look at current fodder stocks, not just grain. These industries, the tens of thousands of workers they employ and the thousands of small businesses that service them need to plan for the immediate future on the basis of available fodder supply. The minister must act to provide them with that certainty. As a matter of urgency, the government must review all aspects of the current grain import protocols with the aim of ensuring that the feedstock required by these sectors can be satisfied if there is no break in the current drought before next year. In many respects, I have been calling for that work to be done since October.

There are currently eight applications to import grain with the government, and one of those applications, for sorghum, has been approved. The opportunity for an early sorghum crop has been all but lost and the deadline for the planting of a late crop is only weeks away. If there is no rain in the next few weeks in important growing areas, the current small number of import applications will quickly turn into a tidal wave. It is worth noting comments made in the other place by the now Deputy Prime Minister in 1994. He said:

We will not have enough domestic grain to cover needs. That is rapidly becoming quite obvious. Priorities in terms of what should be imported, what should be kept here, what export contracts should be met and what should be attempted to be met from other sources are issues that will need to be looked at as a matter of great urgency.

There is now an urgent need to get on top of the questions of inventories for feed, what is
available, what is going to be needed, what the priorities should be, and how they can best be met. There should be no shirking of that responsibility at all under any circumstances.

I am quoting the Deputy Prime Minister from 1994, and there was an audit of stocks undertaken in 1994. Due to the current drought that need has arisen again.

The government has also failed to respond to the crisis confronting our beef and sheep producers. Whilst most farmers have been progressively destocking their properties as the drought has worsened, their ability to retain or agist their key breeding herds and flocks has been severely limited or in many cases lost. This drought is now well beyond normal property management planning. The situation in New South Wales is particularly worrying. Over 96 per cent of that state is now drought declared and it was suggested yesterday that now 99 per cent of the state is in the grip of drought. Many have now lost their core breeding animals and with them the ability to rebuild their businesses after the drought. The government must act to assist these producers to protect the core breeding animals that remain. That would be a sound investment in a quick recovery when this drought has ended.

I note comments this morning by the Deputy Prime Minister that the government is working on a plan to help keep core breeding animals alive. I am concerned at the suggestion in his comments that the necessary work on these measures is only now beginning. The fact is that nothing has yet been delivered by the government on this issue. The fact is that it is the Minister for Transport and Regional Services who is now announcing that the government is starting to look at this option. Just what has the Minister for Agriculture, Fisheries and Forestry been doing? My view is that this assistance should be provided through the current exceptional circumstances structure, and the starting point should be a comprehensive audit of fodder stocks. The matter of feed grain availability is fundamental to any plan to hold core breeding stock together and there is, after all, little point in providing assistance to feedstock if there is no feed available.

Finally, to assist the government in this regard, I say that these steps are the steps it must now take. It must coordinate its existing rural programs to deliver more effective assistance to farmers and to rural industries. It must acknowledge the many dimensions of the drought’s impact on regional communities and review existing government programs that can be adapted to assist these communities, the workers in them and their families. The government must sort out the exceptional mess that Mr Truss has made of the exceptional circumstances program and ensure that it delivers real and lasting reform of national drought assistance. That reform, might I say, must include improvements to the exceptional circumstances assessment and delivery program, including the resourcing of the National Rural Advisory Committee, NRAC, to deal with the multiple EC applications, because it is of little use to ask them to assess multiple applications if they do not have the resources to do it expeditiously. That would be a failing, and a major failing.

So far Mr Truss has proved incapable of addressing the drought crisis enveloping Australia. That crisis is now having a telling impact on the national economy, and the Reserve Bank is now saying it will be responsible for gross domestic product being reduced by one per cent—the equivalent of $7.1 billion. It has gone beyond the responsibility of the minister—he has proven that he is not up to the job. The Prime Minister must develop a national response to the drought. Australia cannot wait any longer for Mr Truss to act on his own initiative. I conclude with a plea made in the editorial of a newspaper in a probably rarely spoken about part of this country—the South Burnett Times, published in Kingaroy on Friday. That editorial says:

Drought-crippled farmers expect governments to stop buckpassing and cut the red tape involved in them getting access to assistance.

That is a message that Mr Truss should hear loud and clear.

World Trade Organisation: General Agreement on Trade in Services

Senator NETTLE (New South Wales) (1.15 p.m.)—I rise to speak on a matter of fundamental importance to the Australian
economy and society, both now and in the future, and that is the issue of international trade. In this parliament, we often hear about the impact of international trade on our economic indicators. Statistics about trading figures are quoted by both sides of the chamber to demonstrate various different points at various different times. In presenting this matter of public interest, I would like to focus not on the economic indicators or dry numbers relating to trade but on the real social impacts and environmental implications of these economically driven decisions.

One of the unique things about the Greens is that in our policies we look beyond the assumptions that apply in many areas, including in the economy. There are two major parties in this chamber whose policy differences essentially split hairs in tinkering with the mechanics or the finetuning of the details of the trading system. In contrast, our major interest is in looking at questions that neither of these parties will address: the real effect of trade and economic policies on people’s lives, the environment, the equity of our world for future generations, and the capacity to democratically shape our own society. The Greens’ policy is based on a fundamental belief that economic systems should exist to support people, not the other way around. Too often the self-serving logic of corporations and economists takes too much for granted. We believe that, instead of adopting the vision of ordinary people to the pressures of powerful interests, we must imagine the economic world that we want and work to achieve it.

The World Trade Organisation provides a good example of this difference of approach. On Monday in the other place, the member for Farrer singled out Greens’ policy for attack when she said that we must take on the international trading system on its own terms. The member’s argument was that as a small economy we cannot expect to have control over our own economic destiny. She misses the point of Greens’ policy, which is that there is nothing sacred about the international trading system. It is an artificial structure, set up by people for their own interests, and there is no reason why it cannot be and should not be turned around, taken over or turned down if it does not serve these interests. As a global movement, we advocate that this should happen on an international level. Indeed, Greens parties from around the world have signed on to a charter calling for the World Trade Organisation to be reformed to make sustainability its central goal. This reform must be supported by transparent and democratic processes and it must be accountable to representatives from affected communities. The WTO in its current form meets none of these requirements. Greens internationally state that if it cannot be reformed to meet these objectives it should be abolished.

The Greens believe that international agreements on the environment, labour conditions and health should take precedence over international rules on trade. The goals of these agreements promote quality of life, health and dignity of work and these are the very goals that the economic system is meant to be serving. But instead of serving these needs, we currently have a system where our environment, workers’ conditions and human rights buckle under the power wielded by transnational corporations through the World Trade Organisation. In essence, we have the means overtaking the ends.

The next round of trade negotiations at the World Trade Organisation will focus on the General Agreement on Trade in Services, or GATS. This agreement seeks to force national governments to deregulate and privatise their essential public services. These services include health, education and environmental regulation. The negotiations affect every level of government, from national to local, and every aspect of people’s lives. At the next round of the World Trade Organisation meetings in Mexico next year, we will see a continuation of the push to expand the scope of the General Agreement on Trade in Services. It was driven by the transnationals of the service industry, the fastest growing sector of the world economy. The aim of these negotiations is to force all countries, developing countries in particular, to open their doors and commit to essential services being listed in the GATS negotiations and therefore open them to deregulation, privatisation and international competition. I will
be moving a motion in the Senate later today to address some of the worst aspects of this situation. I will call on the government to reveal Australia's negotiating position at these WTO talks. I look forward to the support of the majority of senators for that motion.

I will not dwell on the specifics today, because I want to turn to the question of the public response to these issues. Clearly, the immediate impetus for the debate today is the unofficial meeting of world trade ministers happening in Sydney over the next two days. This meeting is not officially a part of the next round of trade negotiations; indeed, it is more of a gentlemen's club where those who will be attending have received invitations from our esteemed Minister for Trade, Mark Vaile. The purpose is for the wealthier nations to come together to plan their strategy for negotiating with developing countries to have the essential services of those developing countries put out to tender for transnational corporations. It is an opportunity for the wealthiest countries to work out how they can get access to the markets that the majority of citizens are involved in: essential services such as health, education and water.

This meeting is neatly symbolic of the problems with the World Trade Organisation and the General Agreement on Trade in Services. It is exclusive and unrepresentative with only 25 out of the 144 countries in the World Trade Organisation having been invited. It is undemocratic in that the negotiations are to be completely secret and decisions reached at this meeting will never have to be ratified by this parliament. It is weighted against developing and smaller countries as the purpose of this meeting is to place pressure on those countries to support the interests of the wealthier countries. It is also a meeting that is organised to be against the interests of ordinary people. Why else would it be necessary to hold it in a special zone where legislation left over from the Olympics will make it almost impossible to undertake peaceful protest and democratic dissent?

This event has attracted a lot of media attention but not, unfortunately, for the profound implications of the future structure and control of our essential services. Instead the media attention, backed by the irresponsible and unfounded statements of some politicians, including the New South Wales Minister for Police, has focused on the potential for violence in demonstrations against the World Trade Organisation meeting. Tomorrow I will not be at the protests in Sydney, because I will be here in the Senate, but I will be sending a message to these protesters who will be gathering to make links between their opposition to the WTO and their opposition to the war on Iraq.

I would like to read part of this message that I will be sending to them tomorrow into the record of this chamber. I will be saying to them that, despite the pressures that will be put on them by the police and security forces, the Greens believe that protesters against the war and against the World Trade Organisation must show it is the strength of their conviction, support for each other and a belief that a better world is possible that will bring change—not violence. The Greens support the right to protest and to break unjust laws without the use of violence. It is a part of our freedom and it is one of the things that our political leaders claim to be fighting for. This is why people will be at the protest tomorrow, to protest peacefully against the war and the WTO, and this is why the Greens will be 100 per cent behind them in this endeavour. Peaceful protest against the World Trade Organisation is legitimate and democratic.

Contemptibly the decisions of the New South Wales government about how to handle such incidents are not. For example, the decision by the New South Wales police to ban all forms of peaceful protest in the city this week and, we hear today, potentially to ban the holding up of banners at Homebush this week is a recipe for disaster. It can be only for the most serious of reasons that the rights of citizens in a democracy to protest should be shut down. The limited incidences of violence by a small number of protesters out of tens of thousands of peaceful demonstrators are merely an excuse and not a reason.
Of the celebrated incidents of violence, particularly the September 11 protests of year 2000, the cold light of an ombudsman’s inquiry has shown that the overwhelming perpetrators of violence were the police and security forces. The civil actions for compensation that have been lodged by innocent protesters injured by illegal police actions are on the public record. Yet the New South Wales government and the Minister for Trade are setting themselves up to make the same mistakes again. There may be a cheap political gain to be made out of headlines about violent protests, but the health of our democracy is the loser in the long run. There is no question that tomorrow and on Friday people will protest as they have every right to do. These protests are founded on real and serious concerns about the World Trade Organisation and the General Agreement on Trade in Services. These protests must be peaceful and I hope that the police and the security response will equally be peaceful.

**Defence: War on Terrorism**

Senator COOK (Western Australia) (1.27 p.m.)—I rise to speak about the war on terror. I particularly want to focus on the need for Australia to provide some leadership in the world to attack the economic causes of terrorism. We have reported constantly in the media the things that we are doing to deal with the effects of terrorism: military actions that need to be taken, how to stifle the supply of funding to terrorist organisations, how to cut off their weapons supply and how to detect the culprits involved here and bring them to justice. But that is dealing with the effects of the problem. I want to talk about the causes of the problem, specifically the economic causes, and how Australia can provide some focus on an economic war on terrorism and cut the problem off at the cause—nip it in the bud where terrorists are recruited out of poor economic circumstances and are gulled into being members of extremist or fundamentalist organisations that see terror as the only action that they can take. So I want to focus on the causes, which is not to say that I in any way disapprove of what needs to be done about the effects of terrorism. Certainly we need a strong international campaign, in which Australia is playing its part, working with the concerned nations of the world, to deal with the effects of terrorism. But, fundamentally, my argument is that unless there is a balanced package here, one that not only deals with the effects but also focuses on the causes, then terrorism will remain with us in the long term and the cost exacted economically, in human suffering and in loss of life and in damage to our institutions will be much greater than if we were to, with equal vigour, tackle the causes of the problem.

Recently the US trade representative, Bob Zoellick, said in a considered speech that it is extremist and fundamental ideologies that lead people to terrorism, not poverty per se. I agree with that sentiment insofar as it goes. He is right about the ideologies that lift people from poverty into terrorist activity, but there is no doubt that poverty, which does disfranchise people not only in economic terms but also in everyday life opportunities in education and health, in the access to free and clean water, in the exercise of democratic rights and the right to employment—those problems which are endemic to poverty—creates a hotbed in which extremist ideologies can take hold and in which terrorists can be recruited. I am sure Bob Zoellick would agree with that.

The same applies when I consider the parallel comment made by the 1998 Nobel prize winner in economics, Amartya Sen, in his book entitled *Development as Freedom*. He put the issue in a slightly different and more erudite and sophisticated way than I will now. However, crudely put, his thesis is that people cannot be free, irrespective of the democratic institutional structures around them, unless they can afford to exercise the rights that freedom gives them. He illustrates his point by referring to a country in our region in which there is a democratic structure but where poor people sell their votes to local landlords, not because they believe those landlords will do what is in the interests of the poor, but simply because their vote is a tradeable good which enables them to sell it and buy a meal for themselves and their family to last through the day. They sell that vote in order to survive not because the landlord or person they sell it to is going to
necessarily enact policies in their interests. So you do not get democracy. Despite the democratic structure, you get a perversion of democratic practice and a continuance of poverty as a consequence.

The point I want to make here is that the war on terror cannot be won if it is only a war on the effects of terror; it needs also to be a war on the causes of terrorism. For Australia, given our region, that imposes unique and special responsibilities. We live in a region of the world where there is an uncomfortably high level of poverty. We can be—and some would argue are—a symbolic or surrogate target as a country representative of, to put it in the lingo, 'the great Satan' which is the target of terrorist organisations.

Living as we do in this part of the world we have an obligation not only to fight terrorism but also to deal with its causes. In this context, I want to refer to the economic circumstances in Indonesia and the deterioration of the economic climate of that country, our nearest and most populous Muslim neighbour and a country friendly to Australia and a country with whom Australia is friendly. In referring to Indonesia, that does not mean that other nations in what has been called the arc of instability around our north ought to be neglected. For example, Papua New Guinea is in desperate economic straits. Australia provides 55 per cent of the budget of PNG. That budget is in deficit to the tune of about seven or eight per cent of the GDP of that country. We are asking PNG, in a declining economic situation, to reverse the democratic mandate that the government of Michael Somare was elected on—that is, to privatise when he was elected on a mandate not to privatise. We are also asking him to balance his budget because an unbalanced budget is obviously unsustainable in the long run. However, we need to stimulate economic growth for the country. Cutting programs to build roads that would allow agricultural producers to bring their goods to market, or cutting programs to deal with health and medicine when the AIDS epidemic is gaining a foothold in PNG, or cutting education services seems to me to be a wrongly focused approach for Australia to take in PNG.

The other nation that ought to be mentioned is the Solomon Islands. It is at grave risk of becoming the Biafra of the Pacific. Its economy is in almost total collapse. While there are strong cultural and religious reasons why those nations will not become part of any international terrorist organisation, their poverty makes them vulnerable. In attending to the arc of instability issue, Australia needs to address those concerns.

Indonesia was the worst hit economy in the 1997 Asian currency crisis and the slowest to recover. The significant thing about Indonesia in modern contemporary times is that it is now a democracy. It is a fragile democracy and it is struggling to remain a democracy. It is in our great interest that it becomes a stronger democracy than it is. That is vital for regional stability and for Indonesians, but it is also important because democracies as a general rule do not make war on other countries or on other democracies. To strengthen the institution of democracy in Indonesia is an important consideration for Australian foreign policy.

If the press reports about Indonesia are true, the Indonesians are showing great skill and great endeavour in tracking down those culpable for the Bali bombing incident and that is to their great credit. Indonesia needs a growth rate of at least six per cent per annum to reduce unemployment and poverty. In 2001, it grew at 3.3 per cent. In 2000, it grew at a higher rate of 4.8 per cent, but this year it is projected to grow at 3.2 per cent. Its growth level is trending down, not up. Its growth level is about half the level it should be in order to address the problems of unemployment and poverty.

Dark clouds are gathering over the Indonesian economy as well. It has a growing public debt problem and it has high external debt. The rupiah is weak against other currencies, pushing up prices for imported goods and making the cost of those imported goods beyond its reach. Some of those goods are essential to the development of the country. It has maturing debt obligations which place on it, and certainly on government outlays, a huge commitment. The government should be stimulating the regional economy of the country and bringing its...
budget back into growth, while providing economic stimulus, lifting aggregate demand in the Indonesian economy rather than paying foreign debt and denying itself the opportunity to stimulate growth. They are some of the questions facing the Indonesian economy.

In the two decades leading up to 1996, poverty levels in Indonesia fell from about 60 per cent of the entire population to below 12 per cent, but the currency crisis pushed poverty levels in Indonesia back up to 27 per cent. In real terms, there are now almost 56 million people in Indonesia, on our borders, living in poverty. When you analyse the nature of their poverty, it is typified by low education, no access to education, rural poverty, overcrowding in Java and the poorest poverty-stricken regions being in east Indonesia—that is, those parts of Indonesia closest to Australia. The World Bank poverty report recently said that, over a three-year period, between 30 to 60 per cent of all Indonesians face a greater than fifty-fifty chance of periodically experiencing not poverty but extreme poverty. So there is a burgeoning social issue right on our borders that needs attention.

The IMF rescue package that was initially put in place after the currency crisis did not work. I believe that the 2001 Nobel Prize winner for economics, Joseph Stiglitz, argues persuasively that the photograph of the Director-General of the IMF, Michael Camdessus, standing over President Suharto when he signed the IMF package not only was a bad look for the IMF in the region, with the West and Europe dictating to this culture, but was counterproductive, did not work and, in fact, made the problems worse. There is a further problem. The Paris Club of creditor nations is rescheduling a $US5.4 billion debt that Indonesia owes in the world under its debt relief programs, but a precondition of having access to debt relief is that they sign an IMF package which arguably has features to it that might worsen the economic situation in Indonesia. That is not a good look; it is a bleak outlook for that country. It is the biggest Muslim country in the world, it is a democracy, it is Australia’s neighbour and it is a country over which we have a special obligation—an obligation that we should deal with irrespective of the terrorist overtones in the world at the moment. We have that obligation no matter what, but in this current climate that is a heightened obligation and one that we should give some priority to.

I am not saying in these remarks that no attention is being paid to the economic dimension that underpins the war on terrorism. Certainly Australia has given attention to that, and I acknowledge that it has done so, but it is not anything like the type of attention that is required. At the end of the day, this is a global issue. Australia cannot do it alone, but Australia should do a number of things. Australia should take and do what it possibly can within its region and among its neighbouring economies to put those economies on a growth path and help them economically to achieve self-sufficiency. We should use our standing in international fora, including the World Bank and the IMF, to help mobilise a global approach to poverty reduction in this area. We should tackle the Washington consensus, a key plank of which is balanced budgets, where you need to increase aggregate demand. After all, the Bretton Woods agreement that underpinned the IMF—an architect of which was John Maynard Keynes—was about increasing aggregate demand. The price that we pay for neglecting these things is a vastly greater price than we will pay to correct them. If we act now, we can remove some of the causes of terrorism and reduce the ultimate long-term cost. If we do not face up to these issues at the moment, and we let the problems incubate, then the war on terrorism will be an endless war, because the circumstances that gives rise to terror will remain. (Time expired)

The ACTING DEPUTY PRESIDENT (Senator Knowles)—I call Senator Tierney.

Senator O’Brien—Madam Acting Deputy President, on a point of order: I understand that Senator Tierney would have been fourth on the speakers list had he been here at the time he was due to be called, but he was not. Senator Cook, who was next on the list, was called. The order is normally government, opposition, minor party. As the government missed a turn in the list, it is my
contention that Senator Murphy is entitled to be called. If Senator Tierney had been here at the time that he was due to be called, he would obviously have had preference but, not having been here, he is not entitled to be preferred now.

**Senator Tierney**—Madam Acting Deputy President, on the point of order: we have just heard from a Labor senator. It is now the turn of the government to speak.

**Senator Ian Campbell**—Madam Acting Deputy President, on the point of order: if you were to accept the submission of Senator O’Brien, the debate that takes place on matters of public interest would have included one government speaker and potentially five non-government speakers. That would be a great imbalance. Although speakers lists are an indicative guide, ultimately the chair has to make their own decision as to how to balance the debate across the chamber. It does from time to time happen, and certainly over the last couple of days it has happened on far too many occasions, that senators have not been able to get to the chamber at exactly the minute the previous-speaking senator resumes his or her seat. All senators should show some give and take in respect of this. I know that Senator Murphy is keen to speak, and we would be keen to hear him, but I think that the chair’s ruling in relation to the balance of speaking should be respected.

**Senator Murphy**—On the point of order: as I recall, it has been a practice in the past that, in respect of matters of public interest debate, if a senator has not been in the chamber at the time they are due to be called, the next senator has been called. It is my understanding that in the past, if that senator has come into the chamber, they have not been called but that in fact the list has been followed as set down. I accept what Senator Ian Campbell has just said. In normal processes of debate where that has happened—and we have had letters from the whips, as we all know, saying that if you are not in the chamber you will miss your turn—and a senator has not made it to the chamber at the time they are due to speak, quite often there is a quorum called or the senator is slotted in at another time in the normal order, whether it be backwards and forwards across the chamber or in whatever order speakers are allocated during the course of a debate.

The matters of public interest debate is given a limited time and there is a speakers list—and we know that this happens only once a week. So one is entitled to argue that it is fair that we should expect that if your name is on the list you will get to speak. I have put my name on the list, as have other senators on previous occasions. When you expect another senator to speak before you, you do not come into the chamber. All of a sudden, the senator who is on the list before you does not turn up and the debate is adjourned. I would suggest that, contrary to Senator Campbell’s argument, this is not a normal debate.

**The ACTING DEPUTY PRESIDENT**—Senator, this is a very long point of order. You are now consuming time that could be used for debate; I hope you realise that.

**Senator Murphy**—But I think it is important, because this is not a normal debate. There is an allocated time and there is a list, and it ought to be fair and reasonable that we should expect the list to be followed. That is my point of order. I think I should get the call because Senator Tierney, who has had three speakers before him, has had ample time to come into the chamber.

**The ACTING DEPUTY PRESIDENT**—I have been in this place for 18 years and I intend to follow the convention that has been observed in that time—that is, that no quorums are called during this debate and that there is a sharing of the time between both sides of the chamber. I therefore intend on this occasion to uphold that convention, and I call Senator Tierney.

**Senator O’Brien**—I rise on a further point of order.

**Senator Tierney**—Oh, come on! You are wasting the time of the Senate.

**Senator O’Brien**—If Senator Tierney will give me 30 seconds, I merely ask that that matter be referred to the President so that we can have a ruling upon which we can rely if there are others in the chair and so it can be a precedent for the future.
The ACTING DEPUTY PRESIDENT—It most certainly can be referred. I call Senator Tierney.

New South Wales: Mental Illness

Senator TIERNEY (New South Wales) (1.47 p.m.)—I rise today to speak on the mental health crisis in New South Wales. This came home to me very dramatically a few weeks ago when my wife and I, together with two of our adult children, left the performance of Cabaret at the State Theatre in Sydney and headed along George Street for coffee. Coming from the glamour and decadence of Cabaret’s pre-Nazi Berlin, we were suddenly confronted on the streets of Sydney by the dispossessed of our society—a group of about 10 people who were aimless, destitute, dirty, drunk and probably homeless. The statistics tell us that in that situation probably 75 per cent of them would have a mental illness—although my wife’s experience as a senior officer in the Department of Community Services told her that in the group before us there was probably closer to a 100 per cent chance of them having some form of mental illness. Many showed signs of brain damage as they clutched their bottles of wine in brown paper bags, swaying and singing along to the music of the evangelist who was at that time trying to save their souls. They were harmless enough and we stopped to talk to some of them in the heart of Sydney, on a balmy spring night within a few hundred metres of five-star hotels and financial centre skyscrapers which denote opulence and success in our society.

Yet the mark of how civilised our society is can be judged by how we treat these really forgotten people. How do we measure up in the state of New South Wales in the care of people with a mental illness? Recently, the Select Committee on Mental Health in New South Wales brought down its interim report. The committee was headed by Dr Brian Pezzutti. I want to draw out of this report one crucial point. The Pezzutti inquiry is the first parliamentary inquiry specifically into mental health in New South Wales since 1877. That is 125 years ago. In 1877, the inquiry identified 11 significant problems with the mental health program at that time. One hundred and twenty-five years later, seven of these 11 problems have not been dealt with properly. Why?

When the latest report was published two months ago, it drew some media comment. Four Corners screened a program which laid bare the run-down in psychiatric services in New South Wales, particularly over the last six years. Two days later, the media moved on to other issues. Contrast this with February 1999, when on the front page of the Daily Telegraph appeared a photograph, taken in a back lane in Redfern, of an older boy showing a younger boy how to shoot up heroin. Quite rightly, there was public outrage. The issue rolled on in the press for many weeks. Quite rightly, the government responded and hundreds of millions of dollars were allocated in a four-pronged attack on the drug problem. The mental health issue raised by the Select Committee on Mental Health died in two days as a media issue. And we are still waiting for Bob Carr to commit one extra cent, even when expenditure on mental health in New South Wales is right at the bottom of the class—sixth out of six, across Australia. Bob Carr probably thinks he can get away with this—

The ACTING DEPUTY PRESIDENT (Senator Knowles)—Senator Tierney, may I correct you. It is ‘Mr Carr’.

Senator TIERNEY—Mr Carr probably thinks he can get away with this because voters do not seem to put mental health very high up the ‘important election issue’ scale. Health is certainly an important issue with the community, but the concern is about access to hospital beds and waiting lists for operations. So I ask: if mental health does not register as a matter that affects voters, how will the lot of people with a mental illness ever improve?

The lack of engagement by the public on this issue is curious when you consider how widespread mental health conditions are, such as depression, anxiety disorders, substance abuse, personality disorders and, to a much lesser extent, psychoses. As for how many people are affected, I note that around 23 per cent of the population have a diagnosable mental illness each year. One-third of these suffer mild episodes and recover without treatment, one-third suffer moderately
severe episodes and should have treatment and one-third suffer severe and/or chronic episodes and need treatment.

Who is affected? Sadly, the worst affected group is the 12- to 17-year-olds—at 20.6 per cent. Of the hope of our future, one in five will suffer a mental health episode. The most shocking result is for the under-one-year-olds. Of this group 5.8 per cent have a mental illness, mainly because of abuse, neglect or mothers suffering severe postnatal depression. So, if you have a 20 per cent chance of having a mental health episode and almost a 100 per cent chance of this happening to someone in your family, what are your chances of receiving professional help?

The answer is not good, particularly if you live in New South Wales. Only 35 per cent of people with a mental illness in New South Wales receive treatment. Most treatment— for 75 per cent of those treated—is provided by general practitioners. Of those treated for anxiety and depression, 55 per cent do not receive effective treatments. All of this raises a number of key questions. Why is such a widespread and disabling health problem occurring in such a wealthy society as ours and why is it so poorly diagnosed, under-resourced and largely untreated? Why don’t the public register mental illness as a major concern and demand that more resources be allocated to this area?

In our culture people do not really want to know; they switch off. We have to ask why. Possibly, it is because there is a great deal of misunderstanding and misplaced fear of people who have a mental illness. Dr Patrick Corrigan, author of Don’t Call Me Nuts, talks about the silent stigma of mental illness when he lists four myths that might explain the public disengagement from mental health issues. Myth 1 is that people with a mental illness are dangerous, unpredictable and out of control and that as a result they can become homicidal maniacs. The fact is that for the most part research suggests that people with mental illnesses are no more dangerous than the rest of the population, except when they use street drugs or are paranoid. Fewer than one in 1,000 people with a mental illness will commit a dangerous act in their life.

Myth 2 is that depression and mania in particular represent a weakness that most members of the population avoid because they have stronger characters. The fact is that serious mental illness is a biological disorder; it is a disease. People no more choose to have depression or schizophrenia than they choose to have diabetes or breast cancer. Myth 3 is that people with mental illness are not capable of living independent lives outside of institutions. The fact is that the vast majority of people with the severest of mental illnesses—schizophrenia, mania and major depression, to name a few—rarely see the inside of a hospital or need institutional care. Myth 4 is that if people with a mental illness are capable of work it is only in mental jobs. The fact is that, like the rest of the population, a small percentage of people with mental illness work as doctors, lawyers and entrepreneurs. Also, mental illness does not necessarily preclude someone from completing schooling or skills training.

Finally, how can we improve what we do for people with a mental illness? There are three key strategies. Firstly, we must increase the mental health literacy of the community. Rotary is to be congratulated on their Australia-wide community forums and support for research into mental illness. Secondly, we must ensure that health practitioners are better able to detect mental illness and provide treatment that works. To achieve this goal there needs to be a large boost in expenditure on mental health, particularly directed at GPs, with training programs and backup resources to make this happen. Thirdly, we need to reorganise mental health services to better provide treatments and forms of support that work in a timely manner—let me emphasise ‘in a timely manner’.

As a society which believes in the self-reliance of the individual, have we struck the right balance between that tenet—and all that it brings as a mainspring of wealth creation and economic growth—and our responsibility in a civilised society to look after those who cannot rely on themselves? Clearly, particularly in New South Wales, the answer is no. Brian Pezzutti’s upper house committee is to be congratulated on exposing the disgraceful state of mental health in New
South Wales. Jillian Skinner has made an excellent start with the mental health policy she released recently. We must now establish plans to ensure that the really forgotten people, the mentally ill, receive the level of care and treatment that should be expected in a civilised society.

The ACTING DEPUTY PRESIDENT—Order! The time for the debate has expired.

QUESTIONS WITHOUT NOTICE

Business: Corporate Governance

Senator CONROY (2.00 p.m.)—My question is to Senator Coonan, the Assistant Treasurer and the Minister representing the Treasurer on matters of corporate governance. Is the minister aware of the most recent survey by the Australian Financial Review which showed that, on average, a CEO receives a massive $1.68 million a year—over 37 times average weekly earnings? How does the minister justify such staggering salaries for CEOs when the average worker earns $44,000 a year?

Senator COONAN—I thank Senator Conroy for his question. The issue of the size of salary packages being paid to corporate executives is, fairly said, one that does trouble some sectors of the community. The sheer sizes of the packages are sometimes difficult to comprehend. I think an abiding principle that Australians agree with is that people should be paid what they are worth and that they have their right to pocket a fair day’s pay for a fair day’s work.

Senators on this side of the chamber would be aware that the growth of executive salaries last financial year appears to be well down on previous years, but that does not address some concerns about the magnitude of some of the payments. There are real issues of fairness if the heads of companies extol the virtues of wage restraint for their workers while accepting excessive salaries for themselves—I think that is a fair point. The owners of these companies—and this is the critical point and the answer to Senator Conroy’s question—and the shareholders and their representatives on the boards can clearly play whatever role they need to in containing or winding back the level of remuneration for executives if they feel that it is excessive. That is the point: the answer to this is in the hands of the shareholders and the boards.

The Labor Party, in its usual attempt to stir up the politics of envy, seems to be suggesting that the government should somehow or other be stepping in and setting the salaries of individual CEOs. Is that what is really being proposed? I do not know whether Senator Conroy dreams of sitting at his desk and setting salaries for CEOs, but it is not going to happen. The shareholders would not be keen on the idea of the Labor Party—or, indeed, the ACTU or any of Labor’s union mates—ticking off what are, or are not, fair and appropriate salaries for individuals.

The decision on the question of what is an appropriate amount for executive salaries ultimately resides with the owners of a corporation and the shareholders. Corporations in this country, I remind the Senate, are not like the ALP: there is no 60-40 or even 50-50 power split. If the shareholders want to alter the rewards received by the leaders of their companies, they are perfectly entitled to do so. I encourage shareholders to be active on this front—including institutional shareholders and superannuation funds, which I have noticed have been taking a great interest lately in this issue. Shareholders and directors need to be vigilant, and the extent of remuneration packages needs to be clearly disclosed so that they can make informed decisions. Nothing alters the point that the answer to this question is quite simple: it resides in the power of the shareholders to do what they wish to about setting executive salaries.

Senator CONROY—Mr President, I ask a supplementary question. Does the minister acknowledge that shareholders have lost millions of dollars over the last 12 to 18 months as share prices have plummeted? Does she acknowledge that the average return to Australian superannuation members last year was negative 4.5 per cent? In these circumstances, how can any increase in executive remuneration be justified, particularly when they follow increases of 13.4 per cent in 2001 and 22 per cent in 2000?
Senator COONAN—I thank Senator Conroy for his supplementary question. I have a very good suggestion for Senator Conroy and those opposite: if they were actually prepared to pass the government’s choice legislation, they would find that those who were trapped in nonperforming funds would actually have a choice and be able to choose where they placed their investment to get the maximum return. The answer to this question lies fairly and squarely in the hands of those opposite. They should pass the government’s choice legislation and stop this fuss.

Victoria: Construction Industry

Senator McGAURAN (2.05 p.m.)—My question is the Minister representing the Minister for Employment and Workplace Relations, Senator Alston.

Opposition senators interjecting—

Senator Conroy—I can’t hear!

The PRESIDENT—Order! No wonder you cannot hear, Senator Conroy, your colleagues are making too much noise.

Senator McGAURAN—Is the minister aware of any data released today on industrial disputes which has particular relevance to the state of Victoria and the construction industry? What evidence is there that the construction industry in Victoria is uncompetitive as a result of the failure of the Bracks government to stand up to militant unions?

Opposition senators—Ooh!

Senator ALSTON—Well may you ‘ooh’! The fact is that ABS data out today on industrial disputes shows that Victoria accounts for the largest proportion of working days lost—40 per cent—and the highest number of working days lost per 1,000 employees—55—in the 12 months to August 2002. This is entirely consistent with what we know about building practices and behaviour in Victoria. The MBA said in June this year:

It cost 25 per cent more to build in Melbourne than in Sydney. There is no question that doing business here is more expensive than in New South Wales. The CFMEU is more flexible and less invasive there than here. The Employment Advocate estimated that building companies factor in contingency budgets of around 22 per cent above the normal cost of a project to allow for industrial relations problems in Victoria.

We all know about the Federation Square blow-out of $340 million, the National Gallery blow-out of a mere $13 million, the Austin Hospital blow-out of $40 million and, of course, the notorious MCG blow-out—where the Bracks government, rather than accepting the national construction code, simply rolled over and said that they would put in the money themselves. There ought to be a reminder of this on the scoreboard at the MCG. There ought to be placards around the ground. The billboards on the arena ought to remind people—or, indeed, Mr Bracks should take out some space and apologise for and explain his behaviour—why Victorian taxpayers like me are being asked to fund this sort of nonsense when the money could be much better spent. To add insult to injury, as an MCC member I have to pay again, and so it is a complete and utter outrage. In fact, the scoreboard ought to have replays of Mr Bracks’s cave-ins—because they happen all the time to the union movement.

We know from Comtechport, which is within my portfolio, that once again the Bracks government quietly signed on to the construction code when it suited them. Mr Bracks, of course, is the No. 1 ticket holder of the AMWU, but that does not stop him getting a character reference from none other than Martin Kingham: ‘I support Bracks; I think he’s done a good job by Victoria.’ That is like Kofi Annan getting a character reference from Saddam Hussein. We know that Mr Grollo from Grocon came out today and said that the Victorian construction industry is in deep trouble, costing the Victorian economy jobs and opportunities, and so we are looking at a return to the flight north that we saw during the eighties.

Mr Grollo said that the game is up for militant unions. He gave a few examples: workers being paid to start at 7 a.m. every day, even though the city council by-laws do not allow you to start work until 8 a.m.; and workers vacuuming water from concrete slabs, even though they are paid wet underfoot allowances. I am sure it goes on—the list must be as long as your arm. Do you ever
hear one word from the Labor Party criticising these sorts of practices? In fact, with the Cole royal commission, we saw people on the other side getting up all the time bagging Cole, pretending that somehow these poor, unfortunate unions are being subjected to unfair practices. In fact, Senator Ludwig said recently:

... unions stand apart from the corporate governance field. They have always been exemplary, as far as I can recollect ...

There is a total failure of memory, a total denial. You do not have to take our word for it. We had Cameron O’Reilly, former adviser to Laurie Brereton, saying only today in the Financial Review:

Federal Labor has become a monoculture, one in which service to the unions or to a party office is almost the only ticket to representing the Labor Party in public office.

So, beware! Quite clearly this is a very shallow gene pool. It is all very well for Kim Carr and company to swim around in it: they know who the real enemy is.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a very distinguished group of politicians from the House of Commons in the UK, as part of the Australian political exchange program. On behalf of honourable senators, I welcome you to the Senate and hope that your stay is both a very productive one and a very enjoyable one.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Victoria: Construction Industry

Senator McGAURAN—Mr President, I ask a supplementary question. Would the minister further explain how the uncompetitive nature of the construction industry is impacting on the state of Victoria?

Senator ALSTON—I think Mr Kingham actually said it all, because we all know Mr Kingham’s illustrious track record of impeccable behaviour on the part of the union movement! When Mr Grollo gave those specific examples, what did Mr Kingham say? He said, ‘It’s all gobbledegook; the young kid’s got a lot to learn.’ That is the sort of denial that you get on the other side of the chamber. These people are not interested in any of the disgraceful industrial relations practices that go on.

Senator Conroy—You’re going down.

Senator ALSTON—You know what is happening in Victoria, Senator Conroy. In your heart of hearts, you ought to be in there apologising. Of course, Senator Carr could not care less about what happened, other than in his own factions and, of course, those internecine squabbles that he has with the industrial right. That is what Senator Carr is interested in. The problem you really have is that you cannot see beyond your own perspective. You are not interested in the welfare of Victorians. You are certainly not interested in cleaning up industrial practices and, as usual, we have to do the job for you.

(Time expired)

Treasury: Australian Office of Financial Management Files

Senator COOK (2.12 p.m.)—My question is to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Can the minister confirm that she advised the Senate in writing on 20 March this year that a list of relevant files from the Treasurer’s portfolio agencies, for the six months ending 31 December, had been placed on departmental or agency web sites, as required by Senate standing orders? Can the minister therefore explain why all AOFM files before 2002, including those relating to the period when AOFM lost billions of dollars of taxpayers’ money through the mismanagement of foreign currency risk, have disappeared from the AOFM web site?

Senator COONAN—I thank Senator Cook for his question. I will check what may have appeared in writing or what the issue is to which Senator Cook refers, because obviously I do not recall the detail of what files may have been referred to, nor precisely the written answers. But the assumption that Senator Cook has made in his question, that millions of dollars have been lost in this matter that has been raging for some time—the foreign exchange losses—is, firstly, not correct. It is not precisely my portfolio area, but I really do not know how many times
Labor need to have the issue of foreign exchange arrangements explained to them. We on this side of the chamber have tried on many occasions to do this, but it should not surprise senators that the Labor Party appears to have no idea at all about a policy of their own making. That is the whole point about this issue. I am happy to go through it again. Why was the policy of foreign currency swaps entered into by Labor? Can anybody remember why? As we all know, the policy was initiated by the Labor Party as a device, a technique, for managing Labor’s mounting debt, which peaked at $96 billion in 1996-97.

The policy was also conducted, of course, on the expectation that the United States dollar debt would result in lower borrowing costs, to take advantage of the lower US interest rates compared to the high interest rates that Australia had under the Labor government—that is, it was a policy born of the chronic failings of the Labor government’s economic management. The Labor Party are masters of rubbery figures and we have seen in this whole issue the most extraordinary and desperate attempts to try to blame this government for a problem of their own creation.

What did the coalition government do? It is worth recounting that we began repaying Labor’s debt, in 1997-98 reducing exposure and helping to reduce the interest rate differentials. Labor’s net debt has now been reduced to $36 billion, which is an extraordinary effort. No swaps to increase US exposure were entered into after February 1999 and the policy was suspended in December 2000. From September 2001, the stock has been run down in accordance with a pre-agreed timetable between AOFM, the Treasury and the RBA, with the aim of eliminating foreign currency swaps altogether. As has been said ad nauseam, the last cross-currency swap matures in 2008. This is starting to be a bit of a tired issue. I do not know how many times we can run through the fact that this was a debt of Labor’s making, a problem of Labor’s making, which this government fronted up to and has fixed.

Senator COOK—Mr President, I ask a supplementary question. Is the minister aware, since she does not recall what was called for, that the order for the production of documents that was tabled in the Senate on 11 March 2002 related to the production of many of the same AOFM files now missing from the web site? If the minister does not recall, will the government now comply with that order and produce the documents, and will the government restore the missing AOFM files to the web site in compliance with the Senate standing orders? On a final point, Labor may have introduced currency swaps, but you lost billions of dollars when you managed them. Will you now admit that fact?

Senator COONAN—I thank Senator Cook for the supplementary question. I obviously have an obligation to check to see what documents were called for production and whether or not there is anything further that can be done. So far as I know, there has been complete compliance with the order for production but, as I have said, I cannot recall in my head every document that might have been called for in an order. As far as the second part of Senator Cook’s supplementary question is concerned, the issue simply does not arise, because the source of this whole problem is undeniably and indisputably the Labor government’s problem, and this government has fronted up and fixed it.

Gun Control

Senator BARNETT (2.18 p.m.)—My question is to the Minister for Justice and Customs, the Hon. Chris Ellison. Will the minister inform the Senate of any new Australian government initiatives to tighten hand gun regulations across Australia?

Senator ELLISON—that is a very important question from Senator Barnett of Tasmania, a state which knows only too well of tragedy in relation to the illegal use of firearms. I am happy to report that at the Australasian Police Ministers Council last week the Commonwealth initiatives that were put forward were accepted in relation to hand gun law reform. But at the outset I want to stress that the priority remains with the use of illegal firearms. Each year, we have the theft of 4,200 firearms in Australia and that is a diversion from the legal sector to the
criminal sector. That still remains a high priority for the Commonwealth government.

In relation to the agreement reached last week, what we took to the Australasian Police Ministers Council were proposals which the Prime Minister put to the premiers and chief ministers when they met before that. We outlined a detailed proposal which would achieve a fair balance between public interest and safety on the one hand and the interests of legitimate sporting shooters on the other. We identified in excess of 250 types of hand guns that were not applicable to legitimate sporting events and we also identified some 10 disciplines of semi-automatic hand gun events which were legitimate sporting shooting events. We said to the Police Ministers Council that we have a proposal here which is a chance to bring sweeping hand gun law reform. As well as that, what we sought from the states and territories was further regulation in relation to the licensing of hand guns, the storage of hand guns—because of the theft problem that I mentioned—and empowering sporting shooting clubs to deal with undesirable members, because they had come to us and said: ‘We have an issue here. We have a situation where we have tried to expel members. They have taken us to the Administrative Appeals Tribunal and overturned our decisions.’ Of course, our proposals dealt with that.

Needless to say, the tragic events of Monash University brought this all into sharp focus. The proposals that the Commonwealth have put forward would have resulted in the alleged shooter not having access to any of those guns. The list of hand guns that we have drawn up is a draft list and that is being worked on between officials and the sporting shooter sector. We will reconvene as a Police Ministers Council and re-examine the 19 proposals that we have agreed on, and it will then go forward to the Council of Australian Governments in mid December. We have here a golden opportunity for all the state and territory governments to work with the Commonwealth in relation to the Commonwealth’s initiative to regulate the use of hand guns in the community and also to outlaw those hand guns which are not applicable to legitimate sporting events.

What we have done in this whole process is look at the interests of legitimate sporting shooters, and they have been working with us in identifying those events and ways that we can tighten controls, but of course you have to remember that the constitutional responsibility of the day-to-day regulation of hand guns lies with the states and territories and we have a distinct problem in the number of thefts of firearms each year, where firearms are stolen and diverted into the criminal market. That is where the problem lies and that is what we must address. That is part of the proposal that we have put forward and we will be taking that back to the Police Ministers Council when we meet in late November.

DISTINGUISHED VISITORS

The PRESIDENT—I draw the attention of honourable senators to the presence in the gallery of three staff members from the newly formed East Timorese government who are here observing our parliament. I wish them the very best for their time with us; we are very pleased to have them with us.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Australian Securities and Investments Commission: Endispute Pty Ltd

Senator FAULKNER (2.22 p.m.)—My question is directed to Senator Coonan, the Assistant Treasurer and Minister for Revenue. Does the minister recall notifying the Senate register of interests on 7 January this year of her resignation as a director of Endispute, and on 6 February of the divestment of her interest in the same company? Can the minister explain why Australian Securities and Investments Commission records still show, as late as today, that she remains a director of Endispute Pty Ltd and retains a 50 per cent shareholding in the company? Given the minister’s responsibilities for ASIC, can she indicate whether it is usual for ASIC to take the best part of a year to process this sort of information?

Senator COONAN—Thank you, Senator Faulkner. I have resigned as a director of Endispute, which is just a private family
company. I have resigned as a director; I have no shareholding—I have transferred my shareholding. I cannot say why it may not have been registered. Obviously, I will make an inquiry.

Senator FAULKNER—Mr President, I ask a supplementary question. I appreciate the fact that the minister will make that inquiry. In these circumstances, I ask the minister to inform the Senate, or take it on notice if she is not able to now, when she resigned as a director and when she divested her shareholding. Can she inform the Senate to whom she divested interest in the company? Can she also inform the Senate when ASIC was advised of these changes and who advised them so we can make assessment about ASIC's role in relation to the processing of this sort of information.

Senator COONAN—I thank Senator Faulkner for the supplementary question. Obviously, when you resign as a director and you divest yourself of a shareholding you do not personally have any obligation to notify ASIC, so I am not able to provide that information. What I can do is ascertain dates, because I would not be in a position to do that just off the top of my head. As to the other part of the question, Senator Faulkner, it is not up to me as a minister to be interfering in any internal processes of ASIC as to when they may see fit to register any information they get.

Environment: Endangered Species

Senator BARTLETT (2.25 p.m.)—My question is to the Minister representing the Minister for Environment and Heritage. The minister would be aware of a recent announcement by the federal government of an agreement they reached with the Beattie Labor government authorising the shooting by fruit farmers of up to 1.5 per cent of the total population of the listed threatened species the spectacled flying fox. The agreement between the governments essentially declares that the referral provisions of the environment protection act do not have to be met if the terms of the agreement have been adhered to. I ask the minister: what is the legal basis in the Environment Protection and Biodiversity Conservation Act for this agreement? How is the agreement different from a section 29 action declared by agreement not to need approval? If they are the same, why hasn't the minister tabled the agreement in the Senate as a disallowable instrument, as required by section 33 of the EPBC act? Will he now agree to table that agreement? (Time expired)

Senator HILL—The question calls for considerable detail and includes issues of legal interpretation, which is not normally given—as is the practice—in this place. I will take the question on notice and see what I am able to provide.

Senator BARTLETT—Mr President, I ask a supplementary question. My question and supplementary question go to a simple matter of whether or not the government has a legal basis for the agreement it has reached with the state Labor government in Queensland to shoot significant numbers of threatened species—namely, the spectacled flying fox—in a mechanism which does not enable adequate monitoring of how many flying foxes are actually shot. Surely the minister can assure the Senate that this agreement is legal and does not go outside the EPBC act. Surely the minister can clarify that we have not reached a stage where a state and a federal government minister can simply sit in a back room and draw up an agreement to ignore our own very strong federal environment protection laws.

Senator HILL—Protected species that need protection at a national level are duly protected. The act does provide for actions to be taken in certain circumstances but, as I said, I think that the best way to approach this matter would be to get a detailed response and provide the detail requested by the honourable senator.

Telstra Enterprise Services

Senator LUNDY (2.28 p.m.)—My question is addressed to Senator Alston, the Minister for Communications, Information Technology and the Arts. Does the minister recall assuring the Senate on Monday that Telstra Enterprise Services—the company which provides IT services for the ACCC, the Department of Communications, Information Technology and the Arts and the Department of the Prime Minister and Cabi-
—is required by its contract with the government to operate wholly independently of Telstra? Is the minister aware that, according to Computerworld magazine of 4 November, Telstra is planning to abolish this wholly owned subsidiary by Christmas and bring all its functions in-house? On what basis, then, can the minister claim that sensitive business with these departments will be kept wholly independent of Telstra?

Senator ALSTON—As I understand it, Senator Lundy is not disputing current arrangements. She is really foreshadowing that there might be a problem down the track if Telstra were to rearrange its business structures. In that event, one would expect that they would honour the terms of that existing agreement. Seeing that you have brought to my attention something that I was not aware of, I will pursue the matter with Telstra to ensure that the current arms-length protection arrangements continue to operate.

Senator LUNDY—Mr President, I ask a supplementary question. How can the minister guarantee that it would be impossible for commercially sensitive information about government policy or the ACCC’s telecommunications regulation activities to be used by Telstra to the detriment of telecommunications competition if it becomes fully privatised?

Senator ALSTON—I am not really sure about the logic of that question. The fact is that whoever might be in a position theoretically to have access to sensitive information has an obligation to ensure that they do not misuse that access. Those who are the owners of that information, whether it be intellectual property or otherwise, such as the Commonwealth government, would similarly be very concerned to ensure that arrangements are in place to require that that demarcation line is carefully drawn and observed. That applies whether the carrier might be, whatever the circumstances of that carrier—whether it be partly government owned, wholly government owned or fully privately owned. Speculating about what might happen down the track is not really the issue. The issue is to ensure that whoever is responsible for the carriage of sensitive information is not in a position to misuse that information. (Time expired)

Trade: United States

Senator NETTLE (2.31 p.m.)—My question is to Senator Hill, representing the Prime Minister. Given reports in today’s media that, as part of the negotiations for a bilateral free trade agreement between the United States and Australia that begin with discussions tomorrow with the Prime Minister, the United States is demanding a winding back of rules protecting Australian media content, our quarantine standards and the Foreign Investment Review Board and previous statements targeting price controls underpinning the Pharmaceutical Benefits Scheme, will the government give a commitment that there will be no trade-off on these controls that protect the public interest?

Senator HILL—Discussions will be held tomorrow between our trade minister and US Trade Representative Zoellick and they will include the subject of the proposed free trade agreement. No doubt the content of that will therefore logically be included within the discussions. As I have said before in this place, the purpose of this agreement is to benefit Australia by seeking to further open up the world’s largest market to our exporters. That brings benefits that flow to all of the community. I hope that the initiative will therefore be supported by all honourable senators. At the same time, we obviously do not wish to sacrifice protections that exist under Australian law such as quarantine and others. This is all part of a trade negotiation, as you would expect, and I think it is better that the detail evolve from the negotiation that we hope will take place.

Senator NETTLE—Mr President, I ask a supplementary question. Will the government give a commitment that its support for a unilateral US war on Iraq will not influence the negotiations on a bilateral trade agreement with the United States?

Senator HILL—This negotiation is to bring trade advantages to Australia and will be a negotiation based on that fact. But I do remind the honourable senator that the premise in her question is false.
Medicare: Bulk-Billing

Senator CROSSIN (2.33 p.m.)—My question is to Senator Patterson, the Minister for Health and Ageing. Does the minister recall telling the Senate on 28 August this year that in relation to the release of the Medicare bulk-billing figures:

... the Health Insurance Commission release the data six weeks after the end of the quarter ...

Now that it is six weeks and two days since the end of the September quarter, why have those figures not been released? Does the minister’s advice to the Senate about the automatic release of the bulk-billing figures still stand or is she shifting the goalposts once again to delay the release of the figures in order to deny the parliament the opportunity to debate them this week?

Senator PATTERSON—I thank the honourable senator for her question. I do not know how many times I will have to say that, but I suppose it will be every quarter and every time that the bulk-billing figures are due to come out. The figures are released by the Health Insurance Commission. They release them six weeks after the end of the quarter. I do not know whether it is to the day or not; I do not have any say in when they are released. I usually get them the night before as a note—not to do anything with them. After the end of the financial year, because there is more data involved, they release them eight weeks after the end of the quarter. I have said it, and I will say it again, and I guess I will say it again the next quarter and the quarter after that: the HIC release the figures. They determine when they will be released and they release them. I do not know that it is to the day, but they release them six weeks after the end of the quarter on which they are reporting—I will keep saying it because I do not think I can make it clearer—and they release them eight weeks after the end of the quarter which ends in the financial year. I believe that they are going to be released on Friday, but I do not have a say in when they are released. The HIC makes the decision as to when they will be released.

As I said, I will be briefed shortly before the statistics are released in the sense of a note coming over. I will not be commenting on them until they appear, because I do not see the statistics until they send the note over. I want to note that, as minister, I have been cooperative, when I could, in relation to Medicare statistics. I have had an endless stream of questions on notice from honourable members and senators about them. I have been asked for electorate based statistics; I have been asked for statistics in other forms. I have actually been asked for the statistics based on postcode. Because sometimes there are very few people living in a postcode area, statistics based on postcode would breach privacy. I will continue to take the approach to be as open as I can with the data I have. Let me say again to all honourable senators on the other side of the chamber: the HIC release the data, not me, and I believe it is to be released on Friday. As I said, I will most probably be advised in a note late tomorrow, I guess—I do not actually ask them when I am going to get it. We were asked this question last time and I said it was eight weeks after—this time it is six weeks after, next time it will be six weeks after, the time after that it will be six weeks after and the time after that it will be eight weeks after.

Senator CROSSIN—Mr President, I ask a supplementary question. I thank the minister for her answer. Now that the six weeks has passed since the end of the September quarter, has the minister in fact seen the note regarding this quarter or will the minister ask the HIC to release the September quarter bulk-billing figures today in accordance with the timetable she has outlined to the Senate?

Senator PATTERSON—I would ask the senator to get her act together and actually ask a question that relates to the answer and not to ask the question that she has there as her supplementary question. She should be capable of actually asking a question based on my answer. I will say it again—the HIC determines the date when they will be released. It is about six weeks after the quarter and eight weeks after the quarter. I have not seen the note. I do not think it has arrived in my office today—I have been down in the chamber all day—but it usually arrives late on the day before they are released. I presume that that will be the case. All I do is
note it. It is a minute for noting—not for any action, but just to inform me about the statistics. The answer is that I have not seen the note. The answer is that I believe the HIC is releasing them on Friday. The answer is that the HIC determines when they will be released and it will be about six weeks—I do not know if it is exactly six weeks—after the quarter and eight weeks after the end of the quarter at the end of the financial year. *(Time expired)*

**Drought**

Senator CHAPMAN (2.38 p.m.)—My question is directed to the Minister representing the Minister for Agriculture, Fisheries and Forestry. Will the minister outline what the Howard government is doing to assist farmers who are facing hardship in drought stricken areas of Australia?

Senator IAN MACDONALD—I thank Senator Chapman for the question. I know he has a very big interest in this, coming from South Australia where, I might say, the South Australian Labor government recently made a very magnanimous gesture for drought relief. They provided some money to replace money they withdrew from a Commonwealth program on droughts when they first got into power. The other bits of the money went to frost relief, would you believe, in the time of drought, and also to roads. That is indicative of what the state governments are all about.

Senator Chapman’s question does enable me to go back through just what this is all about. I know farmers out there and the public generally hate more than anything governments squabbling with each other and saying, ‘It’s your fault’ and so on. But it is important that we all understand that droughts were originally a state responsibility. They came in under the natural disaster relief arrangements. But in 1992 a new national drought policy was developed between all of the states and the Commonwealth. What that provided was that in droughts the states would take the initial action. They would pay the money that was necessary to address the impacts of drought. It was also agreed that, when a drought was a once-in-a-lifetime event or a one-in-25-years drought, the Commonwealth would come in with additional funding, because it was seen to be beyond the ability of the states to cope. That is the background of it. It is very important that it is understood.

Since then the Commonwealth has made very significant contributions under the drought EC or exceptional circumstances provision. I am able to say that, in the Bourke and Brewarrina areas of New South Wales, drought EC or exceptional circumstances have today been officially declared. That means that, in addition to getting the welfare payments that farmers in those areas have been getting now for some weeks, they will be entitled to business assistance and other relief from the federal government. That is very important.

I heard Senator O’Brien speaking in the debate just before lunch, saying that nearly all of New South Wales was drought affected and somehow blaming the Commonwealth for that fact. It is important to understand that the Commonwealth can only act on drought relief when the states make an application to it. Until today the New South Wales government had made one application, for Bourke and Brewarrina. On 19 September, one week after receiving that, money actually started going to those people—$44,000 has already gone to those people from Commonwealth money.

For the rest of New South Wales that Senator O’Brien talks about, there has still not been an application made by the New South Wales government. I correct myself—I am sorry. Three applications came in today. The Commonwealth has to assess them, refer them to an independent committee and then act on them. But the New South Wales government have been recalcitrant in not putting those in before today. I ask Senator O’Brien to tell me: what has the New South Wales state Labor government paid for drought relief? Give me a cash sum. Give me a cash amount. They will not say, because they are embarrassed that they have spent nothing whilst the Commonwealth has spent a considerable amount and is going to spend a lot more. You should also get onto your Queensland colleagues, Senator O’Brien; they are asking for drought relief in the Emerald—
The PRESIDENT—Minister, would you put your answer through the chair, if you do not mind.

Senator IAN MACDONALD—I am sorry. Senator O’Brien asked about the Peak Downs in Queensland—

Senator Faulkner—No, he didn’t; that was someone else!

Senator IAN MACDONALD—He did yesterday. In Emerald and the adjoining shire of Belyando—(Time expired)

Senator CHAPMAN—Mr President, I ask a supplementary question. I appreciate the answer that the minister has given. Could he provide—

Senator Faulkner—You’ll get an Academy Award if you keep going!

Senator CHAPMAN—That may be the case, but those who are interested in drought relief, Senator Faulkner, are interested in what the minister is saying. Could the minister further advise us of what the federal government is doing to overcome the recalcitrance of states in dealing with drought relief issues?

Senator IAN MACDONALD—It is very difficult for the Commonwealth, because the Queensland government were so uninterested in Peak Downs that they did not even put in the application. They got AgForce, the farmers’ group, to actually prepare the application so that they could send it in. That is how uninterested the Queensland state Labor government were. Can I also say that Queensland asked for drought relief for the adjoining shires of Belyando and Emerald. That is a bit of a laugh, because the Queensland government have not even declared those two shires to be drought affected for their own purposes, yet they are asking for the Commonwealth to give exceptional circumstances drought relief. That is the way the state Labor governments are playing politics with this. It is an easy attack on the Commonwealth to say that the Commonwealth should do this, but under the arrangements the states have the prime responsibility. We only come in when the drought is exceptional and then we do help. (Time expired)

Health: Pharmaceutical Benefits Scheme

Senator CARR (2.44 p.m.)—My question without notice is to the Minister for Health and Ageing, Senator Patterson. Bearing in mind that tomorrow is World Diabetes Day, can the minister confirm that last year the Pharmaceutical Benefits Advisory Committee approved two new drugs for the treatment of diabetes—Avandia in March and Actos in September? Has the government taken a decision on listing these drugs under the PBS? If not, what is the reason for the delay? Can the minister also confirm that she has had representations concerning the lack of transparency surrounding the process of listing under the PBS and, further, that the time frames for decision making are impacting on international business confidence in Australia as a location for R&D investment?

Senator PATTERSON—This gives me an opportunity to talk about the Pharmaceutical Benefits Scheme and the process. The Pharmaceutical Benefits Scheme is one of the best systems in the world. It enables all Australians to have medications at a subsidised rate. That is something that people do not understand. People who pay the general rate do not often realise that the most commonly prescribed medication on the Pharmaceutical Benefits Scheme costs $80 per person per month. The cost of the Pharmaceutical Benefits Scheme went from $1 billion in 1990 to $4.8 billion last financial year. What we have to do is ensure that we manage the Pharmaceutical Benefits Scheme in a number of ways. One of them is to get the best price we can for a medication. The Productivity Commission found in a survey of prices for medications around the world that we get the best prices because we have negotiated prices. Of course we always have to realise that there is a fine balance between the profits that the companies have to make and our protecting taxpayers’ funds. What happens is that the pharmaceutical companies make an application to the Pharmaceutical Benefits Advisory Committee to put a medication onto the PBS. The PBAC then makes a decision as to whether it is cost effective—whether it is efficacious.
Senator Faulkner—That’s all very well and good, but when are you going to answer the question?

Senator PATTERSON—Senator Faulkner is sitting there shouting, ‘When will you get to the answer?’ Yes, I will get to the answer, but I am going to tell people about the Pharmaceutical Benefits Scheme in the process. There are some other medicines—Avandia, Singulair and Spiriva—on which there have been delays in finalising pricing agreements between the department and the manufacturers. Important as they are, I believe it is legitimate that the government does what it must to make potentially life-saving medicines, such as Gleevec, available on the PBS as soon as possible.

As I said, negotiating pricing arrangements is often a very difficult task, as manufacturers will naturally always seek pricing arrangements in their best interests but not necessarily always in the best interests of the taxpayer. I categorically reject any suggestion that the government is delaying the listing of the new medicines. The new PBS schedule effective from 1 November 2002 includes three new listings: Xigris, Movicol and Valcyte. One of them is for treating sepsis, one is a laxative for cancer patients and the other is for treating HIV-AIDS patients. Xigris is a new drug which may be used in the treatment of potentially fatal complications of meningococcal disease. It is an important addition to the treatment options for this devastating disease.

Clearly, any suggestion that the government is delaying the listing of new PBS medicines is false. However, I caution the Senate against thinking that, without support for the government’s budget measures, the PBS can carry on growing at an unsustainable rate. It cannot. It cannot grow as it has from $1 billion in 1990 to $4.8 billion last year. Let me remind honourable senators that when Labor were in government there was a medication recommended by the PBAC—I cannot remember the name of the drug, but I have mentioned it once before in the chamber and I am sure it begins with ‘r’—for which the Labor Party could not get agreement on what they thought was a reasonable price, and it was never listed. They can sit over there and talk about delays. We are not delaying, but we are determined to ensure that we get an appropriate price that means that the taxpayers’ money is well spent and that we are able to have a sustainable Pharmaceutical Benefits Scheme.

Senator CARR—Mr President, I ask a supplementary question. Minister, can you confirm that, contrary to what you have just said, a pricing agreement was reached in January this year? It has been 19 months since the PBAC authorised these drugs. Can you also confirm that you have yet to even take a submission to cabinet on this matter? Can you also confirm that there is no new money involved in the cost of this drug—that the money that would otherwise be spent would be provided by savings through patients who are being forced to undertake insulin treatment? Can you further confirm that over 1,000 extra patients have been obliged to undertake transfer to insulin therapy during the period of your delay in processing this matter?

Senator PATTERSON—Senator Carr gets up with this sort of feigned aggravation. Let me just say—

Senator Carr—Don’t mislead the Senate!

Senator PATTERSON—I think that Senator Carr ought to withdraw that because it is impugning me, but I suppose I would not put anything past him. We are not delaying any medication going onto the PBS. Gleevec, for example, a medication that cost $50,000 per person per year, was listed and I did attempt to have that fast tracked because of the life-saving nature of that medication, but we have not delayed medications going onto the PBS. As I said, we negotiate price agreements that are in the best interests of the Australian taxpayer. (Time expired)

Australian Federal Police: Child Sex Tourism

Senator RIDGEWAY (2.51 p.m.)—My question is to the Minister for Justice and Customs, Senator Ellison. Minister, my question relates to the ongoing and very serious problem of Australians engaging in child sex tourism, particularly in Asia. Whilst I am aware that the Australian Federal Police are stationing specialised staff in a number of
countries and trying harder to enforce Australian legislation that criminalises child sex tourism, does the government agree that more preventative training and educative measures need to be taken in Australia to prevent child sex tourism rather than focusing on the prosecution end? Is the government prepared to provide ongoing support to organisations like ChildWise, which has been proactively working in this area for over 10 years and running very effective awareness-raising programs like Travel With Care?

Senator ELLISON—One thing I am pleased to say is that we had a successful prosecution—the first of its kind in relation to child sex tourism—just recently. Of course, this is an initiative that the government has had in place now for some time. It was in 1994 that child sex tourism offences came into place, and the law contains penalties of up to 17 years imprisonment for Australians involved in sex offences against children overseas. We do believe that the penalty aspect is very important. We do believe that one of the best ways of prevention is the deterrence factor. In relation to education, we believe there should be an aspect of education for prevention—there is no question about that.

On the question of direct assistance, Australia has provided direct assistance to Asian countries in training police to investigate sexual offences against children and has signed a number of MOUs. These agreements build upon cooperation between the countries and allow for an exchange of information relating to child sexual abuse. That may assist in identifying groups and also individuals involved in the sexual exploitation of children. We also recently introduced protection for child complainants and child witnesses in proceedings for child sex tourism and other child sex offences. Certainly, in relation to educating people, we make it very public that we are cracking down on people who engage in child sex tourism. I believe the recent successful prosecution is one of the best forms of notice you can have in the community that if you engage in this sort of conduct you will be prosecuted and convicted.

Senator RIDGEWAY—Mr President, I ask a supplementary question. I thank the minister for his answer. Minister, I am aware that there has been an additional conviction; however, there have been only 16 prosecutions of Australians engaging in child sex tourism, yet we all know this is the tip of the iceberg. It is estimated that there are around 20,000 children in Cambodia alone being abused. Isn’t it common sense that we do need to take a two-pronged approach on the issue to deter Australians from taking these kinds of holidays in the first instance? Surely you would agree that no amount of police enforcement will make a serious dent in the problem? In addition, whilst the government has been doing things with the Cambodian government, what further efforts will it take and why is there still a reluctance to mount further cases against those suspected of paeophilia in Cambodia?

Senator ELLISON—In relation to the number of charges under the Crimes Act for these offences, as at 27 August this year there were 14 persons charged. I will not comment on those matters as they are ongoing. But can I say that, certainly, the education of the public is an aspect we looked at in the crime prevention strategy we funded in the past—a program in relation to the education of the public about child sex tourism. We still believe deterrence is the best way to approach this.

Veterans: Gold Card

Senator MARSHALL (2.55 p.m.)—My question is to the Minister for Health and Ageing, Senator Patterson. Given the increasing evidence that medical specialists are refusing to accept the gold card as payment for treatment of veterans, what measures are being taken to reissue veterans with a Medicare card to ensure that they receive the care they require at public hospitals and from GPs?

Senator PATTERSON—With all due respect, Senator Hill represents the Minister for Veterans’ Affairs in this chamber; but obviously you have asked me the question because it relates to health.

Senator Hill interjecting—
Senator PATTERSON—As Senator Hill says, his advice is that doctors continue to do the right thing. This question has been asked before and I will give the same answer I gave before. The government is aware that some doctors are concerned about the level of fees for services to the veteran community. I understand the Department of Veterans’ Affairs is discussing the matter with the Australian Medical Association. I am advised that the overwhelming majority of specialists continue to accept the repatriation gold card for veteran patients and provide the service at no cost to the patient.

Senator Hill—It is a credit to them.

Senator PATTERSON—As Senator Hill says, it is a credit to them. I am advised that, where a veteran is having difficulty locating a treatment specialist, the Department of Veterans’ Affairs can assist in locating an alternative practitioner who will accept the gold card. With respect to general practitioners, the memorandum of understanding between the Department of Veterans’ Affairs and the Australian Medical Association is due to expire in December. Over 12,000 general practitioners participate in this scheme and continue to provide services to veterans and war widows. Under the memorandum, participating local medical officers receive a higher rebate, equal to 100 per cent of the Medicare benefit schedule fee, for treating veterans. The rebate paid to general practitioners who are not party to this arrangement is equal to 85 per cent of the Medicare schedule fee plus 60c. I have been advised, and I think I have advised the chamber before on this issue, that any veteran who is unable to receive treatment because of a refusal to accept the gold card should contact the nearest state office of the Department of Veterans’ Affairs to gain assistance in finding an alternative general practitioner. I understand that the Minister for Veterans’ Affairs is keen to extend the current arrangements with general practitioners under the memorandum of understanding with the AMA for a short period to explore options to address their concerns about the scheme.

Senator MARSHALL—Mr President, I ask a supplementary question. In the event that veterans proceed to take out private health cover in lieu of the dishonoured gold card, will the government compensate them for the penalties entailed for the loss of no-claim benefits?

Senator PATTERSON—that is a hypothetical question and really should be ruled out of order.

Senator Faulkner—It’s a very good question.

Senator PATTERSON—Let me go back and say that the Minister for Veterans’ Affairs is engaged in discussions with the AMA—

Senator Faulkner—Lots of veterans are very worried about that issue.

Senator PATTERSON—If Senator Faulkner wants to answer the question, he can get up and have a go and take note—or however he would like to do it—but I am trying to actually give the honourable senator a reasonable answer to his question. As I said, the minister is in negotiations with the AMA. I have also tried extending the memorandum with general practitioners to ensure that the veterans are covered. In a case where a veteran is unable to receive treatment, I am advised that the Department of Veterans’ Affairs will arrange for the veteran to get to a doctor who does honour their gold card.

Health Insurance: Rebate

Senator REID (2.59 p.m.)—My question is to the Minister for Health and Ageing. Will the minister inform the Senate of the latest figures showing the number of Australians with private health insurance. Is the minister aware of any alternative policies or of any recent comments concerning the future of the 30 per cent private health insurance rebate?

Senator PATTERSON—Thank you, Senator Reid, for your question. The September figure for Australian private health insurance has remained stable, unlike under Labor when it declined rapidly and was unsustainable, as former Senator Richardson said. Although the proportion of the population covered went from 44 to 44.1 per cent, the number of Australians covered actually grew by 4,268, to 8,000,709. This demonstrates the success of the determination of our government to restore the balance be-
between the public and private health systems. This is just the latest in a sequence of data that shows clearly the incredible success of the 30 per cent private health insurance rebate, Lifetime Health Cover and no gaps. Last year, 2000-01, we saw for the first time in history a fall in the number of public hospital admissions, by almost 5,000—almost a 0.1 per cent decline. At the same time, the number of private hospital admissions went up by over 12 per cent. Nobody can say that is not taking a load off the public hospitals. Importantly, these figures do not include the real impact of the Lifetime Health Cover initiative.

Clearly we have restored balance to our health system and taken pressure off Medicare and the public hospital system. I was in Queensland last week—in fact I was in Queensland twice last week—visiting a small private hospital where there is now an after hours centre operating for general practitioners in the area. The director of that hospital, a very impressive young woman, said that had these reforms and changes not come in the hospital would not have been there; the Uniting Church was thinking of dropping out, the hospital would not have been there, would not have been providing this service to those people on the coast and would not have been able to offer a service for after hours care that relieves the doctors in that area and enables them to roster and to have time off. So there was a double impact. There are some hidden benefits of the fact that the private hospital system is viable.

Clearly we have restored balance to our health care system and taken pressure off Medicare and the public hospital system. Over half of procedures are now performed in private hospitals: half of the procedures for chemotherapy, 53 per cent of major procedures for breast cancer, 56 per cent of cardiac valve procedures and 60 per cent of joint replacement and limb re-attachments. So there is clear evidence that there has been a freeing up of public hospitals, and in addition there was a $3 billion windfall to the states when we did not claw back money we said we would claw back as private health insurance went up.

The Labor Party needs to decide whether it supports the 30 per cent rebate. The families who get a rebate of about $750 a year will be very interested to know whether the Labor Party supports it. The people who are waiting for elective surgery, who were putting off having surgery that was not lifesaving or was not seen to be urgent and who were living with the pain, for example, of severe bunions reducing their mobility will be interested to know what the Labor Party is going to do about supporting private health insurance. Let me say that on this side of the chamber we support a strong public system and a strong private system. We believe that is the best way to ensure that we get the best health outcomes for all Australians.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

National Stem Cell Centre

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.03 p.m.)—Senator Murphy asked me a question yesterday about the National Stem Cell Centre, which I took on notice. I seek leave to incorporate a response in Hansard.

Leave granted.

The response read as follows—

Accountability of the Centre to the Commonwealth

Funding for the National Stem Cell Centre is from two sources—Biotechnology Australia, within the Department of Industry, Tourism and Resources, and the Australian Research Council. Because of this, the Centre will be required to be accountable to both agencies. An Executive Committee comprising officers from the two agencies will monitor the activities of the Centre through provisions to be contained within the funding Deed, including regular reporting of the Centre to the agencies on its research activities, and also the Commonwealth’s ability to review these activities.

Ensuring the Centre and its Intellectual Property is managed for the Maximum National Benefit.

There are a number of measures being taken to ensure that the activities of the Centre and its intellectual property are managed for the maxi-
mum national benefit, however these arrangements will not be finalised until negotiations on the Centre’s Business Plan and the Deed of Agreement are complete. The following points detail likely arrangements resulting from the negotiation process.

**Reporting**

To ensure the Centre and its intellectual property is managed for the maximum national benefit, under the Deed of Agreement the Centre will be required to provide regular reports to the Commonwealth with respect to:

- achievement of Centre outputs and outcomes;
- progress and achievements in Centre operations;
- descriptions of research undertaken;
- achievements in the area of research commercialisation; and
- compliance with biological standards.

**Business Issues**

In addition, provisions within the Deed of Agreement will require that:

- the Commonwealth approve the Centre’s final business plan, and material amendments to the business plan;
- the Commonwealth approve intellectual property commercialisation plans of the Centre, including any offshore commercialisation of intellectual property;
- the Centre’s activities comply with the objectives of the Centre of Excellence program;
- the Centre’s key performance indicators under the Centre’s business plan require the Centre to deliver national economic benefits;
- the Commonwealth approve the Centre business plan; and
- payments to the Centre be made after the Centre has provided a report on the expenditure of the funds provided in the previous instalment. The Commonwealth will be able to withhold payments if it is not satisfied that the Centre is performing in accordance with the objectives and the terms and conditions of the Deed.

**Conflict of Interest**

- The Centre must warrant that at the signing of the Deed, no conflict or risk of conflict of interest or is likely to arise in the performance of its obligations.
- The Centre must disclose in writing prior to the signing of the deed if any conflict of interest exists.
- Thereafter, the Centre must notify the Commonwealth if any conflict of interest arises during the term of the contract.
- The Commonwealth is entitled to ask the Centre to resolve any such conflict of interest.
- If the Centre does not notify the Commonwealth on any conflict of interest or it fails to resolve the conflict of interest, as required by the Commonwealth, the Commonwealth may terminate the Deed.

**Adherence to Ethics Codes**

The Deed being developed between the Commonwealth and the successful Centre operator will require that the Centre’s operator will comply with all relevant legislation, regulations, and ethical codes and guidelines.

This will include compliance with outcomes of the decision taken at COAG on 5 April this year with respect to regulation of embryo research.

The funding Deed will be drafted to include provisions such that:

- all research conducted by the Centre must comply with all applicable laws, ethics, codes and guidelines of the Commonwealth, States and Territories or local authorities;
- these include NHMRC guidelines (including the National Statement on Ethical Conduct in Research Involving Humans, and Ethical Guidelines on Assisted Reproductive Technology) and requirements under the Gene Technology Act 2000;
- the Centre must also comply with the laws, regulations and guidelines in other places in which research is being conducted;
- all Centre research must have the approval of the relevant institutional bio-safety, animal ethics or human research ethics committee. It is a condition of the NHMRC guidelines (human or animal) that approval from the relevant committee is obtained before any research work is undertaken; and
- the Centre must submit evidence of such approvals to the Commonwealth.
- the Commonwealth may, at any time, carry out reviews of the activities of the
Centre to determine whether or not the Centre is complying with the conditions of the deed, including compliance with relevant ethics codes and guidelines.

• Under the NH&MRC guidelines on ethical matters for research involving humans, the National Statement on Ethical Conduct in Research Involving Humans (1999), those staff who conscientiously object to research projects or therapeutic programs conducted by institutions that employ them should not be obliged to participate in those projects or programs to which they object, nor should they be put at a disadvantage because of their objection. The Centre must comply with this provision. In addition, an express clause to this effect will be included in the Deed of Agreement between the Commonwealth and the Centre.

The Commonwealth will reserve the right to terminate the Deed in case of any breach by the Centre of any compliance requirements.

The members/owners of the company—National Stem Cell Centre Ltd

Details of this aspect of the Centre will not be finalised until negotiations on the Centre’s Business Plan and the Deed of Agreement are finalised.

These negotiations are currently in abeyance. However, it is intended that the National Stem Cell Centre Ltd will be incorporated as a non-profit company limited by guarantee. It will operate as a not-for-profit company to allow it to be independent of the institutions which are partners in the Centre.

The Directors of the National Stem Cell Centre

Complete details of the governance aspects of the Centre will not be finalised until negotiations on the Centre’s Business Plan and the Deed of Agreement are finalised. However, the Centre’s Board is composed of:

Bob Moses (Chair)

Bob retired from CSL Limited in 2001, where he was Vice President of CSL Limited. Prior to joining CSL, Mr Moses was Managing Director of commercial law firm Freehills, Chairman & CEO of a NASDAQ listed medical service company and Corporate Manager of New Business Development at ICI.

Barry Jones


Ross McCann

Ross is currently Managing Director of Qenos, a joint venture between ExxonMobil and Orica with operations producing polyethylene in both Sydney and Melbourne.

Hugh Niall

Hugh was most recently Chief Executive Officer of Biota, a listed Australian biotech company focussed on the discovery and development of treatments for human respiratory diseases. Previously he has held senior academic and commercial positions, including four years as VP of Research Discovery at Genentech.

Mark Richardson

Mark has been a Special Counsel of the firm Blake Dawson Waldron since 2001, acting on behalf of medical defence organisations in Australia and a major international medical mutual society.

Brian Watson

Brian Watson is the Managing Director of JPMorgan Partners Australia.

Prof Alan Trounson

Chief Executive Officer Designate

It is also anticipated that the Management Team will include:

Chief Executive Officer Alan Trounson

Chief Operations and Commercial Officer Dianna DeVore

Chief Financial Officer Anthony Moore

It is expected that the Chief Executive Officer and Management Team will report to the Board on the management and operations of the Centre and will submit a Business Plan and Revisions for approval by the Board. The Board will operate in the manner of a private company and adopt the sound business principles of a fully commercial business.

QUESTIONS WITHOUT NOTICE:

TAKE NOTE OF ANSWERS

Medicare: Bulk-Billing

Health: Pharmaceutical Benefits Scheme

Veterans: Gold Card

Senator CARR (Victoria) (3.03 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Health and Ageing (Senator Patterson) to questions without notice asked today.

Tomorrow is World Diabetes Day, and I think it must surely be apparent to all of us...
here that diabetes is a growing problem in this country: nearly one million Australians are affected by it. Last year in March and again in September, the government’s hand-picked, drug company friendly pharmaceutical benefits committee approved two diabetes treatment drugs: Avandia and Actos. It is now 1½ years later and the government has failed to make the necessary decisions about the listing of these drugs under the Pharmaceutical Benefits Scheme. Astoundingly, this minister has not even taken a submission to cabinet on the issue. In that time, over a thousand people who could have benefited from these treatments have been transferred to insulin therapy.

This is a government that claims the reason for the delay is one of price. The minister told us today that no agreement had been reached on the issue of price. She failed to tell us that in January this year her department reached an agreement with the manufacturer of Avandia and that that agreement went to the issue of price, volume, conditions of listing and use. So we have a situation where the government in fact reached an agreement that went to the issue of trying to minimise the fiscal risk of the PBS through inappropriate use of the glitazones class of diabetes drugs. This is the position that the government chose not to reveal to us today. That is why I say that this minister misled the Senate.

The Commonwealth has the capacity to force down the price of drugs by direct negotiation with the drug companies. The Health Insurance Commission has the capacity to impose stringent controls on the prescription of drugs; however, it is only if this minister chooses to exercise that control—it is only if she has the political will to do that. The minister has spoken on the issue of price, but at no point did she talk about the issue of cost. She did not point out to us the cost of forcing people onto insulin who could otherwise have avoided it. Nor did she explain the additional cost to the public health system or the community cost resulting from thousands of people who failed to get appropriate treatment. We all understand what sorts of serious complications there are for people who have diabetes and who are not treated effectively.

The other great and consequent cost that the minister chooses to ignore is Australia’s reputation in research and development. She fails to understand that the patent lack of transparency in the processes of government is undermining confidence in this country’s ability to be a proper place in which R&D investment can take place. A situation is emerging where the process of listing and costing drugs is being corrupted by the political interference of the Treasurer of this country. That is the truth of the matter. The minister does not have the political will because that political will is sapped by the Treasurer. The government is essentially seeking to deny sick and elderly people affordable and appropriate treatments and is encouraging a situation where painful conditions are prolonged and suffering is intensified.

The government has failed in its treatment of diabetes. We should remember tomorrow on World Diabetes Day the failure of the government to fulfil its obligations. Last year, the government launched—with all the great fanfare that only the propagandist machine controlled by this government can—a whole series of measures aimed at helping people with asthma and arthritis. The government said that these measures were about trying to improve the quality of life of people with these conditions. The government is now saying that it no longer cares about those people. It is suggesting that where there are affordable drugs—drugs that are provided at costs which can be controlled—it is not interested in proceeding. It is not even interested in taking a submission to the cabinet on the question. If the government were interested in ensuring that doctors prescribed wisely and that people used their medicines effectively, we would see a course in which we were able to assist the minister in the development and reform of the PBS. We do not see that from this government. It is difficult for the government to face up to the fact that it is concealing its own financial errors and shortcomings by trying to slug pensioners in regard to the PBS. (Time expired)
Senator PAYNE (New South Wales) (3.09 p.m.)—I rise to take note of the answers given by the Minister for Health and Ageing, Senator Patterson, in question time today. To make it quite clear, as I understand the minister did in her response during question time today, and which I am now able to reinforce, and contrary to the assertions made by Senator Carr—which were not made in any measured or sensible manner but were made in the typical way we have come to expect, which apparently means that if you shout louder you get more of your message across, which, of course, is entirely untrue and ineffective as you would expect—no price agreement was made in January in relation to Avandia. It is not true. The matter has been double-checked. The minister has advised that that is not the case and, therefore, any further suggestions, assertions or allegations from Senator Carr that this is a corrupted process should be of great concern to the Senate. It is an entirely inappropriate allegation to make in this chamber.

It is also inappropriate to allege that the government is in some wilful fashion seeking to intensify the suffering of individuals in this country. To try to reduce the complexity of the operations of the PBS to a diatribe shouted across the chamber to an audience of nobody who is interested, certainly on this side—Senator Carr—That is the truth. You’re not interested. You are not interested in diabetes.

Senator PAYNE—Nobody is interested in Senator Carr on this side. It certainly does not enhance the capacity of Senator Carr’s reasonably inadequate argument as it has commenced. The minister made quite obvious in her remarks and in her response this afternoon that finalising pricing arrangements between the department and manufacturers involves very complex processes. They are not simple processes that can be dealt with in a matter of minutes. Negotiating those arrangements is a very difficult task because manufacturers naturally seek pricing arrangements in their best interests but not always in the best interests of Australian taxpayers. As well as the good health of Australian taxpayers, the government is also required to have the best interests of those taxpayers as a principle in its operations. I can just imagine the diatribe that would come from Senator Carr if we decided that that was not a principle we should follow; it would be even less entertaining than the last one.

As the minister made quite clear in her remarks, the government is able to categorically reject any suggestion that it is delaying the listing of new medicines. I think the minister referred to some of the aspects of the new PBS schedule, effective from the first of this month, which includes three new important listings: Xigris, which is for treating severe sepsis; Movicol, which is a laxative for cancer patients; and Valezyte, which is an important treatment for HIV-AIDS patients. Xigris—and those opposite may be interested in the importance of this—is a new drug which is used in the treatment of potentially fatal complications of meningococcal disease. It is a very important addition to the treatment suite available for combating the devastation of meningococcal. So any suggestion that the government is delaying the listing of new PBS medicines is absolutely false.

Of course, it is important to remember that the Senate has refused to support the government’s budget measures on the PBS. It is simply not the case that the PBS can continue to grow at an unsustainable rate; it cannot. It is time that those on the other side took a very close look at the government’s very reasonable propositions in relation to the budget measures on the PBS and considered those far more carefully, without histrionics and without hysterics. It is time they looked at what can actually be sustained in the growth of the PBS in the near- and medium-term future and at the very sensible suggestions the government have made in relation to the budget.

What the government have done and will continue to do is to ensure that Australians have access to medicines they do need via the PBS. It is a principle to which we are committed. We are also committed to ensuring that there is access to pricing arrangements that represent fair value for taxpayers. There is absolutely nothing about that from
which we resile. As the minister has indicated, if the opposition really were serious about sustainability rather than about stunts, they would support the sorts of budget measures that the government have brought forward. Again, I want to reinforce that the minister made it perfectly clear during her response—and I am able to, on her advice, confirm it—that there was no price agreement reached on this particular drug in January. It is not the case. To accuse the government or the minister of running a corrupted process is an entirely inaccurate, inappropriate and unhelpful contribution from Senator Carr.

Senator CROSSIN (Northern Territory) (3.14 p.m.)—I rise to take note of the answers from Senator Patterson, the Minister for Health and Ageing, today. I specifically want to talk about her two answers in relation to the figures regarding the bulk-billing rates and the veterans gold card. We heard the minister’s response today that she believes that the figures for this quarter may be out this Friday. But if we just turn back the clock to August of this year, we will find that the minister was not certain about when the figures for the last quarter were going to be released. After a number of questions in this chamber, she finally admitted that she had seen the minute relating to the figures for that quarter, although when she first answered that question she had led us to believe that she had not seen them. So are we still to accept that the minister may not have seen the figures for this quarter? If she has not, why hasn’t she been pressing the Health Insurance Commission to release these figures, given that it is beyond the six-week time frame when they normally release the figures?

If these figures are consistent with previous quarters, we know that the figures on the range and amount of bulk-billing that occurs in this country will continue to decline. I would not be surprised if the latest figures continue to show that. We have seen—and I remember taking note of this back in August—this government stand by and watch the rate of bulk-billing seriously decline since they came to office. This is a government that has no commitment to maintaining Medicare. When we were in government we put that system in place. We are the party that are committed to maintaining the integrity and the values of Medicare. This is a government that is happy to stand by and see Medicare eroded and diminished by stealth.

Let me turn to another very serious matter that has come to my attention in the last couple of weeks—that is, the diminishing value of the veterans gold card, particularly relating to the services they get from specialists, and now, it would seem, from general practitioners. If a veteran has a gold card and they present themselves to a doctor or a specialist, then that gold card has been, in effect, their Medicare card. They have been able to use that gold card to get access to that service. We know that specialists have withdrawn that access and have continued to fail to recognise the value of that gold card in recent months.

At the same time, this government has had in place with the Australian Medical Association an agreement—which expires on 13 December—to recognise a gold card for up to 50 per cent of the value of the Medicare rebate. But that agreement is about to expire. The minister said today that there were discussions with the AMA to try to extend that agreement for a short period. What happens after that? What is going to happen after that for the many thousands of veterans around this country who rely on their gold cards to get access to GP services? They will, more than likely, have to go and apply for a Medicare card, or they will have to take out private health insurance.

Let us have a look at that today. We asked the minister if the government could guarantee that they would give assistance to those veterans if private health insurance had to be taken out. She could not provide that guarantee today. This minister could not guarantee on the public record today that where veterans are disadvantaged and need to take out private health insurance the government would assist them. This minister’s response was to say that people should go back to the Department of Veterans’ Affairs and they will help them to find a doctor. In the case of the Northern Territory, for example, there are
very few doctors who bulk-bill—in fact, one doctor in Palmerston bulk-bills after six o’clock at night. The Department of Veterans’ Affairs will be able to find a doctor for veterans, but these doctors will not be bulk-billing. Veterans will have to get a Medicare card and take out private health insurance, and today we have seen the minister not able to guarantee whether those veterans could have any assistance if they find themselves in this situation in coming months. Again, we have seen that the government is not committed to assisting all Australians with their medical benefits. (Time expired)

Senator EGGLESTON (Western Australia) (3.19 p.m.)—I am appalled at the way the Labor Party is trying to stir up fear in the hearts of the veterans around Australia, making them worried about whether or not they will receive appropriate medical care and attention from their doctors. Of course they will. There are something like 12,000 doctors around Australia participating in the gold card and Veterans’ Affairs medical scheme, and those doctors will continue to provide medical services to these people. What is happening is that the agreement between the government and the AMA over the provision of Veterans’ Affairs medical services—DVA gold card services—is due to be renewed in December. As with all agreements which come up for renewal between all sorts of bodies, when the matter is under discussion a little bit of posturing goes on. That is what is going on here: the doctors are posturing. We will find, I am quite sure, when December comes that there will be an agreement in place to provide medical services to veterans around this country.

As I said at the beginning of my speech, it is absolutely outrageous and irresponsible for somebody like Senator Crossin to get up on a broadcast day and make a speech which implies that veterans, who have given so much to this country in times of war, are going to find that they cannot get adequate medical services through the Veterans’ Affairs scheme. It is absolute scaremongering, total nonsense and, as I said, completely irresponsible of Senator Crossin to do that. She really ought to think through what she has had to say today, because it would have had a very frightening impact on many of the people who do depend on the Department of Veterans’ Affairs for medical services.

The Howard government is absolutely committed to looking after veterans, and it remains absolutely, solidly committed to the gold card system. The government is aware that some doctors have been concerned about the level of fees paid for services to the veterans community and, as I said, there is a process of negotiation going on with the AMA. I am quite sure that will be resolved in a very satisfactory manner for the doctors concerned. I want to assure everybody around this country who is listening to this broadcast that there is no question whatsoever that medical services to veterans will not be maintained.

The other point that Senator Crossin raised and which I think needs to be dealt with concerns the release of the bulk-billing statistics. Senator Crossin seems to think that Senator Patterson should have those statistics to hand and release them to the Senate today. As it happens, as Senator Patterson said, about every six weeks the department of health produces statistics on the level of bulk-billing for various kinds of medical services around the country. In this time frame of six weeks, the next statistics are due to be released on Friday, 15 November. When I read the paper this morning I noticed that the date was 13 November and that it was a Wednesday, not a Friday!

I suspect the Senate will find that, at the time they are due on 15 November, those statistics will be duly released by the minister to the waiting public, including Senator Crossin. She will then be able to tell from those bulk-billing statistics what the actual percentages are for various categories of medical services around this country. I think the minister has acted quite responsibly. If the statistics are not due to be released until Friday, the 15th then that is when they ought to be released, not on Wednesday, the 13th. It is a little bit rich of Senator Crossin to expect the minister to release those statistics before the department does.

There has been some suggestion that bulk-billing is declining around the country, but I wonder what category we are talking about. I
would be very surprised if pathologists or radiologists were bulk-billing less than usual. Certainly, there is some variation with general practitioners, but that goes up and down. Basically, something like 70 per cent of medical services for GPs are bulk-billed in this country, and I am quite sure the statistics will show that that is continuing. (Time expired)

Senator MOORE (Queensland) (3.24 p.m.)—I also rise to take note of the answers given by Senator Patterson in question time today and respond to issues she raised, particularly concerning the much discussed figures on bulk-billing. It is no surprise that people are waiting for the figures on bulk-billing. It is no surprise that we are awaiting them quite eagerly, because this was discussed in this place when the last round of figures were due and because the media report on what is happening to bulk-billing across our country on quite a regular basis now. I note with interest that Senator Patterson actually said that she expected the figures sometime this week and that, when she got them, which usually happens on the evening before their release, she would note them—but not for action; she would just note them.

We are now aware—having been told about 10 minutes ago—that the figures will be released this Friday, 15 November. We await these figures with great expectation, because we know that there is interest in them. We know that people are waiting to have a look at them to find out what is happening with bulk-billing across the country, not just in particular areas. It was proven by the last figures, whenever we got them, that bulk-billing is falling. In fact, in my state of Queensland it is clear that there has been quite a serious decline in bulk-billing and that, in some of the poorest parts of the country, people no longer have access to their doctor in that way. In some areas of Central Queensland and western Queensland the figures on this have dropped to lower than 50 per cent.

The only reason we know this is happening is that people are telling us it is happening. They are concerned, they are hurt and they are making quite serious decisions about whether or not they can afford to go to the doctor. The much awaited figures that we are going to see, hopefully—definitely—on 15 November, will indicate exactly where bulk-billing is available and how it is being accessed. The figures that we got last quarter, after waiting to see whether or not they would be noted, indicated that people no longer had access to that service. Anecdotally, the people talking to us say that the choices they have to make indicate whether or not they can go to their doctor. The doctors—who, as we heard recently, have been posturing—have in fact gone public with their own concerns about this service. They have gone to the media and they have lobbied their politicians. They are talking to the AMA about the fact that, in Queensland, 30 per cent of members have already stopped offering bulk-billing and that those members still using the service or providing the service to their clients are now forced to restrict it. It is a really serious issue: no longer can people expect a service that they used to have.

In some areas of Queensland, doctors are saying that they are being forced to restrict the service to particular types of patients. Also—and this is something that I have great difficulty with—they are only able to provide bulk-billing during particular hours. So you can go to the doctor during particular hours and maybe you can have bulk-billing but, if you go during other hours, you cannot. That is not the access to medical services that we need to have.

However, if we are going to look realistically at what is happening to the health system, there should be an open expectation that we will have the figures. There should be an open expectation that everybody who has an interest in this quite critical issue—our health—will be able to have a look at agreed data, that they will be able to study it and ask specific questions. Rather than posture, people will be able to ask particular questions about what is important to them. Then and only then will we be able to work out some realistic way to address the problem. Instead of quarrelling over whether or not we have the accurate figures, we will be able to look at the real issue, which is whether there is a
crisis in the medical situation in our country and how many people have access to a fair health system.

It is interesting that it is very easy for people to quote the private health care figures and that they are able to be released automatically every month. So this afternoon we were able to hear how effective private health care allegedly is and to have accurate figures that could be related to and used to promote the system in this place. It would be novel—in fact, it would be refreshing—if the same degree of pride could be had about what is happening with bulk-billing in the country. We will wait and see, with interest, whether we get the figures on Friday—then maybe we will see whether they are accurate.

Question agreed to.

Environment: Endangered Species

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (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 Bartlett today relating to the protection of spectacled flying foxes.

I found it astonishing that the minister was not able to answer at least the general thrust of the question that I asked him. I did not expect him to give a chapter-and-verse legal recitation of the vagaries of section 33 of the Environment Protection and Biodiversity Conservation Act, but I did at least expect that the minister—who knows this act very well—would be able to easily assure the Senate that the agreement reached last week between the federal Liberal government and the Beattie Labor government in Queensland did not breach the EPBC Act. I am genuinely surprised that he was not able to do so.

That act was established and put in place a few years back. One of the big areas where it was particularly a major improvement was in protection for threatened species. Unfortunately, we have the classic conundrum for the public in relation to politics: parliaments pass acts providing alleged protection—whether it is for the environment or for people in the community—but governments ignore the acts passed by parliaments and, in some cases, blatantly breach them. That is a real difficulty. It is a difficulty with acts, such as the existing heritage act, because departmental officials in estimates have said quite openly that there is no way of enforcing an act if its provisions are not followed.

There are ways, however, to enforce the EPBC Act because it is a better act. The provisions are not ideal but they are there. Indeed, the spectacled flying fox situation in Northern Queensland, where fruit growers were electrocuting large numbers of spectacled flying foxes and other flying foxes, provides the best example of acts not being enforced. Because of the provisions in the EPBC Act that were put in by the Democrats in the Senate, against opposition from the Labor Party and the Greens, the public now have the standing to take a matter to court to get the act enforced, and this has happened. It is not ideal. It would be far better if the government just enforced its own act, without the public having to go to court to make the government do what it should do. Nonetheless, a court decision was made that the electrocution of spectacled flying foxes—which at that stage were not even listed formally as a threatened species; they have subsequently been listed by the federal minister, something which we congratulate him for—threatened not just the survival of the flying fox population but also the World Heritage values of the Wet Tropics, because the flying fox plays a key part in the web of the diverse ecosystem matrix that makes up the World Heritage values of the Wet Tropics. So the act of slaughtering these flying foxes directly worked against the World Heritage values of the Wet Tropics.

It was a clear decision of the court, and it is precisely what the environmental protection act was put in place to enable to happen: to strengthen the protection of World Heritage areas and threatened species. This government and the Labor Party government in Queensland have gone off to a back room, reached an agreement between themselves and come out saying, ‘Any action that we say is okay is now exempted from the EPBC. As long as you kill these flying foxes by shooting them, instead of electrocuting them, and as long as you shoot up to allegedly only
1.5 per cent of the total population, the act does not apply.’ Leaving aside the absurdity of how you can set the figure of 1.5 per cent when nobody knows what their total population is, there is absolutely no way of enforcing the ability of a farmer to shoot only a certain number. In one way, if you do it with electrical grids, at least you can see the numbers on the ground and you can see it in operation. But, with shooting, since you do not know how often, how regularly and at what time of the day or night it will occur, it is impossible to monitor.

Leaving aside those absurdities, the basic fact that the two governments can do up an agreement and say, ‘The act does not apply, as long as you kill them this way rather than that way,’ surely flies in the face of every tiny shred of the spirit of the EPBC Act. In the Democrats’ view, it raises serious doubts as to whether it actually breaches the letter of the law of the EPBC Act. We look forward to the minister coming back to the Senate as soon as possible to answer the question and to provide that information. (Time expired)

Question agreed to.

NOTICES

Presentation

Senator Murray to move on the next day of sitting:

That the Senate—

(a) notes the rejection by a majority of the states and territories of Graeme Samuel as nominee Deputy Chairman of the Australian Competition and Consumer Commission;

(b) asks the Federal Government:

(i) to ensure that it consults fully with the state and territory governments regarding Professor Fels’ replacement, and

(ii) to establish criteria for the selection and appointment process that include not just selection on merit, but that any candidate should be demonstrably independent, and have a strong interest in consumer and small business needs.

Senators Cherry and Ridgeway to move on the next day of sitting:

That there be laid on the table by the Minister representing the Minister for Trade, no later than immediately after motions to take note of answers on Monday, 18 November 2002:

(a) all requests received by the Australian Government for increased access to Australian services markets by other nations, lodged under negotiations, under the General Agreement on Trade in Services (GATS);

(b) any documents analysing the likely impact of any requests made of Australia in negotiations under GATS; and

(c) any requests lodged by Australia of other countries under negotiations on GATS.

Senator O’Brien to move on the next day of sitting:

That the Senate—

(a) notes, with grave concern, the crisis enveloping rural and regional Australia;

(b) condemns the Howard Government for its neglect of rural and regional Australians, in particular, its failure to:

(i) adequately respond to the growing drought,

(ii) provide timely and appropriate assistance to the sugar industry, and

(iii) support essential services including health, banking, employment and telecommunications; and

(c) calls on the Howard Government to reverse its neglect of rural and regional communities.

Senator Allison to move on the next day of sitting:

That there be laid on the table by the Minister for Arts and Sport, no later than 3 pm on Tuesday, 19 November 2002, the following documents relating to Victoria’s bid for the Commonwealth Games:

(a) the endorsement contract between the Australian Commonwealth Games Association and the State of Victoria authorising the bid for the Games; and

(b) host city contracts between the Commonwealth Games Federation, Australian Commonwealth Games Association, and Melbourne 2006 Commonwealth Games Pty Ltd.

Senator Barnett to move on the next day of sitting:

That the Senate—
(a) notes:
(i) the alarming rise in the number of people with type 2 diabetes, estimated to be one million Australians, with half of those people currently undiagnosed,
(ii) that according to a recent landmark study by DiabCost Australia, type 2 diabetes is costing Australians a staggering $3 billion a year, with the bill for each person with diabetes averaging nearly $11,000 in expenditure and benefits,
(iii) that, according to the study, as the complications of diabetes increase, the cost per person is estimated to escalate from $4,020 to $9,645 when there are both microvascular and macrovascular problems,
(iv) that early detection through screening programs and action to slow or prevent the onset of complications will see reductions in health costs and improve and maintain quality of life for individuals with type 2 diabetes,
(v) the contribution this landmark study by DiabCost Australia will make to better informing government and the public of a significant public health problem,
(vi) that there are approximately 100,000 Australians with type 1, or insulin dependent diabetes, and
(vii) that the Government has recognised the public and personal burden of diabetes as a national health priority; and

(b) urges the Government to:
(i) continue programs to raise public awareness of the high risk of undiagnosed and untreated cases of type 2 diabetes and take whatever steps are necessary to identify those undiagnosed with type 2 diabetes,
(ii) support access to new medications for the treatment of type 1 and type 2 diabetes, while ensuring that Australian taxpayers get value for money through appropriate pricing arrangements,
(iii) continue to encourage people diagnosed with diabetes to undergo regular medical tests, including eye testing, so as to prevent complications,
(iv) ensure adequate funding for further research into prevention and treatment of both type 1 and type 2 diabetes and a cure for type 1 diabetes,
(v) develop a strong education program encouraging appropriate diet and exercise regimes to minimise the risk of type 2 diabetes; and
(vi) develop strategies to heighten awareness of the rising levels of obesity, particularly in young Australians, and the associated adverse health effects of obesity.

Senator Eggleston to move on the next day of sitting:
That the time for the presentation of reports of the Environment, Communications, Information Technology and the Arts Legislation Committee be extended as follows:

(a) provisions of the Renewable Energy (Electricity) Amendment Bill 2002—to 28 November 2002; and

(b) provisions of the Telecommunications Competition Bill 2002—to 19 November 2002.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.34 p.m.)—I give notice that, on the next day of sitting, I shall move:

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

Criminal Code Amendment (Offences Against Australians) Bill 2002
Telecommunications Competition Bill 2002
Broadcasting Legislation Amendment Bill (No. 2) 2002.

I also table statements of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statements incorporated in Hansard.

Leave granted.

The statements read as follows—
Criminal Code Amendment (Offences Against Australians) Bill 2002

Purpose of the Bill
The Criminal Code Amendment (Offences Against Australians) Bill will create new provisions making it an offence to murder, commit manslaughter or intentionally or recklessly cause
serious harm to an Australian where that conduct occurs outside of Australia.

The new offences will provide coverage for overseas attacks on Australian citizens and residents (such as those which occurred in Bali) where it is appropriate that the perpetrators of those attacks be prosecuted in Australia, and where such persons are unable to be prosecuted under the terrorism legislation.

For example, to extradite a suspected offender from a foreign country there must be ‘dual criminality’—that is, the conduct must be the basis of an offence in both Australia and the other country. If a suspect is located in a country which does not have terrorism offences, then it may be very difficult to establish ‘dual criminality’.

Further, there may be difficulty with the political motivation aspect of the Australian terrorism offences. For example, there may be insufficient evidence of that aspect to successfully prosecute the person. Or if the suspect is to be extradited, he or she may be located in a country which does not have the ‘political motivation’ aspect in its relevant terrorism offence.

‘Murder’ and other serious offences against the person are universally recognised, which should provide a sound basis for extradition and prosecution of suspects in circumstances where the terrorism offences are not appropriate.

There is a need to have the offences apply retrospectively to enable the prosecution of those involved in the bombings in Bali on 12 October 2002. Whilst retrospective offences are generally not appropriate, retrospective application is justifiable in these circumstances because it is universally known that the conduct which will be the subject of the proposed offences is criminal in nature. The proposed offences will apply retrospectively from 1 October 2002.

Reasons for Urgency

The amendments to the Criminal Code Act 1995 need to be in place as soon as possible to enable charges to be brought under the new provisions, and any extradition proceedings commenced, if appropriate.

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

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TELECOMMUNICATIONS COMPETITION BILL 2002

Purpose of the Bill

The Bill will implement the government’s response to the Productivity Commission report into telecommunications competition regulation.

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BROADCASTING LEGISLATION AMENDMENT BILL (No. 2) 2002

Purpose of the Bill

This Bill is intended to (a) provide a permanent regulatory framework for the community television sector which currently operates under open narrowcasting licences, (b) provide the Australian Broadcasting Authority with more discretion to review community broadcasting licences when deciding whether to renew them, and (c) repeal spent remaining provisions of the Broadcasting Act 1942.

Reasons for Urgency

The community television sector has operated on a trial basis since 1994. The trial is due to cease on 31 December 2002. Passage of a permanent framework for the sector prior to that date is required to provide certainty and a basis for ongoing operation for the sector.

(Circulated by authority of the Minister for Communications, Information Technology and the Arts)

Senator MACKAY (Tasmania) (3.35 p.m.)—On behalf of Senator O’Brien, pursuant to standing order 78(1), I give notice of his intention, at the giving of notices on the next day of sitting, to withdraw business of the Senate notice of motion No. 3 standing in his name for today for the disallowance of the Civil Aviation Amendment Regulations 2002 (No. 2) as contained in statutory rule 2002 No. 167 and made under the Civil Aviation Act 1988.
COMMITTEES
Selection of Bills Committee
Report

Senator FERRIS (South Australia) (3.36 p.m.)—I present the 12th report of 2002 of the Selection of Bills Committee.

Ordered that the report be adopted.

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

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 12 OF 2002

1. The committee met on Tuesday, 12 November 2002.

2. The committee resolved to recommend—

That—

(a) the provisions of the Financial Sector Legislation Amendment Bill (No. 2) 2002 be referred immediately to the Economics Legislation Committee for inquiry and report by 10 December 2002 (see appendix 1 for statement of reasons for referral); and

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

• Broadcasting Legislation Amendment Bill (No. 2) 2002
• International Tax Agreements Amendment Bill (No. 2) 2002
• Taxation Laws Amendment Bill (No. 6) 2002
• Trade Practices Amendment Bill (No. 1) 2002.

The committee recommends accordingly.

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

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

Bill deferred from meeting of 20 August 2002
Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002

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

Bill deferred from meeting of 12 November 2002
Commonwealth Volunteers Protection Bill 2002
Plastic Bag Levy (Assessment and Collection) Bill 2002
Plastic Bag (Minimisation of Usage) Education Fund Bill 2002
Taxation Laws Amendment Bill (No. 7) 2002.

(Jeannie Ferris)
Chair
13 November 2002

Appendix 1
Proposal to refer a bill to a committee

Name of bill(s):
Financial Sector Legislation Amendment Bill (No. 2) 2002

Reasons for referral/principal issues for consideration
To clarify the design and applications of the “fit and proper” persons test.

Possible submissions or evidence from:
Treasury

Committee to which bill is referred:
Economics Legislation Committee

Possible hearing date(s): 3, 4 December 2002
Possible reporting date(s): 12 December 2002

(signed)
Senator Mackay
Whip/Selection of Bills Committee Member

Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Murray for today, relating to the reference of matters to the Economics References Committee, postponed till 4 March 2003.

General business notice of motion no. 238 standing in the name of Senator Sherry for today, proposing an order for the production of documents relating to the evaluation of the ‘Living in Harmony’ initiative, postponed till 14 November 2002.

General business notice of motion no. 245 standing in the name of the Leader of the Australian Democrats (Senator Bartlett) for today, proposing an order for the production of documents relating to the Foundation for a

General business notice of motion no. 247 standing in the name of Senator Greig for 14 November 2002, relating to the reference of matters to the Joint Standing Committee on Treaties, postponed till 19 November 2002.

General business notice of motion no. 249 standing in the name of Senator Allison for today, relating to the logging of native forests in Victoria, postponed till 14 November 2002.

General business notice of motion no. 255 standing in the name of Senator Brown for today, relating to former Colombian Senator Ingrid Betancourt and Ms Clara Rojas, postponed till 18 November 2002.

Senator NETTLE (New South Wales) (3.37 p.m.)—by leave—I move:

That general business notice of motion no. 251 standing in the name of Senator Allison for today, relating to the logging of native forests and the Greater Sunrise gas field, be postponed till the next day of sitting.

Question agreed to.

INTERNATIONAL LABOUR ORGANISATION: CONVENTION 182

Senator STOTT DESPOJA (South Australia) (3.38 p.m.)—I move:

That the Senate—

(a) notes that:

(i) in June 1999 the International Labour Organisation (ILO) adopted Convention 182 regarding the worst forms of child labour;

(ii) this convention deals with children in the worst forms of labour, including trafficking, bonded and forced labour, armed conflict, prostitution and pornography,

(iii) in April 2002, ILO research found that there were 8.4 million children world wide involved in the worst forms of child labour,

(iv) to date, 131 countries, including the United States, New Zealand, Papua New Guinea, the United Kingdom, Iraq and Thailand, have ratified this convention,

(v) this convention has been the fastest ratified in the 82 year history of the ILO, demonstrating an overwhelming international commitment to eliminating abusive child labour, and

(vi) Australia remains in a minority of nations, including Eritrea, Swaziland, Suriname, Kyrgyzstan, Kiribati and India, which have not ratified the convention, and is the only Organisation for Economic Co-operation and Development nation not to have done so; and

(b) encourages the Australian Government to immediately pursue the ratification of ILO Convention 182.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.39 p.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:

Australian Animal Health Council (Live-stock Industries) Funding Amendment Bill 2002

Health Care (Appropriation) Amendment Bill 2002

Higher Education Legislation Amendment Bill (No. 3) 2002.

Question agreed to.

DEFENCE DOCUMENTATION

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.39 p.m.)—I move:

That there be laid on the table, no later than noon on Thursday, 14 November 2002, the figures ‘in terms of the increasing capability that’s necessary to meet this much more complex strategic environment’, and all documentation relating to those figures, which were provided to the Government by the Minister for Defence (Senator Hill) and referred to by Senator Hill on Channel 10’s Meet the Press program on 10 November 2002.

Question negatived.
COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (3.40 p.m.)—At the request of Senator Heffernan, I move:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the Australian meat industry and export quotas be extended to 14 November 2002.

Question agreed to.

Rural and Regional Affairs and Transport Legislation Committee Meeting

Senator FERRIS (South Australia) (3.40 p.m.)—At the request of Senator Heffernan, I move:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 13 November 2002, from 4 p.m., to take evidence for the committee’s inquiry into the Transport Safety Investigation Bill 2002.

Question agreed to.

PIKE, MR JIMMY

Senator RIDGEWAY (New South Wales) (3.41 p.m.)—I move:

That the Senate—

(a) notes, with sadness, the passing on 3 November 2002 of Mr Jimmy Pike, a Walmajarri man from the Great Sandy Desert in the Kimberley, and thanks his family for their permission to refer to him by name in recognition of his outstanding achievements as an artist;

(b) remembers Mr Pike as one of the artists who transformed the Indigenous fine art movement by his bold use of colour and distinctive style of design, which were inspired by his traditional desert country and the Walmajarri ceremonies and stories associated with that country;

(c) notes that Mr Pike was first introduced to Western-style painting in his 40s, yet created an expansive body of work across many different mediums including painting, printmaking, fabric design and wood carving, that has been exhibited in major galleries throughout Australia, and in Japan, France, Germany, the United Kingdom, the United States of America and the People’s Republic of China; and

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

Question agreed to.

COLSTON, MR MALCOLM ARTHUR

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

That the Senate—

(a) notes that:

(i) four and a half years ago, on 18 May 1998, Malcolm Arthur Colston was committed in the Supreme Court of the Australian Capital Territory to stand trial on 28 charges of defrauding the Commonwealth pursuant to section 29D of the Crimes Act 1914,

(ii) on 5 July 1999, the Director of Public Prosecutions (DPP) presented a Notice Declining to Proceed Further on the charges to the Supreme Court because of medical evidence of Mr Colston’s imminent demise, and

(iii) Mr Colston and spouse each incurred fares in the period 1 July 2001 to 30 June 2002 for $992.24, and charged the taxpayer for Comcar services worth a total of $212;

(b) welcomes the Parliament’s enacting legislation to strip corrupt politicians of their gold passes; and

(c) in the light of the recent revelations of Mr Colston’s use of his gold pass entitlements, welcomes the decision of the DPP to review Mr Colston’s medical status.

Question agreed to.
COMMITTEES

Community Affairs Legislation Committee

Meeting

Senator FERRIS (South Australia) (3.42 p.m.)—At the request of Senator Knowles, I move:

That the Community Affairs Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 14 November 2002, from 3.30 p.m., to take evidence for the committee’s inquiry into the provisions of the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002.

Question agreed to.

House Committee Establishment

Senator MACKAY (Tasmania) (3.42 p.m.)—At the request of Senator Hogg, I move:

That standing order 21 be amended to read as follows:

(1) A House Committee, consisting of the President, the Deputy President and 5 senators, shall be appointed at the commencement of each Parliament, with power to act during recess, and to confer and sit as a joint committee with a similar committee of the House of Representatives.

(2) The committee may consider any matter relating to the provision of facilities in Parliament House referred to it by the Senate or by the President.

(3) The President shall be the chair of the committee.

Question agreed to.

WORLD TRADE ORGANISATION: GENERAL AGREEMENT ON TRADE IN SERVICES

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

That the Senate calls on the Minister representing the Minister for Trade to:

(a) immediately present to the Parliament details of:

(i) Australia’s negotiating position in the current round of World Trade Organisation (WTO) negotiations relating to the General Agreement on Trade in Services (GATS), and
(ii) the specific requests received by Australia from other countries in the current round of WTO negotiations relating to GATS;

(b) make a commitment that the Government will make public by 31 March 2003 Australia’s responses to specific requests from other countries; and

(c) invite community, parliamentary and media observers to sit in on the informal ministerial talks to be held in Sydney in the week beginning 10 November 2002 relating to WTO and GATS.

Question agreed to.

HEALTH AND ENVIRONMENTAL COSTS OF A WAR ON IRAQ

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

That the Senate—

(a) notes the Medact report, Collateral Damage: the health and environmental costs of war on Iraq, launched internationally on Tuesday, 12 November 2002 by the International Physicians for the Prevention of Nuclear War; and

(b) calls on the Government to adopt conclusions contained within the report, including:

(i) the urgent need for humane and wise global leadership which recognises that national security is impossible without international security and that this can be achieved only the measures outlined in the report, and

(ii) pursuing peaceful means of resolving conflicts with Iraq and thinking carefully about the effects of waging war that might damage our fragile planet and its people for decades to come.

Question put.

The Senate divided. [3.48 p.m.]

(The Deputy President—Senator J.J. Hogg)

Ayes ............ 9
Noes ............ 38
Majority ........ 29
AYES

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

NOES

Alston, R.K.R.  Barnett, G.
Brandis, G.H.  Buckland, G.
Campbell, J.  Chapman, H.G.P.
Colbeck, R.  Collins, J.M.A.
Conroy, S.M.  Cook, P.F.S.
Crossin, P.M.  Denman, K.J.
Eggleston, A.  Ferguson, A.B.
Ferris, J.M. *  Hogg, J.J.
Hutchins, S.P.  Johnston, D.
Lightfoot, P.R.  Mackay, S.M.
Marshall, G.  Mason, B.J.
McGauran, J.J.  McLucas, J.E.
Moore, C.  O’Brien, K.W.K.
Patterson, K.C.  Reid, M.E.
Santoro, S.  Tchen, T.
Tierney, J.W.  Troeth, J.M.
Webber, R.  Wong, P.

* denotes teller

Question negatived.

BUSINESS

Consideration of Legislation

Senator ALSTON (Victoria—Deputy Leader of the Government in the Senate) (3.52 p.m.)—I move:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2], allowing it to be considered during this period of sittings.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.53 p.m.)—by leave—Without going into the long history of cut-off motions, which I am sure all senators would be aware of each time we debate matters like this, the purpose of this motion is to allow the Senate to debate the workplace relations so-called fair dismissal bill No. 2 before the end of the year. The so-called cut-off motion, which was initiated by Democrat senator and my predecessor from Queensland, Michael Macklin, back in the 1980s and subsequently modified down the track, was introduced for two reasons: firstly, to make it harder for governments to push through legislation without adequate time for consideration and, secondly, to enable the Senate to have more control when determining what are urgent or important matters and which ones can be put off for later. This bill fits very squarely in the second category. In fact, it would be hard to find a better definition of a bill that we do not need to debate before the end of the year.

I know Senator Ian Campbell does a fabulous job, with as much difficulty getting cooperation from his own colleagues as from the rest of us, in trying to manage all the business of this chamber to get through the important issues that the government believes it needs to get through in the time frame available. As I have said many times on behalf of the Democrats, I believe the Senate should be sitting more days than it does. I acknowledge that that is not Senator Campbell’s decision, but the Democrats believe that, with the legislative workload these days, the historic levels of Senate sittings that we might have had in the past are now inadequate and we really need to be sitting an extra few weeks. Apart from that, most of us like each other’s company so much that I think we should hang out with each other a bit more often!

The reality is that we have only a certain number of days—only 12 sitting days before the end of the year, roughly—to consider a large number of bills; I am sure Senator Campbell knows the number off by heart. We are going to struggle to deal with all of those. We will be having late sitting hours and curtailed debates, people will be making shorter speeches than usual and incorporating remarks, we will be sitting on Fridays and we will be getting tired and grumpy and angry and less able to make considered decisions. The last thing we need is another bill that we do not need to debate.

The Democrats’ view is that we all know what the outcome of this bill will be. We could all give our speeches now or we could incorporate them. They are the same speeches that we made last time the bill came up—or the time before, the time before that or the time before that. But we will not do that. We will all make our speeches, we
will all vote the same way and the outcome will be the same. In one sense, it is the government’s prerogative to put forward what it wants to debate, but I believe that the Senate should not simply sit back and say, ‘We will debate whatever bill the government wants us to in whatever order it wants us to.’ I believe that the Senate, as the primary house of legislative consideration in the parliament and in the country, should be more assertive in determining what order of business it wants and what bills it gives priority to. This bill is not a high priority.

The Democrats are not opposing this motion because we are trying to put off its ever being voted on. We are opposing it because we have only a small number of days left in the year, we have a large legislative program and we should not be chewing up that time on a bill that will not even get through. We can easily deal with it next year and vote it down then. I think that in many ways Senator Ian Campbell would agree that the Democrats would be doing him a favour if the Senate were to oppose this motion in that his program would be just that little bit less cluttered as we move through this busy period towards the end of the year.

Senator LUDWIG (Queensland) (3.57 p.m.)—by leave—It is worth while putting the opposition’s position before the Senate. The opposition support the Democrats on this motion. We stand, however, ready to debate the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2] today. We have said that if the government did want to consider this as a trigger for a double dissolution then our position would be as has been stated by our leader, Mr Crean: you can bring it on. We will put our arguments whenever the bill comes on for debate. We note that the Democrats, however, are not in a position to debate the bill, and on that basis we agree to support their position on the matter.

What might also be worth while saying, if the government has some doubt about it, is that already the opposition have agreed to the cut-off in respect of 34 bills. Given that to date we have had only 45 sitting days this year—this is provided by the general statistics for 2002—when you look at the 2002 program, I do not think the government should consider putting any blame on either the Democrats or Labor for adopting a position on this bill. When you look at the time that was provided during the last sitting day, you find it was inadequate. When you look at the number of bills that we have already agreed to have exempted from the cut-off—a total of 34—you see that we have been generous to a fault in terms of our position.

When you examine the legislative program to date as shown in the statistics on the ParlInfo site—and this is a telling statistic in itself—you find that, from 1 January to 24 October, 10 government bills were introduced into the Senate, plus another 134 bills have come through to be dealt with. That is a total of 144 bills. Up to 24 October, there were still 32 bills to be dealt with; more have been put through and we have not opposed their exemption from the cut-off. On my understanding, there are a few more to be dealt with before the end of the year. We all know—Senator Ian Campbell knows it quite well—that the cut-off is a measure that is designed to avoid the end of year rush. I have gone to the trouble in this instance to go to Odgers’ Australian Senate Practice. I do know there is a 10th edition, but the ninth will do. It outlines an amendment moved by Senator Hill, his leader in the Senate, that:

... had the effect of making a permanent order of the Senate to the effect that a bill introduced in any period of sittings will be automatically adjourned to the following period of sittings unless the Senate makes a deliberate decision to exempt the bill.

That was done on 29 November 1994. Senator Campbell’s leader agreed at that time, and I am sure he is still of the same view, that each bill stands on its merits as to whether it should be exempt from the cut-off—whether the government has been able to convince the Senate as to whether a particular bill is urgent, whether it deserves exemption from the cut-off and should be dealt with or whether it should fall by that particular rule and not be dealt with. The Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2] is a bill we are ready to deal with. The Democrats tell us they are not. On that basis, given the Democrats’ position, it is not a bill that the government has
been able to demonstrate clearly is urgent enough to be dealt with.

It is also worth reiterating what an exemption from the cut-off is. We often seem to have this debate about this time of year. It is about the third time, from my recollection, that we have had it. The government knows why it does it. The government does not have to seek exemption from the cut-off in relation to this bill if it already understands the position of the parties. It could simply choose not to introduce it and let it lie. But of course it brings it on. Why does it bring it on? Because it wants to make a point.

I am not too sure whether Senator Alston or Senator Ian Campbell will get up to make the point, but I remind them—and this is perhaps to help people who are listening to this debate—that when a bill is introduced by a minister or received from the House of Representatives, it is deferred for the next period of sitting, unless it was introduced after the expiration of two-thirds of the total number of sitting days, in which case it fails and requires approval of this house to be introduced and dealt with. This was designed to avoid the great haste which this government might want legislation to be dealt with. Each piece of legislation should be dealt with properly and appropriately and without due haste. One wonders in this instance whether the government’s purpose is to bring it on and rush it through.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (4.03 p.m.)—by leave—I congratulate Senator Ludwig on that act of pure sophistry. It is really an act of transparent cowardice, because he seemed to suggest towards the middle of his remarks that the purpose of the exercise was to avoid the Christmas rush. But he started off by saying that the opposition stood ready to confront this matter—it was not afraid of a double dissolution—but unfortunately the Democrats were not ready and therefore they would defer to the Dems. That is not exactly what Senator Bartlett said. What Senator Bartlett said was that he had great and enduring respect for Senator Macklin who, many years ago, was arguing the case for a cut-off motion or an exemption from the cut-off that would follow from it. As he understood the purpose of a cut-off motion, it was to ensure that there was adequate time for consideration of a bill.

If ever there was a bill that has been over-exposed it has to be this one. This bill has been before the parliament no less than 15 times; it has been before this chamber eight times. If ever in the history of the Senate there was legislation by which you could say you were not taken by surprise, it is that on unfair dismissals. This has been a circus for years. To pretend that somehow you are not ready, or to hide behind what you claim are the Democrats saying they are not ready, is complete and utter sophistry. The reality is that the Dems want to hide because they want to put off the date of reckoning. But they know full well that the purpose of the cut-off motion is to ensure that people are not taken by surprise. This has to be one of the worst kept secrets of all time if you think we have suddenly sprung this on you. We have been bringing it back time and again. Just so that the Labor Party is utterly exposed on this issue, let me remind you what its general attitude has been to exemptions from the cut-off. Senator Ray said on 24 September last year:

... around 125 to 127 bills have been subject to a cut-off resolution since we resumed after the 1998 election. The Labor Party has only ever opposed the cut-off for one...

So you would think that there would have to be extraordinary circumstances to justify that. It would have to be a huge piece of complex legislation which had been dropped on you at the last minute and you simply had not had time to prepare. This, of course, is quite the opposite. The Labor Party has known for months and years about a determination to proceed on this matter and, with its usual consistent intransigence, it absolutely refuses to come to the party. That is irrespective of the fact that we have gone to elections on the issue. It is irrespective of the fact that there have been surveys in which small business has made it painfully clear that this is costing it hundreds of millions of dollars a year.

A recent survey by the Melbourne Institute of Applied Economic and Social Re-
search gives compelling reasons why small business needs to be exempted but, as always, the Labor Party just says no. As we saw in an article by Cameron O’Reilly this morning, it is because virtually everyone on that side is here representing the interests of the union movement. They are not representing the wider community; they are not in touch with small business. They are not really in touch with policy issues. They are simply here as spear carriers for their various unions. If there is one issue that unites them, it is the fact that the unions do not like the exemptions for unfair dismissals. As a result, they are going to die in a ditch. I would have thought that to start off by saying, ‘We are not afraid of a double dissolution, but we have to defer to the Democrats,’ was the height of cowardice. For all those reasons, we will be supporting the motion.

Senator MURRAY (Western Australia) (4.07 p.m.)—by leave—I would have kept quiet, but I think that, in view of some of the remarks made, I need to say a few things. As usual, there has been truth all around the chamber. Firstly, we have such a crowded program that any bill which intrudes and which would take hours to debate obviously has to be considered carefully. Whilst it is true that this bill has been endlessly debated, it is a bill which comes forward with endless arguments that need to be rebutted. Whilst it is true that this bill has been endlessly debated, it is a bill which comes forward with endless arguments that need to be rebutted.

I can assure the chamber that, speaking on behalf of the Democrats, we would take the time and effort needed to debate this bill in full. I am quite certain that so will the Labor people. For instance, the latest Melbourne study cited by the minister is just one of those pieces of paper and items of misinformation which firstly needs to be forensically examined—hopefully beginning at next week’s estimates—and secondly would need to be thoroughly rebutted, because the government knows that, if you keep repeating untruths, there are enough people out there in its heartland who believe them. The difficulty for us all is that we have to constantly rebut extravagant claims made by the government with detailed and factual analysis and response.

Frankly, the only possible grounds for this bill to be considered urgently would be if it were the trigger for a double dissolution. If the government were to come to us and say, ‘We want this to be urgent because we want a double dissolution,’ both Labor and we would say, ‘Bring it on.’ But the Prime Minister himself has said that he does not want a double dissolution. If he does not want a double dissolution, there is no question of courage or cowardice. There is no question at hand. There is simply a question of the policy issue. The policy issue will require hours of debate and some further production of analysis. The Democrats would have considered the cut-off exemption favourably if the Prime Minister had said he wanted a double dissolution. He does not want one, therefore there is no urgency and therefore we will leave it until next year.

Senator MURPHY (Tasmania) (4.10 p.m.)—by leave—From my point of view, as many times as we have seen the government introduce bills into this place with regard to industrial relations, whether it is the rebranded unfair dismissal laws that are now the fair dismissal laws, the fact that you try and argue that this is an urgent bill is just a nonsense. You have had more than enough opportunities—

Senator Ian Campbell—We are not arguing about whether it is urgent; we are arguing about whether we want to vote on it!

Senator MURPHY—You want to vote on it because you are saying it is urgent.

Senator Ian Campbell—It is not an urgency motion. Read the statement!

Senator MURPHY—You are not saying it is urgent—I see. Forgive me for being wrong. I was listening to the monitor in my room and I thought the argument coming from Senator Alston was that it was urgent. Nevertheless, we are arguing about it being exempt from the cut-off.

Senator Ian Campbell—No, it isn’t!

Senator MURPHY—Isn’t it? So what is the purpose of you proposing a motion—

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Through the chair, Senator Murphy, please.

Senator MURPHY—Through you, Mr Acting Deputy President, what is the purpose
of the government seeking to exempt it from the cut-off? If it is not urgent, do not worry about it. Do not waste the time of this chamber and let us get on with the business that we have before us today. That is what we should do. If this is not urgent and you do not want it exempt from the cut-off, do not waste the Senate’s time.

Senator Ian Campbell—That is not what the cut-off is about, you goose!

The ACTING DEPUTY PRESIDENT—Order! Senator Campbell.

Senator Murphy—This is an amazing contribution from Senator Campbell—amazing, but consistent. What can I say? I am opposed to the exemption from the cut-off. I would hope that the government would try and get its own house in order and bring legislation properly before this chamber in a useful type of way. At the end of the day you will then get a proper debate about this legislation and maybe we might just get some good outcomes.

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

The Senate divided. [4.16 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes............. 33
Noes............. 37
Majority........ 4

AYES
Abetz, E. Alston, R.K.R.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Calvert, P.H.
Campbell, J.G. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Ferris, J.M.
Heffernan, W. Johnston, D.
Kemp, C.R. Knowles, S.C.
Lightfoot, P.R. Macdonald, I.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.J. * Minchin, N.H.
Patterson, K.C. Payne, M.A.
Reid, M.E. Santoro, S.
Scullion, N.G. Tchen, T.
Tierney, J.W. Troeth, J.M.
Vanstone, A.E.

NOES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Bolkus, N.
Buckland, G. Campbell, G.
Carr, K.J. Cherry, J.C.
Collins, J.M.A. Conroy, S.M.
Cook, P.F.S. Crossin, P.M.
Denman, K.J. Evans, C.V.
Forshaw, M.G. Greig, B.
Harradine, B. Hogg, J.J.
Hutchins, S.P. Kirk, L.
Lees, M.H. Ludwig, J.W.
Landy, K.A. Mackay, S.M. *
Marshall, G. McLucas, J.E.
Moore, C. Murphy, S.M.
Murray, A.J.M. Nettle, K.
Ridgeway, A.D. Stephens, U.
Stott Despoja, N. Webber, R.

PAIRS
Hill, R.M. Faulkner, J.P.
Watson, J.O.W. Sherry, N.J.

* denotes teller

Question negatived.

COMMITTEES
Scrutiny of Bills Committee
Report

Ordered that the report be printed.

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

Leave granted.

Senator McLUCAS—I move:

That the Senate take note of the report.

The most noteworthy aspect of the committee’s 14th report of 2002 is the continuation of its scrutiny of the Transport Safety Investigation Bill 2002. Earlier reports of the committee advised that there were possible concerns with the bill in relation to delegation of power and search and entry provisions. The committee reported that the provisions were such that a briefing by departmental officers would be appropriate. After
the briefing the committee further reported that it did not accept a central proposition put by the departmental officers, that it had refined its concerns and that it would again write to the minister.

The committee has now received a response from the minister, the Hon. John Anderson, Deputy Prime Minister and Minister for Transport and Regional Services, in which Mr Anderson advises that he will seek amendments to the bill and the draft regulations which will address the matters raised by our committee. The committee is most grateful for this cooperation, which demonstrates a commitment to the committee’s principles of personal rights and parliamentary propriety. The amendments which the minister proposes will all improve core personal rights. It is worth while examining each of the matters in relation to which amendments will be made, because they illustrate different and significant aspects of the work of the committee.

The first area of amendment will provide a major enhancement of safeguards in relation to the power in the bill to enter certain premises without a warrant—by force if necessary. As the bill presently stands, this power is exercisable by a delegate who may be any person at all, subject only to the executive director being satisfied that the delegate is a suitable person to exercise them. The amendments will include a reference to regulations specifying requirements such as briefing and training in entry, search and seizure powers for persons to whom it is proposed to delegate these powers. This will be a considerable improvement from the present drafting, which is based on a subjective power unconstrained by objective criteria. As such, the present provision may come within the committee’s terms of reference both because it breaches personal rights and because it insufficiently defines administrative powers. The proposed amended provision will, however, be similar to another clause of the bill which limits and controls exercise of power.

The next amendment relates to the equally important subject of the notification of rights. The committee considers that bills should provide not only for suitable safeguards and protections but also for appropriate notification of these to persons who may be adversely affected. This, however, is an area where the present provisions of the bill are deficient. The bill does provide for photographic identity cards in the prescribed form for those people who exercise specified powers, which is an essential first step. This beneficial provision is, however, diluted by the following clause which requires the identity card to be produced only if the occupier of the relevant premises asks for this to be done. The minister has now advised that an amendment will require an identity card to be produced when exercising premises powers and for reasonable steps to be taken to notify any occupier of the premises of the purpose of the entry.

The present bill is also defective in that it does not provide for an owner or occupier of premises to be advised of their rights in relation to entry and search which, as noted above, may be without a warrant or consent and by force. This is a significant omission. The effect of even the best legislative safeguards is reduced or even negated if they are not communicated to those whom they are intended to protect. Here again, the minister has undertaken to propose an amendment which will provide for the regulations to specify the rights and obligations of occupiers and for the bill to require occupiers to be informed of these when their premises are affected. This will be another major enhancement of personal rights.

The committee was particularly concerned at the breadth and number of situations which, under the present bill, are subject to entry without warrant. In this context, powers which are given to public officials should be limited to as narrow an ambit as possible consistent with policy objectives. Here also, the proposed amendments will significantly improve the present provisions of the bill, limiting entry without warrant to matters including only accidents and serious incidents. This is a preferable position to the existing wider application of the power.

The final undertaking by the minister is to impose another limit on the exercise of the power to enter without a warrant. The existing power in the bill is not limited and con-
trolled by the usual condition that it must be exercised only on reasonable grounds. The minister has agreed to sponsor such an amendment which, together with the other amendments outlined above, will provide an integrated group of safeguards in relation to search and entry provisions in the bill. The committee emphasises again its appreciation for the minister’s undertakings.

At its meeting this morning, the committee also discussed its participation at the fifth Australasian and Pacific Conference on the Scrutiny of Bills and the eighth Australasian and Pacific Conference on Delegated Legislation to be held in Hobart on 4 to 6 February 2003. These conferences are a useful means of sharing experiences with our state and territory legislative scrutiny colleagues. In the case of the Scrutiny of Bills Committee, they are also significant because of our pioneering role in the field. The committee has decided to prepare a report for the conference on its work during the three years since the last conference and to present two papers.

The first paper will be on entry, search and seizure provisions, which is an area where the committee has done considerable work and that represents one of the most important aspects of personal rights and liberties. Part of the paper will include the minister’s undertakings mentioned earlier in this statement as an example of the improvements in legislation which result from effective legislative scrutiny. The second paper will address regulation-making powers in Commonwealth bills. The days are long gone when bills simply provided for regulations to be made where ‘necessary or convenient’. Bills now often require detailed and esoteric regulations to be made, which raise issues of parliamentary propriety. The committee is confident that the report and the two papers will give a comprehensive account to the conference of its work. The committee in due course will report to the Senate on the conference proceedings.

Question agreed to.

Community Affairs Legislation Committee

Membership

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Order! The President has received a letter from a party leader seeking a variation to the membership of a committee.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (4.29 p.m.)—by leave—I move:

That Senators McLucas and Moore replace Senators Denman and Hutchins on the Community Affairs Legislation Committee for the consideration of the 2002-03 supplementary budget estimates hearings on 21 and 22 November.

Question agreed to.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Message received from the House of Representatives agreeing to the amendments made by the Senate to the following bill:

Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Bill 2002

CRIMINAL CODE AMENDMENT (OFFENCES AGAINST AUSTRALIANS) BILL 2002

First Reading

Bill received from the House of Representatives.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (4.30 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 ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (4.30 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 terrorist attacks of September 11 in the United States demonstrated that the world is facing a new security environment. The tragic events in Bali have brought this threat closer to home in a very direct way. Australia is committed to the war against terrorism. The Bali attacks strengthen our commitment. We cannot hope to hide from terrorism by shirking from this fight. We must do everything possible to fight the scourge of terrorism.

Australia has a history of strong and well-established arrangements in place for counter-terrorism coordination. These arrangements were strengthened following a comprehensive review after the September 11 attacks on the United States. The Howard Government acted swiftly and decisively to address the new terrorist environment with an extensive package of new counter-terrorism policy, legislation and resources for relevant agencies.

A package of legislation was enacted to strengthen Australia’s counter-terrorist laws. Among other things, this legislation introduced a range of new offences relating to terrorism.

 Sadly we now know at a horrific cost that our region and indeed Australia’s shores are not immune from the evils of terrorism. We must continue to do all we can to protect Australians and Australian interests. The Howard Government is committed to doing just that within the framework of a strong legal and judicial system, using established powers granted to intelligence and law enforcement agencies to protect the community. Where necessary, we will seek to have those powers extended to ensure our security and law enforcement agencies have tough tools which will enable them to do all they can to protect the community from terrorism and prosecute the perpetrators of these evil crimes.

In response to the Bali attacks the Howard Government is reviewing current arrangements to identify any possible action to strengthen our counter-terrorism capabilities still further.

As a result of that review the Government announced that it would enact, as a matter of urgency, new legislation outlawing the murder of Australians abroad. The Government is strongly committed to ensuring that Australia has every tool it needs to prosecute those who engage in heinous crimes overseas against Australian citizens and residents, such as those we experienced in Bali. This Criminal Code (Offences Against Australians) Bill 2002 demonstrates that commitment.

This legislation amends the Criminal Code to create new provisions making it an offence to murder, commit manslaughter or intentionally or recklessly cause serious harm to an Australian outside Australia. It will ensure there are no loopholes in terms of prosecuting terrorist acts involving murder overseas. And it further strengthens legislation in our new counter-terrorism package, which already has extra-territorial effect. The legislation will operate from 1 October this year.

The new offences provide Australia with jurisdiction to prosecute for attacks on Australians committed overseas. The offences will complement the existing terrorism legislation, and will provide a prosecution option where perpetrators are unable to be prosecuted under the terrorism legislation.

To extradite a suspected offender from a foreign country there must be ‘dual criminality’—that is, the conduct must constitute an offence in both Australia and the other country.

Other countries may not have specific counter-terrorism laws, but they will have murder laws. This new offence will fulfil the pre-condition for extradition that there is dual criminality and enable extradition for murder. If the suspects are located outside Australia, prosecution of the offences will still depend on the country in which the suspects are located agreeing to their extradition to Australia.

The bill recognises that those involved in the tragic Bali bombings could now be anywhere in the world. The new offences will provide coverage for overseas attacks on Australian citizens and residents (such as those which occurred in Bali) where it is appropriate that the perpetrators of those attacks be prosecuted in Australia. The maximum penalty under the new laws will be life imprisonment.

This bill demonstrates the Government’s commitment to ensuring that Australia has every tool it needs to prosecute those who engage in terrorist attacks on Australian citizens and residents overseas.

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.

**TELSTRA CARRIER CHARGES—PRICE CONTROL ARRANGEMENTS, NOTIFICATION AND DISALLOWANCE DETERMINATION NO. 1 OF 2002**

Motion for Disallowance

Senator **CONROY** (Victoria) (4.30 p.m.)—I move:
That the Telstra Carrier Charges—Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2002, made under subsections 154(1), 155(1) and 157(1) of the Telecommunications (Consumer Protection and Service Standards) Act 1999, be disallowed.

Today, Labor is seeking to overturn the 2002 Telstra price control determination because these new price controls hurt ordinary consumers. Labor opposes these price controls because they fatten up the already hugely profitable Telstra at the expense of struggling low-income families. Labor opposes these price controls because the Howard government has cynically and shamefully misrepresented their effect on low-income Australians. Put simply, Labor is seeking to overturn Telstra’s 2002 price controls because they are unfair.

Telstra’s price rises under the Howard government have hit hard the hip pockets of many Australians. Since the federal election, Telstra has increased its prices for telephone line rentals, directory assistance, wake-up and reminder calls, mobile phone flag falls, text messaging, Internet access and White Pages dual listings. The Howard government have let Telstra off the leash with its new price controls, introduced before the parliament rose for its winter recess in June. Cynically, the government did not introduce this new unfair regime until after last year’s federal election. They knew Australians would not cop line rentals going up prior to the election. The new price controls allow Telstra to slug most Australian families with higher line rental fees and higher mobile phone costs, and some are even paying higher local call rates. Telstra is making huge profits and there is no justification for the large line rental increases allowed under the new price controls. They are unfair to low- and middle-income families.

This is part of a deliberate policy by the Howard government to allow Telstra’s line rental fees to eventually increase to around $32 a month—that will be an increase of $244 a year per line since March 2000. That is just money for jam, and that mob is just fattening up the cow to try and draw in some extra buyers when they try and sell Telstra. That is what this is really about. Since March 2000, Telstra has increased its line rental charges for most customers from $11.65 to $21.90 per month—an increase of $123 a year per line. For customers using Telstra’s most common home line, Complete Plan, that is an increase of almost 90 per cent in just 2½ years. Labor says: enough is enough! Those outrageous rises must stop.

The government talks about rebalancing, whereby line rental costs go up and local call costs come down, but under the August Telstra price rises line rentals went up on common plans and—surprise, surprise, Senator Cherry—there was absolutely no accompanying reduction in local call costs. Most Australian consumers will remember the shock they received in the mail this August when Telstra advised them that their line rentals would be going up by $2 or $3 per month without any accompanying reduction in local call costs.

Senator Cherry—That’s not true.

Senator CONROY—Everyone got the letter, Senator Cherry. The shock deepened when Australians started to receive their bills. They had to fork out the extra $2 to $3 a month to pay for their home phone. Many of those receiving quarterly bills copped a $9 increase in line rentals. If you look closely at the bill, you can almost see John Howard’s face smiling as he takes another $9 away from the average Aussie so that he can fatten up Telstra for sale. This all goes to the heart of the unfairness of the new regime. Line rentals have a discrete subcap allowing for increases of the CPI plus four per cent—an effective increase of about 7.5 per cent a year—but there is no accompanying discrete local call subcap requiring an equivalent reduction in local call costs. The new price controls do not require Telstra to reduce local call costs by an amount related to the increase in line rentals. This was required under the old price controls. The reductions in call costs promised by the government when they announced these new prices in April have not been delivered. Those promises by the government have not been delivered. There has been some very minor fiddling with STD and fixed to mobile rates. Local call costs have not come down on any Telstra.
residential plans—not one. Other services, such as mobile phone calls and text messages, no longer have price controls at all under this new regime. Telstra has already started putting up prices for these services. The reality is that phone line rentals of above $30 per month will make owning a home phone a luxury for many Australians.

Senator Cherry interjecting—

Senator CONROY—You may well laugh, Senator Cherry, but it is not a laughing matter to millions of Australians. The government’s low line rental plan, Home-Line Budget—supposedly for low-income earners—has seen local call costs rise in August from 15c to 22c per call to 30c per call—that is a massive 36 per cent to 100 per cent increase. Some help for low-income earners, thanks to Prime Minister John Howard! The largely low-income customers on this plan have also been slugged with increased costs for STD and international calls. Struggling Australians are effectively being told, ‘We will let you save on phone rental, but please don’t make too many calls.’

The removal of the local call subcap on budget packages is an insidious feature of the new price controls. This not only disadvantages low-income earners but also opens the way for Telstra to introduce a timed local call product, with the long-term aim of squeezing out untimed local calls. That is the hidden agenda here. For those of you who say that would never happen, try finding a phone number from the White Pages with directory service. They are trying to force you onto the other scheme—‘call up and we will connect you’—the call connect. That is what this is about. They tell you that you can still have this other service, then they try to make sure you can never find it, and so you have to use the more expensive one. That is what Telstra have been doing and that is what the Democrats are letting them do.

The government has tried to argue that the new price arrangements are revenue neutral for Telstra. This not only disadvantages low-income earners but also opens the way for Telstra to introduce a timed local call product, with the long-term aim of squeezing out untimed local calls. That is the hidden agenda here. For those of you who say that would never happen, try finding a phone number from the White Pages with directory service. They are trying to force you onto the other scheme—‘call up and we will connect you’—the call connect. That is what this is about. They tell you that you can still have this other service, then they try to make sure you can never find it, and so you have to use the more expensive one. That is what Telstra have been doing and that is what the Democrats are letting them do.

The government has tried to argue that the new price arrangements are revenue neutral for Telstra. This is the biggest furphy of the lot. Even Meg Lees would not swallow this one! Supposedly, consumers lose on the swings but win on the roundabouts. But in October Labor revealed government departmental modelling which showed that Telstra stood to gain $170 million a year under the new price arrangements. How can that be so? It is ‘revenue neutral’, apparently. Telstra would gain $120 million from the fixed line price changes and around $50 million from the removal of price controls from mobile phones—that is the government’s modelling, Senator Cherry.

This more than confirmed Labor’s own estimate that Telstra would gain up to $100 million from the new arrangements—so we were pretty conservative. We actually tried to give them the benefit of the doubt but their own modelling shows $170 million. It confirmed the views of many from investment banks around the country that Telstra stood to gain from these new arrangements. There are a lot of smart people out there; they do their analysis, they have been given a look at the books—and what did they say? They all said, ‘Telstra’s going to be better off.’ But what does this mob on the other side of the chamber say to us? ‘Oh no, there’s no revenue to be gained by Telstra through this.’ But the cat is out of the bag. In the money markets, they know Telstra are on a winner. The government’s own research says that they are on a winner.

This Howard government modelling also allows Labor to confidently claim that this motion will force Telstra to hand back around $80 million that it would have taken off consumers over the next eight months. If you support this motion, $80 million would be saved for ordinary Australians. Vote with the government and they would be $80 million worse off.

Senator Alston has also had a difficult time defending his new price control arrangements. In Senate question time on September 19, it quickly became apparent that Senator Alston did not even understand the new price control arrangements, but that is no surprise from ‘the master of detail’, as he is known over there in the chamber. In scenes reminiscent of this week’s embarrassing revelations that Senator Alston has not read his own Estens report whitewash—

Senator Mackay—That’s disgraceful; I don’t believe it!
Senator CONROY—Yes, it is true. I know it is hard to believe, Senator Mackay.

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Direct your comments through the chair, Senator Conroy.

Senator CONROY—It is just amazing. I am sure even the President is amazed that Senator Alston admitted that he has not read the report. Are you amazed, Mr President? I am surprised, like you are, Mr President.

Senator Ian Campbell—Senator Brandis is the Acting Deputy President.

Senator CONROY—It was a promotion for George; someone has to look after him! Senator Alston revealed in question time that he did not even know that the 25c 'budget package' local call subcap had been blown out of the water under the new 2002 arrangements. How embarrassing! What a gaffe! The minister simply did not know that Telstra were now charging an exorbitant 30c for their local calls on budget packages. In a final clanger which all Australians should remember, Senator Alston said:

if ... you think that line rentals are too high you do not have a phone, do you. No-one is forcing you to be on the line.

That is what Senator Alston had to say a few weeks ago in this parliament when questioned about these increases. I will read that one again:

if ... you think that line rentals are too high you do not have a phone, do you. No-one is forcing you to be on the line.

What a shameful statement. You may well sit there and smirk and shake your head, Senator Alston, but it is in the Hansard and you will weep from that one. This shows just how out of touch with struggling Australian families the Howard government has become. It exposed all the hypocrisy associated with the Howard government’s professed concerns about telecommunications services and prices. It was a fitting prelude to last week’s Estens inquiry whitewash.

Australian families should not be unfairly slugged under these new price arrangements. While the old price controls were far from perfect, they were clearly fairer to low- and middle-income families. Those who are the hardest hit under these new Telstra price arrangements are low- and middle-income families who do not qualify for any kind of special concession. Once again, John Howard has deserted his so-called battlers. Labor are seeking to protect Australian families by disallowing the Howard government’s new, unfair Telstra price controls. We call on the minor parties and the Independents to support this motion. But today we have learnt of another shameful sell-out by the Australian Democrats.

Senator Bartlett—Here we go!

Senator CONROY—I am sorry you were not here before, Senator Bartlett. I was just making the point that even Senator Lees would not have swallowed this rubbish. Even Senator Lees would have got a better deal than you lot have on this little sell-out, this cheap little deal you have done. But now we learn, as I said, that you have sold out and are supporting the government’s Telstra price rises, all in exchange for a paltry $10 million from Telstra. Shame on you!

Just for the benefit of Senator Bartlett, who missed the earlier part of the debate, I will make the point again: this is a company that is making $170 million—not $17 million—out of the new price arrangements, based on the government’s own calculations. What did the big tough Democrats over there in the chamber get out of them? Ten million dollars. Telstra are making $170 million. The Democrats’ decision to side with the government in pushing through unfair Telstra prices shows once again that the Democrats just cannot be trusted.

Thanks to the Australian Democrats and the Howard government, Australians will now be paying more for phone line rentals with no guaranteed reduction in local call costs. You had a big bargaining position here, guys, and you went for 30 pieces of silver. When standard phone line rentals hit $32 per month in the next few years, Australians can thank the Democrats and the Howard government. But, Senator Bartlett, this one is down to you. There is no Meg Lees to blame and nobody else to blame; this one is down to you. The party that gave low-income Australians the GST has now rubbed salt into their wounds by allowing John Howard to drastically increase the cost of
their telephones. But given that most of you supported flat taxes before, you will not mind an equivalent flat tax for low-income earners on phone lines. If this motion were to be successful, Telstra would be forced to revert to the fairer 2001 price control arrangements as per clause 25 of the 2001 price control regime, which forces the continuation of the main provisions of the 2001 price control regime until July 2003 in the absence of a new determination.

Senator Bartlett interjecting—

Senator CONROY—ACOSS supported the GST as well, so do not trot them out as representatives of low-income earners. Do not come in here and try and claim that ACOSS are representing low-income families. They did the dirty, just like some of your colleagues, on the GST. If this motion were successful, Telstra would be forced to comply with the fairer 2001 price control regime for the remainder of the financial year, forcing money back into consumers' pockets—money they would otherwise have taken away. The government would also be forced back to the drawing board to come up with new price controls that do not disadvantage low- and middle-income Australians, which Labor would support. So you had the big chance to make them do it right, and you sold out for 30 pieces of silver.

The government has threatened to abandon price controls from July 2003 if Labor’s disallowance motion is successful. What a threat that is: they will just let the gorilla off the leash—they will let Telstra charge whatever they want. Does anyone seriously believe that is what they would do, that they would sit back and let Telstra just rip people off because it is a huge monopoly? You had the chance here to get a better deal. You could have worked with us to get low-income earners a genuinely better deal, not fatten the cow for this mob to try to sell off Telstra. This is an outrageous threat but it is a hollow threat, and if you had a bit of backbone you would have stood up to them, voted for this motion and forced a decent regime on them next year. If the government got their way, it would mean that we would end up with a privatised monopoly delivering an essential service without price controls. You know you did not have to let them do that. Here we have a government that want to sell Telstra and remove price controls—the true agenda. They want Telstra to be just like the banks. Australians will not cop this and they will know exactly who to blame if Telstra’s price controls are removed—John Howard.

Labor has a strong commitment to Telstra and remains the only party which has not wavered in its commitment to oppose the further sale of this vital national institution. Now you can see why this sort of debate today is critical and why you have to keep Telstra in public hands with majority ownership so that that mob over there and their pack of spivs, who want to advise them and make millions and millions in fees, cannot just flog it off so that shareholders can buy it and lose more money, just like they have done on T2. That is what this debate is about. It is about what you can do when you have majority ownership. It is not just saying no; it is what you can do—the social security protections and the community service obligations you can work in are what is important about this debate. The Democrats are now showing that they cannot be trusted on Telstra. They have sold out Australian consumers yet again. Labor opposes the Howard government’s new price controls: they are unfair, they hurt low- and middle-income Australians and they should be disallowed.

Senator ALSTON—It is something like 12 months since the last election and here he is making his debut. I have to say we should all welcome him and, I suppose, be a bit more tolerant than usual. It is interesting to reminisce about the genesis of this disallow-
ance motion, because this was announced by Mr Crean at the start of the Cunningham by-election. Mr Crean said: ‘I’m in such a desperate hurry I am going to make Telstra the big issue of the campaign. Here is a classic example for you: how they’re ripping off consumers and punishing low-income earners,’ and all the things you normally say when you try to scare the pants off people. Then he made it plain that he had not even been to caucus he was so desperate to get this initiative out there, presumably on advice from Lindsay Tanner. I think that is a story in itself because Mr Crean called a door-stop interview last week to respond to Estens and, as you may recall, Mr Tanner had scheduled a press conference for 2 o’clock and suddenly it was cancelled without warning. Mr Crean came in over the top at 2.30 p.m. Mr Tanner had to be there with him, and Mr Tanner was not allowed to speak. So Mr Tanner is not exactly the flavour of the month. If you look at Kevin Rudd’s top 10 shadow ministers, Mr Tanner is not there and, I am afraid, Senator Conroy, nor are you.

When we said that we would not play ball with this silly, shabby little Cunningham by-election stunt, Mr Tanner’s response was to say, ‘Oh, no, it’s not drop dead. This is to encourage you to negotiate.’ That is what the Democrats have ultimately done, but policy lazy Labor never came near us and never for a moment suggested anything; they just said no. Again, it is symptomatic of a party that has all these very serious internal problems, because Mr Tanner, as we know, has been out there making speeches on a whole range of subjects outside his portfolio but when it comes to this one he is not interested in cutting any deals or talking to anyone; all he is interested in doing is putting out a release that basically misrepresents the position fundamentally while hoping no-one will notice.

The reality is that we allowed the increases on the recommendation of the ACCC. I think you will find, when you look at the very extensive discussion paper that the Democrats have released today, that the ACCC very carefully analysed some of the problems in the marketplace. One of them relates to competition because, whilst you have an access deficit of around $1.2 billion, you find that the line deficit rental is about 45 per cent of the interconnect charges, which means that Telstra’s competitors are actually paying a lot more than they need to pay. So if you have line rebalancing, which the OECD has been promoting for some years and which the ACCC well and truly understands, you actually get a much healthier competitive environment. Of course Labor knows that. That is why this whole exercise is so profoundly dishonest and why it backfired hugely in Cunningham.

Senator Conroy—How many votes did you get in Cunningham?

The ACTING DEPUTY PRESIDENT—Order! Senator Conroy!

Senator ALSTON—You tried to make this the big issue, and it just did not cut the mustard. The punters did not fall for it for a moment. It has never been an issue since. After that ultimate humiliation, you had your chance to come back and try and talk it through. I am not sure whether you even approached the Democrats—I suppose you did not. But the end result is you have done nothing; you have been cut out of the deal and the Democrats, of course, have been able to get a little extra. Good luck to them. But the fact is that there was no need for any extra, because these measures are very carefully considered and do contribute very substantially to competition.

The opposition claimed on 19 September that Telstra’s customers under the new price controls would have to pay about $100 million a year more on line rentals than they would save on local, STD, IDD and fixed to mobile call costs. That was based on totally fallacious reasoning—and we had an example of it just a few moments ago with Senator Conroy adding a CPI of 3½ to a plus four to say that that was 7.5 real. Of course, that is nothing of the sort. The fact is that people have been getting substantial reductions on a basket of call prices in exchange for a modest increase over a five-year period in line rentals. As we know, that is something about which people have always been able to make a choice. While Senator Conroy likes to pretend that somehow I was not aware of this at the time, I have always been acutely aware
that low-volume users were given the option of paying a little bit more on call charges in order to have a $4 a month less line rental charge. That is their choice—and we respect that. The way the Labor Party put it was that these people were suddenly being forced to pay higher call rates—and of course they were not. No-one was obliged to take up that package; it was simply there as an optional extra for those who did not use the service or make all that many calls.

Correctly calculated, using constant prices, consumers are in fact better off as a result of the price caps on line rentals and call charges by more than $100 million annually—so precisely the opposite of what the Labor Party like to pretend. The opposition then claimed on 10 October that a research paper presented by the Communications Research Unit on 2 October showed that Telstra would be $170 million better off under the new controls. The paper, as they well know, presented the results of running a computer model based on publicly available data and the researchers’ own assumptions. The model was theoretical and very general, covering the industry as a whole. The researchers simply used the Telstra price caps as an illustrative example of how the model might eventually assist policy making. They openly acknowledged the model’s limitations. They stated that it was ‘naive and relatively simple’. In fact, the industry had not previously been given an opportunity to make any informed comments on the model’s structure and assumptions.

The model took no account of some important factors that could significantly affect Telstra’s revenues: firstly, the depressed state of the telecommunications market over the past 12 to 18 months, which has reduced the scope for Telstra to achieve revenues theoretically permitted under the price caps; secondly, the fact that, as rebalancing occurs, competitive pressure on Telstra’s prices should increase and Telstra’s interconnect revenues from competing carriers should fall; and, thirdly, the fact that in most price cap periods, Telstra’s prices have been reduced by more than what is required under the caps due to competitive pressures or commercial judgments by Telstra.

Perhaps most significantly, the paper did not consider the benefits deriving from Telstra’s $150 million a year package of products for low-income consumers. That is the very package over which Labor now slams basically the entire welfare sector because there were five leading welfare organisations who signed off on that and who came out and criticised the Labor Party for its shabby and expedient threat to disallow. And, of course, that package is of very significant benefit to low-income consumers.

The opposition misled the electorate when they suggested that the disallowance would mean the reversal of the recent line rental increases. They well knew—or, if they did not know, they could have obtained advice—that any disallowance was not retrospective and that Telstra would not be required to reverse its price changes if the determination were disallowed. But, of course, they were not going to tell that to the people in Cunningham or to the electorate at large. Contrary to their claims, disallowance would have had serious, adverse consequences. It would mean the revival of price caps put in place over three years ago that are no longer relevant or appropriate and that are potentially damaging to competition. This includes price caps that would give very little scope for reduction of the access deficit—so a fundamental chilling of competition. It would give assistance to low-spend consumers—in other words, people who might have holiday homes and only make occasional calls—rather than targeting low-income earners who ought to be the ultimate beneficiaries of low income—

Senator Mackay interjecting—

Senator ALSTON—You do not understand the difference, Senator Mackay? The original package was very poorly targeted at low-spend consumers—in other words, maybe very high-income people who only use the phone occasionally in a particular home.

Senator Mackay—It is new money, is it?

Senator ALSTON—No, it is not new money. These are people who only use the phone occasionally and the previous arrangements were benefiting them. The $150
million commitment by Telstra is certainly new money. It is a package of products for low-income earners.

Senator Mackay—Is it new money?

Senator ALSTON—Part of it is new money. It is not our money. Whether Telstra wants to call it new money or old money does not really matter. What does matter is that Telstra gave benefits to low-income earners, not low-spend users.

Of course, it would have meant that some important price controls like the local call price parity scheme which, again, was designed to ensure that people in areas where there is not sufficient competition, usually outside of the metropolitan areas, are able to get the benefits of a general reduction in call charges in competitive areas. That, of course, would have gone out of the window. Controls on directory assistance charges would no longer have applied. There would have been no controls at all on Telstra’s prices after 30 June next year beyond those applying under trade practices law. Disallowance would have meant the loss of some very important low-income initiatives such as the new low-rental HomeLine Budget product and the expansion of pensioner concessions. These initiatives would no longer have been tenable and therefore would need to have been withdrawn.

I think the Democrats understood all that. Telstra has specifically designed product offerings for a group of over 340,000 holders of the low-income health care card. Telstra will offer a product with a rental that is $2 less per month than the standard residential line rental, which will not increase in real terms. Telstra will also offer substantially discounted connection charges to this low-income group.

These are the additional benefits that the Democrats can quite rightly say result from their taking this seriously. They are not the result of political posturing where you get out and pretend that somehow you are going to act to the benefit of low-income earners but you do absolutely nothing about it. That, I think, is really where Labor continues to be absolutely exposed. Senator Conroy said it all when he said: ‘Telstra’s huge profits constitute no justification for these measures.’ In other words, because he thinks that Telstra is making a lot of money, he could not care less about competition. He could not care less about line rebalancing or excess deficits. These issues are not too difficult to get your head around if you are prepared to do some homework on them. But ignore the ACCC, play the populist card, think you can appeal to low-income earners and the end result is that you come a huge cropper. That is what has happened here. Of course we are not in the business of giving handouts to Telstra; we are in the business of having a much fairer and competitive regime. I think the Democrats have comprehensively demolished all of Labor’s arguments in the paper that they put out today.

Let us be quite clear: HomeLine Budget and other packages are part of the options available to people that give them more flexibility. Labor, presumably, would use the ministerial power of direction to stop those sorts of options being available because Labor somehow think that these people are being forced to pay higher call charges. Once again they would put Telstra in a straitjacket. We know that they would break it up. We know that they are in favour of structural separation, so we know that they would keep some poor pathetic part of the utility service in government ownership and sell off all the rest. Of course they would not let Telstra sell off NDC. Of course they would not let Telstra get into more foreign adventures, as they see them. They would not let them get into any media enterprise activities. They would have them stick to carriage and not content. Once again you would have the Labor Party hell-bent on crippling a great Australian company. For what purpose? To suit the ideological prejudices of those who really call the shots in the Labor Party. The CEPU and the other unions presumably write most of this material and they do not want to understand the benefits of rebalancing, which is so fundamental to health and competition in telecommunications. So I am pleased that, with the assistance of the Democrats, sanity has prevailed. Once again it shows the total irrelevance of the Labor Party, who are too lazy to do any serious work on the subject,
and they of course will continue to get what they deserve.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (5.02 p.m.)—I am not surprised that Senator Conroy fled the chamber as soon as his speech finished because I am sure he did not want to endure the reality of having his fanciful claims smashed aside for their tissue paper thin reasoning. It is a bit of a shame. I do not know whether the story the minister tells about this issue appearing in the first place is correct, but perhaps Senator Conroy has just been stuck in the position of having to be the mouthpiece for Mr Tanner’s original miscalculation.

This is an important issue—political point scoring aside—because it does involve Australian consumers in their millions. It is a complex issue. It can be frustrating, I am sure, for the public or the media when you have got some shadow minister coming along waving around a piece of paper and saying that these new controls relay an extra $100 million profit for Telstra. It is not until you actually explore the reasoning and the rationale and calculations behind that that you discover that not only does it not give extra money for Telstra but it actually gives an extra $115-odd million to the consumer.

The public just says, ‘One mob say this; the other mob say that—who can tell?’ The Democrats have done the work. We have worked extensively to get the data, some of which is not publicly available. The data about household incomes is not available to Telstra, for a very good reason, because there would be significant privacy implications. That is also why rushing in with a quick position is irresponsible.

Senator Conroy had another swipe at ACOSS, saying that they just supported the GST and they are supporting this—say no more. Of course ACOSS did not support the final GST package, and this is just a cheap slur by the ALP.

Senator Mackay—Neither did you!

Senator BARTLETT—Neither did I—that is quite right. That is why I know that ACOSS also did not support it. So just simply to say that ACOSS supported something when they did not, and then to try to extrapolate and say that you can ignore them now because they supported something when they did not, shows the weakness of Senator Conroy’s argument.

Of course it is not just ACOSS; it is a range of other groups. It is Anglicare, it is the Smith Family, it is the Salvation Army, it is Jobs Australia, it is the Council on the Ageing, it is the Federation of Homeless Organisations—and they have worked on this for 18 months in what is a complex area. It is such a mix of different baskets of prices going up and down and different household incomes and different groups and different social frameworks and different household structures that of course it is complex. That is why you listen to the people that did the work.

I am sure that Senator Conroy normally would not dispute the intentions and motivations of organisations like ACOSS and others. The whole group—the Low-Income Measures Assessment Committee—worked for months and months with the sole aim of protecting low-income people. They had therefore already produced an updated, very effective package of $150 million extra assistance for low-income people. It is quite clear that the package as it now stands, which Labor is trying to disallow, and the changes that are coming in, which Labor is trying to stop, will already make most low-income people better off. It will provide them with a choice, if their individual circumstances make it desirable to choose a different package, that will ensure they are not worse off.

But the Democrats did recognise that there could still be a small group of low-income people who might be slightly worse off. In total there is no doubt the majority would have been better off, but we like to ensure that everybody will be better off. With the extra package that the Democrats have now consulted about we are very confident that we have managed to achieve as close as you can get to nobody being worse off with that extra $10 million on top of the existing $150 million package that Telstra is already putting forward. That package would also be drastically impacted upon if this disallow-
ance were to go ahead. So the assistance that is already being provided for low-income people would be lost as well.

What we have here is a motion that would overturn months of work by experts in the welfare sector focused solely at protecting low-income earners. All of that would be thrown out—not only that but there is no alternative model. They are just going to wipe all that clean and say, ‘Get rid of all that; you go and figure out something else, and we will tell you if we like it.’ That is basically what this motion would do.

Senator Lundy—That’s the government’s responsibility. Since when have the Democrats been responsible for something like that?

Senator BARTLETT—The Democrats are always responsible. That is our job. That is why we do not simply react and form a policy on the basis of whatever Mr Tanner puts in a press release. We will do the work and assess what is important to the Democrats, which is protecting low-income people. We will ignore cheap political stunts and look at the policy outcome that is best for low-income people. Not only is this best for low-income people; it is best for middle-income people and for the consumer. It improves competition in the industry. It is not just Telstra supporting this change because it gives them extra money. Of course, it does not give them extra money; it gives them less money. But groups like Optus support it because it is better for them and the entire telecommunications industry. It improves the choices for consumers. It ensures that the options for consumers increase. The increased opportunity for a drop in call costs over time for high-usage people, who are not all high-income people, clearly means that they will be better off. Because of the other packages that have been put in place, low-usage people also have options. Let us not forget that a large number of low-usage people are very high-income earners. So we have the ALP wanting to assist high-income earners, who use extra phones because of the low-line rentals—the extra fax line or the phone in the holiday shack—and willing to throw aside a whole package of measures that assist low-income people.

What is so absurd about what is being done is that a quick knee-jerk response by the ALP—based on inadequate research, no checking with people who know and no seeking out the data or double-checking whether they know their facts—has stuck them in a spot where they feel the need to continue down a path when I presume they know that what they are doing goes against their supposed rationale. You cannot argue against the rationale of what Senator Conroy said he was doing. The trouble is that what he says he is doing in this motion is not achieved. The opposite is achieved.

What the Democrats are about and what we have always been about is looking at each issue on its merits, getting the information from the people who have the facts, doing the work ourselves before we rush to a decision and then ensuring that the outcome is in the interests of the public. We are not going to make decisions based on a cheap political headline for the day. It might be a nice cheap political headline for the day, but the public has to live with the outcome of the policy decision for years to come.

Senator Mackay—That’s why you voted against the GST, Andrew.

Senator BARTLETT—That is why I voted against the GST, and that is why I can say that I am 100 per cent confident we are doing the right thing here. It is not the only reason but it was one of the reasons. That is why we do not go into decisions like this lightly. We did an enormous amount of research, and I pay particular tribute to the staff member who did a large majority of it. We consulted with people widely—people who have the same motivation. It was not just a few spivs—to use Senator Conroy’s phraseology—off on the side who are interested in making money from consultancies. We do not employ any of those people. We are talking about people who care about low-income people. We are talking about people who care about consumers. We are talking about people who are trying to develop technology in the Australian communications sector, and enhance the opportunity for rolling out broadband quicker and getting better access to better telecommunications services. All of those people understand the industry
but come at it from a perspective of what is in the interest of the consumer, what is in the interest of low-income people and what is in the interests of the development of the technology. Then we make a decision.

The Democrats are not, and have never been, interested in simply supporting one side because that is the politically convenient thing of the day. That is why the role the Democrats play is so crucial. We will do our very best. We sometimes make mistakes, like everybody does, or make misjudgments or use incorrect information, but the role, the purpose and the motivation of the Democrats is to ensure that the people we believe are important are considered, and the policies and objectives that we believe are necessary for Australia are reflected where possible, in the legislation and the decisions that this chamber makes. That is why we have prevented a negative outcome for the consumer, for the majority of low-income people and for the telecommunications industry, which is what this disallowance motion would achieve. On top of that, we have achieved an extra positive outcome for low-income people and for low-income health care card holders—in effect, the working poor, who have now also got extra assistance of $10 million. They are the people, broadly speaking, who are most likely to be worse off from this change. Even that small negative of this change we have addressed.

It is unfortunate if this is the level of understanding of the issues by the Labor Party. If that is going to continue across their responses to all telecommunications issues, then it will be a difficult time in this chamber. There are a lot more important issues in relation to telecommunications, information technology and a wide range of other areas that need considered debate. Again, they are complex and significant and they affect a wide range of people and a large number of people and industries.

The bottom line is that the social impact comes first, particularly for those who are less well off but also through access to information and contact with others in the community. That principle is an important one that is being more widely recognised across all policy areas. On top of that is the economics—what it will mean for the industry and future development opportunities for business and competition across the sector, not just for Telstra but for the others.

I find it hard to figure it out sometimes when one minute Telstra is being whacked around the head, as it often deserves to be, for being this huge massive profit-making entity that is supposedly trying to rip the consumer off everywhere and the next minute it is being lauded as a great Australian company that we could not possibly privatise any further. The Democrats certainly remain consistent in our opposition to privatisation.  

Senator Lundy—Bend with the wind.

Senator BARTLETT—Perhaps you can find one single public statement by the Democrats which suggests otherwise. You ignore the actual document that all Democrat senators signed saying that we would not sell Telstra in this term of parliament. Perhaps you could actually come up with some evidence. The extent of the substance of the Labor Party’s case on this is to make wild allegations. Challenge them to come up with evidence, challenge them to demonstrate it, and all they can do is repeat the fabrications. I find it amazing that Labor Party people can ever come on and say, ‘We are the ones you can trust on privatisation.' Give us a break! Not only did you sell the Commonwealth Bank but you said you would not and then went straight out after the election and sold it. Then you sold the airports and Qantas. And you want to say, ‘Trust us on privatisation.’ Give it a rest—it is just unbelievable.

The Democrats are the only party to have a consistent record not only of keeping our word but of opposing privatisation. That is what we have done across the board and time after time, including on Telstra. I can guarantee that the Democrats will not sell Telstra in this parliament. Quite frankly, I am getting very sick of having to talk about the issue of selling Telstra, which the Prime Minister keeps bringing up, because it is not going to happen in the Senate in this parliament; so he should stop talking about it.

Senator Lundy—In this parliament?

Senator BARTLETT—Yes, in this parliament. The trouble is that it might happen
in the next parliament because you people might win government and you will probably sell it and the Liberals will support you. That is why it might happen in the next parliament.

Senator Mackay—This is the GST party talking.

Senator BARTLETT—And they have the hide to talk about tax. This is the mob that did the deal with the government to give massive tax cuts to high-income earners through the capital gains tax cuts in exchange for a deal—by the great negotiating Labor Party—to treat trusts as companies. That was the balance. We will let this outrageous inequity go through—huge tax cuts to high-income earners—and in exchange we will ensure that the government fixes the loopholes on taxing trusts as companies! And what happened? Nothing. When the government said, ‘No, we have changed our mind,’ did Simon Crean go out there like a rat up a drainpipe and say, ‘This is outrageous, you have sold us out, you have sold out the taxpayers, you have sold out the battlers’? He did not say a word, because he did not want to do it either. It is too politically difficult. He is too gutless. It is the same thing we have here: too politically difficult. He is too gutless. It is the same thing we have here: too politically difficult to say, ‘On second thoughts, our calculations are wrong: we don’t really want to do something that is going to hurt low-income people and is going to hurt consumers. We have got to stick with it because it is a good thing to just slap around and do a cheap political stunt with.’

We will hear how they are wrong when my colleague Senator Cherry speaks on this matter. We have cheap, old insults that are not even correct about things that are wrong. Their own record is of the greatest privatising party in Australia’s history, of the biggest tax cuts for high-income earners in a deal that was sold out on them down the track which they did not even whimper about, and they come in here and say, ‘You cannot negotiate. You’re hopeless. You’ve got no backbone. Not only have we stopped a bad thing happening for consumers and low-income earners but we have even got an extra 10 million bucks in the process for the working poor.’ Thank you, I will take our ability to actually deliver outcomes for low-income people, for the less well-off and for the general community any day—particularly when it is balanced against a party that comes in here and dares to say, ‘Trust us on privatisation; trust us on trying to look after low-income people.’ Unbelievable! All they can keep coming up with is this pathetic thing about GST. But what do they do? I think I can rightfully ask, as the only person in this chamber at the moment who voted against the GST: did the Labor Party go to the last election and say, ‘We are going to abolish it’? No.

Senator Lundy—We didn’t say that.

Senator BARTLETT—I know you did not say that. You are not going to abolish the GST. You did not even support a motion in here last week to take the GST off books. The Democrats moved a motion to take GST off books, and you voted against it. You are still going around saying, ‘You supported the GST,’ as though that has any relevance to what this is about. You supported the tax cuts which massively helped the big end of town, you did nothing about stopping the government sell-out that would have actually addressed pulling back an extra tax loophole for another part of the big end of town; and then you try to come in here and say, ‘We are for the battlers.’ It is just a joke. You say you are against privatisation when your record is as the biggest privatising party in our country’s history. It is just fanciful.

I am for defending the Democrats, who have achieved more than the government has done, and, more importantly, for defending those people in the community who work hard month after month. They are the other people you should be apologising to. It is those groups like the Smith Family, you can have your little cheap shots at ACOSS, if you like—they are big enough; they can cope with hollow rubbish. You should apologise to Anglicare and the homeless organisations—all those voluntary and non-government organisations who put in the work month after month with the people on the ground, the low-income people, looking after their interests. You just want to come along, on the basis of a quick glance at something you do not understand, and say,
‘Forget all that, you don’t know what you’re talking about; go back and start again. We do not actually have a better idea, we have not got another idea, about what you should do, but we do not like what you have done. We are not going to try and fix it. We are just going to wipe it out and tell you to go back and do it again.’ How insulting can you get? How insulting to the community can you get? They are the real people you are spitting at with this sort of stuff.

You are happy enough if you think it is just a cheap political insult and it does not matter. It does matter: it has an effect. Millions of people are affected by this. Millions of people would be worse off if you were to be successful. Community organisations who have worked month after month with Telstra on behalf of low-income people would be affected. And you all just sit there and laugh and say, ‘Oh, it doesn’t matter, they can go back and start again; they don’t know what we’re doing.’ I know oppositions are meant theoretically to mindlessly oppose but, as we saw and has been acknowledged in Senator Faulkner’s very good documentary, the reason the Labor Party have sometimes been effective in the past is when they have not just gone for the cheap stunt and opposed for the sake of it but have come forward with positive, constructive and worthwhile initiatives. There is none of that. They cannot even come up with an alternative. They have no policy of their own. All they can do is knock this one down, hurt the low-income earners and spit in the face of the non-government organisations. It is not good enough. Try again. Come up with some ideas of your own and actually look at the impact of what you are doing.

Senator MACKAY (Tasmania) (5.22 p.m.)—That was an extraordinary contribution, and I personally thought a lot better of Senator Bartlett than that. I respected him, together with Senator Stott Despoja, for not supporting the GST. I think that kind of contribution just shows how much he is prepared to give up to get the leadership of a political party that who knows how long will remain, given that Senator Lees has already indicated that she is starting her own. In respect of Senator Bartlett’s speech, I do not think that his heart was in it. If his heart was in it, it was a pathetic speech.

The reality about this $150 million package is that it is a re-allocation of existing money; it is not new money. The minister misled the Senate again and said, ‘Yes, part of it is new money’. Do you know what that means? It means that the minister has not even read Telstra’s press release, never mind the Estens report. He has not read Telstra’s press release. And guess what? The Democrats have fallen for the three-card trick yet again. Something new has emerged on the scene, and that is Senator Cherry. Senator Cherry is well known around the place in terms of his previous role as adviser.

Senator Ferris interjecting—

Senator MACKAY—He actually put the GST deal together. Senator Ferris probably knows him very well and has probably had many drinks and meals with him et cetera, and I am sure that this relationship may have been re-established through this. I have to say that Senator Cherry and Senator Lees did an awful lot better when they were negotiating the GST package in terms of extracting concessions out of the government than this pathetic amount of money—$10 million. Get real! You have got to be kidding!

Let us go to what this is about. This is a softener. We have Senator Bartlett basically sounding like Senator Alston, defending the government and bagging the Labor Party, saying that we have no policies et cetera. I expected Senator Bartlett to start talking towards the end of his speech about how we were all union officials. At least he did not quite go that far. He obviously has not read the options paper by Mr Tanner just as the minister has not read the Estens report nor the press release. What Senator Bartlett did not do—and I am sure that Senator Cherry will be able to enlighten us when he makes his contribution—is find out exactly where the figures came from. The figures that Senator Bartlett disparages actually came from the department. The Labor Party did not pull them out of thin air; they are departmental figures and that is the reality. The $100 million figure came from the department.
I interjected on Senator Cherry about the ACA and he just wrinkled his nose, not particularly interested in the ACA, so clearly they are not the flavour of the month. I am sure he loves ACOS, because they supported the GST. I am quite serious. I think this is a softener for the Democrats to change their position on Telstra. There has been a change in the person who deals with the portfolio. I have got an enormous amount of respect for Senator Allison, and I wish that she had stayed in that portfolio after this performance. This is a softener in relation to the Democrats’ position on Telstra. Senator Bartlett made it very clear that Telstra will not be sold in this parliament. We will wait and see because there was the never-ever GST, which he had the courage not to support—unlike this. He had the courage and, as I have said, I thought better of him.

Let us go to some of the points that Senator Alston made, because there is no point in picking on the Democrats—if they are going to act like puppets, who cares. No wonder Senator Alston did not recognise Senator Conroy in relation to whom he represented in the chamber, because he did not even bother turning up to the last Senate estimates. He was in Stockholm. What was he doing in Stockholm? I reckon he might have been scoping for another job the way he has been performing recently. Maybe that is the kind of posting that he wants. As for the absolutely nauseating sycophancy that we heard from the minister—as they say in the classics, it was deja vu in terms of the nauseating sycophancy we heard in relation to the GST and in relation to Senator Lees and other people who have been involved in deals. It is either absolutely nauseatingly sycophantic or it is total sledging. Senator Alston never manages to get the balance totally right. I would say to Senator Alston, who is not here because he is not very interested—and we all know that he is bored out of his brain and wants another job—is that at least we had the courage to stand a candidate in Cunningham; there was no Liberal candidate. So do not come in here and accuse us of lack of intestinal fortitude. Also, the minister was wrong. Mr Tanner has met with the Democrats in relation to this matter on several occasions, obviously to no avail. So here we go again.

The deal was done by the Democrats because Labor raised this issue to start with. That is why. If we had not, nothing would have happened. The Democrats would have sat there and nothing would have happened. The Democrats wanted to opportunistically rush through a pretty shabby and pathetic deal to get some kind of glory for themselves. The Democrats’ paper that was issued to support this decision is a joke. The Democrats are shamelessly trying to rid themselves of any social equity concerns whatsoever. The Australian Democrats claim that local calls have come down since 1997-98 and ignore the fact that they remained the same under Telstra’s new price rises and, in fact, went up in one package. It is extremely disappointing, but not unexpected, that the Democrats have used their votes to sell out to this government for a mere $10 million, and I make the point that the figures actually came from the department itself. I do not say this lightly, but I now genuinely doubt whether the Democrats will stick to their commitment to no further sale of Telstra. Nobody has been more committed than the Labor Party—and Senator Lundy and I in particular—in relation to ensuring that the majority of Telstra remains in public hands.

Australian consumers will remember this every time they pay their phone bills, and thanks to the Australia Democrats for delivering the coalition’s price line rental hikes to them—thank you very much. Every time Australians pay their bills, they will be able to say, ‘Thank you very much,’ to the Democrats. In contrast to the coalition and the Democrats, Labor is saying that renting a telephone line should not be allowed to become a privilege only for those who can afford Telstra’s high prices. It is crystal clear to Labor senators that the Howard government is basically doing this to fatten Telstra up for privatisation. It is a hugely profitable company and Senator Conroy has already made that point extensively. He covered a lot of figures. I do not know whether you were listening, Senator Bartlett, to what Senator Conroy said.

We do not agree with the coalition that a telephone is an optional luxury for those who can afford it. The coalition does not seem to
understand that a telephone is an essential service. If this motion were successful, which it clearly is not going to be now, Telstra would be forced to revert back to the fairer 2001 price control regime until July 2003, allowing a better price regime to be negotiated. Senator Bartlett comes in here and says, ‘Let’s be reasonable. Let’s come up with some alternatives.’ If you had not intended to vote this disallowance down, Senator Bartlett, it would have given us the time between now and July 2003 and you could have done a better deal than the deal you have done today. You might have got $12 million instead of $10 million but you sold out for $10 million. We believe that this new price control regime is totally unfair and this disallowance, which is now obviously not going to get through, would have been a much fairer way to ensure that that outcome could have been achieved.

I hope Senator Cherry in his contribution will enlighten the Senate as to precisely where he got his figures from. If they came from Telstra and the department, I have to say that you have fallen for the old three card trick yet again, Senator Cherry.

Senator Bartlett—You used the old figures.

Senator MACKAY—That is right. The figures leaked to the Labor Party were Telstra’s figures. These are the figures you were denying were correct. These figures actually came directly from the department. Anyway, Senator Lundy wants to make a contribution, so I will wrap up. I will just say this to Senator Bartlett: if the Democrats or the radical centre—or whatever you attempt to call yourselves these days—want to deal themselves back into the game, they should try to make the price of the deal a bit higher than this. Senator Lees, for whom I actually have a lot of personal respect, at least managed to extract a bit more than $10 million, and we are not even talking about new money. What is this really about?

Senator Bartlett—It is new money.

Senator MACKAY—It is not new money. Telstra’s press release makes it very clear that it is not new money; it is rebadged money, rephased money or whatever Orwel-
The important thing about the package that we have put together today is that we have taken the sound economic analysis of the ACCC, in terms of the rebalancing proposals they produced last year, which recognised that such proposals produce good, solid outcomes for consumers, and we have dealt with the problem area that that created. That problem was the issue of low-income, low-usage telecommunications consumers. We said to Telstra and to the government, ‘You’ve made some progress in dealing with the issue of low-income, low-usage consumers, but too many people fall outside the boundary of your concessions.’ We told them that they had to fix that. They came back and they found $10 million of new money and, lo and behold, we now have extra concessions for 341,000 households. That is something which the Democrats can be very proud of.

With the package we are talking about today, we have delivered the economic benefits identified by the ACCC in their report last year and incorporated them into the new price control proposals—plus, in terms of the package we are presenting today, we are delivering the social equity of dealing with the group that fell through the cracks, namely the low-income, low-usage households. I want to deal very briefly with some of the figures that Senator Conroy referred to earlier on.

Senator Bartlett—Senator Conroy has already gone.

Senator CHERRY—I am not surprised that he has gone. Senator Conroy is someone I usually have a great deal of respect for in the figures department. He is very good on figures. On the Senate Economics References Committee, he always knows his figures. However, on this particular occasion, his figures seem to have gone a bit haywire. Let us start from one particular point of view with the $170 million figure that he produced from the departmental paper. That was a first working paper based on a new model being developed by the department.

There are three fundamental problems with that $170 million, which I am disappointed that Senator Conroy did not identify in his usual analytical and thorough way. The first problem is that the first $40 million of that money was from the reduction of the X factor, the minus CPI factor, from 5.5 to 4.5. That is obviously going to have some impact, but the key thing is that mobile phones have been taken out of that package. Why have they been taken out? Because the ACCC identified that mobile phones are in a competitive market and the vast bulk of the price reductions that occurred under the previous price control regime were in the mobile phone situation. That is why the actual market has been developing those outcomes—because people shift between carriers all the time. That is what the ACCC has said, that is what the market is saying and that is what the telecommunications carriers are saying.

The second problem that comes through is the $80 million which allegedly was going to come from the increase in line rentals. Again, this fails to compare with the current situation. Under the current balancing, the subcaps, Telstra is allowed to balance line rental increases against call increases to come up with a CPI minus zero effect. That particular aspect of the current package is something which the Labor Party really has not considered adequately. Listening to Senator Conroy, I noted there was a great long list of increases in line rentals that Telstra has been able to achieve under the current price control regime—the one that he wants to reinstate if this one falls over. I find it extraordinary that the Labor Party can come in here and put up a whole list of reasons as to why we should be voting for a disallowance so we can return to the system creating the problems Senator Conroy was pointing to in the first place. So that particular part of the analysis also falls over.

The third problem with the analysis is that $50 million of that $170 million came from an assumption that mobile phone prices would rise in the absence of price caps. The reason why the price caps are being removed from mobile phones is that they are reducing by significantly less than inflation in terms of price costs, and have been over the longer term. It is worth noting that, over the last 11 years of price caps, Telstra has failed to increase the cap in eight of those 11 years. The price cap regime of CPI plus or minus X was
introduced by a Labor government in 1989 and has worked quite well in terms of delivering reasonable price outcomes for all of that period.

I am pleased that Senator Conroy has now returned to the chamber. The fundamental problem with Senator Conroy’s and Labor’s figures is the treatment of this terrible thing which they seem to have forgotten about, called ‘inflation’. All of the price cap regimes, in terms of the price caps that have been in place since 1989, deal with a CPI plus or minus X factor, which I am sure that Senator Conroy would appreciate. But the Labor Party seem to have forgotten this in their analysis, because they only deal with the X. They have forgotten about the CPI component. They have forgotten about the fact that, when you are looking at the new price cap regime, you should compare it with the old price cap regime.

The old price cap regime allowed for a balancing of sorts between line rentals and call costs to come up with a subquota of CPI plus or minus zero. When you take that figure into account, the Labor Party’s figures rapidly turn around. The Labor Party’s figure of $100 million, which Telstra is supposedly gaining, comes from taking Telstra’s call revenue of $4.9 billion a year—CPI minus 4.5 allegedly results in a loss of $84 million. Then you take their line cost revenue of $2.7 billion. CPI plus four per cent is $186 million; $186 million minus $85 million is $101 million. That is what the Labor Party is claiming is going to happen, but that is in nominal terms. The proper analysis—the analysis done by the ACCC, by the Productivity Commission, by every person, including the Labor Party itself when it was in government—deals with these issues in real terms, because it is a CPI plus or minus factor. You do that, and that $101 million profit for Telstra turns into a $113 million profit for the consumers. In fact, if you correct that further by taking out the figures that the Labor Party failed to take out in terms of the wholesale interconnect figures which are stuck into these ones, you come up with a $115 million gain for consumers.

You have to compare it with what is happening now: every increase in these line rentals—these ones Senator Conroy was complaining about—is able to be put into place under the current cap because call prices are being reduced in real terms. They are not being, and have not been, reduced in nominal terms, but they have been reduced in real terms. That is how the averaging of the price caps comes into play. It is disappointing on this particular occasion. The Labor Party have based their position on a mis-understanding of the application of inflation to the price capping regime and also a whole range of assumptions in terms of some modelling coming out of a very early, preliminary stage of some seminars within the department.

Senator Lundy—Before they got the politics right!

Senator CHERRY—Before they got the politics right! That is what we are talking about. It is all about politics. That is right. Let us forget about the economics of it! Let us forget about benefits for consumers! Let us not worry about a $115 million benefit to the consumers! It is all about the politics! That is absolutely right. Unfortunately, the politics failed for you, because you did not even win the Cunningham by-election. You can forget about the politics of this one now, because the politics did not work for you. You can go back and try to get some credibility with some decent economic reform and social justice credentials, at which point you might deliver a better outcome for your party into the future.

The measure that we have discussed and got an agreement with Telstra on today is for $10 million of new money to extend the package to a further group of low-income, low-usage Telstra consumers—approximately 340,000 low-income, health card concession holders. This equity measure supplements Telstra’s $150 million package, Access for Everyone, announced in April this year. That included the rebalancing of money, as Senator Mackay correctly pointed out, from those low-usage, high-income people, who were getting about 90 per cent of the previous B10 program, I think it was, towards genuine low-income, low-usage individuals, particularly pensioners, who of
course will pick up an extra $3 a month in terms of their rebates.

The key elements of the package announced today in terms of eligibility are that the package will extend new concessions to low-income health care card holders who are eligible for up to 12 months—even though, of course, health care cards are only issued every six months. So they actually only have to validate their eligibility on an annual basis. The connection fee will be reduced for this group from $59 to $33, to be amortised over 12 months, which will help the cashflow pressures on low-income earners forming new households. The line rental will be reduced by $2 from the standard package, with a local call cost of 24c. Line rental increases for this particular package for low-income earners will be fixed at CPI, so over time they will be doing a lot better than they are doing from day one. Other calls—STD, fixed to mobile and international calls—are tagged at no more than 15 per cent higher than home line complete rates. Of course, they must decrease by 4.5 per cent per annum in real terms. Telstra has also agreed to better publicise its bill assistance program to financially vulnerable consumers and to trial a service option to advise consumers on the packages best suited to their call demands.

The Democrats are satisfied that these pricing arrangements for Telstra will deliver a fairer deal for more low-income groups than current arrangements do. We are also satisfied that the repackaging proposal in terms of the price control mechanism will deliver a better deal for consumers overall than the current price control mechanism so criticised by Senator Conroy in his earlier speech. If the ALP were serious in their concern for low-income households then this is precisely the sort of thing that they should have been doing, but I have now listened to two speeches in this debate and am yet to hear what the Labor Party’s alternative was going to be.

Senator Conroy—The existing price cap!
Senator Cherry—that is the one you do not like, the one that you are criticising, which allows Telstra to offset all the reductions in mobile phone charges and actually use that to increase line rentals. It has comprehensively failed. Price controls are a complex area of public policy, which would be very clear to anybody listening to the ALP’s contribution so far, and they are not amenable to simple analysis. But the key difficulty is that it is impossible to predict the effects of new price controls on each household. To do that requires knowledge of household income and call usage patterns, and that data is often not available. Moreover, phone call usage is not well correlated to income levels. The primary factors in call usage are of course social networks and the numbers in a household. In real terms, the new price control determination represents a net benefit to consumers of approximately $115 million a year. However, the benefits are not evenly distributed, and of course we acknowledge there will be winners and there will be losers.

Senator Conroy—Oh, there’ll be losers!
Senator Cherry—the ‘winners’ are those who make a high number of calls, particularly STD, international and fixed to mobile people, those ATUG consumers.

Senator Bartlett—High-income earners, Senator Conroy, like those you helped out with the business tax!

Senator Cherry—Can I have some order from Senator Bartlett! As local calls are currently delivered at about cost price, there is likely to be no significant reduction until the removal of the access deficit starts to kick in. There is a correlation between household income and total telecommunications expenditure. However, phone line usage is not at all well correlated with income. There is no evidence to suggest that high-income households are more or less likely to have higher fixed-line expenditure. The higher telecommunications spend in high-income households reflects a greater diversity of telecommunications products. Low-spend consumers tend to have smaller social networks—for example, they have no children—and consequently high-wealth suburbs have a higher proportion of low-spend lines than battling suburbs.

Senator Conroy—How embarrassing!
Senator Bartlett—It is embarrassing to help the high-income earners.
Senator CHERRY—Yes, it is terribly embarrassing to help the high-income earners. These are the figures that come out of the social expenditure. NATSEM has been through these figures, as I am sure you know, as have ACOSS and the other groups who have been working through the different categories. You have to look at the figures. The figures actually make sense when you start to work through them. The usage figures—the work that was done by the ACCC last year—appear to have escaped the notice of the ALP in this argument. In real terms, net gains for consumers will be around $115 million.

The ALP has relied on a nominal model that ignores the effects of inflation. Quite simply, the ALP model is naive in economic terms. It is very disappointing, Senator Conroy. The model essentially says that Telstra can put its prices up by the CPI, plus or minus whatever the basket requirements are, but no-one else is compensated for inflation. All Centrelink customers, for example, are compensated for CPI annually or biannually, depending on the program. Moreover, while award wage pay rates are not typically adjusted by reference to CPI, increases are designed to capture likely CPI movements—say over two to three years—through national wage cases et cetera. It is common to have clauses in certified agreements saying that, if the CPI has moved ahead of a predicted rate, the parties will revisit the rate specified in that agreement. That is, for most Australians the effects of price control are already expressed in real terms.

In terms of fairness to low- and middle-income earners, the key equity elements in the previous price controls were the caps on two baskets—the bottom 10 per cent and the bottom 50 per cent of bills. These were notorious for providing benefits to holiday shacks and fax lines because of low usage. Analysis provided to Telstra suggested that 90 per cent of the B10 category were in the top 90th percentile of household income and 50 per cent of the B50 category were not in the bottom 50 per cent of income. As discussed above—

Senator Conroy—You should be the minister!

Senator CHERRY—This is actually the stuff that came out of the ACCC. This is defending the ACCC. Their report actually made sense to us.

Senator Mackay—And they’re always right in the ACCC!

Senator CHERRY—They are not always right, but on this particular occasion they have done a better job of defending consumers than the ALP has. As discussed above, the effects of price caps are dependent on actual call usage and not on income. Households with relatively high use of STD, fixed to mobile and international calls will definitely be better off. Those with relatively high levels of local calls may not benefit to the same extent. This means that the onus will increasingly fall on customers to self-select the right package for their call usage patterns. We have sought in all of this to ensure that there are more options for customers to choose from, to ensure that they get the right package for their respective usage patterns.

The Democrats acknowledged that we needed to ensure that the Access for Everyone package was broadened out to include more low-income groups. That is why we have negotiated this additional package to pick up more groups who were not picked up by the previous package. I might add that the first package that came out of the price control packages for low-income groups was only three years ago. It was not actually a
factor in the previous price control mechanisms introduced by the Labor government.

Senator Conroy—We had hopes for you.

Senator CHERRY—I had hopes for you too. You have disappointed me. In summary, looking at what we have been trying to work through with this debate, it is a very complicated debate involving a whole range of economic offsets and economic discussions. It has been a debate that has been very important in discussing the future competitive nature of telecommunications. I hate to admit that from time to time the minister is right, but the reduction of interconnect charges, which the rebalancing will allow, is a very important component of delivering more competitive telecommunications into the future. That is why the non-Telstra carriers are so keen on this package—because it will actually result in a reduction in interconnect charges which will allow them, over time, to be more competitive and keep more pressure on Telstra to keep their prices down. That is called the market; the market actually occasionally works.

It is deeply disturbing to me to see the once great Labor Party in opposition becoming less and less attached to economic reality, economic analysis and figures, social justice, the importance of competition and the importance of all the things which previous governments held to be important. The Democrats will be voting against this disallowance, but I should acknowledge that it is important that we have this debate. It is a good debate, and I commend Senator Conroy for initiating this debate because it is a good opportunity to analyse the price control mechanisms and to work out whether they are, in fact, in Australia’s interests. We have concluded that they are. We acknowledge that there was a difficulty in terms of low-usage low-income households. We have sought to address that and I think we have succeeded.

Senator LUNDY (Australian Capital Territory) (5.54 p.m.)—I am absolutely astounded. I think it was all summed up in Senator Cherry’s contribution when he said, ‘The minister is right.’ What we have just heard is the most pathetic vindication I have ever heard of the government’s position in relation to upping these costs and pricing of Telstra and how they charge consumers.

I would go so far as to reflect on the comments of Senator Cherry and his obvious devotion to the effective workings of the telecommunications market in this country. Let us look at the evidence of this out there. We can see how well it is working because even the Estens inquiry—whitewash as it was—highlighted some problems that are occurring out there. We know that by virtue of the thousands upon thousands of consumers who continually complain about poor treatment by Telstra and the fact that we do not have telecommunications competition in rural and regional Australia. That is the testimony of the market that you support, that you say will provide the answers. What we have seen from the coalition government is that they are incapable of regulating telecommunications in this country effectively to create competition where it is needed most. They have had over six years to do it and they keep making mistakes after mistake.

Here we have the Democrats, the neophytes of telecommunications policy, in here today telling us that they think that the minister is right, that they subscribe to the dodgy maths that the minister has laid out before them. We have heard pathetic quote after pathetic quote of rubbery figures which they present as some sort of substantiation for what is the most significant sell-out in telecommunications policy that I have heard from the Democrats in my time in this place. That is not to say that there have not been other major sell-outs. The sell-out of the GST in the middle of the election campaign—at that crucial time—changed the way that poor people and the underprivileged in this country would be disadvantaged under the tax system.

That is your legacy. That is the legacy of the Democrats and today we have seen a blueprint on how this political party is going to sell out on telecommunications policy from this point onwards. So get used to it, out there. This is the blueprint. Thank you very much, Senator Cherry. Thank you very much, Senator Bartlett, for making it very clear to the Labor opposition—the only party that will stay true to not privatising Telstra.
and that will stay true to protecting consumers in the telecommunications market.

I would like to reflect a little on the use of figures by Senator Cherry. He talked about the $170 million departmental calculation as somehow being a flawed figure and an early estimate. If that is not spitting out the minister’s spin, I don’t know what is! That is what I mean by politics. Once they realised that the facts were out there, their little feet started scurrying around in the department and there were phone calls between Telstra and the minister’s office to get their line right. But guess what? There’s someone else on the conference call now between Telstra and the minister’s office—it is the Democrats. ‘Quick, tell us how we can get out of this one. How do we substantiate? How do we talk our way out of the fact that Telstra stands to gain $170 million from this exercise in increased line rentals and other changes, such as the relaxing and removal of the price cap regime?’ I think it needs to be explained that disallowing this regulation will force the government to go back to the drawing board and prepare a fairer price cap arrangement. That is what Labor is trying to do today. We are asking for support of the crossbench and the Democrats—we know it is not forthcoming from the Democrats—to force the government to do something better. We do not want this weak, mild, sycophantic, pathetic $10 million extra when we now know there is no extra money involved. It is a little bit of dodgy rebadging. We are used to that from the coalition government. I did not think the Democrats would so easily succumb to such smoke and mirror tactics. I think they have made it very clear that they are sick and tired of being ripped off in such a way that they ask for a second line—a line that they pay full rental on, and which now costs an additional $3 dollars per month, so they are paying extra money for it—and they do not even get that extra line. This is the precise frustration for those who use the telecommunications system for Internet connectivity. A pair gain does not provide an additional line for the purpose of getting a connection speed that makes using the World Wide Web meaningful; a pair gain means that one line is split. Telstra charges people not on the basis of a piece of copper running from the exchange into their homes but on the basis of dial tone. That dial tone can come from one copper pair, and that copper pair could be split up in a number of ways. Telstra charge line rental—and the words here are very important—for dial tone.

The added, I guess, salt in the wound, twist of the knife in the back of consumers, is that while Telstra and the government, and now the Democrats, are collaborating to push up line rental at the expense of consumers’ interests, there are millions of consumers out
there who are astounded and outraged to find that their so-called ‘new line’ on which they are paying line rental is not even that; it is just more dial tone backed on the end of their existing line through a pair gain system. This is, I have to say, relevant if you use the Internet and dial-up connections. The core of the point is that the Democrats argue that these are the kinds of issues that we should be focusing on—the Internet, connectivity and new technologies in telecommunications—and yet this, to me, is about that. The very issue that we are debating—the capacity to charge line rentals on what is not a full line anyway—really needs to be addressed at this point in time. I think the Democrats have ignored some of these key issues.

I refer briefly to some of the minister’s comments. Predictably, the minister’s contribution to this debate focused primarily on the politics. He came in here and had a bit of a rave about the Cunningham by-election and about the government saying that it is going to improve telecommunications competition, and what is everyone else going to do, and how great it is to be so chummy with the Democrats; but he did not bother spending time talking about the issues of competition policy. He left that up to Senator Cherry. Clearly, the brief was slipped across the chamber so that Senator Alston could do what he normally does, which is to sort of dip a foot into the debate from the point of view of just talking about the politics and having a bit of a go at Labor—his normal tactic. He did not really go to the substance or the core of the issue. He did not address any of the questions that the Labor Party has raised specifically, and certainly did not take on any of the very valid points that Mr Tanner has raised in the context of this debate. He showed absolutely nothing but contempt for the Labor Party’s request that the government start again and do better, and not to work as Telstra’s second-hand person in conveying their interests in this place. I have to say, the same message goes across to Senator Cherry. It is so disappointing.

The only way we are going to have effective telecommunications competition in this country is for politicians to rise above the spin that Telstra spits out. That is the only way we are going to make a difference. You can have the Besley inquiry and the Estens inquiry, and you can look at the substance of those and try and work with very weak and whitewashy recommendations, but the only way we are going to improve telecommunications in this country is for the politicians to take an interest and rise above the vested interests, and not be prepared to come in here and act as patsys on behalf of the corporate representation of Telstra. Clearly, that has not been the case. I say to the Democrats that they have one opportunity to right what they are presenting here, and that is to change their mind and support Labor’s motion. I cannot see that it is going to happen.

I would like to close by saying that in relation to this disallowance motion Minister Alston has taken no time to present a cogent case or a reasonable understanding of what the government is trying to achieve. They have presented a package of price caps that does nothing except, I think, advantage Telstra in the marketplace. It absolutely slates consumers. Whatever justification there is on the consumer package, we know that is just some sort of sop to try and get some PR points out of the whole exercise, but it is not going to wash. Labor’s position is the only way that we can draw the government to account on these matters. The only way we can draw them to account is to force the coalition to go back to the drawing board, address the genuine consumer concerns—not allow consumers to be slugged another $9 a quarter and leave them vulnerable on other pricing issues—and come back with a package that addresses not only our concerns but also starts to look at the bigger picture about how it helps Telstra perpetuate their monopolistic hold on most aspects of the fixed line telecommunications network in this country.

Senator CONROY (Victoria) (6.06 p.m.)—In closing the debate, I thank all the contributors who have spoken today—even the minister and his acolyte—

Senator Mackay—The mini-minister.

Senator CONROY—The mini-minister—thank you, Senator Mackay—because he did actually do much better. I can only agree with those interjections earlier. He certainly did a much better job of defending
the government than the minister did, but then that is par for the course with this minister. It is really disappointing to see that the Democrats just do not seem to get it. They reached an asterisk in Cunningham that barely got their deposit back. In fact, I have recently been advised that they did not get their deposit back. They just do not get it.

Senator Ferris—You did not get a member back.

Senator Ferguson—You are the one who is not going to get it. You did not get a member back. We fixed you!

Senator CONROY—You did not get a vote in Cunningham, so let us clear this up. There is no test for the government here. The government did not have the guts to run a candidate so the government got a big zero vote—let us not get too carried away on the other side of the chamber. There was a net zero vote for the government and a net ‘no deposit back’ for the Democrats. The parties that actually sought to defend Telstra got the overwhelming bulk of the votes.

There is a message there: if you are going to get into bed with the government, if you are going to keep walking up, doing the deal and grabbing a little $10 million—to try to claim, ‘We did get something here. Vote for me, notice me! We’ve got $10 million’—you are going to keep losing your deposit. Just like in Victoria, where you are not on the radar screen and where most of your candidates will not get their deposit back, and just like Cunningham, that is what is going to happen if you continue to pursue this strategy of getting into bed with the government.

Senator Bartlett, a lot of Democrat members had high hopes that they were going to see the Democrats stick to their policies and actually take the fight up to the government—just like ‘Keep the bastards honest’, the old Democrat phrase. A lot of party members voted for Senator Bartlett on the basis that he would keep the bastards honest, starting with his own party. A phrase coined by my predecessor was ‘relevance deprivation syndrome’. If ever there was a party suffering from it at the moment, it is sitting down at the end of the chamber, because it will do anything and say anything to get into the newspapers to try to prove it still exists. That is what we are seeing from the Democrats at the other end of the chamber today—a cry for some attention, a cry to say, ‘Look, we made a difference; we helped the government get this through the Senate.’

Senator Crossin interjecting—

Senator CONROY—Imagine those poor Democrat members now. We have seen the sell-out on the GST. Senator Crossin. We have seen them go all over the place on the sale of Telstra. We have a new position this week on the sale of Telstra. Who knows what position we will have by next week? We have seen Senator Cherry come up with a new, all-improved cross media deal. Here we are again, a bit of relevance deprivation syndrome. We have the deal they wanted to do on the choice of super—’just any deal so someone will notice us’. That is what we have got—’Any deal, just so we can get our name in the newspaper to prove we’re still there.’

It is no surprise to see the Greens surging, because they are actually prepared to follow through on what they say they will follow through on, which is defeating the government, stopping the government’s agenda and genuinely keeping the bastards honest. Bob Brown is running all over this country, taking the Democrats’ votes, leaving them with nowhere to go, but, ‘Please, notice me!’ That is what we have—trying to compete with Bob Brown.

Senator Cherry—a Labor-Green alliance—you tree hugger!

Senator CONROY—that is an outrage! Mr Acting Deputy President, make him withdraw that.

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Senator CONROY, I do not think the expression ‘tree hugger’ is unparliamentary.

Senator CONROY—It is when it is attached to me, I have to tell you.

Senator Ian Campbell—If you are hugging a tree, make sure there is no spider on it.

Senator CONROY—that is why somebody we know got bit. You have seen the
ultimate sell-out here, and we will be re-
playing this Hansard. I would love to borrow
the tape, make some copies and send it to all
27 members of the Democrats who are left,
giving them Senator Cherry’s homily to the
market: ‘It works. This is the market. This is
how the market works.’ These are the words
that will haunt the Democrats. We have the
all-new, powerful Democrats saying, ‘The
market works’. God, if you are a Democrat
member you would be turning in your grave—if you were not already walking out of
the party.

Let us see the Democrats’ position for
what it is. We know what the government is
about; it is about fattening up the cow and
making sure that Telstra can introduce on-
going income for themselves which is as
high as possible—the flat rate charge which
they can just keep ratcheting up and up.
Senator Cherry, that is what it is about, that
is what any business would want, that is
what happens in non-competitive markets.
And you know better than what you said
earlier. That is what happens in non-
competitive markets, where you get to put up
the same fees and charges—just like the
banks—with no scrutiny, no capping and no
serious ACCC attention. That is what they
got to do here—they get to keep ratcheting
up that baseline income.

And the markets did work it out. They
actually worked out that this is a good deal
for Telstra. They have worked out that you
are giving them a good deal. They know ex-
actly what is going on in this debate and they
know exactly what this government’s scam is.
We proved it; we got a document from the
department and what did they tell you? ‘It
was just an early working document,’ Sena-
tor Cherry. Did you swallow that? It showed
they were $170 million ahead, on Telstra’s
own calculations. Did they not tell you that?
Did they just tell you, ‘It was an early
working draft, don’t you worry about that;
it’s really too hard to work it out for ours-
elves’?

If I were a Democrat member right now, I
would be seriously considering my position.
They had hopes that Senator Bartlett would
lead them back to something resembling a
progressive position, but, no, that radical
centre is still running the show in Canberra.
That is what we are seeing here: the price of
having them not take a walk is to give them
all the policies they want anyway. You may
as well give it up. If you are just going to
keep voting for the government, you are go-
ing to keep becoming more and more irrele-
vant. It is just a shame to see the fresh start
that people hoped for has come to nought so
quickly.

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

The Senate divided. [6.19 p.m.]
(The President—Senator the Hon. Paul
Calvert)

Ayes............. 25
Noes............. 38
Majority........ 13

AYES
Bishop, T.M. Bolkus, N.
Buckland, G. Campbell, G.
Carr, K.J. Collins, J.M.A.
Conroy, S.M. Cook, P.F.S.
Crossin, P.M. * Denman, K.J.
Evans, C.V. Forshaw, M.G.
Hogg, J.J. Hutchins, S.P.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Mackay, S.M.
Marshall, G. McCutcheon, J.
Moore, C. Nettle, K.
Wong, P. Webber, R.

NOES
Abetz, E. Allison, L.F.
Barnett, G. Bartlett, A.J.J.
Boswell, R.L.D. Brandis, G.H.
Calvert, P.H. Campbell, I.G.
Chapman, H.G.P. Cherry, J.C.
Colbeck, R. Coonan, H.L.
Eggleston, A. * Ellison, C.M.
Ferris, J.M. Greig, B.
Harradine, B. Heffernan, W.
Johnston, D. Knowles, S.C.
Lees, M.H. Lightfoot, P.R.
Macdonald, I. Macgauran, J.J.
Mason, B.J. Murray, A.J.M.
Minchin, N.H. Payne, M.A.
Patterson, K.C. Ridgeway, A.D.
Reid, M.E. Scullion, N.G.
Santoro, S.
Question negatived.

**PROHIBITION OF HUMAN CLONING BILL 2002**

In Committee

Senator MARK BISHOP (Western Australia) (6.23 p.m.)—I move amendment (1) on sheet 2690:

(1) Division 1, page 14 (line 4) to page 15 (line 3), omit the Division, substitute:

**Division 1—Review of Act**

25 Review of operation of Act

(1) As soon as practicable after the second anniversary of the day on which this Act received the Royal Assent, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee into Research Involving Human Embryos, must be appointed to review the operation of this Act.

(2) The Parliamentary Joint Committee must consist of 12 members of whom:

(a) 6 must be senators appointed by the Senate; and

(b) 6 must be members of the House of Representatives appointed by that House.

(3) The appointment of members by a House must be in accordance with that House’s practice relating to the appointment of members of that House to serve on joint select committees of both Houses.

(4) A person is not eligible for appointment as a member if he or she is:

(a) a Minister; or

(b) the President of the Senate; or

(c) the Speaker of the House of Representatives; or

(d) the Deputy President and Chairman of Committees of the Senate; or

(e) the Deputy Speaker and Chairman of Committees of the House of Representatives.

(5) A member ceases to hold office:

(a) when the House of Representatives expires or is dissolved; or

(b) if he or she becomes the holder of an office referred to in a paragraph of subsection (4); or

(c) if he or she ceases to be a member of the House by which he or she was appointed; or

(d) if he or she resigns his or her office as provided by subsection (6) or (7), as the case requires.

(6) A member appointed by the Senate may resign his or her office by writing signed and delivered to the President of the Senate.

(7) A member appointed by the House of Representatives may resign his or her office by writing signed and delivered to the Speaker of that House.

(8) A House may appoint one of its members to fill a vacancy among the members of the Parliamentary Joint Committee appointed by that House.

(9) The review must be completed within 3 years.

(10) The Parliamentary Joint Committee in undertaking the review must consider and report on the scope and operation of this Act and such matters as may be referred to it by either House of Parliament.

(11) The report must contain recommendations about amendments (if any) that should be made to this Act.

The bill provides, pursuant to clause 25, that the minister must cause an independent review of the operation of this act undertaken by persons chosen by the minister with the agreement of each state. By way of introduction, I observe that there are no requirements for the review to be public, to seek submissions, to engage in debate or to take account of evidence submitted to it. The bill requires that the review process consult only the Commonwealth and the states and persons with expertise in or experience of relevant disciplines. This, of course, does not cover the broad spectrum of interested par-
ties who have participated in this debate to date.

The object of the legislation is ‘to address concerns including ethical concerns’. I would suggest that cannot be realised by a review which has no-one representing those perspectives and which has no requirement to consult regarding ethical concerns. Furthermore, clause 25(3) requires that the independent review is to report to COAG. Given that the report will consider and report on the operation of an act of the Commonwealth parliament, it is appropriate a review report to the Commonwealth parliament and not to COAG.

The effect of the amendment circulated in my name is that it will replace the independent review with a review of a joint committee of the parliament. I submit that it is appropriate that a parliamentary committee review the operation of its own act because there are serious ethical issues that this review needs to take into account. Not only are members of parliament appropriate representatives of community concerns but it is appropriate that legislators have a role in the review of contentious legislation such as this. Just developing that argument in somewhat more detail, as I said, the bill provides for an independent review and a written report to COAG. The review has to have regard only to a limited number of matters, a limited range of possible amendments and has to consult with a limited range of persons. So generally, I would suggest that that review, when acted upon, is not going to be open, accountable or responsible and it will be neither wide nor broad.

Specifically, I would make the point to the chamber that there are within this industry—for want of a better description—a limited number of experts with expertise in the field. Those experts are scientists, university professors, medical researchers but in total—as it became clear in the evidence to the Senate Community Affairs Legislation Committee inquiring into the bill, which is the subject of discussion today—there are a limited number of persons involved in this industry and a limited number of people with expertise. The indications are that there is a limited pool from which to draw upon.

We suggest that the review, occasioned by the provision of the bill, will have no regard to ethical considerations and no regard to the activities of licensed entities that might be granted a licence to engage in activity pursuant to this bill. It was quite apparent at the Senate committee that there are a range of participants from the community and a range of speakers who have quite significant interests in this bill and quite significant interests in further scientific research in this field of endeavour. That necessarily leads one to ask: are there vested interests and is there potential for conflict of interest? The sums of money that have been indicated will be granted by the Commonwealth to particular private corporations who might be engaged in research in this field—something in the order of a minimum of $45 million—are huge sums indeed.

Therefore, I would suggest that the activities of those corporations that are engaging in research are properly the subject of investigation and ongoing review by the Commonwealth and by a committee of the Commonwealth parliament, simply because the Commonwealth parliament is allocating tens of millions of dollars to those corporations. If the Commonwealth were not allocating funds and were simply giving a licence to entities to engage in research, there may well be an argument that they are private corporations, or public corporations, and it is their money, their capital—and how they expend their funds is their business. But when the Commonwealth allocates tens of millions of dollars, I would submit that it is appropriate for the Commonwealth to have an ongoing interest, and an appropriate vehicle for that interest to be demonstrated is via a committee of this parliament.

My next specific point is that the independent review to be established by this legislation does not have to have any regard to the views of the public. It is clear from what has been going on in this chamber over the past two or three days, from the range of interest groups and individuals who took the trouble to write to the Senate committee or to give evidence, that there is a range of perspectives in this debate and a range of opinions being expressed. A simple reading of
the speeches in the second reading debate from all sides of the parliament will show that speakers go right from the beginning of the continuum to the end in their views.

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

Senator MARK BISHOP—Prior to the break I was providing some reasons for seeking to change the review provision as contained in the Prohibition of Human Cloning Bill and I addressed some general considerations and then was attempting to make some more specific comments. Continuing in that vein, I now want to make the point that in the terms of reference of the independent committee of review there is no instruction or admonishment to have regard to views of the public. Those individuals who are to be consulted are a relatively narrow group of persons, state governments and the like. But there is no requirement to have any contact or consultation with the public.

It is clear from the contributions to the Senate legislation committee and it is clear from the contributions by various persons in this chamber that there is a wide range of divergent viewpoints on a lot of the issues associated with both cloning and the use of embryos. It is fair to comment that the views expressed by various senators across the board have reflected those divergent views or have picked up the arguments and accepted them and then repeated them here.

My concern is that when the review process is undergone there is no mandatory requirement to seek the views of others outside that narrow group of persons mentioned in clause 25. There is no regard for the interests of church or community groups. There are clearly divided ethical and scientific attitudes. There is no regard for the views of individual members of the public or for them to have the opportunity to make comment. There is no requirement to have regard for public submissions. There is no requirement to seek public submissions. There is no requirement to inquire what the public thinks, and there is no requirement to seek to disclose or publish the views of members of the public or community groups.

Any submissions made are not open to query or testing or challenge, and it strikes me that it is almost an obscene process to enter into because it is only through questioning, challenging, testing, engaging in discussion and debate that what truth there is in this discussion can be arrived at. It is one thing for a group of reputable scientists on either side of the debate to put a particular view to a closed inquiry—albeit it an inquiry characterised as independent—but if their views cannot be examined, if they cannot be called into the dock and asked questions, if they cannot be tested by another group of experts, where is the worth in that? What satisfaction can be demonstrated that the process has been open and proper? So that is the criticism: there is no respect and no requirement to consult with members of the community, members of the public.

My next criticism goes to the role of the NHMRC. It has been created under statute. It is an agency of the Commonwealth. It has great powers. More importantly, it has in this debate the ability to allow the creation of great wealth. Those companies that might be granted licences to engage in research and then engage in trade and commercial development of findings they might make have the potential to create great wealth. We are told that, if the commercial development of findings in the areas of rare and debilitating diseases or body parts transfer or growth of new organs should come to pass, those corporations who hold that interest are going to have great earning capacity and great wealth will go to them. So the NHMRC, in granting a licence, has the power to allocate work and the power to allocate the potential creation of great wealth. It strikes me as odd that, if the NHMRC is the licensing body that grants that authority to particular corporations or companies, it should be in any way involved in, or responsible for, or in charge of, the activities of that review committee.

I know that in this cloning bill the NHMRC is not particularly identified or singled out as having charge of that. In the embryo bill, for discussion later this evening, the NHMRC is singled out as being in charge of that. I do not say that the NHMRC is in any way wrong in its activities, motivated
badly, or malevolent in its deliberations. But, like any other organisation, it is capable of industry capture. It articulates and reflects the views of those persons who participate within its deliberations.

I would submit that the way to overcome a range of the problems I have identified is to have a parliamentary committee engaging in the review of the act. Clearly, it would be open and accountable. Those who chose to give evidence after being requested to do so would be open to challenge. They would be able to put forward their arguments. More importantly, it is an avenue for the resolution of conflict. It is a vehicle whereby ideas can be tested, challenged and resolved. It would in that way bring together the various interest groups—whether they are scientific, university, private corporations, church groups or individuals—and allow them to come and put their case, present their argument and be tested through the court of public opinion of a parliamentary committee, which is much more aware of and relates to what community values or views might be.

In the final analysis, such a process or such a committee aids the development of science and research because it offers a protection that the arguments or the ethics that guide scientists are being used properly. I will not go through the arguments again. I suggest that the review provision contained in the bill is deficient for the reasons outlined and the purposes to be achieved by that review committee can better be achieved by the establishment of a standing committee of this parliament to engage in that activity.

Senator BOSWELL (Queensland)—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (7.38 p.m.)—I am very attracted to Senator Bishop’s amendment. I listened very carefully to the way he explained it. As it stands now, at the end of the two years there will be an investigation into the Prohibition of Human Cloning Bill 2002 and, as I understand it, it will be done—and I look over to Senator Bishop for confirmation—by the NHMRC. Is that correct, Senator Bishop?

Senator Mark Bishop—In this bill the review committee will be an independent committee; in the embryo bill the review committee will be tasked by the NHMRC.

Senator BOSWELL—If a committee is tasked by the NHMRC, then the NHMRC will have a very strong influence over it. This is the problem we have. The issue of stem cell research is taken very seriously by the people of Australia. The people of Australia are represented by a democracy and we in the Senate of the parliament are part of that democracy. We represent the views collectively of those people. This is not a review that should be in the hands of the NHMRC or anyone else. This is a review that the people of Australia through their representatives should have a voice on. I congratulate Senator Bishop for his amendment. It is a very sound amendment and it deserves the support of the chamber. We are sent here to review legislation and to examine it, particularly in the Senate, and come up with conclusions. That is our job, that is what we are paid for, and that is what we are here to do. Senator Bishop’s amendment does those things. To my way of thinking, it is wrong to just allow the NHMRC to appoint a committee.

Senator Bishop raised some very strong arguments. One of the arguments was that through this legislation, the Prohibition of Human Cloning Bill 2002 and the Research Involving Embryos Bill 2002, we are going to grant certain licences to do certain things. There will be a capacity to make large amounts of money by obtaining stem cells from embryos and then sending them overseas. There is no question that the parliament should review this and should review it at the sunset clause stage. This amendment deserves support and I hope it gets the support it deserves.

Senator MARK BISHOP (Western Australia) (7.42 p.m.)—I want to clear up a point. I may have inadvertently misled members in the chamber. In the bill under discussion, the Prohibition of Human Cloning Bill 2002, the review provisions are contained in clause 25(1). It requires that the minister ‘cause an independent review of the operation of this act’ et cetera. The reference to the NHMRC that I made in my argument related to the protection of that organisation not be-
ing engaged in conflict. That protection was to be achieved by a parliamentary committee engaged in the review. In this bill there is no suggestion that the NHMRC is tasked to do the review, although of course that is an option open to the minister. In the other bill to be discussed later this evening, the embryo bill, it is the NHMRC which is tasked by clause 47, from memory, to do the job. I put that point on the record.

Senator HOGG (Queensland) (7.43 p.m.)—Following on from what Senator Bishop has said, in my speech in the second reading debate I lay down a few issues that were of concern to me and one was the proposal under existing clause 25(2), which states that the review is to be ‘undertaken by persons chosen by the minister with the agreement of each state’. The way I read that was that if there was not an agreement by each state then it would be difficult to form the committee. People might say that that is not the intent. If that is not the intent, it is certainly the way it read to me. I may well be reading it the wrong way. The second thing that I raised was in respect of clause 25(4), which states:

The persons undertaking the review must consider and report on the scope and operation of this Act taking into account the following:

(a) developments in technology in relation to assisted reproductive technology;

(b) developments in medical research and scientific research and the potential therapeutic applications of such research;

(c) community standards.

I express the view that that subclause could assume or even presume that changed circumstances in some way will make cloning permissible or respectable. That concern has not been allayed by anything that I have heard in this debate to date. I think that the path being advocated by Senator Bishop is a very good path indeed. It may well be that, ultimately, you could have both forms of review operating in tandem, although that has not been canvassed here tonight. It is not an impossible outcome if this Senate so desires. Looking at the review advocated by Senator Bishop—and I have seen his amendment for the next bill that this chamber will consider—it is clear to me that, on the review process, Senator Bishop has at least tried to establish consistency across the two bills.

Of course, the thing about Senator Bishop’s proposal in respect of the review under clause 25 is that his proposal advocates a joint parliamentary committee. Given the intensity of interest that there has been surrounding this debate, and given the various views that have been expressed either for or against the proposals covered by this debate, one can understand that the ultimate responsibility, the ultimate test, rests undoubtedly, in my view, with this parliament. It is the responsibility of the parliament to be accountable for the transparency of the processes it puts in place. I believe that that accountability and that transparency rest with the proposal that Senator Bishop has raised, because it will take into account all the varying interests that are out there in the community. While the existing proposal in clause 25(4)(c) of the bill looks at community standards, it does not necessarily look at the whole raft of interest groups and individuals who would want to take part in an open and transparent process—there is no guarantee of that under the existing proposal in the bill before us.

Whilst the proposal is independent of the NHMRC—and that is itself a good thing—there are a number of problems, as I said. The review must be undertaken by persons chosen by the minister with the agreement of each state. That is a real problem, in my view from what I have read to date. The way in which the review seems to be constructed under the existing proposal lends itself to desiring a certain outcome that will favour a watering down of the cloning provisions or favour access to human embryo cloning, which certainly are not available under the bill in its current form. I believe that in the interests of openness, transparency and also good governance the proposal by Senator Bishop warrants merit indeed.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (7.49 p.m.)—I thank honourable senators for their contributions. As evidenced in the ongoing debate surrounding stem cell research, nobody needs reminding that science is moving in-
credibly quickly and it is simply not possible to anticipate the developments that may occur in the next three years in the areas of human cloning, reproductive technologies and stem cell research. Recognising that the landscape may change considerably over the next few years, the legislation provides for a comprehensive review of the act within three years. The proposal in the bill is that an independent review be undertaken by persons chosen by the relevant minister with the agreement of each state and territory. The review will involve wide consultation with the Commonwealth and the states and territories and with a broad range of persons with expertise in or experience of relevant disciplines. The results of the review will be put to COAG.

This is entirely appropriate because, as noted by a number of senators in the second reading debate, the Commonwealth bill is only one part of a comprehensive, nationally consistent regulatory scheme, with corresponding legislation in each jurisdiction. It is essential that the states and territories have input into the review and also that the results of the review be considered by all jurisdictions through the COAG process. This does not mean in any way that it precludes the federal parliament from also considering the issues. If the review gives rise to possible amendments to the legislation, any such amendments must come before parliament, and at that time whoever is here will have the opportunity to consider in detail any proposed changes to the legislation.

Senator Hogg—Are you leaving?

Senator PATTERSON—No, I am not anticipating leaving, but I never judge things. We have a very tenuous hold on this mortal coil. God willing, I will be here.

Senator Chris Evans—It would be up to the preselectors, wouldn’t it?

Senator PATTERSON—No, unless we have a double dissolution, it will not be, because I am not up for preselection like some other people; I have a term to fulfil. Senator Hogg and I may be here, if something else does not happen, but none of us can assume that we will be here in three years time—not anyone in this chamber. At that time, those of us who are here will have the opportunity to consider in detail any proposed changes to the legislation. If it is considered necessary, the issues can also be referred to a committee, as occurred with this bill when it was first introduced. In view of that, I oppose the amendment.

Senator CHRIS EVANS (Western Australia) (7.52 p.m.)—I indicate on behalf of the Australian Labor Party that we will also be opposing the amendment. As I have indicated previously, all ALP senators will have a conscience vote and so they will vote according to their own views, but the formal ALP position is to oppose the amendment. Basically, Senator Bishop has put forward an alternative review provision, which is one run by the parliament versus one that is independent of the parliament. It is a perfectly reasonable argument to put, but on balance we prefer the provisions in the bill because of the fact that it arises out of a COAG process. It is a bill that reflects a process arrived at between the Commonwealth and all the states. Part of that COAG agreement was to have a review that is broader than just the work of this parliament and which involves some contributions from the states in the composition of the committee and other matters affecting it. Because of that COAG approach, on balance we say that the review is better being done as envisaged under the provisions of the act.

The other point that I would stress is that it is of course competent for parliament at any time to review any of these issues. One thing that the Senate chamber could not be accused of is not taking its review process seriously by having numerous inquiries into issues that concern senators and the Senate. So it is competent for us to have a review of any of the provisions arising out of this bill or any activities that are conducted under this bill at any stage. On behalf of the Labor Party, I am indicating that we are open to any approaches on those issues as they arise. Because this has arisen out of a COAG process and because that is in fact its strength—it is broader than just the Commonwealth government and it brings uniformity to the laws across the states—we think this wider independent review involving the states is an
appropriate response and therefore preferred to the alternative regime that has been argued.

I also mention that I think Senator Boswell got a little confused. I think Senator Bishop advised him correctly, but I think Senator Boswell misheard and then argued the case, which he wants to mount against the embryo bill, in the context of this bill. I think for those listening that, in fact, the NHMRC is not forming or overseeing the review arising out of this bill but out of the latter bill. Senator Boswell might like to repeat his arguments when we get to that bill, but it does not apply here. Speaking on behalf of the opposition, it is preferable in our view to have the independent review because of the nature of the COAG agreement and the need to involve the states. We accept that the alternative is perfectly reasonable to put, but in this circumstance we prefer the independent review. We also make the point quite strongly that it is competent for this parliament at any stage to review any of the issues that arise out of this bill or out of the operation of the act— if it is passed. I indicate that we have an open mind to those issues if they are brought before the parliament for debate.

Senator STOTT DESPOJA (South Australia) (7.55 p.m.)—On behalf of the Australian Democrats and before you interject, while it is a conscience vote, I have discussed this issue with my six colleagues and they are understandably supportive of the notion of a public inquiry, or specifically a parliamentary inquiry, into this or any other piece of legislation. Understandably, though, we are wary of enshrining in this legislation the notion of a parliamentary committee. I have just spoken informally to Senator Bishop. I put on the record that the Democrats are happy to support a joint committee or a Senate committee to investigate the operations of this bill at a specific time if Senator Bishop, or any other member of this chamber, wishes to put that proposal forward in the usual form as Senator Evans was suggesting—through a notice of motion, as we would give notice for any other Senate committee or other committee process. I am happy to put on the record our support for that because I do think that, while we have a preference for the current proposed review of the act, a public inquiry is totally complementary. I certainly have no problem with the idea of a broader involvement in a debate or an analysis of this legislation, be it after two years, three years or what have you. I am quite happy to support Senator Bishop in that respect but not by enshrining it in the legislation. I am sure that he and other people who support that position would prefer it to be in the legislation, and I hope that it is fair enough to accept our word on the record and acknowledge that—

Senator Boswell interjecting—

Senator STOTT DESPOJA—I will ignore that interjection, Senator Boswell. I am just giving a commitment that we support public investigation. If you would prefer that we do not give that commitment, then I will happily sit down and not contribute to the debate, but I think that the people who have been in the chamber for the duration of this debate have tried to avoid making that kind of interjection and have been quite civil in their conduct of the debate. In relation to the next legislation I will not pre-empt the proposed review provisions, but I suggest that any piece of legislation in its infancy or after it has been operational for a couple of years does deserve scrutiny. Certainly the wider that scrutiny, and the more public and community members that are involved, the better. That is certainly a strong Democrat position and I hope that my commitment on behalf of the Democrats is seen as that and that I do not have to put up with silly interjections from now on.

Senator HARRADINE (Tasmania) (7.58 p.m.)—Given what Senator Stott Despoja said about the importance of a public inquiry or investigation, how would the minister propose to alter the bill that is before us to achieve that end or does the minister not believe that it ought to be public? I hope that I heard Senator Stott Despoja correctly. Did I hear her correctly saying that there should be a public inquiry? Under those circumstances, how is this to be achieved? Could I ask the minister that in the alternative way: why is it not to be a public review or a public inquiry?

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that
the amendment moved by Senator Bishop be agreed to.

Senator HARRADINE (Tasmania) (8.00 p.m.)—If there is no response from the minister, I will have to draw attention to the state of the committee. I will not do that just yet. However, I have asked what I believe to be a legitimate question and there is no response.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (8.00 p.m.)—Clause 25(6) of the bill states:

The persons undertaking the review must consult:

(b) a broad range of persons with expertise in or experience of relevant disciplines ...

I believe that this would constitute adequate public consultation. However, this is only a minimum requirement and the persons undertaking the review will not be limited to the extent of the public consultation which has to be undertaken.

Senator CHRIS EVANS (Western Australia) (8.01 p.m.)—It may be helpful if I indicate that, from the comments expressed around the chamber, there is a clear view that there will be wide interest in making sure that the review is broader and more public than any narrow interpretation of the provisions might indicate. That is a message that the minister ought to take on board. I do not think that it is necessary to amend the bill. I do not necessarily agree with the narrowness of the interpretations made by some senators, but it is fair to say—and I expressed this, as did Senator Stott Despoja in response to the arguments of Senator Bishop and others—that we accept and support the need for a broad inquiry, obviously with as much participation and involvement as possible.

It is important that the minister takes that message. I am not moving an amendment, but she ought to take that as the spirit of the committee’s expression on these issues. Senator Stott Despoja and I have indicated on behalf of our respective parties that we see this as a role for the Senate if required. I suppose that comes down to whether people are satisfied about whether the review process is appropriate and thorough. As I said, I am not supporting an amendment to the bill, but it is a message that the minister ought to take on board as an expression of the view of the committee. The alternative, if it is not taken on board and if people are not satisfied, is that the Senate has the power to initiate its own inquiries at a later date.

Senator HARRADINE (Tasmania) (8.02 p.m.)—Senator Evans intervened after Senator Patterson made her comment. I could not follow the minister’s comment. Frankly, it was not a response to my question. My question was: why is this to be a private inquiry? Why is it not to be public? At the end of the day, in respect of the private—not public—inquiry or review, it is being suggested around the traps that this paves the way for cloning. I will deal with that point later. Not only is the inquiry not to be public but a narrow number of persons are to be consulted, including the Commonwealth and the states and ’a broad range of persons with expertise in or experience of relevant disciplines’. If there is to be cloning, there is nothing at all in this legislation about consulting women’s groups, a number of which came to the Senate Community Affairs Legislation Committee and made submissions to the committee about the number of eggs that would be required to undertake cloning. There is nothing about that—leave them aside.

I am very surprised that the Labor Party, through Senator Evans, will not give the public a fair go. They just go along with the government and with a private inquiry. What about a public inquiry? What is meant by an independent review—of what? It would certainly be independent advice from the ordinary public. What does ‘independent’ mean for the qualifications of the persons who will conduct this review? Should it not be the case that those persons should not have a continuing personal, professional or pecuniary conflict of interest with the matters being reviewed? Is that not reasonable to have in the legislation? Is not that the matter of transparency and accountability that we often talk about in this place?

Senator Stott Despoja is in her place. I hope I did not mishear her. I thought she said that it should be a public inquiry. I am asking the minister how that can be achieved. As I see it, there is a general desire around that
chamber that there should be a public inquiry. There are those like Senator Bishop and me who believe that the best way to have a public inquiry is to have a parliamentary inquiry.

However, I come back to the question I asked: why a private review? What has been the advice given to the minister? In the end, the advice states:

... the views of the Commonwealth, the States and the persons mentioned in paragraph (b)—that is, persons with relevant expertise—must be set out in the report to the extent that it is reasonably practicable to do so.

What does that mean? Frankly, this is very important because, if the persons are chosen with that in mind, this could pave the way for cloning in Australia. So I want answers to those questions.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (8.08 p.m.)—I have to agree with what Senator Evans said. I am not always going to agree with Senator Evans, but on this occasion I will agree with him. As I said before, the bill states:

(b) a broad range of persons with expertise in or experience of relevant disciplines...

This would involve adequate public consultation. We have to remember in this situation that it is an attempt and, as Senator Evans has said in this chamber, it is not often that we get all the states and territories attempting to have consistent legislation. Oh, that they would in indemnity issues! It would make my life easier. But in this issue we are attempting to have some sort of national approach, and it is appropriate that COAG has a role in it. They were the ones who initiated this. The Senate, or the House of Representatives, can initiate an inquiry at any time, as Senator Harradine knows, and it can be a very significant and in-depth inquiry. I would not put it past the Senate to be involved in doing that at the same time as this review takes place towards the end of three years.

I do not know that I can add any more. We could stay here all night having this discussion. I have just indicated that I will not be supporting the amendment. I am of the opinion that the consultation processes are sufficient. The Senate or the House of Representatives could propose an inquiry. I suppose that a joint inquiry could be proposed. But the Senate in its own right, at least, could have a quite extensive public consultation and inquiry. So I believe that there is adequate opportunity and scope for public consultation to be undertaken, and I will not be supporting the amendment.

Senator HARRADINE (Tasmania) (8.10 p.m.)—My question has still not been answered. I asked: why is this to be a private review? Why is it not to be a public review so that this can all be out in the open? Never mind what has happened, for example, to the NHMRC over a number of years, where things are done secretly. I say that through experience, because it was the NHMRC that incorrectly defined cloning when the officer concerned wrote to the states. He told the states that the NHMRC sees a distinction between reproductive cloning and therapeutic cloning. So outrageous was that that the Australian Health Ethics Committee, which is part of the NHMRC, said in an open statement that that was wrong. That information was provided to the committee and was clearly stated by the Australian Health Ethics Committee chairman. Page 17 of the committee’s report states:

The distinction between ‘therapeutic’ and ‘non-therapeutic’ scientific or medical research was made in the 1964 Declaration of Helsinki, and revised in Tokyo in 1975. This declaration was confirmed by the World Health Organisation and the Council for International Organisations of Medical Sciences as the basis for international guidelines for biomedical research involving human subjects.

According to that distinction, ‘therapeutic’ research is research or practice carried out where the procedure is or is expected to be of benefit to the subject of the research. ‘Non-therapeutic’ research does not directly benefit the subject of the research, although it may be of benefit to others or to scientific understanding in general.

It is very important to be clear on this because, as was indicated by that definition, if the subject of the medical experiments is a human embryo, that is not therapeutic clon-
ing. Rather, that is non-therapeutic so far as the embryo is concerned.

The distinction was affirmed by the Australian Health Ethics Committee when the doctor concerned, who was the COAG officer in charge of developing this bill, made his statement saying that therapeutic cloning is distinct from reproductive cloning. The chair of the Australian Health Ethics Committee, the principal committee of the NHMRC, said:

Therapeutic interventions are interventions directed towards the wellbeing of the individual embryo involved and non-therapeutic interventions are interventions that are not directed towards the benefit of the individual embryo but rather towards improving scientific knowledge or technical application. Non-therapeutic experimentation includes both non-destructive procedures (which include observation) and destructive procedures ...

The more-recently-coined term ‘therapeutic cloning’ collapses both (a) the distinction between therapeutic and non-therapeutic research on embryos and (b) the distinction between destructive and non-destructive experimentation on embryos. The creation of embryos specifically for research purposes, experimentation on those embryos and their subsequent destruction, etc. all fall under this term. It was because of the lack of transparency of the term ‘therapeutic cloning’, because the term concealed rather than revealed these ethically-significant differences, that AHEC rejected its use.

The Australian Health Ethics Committee has rejected the use of the term ‘therapeutic cloning’. It is a behaviour-governing term and is quite contrary to the principle of medical research.

What is happening here? Mark my words, in the next two or three years there will be a significant attempt to say, ‘Oh, we don’t want reproductive cloning,’ but they will say that they need therapeutic cloning. Well, they cannot really say ‘therapeutic cloning’, because they have been proven wrong there, so they will call it something else, whereas it is exactly the same thing, exactly the same process: the process of somatic cell nuclear transfer, where the cell is taken from an adult and placed into an enucleated egg. There is an electrical current, and fusion occurs sometimes, if at all. Say there are two resultant embryos. One might be placed into the body of a woman and the other could be carved up to get the stem cells, thus destroying the embryo. That is why we need to be perfectly clear in legislation what we are doing about it. We need to hear what certain scientists are saying about this publicly. Do they have a vested interest? Of course there is a vested interest with a number of them. You have heard that there are a wide range of claims being made or requests being indicated: ‘When the time comes, yes, we will be pushing for cloning.’ That is what this review is all about. If it is not about that, why have the review? The bill bans cloning. Why shouldn’t it be left at that?

The bill bans cloning. You are proposing to have review of that ban in two years time. Then, according to this bill, the report must be made not later than three years after the royal assent. Under those circumstances, because it is of major public interest, why is it to be a private review? Why shouldn’t the public and others with expertise, for example, hear evidence given to the review by those people? My question again is: why should it not be public?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (8.21 p.m.)—I believe I answered Senator Harradine’s questions, and I will not be supporting the amendment.

Senator HARRADINE (Tasmania) (8.21 p.m.)—If that is the way the minister wants to treat the committee stage of the bill on a very, very important matter, so be it. I intend to stand for parliamentary democracy.

Senator Patterson—Do not imply I do not; I find that offensive. Do not imply that I do not.

Senator HARRADINE—You were not even in my mind when I said that, but now you are. In fact, I believe to reject Senator Bishop’s motion is to deny parliamentary democracy in this particular case. This is the problem with COAG. We requested the basis upon which COAG supported the destruction of human embryos for their stem cells. We said, ‘Give us the evidence as to the papers that were used and the reports that were used to provide that.’ Frankly, we were not given them. We were refused permission to obtain
them. Clearly, we will also be refused when it comes to a request for information provided to a private review of a very public issue. That is what I am concerned about.

I support the proposal by Senator Bishop. There is no problem about having the matter sent to parliamentarians or the parliaments of the various states. They can engage with this joint committee of the federal parliament. This is one of the problems that you are faced with in respect of those states that already have legislation—these decisions have been made thus far by the executive governments. The parliaments of those states have not really had a say in it. They have not had a say in the development of the COAG process.

I am talking as a parliamentarian now and under those circumstances I believe it behoves us, as parliamentarians, to support the proposal by Senator Bishop. If that is not supported, or even if it is supported—and it could be running in tandem with another inquiry—I will be proposing, in addition, if the minister is insisting upon proceeding with that private inquiry, to make certain amendments to that to ensure that it is public.

Senator HOGG (Queensland) (8.25 p.m.)—I come back to an issue that I raised before in respect of the people to be chosen by the minister with the agreement of each state. The more I sit here and think about this the more concerned I become about that specific provision because it lends itself to the minister being held hostage by the various states until they selectively put on the review panel those that will conform with their own view. There is nothing there that prevents people who might be of different views—regardless of what side of the debate they are on here—being selected, because of the right of veto that comes under subclause 25(2), which says:

The review is to be undertaken by persons chosen by the Minister, with the agreement of each State.

It seems that we are heading down the path where there is going to be a select group that may be chosen and then there is a right of veto by each state over each of the people to be chosen. I do not know if that is the intent of this, but that is the way it reads. So the concerns that Senator Harradine has raised about the independence of this body really start to bite even further.

One should consider that there will be a lot of behind the scenes argy-bargy. Let us face it, when these committees are set up they are not set up by some broad democratic electoral process; they are set up by people lobbying the appropriate people, or by people approaching the appropriate people. And we may find that the committee of review is a loaded committee of review. Or if it is not a loaded committee of review, you may have the ministers of the various states being offended by the views of someone. Let us assume that someone with Senator Harradine’s views is to be put up for this committee. All that I would see as necessary would be for one state minister to object and that person would be rejected from serving on the review panel. I do not think that is the intention of what is in the current provision. That is the way it is reading and that is a real concern because one then does not have an independent review. One does not even have a review that is semi-independent. So, Minister, I ask again: can you clarify that for me and give assurances that that is not to be the case?

(Quorum formed)

Senator HARRADINE (Tasmania) (8.31 p.m.)—I raise an issue in respect of the bill. I think that Senator Hogg deserves a response to the serious and very valid points that he raised. Presumably the minister is getting some advice about that. In the meantime, I again ask the minister, through you, Mr Temporary Chairman, about a word in the bill. It is the minister’s responsibility, I believe, to let the committee know precisely what the terms mean. I really do want to know what the term ‘independent’ means in the first paragraph. What is meant by the word ‘independent’ when it says:

The Minister must cause an independent review of the operation of this Act ...

Independent of what? Does that refer to the persons who will be appointed to undertake the review? If so, independent of what? What are the qualifications which enable them to assume the mantle of independence? I am also wondering, for example, why the review panel—and bear in mind it is to be a private review—is required to make recom-
mendations as to the amendments that should be made to the act. Why is that required? As a private review, it is obviously to get together and put pressure on various parliaments to amend their legislation. I want a response from the minister in respect of those two matters. Why are the terms of reference so limited?

Senator MURPHY (Tasmania) (8.35 p.m.)—With regard to what is proposed in this amendment, in listening to the debate, as I have been trying to do, I am curious as to the minister’s position that COAG agreed to this process for the purposes of having a review and therefore we cannot have any other review. Am I to understand that is essentially the position from the government’s point of view? Is it the case, Minister, that the reason that you are not prepared to accept this amendment is that the review, as put in the bill, is agreed by COAG? If the minister can inform me of whether that is the case or not, it may save a bit of time.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that the amendment moved by Senator Bishop be agreed to.

Senator Murphy—Mr Temporary Chairman, the minister can nod if it is the case. I just want to understand whether that is the case.

The TEMPORARY CHAIRMAN—Senator Murphy, I cannot compel the minister to answer.

Senator Murphy—I know you cannot compel her.

The TEMPORARY CHAIRMAN—Have you finished, Senator Murphy?

Senator MURPHY (Tasmania) (8.36 p.m.)—I do apologise. Mr Temporary Chairman, but I would like to know if it is the case that the reason the minister is resisting the proposed amendment is that the review in the bill is the mechanism or process that was agreed by COAG and therefore the minister says, ‘Look, we can’t amend it, because that was what was agreed by the states.’ I just want to know if that is the reason that the amendment proposed by Senator Bishop is being opposed.

Senator PATTERTON (Victoria—Minister for Health and Ageing) (8.37 p.m.)—Senator Murphy may not have been in the chamber when I said that the bill went to all of the premiers and all of the COAG members and that a number of them—I cannot remember which ones now; I referred to them earlier today—wrote and asked that the bill proceed with no amendments. A couple of other states made submissions to the committee and indicated that they were in favour of the bill. The comment has been made, ‘What happens if they make amendments into which we have not have had an input?’ If amendments are to be made to the bill, they will come to the House of Representatives and the Senate, and we can have this sort of debate about the amendments all over again, amongst whoever happens to be here at that stage—and that is appropriate.

Senator Harradine indicated he was a parliamentarian. Well, yes, I am a parliamentarian too. We are politicians sometimes, but we are parliamentarians at others. As I said, I took objection to any implication that I did not hold the process of parliament in high regard. Let me just say that, if anybody thinks that somebody can put up a person, recommend them for a committee, and somehow influence the whole of COAG, let them think again. As one person has found just recently, it is quite a challenge to get all of the states to agree on appointment to a position. Having all states agree is one of the things required in this bill.

As I said before, if the parliament believes that there is a need for the impact of any aspect of this bill to be looked into in further detail, I am absolutely sure that somebody in this parliament will move to set up a committee to have a full inquiry. There is no reason why that could not go on at the same time. When all of the premiers have supported a Prohibition of Human Cloning Bill, I find it very difficult to read into this some conspiracy about it being a private meeting. COAG has to operate in a way which is workable and which can achieve outcomes.

As Senator Chris Evans said earlier today—and I have said here again tonight—it is very difficult to get agreement on an issue like this. If you actually put in place mecha-
nisms that make it too hard to work, we will never get this sort of agreement. I think it is important that we can demonstrate a process that will look at something of significant concern to the whole community. We have now got agreement on a national uniform approach to this issue and I do think it is a little conspiratorial to think that there is some hidden agenda in here and that it is private. As I said, if any amendments to this bill arise out of the review, they will be subjected to the full scrutiny of parliament and the full public scrutiny which only the Senate can undertake—and does more and more. As I said before, I will not be supporting the amendment.

Senator HARRADINE (Tasmania) (8.41 p.m.)—The Minister for Health and Ageing has not responded to my question about the committee that she is proposing in this bill. I ask the question: if she wants support or opposition to this piece of legislation—which ever it is—the minister in charge of the bill has the responsibility to at least explain the terms of the legislation. It is clear that it is going to be a private review, not a public review, on an extremely important matter of public interest.

I am also asking what is meant by ‘independent’. You will recall that I asked this before: What is independent? Independent of whom? Does it refer to the people who make up the panel? Again, independent of whom or of what? What is meant by ‘independent’ there? The appointments are going to be made by the minister. As Senator Hogg mentioned, the veto power is in the hands of any one of the state premiers. The bill states:

(2) The review is to be undertaken by persons chosen by the Minister, with the agreement of each State.

That point was raised by Senator Hogg, and he wanted to get the answer. Please, I am asking through you, Mr Temporary Chairman: what is meant by ‘independent’? Because we are voting on a very important issue here, the review of the legislation, I ask what is meant by having such a narrow focus on the terms of reference? The bill, which at the moment is supposed to ban cloning of all types, states:

(4) The persons undertaking the review must consider and report on the scope and operation of this Act taking into account the following:

(a) developments in technology in relation to assisted reproductive technology;

I am not too sure how that comes into it, as far as the banning of cloning is concerned. Perhaps the minister might be able to tell us. How does that come into play? This bill is about the banning of human cloning. According to the bill, the review is then supposed to look at ‘developments in technology in relation to assisted reproductive technology’. Then the bill says:

(b) developments in medical research and scientific research and the potential therapeutic applications of such research...

It says ‘potential’. What does that mean? We heard this before in the Senate inquiry—people say certain research on stem cells has the potential to do certain things—but there has never been any proof of concept. This is very important because, you mark my words, there are—and this aspect has been there all the time, as I explained to the Senate before—certain scientists who want to clone humans. Even the Minister for Education, Science and Training’s scientific adviser, Dr Barlow, has stated that he believes in human cloning, including what he terms ‘reproductive cloning’. This is the minister’s chief science adviser! I have raised that before and I now call publicly for him to repudiate that. It is very important to ask the minister this question about independence and why there are not broader terms of reference. Clause 25(4)(c) refers to ‘community standards’. What does that mean? Is there to be an ethical evaluation of certain proposals or not, or is it to be determined on the basis of a newspaper poll? These are matters that will ultimately determine whether there will be cloning or not in Australia, and it is important for the minister to respond to them.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (8.48 p.m.)—I find it quite distressing that Senator Harradine is persisting in this way in the sense that it gives no credibility at all to our parliamentary process. We elect, despite some of us disagreeing over who is elected as premier, our premiers, our chief ministers.
and our Prime Minister of the day to actually have the good sense to interpret what is meant by ‘independent’. For example, when people are appointed to committees—and I have the responsibility of appointing people to committees from time to time as minister—they are required to fill out a form to indicate whether they have a conflict of interest. I would presume that we would expect that people would not have a conflict of interest, but one of the things here is that we could go on defining and defining what is meant by ‘independent’ and still not have got to what people want in the end.

Through our democratic system we will have elected premiers and chief ministers and indirectly elected a Prime Minister—as we indirectly elected those chief ministers—but at least they are elected representatives and indirectly elected by their parties. It is wrong to presume that they will not be able to interpret what is meant by ‘independent’, and I think most of us in this chamber would agree that it would be inappropriate to appoint someone who had a vested interest in cloning, who had made a public commitment to cloning or who owned shares in a biotech company overseas that was involved in cloning. If you tried to define what you meant by ‘independent’ and went through all those things—that they cannot actually have shares in a company that is involved in cloning, that they cannot be involved in research into cloning but they have to have skills in biotechnology to be able to understand the implications of this—we could go through those ad infinitum to explain what we meant by ‘independent’.

I put trust in the fact that we will have seven people, although they might not always share my political views, who have been elected, having been chosen by their parties to represent their state or territory, and also the Prime Minister of the day—and I am not presuming what parties they will be from—who will have the wit and the ability to interpret what we mean. If they make any recommendations that change legislation, the parliament of the day will have the ability to actually reject or accept those recommendations to amend the legislation. I believe that is sufficient protection, and Senator Har-
port what is proposed it is for that reason
alone because you are saying to us that we
ain’t good enough to do the review. Minister,
you tell me one premier or one chief minister
who would say that the national parliament
could not review this legislation.

Senator Patterson—Most of them.

Senator MURPHY—If that is the case
then I have the same cynical doubt about
their capacity. If we are expected to pass this
legislation then I would argue very strongly
that we ought to be given the capacity to re-
view it or parts of it at some time in the fu-
ture—and that ought to be the case. You can-
not ask parliamentarians in this place to de-
bate legislation and then say, ‘The Prime
Minister and a few premiers and chief min-
isters have got together and decided to have
a review but they are going to exclude the
parliament of Australia out of that review
and the parliamentarians duly elected’. And
senators are duly elected as representatives
of their respective states and territories so
they should be able to participate in a review
of the legislation. It is just a nonsense.

Initially, I did not think I would have too
much to say about the Prohibition of Human
Cloning Bill 2002 but the more I read of this
legislation the more I believe it is the messi-
est piece of legislation. It is fundamentally
flawed. Just wait until we get to the other
part of it. What has a chief minister or a
premier of a state got to do with this parlia-
ment deciding whether we ought to have our
own review of the legislation that we pass?
What a nonsense.

Question negatived.

Senator HARRADINE (Tasmania) (8.57
p.m.)—I move my amendment (10), which is
an alternative to amendment (9):

(10) Division 1, page 14 (line 4) to page 15 (line
3), omit the Division, substitute:

Division 1—Review of Act

25 Review of operation of Act

(1) The Minister must cause an independ-
ent public review of the operation of
this Act to be undertaken as soon as
possible after the second anniversary of
the day on which this Act received the
Royal Assent.

(2) The review is to be undertaken by per-
sons chosen by the Minister, with the
agreement of each State.

(3) The Minister must not choose a person
to undertake the review if the person
has a continuing personal, professional
or pecuniary conflict of interest with
the matter being reviewed.

(4) The persons undertaking the review
must give the Parliaments of the Com-
monwealth and of each State and Ter-
ritory a written report of the review in-
cluding any recommendations for
amendments to Commonwealth legis-
lation before the third anniversary of
the day on which this Act received the
Royal Assent.

(5) The persons undertaking the review
must consider and report on the scope
and operation of this Act taking into
account the objects of this Act and the
following:

(a) the need to preserve and protect
human life;

(b) the need to ensure that in any medi-
cal research on human subjects,
considerations relating to the well-
being of a human subject will take
precedence over the interests of sci-
ence and society;

(c) the current state of technology and
practice in relation to assisted repro-
ductive technology;

(d) developments in medical research
and scientific research including any
therapeutic applications of such re-
search;

(e) community standards.

(6) The persons undertaking the review
must call for public submissions and
publicly hear evidence from:

(a) the Commonwealth and the States
and Territories;

(b) a broad range of persons with ex-
pertise in or experience of relevant
disciplines;

(c) a representative cross-section of
persons who have responded to the
call for submissions;

and the views of the Commonwealth,
the States and Territories and the per-
sons mentioned in paragraphs (b) and
(c) must be set out in the report to the
extent that it is reasonably practica-
ble to do so—in any event the report must contain a list of names of all persons who have made a submission together with the title of their submission.

(7) A person undertaking the review has, in conducting the review, the same protection and immunity as a Justice of the High Court.

(8) A person appearing before the review as a witness has the same protection as a witness in proceedings in the High Court.

Amendment (10) relates to the review of the operation of the act. The amendment was designed in the hope that it would cover the areas of concern which were expressed during the recent debate. Therefore, I do not intend to spend much time on it because the outcome has virtually been predetermined. I believe very strongly that there should be a public review. I listened with interest to what the Minister for Health and Ageing said about the independence of those persons who are appointed to undertake the review. I assumed from what she said that the minister must not choose a person to undertake the review if the person has a continuing personal, professional or pecuniary conflict of interest with respect to the matter being reviewed. The whole point about this issue and what has been lost sight of is that unless that sort of provision goes into the legislation there is no guarantee—fancy trusting a politician but apparently the minister is trusting the premiers and the Prime Minister with this. I do not distrust them but I do have regard to the fact that they are busy people and so much is done for them in this particular area by the NHMRC. They are in the game; they have a research orientation. The NHMRC are the ones that are running the game. I will talk about that later on tonight when we come to the question of the appointment of a licensing committee.

I felt that the persons undertaking the review must give to the parliaments of the Commonwealth and of each state and territory a written report of the review. They are not going to do so because they are just going to give it to COAG, which is the executive, not to the parliaments. I felt that the persons undertaking the review should consider and report on the operations of the act as per the bill taking into account the objects of the act.

The object of the act is, as all senators would know, to address the concerns including ethical concerns about scientific developments in relation to human reproduction and the utilisation of the human embryo by prohibiting certain practices. It has not taken into consideration also the need to preserve and protect human life, the need to ensure that in any medical research on human subjects considerations relating to the wellbeing of a human subject would take precedence over the interests of science and society.

All of this has been predetermined. The minister will not accept any amendment, although she was required to accept one earlier today. Rather than proceeding in that fashion, I wish to withdraw the alternative review of the act provision in amendment (10) and move an amendment—and I am doing this on the run—having regard to what the minister has said. I seek to include in line 6 of clause 25 of the bill after the word ‘independent’ the word ‘public’. That is a very simple amendment. I think the public has got to be aware of what is going on in this important matter of public interest. The inquiry should not be a private affair.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Are you withdrawing your amendment (10) or are you proposing to move an additional amendment as well as (10)?

Senator HARRADINE—No, Mr Temporary Chairman. I am seeking leave to withdraw amendment (10) and I propose to move another amendment as mentioned.

Senator CHRIS EVANS (Western Australia) (9.05 p.m.)—For the record, is Senator Harradine withdrawing amendment (9) as well, because I think that was an alternative amendment? I just want to be clear what he is doing. If Senator Harradine could make himself clear as to what he is seeking to do with those two amendments, that would be helpful. I understand he is seeking to move a new amendment which just inserts the word ‘public’ after ‘independent’ in clause 25(1).
If he could clarify that again to make sure that we are all on the same track, that would be helpful.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Harradine, as I understand it, has sought leave to withdraw amendment (10) because he has moved it. He has not moved amendment (9), so he does not need to withdraw that amendment.

Leave granted.

Senator HARRADINE (Tasmania) (9.06 p.m.)—I withdraw amendment (10), and I move:

Clause 25, page 14 (line 6), after “independent”, insert “public”.

I hope I am supported here by Senator Stott Despoja because, as I understand it, she said that the review should be a public review. I hope that will find favour with other members of the Senate. If it does, then obviously one would need to add an additional amendment which would give protection—privilege—to the persons undertaking the review.

Senator STOTT DESPOJA (South Australia) (9.08 p.m.)—For the record, I need to clarify the position I put forward earlier so that Senator Harradine understands the Democrat position. I indicated that we were supportive of the notion, as put forward by Senator Bishop and others, of a public committee inquiry through the parliament—whether it be a joint or a Senate committee—into the operations of this act, when it is an act. The timing of that inquiry, its composition and whether it is a joint or Senate committee we are happy for the parliament to determine at another time. The problem that we have, however, is with the notion of enshrining it in this legislation. We seek not to do that and, hence, I indicated to the chamber and to Senator Bishop, both informally and on the record, that we would not be supporting his amendment. However, I have given a public commitment tonight that the Democrats would support such an inquiry but through the normal processes—a notice of motion to the parliament, whether that emanates from the Labor Party or from individuals in the coalition. When Senator Harradine refers to my comment supporting a public inquiry, that is what I was referring to.

Regarding the review of the act, the cloning bill, we are happy with the provisions that are there set out. There is scope under those provisions to incorporate the views of the public. There is perhaps one question that I have of the minister, prompted by the comments made by Senator Harradine. I think his views in relation to accountability, transparency and public involvement are all valid, but I think a Senate committee or a joint committee plus this review that will happen after two years could potentially be quite complementary. This independent review reports to COAG. Will the federal parliament receive a copy of this review? Will this review be tabled in the federal parliament? That is something that the minister, on behalf of the government, could undertake to have happen. It solves some questions that may be outstanding in relation to public scrutiny of that review and public involvement. I am quite happy for us to have two reviews of the legislation. An independent review as per the terms of reference or the provisions set out in clause 25 is appropriate. Similarly, I am a great fan of parliamentary inquiries; hence the Democrat commitment to support one if terms of reference should come from the parliament. Given that this presumably reports to COAG, will the report be tabled in the federal parliament? Could the minister provide that information to the parliament? That also opens up, Senator Harradine and Senator Bishop, another opportunity for our involvement as a democratically elected body.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.12 p.m.)—Clause 25(5), line 24 of the Prohibition of Human Cloning Bill 2002 says:

The report must contain recommendations about amendments that should be made to this Act, having regard to the matters mentioned in subsection (4).

The committee may say that they have no recommendations about amendments or they may believe that there should be recommendations about amendments. The committee can deliberate on issues; the impact will be on what recommendations they make about amendments. This parliament, as I have said three times before, will then be able to have
an extensive debate, a parliamentary inquiry and a committee hearing about the amendments. The government of the day may not accept the recommendations in the amendments. The discussion will be public if there are amendments being made to the act.

As I said before, the premiers have had an opportunity to look at this legislation. We have had a chance to look at it during the committee hearing. I find it difficult to comprehend that we are discussing this at this late stage. As Senator Knowles reminded me, many of the hearings were held here in Parliament House to give people the opportunity to go along. Any senator is entitled to go to a committee hearing on a bill and ask questions or put in questions. As I said, if amendments are recommended, they will be public, and if they are going to be implemented they will come before the parliament.

Senator HARRADINE (Tasmania) (9.14 p.m.)—I am sorry that I misheard what Senator Stott Despoja said before. Clearly, it is essential that this not be a private review. Whether or not there is going to be a Senate inquiry or a joint House-Senate inquiry is not the point: the action will be here in this review and problems will occur because it is not public. Furthermore, it is so restrictive as to who can be brought into discussions on the review. It will all be done in secret, in private. That is not the way to operate on a major question of public policy. I am very disappointed that Senator Stott Despoja does not support this motion to ensure that this inquiry or review is undertaken in a public manner. The more accountability and the more transparent the actions of executive government, the better. It is absolutely essential that this be undertaken in the eye of the public—that is why I have moved the amendment. I have withdrawn the other amendment because it obviously will not get the support of the government. So be it. There will be a time of accounting later on to see just who is right and to see whether or not what I have foreshadowed takes place.

Senator STOTT DESPOJA (South Australia) (9.17 p.m.)—On the amendment moved by Senator Harradine: while I understand the intention of Senator Harradine to make it a public review, as we have had in this debate a wide-ranging discussion about what constitutes a public review I think that the way that Senator Harradine is going about this is confusing. As I understand it, the intention is to insert—in clause 25(1) titled ‘Review of operation of Act’—the word ‘public’ between the words ‘independent’ and ‘review’. I do not think that that satisfies anyone because I do not know what is meant by that. Does it mean that it is open to the public to view it, to be involved, to be consulted? Does it involve submissions from those organisations? Personally and on behalf of the Democrats, I believe that the provisions are sufficient and can be combined with a committee at another point in time.

I apologise for not bringing this up in the context of the Community Affairs Legislation Committee. I certainly cannot be accused of not being involved in their deliberations. They were held at the same time that the parliament was sitting. While that sometimes facilitates the opportunity for senators to get there, it often makes it hard, too, when you have conflicting appointments and commitments. I would be satisfied with these provisions if there were a guarantee, an undertaking—and I know that this is not popular with some members of the government—that not only the recommendations but the review would be provided to parliament. It is a standard Democrat request where you have a review of an act, be it independent or otherwise, that the results of that review be tabled in the parliament and thus are available for senators and members. They are also thus publicly available.

I understand that the idea is to make the recommendations available. I certainly do not mean to be problematic at this late stage in the debate, but I do not see a problem with their being tabled in the parliament. I am not seeking to enshrine that in the legislation. I would be satisfied with an undertaking from the minister, on behalf of the government, to do that, because I think that that is appropriate. As I have said—and as I say through you, Mr Temporary Chairman, to Senator Harradine—a more public or a parliamentary inquiry at another stage is something that we would support, but we will not seek to put it into the legislation. Can I get a clear sense
from the minister, because I will not pursue it further if I am at a dead end—not through discussions anyway; we might pursue it through other means—whether the minister is ruling out giving that undertaking. I am wondering why it is so problematic.

Senator MURPHY (Tasmania) (9.20 p.m.)—I would like to hear a response from the minister on the question that has been put to her by Senator Stott Despoja. If there is no response, I will propose an amendment to clause 25(3) of the bill to read as follows: ‘The persons undertaking the review must give the Council of Australian Governments and the Parliament of Australia a written report’—that is, with the insertion of the words ‘Parliament of Australia’.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.21 p.m.)—I think most senators in the chamber would realise that it would be a COAG report. I am not in a position to make a commitment on behalf of COAG. On an issue such as this, I would anticipate that COAG would make the findings public. As I said, if the report recommended amendments and they wanted the amendments, it would be very public, because the amendments would have to come through here; I keep saying that. I cannot give an undertaking on behalf of COAG. I will ensure that it is brought to COAG’s attention that it was the wish of the Senate that this report be made public, and the premiers, chief ministers and the Prime Minister of the day will have to make a decision on that, given the expression of the wish of the Senate.

Senator BARNETT (Tasmania) (9.22 p.m.)—I support the view that has been expressed by a number of senators in this place that we need an open and transparent process and that what we are looking for is public access to the review and the report and its recommendations. I note where the minister is coming from with respect to clause 25(5), and that is indeed appropriate. It makes sense that, if recommendations flow through, they will need to be brought to both houses of the federal parliament. The amendment foreshadowed by Senator Murphy is really along the lines of seeking that the review and the report and its recommendations be tabled in both houses of the federal parliament.

One way to potentially avoid undue delay in the debate tonight would be for the minister to take advice as to whether an undertaking can be made on behalf of the federal government that the report and its recommendations will be tabled in both houses of the federal parliament. This would avoid the process of debating this foreshadowed amendment and whether the wording is correct or whether there needs to be a slight variation at the end of subclause (3) by adding words along the lines of ‘and table such review in both houses of the federal parliament’. That can be decided shortly.

We are really talking about having public access to the entire report and its recommendations because we want to avoid the release of selective parts of the report for the various purposes and different agendas of the different state governments or state premiers. We want to avoid this sort of thing so that there is public access to this type of information. We have had a whole debate in the last few hours about this matter. I wonder whether further advice could be obtained and sought from different places in this parliament to see if an undertaking could be provided on behalf of the federal government that the report and its recommendations will be so tabled at the time it is completed and is given to the Council of Australian Governments. That would be very helpful.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that the amendment moved by Senator Harradine be agreed to.

Question negatived.

Senator HARRADINE (Tasmania) (9.26 p.m.)—I believe that it is incumbent upon the minister to continue the remarks she made when seeking to postpone amendments (3) and (4) on page 1 of sheet 2697. As honourable senators will know, these amendments are to outlaw the—

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Harradine, I am sorry to interrupt you, but I must ask the permission of the committee as to whether they wish to return to those amendments. Is
it the wish of the committee that we return to amendments (3) and (4) on page 1 of sheet 2697 postponed from yesterday?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.27 p.m.)—I have some mixed feelings about this. Last night we had the debate about amendments (3) and (4). I had obviously some sympathy with the argument. Having made quite a significant speech about consistency, as I said, I had some sympathy with the amendments that Senator Harradine was moving—although not indicating support for the amendments. I had the opportunity this morning briefly, because we were back in here at 9.30, to have a discussion with the Prime Minister about the possibility of giving us time to contemplate this in more detail—maybe through regulation. Because Senator Ellison also has an amendment, we have not had time to take all of those into account. At the risk of prolonging this debate, when people get revved up again I am wondering whether it would be appropriate to defer any further debate on the bill until we can indicate to people whether there is an alternative way of addressing the importation issue, at least to give breathing space to consider it in much more detail.

I believe that there is reasonable goodwill. As I have said before, people have very strong feelings and when we debate these bills that have moral implications there are very strong views held on both sides—other people are more lukewarm—and it ranges across a continuum. If we can have that goodwill, I would hope that does not leave it open for there to be another open-ended debate in the committee stage. I would hope that those honourable senators who believe strongly in these amendments and who think that it might be overturned would allow that time in order for an alternative or a compromise to be examined.

In my sense of goodwill in addressing that, I would expect reciprocal goodwill in that the debate would not go on ad infinitum as a result of that. I am suggesting that we postpone debate on this bill at this stage and defer it to a later hour on another day—I do not think that it will be today or tomorrow—and that we move on to the Research Involving Embryos Bill 2002 so that I can come back and indicate what might be possible at least in terms of an alternative for those people who have a concern. As I said, it will not satisfy everyone, but that is the compromise that I am offering.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Minister, you will need to move that the committee report progress.

Senator CHRIS EVANS (Western Australia) (8.30 p.m.)—I am always happy to facilitate progress on these matters and so, if the minister is indicating that some accommodation of different views inside the chamber might be possible and that some more time to do that might be beneficial, my general reaction to that is to say that it would be a positive thing. That is my inclination on this occasion as well. However, I also make the point that we are scheduled to consider these two bills only until lunchtime tomorrow and then adjourn the debate and that it is not to be rescheduled until the sitting week after next. I think it would be the view generally around the chamber that it would be very useful to have dealt with and concluded this bill by lunchtime tomorrow. It would certainly be my strong desire to finalise this bill so that when we come back for the sitting week after next we only have one bill to consider and we do not have to restart both. That is obviously a question for the chamber and depends on how the debate goes, but I think that would not be an unreasonable proposition. If the minister is seeking to adjourn the debate on those amendments, we should at least only adjourn it until tomorrow morning and deal with them then.

I had a question to put to the chair. I think Senator Harradine’s amendments (3) and (4) were the only outstanding amendments still to be considered in respect of this bill. However, there is a question in relation to schedule 1. I suggest that if there are issues other than amendments (3) and (4) to be considered we should consider them now before the adjournment of the debate is moved. We should have a broad understanding that if the adjournment of the debate is supported it is supported on the basis that we come back in the morning to deal with those issues and to
conclude the bill. That would be my preferred option and one for which I would ask for support. Obviously, preliminary to that is the minister’s view in terms of the proposal in respect of amendments (3) and (4) and whether Senator Harradine still intends to oppose schedule 1. Perhaps we could deal with that tonight.

Senator HOGG (Queensland) (9.33 p.m.)—I am not trying to cut across my shadow spokesman’s—

Senator Chris Evans—You have a conscience vote on this.

Senator HOGG—It is not a prerogative on this issue, but I would like clarification from the minister in respect of what she is proposing if the debate is deferred. I heard my colleague say that he would like the bill finished by tomorrow. I am not trying to force you down that path, Minister, but do you think you will be in a position in that regard when we return on 2 December?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.34 p.m.)—Mistakenly I thought we had finished the amendments—in vain hope. Having not finished the amendments—I do not know what I was doing thinking we had finished the amendments; I was hoping that we had but we have gone back to amendments (3) and (4)—I suggest that we finish the debate on the bill except for amendments (3) and (4). I hope that by tomorrow morning we will be able to say in more detail what we are prepared to commit to in terms of a possible regulation. I have already indicated that the Prime Minister has made a commitment on export. The problem is the wording of any regulation about imports and, rather than mislead the Senate or make a promise that is impossible to keep, I want more time—I have not had much time out of the chamber today—to look at that. I anticipate that we can finish the bill tomorrow, but this process allows those of us who have some concern about the inconsistency of saying, ‘We ban cloning, but it’s okay to import it,’ to further consider the issue. Personally I find that a little difficult and this process will give us time to address that. I have been trying to explore that possibility today. However, Senator Ellison has some amendments and, if that process meets his requirements, he may not want to put his amendments.

It does not often happen in this chamber, but I am saying that the debate last night raised an issue that raised concerns for some of us and I am trying to accommodate that. As I said, it will not meet the desires and goals of the people who feel strongly and who would support Senator Harradine’s amendments, but I think it goes some way for those who have concerns. I suggest that, if Senator Harradine is prepared by leave not to move amendments (3) and (4), we proceed with the rest of the committee stage. If we reached the end of the committee stage, other than the debate on Senator Harradine’s amendments (3) and (4), I would then move that we report progress and defer the debate to a later hour the next day. I think we should see how we go. However, I agree with Senator Evans that we need to get the bill through at some stage.

Senator MACKAY (Tasmania) (9.36 p.m.)—In my capacity as a whip, I have total sympathy for the minister’s position. However, there is a general understanding that we may attempt to finish this bill by lunchtime tomorrow, so in my official capacity I would be a bit reluctant to agree to an unlimited adjournment to a later hour. For reasons which all parties are aware of, we need to meet the deadline. I understand the minister’s position, but for a number of reasons lunchtime tomorrow is it in terms of people’s participation. Would the minister care to respond to that?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.37 p.m.)—I did say that this is being done in good faith. I would expect that, since it is being done in good faith, people will not take the opportunity to keep the debate running on just for the sake of it. I have attempted to accommodate all the views. As I said, it will not meet everyone’s needs, but I would hope in good faith that, if we do defer it just to deal with amendments (3) and (4), we can do so expeditiously.

Senator MURPHY (Tasmania) (9.38 p.m.)—I have just omitted an amendment that goes to this issue of having the review
report tabled in both houses of the Commonwealth parliament.

The TEMPORARY CHAIRMAN (Senator Jacinta Collins)—From the chair a moment ago I was going to clarify the outstanding amendments. I am alert to the fact that you have an outstanding amendment. Senator Allison has outstanding amendments, although they may pertain to the issues that we are deferring. Then there is Senator Harradine’s outstanding amendment in relation to schedule 1. Unless someone wants to correct me with respect to the wish of the committee, I anticipate that we will deal with your amendment, defer Senator Allison’s amendment until we discuss the government response to the deferred matters regarding Senator Harradine’s amendments (3) and (4) and then deal with Senator Harradine’s amendment regarding schedule 1.

Senator BARNETT (Tasmania) (9.39 p.m.)—I would like to express support for the manner in which the minister has responded to this matter. I am on the public record saying that there is a glaring loophole in clause 11 of the bill. The minister is aware of the motivation of many members in this chamber to try and patch up that loophole with respect to the importation of human embryo clones, and she has expressed a great amount of goodwill and generosity to try and work through those issues. She mentioned that last night and today. I certainly support seeing if something can be sorted out regarding this matter so that we can wrap it up by lunchtime tomorrow. I will take advice on the timing. It should obviously be as soon as possible so that debate is not delayed, but I support the minister’s position.

Senator HARRADINE (Tasmania) (9.40 p.m.)—My amendments are absolutely crucial. This bill bans cloning but allows the importation of stem cells derived from cloned human embryos. Frankly, that would totally undermine the bill. There are certain scientists who have connections in Singapore and other places and who want to clone or use stem cells from cloned human embryos. That would be impossible under this legislation but for the fact that the legislation as it stands does not ban the importation of embryonic stem cells derived from cloned embryos. I would have thought the amendments would be acceptable to the chamber. I cannot see the problem but, if the minister wants to have more time to consider the matter, I believe that the committee should provide that time in the hope that there will be a satisfactory outcome which will shore up the provisions of this bill which bans all forms of cloning.

The TEMPORARY CHAIRMAN (Senator Jacinta Collins)—Going back to the procedural matter regarding how we should proceed from here, it was suggested that we move now to Senator Murphy’s amendment, we defer Senator Allison’s amendments until the matters of Senator Harradine’s that have been deferred are dealt with at some later time, then we move to Senator Harradine’s amendment regarding schedule 1. Perhaps if we proceed in that way, any informal arrangements regarding other matters can be dealt with outside of procedural issues and we can make the time of the committee fruitful by proceeding. If Senator Murphy would return to his chair and it is the wish of the committee, we can proceed.

Senator CHRIS EVANS (Western Australia) (9.43 p.m.)—Could I just reiterate for the record, on behalf of the Labor Party, that it is our understanding that every attempt will be made to bring that matter back before the chamber in the morning and be dealt with before lunchtime tomorrow. That is our intention. We are under a lot of pressure from the government to get on with the legislative agenda, and that is part of our contribution to that cause.

Senator Patterson—It should be well before lunchtime.

Senator CHRIS EVANS—I am saying that there is a general understanding among the parties that the debate will not go beyond lunchtime because of the unusual arrangements about conscience votes and lack of pairs. If we are to get to the conclusion of this bill before moving into the next fortnight’s sittings, it has to be by lunchtime tomorrow. There is absolutely no prospect of getting both bills finished by lunchtime tomorrow, so we should at least aim for finishing one.
Senator STOTT DESPOJA (South Australia) (9.44 p.m.)—You asked for comment on the process, Madam Temporary Chairman, so I rise on behalf of the Democrats. Senator Evans was confirming that there was an agreement among the parties. I thought it might be appropriate for us to make clear that we are happy to agree to that process—that is, that we deal with this legislation, hopefully, presumably, by lunchtime tomorrow at the latest. I am happy to commit the Democrats to that process and to doing all we can to facilitate that. The process you have outlined for tonight, Madam Temporary Chairman, is thoroughly acceptable to us.

I am happy to indicate, before you jump to your feet, Senator Murphy, that the Democrats will be supporting the amendment. I think it is a worthy one. I believe the review should be tabled in the parliament, and I am disappointed that we did not get that undertaking, because that would have satisfied the Democrats and me. I do have one question, however, in terms of the process for this evening. If we should wrap up this legislation before the allotted time of 11 o’clock, I understand there is no running sheet for the next bill.

Senator Hogg—Yes, there is.

Senator STOTT DESPOJA—So we are in a position to move on to the next piece of legislation if we get that far.

Senator MURPHY (Tasmania) (9.46 p.m.)—I move:

Clause 25, page 14 (line 13), after “Governments”, insert “and both Houses of the Parliament”.

I think it is useful that a report that is prepared on legislation passing through the parliament of the Commonwealth of Australia be tabled in both houses of this parliament. I am going to take a very brief time to talk to the amendment because we have had a long discussion about much of the issue of the review of the act. If we are able to incorporate this into the provisions of this bill and it becomes part of the act, I think it will help a lot of people by taking out a lot of the heat about exactly to whom the report, parts of the report or findings of the report might be made available. It does not take away any-thing from the Council of Australian Governments, but it does add to the public aspect of a review of this act. I think that people would feel much more comfortable if they knew that such a report, once written, would be tabled in both houses of this parliament as well as being given to the Council of Australian Governments.

Senator HARRADINE (Tasmania) (9.47 p.m.)—I support the amendment; I think it is highly desirable. It is the least that can be done for this report, which will be a private review, and it is absolutely essential to have the review at least tabled in both houses of the parliament. I think it would be essential at that time for this review to contain detail of who was heard and the gravamen of the material that was given. I remind the chamber that one of the problems that we had on the committee was that COAG would not give us the basis upon which it made its decisions. Senator Murphy’s amendment is a good one in that it will require those conducting the review to table their report, and presumably the information upon which they have made their recommendations, and to have that tabled in both houses of parliament. So I support the amendment moved by Senator Murphy.

Senator BARNETT (Tasmania) (9.50 p.m.)—I support this amendment and make it clear that it is an important public policy issue that we are discussing. A Senate committee, of which I was a member with others, has just looked into this. We made recommendations and a report, which we tabled publicly. This is a very important matter. It is a watershed event in Australian political history. There will be a review, as set out in clause 25. As I indicated earlier, it will certainly avoid the release of any selective parts of the report for various agendas or objectives of the different members of COAG. This will eliminate that and ensure it does not happen. It is a good public policy position for this parliament to take, and I support the amendment.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.51 p.m.)—People have said to me that I should answer Senator Stott Despoja’s question. I really was not being difficult, but I do not have the
authority to tell COAG what to do. I said that I would make sure that COAG was aware of the Senate’s request that the document be made public and given to the Senate. One of my staff has already put a note in his pocket to write a letter to the Prime Minister—a letter which we hope not just the Prime Minister will see but which will go to the Prime Minister and then to COAG, saying that that is the intent of the Senate. I was not being dismissive of Senator Stott Despoja’s request, but I was going, in the politest possible way, through the Prime Minister, to ask COAG to make the document public. I cannot instruct them to do that.

I think that is sufficient. Obviously, other people in the chamber will not think that is sufficient, but I believe that I made my response clear to Senator Stott Despoja. Senator Stott Despoja is nodding that it was clear, that I did answer her request. She can speak for herself as to whether she agrees, but I thought that was a reasonable response and I intend to write to the Prime Minister to draw his attention to the chamber’s indication that it would like COAG to present the document publicly and to the parliament. So I believe I did answer the question.

Senator STOTT DESPOJA (South Australia) (9.53 p.m.)—I recognise that the minister did answer my question. I acknowledge that. I disagree with her answer in the sense that we are making a federal law at the moment and this legislation and this process give us the right to have this tabled. I do not see it as dictating or instructing COAG in any way. We are drafting provisions in relation to an independent review that will involve the states, the territories, the Commonwealth and, yes, COAG. But this is a federal piece of legislation and the law gives us the power to say, ‘We would like this tabled in the parliament.’ There is absolutely no restriction in relation to this review being tabled in the parliament. We have the power to do it. Let us do it and let us hopefully shorten this debate.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Jacinta Collins)—The question is that schedule 1 stand as printed.

Senator HARRADINE (Tasmania) (9.54 p.m.)—Schedule 1 repeals sections 192B, 192C and 192D of the Gene Technology Act 2000. I think it behoves the minister to explain why the government wants those provisions repealed. I indicate to the chamber that the Australian Conservation Foundation’s GeneEthics Network, in its submission to the Senate Community Affairs Legislation Committee, said that the repealing of clauses 192B, 192C and 192D of the Gene Technology Act 2000 may leave a legislative vacuum unless the bill prohibits all other non-heritable gene manipulations in embryos. In relation to sections 192B, 192C and 192D of the Gene Technology Act 2000, it goes on to say:

While those provisions may have been a stopgap it is important that their repeal does not reduce the prohibitions on the classes of human gene engineering prohibited by them. It is not clear that such manipulations would be regulated by any other body including the OGTR.

I think some guarantees ought to be provided to the parliament so that the concerns that have been expressed in this submission, which I have read to the Senate, are taken care of.

The TEMPORARY CHAIRMAN (Senator Jacinta Collins)—The question is that schedule 1 stand as printed.

Senator HARRADINE (Tasmania) (9.57 p.m.)—On this very important matter I think that the minister should respond to that question. The submission was made and those advising the minister should know of this submission. The request is a serious one. Clause 17 prohibits heritable genetic engineering—that is, germ line genetic engineering—but the suggestion by the GeneEthics Network is that this clause should also prohibit all other non-heritable gene manipulations in embryos. It goes on to say, as indicated, that the repeal of the clauses may leave a legislative vacuum unless that is done. I am simply asking whether it is felt that the legislation covers that situation.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.00 p.m.)—Senator Harradine, it is my opinion and my advice that this clause reflects the COAG
decision and it is not necessary to support your opposition to schedule 1.

Senator HARRADINE (Tasmania) (10.00 p.m.)—If that is the sort of advice that is given, I would get another adviser.

Senator Patterson—Madam Temporary Chairman, on a point of order: I find it improper that Senator Harradine would cast aspersions on the advice that I am given from the advisers box when the adviser has no opportunity to reply, and I presume that Senator Harradine would agree. I know it is late, but that is not appropriate. The advisers cannot be blamed for the way in which I interpret their advice and report to the chamber.

The TEMPORARY CHAIRMAN (Senator Jacinta Collins)—There is no point of order.

Senator HARRADINE (Tasmania) (10.01 p.m.)—I do accept what the minister says—it is getting a bit that way. But really, Minister, you are the health minister and for that reason, as well as being in charge of this legislation, I think it deserves your response. If you choose not to respond—

Senator Patterson—I did respond, Senator Harradine.

Senator HARRADINE—But your response was that COAG considered it unnecessary. I was asking on behalf of an organisation—when I say ‘on behalf of an organisation’, I have not contacted the organisation but I did see their submission and I thought it raised important questions about prohibiting all other non-heritable gene manipulations in embryos. Clause 7 of the bill prohibits heritable genetic engineering—namely, germ line engineering—and the suggestion here is that the clause should also prohibit all other non-heritable gene manipulations in embryos. It goes on to indicate that the repeal of the clauses may leave a legislative vacuum. I am simply asking whether that legislative vacuum is there. If the answer is that COAG does not think it is, I think that you, as Minister for Health and Ageing—and I am sure you are interested in it—should take it on notice so that we can deal with the matter later if there is a problem.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.03 p.m.)—I remind honourable senators that this is obviously a highly technical bill and, as I said, people have very strong views. Yes, I am the health minister, Senator Harradine, and I have to be on top of a lot of issues. I do not happen to be a lawyer; I do not happen to have every aspect of the Gene Technology Bill at my fingertips. But in the spirit of the fact that this was going to be a difficult debate, Senator Ian Campbell arranged a meeting of all the people who are deeply involved in this. He asked that if people had detailed questions, especially technical questions, they give them to me so that I could give people reasonable answers. I am not trying to obfuscate, and I think most people would know that I am not that sort of a person. In trying to ensure that I could answer people’s questions—and I think we had five days of committee hearings on this bill, when these quite detailed questions could have been asked—I did ask that people do that so that I could attempt to answer them as well as I possibly could. That has not happened. With regard to the issue of heritable alterations of genes and clause 18, I can confirm that clause 18 is not intended to prohibit non-heritable alterations such as somatic cell therapy.

Question agreed to.

Progress reported.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.08 p.m.)—by leave—Senator Ludwig, a number of people and I have been working very hard to ensure that the debate on the Prohibition of Human Cloning Bill 2002 and the Research Involving Embryos Bill 2002 was an informed debate, that all senators could make a contribution and that it was handled in an efficient, effective but ultimately fair manner. Senator Ludwig and I were told by all participants in the debate on the Prohibition of Human Cloning Bill that it would be very short and that the committee stage would only last for a couple of hours. We have obviously been
debating that for the best part of the last 24 hours now, with a short adjournment this afternoon for some other business.

I had hoped that we would have made a lot more progress on both of these bills. I think it is fair to say that Senator Ludwig and I have sought to manage this debate in a way that reflected the consensus of all senators involved in the debate. That was the only way I thought we could do this. The government cannot impose its will, the opposition cannot impose its will; you need to manage it in a way that basically reflects commonsense and goodwill amongst all senators and have respect for the fact that all senators hold views on these bills. They are not partisan views; they are views based on sets of beliefs that are deeply held by all senators.

We can only manage these bills on the basis of information provided by all senators, so Senator Ludwig and I convened a meeting a couple of days ago to ask all senators with an interest in the bills to bring forward amendments as soon as practically possible. So people like Senator Evans, who is managing this debate on behalf of the opposition—and who is doing a very good job on it—and, of course, Senator Patterson, on behalf of the government, who is doing a very tough job—

**Senator Faulkner**—As opposed to a good job?

**Senator IAN CAMPBELL**—She is doing a good job, but I think everyone will recognise that it is a particularly tough job.

**Senator Faulkner**—I was wondering why you were using different adjectives.

**Senator IAN CAMPBELL**—I think they are doing very different jobs, and I think Senator Patterson probably has the toughest job.

**Senator Faulkner**—That’s all right. I thought you needed to explain that.

**Senator IAN CAMPBELL**—I appreciate that. I think the job is very tough and is not an easy one to do, because it is not a simple debate where the government has a clear policy position—the position is not as clear as it is on normal legislation. We have sought information from all senators with a view on these issues. We convened a meeting and have had regular discussions on that. For example, I heard Senator Patterson earlier asking that people bring questions forward so that she could be briefed on them and actually respond to those questions. To some extent that was successful but to a great extent it was not.

We were also given clear information to the effect that the debate on the Prohibition of Human Cloning Bill 2002 would be a very short one and that the longest debate would be on the Research Involving Embryos Bill 2002. As it turned out, the debate on the human cloning bill has taken an enormous amount of time. All parties were hoping that the debate on both bills would be concluded by lunchtime tomorrow.

Because a number of senators were travelling overseas, some on ministerial business and others on parliamentary business, with the agreement and cooperation of the Leader of the Opposition, the Manager of Opposition Business and all parties, we added extraordinary sitting hours to the program—I think these hours are possibly unprecedented: a very long night on Monday, a long night on Tuesday and a long night tonight—to enable those people who held strong views on these bills to travel overseas tomorrow afternoon for very important business. I thank the Leader of the Opposition, the opposition and all other senators for facilitating that. We facilitated the possible spillover of the debate onto 2 December, because those people would have travelled back from overseas by then. Enormous goodwill has been extended from all sides, from the major parties and from the minor parties as well, to facilitate the wishes of those people who were travelling overseas—to in fact delay the debate for another fortnight until those people came back from overseas.

The reason we suggested at that stage that third reading debates would be held over until 2 December was to allow those people to have a final vote on those bills. We have now got to the situation—within only a few hours of when all of us hoped that both bills would have been dealt with—where we have yet to conclude the debate on even one of the bills. As the Manager of Government Busi-
ness in the Senate, where we have an enormous program, on which we are getting great assistance from the opposition, to deal with bills prior to the scheduled rising for the summer recess—we are looking between now and Christmas at some 40 bills—

Senator Faulkner—What is the real number?

Senator IAN CAMPBELL—As Senator Faulkner would know as a former manager, it is a very large program. Of course, the point at which we are now puts that program at some risk. I would have preferred to spend the rest of this evening getting on with the committee stage of the next bill. I was told that there is no running sheet, but I now understand there is. If there is consensus around the chamber to keep going and move on to the next bill and at least make some progress, I will do that. Senator Ludwig is saying no and I think everyone probably wants to go home.

It is very important for all senators to ensure that all legislation gets proper consideration in this place. These are special bills and I have gone to extraordinary lengths to ensure this is a well-informed debate with enormous amounts of time allocated to it. If all senators do not ensure that goodwill prevails, not only in the debate on the policy issues themselves but in the allocation of time for dealing with those issues, it will make it very difficult for all of us to consider the many other important bills the Senate needs to deal with over the remaining eight-odd sitting days we have. I will discuss with Senator Ludwig and others how we try to solve the situation that we are now in. It is really a very undesirable situation, where we have dealt with a bill we were told would not take very long at all, and it seems that the biggest challenge lies in the next bill. We will obviously need many, many hours. We have very few sitting days left to deal with those 40-odd other bills and yet another big bill in front of us. I think we are going to need a lot more goodwill than we have had already, and a lot of people are putting their heart and soul into managing this effectively. I would ask all honourable senators who are part of the management of this debate and part of the policy debate to help me, Senator Ludwig and the leadership and whips team to deal with the challenge the Senate faces as we move into the final couple of sitting weeks of this session. We cannot do it without that goodwill, and I ask all senators to help us achieve that. We need to do better than we have done already this week.

ADJOURNMENT

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.16 p.m.)—I move:

That the Senate do now adjourn.

Health: Diabetes

Senator BARNETT (Tasmania) (10.17 p.m.)—I wish to highlight for the Senate that tomorrow is World Diabetes Day. Each year 14 November is World Diabetes Day, and it is an important day. I want to place that on record and advise in advance that tomorrow a motion on diabetes will be put and, I was advised by honourable senators during notices of motion, will be passed with the consent of senators on both sides of this house. I thank the Senate in advance for that. Subject to how that goes tomorrow, I am certainly looking forward to 14 November. I wish to outline tonight on the adjournment what the motion is along the lines of.

There are seven points for the Senate to note. The first is ‘the alarming rise in the number of people with type 2 diabetes’, estimated to be one million people here in Australia, with half of that number actually being undiagnosed. That means these people are guaranteed to have health complications over a period of time. They have a serious and adverse health future. They can suffer a whole range of health complications, from heart disease, kidney disease, eye disease and eyesight problems to problems with limbs, such as hands and feet. For example, last year 69 Tasmanians had amputations from the knee down, and that is a scary thought. It is not something that you wish to dwell upon but it is a fact, and it is a fact that we need to take into account in this country, because we do have an epidemic. It is not just me saying this; this is being said by all the experts, and I acknowledge the International Diabetes Institute and also Professor Don Chisholm, who is leading the diabetes
research and the Diabetes Strategy Group in this country. They have said that we have an epidemic in this country and in fact worldwide.

I want to refer to a recent landmark study called DiabCost Australia, which said that type 2 diabetes is costing Australians a staggering $3 billion a year, with the bill for each person with diabetes averaging nearly $11,000 in expenditure and benefits. That is a lot of money per year for those people. According to the study, as the complications of diabetes increase, the costs per person are estimated to escalate from $4,020 to $9,645 when there are both microvascular and macrovascular problems.

Early detection is the key. Early detection through screening programs and action to slow or prevent the onset of complications will see reductions in health costs and will improve and maintain quality of life for individuals with type 2 diabetes. With diabetes you can have a good healthy lifestyle, as long as the diabetes is managed properly. That is the key and that is why we need to identify those 500,000 Australians out there who do not know they have it. Once they know, they can do something about it: they can manage their health outcomes. I certainly want to make that a top priority of my time in this parliament. It has been a priority in my time as a member of Diabetes Australia in Tasmania and as a member of its national board.

I want to commend Diabetes Australia for the work that they do as a peak body for people with diabetes in this country, representing those one million Australians. I compliment them, particularly Graham Harris, who is the president, and Brian Conway, the executive director. They will both be in Parliament House tomorrow, when we will have an education and awareness day, and I want to thank Diabetes Australia for assisting in the hosting of that event. It is being hosted by the Parliamentary Diabetes Support Group, which is chaired by Judi Moylan with the support of Dick Adams, Cameron Thompson, Dr Mal Washer and Jann McFarlane—all in the House of Representatives—and me. The membership has grown: just recently there were 23-odd members and I understand that another person has joined up even today. I encourage members of parliament to consider joining and supporting the Parliamentary Diabetes Support Group.

Tomorrow, we are hosting this special day. It is the first time we have ever done it in Parliament House and there will be opportunities for educational awareness and opportunities to find out more about diabetes. I thank Diabetes Australia for the support they are providing tomorrow. I also thank the Juvenile Diabetes Research Fund for the work that they are doing to support us and for the work that they are doing in raising money for research, particularly for type 1 diabetes. The contribution of the landmark study of DiabCost Australia will go towards better informing government and the public of a significant public health problem.

On my recent visit to the United States, I found out that nearly 50 per cent of the deaths in the United States could have been postponed or prevented altogether as a result of better public health outcomes—and that is a key point. The position is very similar here in Australia. If we get better public health outcomes and if we live a better and healthier lifestyle, we can avoid these health complications. There are 100,000 Australians at present with type 1 diabetes—that is, insulin dependent diabetes—and I am one of those. I wish to acknowledge that the government has recognised the public and personal burden of diabetes as a national health priority and that is good news.

The motion that I will move tomorrow has six points. Firstly, it urges the government to continue the programs to raise public awareness of the high risk of undiagnosed and untreated cases of type 2 diabetes and urges the government to take whatever steps are necessary to identify those who are undiagnosed with type 2 diabetes. If that does not occur, we will have a serious health problem not only for our health system but also with respect to those Australians because they will be guaranteed to become unhealthy and seriously so in the longer term, including death as an outcome. I urge all members of the government and all members of the public to take this on board as a serious issue.
Secondly, it urges the government to support access to new medications for the treatment of type 1 and type 2 diabetes while ensuring that the Australian taxpayers get value for money through appropriate pricing arrangements. Thirdly, it urges the government to continue to encourage people diagnosed with diabetes to undergo regular medical tests, including eye testing so as to prevent complications.

Fourthly, it urges the government to ensure adequate funding for further research into prevention and treatment of both type 1 and type 2 diabetes and a cure for type 1 diabetes. That is obviously a top priority and that is why I compliment the JDRF for the work they do in raising money—in fact, raising millions of dollars a year not only in this country but in the United States and around the world for a cure for type 1 diabetes.

Fifthly, it urges the government to develop a strong education program encouraging appropriate diet and exercise regimes to minimise the risk of type 2 diabetes. That is one of the reasons I am hosting a forum in Tasmania on 29 November on childhood obesity, the problems and the possible solutions. We are receiving good support for that and I encourage as many Tasmanians as possible to attend and become more aware of the problems of childhood obesity and where it can lead.

Sixthly, it urges the government to develop strategies to heighten awareness of the rising levels of obesity particularly in young Australians and the associated adverse health effects of obesity. I want to acknowledge the wonderful support we received from CanTeen Tasmania and Eat Well Tasmania in organising that forum in Tasmania. They are groups that are particularly concerned about children and their health outcomes. We are looking forward to a great educational day and a great awareness day.

Finally, I want to acknowledge again the work of Diabetes Australia, the JDRF, and the Australian Diabetes Society endocrinologists who formed together to show that they are not only interested in themselves but interested in their patients and the people that they look after. I also acknowledge the work of the Australian Diabetes Educators Association, the work of the nurse educators who are out there and the work of our own nurse educators here in Parliament House and thank them for their support in arranging tomorrow’s World Diabetes Day education and awareness day.

Western Australia: Veterans Health Care

Senator MARK BISHOP (Western Australia) (10.27 p.m.)—I rise to speak on the adjournment debate tonight to address an issue that has been raised with me in recent times by Western Australian veterans relating to their access to health care. The nub of the issue is that Hollywood hospital is one of only three tier 1 private hospitals in Western Australia and the only one within the metropolitan area. Some veterans believe that this severely limits their access to quality health care. For the information of the Senate, a tier 1 hospital is one that a veteran can be admitted to without the prior approval of the Department of Veterans’ Affairs. Prior approval is required for all non-tier 1 hospitals. This hospital treatment is provided under the auspices of the Repatriation Private Patient Scheme, which provides for the hospital care of eligible veterans, war widows and widowers. The scheme seeks to use tier 1 hospitals, which includes public hospitals, former repatriation hospitals and private hospitals selected through a competitive tendering process.

The tier 1 hospitals are called ‘veteran partnering’ hospitals, of which there is only one in metropolitan Perth; namely, Hollywood. Since June this year, two private hospitals outside the metropolitan area in Geraldton and Bunbury have acquired tier 1 status. The situation in Western Australia contrasts with other states where there is much greater accessibility to tier 1 private hospital services. By contrast, veterans in New South Wales and the ACT have access to 49 tier 1 private hospitals. These figures struck me as unusual the first time I saw them given the geographic size of Western Australia and comparable, if not greater, veteran populations than other state capitals.

Hollywood Private Hospital is an acute-care private teaching hospital. Its history dates back to World War II. The Common-
wealth government built Hollywood hospital during the Second World War in response to and in anticipation of casualties returning to Australia, so it was built to care for service men and women. The hospital was opened in 1942 as the Australian General Hospital. It was also known as 110 Military Hospital. The Repatriation Commission was given control of the hospital in 1947 and the hospital changed its name to the Repatriation General Hospital Hollywood.

In the early 1990s, the Commonwealth Labor government either transferred the repatriation hospitals to the states or, in the case of Hollywood and Greenslopes in Brisbane, sold them to the private sector. Ramsay Health Care purchased Hollywood hospital and became the owner-operator on 24 February 1994. Since then Ramsay Health Care has spent $50 million upgrading the facilities at Hollywood. The privatisation of Hollywood hospital has been a resounding success. The professionalism and quality of care by Ramsay Health Care is well recognised within the veteran community and there is considerable support for the hospital from within the veteran community and from doctors.

The issue has arisen whether Hollywood hospital should be the only provider of private hospital services to Western Australian gold card holders. While there is no dispute that Ramsay provide the veteran community with quality private health care, there are some members of the veteran community who seek access to other private hospitals within the metropolitan area. Those seeking access to alternative tier 1 hospitals point to their right to choose where they are treated, given that veterans in other states have a choice of private hospital and the changing demographics and urban sprawl of Perth resulting in increasing inconvenience of travelling the distance to Hollywood for veterans and their families. Certainly those complaints are legitimate. It is true that veterans in other states have access to their choice of private hospital and that the veteran population in Perth extends north of Joondalup and south to Rockingham where travelling times to Hollywood can be significant and inconvenient. There are many within the veteran community who are happy to attend Hollywood and are concerned that the ability of the hospital to service them—and certainly this is one of Ramsay’s concerns—might result in reduced accessibility and range of existing services to gold card holders. Ramsay has a contract with the Repatriation Commission until 2006. Ramsay holds the opinion that the contract gives them exclusive tier 1 status within the metropolitan area in recognition of their commitment to the expense as the result of caring for veterans. Yet the Repatriation Commission stated during Senate estimates in February this year that it has a different view of the contract. It does not believe that the contract gives Ramsay metropolitan exclusivity.

So at the heart of all this are the best interests of veterans. Some veterans believe that staying with Hollywood and maintaining the high level of existing services is in their best interests. Others, understandably, would like to be able to choose which private hospital they attend. The two options may very well, if Ramsay is correct, be mutually exclusive. Permitting tier 1 access to other metropolitan hospitals may well result in a decline in the range and quality of services that Hollywood can continue to provide to veterans. This supposition, however, needs to be tested. According to the Department of Veterans’ Affairs, this has been the experience elsewhere, hence their decision not to intervene in Perth especially in light of what they believe is a high level of satisfaction with Hollywood. The Repatriation Commission’s view on veteran partnering generally is that it should not be implemented at the expense of existing good relationships and services such as in Perth. If opening Hollywood to competition in the metropolitan area means that the hospital is not going to continue to be as accessible to veterans as it is presently, then there may be more veterans who will be disadvantaged by any change than the number who are concerned with the present arrangements. The RSL is undertaking a survey of its 10,000 financial members regarding the suitability of existing hospital arrangements for its members. I will be interested to see the outcome of that survey.
Most of the dissatisfaction with the existing arrangements seems to be coming from younger veterans who want to choose where they are treated. The TPI Federation and the SAS Association have both been very vocal in the calls for change. I have attended meetings convened by both the RSL and the TPI Federation and I am aware of the various opinions on this issue. At the former meeting there was considerable satisfaction with the present arrangements and at the latter meeting there were calls for the department to review those existing arrangements. I do consider this a matter which warrants the investigation of the Department of Veterans’ Affairs. I support the call of a number of ex-service organisations for a review of the Western Australian arrangements. I would be very interested to see the outcome of such a review.

Cybercrime

Senator GREIG (Western Australia) (10.33 p.m.)—I rise tonight to speak about cybercrime in Australia. According to the Computer Emergency Response Team (CERT) Coordination Centre, the number of reported incidents of computer related security breaches in the first three-quarters of 2000 rose by 54 per cent over the total number of reported incidents in the previous year. CERT logged some 9,000 security breaches in Australia in 1999, and that number leapt to an extraordinary 22,000 incidents in the year 2000. In addition to this, it would appear that countless instances of illegal access, damage, fraud and illegal pornography around the world remain unreported, because victims fear the exposure of vulnerabilities, the potential for copycat crimes and the loss of public confidence.

Last year in this chamber, we passed the Cybercrime Bill 2001—now the Cybercrime Act—which amended the Criminal Code Act 1995 and beheaded the penalties for this type of crime. It enacted seven new computer offences to target people who access or modify computer data or communication to and from a computer which they do not have authority to access, modify or impair, and do so with the intention of committing a serious offence. But, despite the enactment of these new laws, electronic attacks, in the form of hacking of major web sites and servers and far-reaching virus and worm attacks, continue. Some companies are monitoring minute by minute to combat the new generation of viruses such as Bugbear-A, Klez, Braid-A and Sircam, which have superseded last year’s viruses and worms such as the ILOVEYOU virus and the Anna Kournikova virus, amongst others.

The perception within the industry is that perpetrators of cybercrime are undeterred by the prospect of arrest or prosecution. They prowl the Net and are an ever-present threat to businesses, their clients, and ultimately the security of the nation. Cracking and virus introduction were targeted by the bill, as were ‘denial of service’ attacks via message or ping floods. More serious offences included ‘denial of service’ attacks and virus introduction actually causing unauthorised modification of data leading to impairment of information. Other offences cover the simple hacking of sites, where unauthorised entry into a protected system is an offence as is the writing, supply, control or possession of codes or programs which can be used to commit a computer offence.

The problem with this, however, is that the vast number of very common software programs that include utilities and applications which can be used for hacking would fall foul of the new cybercrime laws. For example, the Telnet program is attached to every copy of Microsoft Windows and is used on 80 per cent of the world’s computers, and there are programs like John the Ripper which is attached to Unix. Indeed, the federal parliamentary network, which runs on Windows NT, would fall under the shadow of this extremely broad legislation, making the Commonwealth’s IT network legally dodgy.

This problem is compounded for system or network administrators who frequently use programs like Netbus and Linux and who may possess not only programs that can be used for hacking but also, in some cases, benign virus codes. The offence of possession is tempered by the requirement of ‘intent to commit or facilitate an offence’, but in so doing there is the inference that anyone in possession of any of these common appli-
cations may have to defend themselves against such allegations.

Although the government claims that the technology neutral terminology and broad scope of the bill made the proposed laws effective, industry insiders are less enthused. Philip Argy, the National Vice-President of the Australian Computer Society, is reported as saying he supports the legislation in principle but has ‘serious reservations about the broad powers being conferred upon statutory agencies such as ASIO’. In cracking down on cybercrime, the bill may have gone too far. Mr Argy uses an interesting analogy to explain how he sees the new laws. He says:

Assume the police say they have reason to believe there is a sardine just off the Sydney Opera House which could help with their inquiries. Based on this, they can get a warrant to trawl Sydney Harbour and any body of water which is connected to Sydney Harbour.

It can be argued every waterway on the planet is ultimately connected to Sydney Harbour in one way or another, and would therefore be included in such a trolling exercise.

In terms of computers, we are talking about a lot of networks, a lot of individuals and a lot of power. The bill amended the Criminal Code to include new offences aimed specifically at Internet activity, but it has been put to me on more than one occasion that the laws are too broad and are seen by many in the industry as using a sledgehammer to crack a walnut. The overall affect is that Mr Argy and others within the industry are concerned that civil liberties be protected and that strong legislation not be used by law enforcement agencies for harassment.

The bill addressed the practicalities of cybercrime by hugely expanding the associated law enforcement powers of investigation. The offences were given a wide and extraterritorial ambit under the bill in order to catch offenders who may otherwise escape liability by the simple method of bouncing commands off a remote computer or operating from a secure shell overseas. Additionally, police powers are now extended to allow seizure of data in the form of taking a mirror of a drive or disk on site for later analysis. Hypothetically, if a computer somewhere, for example at BHP, is suspected of sending a damaging virus, the police now have the power to insist that BHP provides them with a copy of all information it has stored on all its computers and every computer that its system is networked with—everything. There is no privacy or commercial protection. The absurdity and cost of this scenario is heightened if it turns out that the BHP virus was actually started by a 14-year-old hacker in Hobart.

Due to the nature of electronically stored information, pursuit of data by police through a network means everyone connected to the network is vulnerable to a search warrant—an approach that leaves no room for data privacy. In a more extreme example, if a search warrant was allowed to extend to data and computers accessible from, but not held on, electronic equipment at the premises being searched, then technically there is creation of an unlimited warrant in the case where such a machine is connected to the Internet—hence Mr Argy’s Sydney Harbour comparison.

Industry fears that certain groups may be unfairly targeted by the legislation. So-called ‘white hat’ security consultants who crack networks to find flaws and misconfigurations in network security are concerned that their jobs are threatened by these developments. Site operators who attract and generate large volumes of traffic may be guilty of the offence of crashing web or email servers simply by their ordinary high-load operations. For example, Madonna’s Internet concert was so popular that it caused a large number of crashes all over the world, including Australia. The legislation would place Madonna in danger of falling foul of the law.

IT groups like 2600 Australia maintain that hacking plays an important role in the continuing development of security technology. Through their activities, hackers reveal problems with existing software and are a major motivation in the development of anti-hacking technology both through their own work and as a response by the general community to their activities. The advantage of the Internet is that it is a medium designed to facilitate a free flow of information and data, and legislating to restrict that operation should not destroy or control that freedom. It
would at any rate be practically and effectively useless.

The importance of the legislation is that it points the finger at the real problems behind cybercrime news stories—that is, the insufficient awareness or education of people using the Internet in terms of both operators ensuring their own security and companies promising security hardware and software but in fact leaving their customers wide open to attack. The Cybercrime Bill was a well-meaning but clumsy step in the right direction, although it must be careful not to persecute the IT industry in its search for legitimate Internet criminals.

Victoria: Bracks Government

Senator TCHEN (Victoria) (10.42 p.m.)—A few weeks ago, I rose in this chamber to bring to the attention of senators the sad conditions that my home state of Victoria has sunk to, less than three years after coming under the deplorable mismanagement of the Bracks Labor government. I cited the particular example of the Federation Square development, which had the distinction of being the only Centenary of Federation project that remained incomplete nearly two years after that important event. Senators will be pleased to know that this unsatisfactory situation has been corrected. The Federation Square project was finally opened on Saturday, 2 November—two days before Premier Bracks announced an early election—and was nearly $360 million over budget.

When I raised this matter in this chamber, I was conscious that speculation about the likelihood of an early Victorian state election had been rife in the media for some time and I had some concern about whether it was appropriate to raise state issues in this chamber at this time. However, since it was well known that Mr Bracks did give his solemn undertaking—in writing, too—when he first came to office that his government would serve the full four-year term before going to an election, I took him at his word. And since, according to some of my Labor colleagues, his government was doing so well—to this point I shall return shortly—why would he call an early election anyway? Surely it was quite proper for me to comment on the state of affairs, as I see them, in my own state.

Therefore, I felt rather badly when Mr Bracks, against all promises and against all logic, did call an early election shortly after I had called attention to the true state of affairs in Victoria. Did I breach convention? I was delighted to learn that my esteemed colleague the honourable member for Bendigo, in the other chamber, on Monday this week—a full week into the Victorian election campaign—spoke in the House not once, not twice but three times in praise of the various alleged achievements that Mr Bracks and his government have wrought, particularly regarding Bendigo. It seems to me only proper that I should speak freely about the true state of what Mr Bracks and his government have actually done—or, more accurately, not done—in Victoria; and I shall make particular reference to Bendigo, also.

Three years ago, the Bracks Labor government were elected to office on the back of a string of policy promises. In this list of promises the Labor Party gave significant attention to regional Victoria in an effort to court their vote. Three years since their election, this list of promises has become a list of broken promises. In his paean to the Labor Victorian government of broken promises, the honourable member for Bendigo provided some quite fanciful and inventive claims of success on the part of the Bracks government in the areas of health, education, job creation, provision of ‘fast rail’ train services, economic management and urban planning. I would like to deal with each of these claims in the same order. Let me first quote from the Bracks 1999 list of promises about health services:

A Bracks Labor Government will reverse the decline in the provision of health services throughout regional and rural Victoria.

It was quite unequivocal. But what is the real situation now? According to the Bendigo Health Care Group’s annual report for 2001–02, waiting lists have in fact exploded under the Bracks government. The number of patients on waiting lists for semi-urgent elective surgery grew from 207 in June 1999 to 395 in June 2002—an increase of 188 people
or 90 per cent. The number of patients on waiting lists for semi-urgent elective surgery for longer than what would be clinically ideal grew from 18 in June 1999 to 207 in June 2002—up by 189 people or 1,050 per cent. Previously in Bendigo Hospital, no patient had had to wait more than 12 hours in the emergency department for a hospital bed. Now there are 124 patients who were forced to wait for more than 12 hours.

The honourable member for Bendigo in his speech claimed that Bendigo Hospital has been able to employ 104 extra nurses under Mr Bracks's government. In fact, the hospital's annual report shows it has employed 117 new nurses during the last two years. Of those 117 nurses, 100 were to meet the requirements imposed on the hospital by the enterprise bargaining agreement that the Bracks government has made with the nurses union, but of these 100 nurses the government would only fund 75, leaving a gap of 25 which the hospital must fund within its own budget. The 17 additional nurses were for new programs, and they are not funded by the Bracks government at all. So that is a total shortfall of 42 nurses, or about $3 million, for the hospital to cover from its own resources.

The hospital's annual report also shows that waiting times for category 2 patients have nearly doubled, from an average of 69.72 days in 1999-2000 to 127.25 days in 2001-02. In 1999-2000 73.3 per cent of category 2 patients were admitted within the recommended 90 days; now this percentage has fallen to 61.75 per cent. If these were achievements, one shudders to think what greater disasters Mr Bracks could have wrought in Victoria and in Bendigo in particular.

I now turn to education. Again, let me quote from Labor's 1999 list of promises:

Labor will ensure that class sizes are cut for 5, 6, and 7 year olds to 21 or less. That is for prep grade, grade 1 and grade 2. Three years later, what is the reality in Bendigo schools? Senators would be interested to know—and the honourable member for Bendigo ought to know but apparently does not know—that the reality is that 75 per cent of prep to grade 2 classes in Bendigo's 18 state primary schools remain with well above 21 students. Indeed, as at April this year, most of these 18 schools have class sizes that are higher than the regional average for the Victorian education department's Loddon-Campaspe-Mallee region, which has an average of 22.3 students per class—itself well above the figure in the Labor Party's promise.

What really is surprising is that the honourable member for Bendigo does not seem to know the story of the Kangaroo Flat Primary School, right in the heart of his electorate. The Kangaroo Flat Primary School was included in the Bracks government's May 2000 budget for funding and scheduled for completion in two years. It would make the 19th state primary school in Bendigo. Today, more than two years later, the Kangaroo Flat Primary School is an empty site with not one classroom, not one teacher, not one student. After the episode with Federation Square, no-one should be surprised by the Bracks government's remarkable ability to not get things done. I have a long list of such examples, so I shall continue on another day this story of the Bracks government's ineptitude.

Peek, Vice Admiral Sir Richard

Senator COOK (Western Australia) (10.52 p.m.)—Tonight I rise to speak about a fine Australian—a man who has put his life on the line in defence of this country in two wars, a man who rose to the most senior naval position in the country, a man knighted by the Queen and decorated for his service to Australia by Australia, the United Kingdom and the United States of America, and a man who speaks in plain language, straight from the shoulder and tells it as it is. I wish to speak about Sir Richard Peek, and shortly I will quote his own words in a letter to me.

On 23 October, the report of the Senate Select Committee into A Certain Maritime Incident was tabled and debated in this chamber. I think that you will recall the debate, Mr President. In his contribution to the debate, among other things, Senator Ferguson said:

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 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.

In the government members’ report to the inquiry Sir Richard Peek was described as a vaguely ‘Gilbertian figure’ and his evidence to the inquiry was belittled accordingly.

The only conclusion that I can come to is that government members were unhappy about Sir Richard’s views and the evidence that he gave and decided to shoot the messenger. That is, if you do not like his views, attack the man—shoot the messenger rather than do the fair thing and deal with the message. I would now like to turn to the current edition of *Who’s Who in Australia*. Under the entry for Sir Richard Peek it reads:


It lists his clubs as the Royal Commonwealth Society and the RACA. That is to say that his distinguished military career meant that he was awarded and knighted by the Queen in 1972; he became an Officer of the British Empire in 1945 and a Companion of the Order of Bath in 1971. He obtained a Distinguished Service Cross for service in defence of our country in 1945 and he was awarded the US Legion of Merit.

Senator Ferguson said that he did not know about Sir Richard’s career, but it spans 45 years. He rose to the top of the Navy and he has been heavily decorated. He saw and distinguished himself in active service. He is a passionate Navy man, something of a Navy traditionalist. He is intellectually incisive and acute and is, I must say, remarkably knowledgeable about contemporary naval matters. That is the background against which I received this letter on 7 November in which he thanks me for defending his reputation in the debate that occurred at the time of the tabling of the report. He asks, if it is acceptable, for these words to be read into the *Hansard* to record his attitude to what was said about him. With those remarks, I now quote from his letter:

Ferguson’s remarks about me seem to have nothing to do with the Debate on the Selective Committee’s Report (the only reference to me is on para. 4.31 of the Report and is surely a matter which is only common sense). His remarks appear to be directed at what I said in evidence before the Inquiry and if he had been on the ball (and game!) he could have raised his views then.

I will only comment about one remark which Ferguson made i.e. “the only person ... that the Labor Party could wheel out ...” was me. The Senator is obviously proud of the phrase because he uses it twice in sixteen lines. The only reason that I comment on it is because it is inaccurate. I was not wheeled out by the Labor Party and the Senator could easily have checked how I became a witness.

Before the Election, it was obvious to me and many others that there was something patrid being cooked up politically. When the Inquiry heard Commander Banks and kept him in the witness stand for interminable hours I was shocked and asked that I might be allowed to give evidence. The committee allowed me to do so. Please do not mistake me. All my life, starting in the Navy I have been, necessarily, apolitical. But that does not prevent me from having tremendous respect for the ALP and minor parties who have forced the Senate to have this necessary Inquiry.

My Service career involved contact with senior members of Army and RAAF, Ministers and senior public Servants. Although we often disagreed I cannot remember anyone who did not merit the title Honourable. I wonder whether this is still the case?

Signed ‘Yours Sincerely, Richard Peek, Vice Admiral’. *(Time expired)*

*Senate adjourned at 10.58 p.m.*
DOCUMENTS

Tabling

The following government documents were tabled:

Department of Communications, Information Technology and the Arts—Radio-communications review—
  Government response.
Sydney Airports Corporation Limited—
  Report for 2001-02.
Treaties—List of multilateral treaty action under negotiation or consideration by the Australian Government, or expected to be within the next twelve months, November 2002.

Tabling

The following documents were tabled by the Clerk:

National Health Act—Determination No. PB 15 of 2002.
Radiocommunications Act—Radiocommunications Licence Conditions (Broadcasting Licence) Amendment Determination 2002 (No. 1).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Veterans: White Cardholders
(Question No. 668)

Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 23 September 2002:

(1) How many White Cardholders are: (a) Australian veterans; (b) Commonwealth and allied ex-servicemen; and (c) serving Australian Defence Force (ADF) personnel.

(2) What sums have been reimbursed by: (a) the Government of the United Kingdom; and (b) other governments, for White Card health services in each of the past 3 years.

(3) For ADF personnel with White Cards, what arrangements are in place between the Department of Veterans’ Affairs and the Department of Defence for the payment of medical costs resulting from overseas service covered by the Veterans’ Entitlements Act 1986.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answers to the honourable senator’s questions:

(1) As at 29 June 2002, the number of White Card holders who are:

(a) Australian veterans is 51,132.

(b) Commonwealth and allied ex-servicemen is 8,133.

(c) Serving Australian Defence Force (ADF) personnel: Current serving members of the ADF with conditions accepted under the Veterans’ Entitlements Act 1986 are issued with White Cards for treatment of those accepted conditions. The Department of Veterans’ Affairs database does not differentiate between serving ADF members and former members.

(2) The following table represents total reimbursements for treatment and Pharmaceutical items for the last three years.

<table>
<thead>
<tr>
<th></th>
<th>UK</th>
<th>OTHER</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>TREATMENT</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1999/2000</td>
<td>$2,424,050</td>
<td>$649,719</td>
<td>$3,073,769</td>
</tr>
<tr>
<td>2000/2001</td>
<td>$2,269,329</td>
<td>$332,552</td>
<td>$2,601,881</td>
</tr>
<tr>
<td>2001/2002</td>
<td>$3,350,439</td>
<td>$343,222</td>
<td>$3,693,661</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PHARMACEUTICAL</th>
<th>UK</th>
<th>OTHER</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999/2000</td>
<td>$1,374,314</td>
<td>$246,534</td>
<td>$1,620,847</td>
</tr>
<tr>
<td>2000/2001</td>
<td>$1,686,746</td>
<td>$173,351</td>
<td>$1,860,097</td>
</tr>
<tr>
<td>2001/2002</td>
<td>$2,322,872</td>
<td>$279,652</td>
<td>$2,602,524</td>
</tr>
</tbody>
</table>

(3) Where services are received by ADF personnel using their White Card for an accepted disability, the Department of Veterans’ Affairs meets the full costs.

Veterans: Service Pension
(Question No. 670)

Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 23 September 2002:

(1) How many Commonwealth and allied veterans, by country, in receipt of a service pension have returned to their countries of origin and continued to receive payment.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:

(1) It is not possible to confirm the actual numbers of Commonwealth and Allied veterans in receipt of service pension from the Department of Veterans’ Affairs who have returned to their countries of origin. There are currently 480 Commonwealth and Allied veterans, who are in receipt of the service pension and living overseas but the Department of Veterans’ Affairs database does not enable easy verification as to whether or not they are living in their country of origin or another country.
There is no reciprocal agreement between Australia and any other countries with respect to pension matters.

Veterans: Doctors Fees
(Question No. 677)

Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 23 September 2002:

With reference to the answer to question on notice No. 463 (Senate Hansard, 16 September 2002, p.4182):

(1) Can updated figures on the number of reimbursements be provided.

(2) Can the following information be provided for the past month: (a) the reasons for reimbursement; and (b) the number of reimbursements for each of those reasons.

(3) For those reimbursements in the past month relating to Gold Cards being refused: (a) how many doctors; and (b) how many veterans, were involved in those reimbursements.

(4) Can a summary be provided of the electorates in which those veterans receiving reimbursements live.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answers to the honourable senator’s questions:

(1) The table below shows the total number of medical service reimbursements undertaken by the Department of Veterans’ Affairs for the months of June, July and August 2002.

<table>
<thead>
<tr>
<th>Country</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>2</td>
</tr>
<tr>
<td>Croatia</td>
<td>10</td>
</tr>
<tr>
<td>Cyprus</td>
<td>4</td>
</tr>
<tr>
<td>France</td>
<td>3</td>
</tr>
<tr>
<td>FYR of Macedonia</td>
<td>50</td>
</tr>
<tr>
<td>Greece</td>
<td>65</td>
</tr>
<tr>
<td>India</td>
<td>1</td>
</tr>
<tr>
<td>Macedonia</td>
<td>2</td>
</tr>
<tr>
<td>Malta</td>
<td>24</td>
</tr>
<tr>
<td>New Zealand</td>
<td>16</td>
</tr>
<tr>
<td>Norway</td>
<td>1</td>
</tr>
<tr>
<td>Poland</td>
<td>7</td>
</tr>
<tr>
<td>Serbia</td>
<td>2</td>
</tr>
<tr>
<td>Slovenia</td>
<td>3</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>6</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>271</td>
</tr>
<tr>
<td>USA</td>
<td>5</td>
</tr>
<tr>
<td>Vietnam</td>
<td>1</td>
</tr>
<tr>
<td>Yugoslavia</td>
<td>7</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>480</strong></td>
</tr>
</tbody>
</table>

Note: The Department of Veterans’ Affairs database does not enable ready identification of the reason for reimbursement.

(2) (a) and (b) and (3) (a) and (b) The Department of Veterans’ Affairs is unable to advise accurately on the number of reimbursements where doctors have refused to accept veterans treatment cards over the past month as the reason for reimbursement of doctor’s fees is not recorded in many cases. Therefore the Department is unable to provide information on the number of veterans or doctors involved in such reimbursements.

There are a number of other reasons for reimbursements to be made, including:

• where veterans do not present their treatment card (i.e. where it was forgotten or temporarily lost);
• for medical services provided in the period between the effective date of eligibility to that treatment and the date on which the person was notified of his or her entitlement; or

• various other medical services requiring reimbursement.

(4) This information cannot be provided, as it is not collected.

Veterans: Smart Card Trial
(Question No. 694)

Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 25 September 2002:

(1) What is the cost and duration of the trial of the Smart Card being conducted on the New South Wales central coast.

(2) What information will the card contain.

(3) How is the project being funded.

(4) When will an evaluation of the project be published.

(5) (a) Who is the contractor engaged; and (b) what tender process was employed.

(6) Is it planned that, if successful, such a facility will be included on the Gold Card.

(7) Is permission being sought from veterans to participate in the trial.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answers to the honourable senator’s questions:

(1) The Commonwealth cost of the trial is $180,000 comprising of two components. The trial is being partially funded by an Information Technology On-Line (ITOL) Grant by the Department of Communications, Information Technology and the Arts to the Consortium comprising of Brisbane Waters Private Hospital, Giesecke & Devrient, Smart Health Solutions Pty Ltd and the Department of Veterans’ Affairs. The Consortium was granted $130,000 after the National Office for the Information Economy undertook an extensive competitive tender process as part of the ITOL grant process. The remainder of funding is being met by the Department of Veterans’ Affairs, allocating $50,000 in kind for its part in the project. Also, two of the private sector consortium members, Smart Health Solutions Pty Ltd and Brisbane Waters Private Hospital will allocate additional funding in kind for their part in the trial.

The duration of the trial is scheduled from July 2002 until June 2003. The first six months will be taken up in planning and preparation and the final six months will be the trial itself.

(2) The smart card is used as an identification and authorisation mechanism to access clinical information held on a central secure server. It will only contain an electronic signature and an internal reference number. It will not contain any personal clinical information.

(3) See part (1) above.

(4) The evaluation of the trial will be carried out independently by the Department of Health and Ageing as part of its HealthConnect initiative. The timing of the evaluation report is not finalised but should be ready by September 2003, which is three months after the expected completion of the trial.

(5) (a) and (b) The trial is an extension of an ongoing project between Smart Health Solutions Pty Ltd and the Brisbane Waters Private Hospital. The Department of Veterans’ Affairs was invited to participate, as a significant number of veterans live on the Central Coast. A Department of Veterans’ Affairs tender process was not required as the National Office for the Information Economy conducted an extensive competitive tender process.

(6) Before any decision is made whether to use smart card technology for Gold Cards, the Department of Veterans’ Affairs will consider the results of the independent evaluation report, review the use of smart card technology in the health sector generally and evaluate the cost benefit of such an approach.

(7) Yes.
Defence: HMS Terror
(Question No. 742)

Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 4 October 2002:

With reference to the consideration of Mr Justice Mohr that service at HMS Terror by Royal Australian Navy and Royal Australian Air Force personnel be considered as qualifying service for the period 11 May 1960 to 5 June 1962, why did the Minister not accept that recommendation and, instead, substitute a period of only 51 days.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:

The recommendation on page 28 of Chapter 3 of the report, Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-1975 read “that those Radio Operators posted to Singapore during the period 11 May 1960 to 5 June 1962 be retrospectively allotted for the period thereby qualifying them for the award of appropriate medal and repatriation benefits”.

This recommendation was accepted by Government and, therefore, the radio operators now have the same classification as other members of the Australian Defence Force deployed to Singapore and Malaya at that time, ie:

- Qualifying service for the period 11 May 1960 to 31 July 1960, which was the end of the Malayan Emergency. Hence radio operators who were first deployed to Singapore on 11 May 1960 and any others who arrived up to 31 July 1960, are entitled to claim a service pension.

- Operational service (that entitles veterans to the more generous standard of proof for disability pension claims) in respect of service from 1 August 1960 to 5 June 1962 when the unit was withdrawn.

Veterans: Children Education Scheme
(Question No. 746)

Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 4 October 2002:

(1) How many veterans’ children have received assistance under the Veterans’ Children’s Assistance Scheme, by state, since its inception.

(2) How many successful applicants have had their participation cancelled.

(3) How many participants have failed to complete courses funded by the program.

(4) In how many cases have participants been asked to refund payments, and what sum has been repaid in total to date.

(5) (a) How many cases of fraud have been investigated; (b) how many prosecutions have been launched; and (c) how many convictions have been obtained.

(6) (a) What debts from participants are currently outstanding; and (b) how many cases are involved.

(7) What counselling is provided to those who fail to complete courses.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answers to the honourable senator’s question:

(1) At 30 June each year, the number of people receiving benefits through the Veterans’ Children Education Scheme since its inception in 1987 is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>2,446</td>
</tr>
<tr>
<td>1989</td>
<td>2,261</td>
</tr>
<tr>
<td>1990</td>
<td>2,187</td>
</tr>
<tr>
<td>1991</td>
<td>2,163</td>
</tr>
<tr>
<td>1992</td>
<td>2,221</td>
</tr>
<tr>
<td>1993</td>
<td>2,310</td>
</tr>
<tr>
<td>1994</td>
<td>2,616</td>
</tr>
<tr>
<td>1995</td>
<td>2,867</td>
</tr>
</tbody>
</table>
Year Number
1996 3,361
1997 3,946
1998 4,313
1999 4,499
2000 4,810
2001 5,148
2002 5,344

Information at a State level is only available from 1998 and is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>QLD</th>
<th>NSW*</th>
<th>VIC</th>
<th>TAS</th>
<th>SA*</th>
<th>WA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>1,201</td>
<td>1,258</td>
<td>725</td>
<td>271</td>
<td>263</td>
<td>595</td>
<td>4,313</td>
</tr>
<tr>
<td>1999</td>
<td>1,242</td>
<td>1,296</td>
<td>756</td>
<td>271</td>
<td>303</td>
<td>631</td>
<td>4,499</td>
</tr>
<tr>
<td>2000</td>
<td>1,414</td>
<td>1,279</td>
<td>830</td>
<td>259</td>
<td>363</td>
<td>665</td>
<td>4,810</td>
</tr>
<tr>
<td>2001</td>
<td>1,546</td>
<td>1,304</td>
<td>857</td>
<td>280</td>
<td>440</td>
<td>721</td>
<td>5,148</td>
</tr>
<tr>
<td>2002</td>
<td>1,749</td>
<td>1,238</td>
<td>838</td>
<td>260</td>
<td>480</td>
<td>779</td>
<td>5,344</td>
</tr>
</tbody>
</table>

* The NSW figures include the Australian Capital Territory and the SA figures include the Northern Territory.

Students receive benefits through primary, secondary and tertiary education and can therefore be included in the annual figures for many years.

(2) In time all students receiving Veterans’ Children Education Scheme benefits have these benefits cancelled because they cease to be eligible. Students cease to be eligible because they cease full-time education, either because they have:

- completed their studies; or
- chosen not to continue; or
- been unable to continue with their studies.

No record is kept of the number of students who, for whatever reason, cease full-time education before completing their studies.

(3) No courses are funded by the Veterans’ Children Education Scheme. The Scheme provides financial assistance only, through the payment of Education Allowance.

(4) In all overpayment cases the client is asked to repay the debt. Records specifically identifying Veterans’ Children Education Scheme debts are only available following the implementation of a new recording system during 2000. The total number of overpayment cases in the period is 334 and the amount repaid to date is $146,567.

(5) (a) There is no record of the number of Veterans’ Children Education Scheme (VCES) fraud cases investigated. However, all overpayments are examined for possible fraud. If possible fraud is detected these matters are referred to the Commonwealth Director of Public Prosecutions (DPP) for possible further action. This is done in accordance with the fraud control policy of the Commonwealth. The Minister advises that two cases are currently being investigated by the DPP.

(b) and (c) No prosecution of VCES cases has so far been conducted by the DPP and therefore there have been no convictions.

(6) (a) Current as yet unrecovered overpayments amount to a national total of $288,178.

(b) 165.

(7) Counselling and guidance is available to students at any time they are on the Veterans’ Children Education Scheme (VCES) and may help to prevent students from withdrawing from courses. Guidance and counselling is an important part of the VCES and aimed at helping students to achieve their full potential in education or career training.

Nuclear Testing: British Atomic Testing Program
(Question No. 747)

Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 4 October 2002:
Can the Minister confirm that tenders have been called for, to undertake a review of the methodologies employed in the construction of dosimetry data from the British Atomic Testing Program in Australia; if so: (a) what are the terms of reference; (b) what is the completion timetable; (c) what is the estimated cost; (d) what scientific concern prompted the need for the review; and (e) will the same task be undertaken for British Commonwealth Occupational Forces service in Japan.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answers to the honourable senator’s questions:

An advertisement appeared in the Weekend Australian of 14/15 September 2002 seeking expressions of interest from organisations or individuals with the necessary expertise to undertake radiation dose reconstruction. The Request for Expressions of Interest was also advertised in suitable on-line newsletters and e-bulletins both within Australia and overseas.

After the closing date of 30 November 2002, those individuals/organisations who respond to the advertisement will be asked, as part of the formal Request for Expressions of Interest process, to provide detailed information, including pricing structure, relevant experience and key personnel who might be involved in the project. A shortlist will be drawn from this process and those individuals/organisations on the shortlist will be invited to tender for the dosimetry.

(a) The terms of reference for the dosimetry study are currently being developed in association with the independent Scientific Advisory Committee (SAC) to the study of mortality and cancer incidence in participants in the British Nuclear tests. Those individuals/organisations who respond to the Request for Expressions of Interest will be provided with the terms of reference as part of the formal process. However, on the advice of the SAC, the dosimetry study will be a phased process, with the first step the identification and analysis of existing material relating to health physics records associated with the tests program in Maralinga, Emu and the Monte Bello Islands.

(b) The completion timetable for the dosimetry will depend upon the extent to which existing health physics records can be used to recreate dose levels. If these records are found to be inadequate by both the successful tenderer and the SAC, the dose reconstruction will be a more complicated process.

(c) The final cost of the dosimetry will depend upon the complexity of the task, as stated in (b) above.

(d) Dose reconstruction will enable the study team to demonstrate any relationship between radiation dose and cancer incidence rather than the study being limited to looking only at an absolute increase in cancer incidence or mortality amongst nuclear test participants. Dosimetry is necessary in order to answer the question of whether or not exposure to ionising radiation from the tests has increased the incidence of cancer and mortality in those people exposed.

(e) No, the radiation dose reconstruction is being done as part of a study of mortality and cancer incidence among participants in the British Nuclear tests in Australia in the 1950s and 1960s. Considerable work has already been done with respect to the British Commonwealth Occupational Forces (BCOF) who served in Japan. That work included extensive modelling of the dose that BCOF personnel were likely to have received.

Veterans’ Affairs: Contribution Rates to ComSuper
(Question No. 761)

Senator Sherry asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 8 October 2002:

With reference to Australian National Audit Office (ANAO) audit report no. 65 tabled on 28 June 2002, Management of Commonwealth Superannuation Benefits to Members—ComSuper:

(1) In figure 3.10 the ANAO report states that, in the period from January 2001 August 2001, the Department of Veterans’ Affairs did not report 38 per cent of changes in member contribution rates to ComSuper: What steps has the department taken to ensure that changes in member contribution rates are reported to ComSuper in a more timely manner?

(2) In the period since August 2001, what proportion of changes in member contribution rates was not reported to ComSuper.

(3) In each of the years starting 1 July 2000 and 1 July 2001, what proportion of changes in member contribution rates was not reported to ComSuper.
Senator Hill—The Minister for Veterans’ Affairs has provided the following answers to the honourable senator’s question:

(1) The non-reporting referred to by ComSuper was the result of interface errors between the Department of Veterans’ Affairs payroll system and ComSuper’s system during January and February 2001. When this was identified, a process was put in place for the missing data to be provided to ComSuper to manually update their records. At the same time the software inadequacy was addressed and rectified.

(2) As stated in part (1) above, the improvements to the software interface were made in February 2001, and a subsequent comparative data run revealed that it was reporting all relevant data following these changes.

(3) The proportion of information for employees of the Department of Veterans’ Affairs not correctly recorded by ComSuper during the financial year 2000-2001 was, as reported by the Australian National Audit Office (ANAO), 38%. At the end of 2001/2002, a further data comparison was undertaken, and ComSuper confirmed that the improvements made to the software interface are continuing to work as intended, and no data was missed during that year.