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

PETITIONS

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

Banking: Fees and Services
To the Honourable the President and members of the Senate in Parliament assembled:
The petition of the undersigned citizens of Australia draws to the attention of the Senate the need for a Joint Select Committee of Parliament to investigate and inquire into banking industry to ascertain whether the banks have been guilty of unconscionable conduct in respect to the following matters:
1. Simultaneous settings of the same interest rates by the banks.
2. The size of the margins between lending and borrowing rates charged by the banks.
3. The banks writing off legal fees against assessable income.
4. The associations between members of the judiciary and the banking industry.
5. The banks' onslaught and devastation caused in rural Australia.
7. The banks' paying tax and compliance with ATO provisions.
8. Community interests and banking closures.
10. Banks' tax write-off of client debts while simultaneously suing clients for the total debt without deduction of tax benefits.
11. Banks' high cost of litigation recouped from borrowers.
12. The link of the banking industry and the Banking Ombudsman.
14. Fairness of banking contracts because of the banks' take it or leave it position.
15. Interest rate fixing.
17. Excessive executive salaries, fringe benefits, bonuses etc.
18. Fractional Reserve Banking.

by Senator Murray (from 526 citizens).

Tasmania: Telephone Directories
To the Honourable the President and Members of the Senate in Parliament assembled.
The Petition of the undersigned draws the attention of Senators to the fact that Tasmania has three separate regional telephone directories (combined White and Yellow Rages). Considering Tasmania's small population we the undersigned believe this situation is both impractical and unnecessarily costly to the consumer.
Your Petitioners request that the Senate ask The Minister for Communications, Information Technology and the Arts to consider the proposal of merging Tasmania's existing three telephone directories into two state-wide books; one for the White Pages and the other for the Yellow Pages.

by Senator Sherry (from 1,802 citizens).

Petitions received.

NOTICES

Presentation

Senator McLucas to move on the next day of sitting:

Senator Mark Bishop to move (contingent on the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 being read a second time):
That it be an instruction to the committee of the whole that:
(a) the committee divide the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 (the original bill) into two bills as follows:
(i) a bill dealing with participation requirements and penalties, comprising clauses 1 to 3 (with appropriate amendments) and Schedules 1, 4 and 5 of the original bill, and
(ii) a bill dealing with additional funding for welfare measures, comprising Schedules 2, 3, 6 and 7 of the original bill; and
(b) the committee add enacting words and provisions for titles and commencement to the second bill.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.31 a.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:
Environment and Heritage Legislation Amendment Bill (No. 1) 2002,
Australian Heritage Council Bill 2002, and
I also table a statement of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statement incorporated in Hansard.
Leave granted.
The statement read as follows—

Purpose of the Bills
These Bills will:
• establish a Commonwealth heritage regime that will focus on matters of national significance and Commonwealth responsibility;
• list, protect and manage places of national heritage significance in a National Heritage List using a process of community consultation, expert advice and ministerial responsibility;
• list, protect and manage heritage places in Commonwealth areas in a Commonwealth Heritage List using a process of community consultation, expert advice and ministerial responsibility;
• advise Commonwealth agencies on actions in relation to places in the Commonwealth Heritage List;
• establish the Australian Heritage Council, prescribing the composition, meeting requirements and functions of the Council in relation to the protection and conservation of heritage; and
• repeal the Australian Heritage Commission Act 1975, provide for transitional arrangements and amend other Commonwealth legislation as required.

Reasons for Urgency
This legislative package is the final plank in the Commonwealth’s Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), the Commonwealth’s most fundamental reform of Commonwealth environment laws. National heritage places remain the only matter of national environmental significance that has yet to be included in the EPBC Act. This represents a major anomaly that needs to be addressed in order for the legislation to be fully effective and comprehensive. The inclusion of a heritage trigger in the EPBC Act will provide stronger protection for Australia’s nationally significant heritage places, Commonwealth heritage places and provide more streamlined and efficient heritage assessment and approvals processes. These Bills will implement the 1997 COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment and the Government’s 2001 election commitments in relation to heritage. Furthermore, there is currently duplication in the requirement on Commonwealth agencies to refer proposals for advice as a consequence of the concurrent operation of the EPBC Act and the Australian Heritage Commission Act 1975 (AHC Act). This has lead to confusion among stakeholders, an increased burden on agencies and a considerable impact on administrative resources. The expeditious passage of the new heritage legislation will lead to the repeal of the AHC Act and thus the early removal of this onerous requirement on Commonwealth agencies.
The Bills were originally introduced into Parliament in December 2000 and referred to the Senate’s Environment, Communications, Information Technology and the Arts References Committee which handed down its report in May 2001. Since that time, a number of amendments have been made to the Bills to accommodate a number of the Committee’s recommendations such as retention of the Register of the National Estate and the incorporation of best practice heritage management by Commonwealth agencies.
The Bills are the result of six years of consultation with government, non-government, industry, Indigenous and community bodies. After so many years of public debate, there is a high level of community interest in the legislation and a widespread expectation that it will be passed in the current session of Parliament.
State and Territory jurisdictions have commenced work on an integrated heritage strategy which is contingent on the establishment of the new heritage regime. If passage of the legislation is delayed any further, it will lead to consequential delays in the ability of other jurisdictions to implement their reforms.
(Circulated by authority of the Minister for the Environment and Heritage)
Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.31 a.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:

Australian Crime Commission Establishment Bill 2002,
New Business Tax System (Consolidation and Other Measures) Bill (No. 1) 2002, and

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—

AUSTRALIAN CRIME COMMISSION ESTABLISHMENT BILL 2002

Purpose of the Bill

The Bill will create the Australian Crime Commission to replace the National Crime Authority.

Reasons for Urgency

The Commonwealth and States and Territories made an agreement on terrorism and multi-jurisdictional crime at the COAG meeting of 5 April 2002. In relation to organised crime, it was agreed to replace the National Crime Authority (NCA) with an Australian Crime Commission (ACC) ‘that builds on the important features of the NCA for effective national law enforcement operation in partnerships with State and Territory police forces whilst removing the current barriers to its effectiveness.’

The Commonwealth and States and Territories also agreed that the ACC would come into operation by 31 December 2002. The ACC will be a Commonwealth body but, because of the cross-jurisdictional nature of the ACC’s operations, complementary State and Territory legislation will also require amendment. Commonwealth legislation will need to be amended before 31 December in order for it to be interoperable with legislation in each State and Territory so that the ACC can commence operations by the end of the year.

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

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

NEW BUSINESS TAX SYSTEM (FRANKING DEFICIT TAX) AMENDMENT BILL 2002

Purpose of the Bills

The consolidation regime allows groups to operate as a single entity for income tax purposes and thereby lodge a single tax return. The Bills are the next in a series of Bills that include provisions to establish the consolidation regime in the tax law. The Bills contain legislation for parts of the regime not dealt with in the previous two Bills.

The Bills also make certain consequential amendments following the introduction of the new simplified imputation system.

Reasons for Urgency

The consolidation regime and the simplified imputation system commenced on 1 July 2002 and it is therefore important that the measures in this Bill are enacted as soon as possible to enable taxpayers and their advisers to put arrangements in place for the 2002-2003 income year.

(Circulated by authority of the Treasurer)

Withdrawal

Senator O’BRIEN (Tasmania) (9.32 a.m.)—Pursuant to notice of intention given on 13 November 2002, I withdraw business of the Senate notice of motion No. 1 standing in my name for today, relating to the disallowance of Civil Aviation Amendment Regulations.

Presentation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.32 a.m.)—I give notice that, on the next day of sitting, I shall move:

That, on Monday, 2 December 2002:

(a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to 12.40 am, Tuesday, 3 December 2002;

(b) the routine of business from 7.30 pm shall be consideration of the government business orders of the day relating to the Prohibition of Human Cloning Bill 2002 and the Research Involving Embryos Bill 2002; and

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

Senator Harradine—Mr President, I did not hear that. Certainly for any extension of
time like this we are normally consulted about it.

The PRESIDENT—Senator Harradine, are you seeking leave to comment on that notice?

Senator Ian Campbell—It is a notice.

Senator HARRADINE (Tasmania) (9.33 a.m.)—It is a notice but I seek leave to comment on it.

Leave granted.

Senator HARRADINE—Normally, when these matters are proposed, as is being done now, honourable senators are consulted. This has not taken place at this stage.

Senator Ian Campbell—It is a notice at this stage. You have two weeks to consult about it, Brian, which is normal practice.

Senator HARRADINE—So that I understand, the Manager of Government Business in the Senate is proposing to move the motion tomorrow. So we have two weeks to discuss the matter when in fact the matter will be determined tomorrow, according to you.

Senator Ian Campbell interjecting—

Senator HARRADINE—I tell you what: you will not get out before Christmas.

Senator Ian Campbell—We know your go.

Senator HARRADINE—I beg your pardon?

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate (9.34 a.m.)—by leave—I have some comments in relation to this matter which may assist the Senate. The opposition’s position in relation to the motion, given that it is a notice of motion only, is that it will have the opportunity to consider its position in relation to the hours proposed by the Manager of Government Business in the Senate. We do have sufficient time to be able to at least consider it before we next meet on 2 December. Given that we were told only last night that there would be a motion in relation to the hours of sitting—we were not told the specificity in relation to what the motion would be—and given that it is only a notice of motion, we are now in a position to at least have some time to consider what our reaction will be to the request for the hours of meeting as proposed in the notice of motion.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.36 a.m.)—by leave—I would like to make a short statement on the same matter. It strikes me that there is a key thing for us to deal with here in relation to this legislation—and I think it is important to realise that there have been attempts made around the chamber to accommodate the vast majority of, if not all, senators who have an interest in the two bills currently before the Senate until lunchtime today, when consideration will cease until the next sittings period, which was something agreed around the chamber.

The key thing is that we have been able to establish a good mechanism for informal dialogue about chamber arrangements. Senator Harradine’s point is that that needs to continue. As we work through a debate that has sparked, as we all know and would expect, a great degree of interest and involvement from senators—and by its nature that will continue as we move through the committee stages of the two bills—there ought to be a commitment on the part of not only the government and the Manager of Government Business in the Senate but all other senators to ensure that we keep maximum cooperation and consultation as we work through the mechanism for this chamber to deal with this legislation. I am sure that the Manager of Government Business would agree that it is one thing to put down a notice of motion about the parameters of debate; it is another thing for us to look at dealing with chamber management issues outside the chamber. That is the key thing: we need to keep that dialogue and consultation going.

I hope there is no intention by the government, in giving such a notice of motion, not to continue the process, the modus operandi, that we have established in relation to the continuation of the arrangements for this bill. It is important that the Manager of Government Business in this circumstance indicate to the Senate that that is his clear intention, which he can do via interjection across the chamber, or otherwise. That is the key
thing. Sure, the Senate itself is the master of its own destiny; sure, the Senate has to deal with its routine of business and sitting times. But we also have to keep—informally, outside the context of debate on the floor of this chamber—the dialogue and consultation going about managing a debate in which there is an extraordinary degree of involvement and interest from senators around the chamber.

I hope that is the spirit in which the Manager of Government Business has proposed this particular notice of motion. If it is, with that understanding, we ought to just get on with it and appreciate the fact that there will need to be a lot of dialogue and a lot of ticktacking between government, opposition, minor party and independent senators in this chamber to work through this management task—which is a complex management task—in the time that is available to us.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.40 a.m.)—by leave—

All senators here would have heard my extensive contribution to the debate on the management of these bills just prior to the question for the adjournment being proposed last night, when I outlined the comprehensive nature of the discussions around the chamber that have taken place regarding the management of this debate. The comprehensive nature of the discussions led to the agreement to conclude the debate at lunchtime today to facilitate the travel plans of a number of senators leaving Australia to travel overseas for various reasons and the arrangement to allow voting on these bills to occur on 2 December to further facilitate those people who will not be around next week.

So 2 December had always been proposed as the date for the final consideration of these bills, and we were led to believe that that would only be required for final third reading debates. We were given very clear and precise undertakings by participants in this debate that the over 30 hours of debate that were scheduled for this week would see debate on these bills concluded. We undertook to facilitate people returning from overseas by arranging the vote for 2 December. It has now become clear that the debate has taken a lot longer than any of those undertakings anticipated.

In relation to the notice I have just given, I have held discussions with a number of people around the chamber from about 2.30 yesterday afternoon through to this morning on how we will handle the remaining stages of the debate. I had an option when I came in here this morning of lodging that notice, which is the proper procedure for alerting all senators to one senator’s intentions in relation to an issue. It is actually the procedural way of alerting the world to what you intend doing.

I had a choice under the standing orders of lodging that and having it on the Notice Paper so it can be dealt with on the next day of sitting or the next day or even 2 December—it is obviously better to resolve these issues well before you get to that day—or I had the alternative of reading out the motion. I made a conscious decision this morning to read out the details of the motion so that everyone could be alerted to what was in the government’s mind—and not only in the government’s mind; it is a matter that the Manager of Opposition Business, I and others were consulting on last night and this morning. I made a very conscious decision this morning to read out the details of the motion so that everyone could be alerted to what was in the government’s mind—and not only in the government’s mind; it is a matter that the Manager of Opposition Business, I and others were consulting on last night and this morning. I made a very conscious decision this morning to read out the details of the motion so that everyone could be alerted to what was in the government’s mind—and not only in the government’s mind; it is a matter that the Manager of Opposition Business, I and others were consulting on last night and this morning.

Senator HARRADINE (Tasmania) (9.44 a.m.)—by leave—I did not say anything last night, but we are under a bit of a misapprehension. What was understood previously was that there would be debate on the Prohibition of Human Cloning Bill 2002 and that if it concluded or folded we would go on to the second reading debate on the Research Involving Embryos Bill 2002. It was not expected that that debate would take the shorter time that it did, because it was expected that the vote on the second reading of that bill would not take place until the first week in December. My clear understanding of the
matter was that, if the second reading debate on the research involving embryos legislation did not conclude by 12.45 today, the vote on the second reading would take place on 2 December. That was the understanding. You are well in front at the present moment. The committee stage of the cloning bill has finished and now we are involved in the committee stage of the Research Involving Embryos Bill.

That was the situation. Instead of griping about the matter, Senator Campbell, you should be aware that you are well in front at this particular point in time. I personally do not have objections to this notice now that I have seen it and read it, and I do not have too many objections about getting another hour in, as proposed. All I am saying is that one would have thought that there would have been consultation and the statement made: ‘This is our intention; how about it?’ If that were done, I certainly would not have opened my mouth today.

BUSINESS
Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.47 a.m.)—I move:

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

Criminal Code Amendment (Offences Against Australians) Bill 2002.
No. 3 Australian Animal Health Council (Livestock Industries) Funding Amendment Bill 2002.
No. 4 Health Care (Appropriation) Amendment Bill 2002.
No. 5 Excise Laws Amendment Bill (No. 1) 2002 and a related bill.
No. 6 Taxation Laws Amendment Bill (No. 5) 2002.
No. 7 Broadcasting Legislation Amendment Bill (No. 1) 2002.

Question agreed to.

NOTICES
Postponement

Senator O'BRIEN (Tasmania) (9.48 a.m.)—by leave—I move:

That general business notice of motion no. 258 standing in my name for today, relating to crises in rural and regional Australia, be postponed till the next day of sitting.

Question agreed to.

COMMITTEES
Rural and Regional Affairs and Transport Legislation Committee
Extension of Time

Senator FERRIS (South Australia) (9.48 a.m.)—by leave—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 18 November 2002.

Question agreed to.

BUSINESS
Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.48 a.m.)—by leave—I move:

That—

(a) consideration of general business not be proceeded with today; and
(b) the routine of business from not later than 4.30 pm to not later than 7 pm shall be government business only.

Question agreed to.

NOTICES
Postponement

Items of business were postponed as follows:

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 18 November 2002.

General business notice of motion no. 251 standing in the name of Senator Nettle for today, relating to the Timor Sea Treaty and
the Greater Sunrise gas field, postponed till 18 November 2002.

General business notice of motion no. 259 standing in the name of Senator Allison for today, proposing an order for the production of documents by the Minister for Arts and Sport, postponed till 18 November 2002.

ENVIRONMENT: LOGGING OF NATIVE FORESTS

Senator ALLISON (Victoria) (9.49 a.m.)—I move:

That the Senate—

(a) notes:

(i) the many calls by the Australian Democrats to phase out clear-fell logging of native forests in Victoria, and the local and state-wide opposition to logging, particularly in the Otways and Wombat State Forests,

(ii) the work of members of the Otway Ranges Environment Network, Geelong Community Forum, Geelong Environment Council and Otway Ranges Interest Group in working to protect native forests, and

(iii) the announcement by the Victorian State Government last week that the logging of native forests in the Otways will end within 6 years and logging in the Wombat State Forest will be reduced and woodchipping there stopped altogether; and

(b) congratulates the State Government on this initiative and urges the Premier to put these promises into action immediately after the forthcoming election.

Question put.
The Senate divided. [9.54 a.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes………… 8
Noes………… 41
Majority…… 33

AYES

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

NOES

Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Calvert, P.H. Campbell, G.
Campbell, I.G. Colbeck, R.
Collins, J.M.A. Cook, P.F.S.
Dennan, K.J. Eggleston, A.
Ellison, C.M. Ferris, J.M. *
Forshaw, M.G. Harradine, B.
Hogg, J.J. Hutchins, S.P.
Johnston, D. Kirk, L.
Knowles, S.C. Lightfoot, P.R.
Ludwig, J.W. Lundy, K.A.
Macdonald, J.A.L. Marshall, G.
Mason, B.J. McGauran, J.J.J.
McLucas, J.E. Moore, C.
O’Brien, K.W.K. Patterson, K.C.
Reid, M.E. Santoro, S.
Scullion, N.G. Stephens, U.
Tchen, T. Tierney, J.W.
Troeth, J.M. Webber, R.
Wong, P.

* denotes teller

Question negatived.

HEALTH: DIABETES

Senator BARNETT (Tasmania) (9.57 a.m.)—I move:

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.

Question agreed to.

PARLIAMENTARY ZONE

Approval of Works

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.57 a.m.)—I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being additional works at Reconciliation Place and Commonwealth Place.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.57 a.m.)—I seek leave to amend government business notice of motion No. 2 before asking that it be taken as a formal motion.

Senator Ludwig—Senator Campbell, if you are seeking to remove the telecommunications legislation, I do not think that is now necessary.

Senator IAN CAMPBELL—I withdraw my application for leave and move government business notice of motion No. 2 as it stands:

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.

Question agreed to.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION: APPOINTMENT

Senator MURRAY (Western Australia) (9.58 a.m.)—I move:

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.

Question agreed to.

GENERAL AGREEMENT ON TRADE IN SERVICES

Senator RIDGEWAY (New South Wales) (9.59 a.m.)—I, and also on behalf of Senator Cherry, move:

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.

Question agreed to.

COMMITTEES

Environment, Communications, Information Technology and the Arts Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (10.00 a.m.)—by leave—At the request of Senator Eggleston, I move:

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.

Question agreed to.

Publications Committee

Report

Senator FERRIS (South Australia) (10.00 a.m.)—On behalf of Senator Colbeck, I present the fifth report of the Standing Committee on Publications.

Ordered that the report be adopted.

TELECOMMUNICATIONS COMPETITION BILL 2002

INTERNATIONAL TAX AGREEMENTS AMENDMENT BILL (No. 2) 2002

MIGRATION LEGISLATION AMENDMENT (MIGRATION ADVICE INDUSTRY) BILL 2002

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.01 a.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed as separate orders on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.02 a.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

TELECOMMUNICATIONS COMPETITION BILL 2002

The Telecommunications Competition Bill 2002 introduces a range of measures to enhance the level of competition and improve the investment climate in the telecommunications sector. The measures will ensure that consumers continue to enjoy lower prices and improved services from a competitive telecommunications industry.

The objectives of the bill are to:

- speed-up access to ‘core’ telecommunications services;
- facilitate investment in new telecommunications infrastructure;
• provide a more transparent regulatory market, particularly in relation to Telstra’s wholesale and retail operations; and
• enhance accountability and transparency in tackling anti-competitive conduct.

The Telecommunications Competition Bill makes amendments to Part XIB of the Trade Practices Act 1974, which deals with anti-competitive conduct in the telecommunications industry; and Part XIC of the Trade Practices Act, which deals with interconnection and access to telecommunications services. The bill also makes some amendments to the Telecommunications Act 1997 and consequential amendments to the Telecommunications (Carrier Licence Charges) Act 1997.

The bill implements the Government’s response to the Productivity Commission’s Inquiry Report on Telecommunications Competition Regulation and builds upon amendments introduced by the Government last year to streamline the Australian Competition and Consumer Commission’s (ACCC) arbitration process for telecommunications access disputes. The provisions in the bill have been developed following extensive consultation with industry and other key stakeholders.

It is important that the telecommunications regulatory regime provides timely, efficient and transparent outcomes for all involved. The Telecommunications Competition Bill will deliver these benefits and provide a boost to competition during a period when external factors, such as access to capital, are providing new challenges for the telecommunications industry.

The Productivity Commission’s report confirmed that the underlying regulatory philosophy of the current telecommunications competition regime is appropriate. Since the introduction of open competition in the telecommunications market in 1997, the Government has made a number of amendments to the regime with a view to ensuring that it operates effectively and continues to promote the long-term interests of end users.

The proposed amendments in this bill will further improve the operation of the access regime and the anti-competitive conduct rules. The key measures in the bill include:

• encouraging further investment in the telecommunications infrastructure required for broadband and other key communications services, by enabling potential investors to obtain up-front certainty, through undertakings to the ACCC about access prices and terms and conditions that will apply to their future investments;
• providing greater certainty and more timely access for access seekers, by removing merits review of ACCC arbitrations, requiring the ACCC to produce model terms and conditions for ‘core’ telecommunications services, encouraging voluntary undertakings and ensuring the effective operation of the standard access obligations;
• improving the operation of the anti-competitive conduct regime under Part XIB by enabling the ACCC to issue advisory notices before a competition notice is issued and requiring the ACCC to consult with affected parties before issuing a competition notice; and
• requiring the preparation and publication of regulatory accounts to provide greater transparency of Telstra’s wholesale and retail operations, particularly in relation to the ‘core’ interconnection services provided over Telstra’s network.

The Productivity Commission’s report noted that the telecommunications access regime does not enable potential investors in a telecommunications service to receive an exemption from the standard access obligations or to lodge an access undertaking until they supply an active declared service. This acts as a disincentive for new investment because it means potential investors cannot obtain certainty as to whether or not their service will be declared, and if so, on what terms they would be required to provide access before making their investment.

The Government recognises the need to provide investment certainty. To achieve this outcome, the bill extends the existing provisions in Part XIC to enable the ACCC to grant ex-ante exemptions and approve access undertakings for services that are not yet declared or supplied. The access provider will be able to enter into a regulatory compact with the ACCC that takes into account the benefits to the access provider, potential access seekers and consumers.

In recognition that ex-ante exemptions or undertakings could relate to nationally significant telecommunications infrastructure, the ACCC will be required to have regard to any views of the Minister specified in a disallowable instrument.

A major initiative in this bill that will facilitate more timely access is the repeal of merits review of ACCC arbitration decisions by the Australian Competition Tribunal (ACT).

ACCC arbitration hearings involve a detailed and exhaustive assessment of access pricing and other issues. Repeating this process before the ACT can be costly and unnecessary, leaving access seekers
to bear the contingent liabilities, given that final prices can be backdated by the ACT to the time of the access dispute. Lengthy delays in finally resolving access disputes impose costs on industry participants and create uncertainty for investors, particularly in a telecommunications industry that is subject to rapid technological change.

Parties to an arbitration will still be able to appeal the decision of the ACCC on a point of law to the Federal and High Courts.

The bill assists parties to reach commercial agreement on fair terms and conditions of access by requiring the regulator to publish model terms and conditions of access to ‘core’ fixed line network services that are supplied over the Telstra network. In the first instance, these model terms and conditions will cover the:

- Domestic Public Switched Telephone Network Originating and Terminating Services;
- Unconditioned Local Loop Service; and
- Local Carriage Service.

There will also be flexibility for regulations to prescribe other declared services that should be subject to the requirement to publish model terms and conditions if this becomes necessary.

Publication of model terms and conditions for ‘core’ services will signal to the industry the price and non-price terms and conditions that the ACCC would be likely to determine in an access arbitration. This will in turn encourage parties to reach agreement through commercial negotiation, rather than relying on arbitrated outcomes.

In keeping with the underlying philosophy of the regime, the bill incorporates a number of provisions to encourage timely access through industry-wide voluntary undertakings. Because of their voluntary nature and industry-wide application, the bill retains merits review by the ACT of access undertakings.

Express provisions will enable the ACCC to defer consideration of an access dispute in order to consider a voluntary undertaking. In exercising this power, the ACCC will be required to have regard to the industry-wide application of undertakings, compared with the bilateral operation of arbitration decisions. While the ACCC will be given the flexibility to consider other relevant matters that could outweigh these industry-wide benefits, it will be required to publish transparent guidelines on the exercise of its deferral power.

The Government’s view is that, in most cases, the Commission should seek to consider a voluntary undertaking in advance of an arbitration. There may be, however, circumstances, such as in relation to the timing of the lodgement of an undertaking or in relation to the content of an undertaking, where it is appropriate to deal with an arbitration in advance of an undertaking.

The bill also ensures that a voluntary undertaking overrides any previous arbitration decisions from the date that the undertaking is accepted by the regulator (or by the ACT following merits review). This amendment will supplement existing provisions in the Act that prevent the ACCC from making an arbitration decision inconsistent with an accepted undertaking.

The bill imposes time limits on ACCC or ACT consideration of voluntary undertakings (subject to extensions of time where necessary); and limits ACT review to evidence that was put to the ACCC by relevant parties or otherwise identified by the ACCC for the purpose of its inquiry process.

The Government has previously announced that it will encourage a more transparent regulatory market by requiring accounting separation of Telstra’s wholesale and retail operations, particularly in relation to the ‘core’ interconnection services provided over the Telstra network. Accounting separation will address competition concerns arising from the level of vertical integration between Telstra’s wholesale and retail services and substantially improve the provision of costing and price information to the ACCC as regulator, access seekers and the market.

The broad objective of accounting separation is to provide transparency to the ACCC, competitors that access the Telstra network, and the market generally. Accounting separation will assist in identifying whether Telstra is discriminating between itself and its competitors in relation to price or non-price terms and conditions of supply.

Publication of an enhanced level of transparent cost information, together with mechanisms for release of more detailed information to access seekers on a confidential basis, will result in a better informed market. It will also assist Telstra’s competitors in commercial negotiations about access prices, and in participating in matters before the ACCC.

Accounting separation will be implemented by giving the Minister a power to direct the ACCC to prepare or publish reports using its existing broad record-keeping rule powers under Part XIB. It will not constrain the ACCC in the use of its existing powers. Rather, it will ensure that these powers, which have been under utilised in the past, are better used to provide improved transparency of Telstra’s wholesale and retail operations. The ACCC will be directed to ensure that:
(a) Telstra prepares current (replacement) cost accounts (as well as existing historic cost accounts) to provide more transparency to the ACCC about Telstra’s costs as an ongoing sustainable business;

(b) Telstra publishes current cost and historic cost key financial statements in respect of ‘core’ interconnect services;

(c) the ACCC prepares and publishes an ‘imputation’ analysis (based on Telstra purchasing the ‘core’ interconnect services at the price that it charges external access seekers; and

(d) Telstra publishes information comparing its cost-key financial statements in respect of core costs as an ongoing sustainable business; and the ACCC will:

• be required to issue guidelines on the circumstances in which it will issue a competition notice as opposed to taking other action under the Trade Practices Act;
• be required to consult with a carrier or carriage service provider before issuing a Part A competition notice; and
• be able to issue advisory notices before any competition notice has been issued and therefore possibly before any anti-competitive conduct has occurred.

The bill also contains a number of more minor amendments to the Trade Practices Act which adopt recommendations of the Productivity Commission.

The bill also includes competition related amendments to the Telecommunications Act 1997, such as moving the responsibility for determining which services should be subject to pre-selection from the Australian Communications Authority to the ACCC; and removing the legal requirement for carriers to have, and to report on, a current Industry Development Plan.

In conclusion, there is a range of specific measures in the bill each of which will improve the operation of the telecommunications competition regime. The package of measures will also combine to make the telecommunications competition regime more timely, effective and accountable.

Importantly, the combination of the ex-ante undertakings, model terms and conditions for key interconnect services, ACCC power to defer arbitration hearings and the removal of merits review of individual disputes will strongly encourage a greater emphasis on industry-wide undertakings in preference to drawn out individual arbitrations.

While this bill implements substantial regulatory reform, the Government recognises that the changing and dynamic nature of the telecommunications industry will require ongoing monitoring to ensure the regime continues to meet the needs of an open and competitive telecommunications market. However, it is important that regulatory change is demonstrated to be necessary, targeted to specific practical problems and implemented within a consistent regulatory philosophy. The measures in this bill meet these tests and are broadly supported by the telecommunications industry.

INTERNATIONAL TAX AGREEMENTS AMENDMENT BILL (No. 2) 2002

This bill will provide legislative authority for the domestic entry into force of a Protocol amending the Australia-Canada double tax convention and a Second Protocol amending the Australia-Malaysia double tax agreement. The bill will insert the text of these Protocols into the International Tax Agreements Act 1953 as schedules to that Act.

The Canadian and Second Malaysian Protocols were signed on 23 January 2002 and 28 July 2002 respectively. Details of the Protocols were announced and copies made publicly available following the respective dates of signature.

The Government believes the Canadian Protocol will facilitate trade and investment between Aus-
Australia and Canada by reducing withholding taxes in some circumstances and reducing the possibility of double taxation of capital gains by extending coverage of the Canadian Convention to taxes on such gains.

The Second Malaysian Protocol will protect Australia’s tax revenue by denying treaty benefits to those who use the preferential tax treatment under the Labuan offshore business activity regime and other substantially similar regimes. It will also operate to extend tax sparing arrangements in relation to certain designated development incentives provided by Malaysia until 30 June 2003. Furthermore, the Second Malaysian Protocol will update the Malaysian Agreement to reflect modern business and tax treaty practices.

The Canadian and Second Malaysian Protocols will enter into force when the relevant countries have completed all the requirements necessary to give the Protocols effect in the domestic law of relevant countries.

The enactment of this bill, and the satisfaction of the other procedures relating to proposed treaty actions, will complete the processes necessary in Australia for those purposes.

The bill includes an amendment to ensure that interest that is currently not subject to tax in Australia does not become taxable in Australia as a result of changes to the US Convention. The bill will also make a number of minor technical amendments to the International Tax Agreements Act 1953.

MIGRATION LEGISLATION AMENDMENT (MIGRATION ADVICE INDUSTRY) BILL 2002

This bill amends the Migration Act 1958 to ensure that the current statutory regulatory arrangements in relation to the migration advice industry continue to exist.

The Migration Act currently contains provisions that regulate the migration advice industry. However, these provisions are subject to termination, contained in a sunset clause which takes effect on 21 March 2003.

The 2001-2002 Review of Statutory Self-regulation of the Migration Advice Industry recently reported to government. The review concluded that the migration advice industry will not be ready for voluntary self-regulation by March 2003.

The government has accepted this recommendation. The amendment in this bill will ensure that the industry regulator—the Migration Institute of Australia appointed as the Migration Agents Registration Authority—will continue to operate.

I commend the bill to the chamber.

Ordered that further consideration of the Telecommunications Competition Bill 2002 be adjourned till the next day of sitting.

Ordered that further consideration of the International Tax Agreements Amendment Bill (No. 2) 2002 and the Migration Legislation Amendment (Migration Advice Industry) Bill 2002 be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

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

BROADCASTING LEGISLATION AMENDMENT BILL (NO. 2) 2002

First Reading

Bill received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.02 a.m.)—I move:
That this bill may proceed without formalities and be now read a first time.
Question agreed to.
Bill read a first time.

Second Reading
Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.03 a.m.)—I move:
That this bill be now read a second time.
I seek leave to have the second reading speech incorporated in Hansard.
Leave granted.

The speech read as follows—
The Broadcasting Legislation Amendment Bill (No. 2) 2002 will provide a new and more appropriate regulatory framework for community television services, known as CTV.
This bill introduces new provisions governing CTV services to assist in creating a viable future for the CTV sector, a sector that has much to offer to the Australian community, but also a sector that has operated with mixed success since trial services began in 1994. The bill will also introduce measures to improve arrangements for community broadcasting licensing generally.
The changes will be made by amendments to the Broadcasting Services Act 1992 and the Radio-communications Act 1992. The bill will also amend the Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992 to repeal the remaining provisions of the Broadcasting Act 1942 dealing with political advertisements that the High Court held to be invalid.
In 1992, the Government asked the Australian Broadcasting Authority (the ABA) to conduct a trial of CTV using the vacant sixth television channel, known as Channel 31, in Australia. CTV has operated on a trial basis since 1994.
The CTV trial has shown that CTV can have a valuable role in Australian society. CTV services help to meet local information and entertainment needs in a communications environment that is increasingly national, if not global. The service values of CTV are distinct from network and pay television, tending to focus on innovative and niche programming, local events, news and culture. The programs are typically low-budget affairs, often produced by enthusiastic volunteers and television presenters-in-training. Indeed, CTV has proven to be a significant training ground for future media professionals. Some CTV programs are developed and produced in conjunction with tertiary institutions as a practical way for media studies students to experience, and experiment in, the television environment.
CTV programming is valuable because it caters to distinct and widely diverse community interests not served by network or pay TV. CTV contributes to overall Australian television program diversity.
Unfortunately, there are occasions when the availability and quality of this programming is severely constrained by financial and other factors.
Under current arrangements, most CTV operators are financially vulnerable due to high capital and operating costs, particularly those related to transmission. The situation is exacerbated by the temporary nature of current CTV licensing, which discourages long-term planning and capital investment. The trial status makes it difficult for operators to obtain sponsorship, to achieve savings from longer term contracting arrangements and to generate surpluses for reinvestment in CTV.
Significant concerns were also raised about the corporate governance and accountability of some CTV operators at various times during the trial.
Some CTV trial operators have been more successful than others in providing community-focused television programming. Some have proved better able to balance the competing demands of providing a CTV service, including providing adequate community participation in program production, transmission of a reasonable quality, programming that reflects community interests, and the ability to attract sufficient funds to operate the service while managing commercial relationships appropriately.
The presence of the challenges facing CTV should not, however, obscure the fact that CTV has shown that it can provide an important extra dimension to the Australian media landscape. This bill introduces measures that will assist the ongoing viability of the sector, while preserving the unique characteristics of CTV.
The new CTV licensing arrangements will build on the system which is already in place for community broadcasting licensing in Part 6 of the Broadcasting Services Act. This legislation will recognise a particular category of community broadcasting licence, the CTV licence, which will reflect the unique circumstances and needs of CTV.
Digital television is currently at an early stage of development and it is still too early to make decisions about the permanent future of CTV in the digital environment. Arrangements for the digital
carriage of CTV will be reconsidered before the end of December 2006—which is the end of the moratorium for the allocation of new commercial licences set out in section 28 of the Broadcasting Services Act.

Under this bill, the spectrum currently used for CTV broadcasting services will continue to be used for analog CTV transmission until 31 December 2006. The date the relevant spectrum can be used for analog transmission of CTV would be able to be extended by disallowable instrument, to deal with a situation where the Government decides, closer to that time, that analog CTV should continue. These arrangements will ensure that the relevant spectrum currently used for CTV broadcasting services will be available for use for other digital services if alternative arrangements for digital carriage of CTV broadcasting services become available and it is appropriate to cease analog transmission.

Even though access to current spectrum is only guaranteed until 31 December 2006, under the proposed amendments the ABA may issue a CTV licence for up to five years. This is a significant improvement on the current trial arrangements for CTV, which require licensees to renew their licences annually.

The ABA will be responsible for allocating CTV licences under a merit-based process.

The proposed legislation will require CTV licensees to be non-profit companies limited by guarantee. The corporate governance and accountability requirements under the Corporations Act for non-profit companies limited by guarantee will impose higher and more uniform corporate governance standards on CTV licensees.

There is wide acceptance that providing a CTV service is far more expensive than providing a community radio service. The CTV sector needs to have the ability to raise revenue which will enable it to balance operational and production costs with providing quality programming for community purposes. At the same time it is necessary to balance the need to raise substantial revenue with the community and non-profit nature of the sector.

Therefore, as an underlying regulatory policy, the bill makes it clear that it is the Parliament’s intention that CTV services are to be regulated in a manner that causes them not to operate in the same way as commercial television broadcasting services.

At the same time, the bill assists the revenue raising ability of the CTV sector by increasing the period for which a community television broadcasting licensee can broadcast sponsorship announcements from five to seven minutes in any hour.

Another way that the sector can generate revenue is to sell airtime. Sale of airtime involves the CTV licensee selling a defined period of broadcasting time under its service to a third party. The third party is then responsible for developing and providing programming in that broadcast period. A CTV licensee would be able to use funding raised from sale of airtime to assist with transmission costs, administrative costs and the costs of producing other community access programming.

However, the bill recognises that sale of air-time arrangements may have the potential to compromise the community nature of the CTV service. Therefore, a balance is drawn between the revenue raising requirements for the CTV sector and the community and not-for-profit nature of the sector, by imposing conditions on CTV licensees in relation to sale of air-time.

There is a condition which limits the CTV licensee to selling no more than 2 hours of access to air-time in any day to an individual business which operates for profit or as part of a profit-making enterprise. The condition recognises the need to accommodate those profit-making businesses which are currently producing dynamic and successful CTV programming focusing on a particular community interest. These businesses are not only an important revenue source for the sector, they provide genuine community television programming.

This condition would ensure a business could not purchase a large amount of airtime for commercial purposes.

There is a second condition which limits the licensee from selling more than 8 hours of access to air-time in any day in total to businesses which operate for profit or as part of profit-making enterprises.

Further, there is a third condition which prevents sale of more than up to 8 hours of air-time in any day to any particular person.

The ABA will be able to make a determination to change the sale of airtime conditions if they need fine-tuning to achieve their desired effect. However, it must seek public comment before doing so and the determination will be a disallowable instrument.

Additionally this bill will enable the ABA to impose on all CTV licensees conditions dealing with matters such as community access to airtime, governance, and the provision of annual reports to the ABA.
The CTV licensing arrangements in this bill relating to corporate governance and accountability, spectrum planning and imposition of additional conditions on CTV licences will not apply to remote Indigenous community broadcasting services that provide television programs. Currently these services operate with community broadcasting licences. However, it is likely that these services will not have the resources at this time to meet the higher corporate governance and accountability requirements that the Government is proposing for CTV services.

The bill will also introduce some measures to improve the general community broadcasting licensing regime.

Foremost of these is a measure to reinforce the community and not-for-profit nature of the community broadcasting sector by making it a condition of community broadcasting licences that the licensee will provide the service for community purposes, and will not operate the service for profit or as part of a profit-making enterprise.

Another improvement is to give the ABA more discretion to review community broadcasting licences when deciding whether to renew them. At present, the ABA cannot refuse to renew a community broadcasting licence unless it seems likely that licence renewal would result in significant risk of an offence against the Broadcasting Services Act or regulations, or a breach of licence conditions. This means, in practice, that community broadcasting licences are renewed almost automatically, even when there is an identified problem with the service.

The proposed amendments will extend the range of factors which the ABA can take into account when considering whether it should renew community broadcasting licences to make community broadcasters more accountable for their operations. The amendments will allow the ABA to consider issues that are taken into account in an original licence allocation when deciding whether to renew the licence. The ABA, when renewing a licence, will also be able to consider a proposal from a licensee to change the community interest it is required to represent.

The ABA will not need to undertake a comprehensive review of all licences due for renewal, but under the proposed arrangements, a review could occur where the ABA believed there were problems with the service of the current licensee (for example, because of complaints it had received).

In presenting this bill, and through the introduction of permanent licensing arrangements and better accountability measures, the Government is demonstrating its commitment to a long-term future for community television in Australia. Community television has an important role in Australia, providing programming of a character quite different from that provided by free-to-air networks and pay television. Community television is innovative and diverse. This bill will provide a regulatory basis for a long-term future for the community television sector and for the unique programming it provides.

Debate (on motion by Senator Ludwig) adjourned.

Ordered that the resumption of the debate be made an order of the day for a later hour.

PROHIBITION OF HUMAN CLONING BILL 2002
In Committee
Consideration resumed from 13 November.

Bill—by leave—taken as a whole.

Senator HARRADINE (Tasmania) (10.04 a.m.)—While there are discussions taking place between ministers, I remind honourable senators that the importance of the amendment is to prohibit the importation and exportation of products or components derived from a human embryo clone. We are talking about placing a ban on all forms of human cloning in Australia. On the one hand we are doing that but, unless my amendment is adopted, on the other hand we are leaving open the importation of stem cells from human embryo clones. This could be done from a number of places, including Singapore and at this time the UK. This would completely undermine the ban on cloning that is proposed in this legislation. We have to fix it up somehow or another.

I remind honourable senators and people listening that this is not a theoretical question at all. I quote from the Australian of 1 April a report about Dr Peter Mountford, Chief Executive of Stem Cell Sciences. He spoke out strongly in favour of so-called therapeutic cloning. The report says:

Dr Mountford has never produced a human embryo, but holds a patent on technology he believes will achieve this result by the end of 2002. That result is the cloning of a human embryo. The report goes on:
He plans to commercialise the process within two years by supplying disease-carrying embryonic stem cells to pharmaceutical companies for drug screening.

Under this legislation, there would be nothing to stop the product derived therefrom being imported into Australia. There would be nothing to stop Dr Mountford—if what he says is achieved, if that is the word—from exporting the stem cells derived from those human embryo clones to Australia: from the UK, for example. There would be nothing to stop certain scientists that I know of, who have connections in Singapore, importing such human embryo clones—that is, of course, if they ever get away with it technically. It is a serious matter and it is a practical problem because what is the use of banning cloning in Australia when you leave the gate open to receive them from overseas? I know this is exercising the minds of honourable senators, but if we are all at one in attempting to impose this ban then we should do it. We just cannot do that and wash our hands of what happens with regard to imports from overseas. We have not washed our hands of that completely because—I remind the Senate—we do in this legislation ban the imports and exports of human embryo clones. So we do that much, but we will not go to the next obvious step to protect the system by banning the importation of stem cells derived from those clones.

I have just a couple of words more. I did get a bit concerned when I heard what the minister had said on ‘advice’. Now that I have read it in Hansard, I am even more concerned. The minister stated—and they were her words:

My advice is—

and presumably that was obtained from NHMRC, and this is worrying—that COAG decided that the legislation does not extend to stem cells and that the regulation of imported and locally made stem cells should be regulated according to NHMRC guidelines.

Of course, the importation has got nothing to do with NHMRC guidelines, and they are inadequate anyhow. So that did concern me and it would be a rather brave Premier, I would have thought, particularly one who might be going for an election at the moment, who would say, ‘No, we don’t mind the importation of stem cells derived from cloned embryos,’ notwithstanding the fact that it undermines the whole purpose of this legislation. So, in short, we are faced with a real problem unless we do something, in some way, to fix this problem.

The TEMPORARY CHAIRMAN (Senator Brandis)—Is it the wish of the committee to return to the consideration of amendments (3) and (4) standing in the name of Senator Harradine and postponed on 12 November? I take it that it is. The question then is that the amendments be agreed to.

Senator Patterson—Is Senator Collins going to speak?

Senator JACINTA COLLINS (Victoria) (10.13 a.m.)—For the committee, I would prefer to wait until we hear from the government about where they are with respect to dealing with this issue. I request the time to defer and then I might, perhaps, respond.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.13 a.m.)—I am not sure if it was last night or yesterday, but when this clause came up and we deferred it I said I understood the motive behind the amendment and that we would not be supporting it, and I did admit yesterday that I had a concern about that. I had spoken in my speech on the second reading about consistency and that that posed some difficulty for some people who are supporting the bill. In order to address that in some way, I had a meeting with the Prime Minister yesterday morning and my staff met again with the Prime Minister’s staff yesterday afternoon. I appreciate very much that the Prime Minister took the time to see me and to give me the opportunity to say what had happened in the chamber. I think that speaks highly of the fact that this is the sort of debate it is a shame we cannot have more often and that he listened to the concerns of some of the people making a contribution.

Despite not supporting Senator Harradine’s amendments, I would now like to announce that it is the government’s intention to amend the Customs (Prohibited Imports) Regulations to implement a ban on the import of viable materials derived from hu-
man embryo clones. This would include stem cells derived from human embryo clones and would be reviewed in 12 months. This gives us time to think about the issues that have been raised and to discuss in more detail this issue. This is in addition to the changes foreshadowed last night—or the night before—to the Customs (Prohibited Exports) Regulations to implement a 12-month prohibition on the export of human embryos.

On both these changes to customs regulations, I would also like to advise that government members will be exercising a conscience vote. I remind senators that it is already an offence to export or import human embryo clones under the Prohibition of Human Cloning Bill. It is not necessary to explicitly prohibit the export of stem cells derived from human embryo clones, since under the Prohibition of Human Cloning Bill it is an offence within Australia to create, develop or import a human embryo clone. Therefore, it should not be possible to derive and subsequently export stem cells from human embryo clones.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.15 a.m.)—The other night an important issue arose in this debate concerning the import and export of cloned human embryos. I can see why Senator Harradine sees the need to move his amendment, and I think that the minister’s adjournment of the matter was wise, because of the importance of this issue. I note what the minister has said. Although it is frustrating to adjourn matters to discuss things, this is so important that I think it was worth while, and the discussions that the minister had were indeed worth while. After discussions with government I, as the Minister for Justice and Customs, can say that the government will be amending the Customs (Prohibited Import) Regulations to implement a ban on the import of viable materials derived from human embryo clones. This would include stem cells derived from human embryo clones and would be reviewed in 12 months.

That means that this regulation will stand in place until otherwise revoked. There will be a regulation in place that will ban the import of viable materials derived from human embryo clones as well as stem cells derived from human embryo clones. This works in tandem with clause 11 of the Prohibition of Human Cloning Bill, which prohibits the import of cloned human embryos. As far as importation goes, we will now cover the field from the importation of human embryo clones at the one end to the components or the stem cells or the viable material which has come from human embryo clones at the other. To that extent, I would commend that approach to the Senate. As well as that, the Prime Minister has announced that, in the Customs (Prohibited Exports) Regulations, the government will implement a 12-month prohibition on the export of human embryos. That is across the board. There will be a review to look at that in the meanwhile. Of course, there is nothing to stop the Senate from reviewing it as well under its own processes, in a Senate committee approach. There is nothing to stop the Senate from reviewing any of this as it sees fit.

As the minister has said on the changes to the customs regulations, members of the government will be allowed to exercise a conscience vote. One question that has been raised is in relation to the export provisions. Under clause 11 of the Prohibition of Human Cloning Bill, the export of a cloned human embryo is banned. What of other components? As the minister has said, it is not necessary to explicitly prohibit the export of stem cells derived from those human embryo clones, because under this very bill it is an offence to create, develop or import a human embryo clone, and therefore it would not be possible to legally derive and subsequently export stem cells from a human embryo clone. We have a situation which accommodates the concerns of those who want to see the field covered in relation to the import and export of human embryo clones and material derived from them. I can see why Senator Harradine moved his amendment. I think there is merit in such an amendment, but I believe that with these regulations we can cover the field. On that basis, I will not seek to pursue my amendment which has been circulated in the chamber.

Senator STOTT DESPOJA (South Australia) (10.20 a.m.)—I thank both ministers...
for their contributions. I have a question for Senator Ellison in relation to the amendments he has proposed to the Customs Act, I believe. My question relates to the definition of viable materials. My understanding is that the minister in his explanation specified that this would include stem cells. I do not want to misrepresent the minister’s contribution. That is why I seek clarification. Minister, the amendment, as you outlined it to the chamber, involves ‘viable materials’. What does that mean? How could that be defined? I am presuming that stem cells are only one part of what you would define as viable materials. Am I on the wrong track? I just want to get clarification of the wording and what it actually means. I do not want to misrepresent the minister’s contribution. That is why I seek clarification. Minister, the amendment, as you outlined it to the chamber, involves ‘viable materials’. What does that mean? How could that be defined? I am presuming that stem cells are only one part of what you would define as viable materials. Am I on the wrong track? I just want to get clarification of the wording and what it actually means. I do not want to misrepresent the minister’s contribution.

Senator Patterson—That was what I was meaning by consistency.

Senator STOTT DESPOJA—I am agreeing with you.

Senator Patterson—But you said there wasn’t consistency—

Senator STOTT DESPOJA—No, I said I was concerned not only because of consistency but for a whole range of ethical and other reasons. My concern with the original amendments put forward by Senator Harradine—which I understand was also the government’s concern—was the broad-ranging nature of the amendment. By that I mean the terminology in relation to products and whether or not that took into account everything from intellectual property through to stem cells et cetera.

I guess one of the things that we were discussing both in the chamber and behind the scenes with all senators involved in this debate was whether we could achieve the intent of those amendments but perhaps with a tightening of the definitions. I wonder if that has been achieved by the amendments that Senator Ellison is proposing or whether we still have some issues that we have to confront when we use terminology such as ‘viable materials’.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.22 a.m.)—I do not think you can get into much more detail other than the description of viable materials. I think it is a matter which speaks for itself: it is any material derived from a human embryo clone which is viable. What would one attribute to the word ‘viable’—something which can be used, something which is capable of being used, certainly not something which is decayed, moribund or dead? You are talking about something which can be used and the limits of science, I guess. It would certainly include stem cells—we have mentioned that in particular, though. It would include any living product from any part of the embryo—I think Senator Harradine has used the word ‘components’—and any culture from a cloned embryo. There is a definite description; the term speaks for itself.

Senator STOTT DESPOJA—I was wondering whether you had anything in particular to do with stem cells.

Senator ELLISON—‘Stem cells’ and ‘part of the embryo’ are examples of pieces of viable material from a cloned embryo.

Senator JACINTA COLLINS (Victoria) (10.24 a.m.)—I made an earlier contribution on this issue, and I have a concern in relation to consistency—although I would probably use the stronger word of ‘hypocrisy’—if we were to go down the path of having this position of being prepared to have a general and, as we have been told by the political debate and by COAG, strong ban and then allow, or perhaps encourage, similar behaviour internationally by preparedness to accept the products of that behaviour into the country. I would firstly like to commend the Minister for Health and Ageing. I know that the advice she received through our normal processes was contrary to the position that is now being developed, and she should be commended for being prepared to take on that issue and take it to the Prime Minister. I hope that that will be characteristic of what will happen with some of the other issues that we are likely to have to work through in the next bill as well.
I indicate firstly, though, that I am generally happy with the proposal that the government has put to resolve this issue. However, if Senator Harradine is persisting with his amendments I will maintain support of those, for one main reason, which relates to my comments on this issue the other day. We had the situation in Victoria where we had a strong ban on research on embryos and Professor Trounson was able to utilise a loophole to import embryonic stem cells from Singapore into Australia. His ability to do that has been used by some as a reason—not necessarily the complete reason—for no longer maintaining that ban in Victoria. I have already made the point that it was perhaps difficult within the Victorian jurisdiction to deal with the importation issue, particularly in a national environment which was void of regulation or legislation in other states. But I prefer to see a clear message on this issue within this legislation, if that is at all achievable.

I understand what the government have done, and I commend them for finding a solution to this issue but, because of the history of what occurred in Victoria, I prefer the instrument that is dealing with a ban on cloning to indicate in its full strength, clarity and consistency our position on banning and to highlight the fact that there is no hypocrisy, that there is a ban on cloning and to not involve an acceptance of that practice, whether it be in Australia or overseas.

Senator HARRADINE (Tasmania) (10.27 a.m.)—First of all, I am getting a bit concerned about the use by Senator Stott Despoja of the term ‘reproductive cloning’. This bill bans all forms of cloning. Is she saying that there are some forms of cloning—

Senator Stott Despoja—No, I am not, Senator Harradine.

Senator HARRADINE—Senator Stott Despoja, you always deliberately say ‘reproductive cloning’, leaving the gate open for so-called therapeutic cloning, the type of cloning that has been mentioned by Dr Peter Mountford, the chief executive officer of Stem Cell Sciences. He wants to do so-called therapeutic cloning—that means production of human embryo clones so he can commercialise the process within two years by supplying disease-carrying embryonic stem cells from those clones to pharmaceutical companies for drug screening. The process is exactly the same whether you call it reproductive cloning or so-called therapeutic cloning, a term that is completely deceptive so far as its effect on human embryos is concerned—it is hardly therapeutic for the embryo that is cloned or developed for that purpose.

We really have to be quite open as to what we are saying in this debate. Is it a fact, as I suspect it is, that this legislation will pave the way for such cloning by the use of the review system, which will be a private review undertaken by ministerially appointed members? Let us be open as to what we mean.

I want to formally acknowledge—and I hope she is listening—the fact that Senator Patterson is doing a difficult job and she was obviously thinking very deeply about the matter. I understand the situation, and I think she acted in the entirely proper manner and the entirely parliamentary manner to take the opportunity to postpone the clauses so that she could express her views to various people, including the Prime Minister.

We are all after the same approach when it comes to this question of import and export. The clarification made by Senator Ellison, the Minister for Justice and Customs, has also been very much appreciated. Whilst I would like to see this in the legislation, I will nevertheless be looking forward to what comes forward in the amendments to the Customs (Prohibited Imports) Regulations and the Customs (Prohibited Exports) Regulations. I would like the minister to explain again what is meant by that 12 months. When is it likely that these regulations will come into effect?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.32 a.m.)—The Prime Minister has said that the regulation in relation to the export of embryos would be extant for 12 months. So it would be a finite term, and there would be a review in the meanwhile. The regulation in relation to the import of viable materials derived from human embryo clones and stem cells derived from human embryo clones would stand until revoked. That is different
from the statement in relation to the export of embryos. And, of course, there will be the review as well.

In relation to the question of this going into regulation I, as the minister, would seek to have it put into regulation as soon as possible. Regulations can be implemented expeditiously, but I would want to make sure that the wording was appropriate and in accordance with the statements that have been made. I would seek to have that done as soon as possible. I cannot give the Senate any more definite a time than that, but I would be very keen to see these regulations in place.

Senator STOTT DESPOJA (South Australia) (10.34 a.m.)—I know that Senator Harradine’s intention was to provoke me to respond and, yes, I am provoked. I will put this on record very simply, because Senator Harradine, I hope, is aware of the comments that I have made not only in my contribution to the committee report on this bill but also in my speech in the second reading debate on both pieces of legislation. As Senator Harradine is more than aware, I and many others have recognised that the distinctions between the terminologies of reproductive and therapeutic cloning are not always helpful. I possibly used the terminology ‘human reproductive cloning’ more out of habit than anything else. Throughout my Senate career—particularly since 1997 and, of course, since the advent of Dolly the sheep—I have been an interested spectator in this debate and have been interested in prohibiting what at one stage was known as human reproductive cloning. Rather than take issue with Senator Harradine’s specific points now—although I do find it extraordinary that it took Senator Harradine a couple of minutes into my speech in the second reading debate to claim that I was in some way impugning him when I was making a general comment on Senate committee processes—I will say that he has no qualms about misrepresenting me in this debate.

I think Senator Harradine has made very good points during the committee process and more generally, as did others in their presentations to the committee, that ‘therapeutic cloning’ is a misleading term. As I noted in the committee report and said in my speech the other day, the term ‘therapeutic cloning’ collapses both therapeutic and non-therapeutic research on embryos and also the distinction between destructive and non-destructive research on embryos. So I think there is good reason to call for—and I acknowledge Senator Harradine has done this, as have I—more specific and clarified terminology in this debate. I think you know, Senator Harradine, that I am conscious of the distinctions and I am not intending to mislead the parliament when I use the terminology ‘human reproductive cloning’. I think that was a mischievous point and I would like us to get back to the issue at hand, which was the specific amendments the government has put forward which the Australian Democrats will be supporting.

Senator CHRIS EVANS (Western Australia) (10.36 a.m.)—I just want to indicate on behalf of the Australian Labor Party that we will not be supporting Senator Harradine’s amendments. We were aware of the concerns being raised during the debate in relation to the export and import of human embryo clones and products derived from them. We supported the deferment to allow some progress that was being made around the chamber on those issues. We understood that those concerns were legitimate and genuinely held and that there was a need to work through some of those issues.

As we now know today, the response of the government has been to announce that there will be two amendments to the customs regulations: firstly, to ban the export of human embryos for 12 months subject to further review and, secondly, and more particularly, to ban the import of viable material derived from human embryos and clones, subject to a more comprehensive review in 12 months. I think Senator Ellison just gave some more detail on that. I think that is a reasonable response from the government. It seeks to address the concerns that have been raised, but it does not substantially depart from the national approach which was agreed by COAG and which these bills seek to implement. For those reasons the Australian Labor Party’s formal position will be to support the approach that the government has indicated it will take and to oppose
Senator Harradine’s amendments, but, as I have indicated on all other issues in this debate, Labor senators will obviously be able to have a conscience vote on those matters. The formal Labor Party view will be to oppose Senator Harradine’s amendments and to welcome the response given by the government in relation to the customs regulations to be formulated.

Senator HARRADINE (Tasmania) (10.38 a.m.)—I did not want to provoke Senator Stott Despoja; I simply wanted her to place on record what her views are. She deliberately used the words ‘reproductive cloning’. She knows as well as I do that there has been an attempt to make a distinction between so-called therapeutic cloning and reproductive cloning. I am aware that she understands the difference. I am not trying to misrepresent her. I am simply saying that she only used the words ‘reproductive cloning’. If you like, all cloning is reproductive cloning, because you are reproducing a clone of a particular individual. Different things can happen with that clone—either it can be transferred and placed into the body of a woman or it can be harvested for stem cells and destroyed. What I would be interested in—and I still have not heard this—is whether that type of so-called reproductive cloning that is stressed by Dr Mountford is the type that she may support.

What worries me about this review is that, at the end of the day, there will be certain scientists who go along and say, ‘We find that we cannot use this stem cell research on patients because the stem cells are histoincompatible with the patient.’ Those cells will create an immune response in that patient, so they will be looking for so-called histo-compatible stem cells. The obvious stem cells to use there are adult stem cells. But there is this push to develop cloned human embryos using the somatic cell nuclear transfer process—using a somatic cell from a particular patient so that a little clone of the patient is created, or this is the theory. As a result, they will attempt—and I underline that word—certain therapies. This is a very major question. I did not want to misrepresent Senator Stott Despoja, but I just wanted to see precisely why she used the words ‘reproductive cloning’. I thought we were against all forms of cloning if we were fair dinkum about this bill, because this bill bans all forms of cloning.

The TEMPORARY CHAIRMAN (Senator Cherry)—The question is that the amendments moved by Senator Harradine be agreed to.

Senator HARRADINE (Tasmania) (10.43 a.m.)—In view of what has been said by the minister at the table and the Minister for Justice and Customs, I seek leave to withdraw my amendments.

Leave granted.

The TEMPORARY CHAIRMAN—Senator Harradine, did you want to proceed with your amendment (2) to this bill?

Senator HARRADINE—I do not think it is relevant now, is it?

The TEMPORARY CHAIRMAN—That is for you to decide, Senator Harradine.

Senator HARRADINE—Thank you; it is not relevant here.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.45 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

RESEARCH INVOLVING EMBRYOS BILL 2002

In Committee

Consideration resumed from 12 November.

Bill—by leave—taken as a whole.

Senator JACINTA COLLINS (Victoria) (10.46 a.m.)—I commence this discussion in committee of the Research Involving Embryos Bill 2002 with some general comments on how I hope we will be able to proceed with amendments and, indeed, on the character of at least some of those amendments, particularly the set of amendments that I will be moving. There are certainly some aspects
of Senator Bishop’s amendments, which we will be commencing with in a moment, that I have worked on with Senator Bishop and facilitated through the Senate Community Affairs Legislation Committee inquiry on this bill, but I hope it will facilitate senators’ responses in considering the many matters that will be raised during this committee stage debate to contemplate the general approach that has been taken to amendments with this bill.

Whilst it was clear in the second reading debate that some senators opposed this bill outright, there is in a sense—at least from my perspective and that of some of my colleagues—a view that, if it is the wish of the Senate to allow research on human embryos, it is the Senate’s task to ensure that the COAG intention that we have a strict regulatory regime put in place is fulfilled. This bill has been through an interesting process, and I think many senators will be reflecting in the course of this debate on different aspects of that process. But the desire at this stage and in this debate is quite clearly to ensure that we will have a strict regulatory regime in relation to this conduct. That is certainly my intention.

I have a particular perspective on that issue because I come from a state where, to date, there has been an outright ban. At the same time I reflect that, during the deliberations of the Senate Community Affairs Legislation Committee, there were several concerns—and COAG itself reflects this—about how the current guidelines do not strictly regulate this practice in those states that do allow research on human embryos. We discovered during the committee hearings that these current guidelines will in fact underpin several key criteria in this bill. In Victoria, for instance, if the bill is passed as it is currently framed and until some aspects of the bill are put in place—such as the guidelines that are, at this point in time, nowhere near detailed presentation—we will be going from an outright ban to the more liberal or laissez-faire approach that has been applied in some other states.

There are other aspects of this bill on which I have been quite conscious of trying to find ways of highlighting the point that my perspective is not just that of someone who is opposed outright to this conduct. This is a reasonable perspective on some problems with the way the bill is drafted at the moment, because it does not meet the COAG intention of a strict regulatory regime. Some of the amendments moved by Senator Bishop and me, and by some of the other senators, have deliberately gone back to that COAG communique and said: ‘This is what COAG said but this is not in the bill. We think that we should go back to COAG and implement the full intention of COAG.’ Some other approaches have said, ‘COAG is silent on this issue, but standard legislative practice would deal with this issue in this way.’

For reasons that are either unsatisfactory—as discovered in the Senate committee process—or unexplained, the bill takes a different path. We will seek to address the problems we see in how the bill meets the intention of a strict regulatory regime. I am not aware at this stage of a single amendment that seeks to go back to the position of a ban on this behaviour by default. I do not believe that there is a single amendment in this pack that seeks to go back to that position. It is up to each senator to appraise the merit of any issue on a case-by-case basis. Some will obviously be better informed than others because they were able to participate in the committee process. I particularly encourage senators to look at the issue of the current NHMRC guidelines, because there is a position being put at the moment that the current NHMRC guidelines impose good, strong, solid controls.

The reality is that these guidelines are based on voluntary guidelines that have been in place in most states that have not had a ban on research involving human embryos. When, in the Senate committee process, we tried to get to the bottom of what those guidelines were, we went through what was referred to in the bill. It simply refers to earlier guidelines. We went to the earlier guidelines, and they indicate quite a number of things, but there is now an interim note that relates to behaviour that also then refers back to those guidelines. During the committee process the NHMRC actually had to correct
their earlier advice to the committee about precisely where the guidelines were at and how they applied—and I thank them for that correction. The position on the current state of play is meshed in the guidelines, and we need to fix that. The bill, as currently framed, does not do that. At the same time, the very concerns that COAG had when they said, ‘We think it is best to have a good, strong, national framework,’ were in part the concerns they had with how that framework was being applied in the states that do not regulate the field.

Let me give the Senate one very brief example of that. We were told by the NHMRC that the guidelines, which have been in place since 1996, were under review; that they had been through the first phase of review; and that it was close to, if not at, the stage of being able to report back on stage 1 of the review. That then would be essentially dealt with on a draft basis and there would be a further stage of consultation beyond that before we could see how some key parameters in the bill are meant to be interpreted. I do not need to lecture senators about the best way to legislate. I think we all appreciate that, if at all possible, it is best to define key parameters of a bill in the bill—or, if indeed we need to take the benefit of expert advice, to allow that advice to be given and then act upon it.

The biggest concern I have is that, when the Senate Community Affairs Legislation Committee sought to understand how the current guidelines were being applied—because they were under review—the answer we got back was, ‘Sorry, we can’t tell you how these guidelines are being applied, because we don’t know and there is no framework for us to ascertain that information.’ About the only information they could give us was that, since the interim note, they could consult health ethics committees and ask them to tell us how they had applied the guidelines in a couple of cases. The Senate ultimately got some information from Monash about how they applied the guidelines to the imported Singaporean stem cell lines. That is the state of knowledge about how these guidelines, which have been in place since 1996, have been applied. I think that should be of considerable concern to the Senate because those guidelines, we are told, are to underpin some key phrases in the bill.

One of my concerns with the debate to date—and I noticed this in a letter to the editor in the Australian today—is that there is some misunderstanding of the character of this debate. There is a view that parliament, or the Senate, is attacking the ethics of scientists. That is not the point—it is a long way from the point. As a collective group, scientists probably have ethics that are—and I am sure the general public thinks this—far better than politicians. The point is that scientists are humans. I will probably be attacked for my Catholicism on this point, but human nature will mean there will always be some who will seek to exploit a system. Our job in this debate is to try to create a regime, consistent with COAG’s intention, that is strong, that is rigid and that will minimise the ability for humans, whether they be scientists or not, to act dishonourably if it is their intention to do so—we will be able to deal with that. That is our task; it is not to sling mud at particular scientists. The only occasions on which I have referred to such issues have been where they have demonstrated past problems that we need to rectify now.

I have been particularly conscious of how we as a Senate take account of the ethical issues—not from a religious background but far more from a secular approach. I have been particularly mindful, as we have been able to glean it—and sometimes it has been very hard to glean it because of the process; and I will probably reflect on that later—of the views expressed by the Australian Health Ethics Committee, within the NHMRC. Where they have proposed concerns and advice on how to rectify those concerns, I have listened carefully. In some cases my amendments have acted on that advice. You can see, in some of the dialogue we have had, that there has been a standard bureaucratic NHMRC response to the AHEC position on some issues. For the Senate’s benefit, I will go to an example of one of those.

One of the issues that the Australian Health Ethics Committee raised in relation to this bill, and that my amendments deal with,
is that, without further describing the parameters of a significant gain in knowledge and other similarly grey areas of the bill—for example, those open to interpretation such as proper consent—the proposed regulatory regime will not deliver the strict requirements of the COAG decision. This was, at least at one stage, a considered view of the Australian Health Ethics Committee. The response we had from the NHMRC was that AHEC executives should be reassured by the fact that the licensing committee will be relying on AHEC guidelines for the interpretation of these issues. The point is that it should not be the Australian Health Ethics Committee’s guidelines that determine how we interpret a bill; it should be the parliament that determines how we interpret a bill. I am quite happy to take the NHMRC’s and AHEC’s advice on how to deal with interpretational issues, but it should ultimately be the parliament that determines the interpretations or the meanings in legislation.

So some of my amendments are framed to deal with some of those issues from an ethical position based on advice from organisations such as AHEC, which are dealing with the day to day ethical issues around medical science. They are not coming from a particular religious perspective. I am trying to grapple with the notion of how we apply ethics in this type of field. The committee itself did that. There was a dialogue in the committee chair’s report on an ethical ‘third way’ position. Unfortunately, there is no theological, ethical or philosophical basis for the dialogue in the chair’s report, and I note that Senator McLucas and Senator Stott Despoja sought to give a more considered and broader position on some of that debate.

But my point is that that debate is in its infancy. The only other alternative I can find from an ethical position in dealing with these issues is, in many senses, to go to somewhere like the Australian Health Ethics Committee. I have sought to bring some element of independence when we have contemplated the ethics of some of these issues, quite mindful of the fact that people often try to resort to religious fundamentalism as an excuse not to consider an argument. I have been accused of being a staunch, rigid Catholic for years—something I have never been. These are not the points and I hope people will take these factors into account. (Time expired)

Senator MARK BISHOP (Western Australia) (11.01 a.m.)—I move amendment (1) on sheet 2689 revised:

(1) Clause 3, page 2 (lines 12 to 17), omit the clause, substitute:

3 Object of Act

The object of this Act is to address concerns, including ethical concerns, about scientific developments in relation to human reproduction and the utilisation of human embryos by:

(a) regulating activities that involve the use of certain human embryos created by assisted reproductive technology; and

(b) limiting the number of human embryos used in those regulated activities to the minimum necessary to achieve the purposes of those activities.

This amendment is to the objects clause of the Research Involving Embryos Bill 2002, one of the more critical clauses if the bill should ever be the subject of interpretation in the courts and the meaning is unclear as to its intent from a plain and literal reading of a particular clause of the bill. One of the established ways that a court determines the purpose or intent of a bill is to have regard to the objects clause of the bill. So, for that and other reasons, the objects clause is important. One of the deficiencies I have identified in the objects clause of the bill is that it does not include any requirement or objective to minimise or restrict the number of human embryos that will be destroyed or the various processes that are authorised or permitted under the bill.

When I first became aware of that situation it struck me as odd because the process by which the bill was put together, the guidelines for the drafting of the bill, if you like, derived from the work carried out under the authority of the Commonwealth and various state governments, which was then publicly released in the COAG communique. If you refer to the many comments that the Minister for Health and Ageing, who is at the
table, has made in this debate, and indeed to the fundamental and guiding position of the Australian Labor Party in determining its position in this debate, they are based on what is in the COAG communique. If something was in the COAG communique, then, prima facie, high regard was had for it and it was to be included. If something was deliberately omitted from the COAG communique, it was the position of the government and the position of the Australian Labor Party that the matter would not be considered because it was not part of the COAG process or the COAG communique.

That is a narrow framework, and I will address the restrictions that that necessarily implies in other forums within the Australian Labor Party in due course, because by definition such a restrictive approach is completely and fundamentally at odds with parliamentarians being able to have a conscience vote on any issue. A narrow framework that has been agreed to in advance and that cannot be departed from necessarily prevents proper consideration on a merit basis of the issue at hand, apart from the mechanical process of exercising the right to vote. A conscience vote means more than just the vote itself; it means a conscientious approach, an impartial approach and a deliberative approach to the issue at hand. This whole process has been perverted and is not being allowed to occur, because both of the major parties are having high regard for the COAG communique and the deliberations of COAG. Having said that, I refer to the introductory paragraph to appendix 1 in the COAG communique where it says:

Governments agree to put in place a strict regulatory regime under nationally-consistent legislation and administered by the National Health and Medical Research Council (NHMRC) as the national regulatory and licensing body.

... ... ...

... and that the approval is given on a case by case basis that...

... ... ...

the procedure involves a restricted number of embryos and a separate account of the use of each embryo is provided to the ethics committee and the national licensing body;

So the officials, the various state premiers and the Prime Minister deliberately and specifically included in their communique the reference to a minimal number of embryos being used. Again I stress that it says, ‘The procedure involves a restricted number of embryos.’ For reasons that are not yet clear, and perhaps the minister will explain, the government has determined that it is not necessary for that reference in the COAG communique to be included in the bill. It is that omission, that deficiency, that gives rise to this amendment. The COAG decision, which this legislation is meant to reflect, stated that in the regulatory regime for the licensing of research involving the destruction of human embryos, a licence would only be issued on a case by case basis provided that ‘the procedure involves a restricted number of embryos’ . As I say, that decision has not been included in the bill and the amendment that is before the chair now for discussion seeks to add those words.

This issue of why a reference that was determined by COAG was omitted presumably will be responded to by the minister in due course. But it is worth putting on the record that throughout the Senate Community Affairs Legislation Committee hearing, throughout the evidence on public record of all of the witnesses and throughout all of the submissions—1,800 in total—that were received by the committee, from memory, there was not even one submission that advocated no limit on the number of embryos that were to be created and used in this process—not one. From memory, every person and every organisation, no matter where they stood throughout the spectrum, said that there should be a limit. Certainly there were variations in the number to be used and there were variations between organisations as to the purposes for which they were to be used, but no-one said that there should be open slather, that we should have an unlimited number of embryos, that we should have unlimited access and that we should be allowed to go into unrestricted manufacturing of embryos. They all accepted a limit.

Indeed, in the deliberations in this chamber—if one reads the speeches made during the second reading debate—it has been the
repeated observation of those who argued mildly or strongly in favour of this bill that the manufacture of embryos is an unfortunate process that has to be engaged in and that those embryos that are surplus are going to be used for research purposes, medicinal purposes or in order to give hope in the future to those suffering from debilitating or life destroying diseases. But, in essence, they rationalised or argued for the acceptance of use of those embryos on the basis that there was hope or potential that in the future great good would come from the use of such objects. I do not recall any individual advocating that the embryos that were surplus from ART procedures were just a bunch of tissues—no different in nature from cutting off a piece of hair or a fingernail—and hence could be used for any purpose that the person so desired. All persons advocated restricting the number.

This amendment does not seek to say that you cannot have access. It does not seek to limit it to a specific number. But it does seek to reflect the agreement determined by the various state premiers and the Prime Minister under advice from the various officials who put the communique together and presumably engaged in the deliberations. It presumes to reflect the overwhelming view of all persons who addressed the issue in their speeches during the second reading debate and it seeks to reflect overwhelmingly, if not totally, the evidence given to the Senate committee.

My concern is that those indicators of purpose and intent that all of those who have engaged in the process have publicly stated on the record—and indeed many people have indicated privately in discussions—are not being reflected in the bill; that is, the bill does not reflect the stated desire of those who authorised its drafting—the signatories to the COAG agreement. That is the reasoning behind this amendment. It seeks to put on the record that, as far as public policy is concerned, it is a desirable objective that the number of human embryos that are going to be destroyed for the purposes authorised under the act are to be limited. If that is not there, one asks: what is the alternative? The alternative is, by implication or because of express omission—and express omission and rejection of a critical part of the COAG communique—that public policy does support the use of an unlimited number of embryos. Those are my reasons for moving the amendment.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (11.12 a.m.)—I would like to support this amendment by making the case that the communique makes it very clear that we are talking about access only to embryos created before 5 April 2002. I also point out that clause 21(4)(a) of the bill specifically provides that the NHMRC Licensing Committee must have regard to ‘the number of excess ART embryos likely to be necessary’. In clause 24(5)(b) it says that the conditions specified in the licence may include conditions relating to ‘the number of excess ART embryos in respect of which…’ et cetera. So the issue of quantity and numbers is very much part of this bill. I think it is clear from the communique that the Prime Minister, the premiers and the chief ministers were concerned to regulate with respect to that matter. That is specifically why this whole arrangement is based on embryos created before 5 April 2002 being the only ones able to be used for research. I think it is inherent in this bill. I think it is a commendable amendment proposed by Senator Bishop. I hope very much that Senator Patterson is in a position to accept the sensible amendment.

Senator BARNETT (Tasmania) (11.13 a.m.)—I rise in support of the amendment and agree with Senators Minchin and Bishop. I will not go through all the arguments again, but COAG in its communique of 5 April clearly talks about the protocols to preclude the creation of embryos specifically for research purposes. It talks about the NHMRC reporting within 12 months on the adequacy of supply and distribution for research of excess ART embryos. And what are they
going to say? Will there be any guidelines? Will there be any thought or sense from this parliament as to what sort of message it is sending? That report obviously will be an important one. It is being done for a reason and, if they are going to comment on the adequacy of supply and distribution, they need some sense from us as to a limit. There should be a minimum number of excess embryos for research purposes, and that is the point that Senator Bishop has been making.

We have been asked by COAG to develop a strict regulatory regime, and that is what we are doing, or attempting to do, under the Research Involving Embryos Bill 2002. As Senator Minchin said, there is a limit on the number of these excess embryos of, apparently, about 70,000. The COAG communique says that it is restricted so that human embryos are not created specifically for research purposes. The Hon. John Anderson made it clear that he was concerned about the 'slippery slope' argument—that you will find that over time there will be enormous pressure to obtain human embryos for other purposes, whether it be for research or whatever.

This was brought to the attention of the Senate Community Affairs Legislation Committee and is set out on page 52 of the committee's report. I will not go through those arguments, but a number of witnesses put the view to our committee quite strongly that they are concerned about the slippery slope—about the number of embryos that will be available in time. One of the witnesses to our inquiry, Professor Illingworth, gave a broad estimate that the non-viable human embryos from ARC centres, at this stage, was around 40,000 per annum. I just make that point.

I am concerned about the open slather situation. If this amendment is not included in the bill, what will be the consequences? The consequences will be that the bill may in time be interpreted—and there will be a review in three years or prior to that if COAG sees fit—as allowing for this 5 April deadline to be removed, and there is an amendment relating to that. If that is not there, what is the interpretation under the bill? I will be concerned if this is not included in the objections clause. There is such a good argument that can be put for this amendment. I say: what happens if it is not in the bill? Surely, there is a possibility of open slather, of unrestricted access to human embryos, and this has to be a major concern. It has been reflected throughout the committee hearings, in public debate and by the COAG agreement that there must be a strict regulatory regime covering the number of human embryos that can be obtained for research purposes or for other purposes down the track. This is the concern. We need to set some guidelines and we need to express the intent of this parliament. I really hope that we can come together on an agreement such as this and say that we need a strict regulatory regime and that we can be consistent and support one another on this particular amendment.

Let us go to the proponents of the bill. What do they say? They say, 'We don't need any at all at the moment' or 'We need only a very limited number of human embryos for research purposes.' Some talked about 50, 100 or a couple of hundred human embryos. That is all they require to do the research they need to do. I say, 'Okay, if that is all you need, that is the way it has to be.' This amendment is consistent with that. We are limiting the number of human embryos to the minimum necessary to achieve the purposes of those activities. Why can't we just accept their views? They are the proponents of the bill; they are the scientists. I say, 'Okay, I will go along with that; under this bill we will limit the number.' Obviously, I do not support the actual bill but, if we do have to have a bill, let us have a strict regulatory regime. I have made the point about the review in three years time. Currently, under the bill, the 5 April deadline goes—and then who knows what will happen? That is the slippery slope argument that I am concerned about.

If this amendment is not in the bill, we have an open chequebook, an open slather possibility. I just hope that the minister, the government and others in this chamber will see the merit of having these guidelines tightly framed so that there is a limited number of human embryos necessary to achieve the purposes for which those activities are
conducted. I support the amendment. I think it has merit, and I hope that others who are perhaps listening in their rooms or in other places can see the merit. This is directly consistent with the COAG agreement and follows through on that, and it is consistent with what the proponents of the bill actually want and seek. I hope that the minister and others in this chamber and elsewhere have thought through the arguments and will support the amendment.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.21 a.m.)—I will be brief. I have read the amendment and it is absolutely consistent with what COAG want. COAG have said that they want the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos. They have also said that, if the Research Involving Embryos Bill 2002 is to proceed, they want it done with the minimum use of embryos.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.24 a.m.)—This amendment of Senator Bishop’s proposes to amend the object of the Research Involving Embryos Bill 2002 to include as one of the objects of the legislation ‘limiting the number of human embryos used in those regulated activities to the minimum necessary to achieve the purposes of those activities’. I will not be supporting the amendment because I do not believe that changing the object of the act is helpful.

The NHMRC Licensing Committee will have the power to limit the number of embryos permitted to be used under each licence issued by the committee. They will do this by having regard, under clause 21, to the number of embryos likely to be necessary to achieve the goals of the activity or project proposed in the application. This information will be contained on the publicly available database of licence applications so that the public will have full information about the total number of embryos permitted to be used under licences issued by the NHMRC Licensing Committee. I believe that this provides a high level of transparency and accountability and will also provide us with very valuable information to inform the review of the legislation in three years time.

The object of the act is not meant to include every detail relating to the implementation of the act but to be an overarching statement of intent. The object of the act was developed in consultation and it addresses the intent of the legislation, which is to regulate the use of excess ART embryos. There is a range of concerns raised by COAG which are not directly addressed in the object, such as the need for informed consent and the likelihood of significant advance in knowledge. These issues are, however, all addressed in the body of the legislation.

Senator JACINTA COLLINS (Victoria) (11.25 a.m.)—With respect to Senator Patterson on this issue, it perhaps highlights the comments I was making of a very general
nature, and I will now go to another example. If we trace the regulation of this field to its origins, we go back to the 1996 guidelines. We see those guidelines saying that an institutional ethics committee should only approve such projects in exceptional circumstances. We have not sought to adopt that language, because that is not consistent with what COAG came forward with. At 6.4, the COAG communique says:

- there is a likelihood of significant advance in knowledge or improvement in technologies for treatment as a result of the proposed procedure...

That is what has been adopted straight into clause 21 of the bill. The next one is:

- the procedure involves a restricted number of embryos...

If we go back to clause 21 of the bill, we see that the restricted part has been removed. All that the licensing body is to take into account is the number. There is no intent to restrict the number, and that is the issue. When I first looked at this issue I went back to the 1996 guidelines and I said, ‘Fine, that’s what those guidelines say should be in place.’ When I found that discrepancy, I went to the COAG communique for guidance. If we go to the COAG communique, we see in appendix 1 of the communique that the first point that should be taken on a case-by-case basis is:

- ... a likelihood of significant advance in knowledge or improvement in technologies for treatment as a result of the proposed procedure ...

And the second point is:

- the procedure involves a restricted number of embryos ...

I have to question why, when we are adopting these provisions from the guidelines into the bill at clause 21, we have moved from a ‘restricted number’ to just take account of ‘the number’. So the next stage of the reasoning was to go back to the objects and see if the objects give us some guidance on what the intention should be for the licensing committee. And there is the problem, because the objects do not reflect the COAG decision either that the licensing body should take into account restricting the number. That is what the communique says as well. So then you look at the bill as it is currently phrased and it just says that the licensing body take account of the number—but there is no guidance on for what purpose. Is it so that we can record it or so that it can be available for public information? The point was that the guidelines, which have been in place since 1996, have chartered bodies to look at how they restrict the number. And that is what has been removed—quite inconsistently with the COAG communique.

I listened to Senator Patterson’s response on this and the similarity between that and my own advice from the NHMRC and, indeed, the committee’s advice from the NHMRC on this issue was interesting. We are told that taking into account the number really means restricting the number, and it does not. There is nothing that charters the licensing committee to have an objective to restrict, and that is what COAG told us was its intent. The bill does not include it, and for all we know future guidelines may not include it. We do not know.

Let us take a different mental attitude to this particular amendment, and that is: what harm does it generate? For the life of me I cannot see what harm it generates to put in the objects of the bill the intention of COAG which was, in part, to restrict the number. Indeed, Senator Stott Despoja and Senator Bishop will probably recall that on about the second day of hearings before the committee we heard about how the British system seeks to restrict the number of embryos. The way the British system seeks to give effect to that objective is indeed to have a stem cell bank. The problem with our bill, which we are told will generate a strict regulatory regime and restrict the number of embryos, is that there is nothing in the bill that either indicates that intent or gives it effect—nothing at all. I ask senators, in considering this amendment, to go back to the COAG communique and read what it says. It says that approval is given on a case-by-case basis and that the ‘procedure involves a restricted number of embryos’.

There is perhaps another way to deal with this amendment, and that is for the committee to wait until we get to clause 21, where the drafters of this process have removed this provision, and reinsert it so that 21(4)(a) says, ‘In deciding whether to issue the li-
ference, the NHMRC Licensing Committee must have regard to the following: (a) restricting the number. That is one other alternative. We are told by the NHMRC that this is not necessary. I ask the minister, why is it not necessary? When COAG tells us that their intention is to restrict the number of embryos, and it is in the guidelines currently and slabs of those current guidelines have been used in clause 21 in this bill, but for some strange reason the ‘restrict’ word has not survived the process, I ask why. I ask the minister if she can seek advice on what in the consultation process led to that, in my mind vital, word being removed. What rationale was there for that vital word, unlike most others in that part of the guidelines, being removed?

The reason I ask this question is that I have been told in relation to another of my amendments—the one which raises concerns about commas that have been put in in other aspects of the NHMRC guidelines which, in my view, separate the meaning regarding the acquiring of a significant level of knowledge and that that knowledge should be related to medical treatment purposes which comes from the history of the guidelines—by some who participated in the drafting process that at one stage the drafters had removed the words ‘for treatment’. For some reason those ‘for treatment’ words made it back in again, but it made me highly sceptical about why the commas were put in. I understand that there is fairly general support for the notion that we go back to the precise wording in relation to my amendment dealing with those commas in clause 21. I would encourage senators to think of the precise wording on this matter.

I should foreshadow that, if senators cannot support this way of trying to give effect to COAG’s intent because the drafters thought the other way was not appropriate for reasons yet unknown, perhaps we should go back to that rigid wording as exists in the current guidelines and insert that into clause 21. I would rather simplify the process and proceed the way that has been suggested with this amendment. All it simply does is indicate in the bill what the guiding intent from COAG was so that the licensing committee can have that in mind when it looks at the number—for what purpose it is looking at the number, that is, to restrict—but that should be a second level approach to it. I am not sure the minister heard my question earlier, but I am interested in whether the NHMRC can advise the chamber as to why the word ‘restrict’ was removed from the wording that has been incorporated into clause 21. Everything else from that section of the guidelines is reflected there. We refer to the number, but we do not carry over that other objective, which is in the guidelines, which is to restrict the number.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.36 a.m.)—Senator Collins has noted that the AHEC guidelines require that the research involve a restricted number of embryos. My concern is that that is not sufficiently certain for the implementation of legislation. ‘Restricted’ is an uncertain term. Do you mean restricted to seven, restricted to 10, restricted to 100 embryos? The licensing committee will first of all decide whether the research is necessary, appropriate and justifiable and then determine how many embryos are required to implement that research. The bill makes it clear that the committee has to look at the number that is likely to be necessary to achieve the goals of the project. Just putting ‘restricted’ does not give you that information. It is how many are necessary—not an unrestricted number but the number likely to be necessary. That is entirely consistent with COAG. The number of embryos allowed to be used will also be detailed, as I said before, as a condition of the licence and will be publicly available. That, as far as I am concerned, meets the COAG intentions. I say again I will not be supporting the amendment.

Senator JACINTA COLLINS (Victoria) (11.37 a.m.)—With respect, Senator Patterson, you actually highlight the reason why we have not gone down the path of just putting ‘restrict’ into clause 21. We accept the view that ‘restrict’ is a difficult term for a licensing committee to apply in that context. The point I am making is that in the absence of this amendment nowhere in the bill does it refer to the objective of COAG, which is to
restrict. This is why we have sought to put that into the objects.

I would also like to bring to the chamber’s attention that in any of the ethical discussions on this issue—and I have to say this third way ethical position that was canvassed in the process is not mine—it seems implicit in many people’s view that these embryos are human and they have some status, though in going to the state of extremes that status is not equivalent to that of an adult human being. If you accept the logic of that, then what flows from that position is the view that they do not attract full human status—a clumsy way to express it.

But what do they attract? Nearly the first thing that comes forward in ethical discussions is that if research is to occur it should occur only under tight restrictions. It should not occur easily and should not involve large numbers of embryos. I recall that Professor Hearn was one of the people who was very keen on that issue—that there should only ever be restricted numbers. But that object is nowhere in this bill. This is my point. It is in the AHEC guidelines. Other key parameters in the AHEC guidelines have been adopted but not the ethical concept not only that we take account of the numbers—that is not the point—but also that the licensing committee should take account of restricting the numbers. I do not want to see this bill just turned into a log of the numbers. That is not how the licensing committee should operate. Certainly I know AHEC understands this, but for the life of me I cannot understand why the bureaucracy within the NHMRC cannot. It is clear that COAG understands it, it is clear that AHEC understands it, it is reasonably clear from my discussions with people who accept this philosophy about embryos that they understand it; and Professor Hearn understands it. Many others have expressed that view in the debate. My point is that nowhere in this bill do we give effect to that ethical position that the number of human embryos used in these processes should be restricted.

Senator HARRADINE (Tasmania) (11.41 a.m.)—The minister says that she does not know what the term ‘restrict’ means. What does that matter? The minister is sitting there refusing to accept any amendments. Why? Because of COAG—‘We can’t do this because of COAG.’ If that is her approach to every amendment that is going to come up, here is an amendment that does conform strictly with what COAG decided, and it has been deliberately taken out of this legislation. Page 241 of the appendix to the COAG agreement says:

... A licence would only be issued where that project has the approval of an ethics committee established, composed and conducted in accordance with NHMRC guidelines, and that the approval is given on a case by case basis that:

... ... ...

• the procedure involves a restricted number of embryos and a separate account of the use of each embryo is provided to the ethics committee and the national licensing body ...

As has been asked by the mover of this amendment to the legislation and the other speakers, why has that not found its way to the objects of the legislation? The authorities, including the licensing authority, would be looking to the objects of the act in order to decide their view on the matter—on the application, for example. Unless you have the word ‘restricted’ there in the objects of the act, as is proposed—and I would have thought it would be better to have the word in the body of the act—then you are acting contrary to the COAG process itself.

I ask the minister: why does she refuse to accept these words as is proposed to amend the guidelines? It is a very serious matter. We have the minister stating that she will not accept them, but she has not said—as she has on previous occasions—that she will not accept them because they are contrary to the COAG communique. She cannot, because they are not contrary to the COAG communique. It is quite the contrary: her refusal is contrary to the COAG communique, which, I repeat, includes the words:

... the procedure involves a restricted number of embryos ...

To refuse to have that included in the legislation is, I believe, contrary to not only the spirit but the letter of the communique.

Senator MARK BISHOP (Western Australia) (11.46 a.m.)—I want to readdress this issue because it seems to me that, with the
way this debate is being conducted, we are not going to be given any adequate response to legitimate questions that are raised from the floor. The minister outlined at the outset her reasons for not accepting the amendment. They were in two parts. Firstly, she said that not all parts of the communique are necessary to be included in the objects of the act. As a statement of fact that is probably correct, and as a matter of possible legal interpretation later it is arguably correct as well. I accept that reasoning. I then go to her second point about why the government would not accept the amendment limiting the number of human embryos. The minister referred the chamber to clauses 21 and 24, and she made specific reference to subclauses contained in those clauses which say that the NHMRC Licensing Committee must have regard to a number of matters, primary among which is the number of excess ART embryos likely to be necessary to achieve the goals of the activity or project proposed in the application.

As discussed by other speakers, that wording in clause 21(4) and clause 24(1) is deliberately at variance, deliberately at odds, with the decision of the Prime Minister and the various state and territory leaders. The communique that they signed up to was the result of consensus after deliberations between the Commonwealth and the states on that issue. The officials who were involved in those negotiations from a Commonwealth level were from Senator Patterson’s own department. They were officials from the NHMRC. They were the body that gave advice on the content of the communique. They were the officials that gave advice on the phrasing and the wording and who either suggested in the communique that the number of embryos to be used be restricted or, alternatively, accommodated and gave expression to the direction of their political masters. Either is acceptable, appropriate and proper, but when the bill went to the drafting stage in the Department of Health and Ageing, via the respective officials, the decision of the COAG participants to have that intent was deliberately omitted from clauses 21 and 24. So the bill as it is currently expressed is completely at variance with the decision of the COAG participants. It was the political decision of the COAG participants in a unanimous fashion to go down a particular path. They outlined their concerns and their solutions and they all signed up to it. Officials of the department of health were given responsibility for drafting to give effect to their political decision.

I can accept that the government may now have a different view and may want to have unrestricted numbers of embryos available for researchers and scientists to have access to. In some sections of this debate, that is a perfectly legitimate and ethical position to hold. If embryos have no intrinsic merit, if they have no value, let hundreds of thousands bloom. It does not matter. If that is the position of the government, the government should come along and say that and explain it. That is their right. That is Senator Patterson’s right. That is the Prime Minister’s right. I do not quarrel with that. If they want to be able to manufacture an unlimited number of human embryos and dispose of those for research purposes, as approved of by the relevant committees, that is their right. Let them come along and say it.

But there are also in this debate obligations that the government and the opposition have chosen to adopt and to bind upon themselves. This has to do with the nature of the conscience vote. A conscience vote is not simply a mechanical process whereby individual elected members of a parliament, representative of a party, may with authority depart from the vote or the properly decided decision of their own party. It is more than that. A conscience vote means that people have to inform themselves. They have to participate properly in the process. They have to give reasonable explanation for their decision. They have to give explanation for their position. That is the necessary implication of a conscience vote. The Australian Labor Party, the Liberal Party of Australia and the National Party of Australia—and the Democrats, in another context—all freely chose to accept those constraints and restrictions. In my own party, that means I have to go to considerable lengths to explain a position which would perhaps not otherwise have to be explained in debates or which could be rolled through a committee.
It is similar on the government’s part. If they have a particular view of the world for the use of embryos—they are elected, they went through the process, they have a majority on the floor of the House—they have an absolute right to have a policy position on embryos, how they are to be used and the numbers to be used, and to put it in this place. I do not quarrel with that. But when they as a political party and their representatives freely choose to restrict their ability by having conscience votes, that means there has to be thorough explanation as to reasons. The question I am asking is why the government does not want to limit the number of embryos used. I do not say they cannot have that position but I do say that, having gone down the path of conscience voting, there is an added or additional obligation to explain that reasoning.

Secondly, the whole position of the Australian Labor Party and the government parties in this debate has in reality been to slavishly follow the advice of the NHMRC. It is the NHMRC, amongst others, who are providing the primary advice to the government and to the opposition. Certainly, other sources of advice are available and can be used. But the one set of advice is going to the two major parties—to both the government and the potential alternative government. There is no variation. If the government does have a different position now, then I think we are entitled to know why it has changed. I go back to the original question that opened up this debate: why is the government wishing to depart from the communique? The communique says:

... the procedure involves a restricted number of embryos ...

The phrase ‘restricted number of embryos’ is deliberate. Obviously, the political masters gave the tick-off to that. But they did not say ‘an unlimited number of embryos’. They were not issuing a direction that there should be open slather in this debate. It may well be the case that in three, five or seven years time the premiers and Prime Minister of the day might well decide that community sentiment has shifted, public values are different, the greater good is more relevant than it is now and there should be hundreds and hundreds of thousands of surplus embryos manufactured, with the eggs farmed from women—or by whatever process; I will not get emotional. They might decide that there should be hundreds of thousands of embryos available and that there should be no restrictions applied. But that is not the decision. That was not part of the consensus building process on the day that gave rise to the COAG agreement.

The consensus building process that occurred and resulted in the communique that we are referring to resulted in the Commonwealth and the states choosing to apply a number of limitations to this field of activity. They also said that we are going to have a review of the act within three years time, and that is going to be done by an independent committee also to be set up by the NHMRC. So Caesar is going to be judging Caesar on the act that Caesar created. That is fine; it is good work if you can get it. But they have not given the reason as to why we should willy-nilly accept the government legislation of the day.

If this was any other bill and there was no conscience vote then the government would have a perfect right to just stand up and say: ‘The government’s had a meeting. It’s the view of the cabinet minister and the caucus that this is the particular path to go down. The legislation gives expression to that policy. We have the numbers. Thank you for your comments, opposition; go away.’ But in this case the government and the opposition chose to accept a different set of rules: they chose to accept conscience voting, with the necessary limitations that go with that. But in this debate, the constant in both the government and the opposition has been to rely on the steadfast restrictions that have been established by the states and premiers via the COAG agreement. I can understand that. I do not like it, but I certainly understand the logic and reasoning behind it.

If it is the role of the Commonwealth parliament simply to give expression to agreements reached between the states and the Commonwealth without amendment or interference, then I can understand that process. But the COAG communique was issued in the full knowledge that both the Australian
Labor Party and the two opposition parties were going to give to their members of parliament a conscience vote. They knew it was going to their respective organisations and that their respective organisations would, and eventually did, give that conscience vote. So those who signed up to the COAG communique must have had in their minds, must have anticipated that amendments would come from the floor of the Senate or the House or indeed from any other chamber of a state parliament around Australia and that because it was a conscience vote there might be variations that emerged from the strictures that were to be applied by COAG. So again I simply ask the minister why the government has departed from the COAG wording, why it no longer believes it to be appropriate to limit the number of embryos that might be accessed and why it believes it to be appropriate to have an unrestricted number of excess embryos that might be able to be accessed.

Senator CHRIS EVANS (Western Australia) (11.59 a.m.)—Firstly, I indicate that the Labor Party will be opposing Senator Bishop’s proposed amendment to the objects clause. We will be doing so because we accept the logic that the objects clause was determined as part of the COAG process and we think it adequately meets the objectives of the act. Senator Bishop’s amendment, in the sense that it modifies the objects clause, is therefore not necessarily a useful addition. I formally put that on behalf of the Labor Party and indicate that there will be a conscience vote of Labor senators on that issue anyway.

I want to make a couple of personal comments which go to this debate. It is important that we actually concentrate on this issue. I am not sure that the objects clause is the way to do this. I have heard the strength of the argument put by Senator Bishop, and I think there is some strength to it and I think it is something that the Senate will want to grapple with. I would not deal with this issue in the objects clause, and that is a personal decision; Senator Bishop has done it there. From formal Labor advice and in my personal view, that is not the place to do that.

The debate has highlighted a concern that the COAG agreement has not been fully reflected in the bill. That is a difficulty for those who have argued that the bill ought to go through as is on the basis of the COAG agreement. This highlights a broader problem which we have a couple of weeks to rectify. We may well get a vote on this clause; but, as senators know, at 12.45 p.m. we will adjourn this debate. We will all come back refreshed in three weeks. The minister will have had a nice holiday in Bali, and she will be keen for the fray—even if she has got nothing to wear! I am assured the minister is doing important work representing the Australian government and the Australian people in a most important ceremony in Bali, and I wish her well with that.

The debate on this issue highlights that, in a long committee stage process in the Senate where a conscience vote applies, strength of argument—not our traditional process, which is based on where the numbers fall and which party has the numbers—will in the end win the debate. It is necessary in the committee stage of the debate, however uncomfortable that might be and however unusual it is for the government, to actually win the argument. While people are focusing on the conscience vote, they have to focus on the fact that the difference in this debate is that people have to win the intellectual argument. That is something that the government ought to give consideration to in the next couple of weeks: senators will be exercising conscience votes, they will be listening closely to the argument and they will want to be convinced.

I have not done the numbers but, judging from the indicative votes on the cloning bill—and I could be wrong in terms of the embryo bill, so I will not put this too strongly—there seems to be a small majority of senators inclined to support the legislation. But I do not think that that majority will hold on all occasions just because someone says COAG said this or because someone says the government wants it that way. We had an indication of that the other day with the 63 to 9 vote on a particular amendment. On that occasion, the official Labor Party view was to support the amendment. That
accounted for some of those numbers, but it certainly did not account for them all. It was a reflection that senators who listened to the debate had not been convinced and voted accordingly. I am sure that that will be the case in the committee stage of this bill. I do not want to lecture or patronise anyone about this, but it is important that we understand that people will need to win the intellectual debate by the strength of their argument. I point out that I am speaking on my own behalf as an individual senator searching his conscience on this issue at the moment, but I do think it will be necessary for us to win discussions inside the chamber by strength of argument.

Therefore, I will not be supporting the amendment proposed by Senator Bishop. I do not think that is appropriate in the objects clause—that is a personal and party view. But I do think that Senator Bishop has raised an important issue about whether COAG’s decision is fully reflected in the bill. He has also raised the concern, which has been expressed around the chamber—which I think is shared by all senators and, I am sure, is shared by Senator Patterson—that, to the extent possible, we limit the number of embryos who are impacted on by any research needs. There will be opportunities later in the process of the bill to come to those issues again. I am sure that Senator Bishop has the persistence to again raise these issues under a different heading. I gather there is some debate over whether it is applicable but, clearly, section 21 seeks to lay out the conditions that would apply. As Senator Bishop has pointed out, it does strike people as strange that there is nothing that gives effect to what seems to be the broad COAG agreement and the broad Senate view that, to the extent possible, we ought to be limiting the number of embryos who are affected by legitimate research needs. I say that again without my formal ALP hat on as a cautionary note and to reflect the view that, while people will want to give force to COAG decisions, they will not necessarily accept an argument purely on the basis that COAG decided it. Senators will want to exercise their own conscience and their own decision making powers.

Having said that by way of a personal interlude, I return to put on my Labor Party hat, which up to now has been consistent with the positions I have, without any concern, adopted. I have supported the official Labor Party position personally and have been very happy with the approach taken. But I do think we need to exercise caution about how the debate proceeds when we return in a couple of weeks time. We need to seriously address those arguments that have been raised on this issue and provide a serious response. The intervening period will allow that to occur, but obviously we will have similar issues on other amendments and we have to make sure that rigour is applied. I know that that will be the view of senators, and they have displayed that already. That is worth our taking on board. As I say, with my official Labor Party hat on and in my personal view, I do not think the objects clause is the place to do what is proposed by Senator Bishop’s amendment. I do not support Senator Bishop’s amendment, but I think he has raised a very important issue that will be the subject of consideration. If it is not carried here, I am sure it will present again in some other form.

Senator HOGG (Queensland) (12.07 p.m.)—I have not participated directly in the debate this morning but, having listened to the debate on this issue, I now share the concerns that have been raised by Senator Evans in his non-party-political hat, speaking as Senator Evans. These concerns have also been expressed by other colleagues around this chamber. I think this really gets to the difficulties that may well be experienced in this debate. I think it is something, as Senator Evans has said, that needs to be taken into consideration. The committee knows that I have moved a number of amendments to this bill. I have always been an advocate of this bill progressing as swiftly as possible and that is what I have always endeavoured to do in my attempts to participate in this debate.

It seems to me that a number of the amendments that I have raised arise specifically out of the issue of COAG. It is very important—and I think this is something that needs to be done, as Senator Evans has indi-
cated—that those amendments be taken into consideration over the next fortnight. In that way it may well be that the bill will be expedited in its passage through here. There are still going to be other issues where there are fundamental areas of disagreement between the views of a number of people around this chamber and the government view. I think that will lead to a healthy, robust debate.

As Senator Evans said, if you have the consent and agreement of a sufficient number of colleagues in this place on your amendment then it will get up. That is fair enough. On this occasion, many of the senators are paying very close attention to the debate that is taking place. I think Senator Evans was correct in saying that shifts and changes in voting patterns will take place on a number of amendments that are before this chamber. One would hope that is the case, otherwise it will be a very sterile debate indeed. It will be a debate that, at the end of the day, will account for naught in terms of giving the Australian people the best piece of legislation that this parliament can possibly deliver.

I looked at the COAG agreement and I just want to refer to a couple of the clauses, because I think this really gets to the heart of things. In clause 6 it says:

The following principles should underpin nationally-consistent legislation …

Clause 6.1 says:

... legislation should ensure appropriate ethical oversight of research involving embryos based on nationally-consistent standards …

So that is fine. Clause 6.2 says:

... the nationally-consistent standards should be clear, detailed and describe the ethical issues to be taken into account, research which may be permitted and the conditions upon which it may be permitted …

It goes on:

... these national standards should be applied consistently throughout Australia, recognising that jurisdictions may use different mechanisms to establish that proposals comply with the national standards …

So we are not necessarily trying to write legislation for the individual states; we are adopting Commonwealth legislation for use by the Commonwealth government. Obviously, the aim of that legislation is that there will be consistency throughout the various jurisdictions in Australia. Clause 6.4 then goes on to say:

... the system should provide for public reporting of research involving embryos so as to improve transparency and accountability to the public …

Forget the reporting for one moment. To me, transparency and accountability are significant issues in any piece of legislation that comes before this parliament and none more so than in this piece of legislation. There should be both transparency and accountability. The transparency comes about in the application of the COAG agreement. While this is meant in the end not to dictate to but form part of a nationally consistent framework, one would expect that this committee nonetheless will bear in mind the appropriate agreement that has been made through the COAG principles.

I turn to appendix 1, which is headed ‘Regulatory regime criteria for research uses of excess assisted reproductive technology (ART) embryos’. It states:

Governments agree to put in place a strict regulatory regime …

So it is not a loose regulatory regime, but a strict regulatory regime. To me, the word ‘strict’ is fairly confining and defining. Yet, based on the issue that has been raised by Senator Bishop and a number of others here today, although I have not got Senator Bishop’s amendment before me at this stage—and while Senator Evans says that he thinks the objects clause is not the correct place for the issue of limiting the number of embryos available for research—that clearly is the intent of the COAG agreement. The third dot point under appendix 1 says:

... the procedure involves a restricted number of embryos and a separate account of the use of each embryo is provided to the ethics committee and the national licensing body …

So I do not think it is unrealistic for Senator Bishop to ask in his proposed amendment for a limit on the number of human embryos used in regulated activities to the minimum necessary to achieve the purposes of those activities. I do not think it is unfair at all. I am not going to proceed much further be-
cause I think that the debate should really be

got on with, but I believe, Minister Patterson,

that there needs to be some fairly solid

analysis done of the amendments that are

being proposed where they raise issues of

consistency with the COAG agreement.

Whilst the government may not necessarily

agree to the words proposed by the various

amendments, it may well be able to seek an

alternative amendment which may be ac-

ceptable to the proposers of the amendments.

I think there is an opportunity here for a

number of the amendments to be worked

over and an agreement to be arrived at.

I do not know about other senators’

amendments, but when I circulated my pro-

posed amendments—and I note that Senator

Bishop and Senator Collins did the same—I

added a small explanation as to why each

amendment was being sought, because of the

difficulties that a number of senators are

having in this debate. It is quite different

from debates on other bills, because they are

being asked to address the issues based on

their own conscience, and for everyone to

get around every amendment and understand

the importance of that amendment to the per-

son who is proposing it is not necessarily

easy. Not everyone is watching this back in

their room at every moment of the day. Peo-

ple have other commitments. I know that

would upset a few people, but there are

committees of the Senate sitting and there

are people with other commitments who do

not know precisely what is going on in the

debate. That is why I have circulated my

amendments with those explanations. I do

not know if it is possible for any other sena-

tor who is involved in this debate to do that

for their amendments, but it may well assist

the process of expediting this bill through the

Senate. Senator Bishop has raised some very

valid issues indeed. I commend to the min-

ister that the issues that I and others have

raised be taken into consideration over the

next non-sitting fortnight.

Senator STOTT DESPOJA (South Aus-

tralia) (12.18 p.m.)—In addition to some of

the more informal discussions that are occur-

ring around the chamber, I will make a brief

comment on the record. I think Senator Ev-

ans made some very appropriate points.

Firstly, I make it clear, as I have done in in-

formal discussions, that I will not be sup-

porting the move to insert these changes into

the ‘Object of Act’ clause. Notwithstanding

the vigorous debate and the convincing ar-

guments that have been put forward, I do not

think it is an appropriate place for such an

insertion if you want to make reference to

limiting or restricting the number of em-

bryos.

I do think the purported inconsistency

between the COAG communique and the

legislation is an area that deserves attention,

and that vibe has certainly been picked up by

most people in the chamber. I certainly do

take to heart Senator Evans’s point that the

exciting aspect of conscience votes in this

chamber is that we are forced to think about

individual amendments and bits of legisla-

tion and also that we get robust debate and

need convincing. Sometimes we need very

strong counterargument too. I appeal to the

government and to advisers to consider that

if there are questions such as, ‘Why is there a

distinction between the COAG information

and the legislation with which we are deal-

ing?’ and these issues have not been suffi-

ciently explored at the committee stage or we

have not had a response that has satisfied

some members of the parliament, and if there

is a good reason why there is an inconsis-

tency and that is explained to the chamber,

there are people who are more than happy to

be swayed by those counterarguments, inas-

much as we are prepared to listen to and be

swayed by the amendments before the chair

as well.

My position in relation to changes to the

‘Object of Act’ clause has not changed. We

will not be supporting that proposed amend-

ment, and that has been conveyed privately

and now. Secondly, if over the coming

weeks, as Senator Evans has suggested, the

government would like to provide a different

or enhanced rationale but at the same time

other members of the Senate would like to

look into whether there is an appropriate

place to discuss this issue and make changes—certainly section 21 of the bill has

been proposed as a possible area for amend-

ment—let us do that. Let us use the next two

weeks to resolve some of these outstanding
issues. That would give us a better chance to look at all of these amendments in detail and then hopefully on 2 December whip through this bill—

Senator Hogg—Whip!

Senator STOTT DESPOJA—Let us be honest then: we will probably spend all night working very hard on this legislation in the hope that we can get a regulatory system and scheme up and running that also solves all of our concerns and aspirations.

Senator JACINTA COLLINS (Victoria) (12.22 p.m.)—Thank you, Senator Stott Despoja and Senator Evans. I endorse your reflections on an alternative way of dealing with this, and I am glad you have responded to my detailing of the situation in relation to the current guidelines, the COAG decision and this bill. Before Senator Bishop foreshadows his response to that, there is one issue, alluded to by Senator Evans, that I should comment on briefly which I think will assist further debate. If I understood Senator Evans correctly he indicated that, to his knowledge, COAG had informed the drafting of the objects provision of this bill. Before Senator Bishop foreshadows his response to that, there is one issue, alluded to by Senator Evans, that I should comment on briefly which I think will assist further debate. If I understood Senator Evans correctly he indicated that, to his knowledge, COAG had informed the drafting of the objects provision of this bill. So far I have not seen an indication that that is the case. For instance, I am not aware that the communique is pretty clear on their intent in quite a number of areas, but I am not aware that the precise detail that arose out of the consultation process was actually returned to COAG, or if indeed there was any detailed consideration of issues such as those we are addressing now concerning areas where things are expressed differently and how that might impact on a strict regulatory regime.

I am interested in an answer to that question beyond just, ‘Yes, it went back to them at some meeting and they said, “Yes, that’s great,” and off it went’—that is, I am interested in the extent to which COAG may have been informed of the various bits of advice that the Senate has now received through its committee process, such as AHEC’s views about whether this would in fact achieve a strict regulatory regime and their suggestions. I use as an example there—and I hope by now that Senator Patterson is aware of this example, which relates to my amendments (1) and (2)—the exemption in the bill for diagnostic testing. I am aware that in the debate in the House of Representatives the minister indicated that he was still not satisfied with how well that provision had been drafted. The committee then sought to explore that issue further. Through the committee’s explorations we discovered, in a way we would not have been informed by the NHMRC, that AHEC had indeed not been satisfied with the drafting changes to the diagnostic exemption. We are now in the position of being able to reflect on AHEC’s advice on how they think we can most appropriately close that loophole.

So on the one hand you can say, ‘Yes, mechanically it might have gone through a COAG process,’ but if we do not know whether COAG was informed of some of these issues and in fact addressed them, it is very difficult to say that COAG had a role in the drafting of this particular object provision. I would encourage senators not to take a loose interpretation of those sorts of reflections. It is good for us to know if COAG had an active role in the way a particular provision in this bill is worded, but if that is not the case, I would encourage any of the advisers to the parliament in this process not to seek to portray that as being the case. Perhaps between now and when we come back to this debate we can get some clarity on many of the issues relating to how some of the drafting provisions have been established. I will go back to the two commas as an example. At no stage, even though I did raise this informally with the NHMRC, have I had any explanation for how or why, in the drafting process, that occurred. I can only reiterate Senator Evans’s comments that what we will require in this debate is the intellectual case to justify these circumstances—and light references to ‘Oh yeah, but COAG …’ are not going to satisfy this committee.
Senator MARK BISHOP (Western Australia) (12.27 p.m.)—I want to thank Senator Evans for his strategic intervention. It is always good to work with professionals.

Senator Chris Evans—I’ll be shot now!

Senator MARK BISHOP—I have just ended his career. We are all professionals! His advice was useful and I have taken it on board. Accordingly, I withdraw amendment (1), which is currently before the chair for discussion. I indicate an intent later in the committee proceedings to move a similar amendment to clauses 21 and 24, and other clauses if appropriate. I take on board, and will consider, the comments made by both Senator Stott Despoja and Senator Evans that the appropriate place for such a provision, if there is to be such a place, is not the objects clause but may be elsewhere in the bill.

Senator BARNETT (Tasmania) (12.29 p.m.)—I notice the time factor, Mr Temporary Chairman, so thank you for the opportunity in the time available to speak to these amendments, which relate to the issue of consent—a very important part of this Research Involving Embryos Bill—which is set out in clause 8 of the bill. At the moment I believe the clause is deficient, thus the reason for the amendments. I have prepared an explanatory note that I have forwarded to other honourable senators in the last few days, but I would like to go through that and get it on the record so that people are aware and, over time, can consider the arguments. Amendment (R3) specifies some elements of the nature of the proper consent—

The TEMPORARY CHAIRMAN (Senator Cook)—Senator Barnett, you need to seek leave to move your amendments together.

Senator BARNETT—Indeed, that is a very fair comment, and I seek leave to move the amendments together.

Leave granted.

Senator BARNETT—I move amendments (R2) and (R3) on sheet 2694 revised:

(R2) Clause 8, page 6 (line 26) to page 7 (line 7), omit the definition of proper consent, substitute:

proper consent has the meaning given by section 8A.

(R3) Page 7 (after line 20), after clause 8, insert:

8A Meaning of proper consent

(1) In this Part:

proper consent, in relation to the use of an excess ART embryo, means:

(a) consent obtained in accordance with the Ethical Guidelines on Assisted Reproductive Technology (1996) issued by the NHMRC; or

(b) if the Chairperson of the NHMRC Licensing Committee specifies, by notice in the Gazette, other guidelines issued by the NHMRC—consent obtained in accordance with those other guidelines.

(2) It is a condition of proper consent that the donor:

(a) receives independent counselling; and

(b) receives written notification of, understands and consents in writing to the specific application to which the ART embryo will be put; and

(c) has a cooling-off period of 7 days.

(3) At all times a donor is to have access to the information about the use to which that donor’s embryos were put.

Senator Harradine—I ask for clarification: are they amendments (1) and (R2)?

The TEMPORARY CHAIRMAN—It is (R2) and (R3).

Senator Harradine—What happened to amendment (1)? Is it on one of the sheets that I have in my hand? Is that what we are looking at?

The TEMPORARY CHAIRMAN—I am just obtaining an answer for you, Senator Harradine.

Senator BARNETT—Perhaps I can help with that one. That is actually set out on page 5 of the running sheet, in relation to clause 42 and clause 2. They go together, so we need to debate my amendments to clause 42 and then, subject to what happens to it, we move to clause 2. It is all related to clause 42; it is a consequential amendment. It relates to an anomaly in the bill.

The TEMPORARY CHAIRMAN—I think the answer to your question, Senator
Harradine, is that it is there but we have not got to it yet.

Senator Barnett—The amendments specify some elements of the nature of proper consent that this bill will require to be obtained from all responsible persons—that is, parents, gamete donors and their spouses—in relation to excess ART embryos before such embryos may be used for research under a licence from the licensing committee. The bill refers to the present ethical guidelines on ART 1996, and that is an important thing to take into account. It is the ART 1996 guidelines that the bill refers to specifically, and I will talk about that shortly.

The consent provisions in these guidelines primarily deal with consent of participants to ART treatment. They do not adequately address the very different consent to the use of excess embryos for research purposes that will ultimately and inevitably involve their destruction. The guidelines allow for counselling in relation to ART treatment to be carried out either within the clinic where the treatment will be received or independently. The amendments specify that counselling must be independent. Couples undergoing ART treatment at a clinic often form very complex relationships with clinic staff as they go through the emotional roller-coaster ride of successive attempts at IVF treatment. It seems a better safeguard to ensure a fully free and informed consent to require counselling in relation to the use of excess embryos to be independent of both the clinic and the researchers seeking to obtain the embryos. Similarly, legislation relating to organ donation requires that discussion regarding such donation be conducted by a person independent of both the clinical team treating the patient and the transplant team. So we are looking at a process that is not dissimilar to the organ donation process in terms of consent.

Importantly, and I think this is incredibly fundamental, the amendments require a person to be notified in writing and that they should understand and then consent in writing to the specific application to which the ART embryo will be put.

This is important and is entirely consistent with COAG. I would like to refer to the COAG 5 April communiqué where it talks about consent. It says:

... including requirements for the consent of donors and that the embryos were in existence at 5 April 2002. Donors will be able to specify restrictions, if they wish, on the research uses of such embryos.

It is in the communiqué; the amendments are consistent with the communiqué. What is not in the bill is what has been said in the communiqué and, not only that, it was said widely and publicly time and again that the donors would be able to specify the type of research their embryos would be used for. I know what the response from the government advisers will be: ‘Oh, well, we can set that out in the guidelines.’ That is not good enough. We are setting the guidelines here in this parliament; we are creating the legislative framework today that will apply for months and years well into the future, and saying that it will be set up under the guidelines is not good enough.

Let us talk a little bit about the guidelines. Senator Collins has previously discussed the guidelines—the ethical guidelines for ART 1996—at some length in this place. They have been referred to in our committee report at some length. They are draft guidelines. They are currently under review. As a committee, we were not able to comprehensively consider or review the guidelines because the response from the advisers was, ‘They’re currently under review, so they’re not that relevant to the committee today.’ I find that staggering: we are creating a framework which will apply for years into the future and we have draft guidelines which are currently under review. So we do not even know what the guidelines are. I find that hard to comprehend, and that is why I will be supporting the foreshadowed amendment from Senator Collins which states that this whole regime cannot start until the guidelines are agreed to and the regulations are in place, because what we are doing is setting up a regime to
start without knowing what the regime will look like in any event.

The amendments are entirely consistent with the COAG agreement, and that is a key point that I want to make about that part of the amendments. Amendment (R3) contains three subclauses. The second subclause includes reference to a cooling-off period of seven days. As the excess embryos that may be used in research will be in frozen storage, and research projects require substantial planning time, there seems to be no valid reason not to allow people sufficient time for reflection before they consent to the irreversible destruction of and research on their human embryos for which they are the responsible persons. Cooling-off periods are standard in contractual legal agreements like this for all sorts of reasons and for things less weighty than agreeing to destructive research on human embryos.

Finally, amendment (R3) provides that each responsible person be given access to information about what actually happens to their embryo. This is similar to the needs of organ donor families who are given information about the outcome of the donation. Not every responsible person will want to follow up on this—that is fine; that is within their rights—but those who desire information about these things should have the legal right to obtain it. I notice that that sentiment is consistent with the principle set out in a recent motion by Senators Andrew Murray and Aden Ridgeway regarding access to certain information about their past heritage.

They are the points that I would like to make. In light of the time available, it may be of merit for this chamber—because there are a lot of other things I could add—to receive a short response from government advisers so that we get a feel for where we are at, having regard to the time situation. If all the amendments are entirely acceptable, we can move on. If they are not, we can look at the reasons why and consider those reasons more carefully in this three-week period that we have to consider these amendments.

I commend the amendments to the committee. I can anticipate the response: ‘The guidelines are already there.’ But they are for ART technology, which is totally different. They could say that the guidelines could be set up in the future but, if we accept that proposal, if these amendments do not go through, what we are saying is, ‘Here is a blank cheque; here is a blank regulatory regime.’ At this stage a one-line signed consent would be adequate. That is totally unsatisfactory, and we need a better regime. We are creating the legislative and regulatory environment today in this chamber, and it needs to be tight. I hope to receive a response, at least at an interim level, from the government.

Senator JACINTA COLLINS (Victoria) (12.42 p.m.)—On this particular matter, I would like to draw the committee’s attention to an issue that I raised earlier in relation to the Australian Health Ethics Committee. This is a theme that will carry through quite a number of the amendments. I have sought to get advice—different from my own personal ethical position—on how best we make this the strict regulatory regime that was the COAG intention. The Australian Health Ethics Committee has also touched on this issue in its opinion that the proposed regulatory system would not deliver the strict regulatory regime required by COAG if it did not deal with some grey areas of the draft bill—for instance, those terms open to interpretation such as ‘proper consent’.

This area of consent is one where AHEC has also indicated that a more detailed approach is necessary. We are in a similar position on this issue to the guidelines matter. Whether the parliament seeks to detail every single aspect of what we think is adequate in relation to how such matters should be interpreted to deliver a strict regulatory regime or whether we rely on the NHMRC and AHEC to detail how they think the likes of guidelines or regulations in such matters are best expressed is open to debate. Certainly, in this case, Senator Barnett has sought the ‘let’s try to detail it thoroughly in the bill’ approach. I think AHEC’s position on how best to deal with this issue is, in my mind, still quite grey, because it has been very difficult to get full details. The committee will be familiar with my approach in trying to ensure that AHEC gave us the benefit of their advice.

Progress reported.
CRIMINAL CODE AMENDMENT
(OFFENCES AGAINST AUSTRALIANS)
BILL 2002
Second Reading
Debate resumed from 13 November, on motion by Senator Alston:
That this bill be now read a second time.
Question agreed to.
Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

AUSTRALIAN ANIMAL HEALTH
COUNCIL (LIVE-STOCK INDUSTRIES) FUNDING
AMENDMENT BILL 2002
Second Reading
Debate resumed from 21 October, on motion by Senator Ellison:
That this bill be now read a second time.

Senator O’BRIEN (Tasmania) (12.46 p.m.)—The Australian Animal Health Council (Live-stock Industries) Funding Amendment Bill 2002 will enable levies and charges to be appropriated to Animal Health Australia to repay the Commonwealth for underwriting the livestock industry’s share of costs of responding to emergency animal diseases. In 1998, the then Agriculture and Resource Management Council of Australia and New Zealand, known as ARMCANZ, agreed to develop a national policy on funding principles for pest and disease emergency management. The Australian Animal Health Council, also known as Animal Health Australia, undertook industry consultation and coordinated the development of a new emergency animal disease response cost sharing arrangement. The government advises that this arrangement has broad industry support. This arrangement, known as the Emergency Animal Disease Response Agreement, provides for cost sharing between affected industries and government. It replaces a previous Commonwealth-state agreement.

Under the Emergency Animal Disease Response Agreement, the Commonwealth will underwrite the costs of reacting to an emergency animal disease outbreak, subject to an appropriate repayment scheme involving participating industries. Livestock industries subject to this arrangement will fund their responsibilities through a new animal health disease levy. The levy will initially be set at zero with the exception of the honey bee industry, as this industry has chosen to impose a levy to create a funding reserve.

The new animal disease response levies and charges will be imposed on the participating industries by regulation under the Primary Industries (Excise) Levies Act 1999 and the Primary Industries (Customs) Charges Act 1999. To allow the repayment arrangements to come into law, it is necessary to amend the Australian Animal Health Council (Live-stock Industries) Funding Act 1996. These amendments will enable repayments to be appropriated to the Australian Animal Health Council from consolidated revenue and used to repay the Commonwealth. Once a debt to the Commonwealth is known, the emergency animal disease levy will be activated and the levy funds will flow to the Commonwealth. These funds will then be disbursed to the Australian Animal Health Council. That council will manage the funds on behalf of the relevant industry and repay the industry’s debt to the Commonwealth.

The bill provides for any levy funds collected in excess of the Commonwealth debt to be redirected to the promotion or maintenance of animal health, including redirection to the industry’s research and development corporation. These levy funds redirected to research and development will not be matched by the Commonwealth. The government—particularly the current Minister for Agriculture, Fisheries and Forestry, I might say—do not have a great record on livestock industry matters. The minister’s ongoing war of words with the beef industry’s peak bodies and his bungling of the administration of Australia’s US beef quota are good examples of that poor performance. Nonetheless, I would have to say that it seems the minister has, in this instance, been prepared to work cooperatively with Australia’s livestock industries to develop a new animal disease response arrangement, and this bill is a key component of this arrangement. In this case, I am therefore pleased to
indicate the support of the opposition to the government’s legislation.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.50 p.m.)—The Australian Animal Health Council (Live-stock Industries) Funding Amendment Bill 2002 has the full support of industry groups and producers. It establishes arrangements for the long-term funding of emergency animal disease outbreaks and assists in providing certainty for the planning of the responses to those outbreaks. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

HEALTH CARE (APPROPRIATION) AMENDMENT BILL 2002
Second Reading
Debate resumed from 11 November, on motion by Senator Kemp:
That this bill be now read a second time.
Question agreed to.
Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

EXCISE LAWS AMENDMENT BILL (No. 1) 2002
EXCISE TARIFF AMENDMENT BILL (No. 2) 2002
Second Reading
Debate resumed from 17 October, on motion by Senator Ian Campbell:
That these bills be now read a second time.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.51 p.m.)—The changes in the Excise Laws Amendment Bill (No. 1) 2002 and the Excise Tariff Amendment Bill (No. 2) 2002 are intended to address the concern that the practice of overstating alcohol content on the label could spread because manufacturers may gain a competitive advantage from offering what looks like an expensive drink at a relatively low price. This represents a risk to the revenue, and the changes to these bills represent an important correction of the excise system with regard to alcohol. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

Third Reading
Bills passed through their remaining stages without amendment or debate.

TAXATION LAWS AMENDMENT BILL (No. 5) 2002
Second Reading
Debate resumed from 11 November, on motion by Senator Kemp:
That this bill be now read a second time.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.52 p.m.)—The Taxation Laws Amendment Bill (No. 5) 2002 represents the government’s commitment to a better tax system on two fronts: responsiveness to emerging problems with the existing law and the finetuning of tax reform measures. It contains four measures—all of which will be of value to taxpayers or to the integrity of the tax system. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

BROADCASTING LEGISLATION AMENDMENT BILL (No. 1) 2002
Second Reading
Debate resumed from 25 September, on motion by Senator Ian Campbell:
That this bill be now read a second time.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.53 p.m.)—The Labor Party has circulated a second reading amendment to the Broadcasting Legislation Amendment Bill (No. 1) 2002. This legislation amends the Broadcasting Services Act to delay the start of the high definition television, HDTV, obligations on broadcasters. The proposed opposition
amendment delays the introduction of the 20 hours per week high definition quota on metropolitan, commercial and national television broadcasters by six months—that is, until July 2003. This is a holding action to enable the government to finalise legislative changes to the government’s high definition television legislation, including flagged changes for an annualised rather than a weekly high definition quota. To ensure industry certainty in the television broadcasting sector, Labor will not oppose the bill. However, we do condemn the Howard government and Senator Alston for their botched digital television policy. Therefore, on behalf of the opposition, I move:

At the end of the motion, add “but the Senate condemns the Government for:

(a) continuing to fiddle with its disintegrating digital television regime without addressing the overall problems inherent in the regime;
(b) refusing to acknowledge that its digital television regime is failing, particularly with respect to the very poor consumer take up of digital receivers;
(c) creating confusion in the broadcasting sector by promoting multi channelling but not acting to enable it to occur;
(d) maintaining a failed datacasting strategy which has been completely rejected by the media sector;
(e) granting $260 million in digital television conversion funding rebates to the regional television networks to cover the cost of digital conversion without entrenching guarantees that existing services such as regional news services would be maintained.”

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.55 p.m.)—All I would say in response to Senator Mackay is that the government remains committed to HDTV as an important element of the digital television landscape.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

Sitting suspended from 12.57 p.m. to 2.00 p.m.

MINISTERIAL ARRANGEMENTS

Senator HILL (South Australia—Leader of the Government in the Senate) (2.00 p.m.)—by leave—I inform the Senate that Senator Kay Patterson, the Minister for Health and Ageing and the Minister representing the Minister for Ageing, will be absent from question time today. Senator Patterson is representing the Prime Minister at the cleansing ceremony at the site of the bombing in Kuta in Bali. During Senator Patterson’s absence, Senator Vanstone will take questions relating to health and ageing. I also wish to inform the Senate that earlier today Senator the Hon. Ian Macdonald was sworn in as the Minister for Fisheries, Forestry and Conservation.

Senator Conroy interjecting—

Senator HILL—No, it is an expanding empire, I would say, in recognition of exceptional capabilities. The new ministerial title better reflects Senator Macdonald’s responsibilities for the Australian fishing industry.
and aquaculture matters. For the information of honourable senators, I table a revised ministry list and seek leave to have it incorporated in Hansard.

Leave granted.

The document read as follows—

THIRD HOWARD MINISTRY

14 November 2002

<table>
<thead>
<tr>
<th>Title</th>
<th>Minister</th>
<th>Other Chamber</th>
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<tbody>
<tr>
<td>Prime Minister</td>
<td>The Hon John Howard, MP</td>
<td>Senator the Hon Robert Hill</td>
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<tr>
<td>Parliamentary Secretary to the Prime Minister</td>
<td>The Hon Jackie Kelly, MP</td>
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<tr>
<td>Minister for Transport and Regional Services (Deputy Prime Minister)</td>
<td>The Hon John Anderson, MP</td>
<td>Senator the Hon Ian Macdonald</td>
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<td>Minister for Regional Services, Territories and Local Government</td>
<td>The Hon Wilson Tuckey, MP</td>
<td>Senator the Hon Ian Macdonald</td>
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<td>Parliamentary Secretary</td>
<td>Senator the Hon Ron Boswell</td>
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<td>Treasurer</td>
<td>The Hon Peter Costello, MP</td>
<td>Senator the Hon Nick Minchin</td>
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<td>Minister for Revenue and Assistant Treasurer</td>
<td>Senator the Hon Helen Coonan</td>
<td>The Hon Peter Costello, MP</td>
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<tr>
<td>Parliamentary Secretary (Manager of Government Business in the Senate)</td>
<td>Senator the Hon Ian Campbell</td>
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<td>Minister for Trade</td>
<td>The Hon Mark Vaile, MP</td>
<td>Senator the Hon Robert Hill</td>
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<td>Minister for Foreign Affairs</td>
<td>The Hon Alexander Downer, MP</td>
<td>Senator the Hon Robert Hill</td>
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<td>Parliamentary Secretary (Foreign Affairs)</td>
<td>The Hon Chris Gallus, MP</td>
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<td>Minister for Defence (Leader of the Government in the Senate)</td>
<td>Senator the Hon Robert Hill</td>
<td>The Hon Danna Vale, MP</td>
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<td>Minister for Veterans' Affairs</td>
<td>The Hon Danna Vale, MP</td>
<td>Senator the Hon Robert Hill</td>
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<td>Minister Assisting the Minister for Defence</td>
<td>The Hon Danna Vale, MP</td>
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<td>Parliamentary Secretary</td>
<td>The Hon Fran Bailey, MP</td>
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<tr>
<td>Minister for Communications, Information Technology and the Arts (Deputy Leader of the Government in the Senate)</td>
<td>Senator the Hon Richard Alston</td>
<td>The Hon Peter McGauran, MP</td>
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<td>Minister for the Arts and Sport</td>
<td>Senator the Hon Rod Kemp</td>
<td>The Hon Peter McGauran, MP</td>
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<td>Minister for Employment and Workplace Relations (Leader of the House)</td>
<td>The Hon Tony Abbott, MP</td>
<td>Senator the Hon Richard Alston</td>
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<td>Minister Assisting the Prime Minister for the Public Service</td>
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<td>Minister for Employment Services</td>
<td>The Hon Mal Brough, MP</td>
<td>Senator the Hon Richard Alston</td>
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<td>Minister for Immigration and Multicultural and Indigenous Affairs</td>
<td>The Hon Philip Ruddock, MP</td>
<td>Senator the Hon Chris Ellison</td>
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<td>Minister for Citizenship and Multicultural Affairs</td>
<td>The Hon Gary Hardgrave, MP</td>
<td>Senator the Hon Chris Ellison</td>
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<td>Minister for the Environment and Heritage (Vice-President of the Executive Council)</td>
<td>The Hon Dr David Kemp, MP</td>
<td>Senator the Hon Robert Hill</td>
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<td>Parliamentary Secretary</td>
<td>The Hon Dr Sharman Stone, MP</td>
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<td>Attorney-General</td>
<td>The Hon Daryl Williams, AM QC MP</td>
<td>Senator the Hon Chris Ellison</td>
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<td>Minister for Justice and Customs</td>
<td>Senator the Hon Chris Ellison</td>
<td>The Hon Daryl Williams, AM QC MP</td>
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<td>Minister for Finance and Administration</td>
<td>Senator the Hon Nick Minchin</td>
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<td>Special Minister of State</td>
<td>Senator the Hon Eric Abetz</td>
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<td>Minister for Agriculture, Fisheries and Forestry</td>
<td>The Hon Warren Truss, MP</td>
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<td>Minister for Fisheries, Forestry and Conservation*</td>
<td>Senator the Hon Ian Macdonald</td>
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<td>Parliamentary Secretary</td>
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<td>Minister for Family and Community Services</td>
<td>Senator the Hon Amanda Vanstone</td>
<td>The Hon Larry Anthony, MP</td>
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<td>Minister for Children and Youth Affairs</td>
<td>The Hon Larry Anthony, MP</td>
<td>Senator the Hon Amanda Vanstone</td>
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<td>Parliamentary Secretary</td>
<td>The Hon Ross Cameron, MP</td>
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<tr>
<td>Minister for Education, Science and Training</td>
<td>The Hon Dr Brendan Nelson, MP</td>
<td>Senator the Hon Richard Alston</td>
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<tr>
<td>Minister for Education (Deputy Leader of the House)</td>
<td>The Hon Peter McGauran, MP</td>
<td>Senator the Hon Richard Alston</td>
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<tr>
<td>Minister for Health and Ageing</td>
<td>Senator the Hon Kay Patterson</td>
<td>The Hon Kevin Andrews, MP</td>
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<tr>
<td>Minister for Ageing</td>
<td>The Hon Kevin Andrews, MP</td>
<td>Senator the Hon Kay Patterson</td>
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<td>Parliamentary Secretary</td>
<td>The Hon Trish Worth, MP</td>
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<tr>
<td>Minister for Industry, Tourism and Resources</td>
<td>The Hon Ian Macfarlane, MP</td>
<td>Senator the Hon Nick Minchin</td>
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<tr>
<th>Title</th>
<th>Minister</th>
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<tr>
<td>Minister for Small Business and Tourism</td>
<td>The Hon Joe Hockey, MP</td>
<td>Senator the Hon Eric Abetz</td>
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<td>Parliamentary Secretary</td>
<td>The Hon Warren Entsch, MP</td>
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Each box represents a portfolio. Cabinet Ministers are shown in bold type. As a general rule, there is one department in each portfolio. Except for the Department of the Prime Minister and Cabinet and the Department of Foreign Affairs and Trade, the title of each department reflects that of the portfolio minister. There is also a Department of Veterans’ Affairs in the Defence portfolio. Asterisks indicate changes from the last published list.

QUESTIONS WITHOUT NOTICE

**Taxation: Family Payments**

**Senator MARK BISHOP** (2.01 p.m.)—My question is to Senator Vanstone, the Minister for Family and Community Services. What is the minister doing in response to the Ombudsman’s claim in relation to her flawed family payment system that ‘the system inherently results in large numbers of debts’ and that ‘these debts are significantly high’ and that ‘debts arising from the scheme are affecting many low-income families’?

**Senator VANSTONE**—I thank the senator for the question. I do not know where Senator Bishop was when the government made some announcements in July or August making some changes—giving families more choice in this area. There were some implementation difficulties with a very good new family tax benefit policy—a policy that puts $2 billion extra into the hands of Australian families. Those features are well understood by the government and clearly by the opposition. The government made some changes to ensure that families would have more choice, which will avoid them getting overpayments. I say ‘overpayments’ because I do not know of a family who expects to get more than another family in the same circumstances. Where that family has had an overpayment, that family would expect to pay it back. It is not a debt in the sense of money owed in some other way; it is an overpayment of a benefit. I do not know of a family that has argued to me—I cannot recall one—that they should get more money than another family in the same circumstances. I will dig out the announcements that were made giving families more choice to solve these problems and I will have them sent around to your office.

**Senator MARK BISHOP**—Mr President, I ask a supplementary question. When is the minister actually going to fix the grossly unfair system of family payments which has delivered to 650,000 Australian families average debts of $850 per family?

**Senator VANSTONE**—I thank the senator for giving me the opportunity to highlight to his colleagues and to my own colleagues that typical Labor tactic—and that is, ‘When are you going to fix something?’ containing the absolute assertion that something is wrong. Do we hear calls to fix a tax system whereby at the end of the year some people have to pay more and some get a refund? No. Why? Because people understand how the tax system works. The family tax benefit is inextricably linked into that. Senator Bishop, if you do not understand it, the majority of Australian families do.

**DISTINGUISHED VISITORS**

The **PRESIDENT**—Order! I draw the attention of honourable senators to the presence in the chamber of a delegation from Hungary, led by the Speaker of the National Assembly, Dr Katalin Szili. On behalf of honourable senators, I have pleasure in welcoming you to the Senate and I trust that your visit will be both enjoyable and informative. With the concurrence of senators, I propose to invite the Speaker to take a seat on the floor of the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

**Australian Competition and Consumer Commission**

**Senator BRANDIS** (2.06 p.m.)—My question is directed to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Will the minister advise the Senate
of recent developments in ACCC appointment processes?

Senator COONAN—I thank Senator Brandis for his question and his ongoing interest in the ACCC as a professional barrister and as a senator. It is extremely disappointing that a majority of states and territories have failed to support the Commonwealth’s nomination of Mr Graeme Samuel as Deputy Chair of the ACCC. Currently the Chair of the National Competition Council, Mr Samuel is a highly intelligent and competent person with extensive credentials in understanding and implementing competition policy. As the Australian Financial Review reported this morning—quite rightly—lawyers with experience in both business and competition policy who are willing to work in the public sector do not grow on trees. It is a small pool, and it is going to become smaller if every nominee is treated in the same way as Mr Samuel. He has previously been supported by states and territories, including those with Labor governments, in his work at the National Competition Council.

While Mr Samuel’s nomination received strong support from some states, there has not been sufficient endorsement for his nomination to proceed, very sadly. The Treasurer has made it quite clear that some of the comments by state governments about the adequacy of the nomination are simply wrong. The process that was followed for this nomination was the same process that has been followed in every appointment in the ACCC since its inception in 1995. It is a process required by the conduct code agreement between the Commonwealth and the states and requires the Commonwealth to invite nominations from the states. The Treasurer wrote to the states and territories not once, as required, but twice—on 31 May 2000 and 5 September 2000—inviting nominations for a number of ACCC positions, including that of the deputy chair. Only one nomination was received in response, and that came from former Chief Minister Carneal of the ACT. She nominated Mr Allan Asher, the incumbent deputy chair, who was not available for reappointment. Five months after the Treasurer’s second letter, the Acting Premier of New South Wales, Mr Andrew Refshauge, wrote suggesting a person for the deputy chairman’s position. The Treasurer noted that in his recent discussions with Premier Carr he had indicated that he did not wish for that nomination to proceed. After considering possible candidates, the Treasurer then wrote to the states and territories again nominating a candidate: Mr Samuel. The states have had the opportunity to indicate their views. It is absolutely false to suggest that proper consultation processes have not been followed. Indeed, the consultation process that was followed for the nomination of Mr Ed Willett for an ACCC commissioner position followed exactly the same process as that of Mr Samuel for deputy chair. Yet it is only Mr Samuel’s nomination that is being opposed.

What could possibly be driving the rejection of Mr Samuel? The real reason the states said no to Mr Samuel, of course, comes down to it being widely reported that New South Wales was behind the push to reject his nomination. What factor could be so powerful and consuming that it could make a Labor premier or treasurer reject a person they knew to be a talented, capable and qualified candidate? At a meeting on 24 October at the Trades Hall Auditorium in Goulburn Street, Sydney, there was a meeting, and minutes recorded that ‘the President, Comrade Sandra Moait’ was in the chair. It was a meeting of the New South Wales Labor Council, and it called on the Premier of New South Wales to oppose the appointment of Graeme Samuel as ACCC deputy chairman. Guess what? That is where it came from. Surprise, surprise! It was pursued, and within two weeks the comrades of the New South Wales Labor Council had directed Premier Carr not to endorse Graeme Samuel, and that is how it happened. (Time expired)

Taxation: Family Payments

Senator WEBBER (2.10 p.m.)—My question is to Senator Vansstone, the Minister for Family and Community Services. What response does the minister have to a constituent of mine whose appeal against a family tax benefit debt was turned down, notwithstanding that the SSA T accepted that the applicant ‘did not contribute to the debt in any way whatsoever’ and that the debt was
incurred solely through the uneven flow of child support payments? Given that the SSAT accepted that recovery of the FTB debt would be likely to place this family in significant financial hardship through no fault of their own, what hope can the minister give to the many families in this situation that they will not be facing the same hardship again next year?

Senator VANSTONE—I thank the senator for her question. This question has in fact been asked here before recently, possibly by you, Senator. It has just been reworded and attached to an anonymous, possibly even hypothetical, example. Nonetheless, let me go to your question. You ask the question about a family that has had an appeal, and you point out that the appeal has been turned down. I have to say that that immediately makes me think, ‘Hmm, what does that tell you?’ They had an appeal to an independent authority and it was turned down. I would think about that before you put the question this way again.

But let me get to the point of your concern: you say there is a family that, due to the uneven flow of child support payments, ended up with an overpayment of family tax benefit. I would like, and I am sure all of us would like, child support payments to be paid on time, but I have had a couple of examples of this where you have a family—let us take a hypothetical example—that has a $30,000 income and, all of a sudden, a $10,000 back payment of family payments, child support payments, arrives. You are now talking about a family that in that year had a $40,000 income. What you are saying to me, Senator, is that somehow we should treat them as though they did not have that extra inflow of money, that they are still back as a family that has $30,000. Why did the family get an overpayment? Because they suddenly got a lot more income. Somehow, Senator, you want me to believe that a family that has suddenly got a lot more income (a) should keep the additional payments that they have got and (b) has not got the money to pay them back. What did they do with the sudden inflow of additional family payments? What did they do with that money? The situation is that, at the end of the year, this very fair system ensures that a family on the same income with the same number of kids gets the same amount of money. The obvious extension of your question is that, if a family gets a lump sum back payment of family payments from a previous spouse, we should somehow ignore that and treat them as though they did not have that income. It is just not going to happen.

Senator WEBBER—Mr President, before I ask my supplementary question, I seek leave to table the SSAT ruling on this matter. Leave not granted.

Senator Chris Evans—Senator Vanstone said it wasn’t true a minute ago.

Senator Vanstone—I never said it wasn’t true.

Senator Chris Evans—Look at the Hansard.

Senator WEBBER—Mr President, I ask a supplementary question. What action will the minister take to ensure that all families are fully aware of the likely FTB consequences of their income estimates, particularly when uneven Child Support Agency payments make accurate estimates impossible? How does the minister respond to the statements of the SSAT that are in this document in the case of my constituent, who said that the tribunal also appreciates the applicant’s frustration at being faced with a substantial debt that she had no idea that she was incurring and no way of avoiding in the future?

Senator VANSTONE—I thank you for the opportunity, Senator Webber, to speak on the record, lest Hansard alter the text of what I have said, as they have done once before.

Senator Faulkner—How terrible!

Senator VANSTONE—I notice that Senator Faulkner says it is terrible—it is a funny thing, but it was words of his and my response that were removed.

Opposition senators interjecting—

Senator VANSTONE—It was not at my instigation, I hasten to add.

The PRESIDENT—Order! I remind honourable senators on my left that shouting across the chamber is disorderly.
Senator VANSTONE—Let me make it quite clear. You will not find in Hansard me saying that what you said was untrue or that what the appeals tribunal said was untrue. But the fact that appeal was not upheld does tell you something. It is always a difficult thing when people get lump sum back payments of child support. I notice you talk about uneven payments from the Child Support Agency, as if it is their fault. If you have instances where it is their fault that they are uneven, please raise them with me, but I think you will find that the uneven payments are a function of uneven collection of the payments, and that is not their fault. (Time expired)

States: Taxes and Charges

Senator JOHNSTON (2.16 p.m.)—My question is to the Minister for Family and Community Services, Senator Vanstone. Will the minister inform the Senate how excessive state taxes and charges impact on the most disadvantaged Australians?

Senator VANSTONE—I thank the senator for his question. All of us in this place represent states and territories, and at the moment it happens that everyone on the other side represents states and territories that are in government. But the situation has been different and will be different in the future. It is important that senators always recognise that they are not here as empty vessels to do what their state governments want or ask them to do and that they are not supportive of them when they do the wrong thing.

The federal government has a very important role in assisting disadvantaged and low-income people. That is why people on the family tax benefit, for example—the low-income ones that Senator Bishop was referring to—do not have debts on FTBA, because they get the maximum rate and do not have a problem. When we are talking about low-income people, we need to look at how much money is left in their pockets. We can look at how much income they get from welfare, but how much is taken out by state taxes and charges?

When we have a look at this, we see that state taxes and charges either imposed by them or controlled by them in pricing regimes have been going up substantially. I have not heard a whimper from state media about it or, for that matter, much discussion of it in this parliament, and I think there should be, because these charges make a big difference. The cost of electricity and gas is one example; car registrations are another. Public transport is another, where public transport is so inefficiently provided in urban areas that people on low incomes who have either one car on no car are forced to meet very significant expenses. Of course, there are the levies, taxes or charges—call them what you will—on insurance. These are significant everyday expenditures. There are also gambling taxes that mostly come from pokies, ripping money out of low-income families. There are also, of course, conveying taxes that, in effect, mean that where a family wants to have another child and move to another house because they want another room they cannot afford to pay the state for the privilege of doing so. So I think we do need to consider very much the impact that taxes and charges from the states have on low-income Australians.

We are helping low-income Australians. A single-income couple living on a minimum wage with two kids get nearly $10,000—$9,456—in support from this government; that is very significant. But then we see it eaten away by increasing taxes and charges. Too often, the debate on welfare and poverty looks at the amount of money going in and refuses to look at the amount of money taken out by the states. Now the states have got access to GST revenue—Queensland is next year positive; the other states will come on board—it will be even more important for senators in this place to look at and understand state budgets, to look at and understand what the states are doing with their money.

The states will become the major service delivery agents to our constituents, and we should be able to understand their budgets. They should have consistency and transparency at a state level so that not only can the federal parliament understand what is happening with state money but community groups and individuals are able to understand what the states are doing. To be able to un-
understand that is fundamental to a democratic system. In New South Wales, for example, where there was a $39 million underspend, numerous experts have not been able to find how they got away with that and how it could be underspent for so long. Imagine if we tried to not spend $39 million! Imagine if we had a 50 per cent levy on insurance costs in rural Victoria in a year when we have got such drought and such risk of bushfire. Wouldn’t you think somebody in this place would raise it? Wouldn’t you think somebody over there would be interested? (Time expired)

Employment: Job Placement, Employment and Training Program

Senator DENMAN (2.20 p.m.)—My question is addressed to Senator Vanstone, the Minister for Family and Community Services. I refer to the government’s decision to cut a number of services operating across Australia under the Job Placement, Employment and Training, JPET, program. Why were some services notified in writing that they must cease assisting homeless young people as of 31 December this year then two weeks later told that the government is holding off closing the services until after the end of March 2003—that is, after the Victorian and New South Wales state elections? Doesn’t this simply leave vulnerable young people in great distress for a further five months?

Senator VANSTONE—Senator, the JPET program is a very good one, as I am sure you understand. We allocated $74 million to it over four years in funding. This financial year the funding will increase from $18 million to $18.5 million. The department recently conducted an open, competitive business allocation process to determine where the future service should be allocated. A part of this process included a needs analysis to ensure that services are allocated in the areas of the highest need. Over 600 applications were received. There was a great deal of interest from community organisations in this very effective program. As would be expected in any of these business allocation processes, not all incumbents were successful, and it is never surprising to have people complain and be unhappy. Quite often it happens that there are very good providers who do not get the money, either because the service is not required in that area or because there was someone who was better. Appropriately, the Secretary of the Department of Family and Community Services is investigating the complaints, and the business process will therefore be delayed until the investigation is complete. I can assure you, Senator, from every piece of information I have about this, that it has nothing whatsoever to do with any state election.

Senator DENMAN—Mr President, I ask a supplementary question. Minister, is youth homelessness still one of the Prime Minister’s priorities? Why then won’t the minister do more to safeguard the JPET program, which has been evaluated time and time again as the most effective program available to assist young homeless people to get jobs?

Senator VANSTONE—Senator, thank you for highlighting the priority that the Prime Minister puts on youth homelessness. You invite me to remind you of the task force that he set up and the work that the government is doing in that area. I thank you for that acknowledgment. That is still a priority. Nothing that I have said and nothing that I am aware of changes our commitment in that area. Nothing associated with the review of JPET and the business allocation process is in any way related to any diminution whatsoever of our commitment in that area—nothing at all that I know of.

East Timor: Human Rights

Senator RIDGEWAY (2.24 p.m.)—My question is to Senator Hill, the Minister representing the Minister for Foreign Affairs, Mr Downer. It relates to a question I asked earlier this year. Following the acquittal by the Indonesian ad hoc human rights tribunal of six defendants on charges of gross human rights violations in August of this year, Mr Downer expressed his disappointment with the decision but wanted time to review the judgment of the tribunal. Minister, has the government now evaluated the judgments from the tribunal? If so, does the government share any of the serious concerns that were expressed by the then Human Rights Commissioner, Mary Robinson, particularly in
terms of the capacity of the tribunal to comprehensively investigate the Indonesian army’s responsibility for human rights violations in East Timor? Given the global terrorist threat, isn’t it more important than ever that governments work harder to promote and uphold human rights on all fronts, particularly in the Asia-Pacific region?

Senator HILL—I agree with the last point, not necessarily related to the horrible experience of Bali; it is important that we not only adhere to those values ourselves but do our best to work cooperatively with neighbours in further entrenching basic standards of human rights. The Australian government did express some concerns about aspects of the prosecutions. The result was mixed, as I recall it, but the reason that we were not prepared to expand further was that the process of the prosecutions had not been completed. I do not have a brief as to whether that has now been completed, but I will ask that question and return to the honourable senator with a response depending on the circumstance.

Senator RIDGEWAY—Mr President, I ask a supplementary question and thank the minister for that undertaking. Is the minister also aware that Mr Downer has commented in the media that he wanted to speak with the East Timorese government, as the elected representatives of the people of East Timor, about how they intend to respond to the tribunal’s findings? Has the government had discussions of this nature with the East Timorese government and, if not, does the Australian government intend to do so in the near future? Finally, would the government be prepared to support East Timor if it called on the UN to act on the report of the international commission of inquiry, which recommended a tribunal to try those accused of human rights violation in East Timor?

Senator HILL—I think I should also refer that back to Mr Downer and get his response, seeing as it followed from something that he undertook to do. I will do that and add that to my answer.

Small Business: Bank Fees

Senator LUDWIG (2.27 p.m.)—My question is to Senator Abetz, the Minister representing the Minister for Small Business and Tourism. Does the government accept the findings of the Financial Services Consumer Policy Centre that small business now pays more than $2.5 billion each year in bank fees? What is the government doing to alleviate this crippling burden on small business?

Senator ABETZ—I congratulate the opposition for finally asking a question on small business. It looks as though I shamed them into it earlier this week. I welcome the first question from the Australian Labor Party on small business in over 12 months—since the re-election of the Howard government. Mr President, those of us that go around small businesses, and I know you do, in our home state of Tasmania know that small businesses are absolutely delighted by the fact that interest rates are now at a historic low level. Whilst there is, quite properly, concern about bank fees, the vast majority of small businesses look at the total package that they are confronted with. They say they have strong government, capable government, competent government; they are confident about the future; they enjoy low interest rates. But one of the greatest burdens facing small business is, of course, the unfair dismissal laws that Labor introduced and will not repeal. As I was able to tell the Senate the other day, 78 per cent of people responding to a Franchise Council questionnaire indicated unfair dismissal as the most important issue confronting them.

Senator Ludwig—Mr President, I rise on a point of order; it seems that Senator Abetz has now strayed significantly from the question that I asked. I remind the Senate that the question I asked in relation to small business was: there are $2.5 billion each year in bank fees; what is the government doing to alleviate this crippling burden? That was the question I asked. Senator Abetz has now wandered off into industrial relations, but what we are talking about is bank fees crippling small business.

The PRESIDENT—Senator Abetz has 2½ minutes left—I am sure he was coming to answer that.

Senator ABETZ—Mr President, you are quite right. You cannot look at one particular
item in isolation when you have a look at small business. I simply remind Senator Ludwig that the likes of Senator Faulkner, Senator Cook, Senator Ray and others had their feet under the cabinet table for over 13 years, and guess what? Never once did they move to regulate bank fees—not once—because they never thought it a priority. What they thought a priority was ensuring that small businesses could not employ people, by introducing the horrendous unfair dismissal laws that we have been trying to repeal since our election some six years ago. Now we have a situation where, as late as yesterday, the Australian Labor Party voted yet again to ensure that we as a government could not repeal unfair dismissal laws.

I happen to agree with Senator Ludwig that it would be great if we could reduce bank fees for small business. That would be great. But the real burden confronting small businesses, their families and their employees is the fact that they cannot employ another 50,000 fellow Australians because of the Labor Party’s manic determination to keep the unfair dismissal laws in place. Whilst we can fiddle around the edges and talk about bank fees, there are real icons issues for the small business community, such as unfair dismissals. So can I suggest to Senator Ludwig that he not pretend and feign concern for small business when he deliberately votes, as late as yesterday, to stop the reform of unfair dismissal laws.

Senator LUDWIG—Mr President, I ask a supplementary question. Does the minister realise that fees charged by banks to small business are rising at the staggering rate of 18 per cent per annum? Why then is the government opposing the call by the states for an ACCC investigation into bank fees?

Senator ABETZ—One thing I do know is that the small business community appreciate the fact that financial institutions duty, where they had to pay 6c in every $100 that came in, was abolished as part of our tax reform. The Australian Labor Party sought to stand in the way of that very important reform. What Senator Ludwig will not tell the Australian people is how much the small business community have in fact saved as a result of the abolition of the financial institutions duty. It was just one of the many taxes that we removed for business, including the wholesale sales tax, which I think the Labor Party have now finally abandoned as part of their roll-back position. Our record is very strong on small business. What is more, the small business community know that we are the only party that support them. We support them because they are the engine room of job creation. We ask the Labor Party to allow us to create another 50,000 jobs. (Time expired)

Taxation: Family Payments

Senator HARRADINE (2.33 p.m.)—My question is to the Minister for Family and Community Services, Senator Vanstone. In a response to a question by Senator Bishop, the minister indicated that there was another $2 million available for family payments so that families would be better off. If so, how come so many ordinary families with children, particularly one-income families, are finding it more and more difficult to make ends meet? Has the minister seen—and I am sure she would have—the report of the National Centre for Social and Economic Modelling here in Canberra, commissioned by the AMP, which shows huge increases in the cost of raising children? Is the government actively considering measures to provide up-to-date justice for those responsible for the raising of children? If so, what are those measures?

Senator VANSTONE—I thank Senator Harradine for his question. He is widely acknowledged as one of the senators with a very strong and consistent interest in the welfare of families, especially low-income families. I am aware of the NATSEM report to which you refer. Like everybody, I think, I was surprised at the calculation of the cost of raising a first and second child over the period of them being considered children. One is considered a child up to the age of 18 or 20, I think—that was the age they took it to. It is a very significant amount of money. This government has moved to very significantly help families, especially low-income families. The amount of money I referred to in response to the question that Senator Bishop asked was the additional $2 billion, through the family tax benefits A and B,
which is going into the hands of Australian families.

Senator Harradine gives me the opportunity to remind senators, including Senator Bishop, of course, that families earning up to $30,000—which is not a lot compared to what everyone here earns; if you add on families with children earning up to $30,000, it is not a very large income—get the full rate of payments for their children, so they do not have to worry about variations of income until they go past that. Of course, income support goes from lesser levels up to families with even about $80,000 in income. The level of financial stress that a family feels is related not only to the income it has and the state and tax charges that I referred to going out but also to the number of children in that family. That is why the family tax benefit, which focuses very much on your income and the number of children you have, has been of tremendous assistance to families.

Over the next year, the government expects to spend nearly $19 billion assisting Australian families through the family tax benefit, the child-care benefit, the parenting payment, maternity allowance and maternity immunisation allowance. So I think you can see that this government has a very long-standing commitment to families when you add onto that all of the tax changes we have made since coming into government.

An incident having occurred in the chamber—

Senator VANSTONE—Somebody has a phone call; I am not sure who it is.

Government senators—Senator Carr!

Senator VANSTONE—Senator Carr might be being called to a union meeting!

Senator Faulkner—I’m amazed there’s any mobile phone coverage.

Senator VANSTONE—I am pleased to see that Senator Carr’s mobile works even in here. That is what we like to see: delivery of telecommunications around Australia.

Opposition senators interjecting—

Senator VANSTONE—If we can get away from the humour inspired by just one telephone ringing, which is apparently tremendously funny to people on the other side who have nothing else to think about, I will go back to where I was in my answer. Senator Harradine, you might recall that the family tax promises we made before we were elected were delivered on time and in full by a government that faced a $10 billion deficit. We had to fill a $10 billion black hole—all that debt we had to pay off—but we nonetheless delivered on time every cent that we promised to families in that very difficult process. Subsequent to that we have continued to add measures to assist families and, where we can afford it and where it is appropriate, we will continue to do so.

Senator HARRADINE—Mr President, I ask a supplementary question. I go to this question of up-to-date justice for those people who are responsible for raising children. Minister, does the government have any process by which to evaluate why more and more families are finding it harder and harder to make ends meet? We get that information from our electorate officers, obviously, but also from our circles of friends and family. It is occurring. Is there any method used by the government to evaluate that situation to see how many are finding it more and more difficult to make ends meet?

Senator VANSTONE—Senator Harradine, let me give some consideration to that question and whether that is in fact possible. I will come back to you and perhaps have a discussion with you, because there might be something we can do to look at these things. But, of course, I raise the question that was asked of me earlier about state taxes and charges. These impact very heavily on low-income families—more than they do on people like us who, if the electricity bill goes up, simply pay it. If a levy on insurance goes up we simply pay it but, Senator Harradine, you would be aware that, of the third of the homes damaged by the fires in Sydney last year that were not insured, half of the families owning those homes indicated that it was the cost of insurance—which there are significant state levies—which stopped them insuring and meant that they lost the lot. So we will look at what we can do to find out what match there needs to be, but we also need to look at the taxes and charges...
that are put on by the states and we need to look at the aspirations of families. *(Time expired)*

**Arts: Film and Television Industry**

**Senator MASON** (2.40 p.m.)—My question is to the Minister for the Arts and Sport, Senator Kemp. Will the minister advise the Senate of the latest film and television production figures for Australia and will the minister explain how the government’s policies have benefited the industry?

**Senator KEMP**—I thank Senator Mason for that question. I have to say that questions from the Labor Party on the arts and sport are few and far between but, Senator Mason, we appreciate the very strong support that you show for the Australian arts and the Australian film industry. The film industry is one of Australia’s great growth industries.

Last week the Australian Film Commission released its annual national survey of feature film and TV drama production for 2001-02. This survey confirmed the industry’s growth. It also confirmed that the government has got the policy mix right to ensure a robust production industry in this country.

The survey showed that total production expenditure in Australia increased by eight per cent, from $611 million to $662 million, with 39 feature films and 49 TV drama programs made here. This year has also seen an increase in the number of local features, which amounted to a total feature film production spend in Australia this year of almost $130 million. This is a fantastic outcome. It compares favourably with the $79 million spent in the previous year. In fact, 2001-02 was an exceptionally strong year for Australian feature films. Three Film Finance Corporation features passed the critical $5 million mark at the box office and made it into the top 25 Australian films of all time.

Spending on foreign features also increased here last year. Potential investors come, of course, in all shapes and sizes; so must the incentives that are used to attract them. As many in this chamber will know, as part of its package of industry initiatives and funding announced last year, the government announced the film tax offset. A great deal of credit for that must go to the splendid work of Senator Alston in helping to develop this film package. The offset is designed to help Australia attract movies with larger budgets and higher production values, many of them from foreign production houses.

Australian film and TV practitioners are amongst the best in the world. This is also demonstrated by the recent international recognition of their skills and achievements, including major awards such as Oscars and Golden Globes. The federal government has underpinned the success of our film industry, and the government’s unprecedented funding package announced in September last year builds on that support, ensuring our success in the future. Of course, the package supplements other longstanding and successful measures such as tax concessions available for qualifying films. The film industry in Australia is going from strength to strength. It receives very strong support from the government, and I think Australians are indeed proud of the success of our industry.

**Small Business**

**Senator WONG** (2.45 p.m.)—My question is to the Minister representing the Minister for Small Business and Tourism, Senator Abetz. What is the government doing about the devastating impact on small business of late payments by their big business customers?

**Senator ABETZ**—I really have hit a note with the Australian Labor Party, haven’t I? I have finally shamed them into showing some interest in small business. The commercial deals that small business might enter into with big business is a matter, in a free, democratic society, for them to determine between themselves. The terms of trade can be as the various parties agree. Whilst they are concerned about such things as bank fees and late payments by some larger companies, the important thing on the minds of small business that they are genuinely concerned about is getting rid of the unfair dismissal laws that Labor voted against yet again yesterday.

The Australian Labor Party can try to feign some sort of concern for small business by picking up on these esoteric issues on the side, but the fact is that the real issue of con-
cern to small business proprietors right around the country is the unfair dismissal laws that are stopping them from employing another 50,000 Australians. What it also means is that small business proprietors, and those who are fortunate enough to have a job in small businesses, are required to work longer hours to fulfil the demands placed upon them because they are too scared to employ any more people under the unfair dismissal laws.

We have a bevy of state governments around Australia. It would be interesting to know whether they have raised this issue at COAG, if it is a matter of such importance. I do not think they have. It would be interesting to know whether the former federal government, a Labor government, moved on this issue in their 13 years in office. No, they did not. Did they go to the last election with this as an alleged policy? No, they did not. All they are doing is seeking to cover up their failure in relation to the unfair dismissal laws. Until the Australian Labor Party wake up in the area of unfair dismissal laws, the small business community will continue to reject them, as they should.

**Senator WONG**—Mr President, I ask a supplementary question. Does the minister agree with the Motor Trades Association of Australia that Labor’s draft private member’s bill to crack down on late payments should be passed as soon as possible? Does the minister also agree that the bill would, as the MTAA says:...

... be of significant assistance to the many hundreds of thousands of small businesses who find that payments to them by their suppliers and purchasers are now regularly exceeding normal commercial terms.

If the minister does not agree with the MTAA, what alternative solution is he proposing?

**Senator ABETZ**—As is so typical with the Australian Labor Party, they would seek to overregulate absolutely everything. We happen to believe in a free market economy, and it is up to businesses to come to arrangements with their suppliers to ensure that there are appropriate terms of trade entered into to the satisfaction of both sides. As a government, we will not pretend to be the big brother and seek to regulate to that sort of degree. The real challenge for the Australian Labor Party is to get rid of the unfair dismissal laws. Then small business might actually start to believe them. Until the Labor Party deal with that issue, small business will know that they do not support them.

**Taxation: Mass Marketed Schemes**

**Senator MURPHY** (2.49 p.m.)—My question is to the Minister for Revenue and Assistant Treasurer, Senator Coonan. The minister would remember the mass marketed managed investment tax schemes debacle and the difficulties that issue caused for many taxpayers. As we know, the ATO took the Bud Plan case to the Federal Court and won. This case was claimed by the ATO to be representative of the great bulk of taxpayer investments the ATO believed to be in breach of tax law. The minister would be aware that there have now been three further Federal Court cases, all of which have been won by taxpayers. These outcomes prove the ATO’s “Bud Plan equals all” approach has indeed been fair and equitable to the taxpayers involved in the many different schemes?

**Senator COONAN**—I thank the senator for his question. Senator Murphy, I do not think you are quite right in the way you have framed your question. The information I have here is that the Federal Court has now handed down three decisions in relation to typical mass marketed schemes and another decision in relation to a similar scheme. In three of the cases, the commissioner has been successful or partially successful, but it appears that each case is going to have to be decided on its merits. The commissioner is considering the implications of the issues on which he was not successful, but he is obviously not considering going back on his settlement offer in respect of the offer that has proceeded recently. However, the decisions do confirm that it is proper to at least consider the general anti-avoidance provisions in this context. Despite the court action, the commissioner proceeded with his settlement offer and in fact has, as you know, extended
the deadline. The settlement offer took into account that many of the investors in the mass market schemes did have a good tax record, accepted advice from advisers and should have been aware of the tax risks.

The issue with respect to the court cases is that obviously they do need to be analysed very carefully, Senator Murphy; I think that is a fair point. But if you go through each of them—and it would take some considerable time to go through the issues of each of these cases—you will find that the distinguishing features are not ones that would clearly invite reconsideration and reissue of assessments. They are pretty technical cases and what might assist you—and I would certainly be prepared to do this if you are genuinely interested—is a briefing as to the consideration that has been given in respect of each case.

Senator MURPHY—Mr President, I ask a supplementary question. I thank the minister; I note that she said the cases needed to be analysed carefully because they are very technical, and I agree. That is the reason I asked the question as to whether or not the minister would initiate an inquiry. The cases are of a technical nature and what might assist you—and I would certainly be prepared to do this if you are genuinely interested—is a briefing as to the consideration that has been given in respect of each case.

Senator MURPHY—Mr President, I ask a supplementary question. I thank the minister; I note that she said the cases needed to be analysed carefully because they are very technical, and I agree. That is the reason I asked the question as to whether or not the minister would initiate an inquiry. The cases are of a technical nature and I will take up the offer of a briefing, because I think this is an important issue. I am interested and have been interested in these cases for a long time. Again I ask the minister whether she will consider, or at least request her department to consider, a careful analysis of these cases to determine whether or not taxpayers have been treated equitably and fairly.

Senator MINCHIN—This shows how vital the opposition consider this issue to be: Senator Conroy and Mr McMullan gave a press conference on this matter at lunchtime on Monday, I think, and it has taken them until five minutes to three on Thursday for them to raise it with me in the Senate, so it is obviously a really pressing and important issue for the Labor Party in the Senate—a critical matter that they had to bring immediately to the attention of the Senate. Of course, they tried without any success whatsoever in the House of Representatives to make this an issue, and failed again. I note that Mr McMullan has issued a statement saying that they have given up asking any questions about it in the parliament and that they are going to refer the question to Senate estimates. We all wait in fear and trepidation for this fearsome line of questioning that we and the government officials will get at Senate estimates hearings.

This really is a very tired and pathetic line of questioning and attack from the opposition. Someone talked about a dog returning to its vomit, which I recall from the previous government—

Senator Faulkner—It wasn’t Jeff Kennett, was it?

Senator MINCHIN—No, I think it was Paul someone or other who talked about that. This is very much in that vein, because this is all about the massive $96 billion debt that these people left us. It is about their method of dealing with that debt and the methodology that we inherited from them to manage their debt. That is what this issue is all about:
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how on earth do we manage down $96 billion of debt that the previous Labor government left us? When they came into government the debt was $20-odd billion and when they left it was $96 billion. They brought in this cross-currency swap methodology to try to manage down that horrendous debt. We inherited both the debt and the methodology and we have tried to manage down that debt as successfully as we possibly can.

The opposition have scoured through the AOFM reports. They lied about my position: they claimed that Senator Minchin, the Minister for Finance and Administration, had issued some directive to bury information released by the AOFM—a complete and utter lie. There was a directive issued by the former minister for finance, Mr Fahey, last year before this matter was ever raised and it only referred to the way in which the matters were to be presented. At no stage did the ministerial direction suggest at all that there should be any diminution in the information available in these reports.

As to this cross-currency swap procedure, which we inherited from them, the facts are as the Treasurer noted: the realised gain on the portfolio was $144.3 million in nominal terms and $777.4 million in net present value terms, from the commencement of the policy in 1987-88. Despite all the debt and despite that methodology, if you look at it over the whole program you can see that the Commonwealth is still ahead of the game by $700-odd million in net present value terms. The opposition will continue to try to look at various snapshots of this process as we manage down this debt and they will try to make nefarious claims about what it means, but the fact is that we inherited the debt and the methodology, and fortunately for the Commonwealth and for taxpayers we are still ahead of the game on this process.

Senator KIRK—Mr President, I ask a supplementary question. Is the minister aware of this comment by APRA:

If APRA detects a failure to exercise good risk management—for example, serious problems that are swept under the carpet—then we will not hesitate to deem board members and senior executives unfit for their roles and remove them.

Why shouldn’t this apply to the Treasurer?

Senator MINCHIN—It should not apply to the Treasurer, because this Treasurer is probably the most successful Treasurer we have had, certainly since the previous Treasurer in the Fraser government, Mr Howard. He is the one who is responsible for managing down the debt that the previous Labor government left us. He is the one who has reduced the debt by $60-odd billion and saved taxpayers $4 billion every year in interest payments. That is why your reflections should not pertain to the Treasurer, who has done such a magnificent job in managing down your debt.

Information and Communication Technology: Innovation

Senator TIERNEY (2.59 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Will the minister please outline to the Senate the government’s commitment to driving forward its blueprint for information and communication technology innovation in Australia? Is the minister aware of any alternative policy proposals?

Opposition senators interjecting—

Senator ALSTON—I was busy yesterday, you know that. Innovation is a very important issue. It is the engine that creates jobs. It inspires small business. It creates opportunities at all levels. That is why we have just introduced into the lower house some legislation on venture capital, which is a critical ingredient if you are going to be able to commercialise good ideas. We have gone further with our $3 billion innovation action plan, Backing Australia’s Ability, and $129 million from the government and another $96 million from the private sector for a centre of excellence. Those sorts of initiatives are absolutely crucial and they are very policy specific. They are honouring commitments we gave well before the last election, so there has been a carefully thought-out strategy on innovation. We have made sure that there are more places created in schools, and we have ensured that funding is available at all levels.

I am asked, by way of contrast, whether there are any alternative policy proposals. We would all have to say that there is a cry-
ing need for new policy alternatives. If we believe in a healthy democracy and we want the other side of the parliament to be taken seriously, we expect them to have policy initiatives. This was recently identified as a crying need by none other than someone called Craig Emerson. I confess that I had barely heard of him until last week. Do you remember that he was the guy that put in the job application? When he saw that all the dogs were circling, he said, ‘I’ve done nothing for 12 months, but I’m interested in the top job.’ Mr Emerson—

Senator Faulkner—Dr Emerson.

Senator ALSTON—or Dr Emerson, as Senator Faulkner has pointed out—

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left! The last few minutes have been very rowdy. I ask you to come to order. Senator Heffernan, would you please remain seated when the President is on his feet.

Senator ALSTON—What Dr Emerson had to say in a caucus paper recently was that too often Labor policy statements are heavily qualified and lose their meaning with the general public—in other words, the usual plea: ‘No-one knows what we stand for.’ So let us see what he says in his innovation policy document.

Honourable senator—Has he got one?

Senator ALSTON—Yes, he has. There is a preface to it. Senator Carr’s so-called policy discussion paper on research has the same introduction—buyer beware:

Policy options canvassed in the policy discussion paper are not meant to be exhaustive, nor is Labor advocating them at this stage.

But it gets even better: Ultimately all these policy areas will be integrated but seeking to do so at this early stage of developing ideas would be overly ambitious.

So just to make it perfectly clear, he ends by saying:

Creating a vision for the nation is the vital first step. The first step then needs to be followed by a series of further steps ...

Pretty powerful stuff, isn’t it? In other words, Labor have no idea and they have no intention of turning their mind to policy issues.

Just to show that they do not learn, poor old Senator Lundy, you might recall, got a wake-up call a few months ago about the inadequacies of her web site. We have given her plenty of opportunities to rectify it. But what has happened? We have gone back and had another look at it and we see that, under ‘ICT industry development’, it is still blank. And what do we get under ‘Innovation’? We get a speech from November 1999 about spaghetti and meatballs. They are still on about Knowledge Nation. We know it sank without trace, but this seems to be about as much as they can come up with. There is simply nothing there: no innovation ideas; IT statistics are out of date. Crikey.com has pointed out that Mr Tanner, who is nominally the shadow minister for communications, has 1998 election statistics on his web site. It really is a classic example of others doing policy homework, while Labor are asleep at the wheel. (Time expired)

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Telstra

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (3.04 p.m.)—On Monday, 11 November, and Tuesday, 12 November, I was asked by Senator Faulkner, in relation to the COT cases issue, whether I had spoken to Detective Sergeant Rod Keuris from the Victoria Police. On 12 November, Mr Tanner put out a media release asking the same question. In answering Senator Faulkner’s questions, I indicated to the Senate that there was nothing to suggest that I had contacted Detective Sergeant Keuris and that I had absolutely no recollection of speaking to Detective Sergeant Keuris.

I wish to inform the Senate today that I have indeed spoken to Detective Sergeant Rod Keuris—today, for the first time in my life. This morning, Sergeant Keuris rang my office. The record of conversation taken by my office states:

Rod Keuris called reception saying that he wanted it to be on record that he has never spoken
to Senator Alston in his life. He said the reason Senator Alston could not remember the conversation was because it never happened. He was also not very happy that Labor had put out a press release with his name on it. He left his mobile number...

After being informed of that conversation, I rang Sergeant Keuris to ask him whether he was happy for me to mention this matter in the Senate, given that it had been the subject of questions earlier this week. He indicated that he was happy for me to do so and strongly reiterated his concerns about the behaviour of the Labor Party regarding this matter. Some of us in this game are required to have thick skins, but innocent people like Sergeant Keuris do not deserve to be the playthings of the Labor Party. They should not be subjected to such behaviour, and both Senator Faulkner and Mr Tanner owe Detective Sergeant Keuris an apology. I suspect, however, like the Bailleau family, he will have to wait a very long time.

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**Senator COONAN** (New South Wales—Minister for Revenue and Assistant Treasurer) (3.06 p.m.) — Yesterday, Senator Cook asked me a question about AOFM files. I seek leave to incorporate the answer in Hansard.

Leave not granted.

**QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS**

**Taxation: Family Payments**

**Senator MARK BISHOP** (Western Australia) (3.06 p.m.) — I move:

That the Senate take note of the answers given by the Minister for Family and Community Services (Senator Vanstone) to questions without notice asked today.

I want to discuss the flawed family tax payments system that this government brought into operation some three years ago. Before I address some of the comments in the Ombudsman’s report, it is probably useful to remind senators and put on the record the details of the system that the government brought in some three or four years ago.

The details of the package are well known. The government, in introducing the package some years ago, said the changes were going to mean more money, greater benefits and more simplicity for families. The design features of the scheme are also well known. Proposed recipients advise Centrelink of their anticipated income and then advise Centrelink of variations to the proposed income that occur from time to time in an economy such as ours. The recipients receive family tax payments based on the information provided, as amended, to Centrelink, and at the end of the financial year there is the usual balancing activity. Overpayments are recovered as debts; underpayments are paid out. The overpayments are, by and large, stripped back through the taxation system. That is essentially the system that the government brought in some three years ago and which was going to bring much heralded change—more benefits for families, improvements to the system and efficiency introductions. The bottom line was that there would be more, immediate and larger benefits to families, particularly low-income families.

It is obvious to just about anyone—excluding, perhaps, the Minister for Family and Community Services—that the entire system which she brought in is in an absolute shambles. Over 650,000 families—and the figure is going up—were overpaid and have debts, and 400,000 families were underpaid their fortnightly entitlements and only now, at the end of the year, have a catch-up payment. This means that in excess of one million families—one in two in this country—are not being paid their correct fortnightly benefits. That is almost impossible to comprehend. A system designed to assist families has resulted in one in two families who receive benefits receiving the incorrect payment every fortnight. Both of these groups are being disadvantaged. Those who were overpaid are being hit with debts from out of the blue and those who were underpaid missed out on vital payments throughout the year when they needed them.

If we go back to the origins of the system, it was to assist families on a fortnightly basis, particularly low-income families who have need of such assistance. This system has been the subject of some examination in
recent times by the Commonwealth Ombudsman, after a special investigation into the government’s administration of this system. The Ombudsman acted on many complaints that he, his office and members of parliament had received which indicated that many families had been caught up in the government’s debt trap. The Ombudsman’s report has identified 12 core concerns which he saw as indicative and which reflect the problems that families are experiencing now because of the design features of the system introduced by Senator Vanstone some three or four years ago.

Let us look at some of the problems that ordinary families in this country are experiencing every day. Firstly, the Ombudsman said that the system inherently results in large numbers of debts and that these debts are significantly high. Secondly, he said that debts arising from the scheme are affecting many low-income families and their ability to operate satisfactorily. He said that there are situations in which debts are unavoidable, even when families fully comply with all of their requirements. So the design feature of the scheme requires changes in income levels to be notified. When families comply with that regularly, on a fortnightly basis, there are still problems that lead to unavoidable debts being incurred—a funny sort of system to design, you might note. He went on to say that there are situations in which debts seem to have an unfair retrospective effect—that is, changes in family circumstances cannot be anticipated and may be beyond their control, resulting in significant debts and/or losses or detriment. He also said that there may be particular circumstances in which it is difficult to avoid a debt, such as when a previously non-working parent in a two-parent family gains employment or receives some other income. (Time expired)

Senator COLBECK (Tasmania) (3.12 p.m.)—Senator Bishop is quite eager to play in, but what do Labor have to offer? Again, that is the question. Here we are again in a situation where we have had to come in behind Labor and fix up a huge mess. Senator Bishop complains that this system does not provide immediate benefits, but that is exactly what it is designed to do and exactly what it does. Senator Bishop seems to imply that Centrelink in some way is supposed to know exactly what the income details of these families are and yet the payments are based on the income details provided to Centrelink by the recipients. The recipients have the option of making a decision as to whether they underestimate their income so that they can get a tax cheque at the end of the year. A lot of families that I have spoken to make a deliberate decision to do that so that they know that there is going to be some extra money at taxation time. The average payment at the end of the year from the system is a bit over $1,000; $1,028 is the average top-up received by recipients under this system.

I find it a little amazing that the Labor Party want to get in and rattle the system that has made a real difference and provides some options for taxpayers. How much did the Labor Party provide as a top-up when they were in government? Not a cracker; absolutely not a penny. If you were underpaid, that was it. The Labor Party kept it in the bank. They never came near you and never told you that you were underpaid. That was it; it was just too bad. Bad luck. If a person was underpaid, how much did the Labor Party give back?
that did not exist under the Labor Party, I might add—and a fairer tax system, where more people are paying lower tax. Again, that has a significant positive impact on families. A single-income couple who have two children and are living on minimum wage received about $9,500 in support from the Commonwealth—a significant level of support from this government that really does have a significant, caring attitude towards families and places a real priority on looking after the family unit. The income-testing arrangements are much more generous: more families are receiving maximum levels of assistance and families are able to keep more of each dollar they earn—again through the lower tax system. Over the next two years, $144 million will be provided through the Stronger Families and Communities Strategy—again, a significant investment by this government in families. From 1 July 2002, families have been able to claim the government’s new first child tax refund—again, more for families, for Australian people.

The government has also made significant improvements to child care—a $600 million increase over three years in child-care payments and $18.872 billion in assistance to families through the family tax benefit, the child-care benefit, the parenting payment, the maternity allowance and the maternity immunisation allowance. This government has a significant record in looking after and caring for Australian families. The baby bonus is a further measure aimed at looking after Australian families.

Senator Forshaw interjecting—

Senator COLBECK—Mutter, mutter, mutter.

Senator Carr—That’s what you’re doing. Why don’t you get on with it? Get on with it.

Senator COLBECK—I will take as long as I like. (Time expired)

Senator WEBBER (Western Australia) (3.17 p.m.)—I also rise to take note of the answers given by Senator Vanstone, the Minister for Family and Community Services. As mentioned in question time today, I have previously asked the minister a very similar question to the one I outlined today—namely, a question about the situation that a person finds themselves in when they receive inconsistent child support payments and the effect that this has on their entitlement to the family tax benefit. When I last asked Senator Vanstone a question along these lines, I was told that the senator did not answer hypothetical questions—although at the time Senator Vanstone did offer to investigate the matter if I forwarded the information that I had to her. That was back in August. I must say that I am still waiting for an answer—and so is the constituent whose case I referred to the minister.

The issue I have with the case I quoted today is that we are seeing exactly the same procedural stuff-up that we saw in the case I referred to her in August: a person who—through no malice, no intent, no failure to make an effort—is being made to pay back an amount of money that they had no control over. Indeed, the Social Security Appeals Tribunal in this matter have upheld the decision to recover the money, but that is only because they must do so according to the law. The law as it currently stands does not give them the flexibility to make any alternative arrangements. Given the fact that there are numerous examples of how recipients who are also receiving irregular child support payments—and unfortunately there are far too many of them—can hardly ever accurately estimate their income and therefore are always in risk of debt, one has to conclude that the system must be reformed. The system as it currently stands unfairly penalises people that access a certain amount of their income through the Child Support Agency. At the very least, in my view, the law should be changed to allow some flexibility to the people administering the legislation to take this into account and, indeed, to allow the Social Security Appeals Tribunal to also take this into account. In ruling on the case which I referred to earlier today the SSAT state:

However, these factors can only be taken into account where a debt or a portion of a debt is attributable solely to administrative error.

Unfortunately, with irregular child support payments that is not solely due to administrative error. They go on to say that they ac-
cept that the individual ‘did not contribute to the debt in any way whatsoever’. And, fin-
ally, they state that they appreciate that the applicant is ‘frustrated at being faced with a substantial debt that she had no idea that she was incurring and no way of avoiding in the future’. Therein lies the heart of the problem. This issue existed for the applicant last year, it exists this year and, unless there is a change to the law and the way that it is administered, it will exist next year as well. The system as it currently stands is con-
demning this applicant to a treadmill of debt year after year with little or no means of repaying it. This is not the hypothetical Wright family that the minister referred to in this place when she had a previous portfolio; these are real people confronting the impos-
sibility of the current system that she has created.

When you look at this law and the way that it is administered and the minister’s view on this law, can you really trust what Senator Vanstone has to say? In fact, it has been brought to my attention that on Radio National yesterday, when talking about the breaching regime, she said:

This regime that we now have was in fact endorsed by parliament completely and has subse-
quently been softened by the government—not by the Labor Party, by the government.

You used to have a system where when you got breached you lost all your payments. It’s a Liberal government that changed it to a system where, on your first breach you lost a portion of your pay-
ments for a period of time, second breach a larger portion for a longer period, third breach you lose them altogether for an even longer period.

Have I got news for Senator Vanstone. Let us calm down and not rewrite history. Back in 1996 the government destroyed the skilling and training infrastructure that was provided to unemployed people under Labor and proposed an unbelievably harsh regime to strip people of their social security entitlements completely. (Time expired)

Senator JOHNSTON (Western Australia) (3.22 p.m.)—The most amazing ingredi-
ent in this chamber at the moment is the ca-
pacity to recite the problem but with no so-
lution—to tell us how bad it is out there and offer nothing; to simply regurgitate the Om-
budsmans’s factual assessment of the com-
plaints he has had and then bring them into this place and let them lie on the table so that we can look at them with not one suggestion, iota or hint of a policy. It is a black hole over there. It is a black hole of policy, initiative, energy and ability, sadly.

The facts are, starting at the very top of the tree, that mortgage interest rates are the greatest panacea for families in this country today and there is only one party that can claim any ability in this regard. Of course, that is my party, the government. We have the lowest rate of unemployment, so mort-
gage payers are benefited not only by low rates of interest but also by very good jobs. In addition to that, we have agreed to top up family allowance. Let us analyse exactly what that means. If you get the assessment, evaluation and estimation of your income wrong, and you receive less than your enti-
tlement, this government will top you up, this government will pay you up to your enti-
tlement. The previous Labor government did not do that. It refused to do that. It drove around doing that. We also say, on the other side of the ledger, something that in my re-
spectful submission is fair and reasonable and the Australian way: if you get a payment that is more than your entitlement—that is, to the exclusion of another Australian fam-
ily—you have to pay it back, and you have to pay it back in an orderly fashion via your tax refund or by agreement or by future re-
duction. That logic is inescapably fair and reasonable.

Of course, the policy that lies underneath the complaints on the other side is that there will be no top up. That is the policy position of the Labor Party. They will not tell you that, but that is their position. You will not get a top up. If you fail to anticipate a decline in your income, such that you are owed money under family allowance, you will not get a top up under Labor. That is the obvious position that they bring to the table.

We have 403 projects, worth $56.2 mil-
lion, under the Stronger Families And Com-
munities Strategy. An amount of $144 mil-
lion has been set aside for that. We have al-
located $600 million over three years to cover the increased costs of child-care pay-
ments. Over the next year, this government will spend $18 billion in direct assistance to families in, among other things, maternity allowance, parenting payments, immunisation allowances, family tax benefits, child-care benefits et cetera.

Let us have a sample of what we are seeing from Labor, or what we would see were they to be in power. The fact is that costs for electricity, gas, car registration, public transport and, particularly, insurance have gone through the roof in states such as Victoria and New South Wales. Notwithstanding those hikes in charges, New South Wales, in the face of the worst drought in our living memory, has an underspend of $39 million. That is absolutely outrageous. In the face of families doing it tougher than ever before in outback New South Wales, it has an underspend of $39 million. It boggles belief.

The Labor Party opposed the GST because it attacked the most vulnerable in the community. Yet where do they think the principal amount of $196 million in South Australia, from a gambling tax hike, comes from? Obviously from the most vulnerable, and from families. It is very hollow to come here talking about these issues when the track record is a very sorry, sad one.

(Time expired)

Senator FORSHAW (New South Wales) (3.27 p.m.)—I take note of answers to questions from Senator Vanstone, the Minister for Family and Community Services. I particularly want to focus on the answer, or the lack of an answer, that Senator Vanstone gave to the question by Senator Denman regarding the Job Placement, Employment and Training Program, often referred to as JPET. I might pick up on the last comments of Senator Johnston, when he was endeavouring to refer to the most vulnerable. One of the most vulnerable groups in our society, in this country, is homeless youth or youth who for various reasons—as a result of family breakdown and so on—are dependent on welfare. When the last Labor government was in power, the then Minister for Health, Housing and Community Services, Brian Howe, introduced the Job Placement, Employment and Training Program. It was specifically targeted at helping young people in desperate situations to get employment and to get access to accommodation rather than living on the streets.

When this Prime Minister, John Howard, came to power one of the first things he did was establish his very own Youth Homelessness Task Force. I recognise that the Prime Minister himself recognised the importance of this issue. There was a lot of concern in the community about the issue of youth homelessness and other issues affecting youth such as suicide and drugs. One would have thought that, as a result of that, Mr Howard and his government would be concerned about continuing to assist the young disadvantaged members of our community. His task force undertook its work. One of its main findings was that assistance towards employment was the key to pulling young people out of homelessness and away from a lifetime of being dependent upon welfare.

In particular, the Prime Minister’s own task force recommended that the Jobs Placement, Employment and Training Program be not only retained but also expanded and the government supported the task force recommendation. Subsequent inquiries have reinforced that position. Indeed, most recently an independent review of JPET concluded that the JPET program is:

... competitive in achieving employment and education/training outcomes, and that it also offers a wide range of other physical, emotional and educational supports that assist young people with multiple barriers to employment, training and education make lasting transitions to sustainable and independent lifestyles.

You could not get a much stronger and more positive endorsement of this very worthwhile program—started by Labor and continued by this government up until now. This is the basis of the question that was asked of Senator Vanstone. What has happened is that Minister Vanstone wrote two weeks ago to 70 JPET services across the country and informed them that, as of the end of this year, 31 December, they would no longer be receiving any funding. That is more than half of the JPET services across the country. There are 138 JPET services; 70 of them received letters saying that their funding ceases at the end of December. Naturally
there was an outcry about this, and representations have been made.

What is significant is that more than 50 per cent of these services that will lose their funding are in Victoria and New South Wales. What is happening in Victoria and New South Wales in the next couple of months? There are going to be state elections. The federal government woke up and thought, ‘This is not a good message to be sending prior to a state election,’ so the minister has written back and said, ‘We are actually going to extend your funding to the end of March 2003’—taking it beyond the date of the state elections. They recognise the electoral backlash of this decision. But it is still going to cut out at the end of March, and that is only because they were cynical enough to try to delay the closure date of 31 December this year to March next year. This is a disgraceful decision by this government and it flies in the face of their own earlier recommendations. (Time expired).

Question agreed to.

MINISTERIAL STATEMENTS

Indigenous Education and Training Report 2001

Senator HILL (South Australia—Minister for Defence) (3.33 p.m.)—On behalf of the Minister for Education, Science and Training, Dr Nelson, I table a statement and document on the National Report to the Parliament on Indigenous Education and Training.

Senator CARR (Victoria) (3.33 p.m.)—by leave—I move:

That the Senate take note of the statement.

Today the Minister for Education, Science and Training, Dr Nelson, tabled a statement based on the National Report to the Parliament on Indigenous Education and Training 2001. In his statement he says he does so with ‘mixed emotions’. That is the term he uses. When I read this report I can assure you that the term ‘mixed emotions’ is one that somewhat understates one’s response. When we talk about inequalities in education it is important to reflect upon the extent of social inequalities in this country. If ever there was an instrument to highlight that, then this report is such an instrument.

Along with Dr Nelson, and presumably all thinking Australians, the opposition would celebrate the achievements of many Indigenous people who are doing well and obtaining very fine results in our education and training systems. However, having said that, it is important to point out that there is not a great deal to celebrate. When it comes to the issue of the failure of our education systems to ensure equality of opportunity, I think reports such as this draw that starkly to our attention. I note that particularly with regard to the failure of our education systems in this country to meet the needs of young Indigenous Australians, particularly in education and training but also in health, housing and human rights.

It is important for us to acknowledge progress and also to acknowledge the complexity of the policy issues that are involved in Indigenous education. But it is important also to appreciate just how small the progress has been. If you look in this report, for instance, at just one minor statistic—the numbers of Indigenous students in higher education by gender, a table to be found on page 95—you will see that in 1993 there were 1,241 male Indigenous students who commenced higher education. In 2001, the number had grown by six to 1,247. I am sure there are many other statistics there that highlight that sort of trend and there are many others that will show greater achievements in other areas. But that stands in sharp contrast to what we would expect throughout the general community.

I say that in a context of bipartisanship in this country. One of the highest levels of bipartisanship in education is on the issue of Indigenous education. There is a real understanding across the political spectrum, from most thinking politicians, about just how serious these questions are. I think it is important to appreciate just how serious or how complex and how daunting the task also is.

This report draws attention to the fact that Indigenous students’ completion rates in all areas of education are much lower than the national average. Something like a third of Australians at large have post-school qualifications, whereas in Indigenous communities it is 14 per cent. If you think about the num-
bers of students in a broader context, you get an even more profound set of statistics. The infant mortality rate amongst Aboriginal babies is twice the national average. Life expectancy is 15 to 20 years less than the average. The average life expectancy for Aboriginal men in this country, according to this report, now stands at 56. That is the same level as for the general male community 100 years ago. If you look at the death rates amongst Indigenous people in the age group 35 to 54, you will see that they are six to eight times higher than for the general population. Seven per cent of Indigenous people live in dwellings with 10 or more people. That is 50 times the rate that other Australians live in such dwellings. If you examine the broader issues of family breakdown, domestic violence, diet and alcoholism, then you see that the problems are compounded.

What this points to in my mind is that you cannot look at education in isolation. There are a whole range of issues that need to be examined and, to me, the impact of poverty stands central in that discussion. When we look at the impact of education on life chances and also on health, then I think the correlations are even more daunting. The prevalence of hearing loss and vision impairment—the results of poor living conditions and the lack of access to reliable water supplies—and the fact that kids cannot even get to school suggest to me that there is a huge amount that this parliament has yet to do. Overcrowding and substandard dwellings are not appropriate conditions in which learning can take place. It is no wonder that the sorts of figures reflected in this report and the sorts of concerns reflected in the minister’s statement are there.

Senator Crossin will no doubt want to say something on this. Her direct experience working on these issues is much greater than mine. In the work I have done in this parliament, these issues have come up again and again, and the progress reports have remained as meagre as this one. It strikes me that we have to find ways of improving our capacity to provide assistance. We have to understand the social and economic conditions in which people actually live, as distinct from the conditions in which we would like to believe that they live. When we are looking at issues of costs, I think the cost of not providing a decent education to all Australians has to be borne in mind. The Commonwealth has to fulfil its obligations in that regard and make sure that the states fulfil theirs. If they do not, then I am afraid there is a heavy burden for us as a parliament to bear, but it is an obligation that we will have to carry forward. I argue that the cost of not providing assistance is huge and is perhaps not adequately reflected in an official report of this nature, nor can it be.

It is important to also highlight that there have been a number of policy failures by government. The government’s position on Abstudy, for instance, has highlighted just how the failure of government to appreciate its responsibilities can accelerate the decline in participation rates. We can look, for instance, at the enrolment numbers and the infrastructure support that is provided in vocational education and in higher education. That is not adequately reflected in this report. These issues were addressed in the Universities in crisis report by the Senate. The government’s response to that in recent times has been so grossly inadequate as to defy description.

This is a report that we should welcome. We should welcome the way in which the minister has presented it to the parliament, the fact that he let us know it was coming and the fact that this government shares with, I think, all the parties in this parliament very deep concern about the situation. We have to appreciate that the sorts of objectives we have for this country rest upon our capacity to ensure that equality of opportunity actually means something. It is quite apparent that we have a long way to go. The vicious cycle of poverty and lack of opportunity is going to constantly reinforce what is a great black mark against this country.

Senator RIDGEWAY (New South Wales) (3.43 p.m.)—I would like to briefly respond to the ministerial statement and the National Report to Parliament on Indigenous
Education and Training that has been tabled today. The Minister for Education, Science and Training, Dr Nelson, tabled his report with mixed emotions, presumably because on the one hand he welcomes the first baseline study of exactly where we are in relation to Indigenous education and training and on the other hand he is overwhelmed by what he euphemistically refers to as the ‘significant challenges’ that lie ahead. I too have mixed emotions about the report and the ministerial statement—not for the same reasons as the minister but because of the amount of time that it has taken for this report to be produced. It is a long overdue report. It beggars belief that this is the first time the Commonwealth government has ever commissioned a baseline study to collate data about preschool, school and vocational education and training for Indigenous Australians.

To give that some context, the Senate needs to be reminded that the Commonwealth has had responsibility in this area since 1967, when 90 per cent of Australians vested authority in this regard with the national government. How is it that no Commonwealth government of any political persuasion even established the scale of disadvantage that existed and that the needs of Indigenous people, particularly in the area of education, were neglected for some 35 years? It is an indictment of the parliament that it has taken so long to even establish some baseline figures. Surely we are all in agreement that education and vocational training is perhaps one of the most important issues to confront Indigenous people and Indigenous communities, particularly in terms of being able to access and take advantage of opportunities but most of all in terms of being able to break the cycle of welfare dependency and endemic poverty that exists in many communities.

The significant thing about this report is that it is telling us that only a minority of Indigenous students are able to ever achieve levels that are comparable to their non-Indigenous classmates, that for the vast majority the situation is deplorable and there are no quick fixes to their circumstance. It has now been estimated, following on from this report, that it will take another 40 years before Indigenous participation in secondary education is equal to that of non-Indigenous students. That is a long time, and I think we have got to act quickly to make sure that another generation is not lost. I do not believe that we can afford to sacrifice these people to the unemployment queues or what sometimes seems like a permanent pathway to juvenile justice detention centres across the country and, in adulthood, jails. I think that if this report tells us anything it is that we have to start investing by putting forward the resources now.

This fact becomes more and more pressing when we look at the demographics of Australia’s Indigenous people because, unlike the rest of the national population, most Aboriginal and Torres Strait Islander people are under the age of 25. In fact, of the 410,000 Indigenous people in this country, there are about 240,000 under the age of 25, and most of them are under the age of 18. Whilst I acknowledge that there are marginal improvements on some fronts, the comparative disadvantage of Indigenous people is now beyond dispute. We have to ensure that we are providing the opportunities and the support mechanisms that are required to turn this situation around.

I do not intend to restate the raft of depressing statistics that are compiled in the report. They are all before us in black and white. They begin at preschool and extend across the board right through to tertiary study and vocational training. What I think is worth noting today is the dropout rate of Indigenous students, particularly from high school and tertiary education, which is something that I raised earlier this year when the ABS released the five-year figures in relation to Indigenous demographics in this country. As the minister has acknowledged in his statement today, the retention rate to year 12 for Indigenous students was at 30.6 per cent in 1995 and since then has improved to 35.7 per cent in 2001. But we have to keep that in context, because those figures really tell us that that rate is less than half the rate for non-Indigenous students in 2001, which stands at 76.2 per cent.

I have spoken to a number of professionals in the education field, and it is so often
the case in their experience that most Indigenous people do not complete their education because of financial difficulties. It might be seen as a simple increase in the bus fare to the university or a rise in rent, or problems in being able to access Abstudy; it might be a matter of only a few dollars difference to their weekly income that decides whether or not a student can finish a degree or even get their Higher School Certificate.

Similarly, in the broader sense, there is also often a link between health issues and poor retention rates. Dropping out of school might be preferable if the student has been suffering from an undiagnosed hearing impairment or vision impairment that has held them back in terms of literacy or numeracy skills being acquired. It seems to me that if there was a greater integration of health and education services we might be able to provide some answers and some reasons for the poor retention rates being there in the first place, because we could detect and deal with them at a much earlier stage.

I want, on this occasion, to encourage the minister, his department and all of those responsible for the whole-of-life approach to look more closely at the reasons behind the retention rates being so poor for Indigenous students and to gather data on this front as well. One thing that I can think of that perhaps may be a suggestion is to make it a compulsory requirement of funding for education providers to also look at compiling exit reports so that we can at least gather some data and some information to start to understand the range of reasons that people do not get the education they are entitled to.

Another important thing that perhaps needs to be identified as a critical issue is the central place that Indigenous cultures must have in the education process. I am sure I am not the first person to raise this with the government; I am aware that the Federation of Aboriginal and Torres Strait Islander Languages did so at the time that the parliament was dealing with the Indigenous Education (Targeted Assistance) Bill 2000. Their concern back then—and it continues now—is that often it is very difficult to fit cultural outcomes into the straitjackets of performance indicators and targets, as the act requires.

But I think the incorporation of culture into the education process for their children is perhaps one of the most important outcomes, particularly for Indigenous parents, regardless of whether they are in Broome, Cape York or even Redfern. The education process is where cultural transmission and reinforcement of family values can and should be occurring. It may be as simple a thing as recognising the role of elders, their cultural knowledge and the need for that to play a more central role in our institutions of learning.

If police forces around the country have managed to employ and value Indigenous trackers for hundreds of years, why is there still resistance and reluctance on the part of the education system to do exactly the same with Indigenous knowledge holders in other areas, such as horticultural knowledge, linguistic expertise or artistic skill? Why can’t we be more willing to recognise and accredit cultural skills in other areas that are just as critical to the survival of Indigenous identity and our social wellbeing?

I have to ask the question: why is it that Australia’s Indigenous languages remain outside the official language status of the country and, as a consequence, receive little financial resources when compared with the so-called international economic languages like French, Japanese or German? Australia’s Indigenous languages are not even recognised as national languages, and this is despite the fact that there has been an increased willingness to support and promote languages which are seen as an economic benefit to Australia.

The education system has embraced with fervour Asian languages, especially Indonesian and Mandarin, yet Indigenous languages continue to remain a complete mystery, a relic of traditional communities in only the remotest parts of the country, to the majority of non-Indigenous Australians. Senator Crossin will no doubt raise this issue, but we have to ask why there has been a deafening silence on the part of the Commonwealth government about the Northern Territory
government's decision to progressively phase out—(Time expired)

Senator CROSSIN (Northern Territory) (3.53 p.m.)—I rise to take note of the ministerial statement and the National Report to Parliament on Indigenous Education and Training tabled today by the Minister for Education, Science and Training. I will say at the outset that, while this report is welcomed, from my knowledge of the history of Aboriginal education in this country there has not been a comprehensive report such as this one tabled in the parliament today since the introduction of the original Aboriginal education program—which has now been rebadged as IESIP, the Indigenous Education Strategic Initiatives Program—11 years ago. It is pleasing to see that, as a result of amendments made to the Indigenous Education (Targeted Assistance) Act 2000, this report will be annual.

A review of the Aboriginal education program was conducted by Mandawuy Yunupingu midway through the first 12 years of its operation. But time has moved on and many more millions of dollars have been pumped into Aboriginal education, yet we still see very little change. If you look at some of the statistics, you will see that year 12 retention rate for Indigenous students, for example, was 30.6 per cent in 1995, and that has increased to 35.7 per cent in 2001. On that basis, there has been a 5.1 per cent increase in the year 12 retention rate for Indigenous students in this country in six years, but non-Indigenous students have a year 12 retention rate of 76.2 per cent. That is a 40 per cent difference. On that basis, if we are going to make five per cent improvements over six years, year 12 retention rate of Indigenous students will not equal the non-Indigenous student retention rate for another 48 years. In terms of Aboriginal life cycles, that is nearly two, possibly three, generations away. The improvements, while there, are clearly not good enough. The growth in some areas is moving ever so slowly, and in other areas it is moving backwards.

Senator Carr, in pointing to Indigenous students in higher education, highlighted the difference between the number of male Indigenous students in 1993 compared to today. There was a time when the number of Indigenous people undertaking higher education peaked—in 1998 and 1999. In 1999, for example, the figures for Indigenous participation in higher education in this country were: males, 1,542; and females, 2,598. Those numbers have gone backwards since then, and this document shows us that today there are 1,247 males and 2,319 females in higher education. Both those figures are significantly less than the figures for 1999. There is a very clear answer as to why that is the case: that was when this government introduced significant changes to Abstudy. We can pinpoint exactly why and when these numbers fell dramatically. Since the changes to Abstudy, Indigenous people have not been able to get the financial assistance they need to undertake higher education courses—so they do not do it or they drop out or, as this government would want us to believe when trumpeting a major increase in the number of students who have enrolled in vocational education and training, they undertake VET. The figures show us that Indigenous people have moved from higher education into VET. They do not bother about higher education any more; they enrol in vocational education and training.

The other issue is that we do not know the completion rates of Indigenous students. Page 97 of this report refers to those figures. If the figures are right—the report only says 'apparent retention rates'; these are not definitive figures—the apparent retention rates of Indigenous students were just hovering above 0.59 per cent in 2001, 0.58 per cent in 2000 and 0.61 per cent in 1999. Again, we see the figures going backwards. Why is that? I believe it is because in some areas of Aboriginal education there are very bad policies which are not assisting and supporting Indigenous people to enter into the education system and to operate as effectively as non-Indigenous people do. We know that in higher education the amount of money provided to universities, for example, to supplement and assist Indigenous people is based on the number of students enrolled in higher education.
Based on the figures that I have just given this chamber, those figures are decreasing. The amount of money that supports Indigenous students in universities therefore decreases, because the two are linked. And we wonder why we are not getting more Indigenous people enrolling in universities, staying at universities and completing their courses. That is just one area of the education sector. Probably, if I had a chance, I would like more than 10 minutes to speak.

We know from Bob Collins’s *Learning lessons* report that a low retention rate is one of the critical factors as to why Indigenous children in this country are not advancing at the rate they ought to—they simply do not go to school. In the time that I have had to glance at it, this document does not tell us much. It gives us the percentages of children who are not attending school, but in relation to what? Is it in relation to those who ought to be attending school or is it somehow a figure based on the population basis of that area? Clearly we still do not know exactly how many Aboriginal kids out there never go to school and have never been to school as opposed to those children who were once enrolled in schools and now do not attend. Are those attendance figures in this book based on previous enrolments or on the population that we know exists out there and has never attended school?

On secondary education, the new Northern Territory government, to their absolute credit, have moved on this and have decided to do something about Indigenous education. They have actually decided to implement the *Learning lessons* report, something that the previous CLP government did not want to touch. They have now decided to trial, as Senator Ridgeway said, a total approach to education in four areas in the Northern Territory, where education and health services will be combined and where parents in the community will be assisted in taking a large role in the education of their children. But there are nearly 190 remote schools, and I am only talking about the Northern Territory here. I acknowledge that the Commonwealth government has put additional funds into assisting the Northern Territory government to achieve those aims, but only in four areas in the Northern Territory.

Clearly it is time for this government to sit down and rethink the whole approach to Indigenous education in this country. More money is needed to assist governments like the Northern Territory government to actually get on top of Indigenous education and the lack of outcomes we are having. This government needs to pour buckets of money into creating secondary schools in the Northern Territory. There are at this stage two secondary schools outside of the Stuart Highway radius in the Northern Territory and they have been built by the community or by the Christian schools association. This government needs to assist parents to encourage their children to go to school. All in all, while this is a welcome report, there does need to be an acceptance by this government that it must stop pumping money into programs that just entrench the outcomes that we are getting—or not getting—and that are not improving at a significant enough rate.

**Senator RIDGEWAY** (New South Wales) (4.03 p.m.)—Madam Acting Deputy President, I seek leave to incorporate the remainder of my speech in *Hansard*.

Leave granted.

*The statement read as follows—*

Why has there been a deafening silence on the part of the Commonwealth Government’s silence about the Northern Territory Government’s decision to progressively phase out bilingual education programs for Indigenous students?

There is no doubt that centuries of proactive, institutionalised hostility towards Indigenous cultures and identity have taken their toll. Indigenous communities have paid a heavy price.

We have all seen newspaper articles which chart a very bleak future for Indigenous languages in this country—like the *Northern Territory News* in May this year, which claimed that one Indigenous language is disappearing every three years and the decline is accelerating.

Worse still, are research articles like that written by Dr McConvell of AIATSIS (Australian Institute of Aboriginal and Torres Strait Islander Studies), where he has concluded that of the 15 strong languages left, there is a high risk these will all die out in the second half of this century.
In other words, the invisible web that binds language, culture and identity together, will inevitably break—probably within our lifetime and that of our children.

I for one, would like to see more benchmarking of Indigenous language programs so that we can start to turn this problem around and save what remains of our languages for future generations.

**Conclusion**

In closing, I want to stress that the Australian Democrats welcome the fact that it is as a result of the resolve of the Parliament in the Indigenous Education (Targeted Assistance) Act 2000, that all future Commonwealth Governments will have to report on the state of affairs in Indigenous Education every year and be accountable to the Parliament in this regard.

Given that the Minister for Aboriginal and Torres Strait Islander Affairs has excused the Government's lack of progress—even in regard to the very limited goals of "practical reconciliation"—by saying there is no baseline data to measure progress—at least on the education front this kind of excuse cannot be wheeled out in future.

We now have the baseline data—we can quantify exactly how bad the situation is—and we can build on the marginal improvements that exist on some fronts.

Indigenous people want to see improvements in this regard more than anyone else.

As Members of Parliament, we need to remind ourselves that there are only 410,000 Indigenous Australians—the largest total since Indigenous people were included for the first time in the national census in 1971.

This is a quite manageable number to deal with, and we do have the resources to turn the situation around.

We should not be prepared to accept the stereotype of Indigenous affairs as being a terminal case of public policy failure, or allow the needs of 410,000 people to overwhelm our imagination or our ability to formulate responses to familiar challenges within community development.

If nothing else, this report reaffirms the message that progress will only be possible if governments at all levels work in genuine partnership with Indigenous people, and create the opportunities for Indigenous communities the capacity to take control of their futures.

As the Ministerial Council on Education, Employment, Training and Youth Affairs noted in this report (p.21):

"...children learn most effectively when there is a partnership between parents/caregivers and educators, when there is a sense of community between home and school environments. But the general level of interaction between schools and the local Indigenous communities is often poor."

What we need to first acknowledge and accept is that:

"... Family involvement in education is more than simply getting families into the schools. ... Schools as institutions of practice and beliefs need to change to mirror Indigenous family values and community beliefs and practices. It is not up to Indigenous families to initiate change, but rather for education systems to reflect multiple world views and perspectives."

(Fleer and Williams-Kennedy, p.21).

Question agreed to.

Related: NELLY BAY HARBOUR PROJECT

**Return to Order**

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.04 p.m.)—With reference to Senator Bartlett’s motion of 25 September 2002 for the production of documents relating to the Nelly Bay Harbour project, the Minister for the Environment and Heritage has provided the following response. I seek leave to incorporate the document in Hansard.

Leave granted.

The document read as follows—

Senator Bartlett moved on Wednesday, 25 September 2002:

That there be laid on the table no later than 4 p.m. on 24 October 2002:

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

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

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

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

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

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

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

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

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

The Minister for the Environment and Heritage has provided the following response:

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

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

In respect of documents falling in the scope of this request, these have been released with all personal information deleted.

The Privacy Act 1988 provides that a record keeper who has possession or control of a record that contains personal information shall not disclose the information unless the disclosure is required or authorised by law. “Personal Information” includes information about an individual whose identity is apparent, or can reasonably be ascertained, from the information.

As disclosure of personal information is not required or authorised by law, deletion of all person information facilitates the release of the documents without breaching the privacy of the named individuals.

Other documents falling within the scope of this request also fall within “documents evidencing actions on site that the Great Barrier Reef Marine Park Authority stopped, prevented or change” under item (i) below.

A number of documents that fell within this request have not been released on the grounds of legal professional privilege. These documents relate to a matter currently under investigation and have been withheld.

(c) the weekly site supervisors reports for the Nelly Bay Harbour project.

The weekly site supervisors reports have been released with all personal information deleted. The deletion of the personal information facilitates the release of these documents without breaching the privacy of named individuals.

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

An application has been received for pontoons attached to residential land bordering the Great Barrier Reef Marine Park, the application and associated plans have been released with all personal information deleted. The deletion of the personal information facilitates the release of these documents without breaching the privacy of named individuals.

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

In respect of documents falling in the scope of this request, these have been released with all personal information deleted. The deletion of the personal information facilitates the release of these documents without breaching the privacy of named individuals.

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

The executive summaries of monthly harbour monitoring reports have been released with all personal information deleted. The deletion of the personal information facilitates the release of these documents without breaching the privacy of named individuals.

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

Documents falling within the scope of this request also fall within “documents evidencing actions on site that the Great Barrier Reef Marine Park Authority stopped, prevented or change” under item (i) below.
There is currently an on-going investigation into coral damage associated with channel dredging works, these records are not available for release.

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

No documents fall within the scope of this request.

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

Documents falling within the scope of this request, these have been released with all personal information deleted. The deletion of the personal information facilitates the release of these documents without breaching the privacy of named individuals.

COMMITTEES

Reports: Government Responses

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.04 p.m.)—I present three government responses to committee reports, as listed on today’s Order of Business. In accordance with the usual practice, I seek leave to incorporate the documents in Hansard.

Leave granted.

The documents read as follows—

COMMONWEALTH GOVERNMENT RESPONSE TO OUTSOURCING OF THE AUSTRALIAN CUSTOMS SERVICE’S INFORMATION TECHNOLOGY

THE REPORT OF THE SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

AUGUST 2002

Background

On 16 May 2002, the Senate Legal and Constitutional References Committee tabled its report Inquiry into the Outsourcing of the Australian Customs Service’s Information Technology.

The report focussed on the Australian Customs Service’s implementation of its Cargo Management Reengineering Project (CMR) and in particular, on the Information Technology aspects of CMR. These involve the replacement of Customs’ current disparate range of cargo processing IT systems with an integrated system—the Integrated Cargo System (ICS)—and the introduction of an open IT platform based on internet protocols, to replace Customs’ current IT gateway and modernise its communication capabilities. The replacement gateway is known as the Customs Connect Facility (CCF).

The report also focussed in part on the procurement processes adopted by Customs for the development of the ICS and the CCF. Early development of both the ICS and the CCF was conducted by EDS Australia under its outsourcing contract with Customs. During 2001, EDS and Customs agreed that an alternative provider for the ICS development should be sourced. A consortium led by Computer Associates won an open tender for the application development of the ICS and commenced the development in February 2002. Customs also agreed with EDS that, given the ICS dependency on the provision of the CCF, Customs should contract directly with the firms EDS had engaged to deliver the Customs Connect Facility—IBM, Baltimore and Securenet. Given the need to mesh the CCF development with the ICS, Customs engaged Computer Associates to provide a project manager for the CCF. Responsibility for the CCF application development rests with IBM and Securenet, under contract to Customs.

The Government acknowledges the complexity of the ICS and CCF developments and notes the progress achieved by Customs on the consultation process.

Recommendations

Recommendation 1

The Committee recommends that Customs undertake a review of its consultative processes with a view to developing a strategy for consultation processes for the rest of the ICS implementation phase.

Government Response

The Government supports this recommendation and advises that a strategy for consultation processes for the Integrated Cargo System implementation phases has been established. The strategy was discussed with industry stakeholders on 29 April 2002 and has been widely disseminated. A fact sheet “CMR Implementation Strategy and Milestones” has been circulated and is available on the Customs website.


The ‘trade modernisation legislation’, a package of three Acts that underpin CMR, was enacted in July 2001. Its provisions are to commence by proclamation. As a clear expression of its desire that industry be ready for the CMR changes, and in response to industry feedback, the Government has moved an amendment to the legislation
The business process, legislative and IT changes arising from Cargo Management Re-engineering (CMR) will be introduced in five phases, the first of which commenced in July 2002.

The phases and their timings are:

- July 2002—proclamation of legislative changes not reliant on introduction of the new Integrated Cargo System (ICS);
- November 2002—commencement of the trial of the IT infrastructure for the ICS, as well as some new electronic reporting functionality for the air express courier sector;
- mid 2003—availability of the online client registration facility to support the export phase;
- November 2003—introduction of the new export cargo reporting and export declarations; and
- March 2004—introduction of the new import cargo reporting and import declarations.

Industry stakeholders have welcomed the timetable.

Customs is adopting a number of strategies to prepare users of EDI messaging software for the CMR transition, including the provision of Software Developers’ Guides, the provision of a computer test facility available to developers several months prior to phases 4 and 5, developer and user support during the test and rollout stages and ongoing information and learning support for the transition.

Recommendation 2

In order to provide certainty for industry, the Committee recommends that, in the event that the Customs Connect Facility and the Integrated Cargo System are not in place on the date required by the Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001, Customs invoke the procedures described in Section 126E of that Act.

Government Response

The Government supports this recommendation. Section 126E of the Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001 provides for contingency arrangements should Customs information systems not be operable. As with Customs systems that currently operate, mechanisms will be in place to ensure that industry is informed about the contingency arrangements, and how they are invoked.
or will be addressed through further implementation of particular measures of the remaining business tax reforms.

In addition, the Government is strongly aware of Australia’s position as a gateway to the Asia-Pacific region and the advantage Australia has as a critical time-zone between the closing of business in Europe and the opening of business in America. More broadly the Government has done much, and continues to seek new opportunities through various initiatives, to engage appropriately in the Asia-Pacific.

The Government’s response to the fourteen specific recommendations as tabled by the Committee are as follows.

**Recommendation 1**

The Committee recommends that Axiss Australia continues to investigate innovative ways of promoting Australia’s competitive advantages to overseas investors and businesses by integrating messages about lifestyle and cultural advantages with financial and economic advantages.

The Government supports the Committee’s view that Australia’s messages in terms of lifestyle and cultural advantages are significant and hence must be integrated into core marketing messages that also cover financial and economic issues. The Government acknowledges that lifestyle considerations can be a major decision factor for senior executives when determining the locality for Asia-Pacific operations and hence must be incorporated into marketing targeted to this audience.

The inclusion of lifestyle and cultural messages has, and continues to be, integrated into marketing strategies adopted by Axiss Australia.

Examples of such integration are included in the fortnightly electronic newsletter a2a and major publications such as Australia—A Global Financial Services Centre in the Asian Time Zone, and Australia’s Financial Services Data File. These publications highlight the significant competitive advantages Australia possesses in this area relative to other countries in the region. Advantages such as a skilled and multilingual population, a low cost of living and high quality of life are each discussed. Comparisons with other countries are made to highlight Australia’s position and are done using independent data gathered from respected sources such as the IMD World Competitiveness Yearbook, PERC Business Environment Report and the Australian Bureau of Statistics.

Lifestyle and cultural messages also feature prominently in Axiss’ on-line/internet strategy, which includes webcasting and an Axiss microsite hosted by euromoney.com. These initiatives ensure that Axiss is promoting Australia’s attractions in an appealing and compelling way to a global audience.

Axiss Australia has also arranged the production of a series of television commercials that outline Australia’s strengths as a global financial services centre within the Asia-Pacific region. The commercials, which have been aired on CNBC Asia and Bloomberg Television, highlight Australia’s economic advantages (ie low cost infrastructure, skilled multilingual workforce and liquid capital markets) and also make reference to quality of life issues, with video footage of attractive locations in Australia used to reinforce this message.

These messages have also been disseminated via Axiss’ media activities, which have resulted in coverage both domestically and internationally in publications such as The Australian Financial Review, The Sydney Morning Herald, Business Review Weekly, Business Asia and Asia Money.

**Recommendation 2**

The Committee recommends that Government and industry continue to monitor Australia’s potential to develop niche markets in the Asia-Pacific region and work together to identify educational, IT and other initiatives which will generate opportunities for Australia and enhance Australia’s reputation in the global financial services industry.

The Government agrees with the Committee’s assessment that the development of niche markets is essential to Australia’s continued competitiveness as a global financial services centre.

In achieving this objective the Government, through Axiss Australia, works closely with a number of finance and industry associations to identify opportunities and develop strategies that enhance the growth of niche sectors of the financial services industry.

To date, the area in which the greatest success has been achieved has been in the field of treasury processing.

The decision by Deutsche Bank to locate its Asia-Pacific global processing hub for foreign exchange in Australia is one example of a global investment bank opting to locate treasury processing operations in Australia. A further example is that of US investment bank, JP Morgan, who has relocated a number of securities and derivatives processing activities from Singapore to Australia. Such activity is being done on a regional rather than on a domestic basis and, as such, is very important to Australia’s status and future development as a global financial services centre. In recognition of this, Axiss is currently working with a number of other global investment banks on this issue and is also completing a
round of visitations to other banks who may shortly consider undertaking similar activity.

In addition to treasury processing, Axiss Australia has also implemented a number of initiatives to capitalise on Australia’s strengths in the area of investment management.

With total funds under management currently exceeding $A600 billion, Australia has the second largest market for investment management in the Asia-Pacific (after Japan). With total funds under management predicted to rise to over $A2.3 trillion by 2015, Axiss sees considerable potential for Australia to further leverage off its investment management expertise and to use this industry as a drawcard to attract new firms to Australia.

To this end, Axiss has published a 36-page executive briefing document Investment Management in Australia which showcases the size, range of products and relevant regulatory guidelines that apply to Australia’s managed investments industry. This document has been distributed to leading funds management organisations globally and is also available via the Axiss website. Axiss will also be publishing in the second half of 2002, a further executive briefing document on Australia’s hedge fund industry. Hedge funds are one of the fastest growing segments of Australia’s investment management community with a number of international participants such as hedge fund managers, prime brokers, custodians and investment administrators establishing operations in Australia. Axiss has worked closely with Australia’s peak body for hedge funds (the Alternative Investment Management Association) to foster the development of the hedge fund sector in Australia. These efforts, together with the scheduled executive briefing, will enhance the understanding of Australia’s hedge fund industry amongst international investors and is intended to encourage both investment inflows and relocation activity from other offshore centres.

This direct mail and website strategy has been augmented by several missions to the United States, the United Kingdom and Hong Kong by the Axiss CEO, Mr Les Hosking. For the United States visits, Mr Hosking was accompanied by Mr Ken Allen, the Australian Consul General in New York. Mr Hosking targeted primarily funds management firms on each mission. Further meetings between Axiss and North American, European and Asian fund management firms are scheduled for later in 2002.

Another area of the financial services industry that has strong growth prospects is the venture capital and private equity investment industry. While still small by international standards, Australia’s venture capital and private equity market has enjoyed vigorous growth over recent years with venture capital firms raising over $A1.2 billion in 2000.

To promote and enhance the development of the venture capital industry, Axiss maintains ongoing dialogue with the Australian Venture Capital Association (AVCAL) and has involved AVCAL staff and members in marketing and press functions concerning the global financial services centre initiative. In addition, Axiss commissioned an expert consultant from the venture capital industry to author an executive briefing paper on the venture capital market in Australia. The publication has been distributed to executives of financial sector firms within Australia and overseas so as to profile the achievements made in this sector.

Export of Australia’s expertise in finance education and training is a niche area which Axiss has been helping to develop through the Australian Financial Services Training Alliance (AFSTA). A survey of export opportunities for AFSTA members was conducted in conjunction with Austrade. The survey will assist AFSTA to develop joint marketing initiatives to promote the export of education to key Asian markets.

In relation to IT initiatives, Axiss has identified the strategic importance IT holds for further development of the financial services industry in Australia. Several projects are currently underway internally to increase Axiss’ involvement with industry so as to better understand IT’s impact on financial services. Additionally, a number of IT-related issues are being explored including the cost and availability of domestic and international bandwidth.

On a more general level the Government has been looking at mutual recognition in the financial services industry as a means of promoting regulatory cooperation between jurisdictions and as a way of creating opportunities for Australian participants to access markets within the region. To assist in this activity, Axiss hosted an APEC Future Economic Leaders Think-Tank in April 2002 on the topic of capital markets harmonisation.

Recommendation 3

The Committee recommends that to support the global financial centre initiative a “whole of government” approach should be adopted to promote development at the value-added end of the financial services market, to maximise opportunities and to build wealth for all Australians.

The Government agrees with the Committee’s recommendation of the adoption of “a whole of government” approach to support the global financial centre initiative so as to promote devel-
opment of the value added end of the financial services market.

Since its inception, Axiss Australia has sought and received cooperation from appropriate federal, state and local government agencies.

The initial staff of Axiss were drawn on secondment from the Commonwealth Treasury, Reserve Bank of Australia, Austrade and the State Government of Victoria.

As a member of the Regulatory Advisory Committee (RAC), Axiss meets frequently with the Australian Taxation Office (ATO), the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA), the Australian Bureau of Statistics (ABS), the Australian Competition and Consumer Commission (ACCC), and the Reserve Bank of Australia (RBA) and Treasury.

Axiss cooperates closely with Invest Australia and Austrade and continues to utilise their overseas networks in the international promotion of Australia as a global financial services centre and in the export of financial services.

There continues to be a high degree of coordination and cooperation with numerous Government agencies on specific projects and policy initiatives. Examples include:

- Co-authoring of the Axiss executive briefing Information Technology & Communications Infrastructure in Australia in conjunction with the Department of Communications Information Technology and the Arts (DoCITA).

- Regular cooperation with the Department of Foreign Affairs and Trade (DFAT) on international policy and promotional activities including negotiation of the Singapore Free Trade Agreement and promotion of Australia as a global financial services centre during the Olympics. Axiss is also a regular participant in the International Media Visitors Programme that is organised by DFAT.

- RBA sponsoring the Axiss organised APEC Future Economic Leaders Think-Tanks. The second Think-Tank was held in Sydney in April 2002. The Think-Tank concept, which draws participants from all APEC member economies, was developed in consultation with DFAT and PM&C. The inaugural event in August 2001 received AusAid funding support through the APEC Support Programme.

- Axiss coordinating its activities in the education and training sector with the Commonwealth Department of Education, Science and Training (DEST). The former Minister of Education, Training and Youth Affairs, the Hon Dr David Kemp, MP, participated in December 2000 in a roundtable discussion, organised by Axiss, with senior management of the Australian financial services sector.

- Axiss initiating discussions between Austrade and the Australian Financial Services Training Alliance (AFSTA) to explore education export opportunities. Axiss and Austrade have since completed a survey of AFSTA members to gauge current export activity in this area. The Survey has inspired the planning of a ‘road-show’ to China to promote Australia’s expertise in finance education and training. Axiss has also been working with Australian Education International (AEI), an agency of DEST, on the development of the Study in Australia brand.

- Axiss working closely with the ABS to ascertain detailed statistics on various aspects of Australia’s financial services sector. A staff member of the ABS worked in the Axiss office during part of 2000.

- In January 2002, Axiss Australia launched the Workplace Learning Project, a joint initiative with the Enterprise Career and Education Foundation (ECEF), an organisation fully funded by DEST. The project develops career, enterprise education and structured workplace learning programs for secondary school students considering a career in the financial services industry. Key to this project is the development of alliances with government and private education bodies at State and Commonwealth level, along with the development of close relationships with industry associations and financial services organisations.

- Sponsorship of an APRA-coordinated training seminar for bank supervisors from APEC member economies.

- Regular monthly meetings with the NSW Department of State and Regional Development, including cooperating on numerous investment attraction projects and international promotional events. Examples of cooperation have included the Australian launch of the Japanese financial services technology firm MetaBit Systems in June 2002 and the staging in Sydney of the Asia Australia Investment Conference and Expo to coincide with the APEC Business Advisory Council meeting in May 2002. The Government of NSW was a sponsor of the Axiss-organised conference Australia: Financial Gateway to the
Asia Pacific in London in July 2000 and the Premier of NSW spoke at the conference.

- Regular meetings with the Victorian Department of State and Regional Development, including cooperating on numerous investment attraction projects and international promotional events. The Victorian Government was a sponsor of the Axiss organised conference *Australia: Financial Gateway to the Asia Pacific* in London in July 2000, and the Premier of Victoria also spoke at the conference.

- Regular meetings with the Committee for Sydney and the Committee for Melbourne, including cooperating on investment attraction projects.

- Discussions with the Australian Vice-Chancellors’ Committee to host jointly a high-level finance industry education round table.

Axiss intends to further broaden its inter-agency coordination and cooperation through its existing network of Government contacts, and by continuing to forge closer connections with appropriate agencies throughout Government at all levels.

**Recommendation 4**

*The Committee recommends that, in order to ensure that Australia has a competitive taxation regime, the Treasurer refer the taxation issues raised during the inquiry to the Board of Taxation for review and advice, and to take action as appropriate.*

Specific issues raised with the Committee that have already been addressed by the Government include, as noted in the Report, the treatment of overseas unit trusts under the *New Business Tax System*, and certain Goods and Services Tax issues.

The successful negotiation of changes to Australia’s Double Tax Convention with the United States will address concerns that overseas dividend withholding tax rates permitted under Australia’s double tax treaties are too high.

Preceding the release of the Report, the Government announced on 21 February 2001 changes to be made to section 128F of the Income Tax Assessment Act 1936 that will allow the interest withholding tax (IWT) exemption to apply in cases where widely held securities are purchased by onshore associates of the issuer and offshore associates acting in the capacity of a clearing house, paying agent, custodian or funds manager. These changes will facilitate the intended operation of the extension of the section 128F exemption to onshore associates originally proposed in the Government’s 1997 ‘Investing for Growth’ statement.

IWT will be removed from payments to nostro (settlement) accounts held with foreign banks. The law will also be amended to exempt from IWT the deemed interest component of the purchase price of Australian-issued securities being purchased from non-residents. This change will allow the IWT exemption to apply in cases where securities are sold back to Australian purchasers prior to maturity.

All measures announced on 29 August 2001 apply from the date of announcement.

**Recommendation 5**

*The Committee recommends that the Treasurer review the superannuation arrangements for expatriate staff, in order to ascertain whether:

a) Superannuation Guarantee arrangements can be streamlined; and

b) portability of funds for expatriate employees leaving the country could be effected more expeditiously through the present process of establishing bilateral agreements or through other, or interim measures.*

The Government considers that the current policy of including double coverage provisions within bilateral social security arrangements is appropriate. The inclusion of double coverage provisions enables non-resident expatriate staff who would be ordinarily covered by a scheme in their home country and by the Superannuation Guarantee (SG), to be exempted from the SG.

Other countries levy payroll-based social security taxes, a proportion of which provide employees with pension benefits in retirement. As the size of the pension benefit depends on the level of lifetime contributions, and contributions are compulsory, contributions to these schemes are equivalent to SG contributions.

These SG equivalent contributions are compulsory for Australian expatriates who are temporarily working overseas and are generally non-refundable and the benefits are non-transferable. Further, most countries have a minimum contribution period before any entitlement to a pension benefit arises. Thus, Australian expatriates who...
are temporarily working overseas are generally not entitled to a refund of their SG equivalent contributions on permanent departure or retirement.

While the Government recognises the concerns raised by the Australian business community regarding the time taken to negotiate bilateral and reciprocal agreements for the transfer of superannuation benefits by non-residents on permanent departure from Australia, the present process of establishing bilateral arrangements is considered appropriate.

In addition, from 1 July 2002, eligible temporary residents will be able to access their superannuation benefits upon permanent departure from Australia.

**Recommendation 6**

The Committee recommends that the Board of Taxation review the arrangements for the taxation of salaries and remuneration for expatriate staff employed to work for varying periods of time in Australia and, within the limits and guidance of the various international treaties, advise the Treasurer on whether or not:

a) the systems or regimes are onerous or complicated making compliance by companies difficult;

b) the systems or regimes are fair with respect to the levels of taxation required;

c) the systems or regimes are sufficiently attractive so as to not unduly deter prospective employees from coming to Australia; and

d) the current system of electing to defer tax to the time of ultimate realisation of assets is fair and equitable.

In May 2002, the Government introduced legislation into Parliament to change the taxation of expatriates to remove impediments and assist business in attracting highly skilled workers from around the world. These impediments relate to the tax treatment of foreign source income and the foreign investment fund rules in respect of expatriates.

This legislation was rejected in the Senate and the Government is considering how to progress these changes to expatriate taxation. This obstruction will adversely impact on skilled expatriates working in Australia and on Australian businesses seeking to attract skilled expatriates to Australia to temporarily fill skill shortages.

The Government is also seeking to address concerns relating to the CGT treatment of departing residents, including expatriates, on a country by country basis through renegotiation of double tax agreements. The recently signed protocol to our tax treaty with the US included provisions to address these concerns and the issue has been raised in all our current treaty negotiations, including with the United Kingdom.

Furthermore, the Government is undertaking a review of international taxation arrangements with particular attention on whether current arrangements impede Australian companies expanding offshore, whether they impede attraction of domestic and foreign equity, and how they affect holding companies and conduit holdings being located in Australia.

The focus of the review is on at least four principal areas: the dividend imputation system’s treatment of foreign source income; the foreign source income rules; the overall treatment of conduit income; and high level aspects of Double Tax Agreement (DTA) policy and processes. The review is also examining expatriate taxation issues. The Treasury is preparing a paper for public release around mid-year to serve as a basis for consultations to be undertaken by the Board of Taxation in the second half of 2002, with a report by the end of the year to Government.

The taxation of foreign expatriates will be considered by the Board of Tax during its consultations on the review of international tax.

**Recommendation 7**

The Committee recommends that the Treasurer review the entitlements of expatriate staff to Medicare and consider ways to streamline the exemptions requirements.

The Government does not support recommendation seven.

The Government considers that the current arrangements relating to the entitlements of expatriate staff to Medicare benefits and the process relating to their applying for exemptions from the Medicare levy are broadly appropriate.

Eligibility for Medicare benefits is conferred by the Health Insurance Act 1973 which falls within the portfolio responsibilities of the Minister for Health and Ageing. Generally, eligibility for Medicare benefits does not extend to foreign expatriates unless there is a reciprocal health care agreement in place between Australia and the expatriate’s home country. These agreements are negotiated and established at ministerial level between Australia and the foreign country. Comments were made to the Committee that reciprocal health care agreements are not in force with all countries, notably the United States. However, these agreements are generally considered appropriate only where the public health system in the corresponding country offers a similar level of coverage to that provided in Australia. Accordingly, they will not be appropriate in all cases.
Persons who are not entitled to Medicare benefits may apply to the Minister for Health and Ageing to be certified as such and therefore exempt from liability to the Medicare levy. While the Government notes the concerns that have been raised with the Committee regarding this process, it considers that the current arrangements offer advantages with respect to the integrity of the Medicare levy and Medicare levy surcharge systems compared with alternatives. In particular, the Government is concerned that the approach identified in the Committee’s report of allowing taxpayers to make an election on their annual income tax return would involve increased compliance risk relative to the current certification-based arrangements. In this context, the Health Insurance Commission is currently working towards upgrading and enhancing the integrity of its certification systems, including developing automated compliance checking.

**Recommendation 8**  
*The Committee recommends that the Government support and encourage industry groups to look at ways in which the Australian financial services industry can become more competitive and cost-effective. The Committee also supports the Government’s view that Australia needs to examine ways to exploit the opportunities that have arisen as a result of the rationalisation and consolidation taking place globally across the finance and securities industry.*

The Government supports the Committee’s recommendation that Government and industry groups work together to ensure Australia’s financial services sector remains globally competitive and cost-effective. The Government also supports the Committee’s view that Australia needs to examine ways to exploit the opportunities that have arisen as a result of the rationalisation and consolidation taking place globally across the finance and securities industry.

As outlined previously, the Government through Axiss Australia, maintains regular dialogue with major finance and securities industry associations and private sector firms. Where possible, Axiss provides strategic advice, data and research to assist these firms in developing their business strategies. It also acts as a conduit between these firms and the Government on policy and regulatory matters to identify and correct any impediments or regulatory anomalies that impact on Australia’s ability to be globally competitive.

**Recommendation 9**  
*The Committee recommends that the Commonwealth Government work with State Governments, regulators and service providers to provide a one-stop shop to streamline access to Australia for companies and others seeking to enter the Australian financial services market.*

The Government agrees with the Committee’s conclusion that streamlining access to Australia and its services is one of the keys to more effective promotion of Australia and its advantages to the rest of the world. Frequently, decisions to enter new markets or the actual establishment of a presence within a new market need to be made quickly and efficiently in order to maximise the benefits from that decision. The Government, through Axiss Australia, seeks to demonstrate its commitment to growing the financial services sector in Australia by facilitating the entry process.

Axiss recognises the need to help companies through all stages of the entry process, from constructing an initial business case, through to visa requirements for expatriates. For legal and practical reasons, Axiss cannot offer to complete the entry process for incoming market participants, however it readily offers its services as a guide and facilitator within the Australian financial services system and with Government departments at all levels. One way in which Axiss provides assistance is via the Locating in Australia section on the Axiss website, which provides useful information in areas such as licensing, taxation, visas, government assistance and finding skilled staff for firms considering establishing their operations in Australia.

Axiss has developed a one-stop-shop website for information relating to finance education and training called the Finance Skills Gateway. The site provides a searchable database of courses and information on Australian education and training, including training compliance required following the introduction of the Financial Services Reform Act (FSRA).

Axiss has built an extensive network of contacts that it can call upon to help new entrants when questions or problems arise. Through the establishment of the Regulatory Advisory Council, Axiss has close and regular contact with the Australian Taxation Office (ATO), the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA), the Australian Bureau of Statistics (ABS), the Australian Competition and Consumer Commission (ACCC), and the Reserve Bank of Australia (RBA). Axiss has also established close links with other organisations such as the Department of Immigration and Multicultural Affairs (DIMA), Invest Australia and the Department of Education, Science and Training (DEST). Axiss also maintains a range of constructive dialogues with financial services industry organisations and representative groups in addition to its contacts with individual companies. This network
of contacts can be called upon for advice and/or insights into some of the technical or product-specific inquiries that may be directed to Axiss.

The Government believes that it is appropriate that State Governments make their own representations to potential entrants explaining the relative merits of their particular State in terms of locating operations within Australia. However, as explained in response to Recommendation 3, Axiss maintains regular contact with government bodies and organisations at various levels in other States, which also have the aim of attracting new entrants into the financial services sector. By maintaining constructive relationships at these levels, a duplication of effort is avoided and the possibility of sending conflicting messages is minimised.

By building on the information base compiled in its first year of operation, Axiss seeks to act as a comprehensive and useful information bank to help companies construct accurate and persuasive business cases for their entry into Australia. By offering guidance and advice Axiss aims to streamline the entry process itself. However, while the Government recognises the need to make entry into the Australian financial services market as smooth as possible, it does not wish to restrict potential entrants to one or two sources of information only. Companies wanting to explore the possibilities of entering the Australian financial services market are welcome to discuss matters with Australia’s Ambassadors, State Representative Offices, and private sector legal and taxation advisers if they consider that these individual sources of information will provide them with the level of specific information they require.

Recommendation 10
The Committee recommends that the Government make a statement which reaffirms Australia’s commitment to Asia.

Response to Recommendation 10 is incorporated into response provided for Recommendation 12.

Recommendation 11
The Committee recommends that Axiss Australia work with the Department of Education, Training and Youth Affairs (now the Department of Education, Science and Training) and other educational bodies to:

a) consider the development of mechanisms for educating primary and secondary students about financial matters, including through IT initiatives;
b) develop a coordinated strategy to build and promote the study of financial services skills along with Asian language and cultural studies in the tertiary sector, and within the Australian financial services industry; and
c) consider ways in which to foster and promote existing developments in financial services accreditation, education and training overseas.

a) The Government agrees with the Committee that it is important to educate primary and secondary students about financial matters. The Government acknowledges that the development of mechanisms that include IT initiatives will have a positive impact on the talent pool available to the financial services industry in Australia and assist in the promotion of the industry as an attractive study and career option to potential tertiary students and employees.

Axiss continues to explore new initiatives that promote education and training to school students and that involve the fostering of a close relationship with DEST. Axiss’ Workplace Learning Project is one example of a mechanism by which Axiss is facilitating the access of school students to information concerning financial services. The project is the result of an alliance with the Enterprise and Career Education Foundation (ECEF), an organisation fully funded by DEST. Through the Workplace Learning project initiatives, school students will have increased access to information on career and education pathways in financial services, along with an increased understanding of financial matters. The project has established an Advisory Group in order to ensure that both industry and education objectives are met. The project works closely with the ECEF sponsored IT Targeted Industry Project in order to ensure that synergies between the two projects are identified and explored.

A further example is Axiss’ sponsorship of the 2000 Australian Business Week (ABW) National Championships, an event also supported by DEST. The event involved 60-top Year 12 students competing in teams as “virtual” fund managers each responsible for $500,000 in “virtual” investment funds. As part of this experience for students, the ABW National Championships utilised new computer technologies that simulate changing financial market conditions and facilitate the collection, analysis and organisation of information. The event was successful in increasing awareness and interest amongst students in the financial services sector and similar initiatives are planned for this year.

b) The Government welcomes the Committee’s recommendation concerning a coordinated
approach to the promotion of financial services skills, Asian languages and cultural studies.

In regards to the promotion of Asian languages and cultural studies in conjunction with the study of financial services skills, the Government acknowledges the advantages to Australia of having a multilingual workforce that is also proficient in financial services skills. This objective is one that involves close coordination between a number of Government agencies including Axiss Australia, DEST and the Department of Immigration and Multicultural Affairs. To date, joint initiatives between these Departments have been limited, however the Government accepts the need for joint strategies to be implemented that involve each of these Departments. The promotion of such study by Axiss would complement, and indeed strengthen, Axiss’ efforts in promoting Australia as having a broad base of language skills amongst the working population. This broad base of language skills provides a substantial benefit for those financial service organisations looking to locate regional headquarters within the Asia-Pacific.

In regard to the promotion of financial services skills, the Government through Axiss has initiated a joint programme between leading universities and the private sector known as the Axiss Scholar Programme. The Axiss Scholar Programme has brought together three universities and over thirty organisations in the financial services industry. One of the objectives of this Programme is to promote the study of financial services skills at the tertiary level through offering scholarships that facilitate “on-the-job” learning in a financial services organisation. By enabling a “real-time” experience in the workplace for those studying tertiary courses related to the financial services industry, the Axiss Scholar Programme will enhance the attractiveness of these courses to those students who are entering tertiary institutions.

c) The Government welcomes the Committee’s recommendation for Axiss, with DEST and other educational bodies, to consider ways in which to foster and promote overseas Australia’s offering in the areas of financial services accreditation, education and training. This process has been underway at Axiss for some time now. An early example of Axiss’ efforts in this area was the brokering of the establishment of the Australian Financial Services Training Alliance (AFSTA) in June 2000. AFSTA comprises the major finance industry associations, universities and training bodies as well as the regulatory agencies ASIC and APRA. AFSTA provides a forum for developing joint international marketing initiatives such as a promotional website and a ‘road-show’ to China. Axiss is coordinating activity in this area with Austtrade and Australian Education International (AEI).

Recommendation 12
The Committee also recommends that, to enhance international recognition of Australia’s status as a ‘gateway’ to the Asia-Pacific region, the Government should continue to consolidate Australia’s reputation by forging productive engagement between Australian institutions and organisations and those in the region, through regional organisations such as APEC and bilaterally.

The Government’s commitment to Asia was explicitly outlined in the Coalition’s foreign affairs policy statement for the 1996 election, A Con- dent Australia where the Coalition set out its position in very unambiguous terms.

The Government maintains its strong commitment to Asia, which it is actively developing through continuing work in a range of practical bilateral and institutional links. For example, Australia is actively engaging in APEC, which involves considerable assistance on capacity building to the region. In the area of economic and financial links, Australia is active in groupings such as the Manila Framework Group, the G-20 and the Financial Stability Forum, all of which give timely reflection to the changing distribution of global economic influence and give more voice to the growing economies of Asia.

In addition the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, Reserve Bank of Australia, Australian Competition and Consumer Commission, Australian Taxation Office, Australian Bureau of Statistics, and AusAid have all provided technical assistance to the region over the last year.

Technical assistance to the region occurs at multi-lateral and bi-lateral levels focusing on individual institutional requirements as well as providing broader education and training services, knowledge and skills transfer, and capacity building.

The Government has initiated a Mutual Recognition Project with Hong Kong and Singapore to enhance regional cooperative arrangements in the area of financial services regulation. The project aims to facilitate cross border flows of capital within the region and strengthen the ability of
Australia and the Asian region to compete globally.
Australia is currently examining, with overseas regulatory bodies, mechanisms for achieving mutual recognition in a range of specific areas. While the project is currently on a bilateral basis, it is foreseeable that any cooperation achieved could, over time, be extended to other jurisdictions in the Asian region.

Recommendation 13
The Committee recommends that Axiss Australia develop and conduct an on-going research project so as to provide advice to Government on:

a) the reasons companies and other financial service providers come into and leave Australia; and

b) the reasons expatriate staff come to and leave Australia.

An important aspect of the work undertaken by Axiss Australia is to understand the process by which financial services firms (both Australian and international) determine the location for their financial services operations.

To this end, Axiss meets regularly with senior personnel of financial services companies to discuss their latest thinking on this subject. Axiss supplies data and other relevant information to these firms to assist them in their decision making processes and also works closely with other Federal and State Government agencies to provide answers to questions on business issues such as immigration, tax and licensing requirements.

In addition to maintaining dialogue with financial services companies, Axiss also works closely with major accounting, legal and consulting firms who, on occasion, produce research and analysis on financial service sector trends. Findings from such research are incorporated into marketing done by Axiss.

To further understand the decision factors adopted by global financial organisations, Axiss commissioned a large global consulting firm to undertake a study of the relocation criteria used by global financial firms. The purpose of this study was to gain a better appreciation of the factors that firms take into account when making location decisions and to also understand the weightings given to these factors. The results of the study were presented to the Axiss Advisory Board for its consideration in preparation of an Advisory Board report to the Government.

Findings from this research will not only give Axiss a better insight into contemporary thinking on this issue but will also enable it to better attune its data and marketing publications to the needs of global financial services firms.

In regard to the entry and exit of expatriate staff, Axiss has spoken to numerous companies regarding their current policies on expatriate employees. Axiss has used the intelligence gained from these meetings to provide input to Treasury on issues such as international taxation reform.

Recommendation 14
The Committee recommends that Axiss Australia, as a matter of priority, develop some meaningful indicators by which it can measure its performance in delivering the outcome of promoting Australia as a global financial service centre.

An important overall indicator of the effectiveness of Axiss lies in the decisions made by major financial institutions to relocate their operations to Australia. Since the commencement of the initiative, over 80 companies have established a presence or increased operations in the Australian financial sector. However, global trends in financial services, including consolidation and convergence and other influences, make this measurement of success difficult to assess.

Rather than limiting performance assessment to a “success list”, Axiss also measures its performance through its output of marketing and promotion initiatives; distribution of data and information materials; and facilitation and assistance for financial services companies already operating and newly entering Australia. In addition, Axiss continues to investigate the feasibility of further developing outcome measures, which specifically relate to Axiss activity.

AUSTRALIAN GOVERNMENT RESPONSE TO THE REPORT OF THE JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE “CONVICTION WITH COMPASSION: A REPORT INTO FREEDOM OF RELIGION AND BELIEF”

RECOMMENDATION 1
The Committee recommends that the Australian Government continue to encourage and support the work of the Human Rights and Equal Opportunity Commission, and ensure that the resources with which it provided allow it to carry out its work in relation to freedom of religion in timely, efficient, effective and appropriate ways.

Accepted. The Government is committed to a strong and independent human rights body that provides effective and equitable protection and promotion of human rights, including freedom on
religion and belief. The Government considers that the Human Rights and Equal Opportunity Commission (HREOC) is appropriately resourced to carry out its functions. As an independent statutory body, the allocation of resources between its functions is primarily a matter for HREOC.

RECOMMENDATION 2

Accepted in principle. The Government agrees the important issues raised in HREOC’s Report should be considered.

In February 1999 the Attorney-General announced that the Government would not implement the main recommendation in HREOC’s Report for a Religious Freedom Act.

A number of the Report’s recommendations relate to matters within the responsibility of State and Territory Governments. The Attorney-General has referred these matters to his State and Territory counterparts for their consideration.

The Attorney-General has referred the remaining recommendations to relevant Ministers and relevant areas of his portfolio so that they may be taken into account in relevant policy development.

RECOMMENDATION 3
The Committee recommends that the Australian Government coordinate a review of Commonwealth, State and Territory legislation to ensure the maximum degree of domestic protection of freedom of religion, with a view to the introduction of a greater degree of uniformity of human rights law and practice in Australia.

The Attorney-General has brought the Committee’s report to the attention of his State and Territory colleagues for their consideration.

RECOMMENDATION 4
The Committee recommends that, based on the detailed recommendations made to this inquiry, the Commonwealth, State and Territory Governments examine ways of promoting and extending freedom of religion and belief within their jurisdictions.

The Attorney-General has brought the Committee’s report to the attention of his State and Territory colleagues for their consideration.

RECOMMENDATION 5
The Committee recommends that the Australian Government continue to take every opportunity, in both multilateral forums and in its bilateral relationships, to promote the universality and indivisibility of all human rights, specifically the right to freedom of religion and belief.

Accepted. The Government’s human rights policy provides a range of opportunities to implement this recommendation. Apart from raising specific cases where the freedom of religion and belief have been violated, the Government intends to continue to raise issues such as the freedom of assembly which are closely related to the protection of religious freedom.

Since the preparation of the Department of Foreign Affairs and Trade’s initial submission to this inquiry, further relevant action has been taken on both the multilateral and bilateral levels to promote freedom of religion and belief. Bilaterally, the importance of freedom of religion and belief has been a theme of many of the exchanges on human rights issues Australia has conducted with other governments during the past few years, as demonstrated in the examples set out below. Future discussions will occur within the context of these established official exchanges.

With regard to China, the Government considers that the Chinese authorities should be given credit for the steady improvement in providing protection for religious freedoms that has taken place over the past 25 years. That said, real problems remain. Generally, the authorities seek to limit religious activity to Government-sanctioned organisations and places of worship. Religious believers who abide by the limitations imposed by the Government experience little, if any, interference. On the other hand, those who operate outside the official umbrella may be subject to harassment, although this varies widely.

Evidence available points to an increase of harassment in many parts of China over the past few years. The Australian Government makes known its concerns through the annual bilateral human rights dialogue, through multilateral forums such as its main human rights statements to the UN Commission on Human Rights and the UN General Assembly, and occasional specific representations, including those made on 27 April 2000 on behalf of Pastor Li Dexian, Bishop, Yang Shudao, and Bishop Jia Zhiguo, and on 11 January 2002 on behalf of members of the Huanan Church.

There continue to be problems in the freedom of religious belief and expression in Viet Nam. Australia is addressing these by continuing dialogue...
with the Vietnamese authorities. Over the past year, the Government has learned that a number of prisoners on the Australian list of cases of concern have been released, including Brother Mai Duc Chuong of the Catholic Congregation of the Mother Co-Redemptrix. Eighteen people on whose behalf the Government has made representations have been released since 1998. The release of these prisoners has followed representations made at different levels, including by Mr Downer during his meeting with Vietnamese Foreign Minister Nguyen Dy Nien in May 2000, and representations made by Embassy staff before the Vietnamese prisoner amnesties in September 1999, and in April and September 2000. Mr Downer also used his meeting with Mr Nien to raise Australia’s desire to engage in a more formal process of discussing human rights issues with the Vietnamese Government. Mr Downer raised human rights issues with the Vietnamese Deputy Prime Minister Nguyen Manh Cam, during his visit to Australia in September 2000. The Minister for Immigration and Multicultural Affairs, Mr Ruddock, also raised human rights issues during his visit to Vietnam in June 2001.

In another positive development, the Government understands that, following discussion between the Vietnamese Government and the Vatican, the Vietnamese Government has agreed to the appointment of six new bishops nominated by the Vatican, although it vetoed the appointment of a new Archbishop of Hanoi. The Vietnamese Government is now allowing exit visas for priests to study abroad.

The Government, through our Embassy in Hanoi, will continue to monitor the human rights situation in Viet Nam and, as required, will make representations to the Vietnamese Government regarding individuals who are subject to detention, house arrest or harassment for the peaceful expression of their political and religious beliefs.

Religious freedom has also featured prominently in the Government’s human rights exchanges with Iran. The Government expressed concerns about the continuing discrimination experienced by the Bahá’í community in Iran and in particular about three men under sentence of death. The issue was raised a number of times with Iranian officials. These death sentences were eventually overturned on appeal, and a number of the men, having served their prison sentences, have been released. The Government is seeking a bilateral dialogue on human rights with Iran, and religious freedoms—for all Iranian minority religions, be they Sunni, Christian, Jewish, Zoroastrian or others—will be a part of that, as well as a part of post-activities where considered appropriate. The post actively engages with minority religions in Iran through their representatives in the Iranian Parliament. The MP for Jews, Mr Morris Mottamed, is Vice-Chair of the Australia-Iran Friendship Group in the Majles, and the MP for Assyrian Christians, Mr Yonathan Bet Kolia, is a fellow member with two Australians on the Assyrian Universal Alliance’s Executive Board.

As foreshadowed in DFAT’s submission to the Inquiry (paragraph 111), the government-funded Australia-Indonesia Institute assisted the Australia-Indonesia Legal Development Foundation to run a three day workshop with direct relevance to religious freedom. The workshop was held in November 1999 and was attended by sixty personnel from thirty six religious, ethnic and other groups. Its objective was to provide an opportunity to discuss and coordinate future strategies on inter-communal relations. Issues covered included the promotion of better inter-communal harmony and dialogue; lessons learned from initiatives already undertaken; key issues to be addressed by institutional reform; and the need, if any, for legal reforms.

The four year, $2 million Komnas HAM (the Indonesian human rights commission) project aims to strengthen the Commission’s capacity to fulfill its mandate to protect and promote human rights in Indonesia, by enhancing its management capacity to disseminate an understanding of human rights principles and the role of national human rights institutions. The project has funded national human rights seminars; developed a complaints procedures manual; helped recruit professional management staff; established professional links with Australia’s Human Rights and Equal Opportunity Commission; and placed an Australian advisor in the Commission’s Public Education and Awareness Bureau for two years. The project will also provide training in national inquiry skills and investigation techniques to support Komnas HAM’s new responsibilities under recent Indonesian legislation (Act No. 26 of 2000 Concerning Human Rights Courts). While these programs do not directly address freedom of religion issues, government officials have expressed the view to the Committee that an improvement in human rights observance overall will contribute to greater respect for religious freedom.

In February 2002, the Government announced the three year Muslim exchange program funded by the Australia Indonesia Institute. Under the program, Muslim leaders from both Australia and Indonesia will visit one another’s countries for up to two weeks to promote a greater understanding about Islam.
The Australian Government is extremely concerned about the ongoing episodes of violence in the Maluku provinces. The Australian Embassy in Jakarta closely monitors developments and makes regular representations to Indonesian authorities urging them to protect the residents of that region and to find a peaceful solution to the conflict through dialogue and respect for human rights, including the right to freedom of religion and belief.

RECOMMENDATION 6
The Committee:
• Notes the valuable work done by the United Nations in extending and protecting freedom of religion and belief;
• Calls on the Australian Government to continue its support for the work of the United Nations in this area, and
• Further calls on the Australian Government to continue to encourage other nations, in both multilateral forums and as part of its bilateral relationships, to support the United Nations actively in its work of protecting freedom of religion and belief.

Accepted. The Government will continue to support the valuable work undertaken by the United Nations and, where possible, will encourage other countries to do likewise.

During 2001, Australia co-sponsored a number of relevant resolutions in UN forums and expects to take similar action at forthcoming UN meetings. (Co-sponsorship of a UN resolution indicates that the member country supports, and wishes to associate itself with, that resolution.) At the Commission of Human Rights in Geneva, Australia co-sponsored the following resolutions, the first of which addresses freedom of religion and belief exclusively. The others listed mention this freedom, among other issues.

Implementation of the Declaration on the Elimination of All Forms of Religious Intolerance
Situation of Human Rights in the Islamic Republic of Iran
Promoting and Consolidating Democracy
Racism, Racial Discrimination, Xenophobia and Related Intolerance
Situation of human rights in Iraq
Situation of human rights in Myanmar
Situation of human rights in the Sudan
Situation of human rights in Cuba
Elimination of Violence against Women
Tolerance and Pluralism as Indivisible Elements in the Promotion and Protection of Human Rights
Rights of the Child
Regional Cooperation for the Promotion and Protection of Human rights in the Asian and Pacific Area
Question of the Death Penalty
Human Rights and Mass Exoduses
Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
United Nations Decade for Human Rights Education
The Situation of Human Rights in Southeastern Europe.
Human Rights and Thematic Procedures

In 2000 Australia co-sponsored the following biennial resolutions:

• Tolerance and Pluralism and Indivisible elements in the Promotion and Protection of Human Rights
• Human Rights and Mass Exoduses
• The Government also referred to its concerns about violations of religious freedom in major statements delivered to these bodies.

RECOMMENDATION 7
The Committee recommends that the Australian Government continue its support and funding for the good governance and human rights programs, undertaken by such bodies as the Centre for Democratic Institutions and the Australian Agency for International Development, designed to promote and protect freedom of religion and belief.

The objective of the Australian aid program is to advance Australia’s national interest by assisting developing countries to reduce poverty and achieve sustainable development. Support for good governance is an important part of that. In countries where there is corruption, poor control of public funds, lack of accountability, abuses of human rights and excessive military influence, development inevitably suffers. It is for this reason that the aid program supports good governance activities and human rights programs. While the protection of freedom of religion and belief may also be strengthened in this context, the Government notes that this is not the prime objective of the aid program.

The Government intends to continue to support several important initiatives which make this kind of indirect contribution to the promotion of freedom of religion and belief. These are the Human Rights Fund and the Centre for Democratic Institutions (CDI). The Human Rights Fund in-
cludes the Human Rights Small Grants Scheme, support for the Asia-Pacific Forum of National Human Rights Institutions, and regular contributions to the Office of the United Nations High Commissioner for Human Rights. The Australian Government’s continuing support of these initiatives is demonstrated by its allocation of $1.3 million in 2000-2001 to the Human Rights Fund (an increase of 30% on the previous financial year) and a commitment of $5 million over five years to the CDI.

RECOMMENDATION 8
The Committee recommends that the Australian Agency for International Development continue to extend the programs that assist international non-government organisations to protect freedom of religion and belief.

As stated in the response to Recommendation 7, the objective of the Australian Government’s aid program is to advance Australia’s national interest by assisting developing countries to reduce poverty and achieve sustainable development.

The Australian Government acknowledges the vital role of NGOs in development and in the Australian aid program. Recognising the strengths that NGOs bring to the aid program, the Australian Government, through the Australian Agency for International Development, will continue to utilise NGOs in assisting with poverty reduction in developing countries through such programs as the AusAID-NGO Cooperation Program.

While the international activities of the NGOs receiving government support in this way are likely to contribute to the promotion of all human rights, the Government notes that its allocation of funds to NGOs will not be based upon religious, political or sectarian considerations.

RECOMMENDATION 9
The Committee recommends that the Commonwealth Attorney-General give consideration to the convening of an inter-faith dialogue to formulate a set of minimum standards for the practices of cults.

The Government notes the Committee’s considered examination of this complex issue. The Committee noted that while some cults can cause great unhappiness, at times, other cults can bring fulfillment. It noted that there would be practical difficulties in developing minimum standards for the regulation of cults. It also noted that there would be considerable difficulties in seeking to define the groups that should be regulated.

Given these issues the Government doubts whether convening an inter-faith dialogue to formulate a set of minimum standards at this time would be of assistance in minimising the harmful effects of cults.

As State and Territory governments also have a role in minimising the harmful effects of cults, the Attorney-General will bring the Committee’s examination of the issue to the attention of his State and Territory colleagues for their consideration.

Senator LUNDY (Australian Capital Territory) (4.04 p.m.)—by leave—With regard to the government response to the report entitled Inquiry into the outsourcing of the Australian Customs Service’s information technology, I move:

That the Senate take note of the document.

On 16 May 2002 the Senate Legal and Constitutional References Committee tabled its report, Inquiry into the outsourcing of the Australian Customs Service’s information technology. The report focused on the Australian Customs Service’s implementation of its cargo management re-engineering project, or CMR, and in particular on the information technology aspects of CMR. These involved the replacement of Customs’ current range of cargo processing IT systems with an integrated system—the integrated cargo system, or ICS—and the introduction of a different IT platform that increased the role of the vendor, EDS, to replace Customs’ current IT gateway, provided by a not-for-profit organisation called TradeGate. It is important to note that TradeGate has representatives from both Customs and industry on the board of that organisation. Also, it probably represented one of the earliest models in the world of an e-commerce hub. It achieved an extraordinarily high standard of e-commerce within that particular community—in relation to Customs.

The replacement gateway is known as the Customs connect facility, or CCF. The primary concern expressed through the inquiry was that changes would mean that the high-volume users of that facility would get lower costs. So many of the witnesses that appeared were arguing that the changes proposed through the CCF would in fact mean that customers of Customs—that use the system on a high-volume basis would be given lower
prices. This would unfairly disadvantage lower-volume customers or users of Customs services.

The resulting impact would mean that the big end of town would pay lower prices for those services but the smaller users—the Australian SMEs, exporters and so forth—would actually pay higher prices for those services. The inquiry traversed this issue at some length. There have certainly been denials by the Australian Customs Service that price inequities would be the result. As yet we do not know the outcome of that particular matter, but it will certainly be worth watching.

The report also focused on part of the procurement processes adopted by Customs for the development of the ICS and the CCF. Early development of both of these was conducted by EDS Australia, the IT outsourcing vendor, under its outsourcing contract with Customs. Clearly there were concerns that EDS were, for whatever reason, not best placed to provide such a solution; hence, during 2001, EDS and Customs agreed that an alternative provider for the ICS development should be sourced. A consortium led by Computer Associates won an open tender for the application development of the ICS and commenced development in February 2002.

Given the dependency of the ICS on the provision of the CCF, Customs ensured that they contracted directly with the firms that EDS had engaged to deliver the CCF: IBM, Baltimore and SecureNet. Again, I think this reflects a growing awareness within Customs that they ought not become captured by their IT outsourcing vendor, EDS, and can be interpreted as an attempt by Customs to regain some control over that process, particularly given the need to mesh the CCF development with the ICS and so forth. Responsibility for the CCF application development rests with IBM and SecureNet under contract to Customs, as opposed to EDS, which goes some way towards alleviating some of the concerns expressed by witnesses who provided evidence to the inquiry.

The good news is that the government has agreed to both recommendations put forward by the committee. The recommendations were supported by all members of the committee. The first related to the concern that the consultation process with regard to CMR, CCF, ICS and all of those acronyms that they use was not adequate, was not effective and had in fact put at a specific disadvantage many of the stakeholders at the time. The recommendation was that Customs undertake a review of its consultative processes with a view to developing a strategy for consultation processes for the rest of the ICS implementation phase.

The Senate needs to understand that this recommendation comes on the back of several years of concerns and complaints about inadequate consultation. The government response to this was that it would try to improve its consultation processes. Indeed, a strategy was discussed with industry stakeholders on 29 April this year and the published statement includes various times for phases of implementation of the ICS. I will not go into it because I know the minister has tabled the document.

Another recommendation in the report was:

In order to provide certainty for industry, the Committee recommends that, in the event that the Customs Connect Facility and the Integrated Cargo System—the CCF and the ICS—... are not in place on the date required by the Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001, Customs invoke the procedures described in Section 126E of that Act.

That is a very technical way of saying that, if the new systems are not in place by the time they should be, industry stakeholders will not suffer any unfair penalty or loss or any new penalty under the proposed new system. At the time when this report was prepared there was speculation about whether or not those aspects of the CCF and ICS would be in place. The speculation proved to be correct, so the concerns of the industry were subsequently dealt with by the government, ensuring that no stakeholder in the sector would be adversely affected by delays caused by the inability of Customs to get the new systems operational during the interim phase and that the existing arrangements would apply. As I would like to be able to
continue to reflect on this report and this issue, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMITTEES

Public Accounts and Audit Committee

Report

Senator COLBECK (Tasmania) (4.13 p.m.)—On behalf of the Joint Committee of Public Accounts and Audit, I present the committee’s annual report for 2001-02, together with an erratum and minutes of proceedings.

DELEGATION REPORTS

Parliamentary Delegation to Indonesia and the 23rd ASEAN Inter-Parliamentary Organisation General Assembly

Senator McGAURAN (Victoria) (4.13 p.m.)—by leave—I present the report of the parliamentary delegation to Indonesia and the 23rd AIPO General Assembly, which was held in Vietnam from 1 to 13 September 2002. I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

The delegation visited Indonesia between 1 and 6 September. The broad objective of the visit was to promote and foster relations between Australia and Indonesia and to examine the challenges that confront Indonesia over the short to medium term. The delegation met with a range of Indonesian government, private sector representatives and individuals to discuss:

- Islam, politics and security;
- poverty reduction;
- decentralisation;
- economic and trade reform; and
- electoral and constitutional reform.

Mr President, as part of the visit, the delegation met with Islamic leaders and visited Muslim educational institutions. The purpose was to gain a clearer understanding of the role and influence of Islam in contemporary Indonesia. In particular, it was possible to discuss the impact and response by Islamic leaders to the events of 9-11, and the role of Islam in politics.

The Islamic leaders indicated their opposition to violent conflict and suggested that their religion placed emphasis on developing moral values and spiritual well-being. In particular, they were opposed to the creation of conflict on the basis of religion and extremism.

In relation to the role of Islam in politics, representatives of the Muhammadiyah University commented that ‘Islam is not Indonesia’. Instead, Indonesians should focus on justice and the virtues of education. Background information suggests that Islamist political parties had yet to attract widespread political support.

Mr President, there are an estimated 40 million people in Indonesia living in poverty. There are more than 1 million internally displaced people (IDPs) who are now competing with a growing urban underclass for survival. The United Nations World Food Programme (WFP) operating from 1 July to 31 December 2003 will help 2.1 million Indonesians who face the highest risk of hunger and malnutrition.

As part of the itinerary, the delegation visited an AusAid sponsored United Nations World Food Programme Project in North Jakarta providing food aid to the urban poor. Mr President, the level of poverty and deprivation suffered by these people is profound.

It is estimated that the poor survive on no more than US$2 a day. They go without adequate food, water and shelter, and the provision of essential infrastructure such as running water and sewerage. The site that was visited consisted of about 2000 people living in small corrugated iron dwellings that were joined and tracked along a river bank. These people were occupying the area illegally. The WFP explained that these people have no access to government social support because they are ‘illegal settlers in a shadow existence on the fringes of the economy.’

The visit formed an essential part of the delegation’s itinerary by clearly demonstrating the significant challenges confronting Indonesia. If possible, all Australian delegations to Indonesia should seek to visit a World Food Programme in order to better understand the extent of the problem and the valuable role played by the poverty reduction programmes.

Mr President, the policy of decentralisation is about the devolution of government functions away from Jakarta to the regions. Key decentralisation laws came into affect in January 2001, and devolve to district level governments most government functions, with the exception of foreign policy, defence, the judiciary, national planning and religion, to be assigned to the districts. The central government transfers 25% of its revenue to district level governments with some modulation to ensure equity across all districts.
The delegation explored some of the implementation issues and the possible impact of decentralisation upon the delivery of government services and investment. For example, regional administrations have the challenge of delivering programs and services. The Central government needs to develop systems and processes to ensure that services are being delivered according to agreed national standards, especially in the areas of health and education.

Mr President, Indonesia’s growth rate is currently around the 3% mark. This is considered to be inadequate to generate sufficient levels of employment growth and help in the reduction of poverty. Some market economists suggest that growth rates of at least 6 to 7% are required to achieve sufficient employment growth. It is estimated that the current growth rate of 3% will result in almost 1 million people joining the ranks of the unemployed every year.

Some of the key issues affecting economic recovery include the level of government debt, decentralisation, and issues influencing investor confidence.

The delegation met with the Coordinating Minister for People’s Welfare, Mr Yusuf Kalla, the Minister for National Development Planning Kwik Gian Gie and the Minister for State Owned Enterprises, Mr Laksaman Sukardi. One of the major themes during these discussions was economic recovery and Government debt.

The key problem with high levels of government debt is that it diverts revenue away from public programs designed to stimulate the economy. In addition to this are concerns about falling levels of private sector investment.

A key concern affecting investor confidence is the credibility of key public institutions and the impact of corruption, collusion and nepotism which Indonesians call KKN.

The delegation was advised that reporting and transparency in Indonesia has improved. The newspaper media seemed prompt in its reporting of alleged or proven cases of corruption. For example, the Jakarta Post of 5 September 2002 reported on the sentencing of the Speaker of the House of Representatives, Mr Akbar Tanjung to three years imprisonment for corruption. The court said that Akbar was convicted of misusing US$4.44 million in State Logistics Agency funds that were supposed to be earmarked for a poverty alleviation program, when he was minister/state secretary in 1999 under President Habibie.

Mr Tanjung has decided not to stand down while he appeals the decision with the Jakarta High Court.

Mr Tanjung attended the 23rd ASEAN Interparliamentary Organisation (AIPO) General Assembly in Hanoi, Vietnam between 8-13 September 2002. The 24th AIPO General Assembly will be held in Indonesia in September 2003. Under the AIPO statutes, Mr Tanjung became President of AIPO at the conclusion of the 23rd General Assembly.

Mr President, the final issue that was examined during the delegation’s visit was constitutional and electoral reform. The recent annual session of the MPR held in August 2002 finalised a series of constitutional reforms. These reforms are due to take effect before the 2004 elections. The key reforms include:

- the creation of a two chamber legislature comprising the House of Representatives (DPR) and the Regional Representative Council (DPD) which will function like a Senate. The DPR and DPD sitting together will form the MPR with the power to amend the constitution;
- removal of 38 seats reserved for the military and police who will under the reforms have the right to vote; and
- direct election of the President.

The DPR now has the responsibility of framing legislation to implement these changes. The DPR’s Legislation Committee has indicated that the DPR will give priority to the bills directly relevant to the elections in 2004, on political parties and on general elections. Bills on direct Presidential elections and the new structure of parliament which have yet to be drafted will be fast tracked.

Mr President, in concluding this section, the Parliamentary delegation to Indonesia fulfilled its primary objective of promoting parliamentary relations between the two countries. A range of meetings were held with key parliamentarians, parliamentary committees and Government Ministers. Through these meetings it was possible to discuss some of the key issues facing Indonesia during the short to medium term.

Mr President, Australia’s interests are linked to Indonesia’s stability and prosperity. In support of this goal, Australia provides aid assistance to Indonesia which is currently estimated at $121 million in 2001-02.

Mr President, the 23rd AIPO General Assembly was held in Vietnam between 8 and 13 September 2002. Parliamentary representatives of eight ASEAN countries, two special observer countries, and eight observer countries attended the Assembly. The Assembly provided a forum from which to examine, discuss, and propose solutions.
to issues of common interest throughout the Asia-Pacific region.

One of the major features of the General Assembly was the Dialogue Session during which representatives of the ASEAN member countries discussed issues with the observer countries. During Australia's Dialogue Session, the key issues examined included:

- regional and political matters;
- trade and investment issues;
- educational and cultural cooperation; and
- scientific and technology cooperation.

Regional and political matters

Mr President, the key discussion issue raised during this part of the dialogue session focused on Australia's level of integration with Asia as opposed to Australia's ties with Europe. The Australian delegation explained that Australia's commitment and integration with Asia is substantial and growing. On a trade basis, North Asia and South and South East Asia combined, account for almost 60% of Australia's merchandise exports. Trade with Europe only accounts for 13%. In relation to aid, Australia committed an estimated $376 million to ASEAN in 2001-02.

The Lao delegation highly appreciated Australia for maintaining good relationships and being a strong supporter of ASEAN and AIPO especially in the area of strengthening economic integration, particularly with new ASEAN members.

The Cambodian delegation requested Australia to continue to send observer teams to Cambodia to observe the national elections to be held in July 2003.

Trade and investment

The member countries of AIPO expressed their appreciation at Australia's level of trade and investment in ASEAN countries. Representatives of Singapore, Vietnam and Indonesia suggested that Australia should seek to increase the level of trade and investment where possible.

Educational and cultural co-operation

Mr President, it was acknowledged that Australia and ASEAN have good cooperation in education and cultural issues. During 2001, for example, there were about 70,000 ASEAN students studying in Australia. In August 2001 the Australian Government and the World Bank launched the virtual Colombo Plan with an Australian contribution of $200 million over five years. This joint initiative seeks to use information communication technologies to address the causes of poverty.

Scientific and technology cooperation

Developments and innovations in the area of science and technology, particularly information communication technologies, can contribute to development through enhancing education and training. These aspects of science and technology were understood by all delegates. The delegation suggested that Australia should enhance its technology transfer to ASEAN countries. In particular, the Vietnam delegation suggested that as Australia's farm practices are sophisticated, it should share its agricultural knowledge with ASEAN countries.

Meetings and inspections

Mr President, because Australia is an observer country to AIPO it does not have to attend all sessions of the conference. In view of this, the Delegation, with the assistance of the Australian Embassy, Hanoi, Vietnam, attended a series of meetings and inspections.

The majority of these meetings were with non-government aid organisations which were receiving aid money through AusAid. These meetings provided an opportunity to appreciate at first hand some of the aid projects that are supported by Australia. The focus was on their effectiveness and their contribution in assisting with development objectives.

Mr President, in conclusion, the Australian Delegation's attendance at the 23rd AIPO General Assembly was very successful, and the Australian Parliament was ably represented. In addition to attending the General Assembly, the delegation attended 29 meetings during its visit to Indonesia and Vietnam.

I would like to express the Delegation's appreciation to staff of the Australian Embassies in Indonesia and Vietnam. In particular, the then Ambassador to Indonesia, HE Mr Rick Smith provided the delegation with comprehensive policy advice. In addition, Ms Kate Callaghan deserves praise for developing an effective itinerary which more than met the needs of the delegation. On arrival in Hanoi, Vietnam, the delegation was provided with excellent support from HE Mr Joe Thwaites and his staff. In particular, Ms Sandra Henderson deserves praise for supporting the delegation and developing a time effective itinerary.

Mr President, I commend the Report to the Senate.
variation to the membership of various committees.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (4.14 p.m.)—by leave—I move:

That Senator Ray be appointed as a participating member of the following legislation committees for the consideration of the 2002-03 supplementary budget estimates on 21 November and 22 November 2002:

- Community Affairs
- Economics
- Employment, Workplace Relations and Education
- Foreign Affairs, Defence and Trade.

Question agreed to.

BUSINESS

Rearrangement

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (4.15 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 9 (Excise Tariff Amendment Bill (No. 1) 2002 and a related bill).

Question agreed to.

EXCISE TARIFF AMENDMENT BILL (No. 1) 2002
CUSOMS TARIFF AMENDMENT BILL (No. 2) 2002

Second Reading

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

That these bills be now read a second time.

Senator CONROY (Victoria) (4.15 p.m.)—The Excise Tariff Amendment Bill (No. 1) 2002 and the Customs Tariff Amendment Bill (No. 2) 2002 propose equivalent amendments for two acts: the Excise Tariff Act 1921 and Customs Tariff Act 1995. These cognate bills implement a national excise scheme for low-alcohol beer, remove the excise on the water component of emulsified diesel-water fuel blends and remove excise on certain non-recyclable oils and lubricants now subject to excise under the product stewardship oil scheme.

The decision to implement a national excise scheme for low-alcohol beer is welcomed by Labor. The key feature of this scheme is the cessation of state subsidies for low-alcohol beer, with assistance to be delivered instead through lower excise rates. Labor consider that there is merit in these proposals to simplify the excise system and eliminate the requirement for wholesalers to claim rebates for excise that they have paid. Labor commend this initiative and will support it. However, it is interesting to note that the excise rates for both low-alcohol and mid-strength beer will be reduced. For low-alcohol beer, it will be for both the draught and packaged product, while for mid-strength it will be for the packaged product only. This is expected to result in reduced prices for low-alcohol draught and packaged beer in all states and territories except Tasmania. However, the price of mid-strength draught and packaged beer will increase in all states and territories except Queensland and the Northern Territory. This is because the reduction in the excise rate will not compensate fully for the abolition of previous state and territory subsidies for this product.

This bill also contains amendments to the excise treatment of emulsified diesel-water fuel blends produced by licensed excise manufacturers. There is evidence to suggest that such blends offer a cost-effective way to reduce harmful emissions from heavy-duty engines without expensive modification to vehicles. At present, there is an anomaly in the excise treatment of these blends in that the water component of these blends is excisable in addition to the diesel component. To my knowledge, the Australian Taxation Office has never managed to levy a direct excise on water anywhere else in the taxation system, nor should it begin now. Instead, these amendments will properly address this anomaly by making the water component of blends produced by licensed excise manufacturers excise-free. Labor supports the removal of this anomaly.

The bill also contains some changes to the government’s product stewardship oil levy. This scheme seeks to reduce the impacts of
waste oil through imposing an excise style levy on virgin oils and lubricants, and providing grants for the recycling and reuse of the oils. Labor supported the product stewardship oil scheme at the time of its inception. It attempts to address a serious environmental issue—namely, the current large-scale leakage of toxic waste oil into the environment. By providing an economic incentive for recycling and reusing this oil, it aims to prevent environmental damage by reducing the waste oil stream rather than having to remedy the damage after such waste oil is dumped into the environment. Given this intention, it is reasonable that, where oils do not enter the waste stream, they should be considered for exemption from the levy. The government sets out criteria in the bill for such exemptions—namely, where the oils are used in the manufacture of another product and are not contributing to the waste oil problem and are clearly distinguishable from other oils that do.

On this basis, this bill excludes certain food grade white mineral oils, certain polyglycol brake fluids and certain aromatic process oils. We consider that the government’s criteria for considering the exemption of oils from the levy are reasonable. On these grounds, Labor will support the exemptions proposed, on the understanding that they meet the technical criteria set out in the bill. The government sets out criteria in the bill for such exemptions—namely, where the oils are used in the manufacture of another product and are not contributing to the waste oil problem and are clearly distinguishable from other oils that do.

On this basis, this bill excludes certain food grade white mineral oils, certain polyglycol brake fluids and certain aromatic process oils. We consider that the government’s criteria for considering the exemption of oils from the levy are reasonable. On these grounds, Labor will support the exemptions proposed, on the understanding that they meet the technical criteria set out in the bill. Finally, the bill also abolishes the automatic indexation of the PSO levy, to bring it into line with other petroleum fuels. Labor support the bill.

Senator MURRAY (Western Australia) (4.20 p.m.)—I rise to speak to the changes to the excise arrangements on alcohol, specifically the beer components, in the Excise Tariff Amendment Bill (No. 1) 2002 and the Customs Tariff Amendment Bill (No. 2) 2002. Although the amendments that we are to move are not before you, we did send a draft of them to the Treasurer, the Treasurer’s office, the shadow Treasurer’s office, the Independents and the minor parties on 24 October, so they will have had the chance to have a look at them. I have slimmed them down slightly. I apologise; I had the understanding that they had already been circulated, but they had not.

The second thing I want to do, and I was assured that the explanatory memorandum would be somewhere in the chamber, is to table an explanatory memorandum that will cover my amendments to those bills. I seek leave to table the explanatory memorandum.

Leave granted.

Senator MURRAY—Moving on to my second reading debate remarks, these bills cover a number of areas. They cover the product stewardship oil scheme, the diesel water emulsion relief from excise and low-alcohol beer. I am going to restrict my remarks to the low-alcohol beer and related areas. Alcohol is one of those things that is a part of our community. Not surprisingly, there is not just cross-party consumption of the product—except for Senator Conroy, I might say on the record—but also cross-party support for addressing matters related to the use and abuse of alcohol. The Democrats have, in concert with credible and authoritative health campaigners who are experts in the alcohol field, long campaigned for the promotion of low-alcohol products. Well before the coalition’s new tax system for alcohol was finalised in 1999, as portfolio holder for the Democrats I was keen to see an integrated low-alcohol policy introduced in Australia.

In the new tax system negotiations with the government, there was an agreement between the government and the Democrats to progress these issues over time. I have always been disappointed at the government’s subsequent lack of progress. At various times, both formally and informally, I have tried to persuade the government and others as to the social and health desirability of introducing an integrated low-alcohol policy for Australia. The government has done good work over the past few years in putting forward changes that have helped to deal with low-alcohol beer. These bills are an example of addressing bureaucratic inefficiencies and standardising tax incentives for lower alcohol beer products.
The government and the Treasurer are to be congratulated for the lengthy negotiations that have resulted in a much improved beer taxation regime. What is missing from this situation, though, and from government generally is a clear and genuine commitment to reform taxation arrangements related to low-alcohol products much more broadly. In recent years, as portfolio holder, I have written to the Treasurer a number of times advocating the reform of alcohol taxation in order to deliver better health outcomes and a more equitable taxation regime. No doubt his minders or offsiders or bureaucrats respond and he just signs the letters, because I have as yet seen little sign of his bright mind in the responses. I have always been willing, both within and outside this chamber, to act on a sound idea without regard to who may have put the idea forward. I get the distinct feeling that, because this is something that Treasury itself has not come up with, it really has not shown much enthusiasm. Why one would not show enthusiasm for delivering a comprehensive low-alcohol policy regime quite escapes me.

So, quite frankly, I am disappointed. The introduction of a comprehensive low-alcohol regime and the further removal of alcohol taxation anomalies is something all parties could and should agree upon and should act on within a reasonable time frame. This is also not the time for the opposition to be timid. The opposition has in the past adopted a small target strategy. This area of alcohol tax is one in which there are well-informed opposition members, and a shadow minister like Mr David Cox can make a significant contribution.

What is at stake here? Why do I emphasise the importance of a comprehensive low-alcohol regime? Of the 77 per cent of Australians who consume alcohol, health experts say that 36 per cent consume alcohol at what are considered to be harmful rates. About 70 per cent of young Australians aged between 14 and 19 consume alcohol. The rate of consumption at harmful levels by younger Australians is high, and 57 per cent of males and 74 per cent of females do so at harmful rates. In addition, the issue of either licit or illicit drugs used in conjunction with alcohol has become a substantial issue of concern.

In the late 1990s the estimation of the economic cost of alcohol consumption imposed on the Australian community was more than $4½ billion per annum. This costing, based on mid-1990s mortality and morbidity figures, comprised more than $3½ billion of tangible costs, including those associated with the loss of work force productivity, health care costs and resources used in addictive alcohol consumption. There is nearly $1 billion of intangible costs, including mortality, where the value of loss of life or consumption forgone by deceased and suffering imposed on the rest of the community are added together, and morbidity, which is how the pain and suffering of the sick and the suffering imposed on the rest of the community is calculated.

Drinking alcohol has health, social and economic costs and benefits for both individuals and populations and for the industry sectors involved, and even for governments, which get much revenue from that area. People who drink in moderation have better health outcomes—and I would suggest better social lives—than many of those who do not drink; although, abstainers do achieve very much better health outcomes than heavy drinkers. Drinking alcohol at risky and high risk levels introduces long-term harm and is estimated to cause over 3,000 deaths each year. Perhaps Treasury, which does not pay much attention to health issues, might just stick that number in their heads: over 3,000 deaths in Australia a year, accounting for about four per cent of all male deaths, two per cent of all female deaths and about 50,000 hospitalisations. The short-term and long-term effects of excessive drinking make roughly equal contributions to those deaths. Immediate personal and social environmental effects can see family, social and work related disruptions that can end up with severe workplace and relationship breakdowns. Ultimately, criminalisation is a high potential outcome resulting from extended use.

For men, alcohol is the leading cause of disability in developed countries and the fourth leading cause of disability in devel-
oping countries, out of a list of 11 major risk factors. Put simply, alcohol abuse is still a major problem in this country and this government will be negligent in its duties if it does not take every available avenue open to it to address this problem. Let me stress again: the government has to be given credit for a much improved low-alcohol beer taxation regime, but that is only part of the opportunity. In this bill, as a contribution to furthering and incentivising low-alcohol policy, the Australian Democrats recommend that all packaged low-alcohol ready to drink products other than cider should be subject to the same tiered excise regime that has successfully encouraged the production and consumption of low-alcohol packaged beer. There is no justification for the omission of RTDs from the national scheme that applies to low-alcohol beer. The scheme is designed to encourage the consumption of low- and mid-strength beverages by providing lower tax rates for lower alcohol strength products.

Taxing low-alcohol packaged RTDs at a higher rate than packaged beer of the same alcohol content discriminates against individuals who prefer to consume lower strength RTDs and prevents the development of a market for lower strength RTDs. Some states and territories, like Queensland and the Northern Territory, pay a low-alcohol subsidy for low-alcohol RTDs. I would suggest to you that that is good social policy. There is no sound policy reason why the Commonwealth should not reduce the excise duty on packaged low-alcohol RTDs in the same way that it reduced its excise duty on packaged low-alcohol beer. There is no revenue cost; nothing hangs on it. There is no risk.

There is clear evidence that for consumers these products are direct substitutes for one another, competing for market share. Producers of RTDs would therefore be encouraged to produce low-alcohol versions of their products by lower associated tax costs. A submission to the Senate Economics Legislation Committee review of the bill from the only known maker of a low-alcohol RTD, Kirwan Quest Pty Ltd, has confirmed this view. There are significant community and health benefits to be obtained from encouraging production of lower alcohol RTD products. These benefits are unlikely to be limited to production of low-alcohol beer. That policy view is supported by a wide range of health industry groups, including the Alcohol and Other Drugs Council of Australia. I stress to the chamber that the alcohol health industry groups and experts support the route I am taking.

I am on the public record as supporting the volumetric taxation of wine. Those views are shared by a very large number of wine producers. Some who are attracted by my idea of having an option are the Wine Industry Association of Western Australia, the Queensland Wine and Grape Producers Association, the Vineyards Association of Tasmania and individual companies like Helm Wines and Stefano Lubiano Wines. I expect there will be substantial numbers of others who will be writing to me on this basis.

What do I mean when I talk about the volumetric option? There are two aspects to the volumetric taxation of wine. One aspect would be that, if it were applied to low-priced wines, it would raise the price of those wines. It has been found in research and from the policy decisions undertaken in the Northern Territory that, if you raise the price of cask wine, you lower alcohol abuse substantially in those communities. The second benefit of volumetric taxation of wine is that it lowers the price of higher value wines. The result of that is that it is good for jobs and the industry, without contributing to alcohol abuse.

The government is committed to WET. The Senate has passed the WET bills. I can see no prospect of WET, which is an ad valorem tax, being done away with. I recommend that the government seriously consider the option of entities or producers being able to choose to take either a volumetric approach or a WET approach by entity or producer. I can see no reason why that is not possible. As I say, there are large numbers of wine producers who are attracted by the option idea.

There are two benefits in a volumetric taxation approach. It is a means of raising the price of low-priced full-strength wines such as cask wines, which is desirable from a health policy perspective. The value-added
wine equalisation tax has maintained, and in some senses increased, the low-priced, cheap alcohol cask market that is at the recorded centre of alcohol abuse. It is also a means of lowering the price of high-value wines, which is desirable from an economic and industry perspective. The value-added WET is seen to be punishing the premium and small-business bottled wine sector. The Democrats supported the introduction of the WET regime as part of the new tax system. The proposal that I am putting forward does not disturb that support or the WET itself. There is no low-alcohol wine category at present, so that is not a risk. The option regime is an entirely fair proposal.

There is a clear need for taxation incentives to produce low-alcohol wines, especially low-alcohol cask wines. This is supported by much of the respected medical and health literature. For instance, on page 45 of the Australian Alcohol Guidelines, put out by the National Health and Medical Research Council in October 2001, it states:

A recent Australian study found that the beverages most commonly associated with night-time assaults and alcohol-related injury were the cheaper alcohol products—cask (not bottled) wine, and regular-strength (not low-alcohol) beer ...

That study was by Stockwell. The amendments I put to the committee will provide such an incentive. They would apply to 100 per cent grape wines not exceeding eight per cent alcohol by volume.

In summary, what I am proposing includes the implementation of a taxation scheme for low-alcohol wine, involving the removal of low-alcohol wine from the WET regime and the inclusion of low-alcohol wine in the Excise Tariff Act schedule. I am suggesting an increase in the rate of excise on brandy to bring it into line with other spirits. I do not understand why we have a brandy market where 40 per cent of brandy—namely in the form of cognac and foreign brandy—is taxed at a different rate to other spirits. It is cheaper to get imported brandy than it is to get Australian rum. Spirits are spirits; alcohol is alcohol. It should be taxed at the same level.

We also know that use of some alcohol products appropriately does assist in promoting a healthy and happy society in a number of ways. The Australian Democrats are not wowsers. We say that, where there are benefits, take advantage of them in moderation and, where there are consequences, take action to address these. Our message to the government is simple: you are not taking enough action, despite the great credit I give you for the efforts you have made on the beer side of things. Changes to the taxation laws that advocate low-alcohol products cannot be seen as anything other than a positive move for the health of our community.

We are advocating low-alcohol products. There is no revenue cost in doing this, as these low-alcohol products—either in wine or in RTDs—do not exist at present. The government will say, ‘Aha! But it will take volume away from products which do generate revenue.’ Our answer to that is that the health and social benefit will outweigh the small revenue cost, and we should be able to evaluate the effects over time, even if we cannot at this stage cost them accurately. So we are advocating more choice—the coalition likes choice; more flexibility—the Democrats like flexibility; and more opportunities—Labor likes opportunities—for people within our community to choose to drink low-alcohol products. I referred earlier in my address to my second reading amendment, on sheet 2732, which has been circulated. I now move:

At the end of the motion, add “but the Senate, noting that many sectors of the wine industry are experiencing difficulties, particularly small producers in the bottled wine market, requests that the Government:

(a) explore the feasibility of offering the wine industry the option to choose by entity/producer either to be taxed volumetrically or ad valorem, so that a volumetric wine taxation system could operate in tandem with the ad valorem WET system; and

(b) arrange for the feasibility to be assessed either by an inquiry by a government appointed body, or by the Senate Economics References Committee, for report by the last day of February 2003 for consideration of their findings by the
That is a request. It is not an imposition. It is wise. I can assure the chamber that many hundreds of wine producers will be supporting that approach. I look forward to the support of the chamber for it. In closing, I say to the Labor Party and to the government that low-alcohol products are an issue where a bit of political adventurism is necessary. It is obviously a good health policy position and you do have the opportunity to make a difference.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (4.39 p.m.)—I thank Senator Conroy and Senator Murray for their contributions and constructive comments on the Excise Tariff Amendment Bill (No. 1) 2002 and the Customs Tariff Amendment Bill (No. 2) 2002. There is very little on which I disagree with Senator Murray in relation to the principles which he is espousing. I think if you look at the actions the government has taken over six years, particularly with the introduction of the new tax system reforms, you will see that the government has moved significantly towards the sorts of principles that Senator Murray has espoused.

We argue, however, that these bills certainly do not set out to become a platform for alcohol taxation reform. Certainly, a significant amount of reform was put in place under ANTS. I think it is fair to say that that created significant costs and implementation expenses for a very important industry, particularly the wine industry but a range of other sectors of the industry. I think it is fair to say that most sectors of the industry benefited from some reforms there. I know as a Western Australian—and Senator Murray is also a Western Australian—that there is a significant sector of the industry in our home state of Western Australia that would have preferred us to take that opportunity to go further and introduce volumetric taxation. But I think those of us who have been in this debate for a long time know that there are equally strong views put by grape growers and wine producers in other geographical zones of Australia—or ‘appellations’, as they call them on the Continent.

There has been a vigorous debate in this industry about this form of taxation. I think it is an important debate. It is a debate that will continue. It is a debate that the government will closely monitor but it is not something that we would seek to enter into in a piecemeal fashion. I think it is fair to say—and I think Senator Murray would admit—that he has approached reform in a piecemeal fashion. The government has made significant reform. Senator Murray has commended that. These bills seek to do a number of things and in relation to the taxation of beer they seek to bring in a replacement to the existing state and territory schemes with a uniform, national, administratively efficient concession scheme for low-alcohol beers.

The changes in these bills do not represent a change in policy in relation to the taxation of alcohol; they simply represent a transfer of responsibility from the states to the Commonwealth. These are not bills that seek to change alcohol taxation. They validate a range of tariff proposals, one of which happens to concern beer. In the government’s consideration of alcohol taxation arrangements which took place with the introduction of the new tax system—and that was only four years ago—manufacturers of pre-mixed drinks, for example, did benefit in particular from the outcome of that review. Excise rates were reduced on those, comparable to the rates on spirits, to something closer to the rates for full-strength beer and there were drops of up to 37 per cent in the rate applicable to pre-mixed drinks.

In relation to wine, the reforms in the new tax system, when you combine them with the rebates offered by the states, allow wineries to effectively sell their wine free of the wine equalisation tax at the cellar door or via mail order up to a retail value of around $600,000 per annum. Small producers who are not registered for the GST—that is, with a turnover of up to $50,000—do not pay wine tax at all. The government’s commitment to the health aspects of alcohol consumption is, I think, on the record. We have put into place a series of actions over the years, particularly through the new tax system, and the government are also interested in seeing the outcome of the inquiry requested by the Parlia-
mentary Secretary to the Minister for Health and Ageing into the marketing and promotion of ready to drink or pre-mixed alcoholic products to minors. I understand that the parliamentary secretary has asked the National Expert Advisory Committee on Alcohol to undertake this inquiry and it might shed some light on the sorts of influences on drinking behaviour that we have to think about. The government will not be supporting Senator Murray’s and Senator Murphy’s amendments. The government will not be supporting the second reading amendment that Senator Murray has moved in relation to a proposed review by either the Senate Economics Committee or an independent body.

We believe that the reforms that took place under the new tax system have only just been bedded down by a large and important industry and that it is important to have some certainty. That does not, however, rule out change or reform in the future. There is, as I said earlier in this contribution, merit in many of Senator Murray’s arguments. From my position, I am certainly not going to rule out any future reform in this area. I welcome the debate; I think it is a very important debate. I have spoken particularly about the wine producers in Western Australia who I have dealt with—I know there are other supporters around the country; I just happen to be in closer proximity to those in WA. I enjoy being in proximity to them, especially when I do my regular tours around the wonderful vineyards of my old stomping ground in the Swan Valley and the Margaret River region. I think that most of those wine producers took the same position that Senator Murray did in relation to the WET tax. They saw the benefits of the ANTS reforms, the new tax system reforms. They would have liked more reform but they saw that it was incrementally moving to a better system. Of course, those who support volumetrics say you could have an even better system.

I do not think that even Senator Murray would underestimate the challenges involved in moving further down the path of alcohol taxation reform. There are significant public policy issues, broadly, and also significant political issues that you cannot ignore—you have to deal with those. I know Senator Murray is genuinely trying to be helpful in that regard and I welcome that assistance in the debate. The government will monitor and engage itself in consideration of further reform in a timely and diligent fashion, as always.

Question negatived.

Original question agreed to.

Bills read a second time.

In Committee

EXCISE TARIFF AMENDMENT BILL (No. 1) 2002
Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (4.48 p.m.)—I will take the guidance of the chair. There is no running sheet. On sheet 2686 there are a few amendments which I should take together. I suggest—and I am happy if the chair disagrees—that items (2) and (5) be taken together and that items (3) and (4) be taken on their own. If any of those get up, I would have thought that item (1) would follow.

The TEMPORARY CHAIRMAN (Senator Cherry)—You are certainly welcome to do that, Senator Murray.

Senator MURRAY—by leave—I move:

(2) Page 8 (after line 11), at the end of Schedule 1, add:

9 Schedule (definitions)

Part 5—Amendments having effect on and from 1 July 2003

(low alcohol wine) means a beverage which:

(a) is the product of the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes; and

(b) complies with any requirements of the A New Tax System (Wine Equalisation Tax) regulations made for the purposes of section 31-8 of the A New Tax System (Wine Equalisation Tax) Act 1999, relating to grape wine; and

(c) contains more than 1.15% by volume of alcohol but not more than 8% by volume of alcohol.
10 Schedule (after item 2)
Insert:

2A. LOW ALCOHOL WINE
$3.00 per litre of alcohol

(5) Page 8 (after line 11), at the end of the bill, add:

Schedule 2—Amendment of the A New Tax System (Wine Equalisation Tax) Act 1999
Part 1—Amendments having effect on and from 1 July 2003

1 At the end of subsection 31-2(1) Add:
; and (c) contains more than 8% by volume of ethyl alcohol.

I have circulated an explanatory memorandum. I indicate that everyone in the debate had received a draft well prior, but this is slightly different. The effect of it is to provide for the very first time a low-alcohol wine proposition. The difficulty we face as a chamber is that it would put it in the excise regime. I am sure the government will have something to say on that account. The purpose of that was to avoid difficulties of administration. I have no objection to there being a low-alcohol WET opportunity, but since WET is ad valorem I am not sure how that would work out. I gather from the minister’s remarks that the government is likely to turn it down but, if Labor showed any excitement in their voices and a desire to support it, I would then motivate it much more strongly. But I would like to get an initial reaction to see whether I should bother wasting my time.

Senator CONROY (Victoria) (4.51 p.m.)—I respond to Senator Murray’s comment. Labor support the new national low-alcohol tax regime for beer, as it improves and simplifies the administrative arrangements while essentially maintaining its competitive status quo in the alcohol market. There is also an argument for lower tax to apply to all low-alcohol products to act as an incentive for their consumption over full-strength products, as is the case with beer. However, alcohol taxation is a complex issue. I know that Senator Murray has long-held and genuine views on this issue. Any changes would require wide consultation. At this stage, it is probably a little too early in the process for us to be able to commit ourselves to supporting Senator Murray’s amendments. Senator Murray and Senator Murphy, you can probably tell from the lack of excitement in my voice that we will not be supporting your amendments.

We do have a couple of concerns about your amendments. If I could just outline them to you, it may be useful for you to be conscious of them as part of an ongoing discussion. First, we consider it to be inappropriate to remove low-alcohol wine from the WET regime and place it in the excise regime. Obviously, this is because wine is taxed by value and not by volume, as is the case with excise on beer and spirits. So we agree that there is an issue we have to try to work our way through. Second, there is no significant benefit to be gained from raising the excise on locally produced brandy to the level of other imported spirits, apart from an increase in government revenue. Third, the proposed tiered arrangements similar to beer for registered drink products have not been officially costed. Revenue implications of these arrangements may be significant.

Any change to the structure of alcohol taxation may also lead to significant commercial consequences, and certainly ad hoc proposals designed to improve the competitive position of one type of alcoholic beverage over others are not supported. Labor are happy to work with relevant interest groups, the Democrats and Senator Murphy to develop an appropriate policy for genuine low-alcohol products but, for the reasons I have mentioned above, we will not be supporting the Democrat amendments. There are many similarities with Senator Murphy’s amendments, and at this stage we would not be supporting Senator Murphy’s either.

I invite those who are interested in this issue to join us while we work our way through a consultation on the basis of a review paper on the wine industry which we produced before the last election. If we could find common ground on the issues that I know Senator Murray and Senator Murphy are concerned about, we would welcome the opportunity to develop that with other senators and interested parties over the course of
the next few months. We hope that you will take up that opportunity to work with us on some of these issues.

Senator MURPHY (Tasmania) (4.55 p.m.)—For the sake of efficiency in terms of this debate, I might just speak in respect of Senator Murray’s amendments, knowing that both the government and the opposition are opposed to both Senator Murray’s amendments and the amendments that I have proposed. With regard to the purpose behind these amendments, it is not just about getting tax equivalence in the treatment of particular alcoholic drinks; there is also a very large health issue here in respect of ready-to-drink alcoholic beverages.

We know that there is a significant consumption—somewhere in the order of between 22 million and 25 million cases per annum—and that this is probably consumed largely by young people. Of those 22 million or 25 million cases—whatever the number is—only about 1,800 are sold as low-alcohol drinks. I think it is a major health issue and one that this parliament ought to seek to address. I guess I could argue all of the reasons, from a competitive point of view, as to why you ought to develop a more equitable tax system for alcoholic beverages. But my approach to it is on the basis that, because we know that there is significant consumption, and because of the trend in the consumption of alcoholic beverages towards ready-to-drink beverages, we ought to be dealing with this very much from a health point of view.

I accept what Senator Ian Campbell has said; I welcome his and Senator Conroy’s comments. I will certainly take up the opportunity to speak to the shadow Treasurer about this issue to see whether or not we can put in place what I think would be a far more sensible approach to taxation which would encourage more consumption of low-alcohol beverages. That is a great objective and one that I will certainly pursue.

The amendments that I propose are slightly different to Senator Murray’s second set of amendments. In my contribution to the debate at this point, I am just going to cover the lot, for the purposes of efficiency and timeliness. This issue is very important. As I said, we know that between 22 million and 25 million cases of ready-to-drink alcoholic beverages are consumed, and it is probably true that the great bulk of those will be consumed on premises—that is, in nightclubs or bars where people buy them and drink them on the premises. A lot of the arguments go to the revenue issues, particularly if we are looking at low-alcohol, on-tap, ready-to-drink alcoholic beverages—of which there are none at the moment. One of the reasons I have been pursuing this is that we should be encouraging the manufacturers to produce low-alcohol, on-tap, ready-to-drink beverages. That is something that we must give very serious consideration to.

I think Senator Murray’s and my proposals are very worthwhile amendments to this bill. Obviously they are not going to succeed, but other opportunities will arise in the coming months. With regard to Senator Conroy’s comments, I reiterate that I will be very keen to see what the Labor Party do and I certainly will make every effort I can to encourage them. If I can be of any assistance in respect of having some appropriate changes brought forward to this parliament which will at the end of the day ensure that we do go down a path of encouraging lower alcoholic beverage consumption, I will do so.

I think Senator Murray has pointed out very clearly the types of figures and the types of problems that we are dealing with, so this is a very important issue from a health point of view. I hope that in the not too distant future we will be able to see this parliament pass some laws in respect of excise on alcoholic beverages that will lead to a better health outcome, particularly for young Australians.

Senator HARRADINE (Tasmania) (5.00 p.m.)—I concur with the comments of the last speaker and Senator Murray. I will not repeat what has already been said by Senator Murray and Senator Murphy. I congratulate them for taking a special interest in this matter. I am sure the Manager of Government Business does not want any long discussion at the committee stage of this particular matter. I will be voting for the amendments that have been proposed.

Question negatived.
Senator MURRAY (Western Australia) (5.01 p.m.)—I move amendment (3) on sheet 2686:

(3) Page 8 (after line 11), at the end of Schedule 1, add:

Part 5—Amendments having effect on and from 1 July 2003

11 Schedule (subitem 1(D))

Omit the subitem, substitute:

(D) Other Excisable Beverages of an alcoholic strength by volume not exceeding 10%

(1) packaged in an individual container not exceeding 48 litres

(a) not exceeding 3% by volume of alcohol $28.95 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

(b) exceeding 3% alcohol but not exceeding 3.5% by volume of alcohol $33.75 per litre of alcohol

(c) exceeding 3.5% by volume of alcohol $33.75 per litre of alcohol

(2) packaged in an individual container exceeding 48 litres

(a) not exceeding 3% by volume of alcohol $33.75 per litre of alcohol

(b) exceeding 3% alcohol but not exceeding 3.5% by volume of alcohol $33.75 per litre of alcohol

(c) exceeding 3.5% by volume of alcohol $33.75 per litre of alcohol

This is the amendment which seeks to introduce a new RTD low-alcohol category which would provide a taxation incentive for the production of low-alcohol RTD products not exceeding three per cent by volume of alcohol. As has been previously remarked, there is only one such product at present, which does not have a taxation incentive; and price, as we know, is critical. When the Labor government, as I think it was, took the bull by the horns and originally introduced, way back when, taxation incentives for lower alcohol beer, it could not have known that the result would be that 13 per cent of production in the beer market would be now produced as low-alcohol products—and that is a massive figure. Wouldn’t it be absolutely wonderful if 13 per cent of all wine and all RTDs—that is, measured drinks of spirit mixes—were low alcohol? It would have tremendous health and social benefits. I have heard the remarks of the major parties. I know this amendment is going to go down. I do hope that those in Treasury and in the Treasurer’s office will accept and understand that this is an area that they must and should attend to. I would suggest to you that the next opportunity to do so will be the next budget.

Question negatived.

Senator MURPHY (Tasmania) (5.03 p.m.)—In light of the defeat of Senator Murray’s amendment, I am not sure whether I should move my amendments or withdraw them.

The TEMPORARY CHAIRMAN (Senator Collins)—Senator Murphy, you need do neither.

Senator MURPHY—Madam Temporary Chairman, I will move the amendments in hope beyond hope that maybe there might be a change of heart. I seek leave to move my amendments together.

Leave granted.

Senator MURPHY—I move amendments (2) and (1) from sheet 2723:

1. Clause 2, page 2 (at the end of the table), add:

6. Schedule 1, 1 July 2003 Part 5

2. Page 8 (after line 11), at the end of Schedule 1, add:

Part 5—Amendments having effect on and from 1 July 2003

9 Schedule (subitem 1(D))

Omit the subitem, substitute:
(D) Other Excisable Beverages of an alcoholic strength by volume not exceeding 10%

(1) packaged in an individual container not exceeding 48 litres

(a) not exceeding 3% by volume of alcohol

$28.95 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

(b) exceeding 3% alcohol but not exceeding 3.5% by volume of alcohol

$33.75 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

(c) exceeding 3.5% by volume of alcohol

$33.75 per litre of alcohol

(2) packaged in an individual container exceeding 48 litres

(a) not exceeding 3% by volume of alcohol

$5.78 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

(b) exceeding 3% alcohol but not exceeding 3.5% by volume of alcohol

$18.16 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

(c) exceeding 3.5% by volume of alcohol

$23.76 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

Senator MURPHY (Tasmania) (5.05 p.m.)—I do not want the committee to think that I have taken this in a light-hearted fashion with regard to the government’s and the opposition’s position, because it is an important issue, as I said before. I think it is important that we do address all three levels. I accept what Senator Murray says, that this is not something to be treated in a light-hearted fashion, and I certainly was not. I guess it is just the circumstances that we find ourselves in, confronted by a government and an opposition that are simply not prepared to look at this in any way, shape or form at this point in time. I have to say that I accept Senator Conroy saying ‘at this point in time’, so there is a glimmer of hope, there is at least some light in the far-off distance, and so we should continue to pursue this. I put this in a more comprehensive form in addressing both packaged and on-tap ready-to-drink alcoholic beverages, because that is what is important. As I emphasised before, there is a reasonable volume—22 million to 25 million cases—of ready-to-drink alcoholic beverages consumed each year, so it is an important issue. As we all know, young people have a tendency to drink these types of alcoholic beverages—that may change in the future but that is the trend—and they do so in large part on premises. It is a very important issue.

As Senator Murray pointed out, the changes that the Labor Party brought in with respect to excise on low-alcohol beer have been significant. That in turn has seen the brewing industry introduce a whole variety of mid-strength beers as well. I think that move that a Labor government took has been of great benefit and it is a move that we
should be looking to take now rather than leaving it forever. This is something that should be addressed in the short term rather than in the long term. Now that we have put these amendments on the table I hope that they will not just be shoved away but that there will be some serious thought given to this matter. I will certainly take it up with the shadow Treasurer so that we can progress some responsible change from a health point of view in respect of alcohol consumption in this country.

Question negatived.

Senator MURRAY (Western Australia) (5.08 p.m.)—I move amendment (4) on sheet 2686:

(4) Page 8 (after line 11), at the end of Schedule 1, add:

Part 5—Amendments having effect on and from 1 July 2003

12 Schedule (subitem 2(A))

Omit the item, substitute:

(A) Brandy $57.17 per litre of alcohol

I will confess to the parliamentary secretary that I have put this in to niggle him, although I doubt it will have much niggling effect. But I really think that at the bottom of this tax concession for brandy there is a pork barrel somewhere. Can anyone explain to me, when a government is scrambling and anxious for every dollar—given the state of affairs in Australia and worldwide right now—why brandy is not taxed at the same rate as spirits? Spirits are spirits; alcohol is alcohol. Thirty per cent of brandy, which includes cognac, is imported, so we are giving a tax advantage to imported spirits over other imported spirits and over Australian spirits. It makes no sense whatsoever; it is an absolute nonsense. I doubt if this amendment is much more than a tickle in the ribs but I did put it in to niggle you and to tell you that I think it is a silly anomaly and that you should get rid of it.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.12 p.m.)—The government is looking at those issues in the context of the biofuels election commitment, and there is a process—which I think Senator Allison is aware of—dealing with biofuels generally. That process will address that issue in the context of that analysis.

Senator MURRAY (Western Australia) (5.13 p.m.)—That sounds positive to me; I will take it that way. The second question Senator Allison has, which I am interpreting for her, is about the products stewardship oil exemptions. In the financial impact statement it said that exempting certain oils from the levy would reduce the costs for businesses using these oils—and that seemed to me to be a reasonable thing to do. It said that the estimated cost to the government is around $1.3 million per annum. If I under—
stood Senator Allison correctly, her question was: does that also cover oils such as brake fluids and ancillary engine fluids?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.14 p.m.)—These measures apply only to those that are listed at page 10 of the explanatory memorandum. The products are: certain food grade white mineral oils, certain polyglycol brake fluids—which I think answers a particular question of Senator Allison’s—and certain aromatic process oils.

Senator MURRAY (Western Australia) (5.14 p.m.)—I thank the parliamentary secretary for that. The last question I have, which also arises out of the EM, is to do with product stewardship oil indexation. You are aware of our Democrats’ view that taking indexation off fuels is not a really smart policy. But you have done it and that is how it is. We do not support this and normally we might even try moving an amendment just to show that we do not support it. But in this case we will not. The question is: were these changes run through what I understand is known as the Oil Stewardship Advisory Committee? Did they support them? Were they consulted?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.15 p.m.)—We do not think so. We did not think their remit was at this particular end of the process. But I will get a more detailed answer and provide it to Senator Allison offline, if that is okay.

Bill agreed to.

Customs Tariff Amendment Bill (No. 2) 2002

Bill—by leave—taken as a whole.

Bill agreed to.

Excise Tariff Amendment Bill (No. 1) 2002 and the Customs Tariff Amendment Bill (No. 2) Bill 2002 reported without amendment; report adopted.

Third Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (5.18 p.m.)—I move:

That these bills be now read a third time.

EGG INDUSTRY SERVICE PROVISION BILL 2002

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

Second Reading

Debate resumed from 23 September, on motion by Senator Ellison:

That these bills be now read a second time.

Senator O’BRIEN (Tasmania) (5.18 p.m.)—I can say that I am extremely pleased to speak on the Egg Industry Service Provision Bill 2002 and the Egg Industry Service Provision (Transitional and Consequential Provisions) Bill 2002 because these bills provide for a new egg industry structure, including the declaration of a new industry services body. The industry services body will provide promotion and research and development and other services to the egg industry. The Egg Industry Service Provision Bill provides for the Minister for Agriculture, Fisheries and Forestry to declare a new industry services body and then enter into a funding agreement with that body for the receipt of levies collected by the Commonwealth for the industry’s promotion and research and development and the Commonwealth’s matching funding for research and development expenditure.

The second bill, the Egg Industry Service Provision (Transitional and Consequential Provisions) Bill, provides for the transfer of assets from the existing egg subprogram of the Rural Industry Research and Development Corporation to the new body. In relation to the current industry structure, egg industry services are currently provided by the Australian Egg Industry Association, the industry peak body, and the egg subprogram of the Rural Industry Research and Development Corporation. A levy of 7.87c per laying chicken is currently imposed under the Primary Industries Excise Levy Act 1999. The levy funds are largely devoted to research and development through the Rural Industry Research and Development Corpo-
ration egg subprogram, with some funds directed to residues and animal health matters.

In 2001 the Australian Egg Industry Association presented a proposal to the Commonwealth seeking a new industry structure, including a corporations enacted company, to undertake egg promotion, research and development, and to provide other industry services. Under the proposal the existing Rural Industry Research and Development Corporation egg subprogram would transfer to the new company. The Australian Egg Industry Association has also sought a new statutory promotional levy at 32.5c on each laying chick purchased from a hatchery. The proposed levy would be imposed on egg producers but collected by the hatcheries. All egg producers who pay the statutory promotional levy will be eligible to become members of the new industry body. The Australian Egg Industry Association engaged in extensive consultation on the industry reform, including the new levy, between April and September last year. The results of an industry ballot suggest significant support for the Australian Egg Industry Association’s proposal from both producers and hatchery operators.

The bill provides for the new industry structure sought by the Egg Industry Association, and the new regulations will implement the proposed levy regime. The existing levy for research and development residues testing and animal health will remain in place. With regard to the industry and the need for these reforms, the Australian egg industry has suffered from declining fortunes over the past decade. In the period 1989 to 1999, Australia’s annual egg consumption declined by six per cent, from 146 to 137 eggs per person. Per capita, egg consumption is much higher in comparable countries. In New Zealand, for example, the average annual consumption is 208 eggs per person. The industry attributes the difficulties to outbreaks of Newcastle disease, enforced changes to hen caging and an inability to engage in generic marketing or to fully benefit from industry research and development. Previous attempts by the industry to introduce and manage voluntary promotional levies have failed. The industry believes a new industry services body will have the capacity to engage in effective generic marketing to boost egg consumption and to better capitalise on the links between product promotion and research and development.

The Egg Industry Service Provision Bill 2002 will provide authority to the Minister for Agriculture, Fisheries and Forestry to declare a company limited by guarantee as the industry services body. Before the declaration is made, the minister will be required to enter into a funding contract with the company. The contract between the Commonwealth and the company will establish obligations in respect of the use of levies and matching research and development funding and the company’s accountability to its members and the Commonwealth. Further accountability measures will be contained in the company’s constitution. Once the declaration is made, the Commonwealth can make payments to the company. Agri-political activities will continue to be undertaken by the Australian Egg Industry Association as the peak industry body.

With regard to the levies, the effective use of statutory levies can assist producers to pool resources and work collectively on research and development, promotion and other priority industry tasks. Most traditional industry sectors have a levy system and a number of key primary industries have recently amalgamated their research and development and marketing functions. For example, Australian Pork Ltd and Horticulture Australia have been created as a result of change in research and development and marketing arrangements in the pork and horticultural industries.

The opposition has recently received representations from some members of this industry opposed to the imposition of the levy as proposed. I have received a copy of a petition signed by 76 industry members that specifically addresses opposition to the levy. I know other senators have received letters and telephone calls urging opposition to the new industry arrangements. The imposition of industry levies is, of course, often a difficult matter. It should be noted, however, that these bills do not impose the proposed levy; rather, they provide for a new Australian egg
industry structure, including the declaration of a new industry services body. The matter of the proposed levy will be the subject of a yet to be introduced regulation.

During the examination of this legislation by the Senate Rural and Regional Affairs and Transport Committee into the provisions of the bill, a number of concerns were raised in respect of animal welfare and the accountability of the new industry body. The committee, while noting these concerns, recognised the following: the legislation is not actually concerned with specific animal welfare issues, as you would have gleaned from my earlier comments, and the new company will provide generic promotion and research and development functions for the whole industry. Additionally, issues relating to animal welfare are more appropriately covered through other activities and through state legislative arrangements. With respect to the accountability of the new company, the committee formed the view that the provisions are adequate and similar to those for other companies operating under Corporations Law. I might say that the opposition concurs with the conclusions of the committee in respect of these matters.

In conclusion, the opposition supports the implementation of this new egg industry structure, as requested by the industry and developed by the industry itself. The coming months will be crucial for the future prosperity of the Australian egg industry, and of course one of the main challenges is the crippling consequences of the current drought. Egg producers, like pork, chicken and beef feedlot growers, are currently facing uncertain feed supplies and escalating prices. The opposition has called for a national grain audit to address concerns about grain hoarding, uncertain supplies and skyrocketing feed prices. Thus far, the government has ignored the opposition’s demands. For the sake of Australia’s intensive industries, including our egg producers, I renew the call for a national grain audit today. The opposition agrees to the passage of these bills and trusts that the new industry structure will assist the industry to build a more secure future for its members.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (5.28 p.m.)—On behalf of the Australian Democrats, in particular my colleague with responsibility for agricultural issues, Senator Cherry, I speak to the Egg Industry Service Provision (Transitional and Consequential Provisions) Bill 2002 and the Egg Industry Service Provision Bill 2002. The bills were the subject of a brief committee report which, again, I think is a good example of the value of the Senate committee system. Rather than senators chewing up a lot of time in the Senate chamber, asking questions backwards and forwards in the committee stage, the committee was, in the space of a few hours, able to get a lot of facts from the department, the industry and from bodies with interests in the legislation and, from there, develop a report.

The Democrats have a couple of concerns with these bills and with the way in which the rationale has been put forward about what the bills are and are not about. It is a bit strange to the Democrats for the government and the opposition to suggest that these bills do not and should not have anything to do with animal welfare when one of the reasons provided in the majority report for this levy is that in part it is to address issues associated with negative consumer perceptions about the nutritional benefits of eggs and animal welfare concerns. So if we are passing bills enabling a levy to be put in place to address animal welfare concerns, it seems a bit strange to the Democrats that the government and the opposition are suggesting that these bills do not and should not have anything to do with animal welfare when one of the reasons provided in the majority report for this levy is that in part it is to address issues associated with negative consumer perceptions about the nutritional benefits of eggs and animal welfare concerns. So if we are passing bills enabling a levy to be put in place to address animal welfare concerns, it seems a bit strange to the Democrats that the government and the opposition are saying that the bills do not have anything to do with animal welfare and that we should stop trying to raise animal welfare issues as part of it.

It is not surprising that there are negative consumer perceptions about the egg industry. Whilst I do not think that it is the worst industry in terms of the infliction of animal suffering, it probably is the most well known one in the public’s mind. The public’s reasonable instinctive concern with cramming a large number of birds into a small cage for their entire lives is very difficult to overcome. One wonders why consumers and producers are expected to fund a levy to overcome negative perceptions rather than
perhaps to address the root of those perceptions, which is the fact that 92 per cent of the egg industry still operates out of cages. You can reduce the negative animal welfare implications of caged hens but you cannot remove the animal welfare problem while the cage exists.

The only way to fully address animal welfare problems is to get hens out of cages. That does not mean that there are no animal welfare problems with the other systems—that is, farm laid and free-range methods—but they can be addressed if they are done properly. You cannot properly address animal welfare issues while birds continue to be caged for their entire lives. That is not the utopian dream of a few tree huggers; it is a widespread approach that has been adopted by many countries, particularly in Europe, where cages are to be phased out over the next 10 to 15 years, at different rates in different ways in different countries. There is a clear move away from the cage. Any suggestion that the industry would collapse as a consequence has been proven wrong by the fact that that move is happening.

During the committee hearings one member of the committee seemed to think that animal welfare concerns interfered with consumers’ ability to choose. It is true that you can choose between free-range and cage-produced eggs; although, as came out in the inquiry, the labelling of those eggs is not particularly clear and has not progressed very far—that is, whether eggs are accurately labelled as being produced from a caged-hen system. Choice and availability are not as clear-cut as that. Choice is dramatically hindered by the overpricing of eggs produced through the barn-laid and free-range systems. Because it is a boutique, niche type market, producers are able to price eggs far over the rate that reflects the extra production costs. As the Productivity Commission’s report a number of years ago showed, once an adequate volume of production is reached, production costs from more animal welfare friendly systems such as a free-range system are fairly small per egg. Nonetheless, other concerns need to be addressed.

In many ways it is fair to say that this bill sets up a body that follows down the path of a few other primary industry bodies in recent years and to ask why there is a problem with this one. That is a fair argument but some accountability issues are coming to the fore. Accountability is not just about reporting requirements under the Corporations Law. I do not have any concerns in relation to that and I agree with the committee’s assessment of that matter, but the issue is broader than that, particularly in terms of what still does not happen. We are passing legislation even though there is no full detail about what the constitution of the AECL will be or about the contract between that body and the government. Parliament’s ability to oversee research priorities to ensure that the body operates in the way suggested—that is, as an industry-wide body rather than one that focuses on specific sectors—will be reduced because it is to be an incorporated private body outside of government control.

The Senate recently encountered such a problem when it passed a motion, which I moved, seeking a report by Livecorp, which is a similar body to the one we are about to create: an industry body created by statute. The government refused to table an animal welfare related report produced by Livecorp about conditions on a ship that was exporting animals. The government claimed that the report was held by the company, that it was a private organisation, that it was the company’s report, that it was nothing to do with the government, and that the government cannot force it to provide or publish the report. That is a perfect example of the public and parliament being prevented from gaining access to materials that are critical to our ability to oversee the operations not just of that body but of the industry more widely.

Clearly, in the case of live exports, whatever view you take about them on an economic or animal welfare ground, there is public interest and parliamentary responsibility in being able to oversee how the industry is operating. The fact that a report about that issue was prepared by Livecorp, a private body created by statute, means that we apparently cannot access it, even through something that is supposedly significantly powerful—that is, the Senate’s power to pass
returns to order requiring the government to table documents.

Again, that is another example of where parliament’s ability to scrutinise areas that are supposedly in our sphere of responsibility is being lost tiny piece by tiny piece and being ceded to agreements between state and federal governments and to agreements between the executive and industry bodies, with parliament being cut out of not just the process but the ability to scrutinise ongoing activities. There are genuine accountability issues here for the Democrats—and not specifically because this is about the egg industry as opposed to any other industry—and they need to be scrutinised bit more closely. There is a fair prospect that this will not be the last industry body established by statute that this parliament will be considering. The problem that we have identified needs further examination.

In relation to the issue of consultation, and Senator O’Brien flagged this, the information provided by the Egg Industry Association to the committee claimed that the proposal for the development of a promotion capability for eggs was the subject of a comprehensive national process of consultation with egg producers last year, as required under Commonwealth levy guidelines. They stated that it resulted in overwhelming levels of support by over 90 per cent of those who participated. In the government’s explanatory memorandum it was claimed that the consultation was extended in order to ensure that all stakeholders were aware of the proposal and had the opportunity to provide comment. There should not have been any exclusions based on whether or not people were actually members of the Egg Industry Association.

Despite that, as Senator O’Brien noted, in the last couple of days I have received a flurry of phone calls to my office and petitions or letters from producers. I had 74—a couple more must have come to Senator O’Brien’s office, because he said ‘76”—producers opposing this levy. If, as the Egg Industry Association says, there are only 344 commercial producers, and 76 of those have written in either saying they oppose the levy or, even more concerning, saying they were not aware of it, that raises some question marks about the validity or the veracity of the consultation process that occurred. Again, that needs to be probed a bit further because it appears to me—and as this has only come up in the last few days I have not had the opportunity to fully explore it—that these producers that have expressed concerns are of the smaller scale. One of the concerns expressed in relation to the bills was that they were basically going to be dominated by the big producers. The sudden triggering of concern in the last few days from, I believe, small producers reinforces the fear that the body will operate predominantly for the few large producers who dominate the industry and obviously enable them to dominate it even further.

That ties back to the animal welfare issue. Whilst many of the large producers have free-range or barn-laid alongside the caged systems—in some cases as part of the whole establishment—the fact is that they are doing that to cater to the small boutique market while seeking to continue to expand the intensive side of the industry, which is of course the caged hens. The complete failure of state ministers a couple of years ago to act to phase out the cage—instead entrenching it with an absolutely minimal increase in size—is something that should be condemned.

I find it ironic that the industry is now seeking that the parliament pass a bill to enable a levy to be imposed to help it promote itself to overcome the negative public perceptions of the fact that it is still insisting on caged hens. It might make more sense and be cheaper in the long run for the industry not to have to impose levies to help it overcome a negative public perception image by getting rid of the problem that is causing the negative public perception, which is cramming all the birds into the cage. I suspect that if one did an economic cost-benefit analysis one might actually find that you would come out better in terms of dollars and cents at the end, and obviously the hens would come out a hell of a lot better.

The narrow-minded, short-term focus of the industry and their incredible reluctance to change, which I have witnessed over many years, in many ways works against their own
long-term interests. The stubborn refusal to act to address what is widespread public concern about the ongoing widespread use of the battery cage is going to continue to dog the egg industry. I think that is self-evident. As senators might be aware, I have had an interest in this issue for a while. I still have some postcards in my office if you want me to autograph one! I think it is one that will continue, regardless of whether I continue to campaign on it, because it provides a clear, easy focus for people. Most people have a general, inherent dislike of seeing animals suffer. There is no more obvious and clear-cut symbol of a suffering animal than having a cage with three or four birds squeezed into it—which are unable to turn around, stretch and flap their wings—and having them caged for what is also a dramatically shortened life. I do not think you can ever overcome the negative public perception about that, quite frankly, and I think it is ridiculous for the industry to impose a levy on themselves, and therefore the consumer, to help promote themselves out of a negative perception. I will not draw analogies because people will find them offensive, but it pretty much speaks for itself.

The promotion is also meant to deal with negative public perceptions about health issues relating to eggs. I am not going to get into a debate about whether eggs are healthy for you or not. Contrary to some media reports and perceptions, I am not a vegan; I do eat eggs from time to time, although not particularly regularly. There is certainly a significant body of credible scientific research that highlights health problems with egg consumption. The industry comes up with another body of credible scientific research that says eggs are really healthy for you and you should eat more. Indeed it gave evidence to that effect to the inquiry. There have been number of reports recently about egg consumption being linked directly to an increased risk of ovarian cancer. I cannot imagine that the industry is necessarily going to be out there promoting that in the public interest, but I suppose it is unrealistic to expect an industry to actually promote information that is against its own interests.

Again, it raises the question of the appropriate use of these levies. It is a levy that the industry wants to impose on itself. There are also arguments about whether the economics of generic promotion actually work. I think the evidence for that is fairly flimsy. However, if the industry wants to put a levy on itself to promote itself because it thinks it will work, who am I to argue with it? Let it do it and see how it works. I am pretty dubious, but if that is what it wants to do that is fine.

In conclusion, for the long term the Senate needs to have a closer look at some of the accountability or transparency issues that occur when we set up this type of body. When I use the word ‘accountability’ I am not implying corporate wrongdoing, and that is why the Corporations Act provisions are fine; I am talking about transparency and the ability for the public and the parliament to know what the money is being used for, and that ability is weakened. There are obviously going to be ongoing issues in terms of animal welfare implications. You cannot run away and hide from that. You cannot just build nicer, cleaner and bigger buildings with better security systems to keep people like me out. The public will continue to be aware of the reality. I know egg producers continue to say that they are concerned about animal welfare and that they are building nicer facilities with temperature controls and all that. That is all well and good, but the fact is that the birds are still in very small cages with other birds for what passes as company. That basic fact cannot be overcome. Putting more and more research into ensuring hen welfare when they are going to continue to be in that system seems to me to be fairly pointless and a waste of money.

The fundamental point, and this is why it is an animal welfare issue from the Democrats’ point of view, is that if this generic promotional levy does work, if it increases egg consumption and if it is only focused on a neutral industry-wide body then there is no doubt that, if it continues to include 92 per cent of the egg industry, it will be 92 per cent of a larger number of eggs. As a result of that, a larger number of birds will be in cages. In effect, people who buy free-range
eggs will be subsidising that promotion to expand the caged egg industry. That is also a bit unfortunate. Having said all that, the bills will obviously pass. It is something that the industry—or parts of it—want and the on-going scrutiny of the activities of this corporation, once it is established, is obviously something the Democrats will keep a close eye on.

**Senator TROETH** (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.48 p.m.)—I thank honourable senators for their contribution to the debate on the Egg Industry Service Provision Bill 2002 and the associated bill, the Egg Industry Service Provision (Transitional and Consequential Provisions) Bill 2002. This legislation has come about as a result of moves within the egg industry to rationalise its marketing and research and development activities, and to provide other industry services to the egg industry which will enable it to be more responsive to the challenges that it faces.

I would like to deal with some of the issues raised by senators during their speeches and certainly with the issue flagged by Senator O’Brien and continued by Senator Bartlett about the opposition to the levy. As Senator O’Brien remarked, there was a formal consultation period from April 2001 until 30 September 2001, and during the period since only two letters of complaint have been received. Ninety-four per cent of 238 producers who voted on the proposal were in favour of this legislation and the implied levy and they represent over 96 per cent of the laying hens flock.

I should also point out that I too have had some comment on the issues raised by the protesters. The signatories to the petition that has been circulating have not been able to establish bona fides. It has not been shown that all the signatories are producers or will be paying a levy under the new arrangements to be implemented. It is still an absolute fact, and has been clearly shown, that the majority of the industry is vastly in favour of the establishment of the corporation. I have a letter from the Australian Egg Industry Association telling me that. They have analysed those figures and still maintain that around 94 per cent of voters voted in favour of these proposals. As I will be the one who decides these matters for the egg industry, I am perfectly satisfied with that demonstration of support for the legislation.

With regard to Senator Bartlett’s comments on animal welfare, I believe that the establishment of the new company will provide the industry with a greater resource base and a more focused means of providing a way of addressing issues of concern to the industry. That includes the need for the industry to respond to any regulations or resolutions relating to animal welfare. Obviously, the company would not have any direct role, and it is not proposed that it would have any direct role, in enforcing animal health and welfare issues, because these are clearly matters for state legislation. However, it is expected that under the proposed new arrangements the new company will be able to provide direction and leadership to industry in addressing these concerns, as well as assist with the development and implementation of initiatives relating to animal health and welfare arising out of the primary industry standing committee framework and other relevant fora.

Moreover, as an industry services body, the new company will have the capability to undertake, on behalf of the industry, policy research and analysis on important industry issues such as animal welfare standards. The new company will take on the research and development functions that are currently provided to the egg industry under a sub-program of the Rural Industries Research and Development Corporation. As one of its priorities, that organisation has a focus on animal welfare and the new arrangements will not affect the Commonwealth’s ability to require the industry to meet these priorities through the new company in the future.

With regard to Senator Bartlett’s concerns about parliamentary access to the new company’s operations—and he quoted his dealings with Livecorp recently—the contract between the Commonwealth and the new body is in the draft stage. However, it is expected to include a clause which will require the company to provide all reasonable assistance required by the Commonwealth in re-
spect of any evaluation or inquiry into the company’s performance. That includes any inquiry conducted by parliament or by a parliamentary committee. I commend both the Egg Industry Service Provision Bill 2002 and the Egg Industry Service Provision (Transitional and Consequential Provisions) Bill 2002 to the Senate.

Question agreed to.

Bills read a second time.

**Third Reading**

Bills passed through their remaining stages without amendment or debate.

**BANKRUPTCY LEGISLATION AMENDMENT BILL 2002**

**Second Reading**

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

That this bill be now read a second time.

**Senator LUDWIG (Queensland) (5.54 p.m.)—**The Bankruptcy Legislation Amendment Bill 2002 was introduced into the House of Representatives on 21 March 2002. A previous bill, substantially similar to the one now before the Senate, was introduced last year and lapsed when the election was called. In introducing the bill, the Attorney-General stated that bankruptcy had been devised as:

... a shield that might be used, in the last resort, by an impecunious debtor to seek relief from his or her overwhelming debts. Over the years, some unscrupulous debtors have learned to use bankruptcy as a sword to defeat the legitimate claims of their creditors.

That sentiment—the idea that bankruptcy is used by the rich rather than the broke—has been on the rise over the previous year, given the prominence which has been given in the media to high-profile bankrupts, including a number of lawyers who appear to be living the high life while being officially bankrupt—some of them more than once. If the bankruptcy law is being abused, it is appropriate that it be reviewed and amended to ensure that loopholes cannot be exploited.

Labor certainly supports those measures in the bill which will make it harder for otherwise well-off people who are using bankruptcy improperly. However, despite the hype generated by the Attorney-General, there is little in this bill which will have any substantial impact on cracking down on the top end of town. On the contrary, much of the reform is squarely directed at low-income people who are forced to go into bankruptcy because they cannot pay the debts they have incurred. They are the people referred to in ITSA’s recent report entitled Profiles of debtors. This is a bill which is typical of a government that protects the greedy, not the needy. The last major overhaul of bankruptcy legislation was in 1996, shortly after the coalition came to office. The 1996 bill was substantially based on Labor’s 1995 bill and incorporated amendments recommended by the Senate Legal and Constitutional Legislation Committee in September 1995.

This bill does a number of things. It gives official receivers a discretion to reject a debtor’s petition where it appears that, within a reasonable time, the debtor could pay all the debts listed in the debtor’s statement of affairs and that the debtor’s petition is an abuse of the bankruptcy system. It abolishes early discharge from bankruptcy. It will make it easier for trustees to lodge objections to a person’s discharge from bankruptcy and harder for bankrupts to sustain challenges to objections. It clarifies that a bankruptcy can be annulled by the court, whether or not the bankrupt was insolvent when a debtor’s petition for bankruptcy was accepted. It doubles the current income threshold for debt agreements to allow and encourage many more debtors to choose this particular alternative to bankruptcy.

Other changes proposed by the bill streamline the operation of the act or are a consequence of the Insolvency and Trustee Service Australia—that is, ITSA—having become an executive agency. The 2002 bill drops a measure previously included in the 2001 bill which would have introduced, in relation to most debtors, a mandatory 30-day cooling-off period under which the debtor may have withdrawn the petition within 30 days of the official receiver having accepted it. This measure was heavily criticised, as it would have lengthened the period of harassment already faced by bankrupts from
creditors and debt collectors, without showing any appreciable benefits for creditors. While Labor supports the need for bankruptcy reform, there are a number of aspects which are less than satisfactory which I now wish to touch upon.

Concerns were expressed during the Senate committee hearing on this bill that, in drawing up the reforms, the government paid little attention to those organisations who most closely represent the interests of those people for whom the bankruptcy legislation exists—that is, low-income people. When somebody comes to the realisation that they cannot meet their debt repayments—it may be that they have too many credit cards and just cannot cope with the financial situation in which they find themselves—one of the first people they often see is a financial counsellor. These people are at the coalface of our personal insolvency system. Often, by visiting a financial counsellor, it is possible to provide people with the assistance to budget their way out of debt. Other times, the only option is bankruptcy.

I would have thought that, in framing a personal insolvency system, one of the most important groups of people to listen closely to would have been the financial counsellors. But the Wesley Community Legal Service expressed the view:

... proper consultation with interested and relevant community based welfare organisations did not occur but rather lip service was paid to a few select organisations ... financial counselling organisations were not consulted properly.

The detailed provisions of the bill, which are targeted more at the low-income bankrupts who are in over their heads than at the bankrupt barristers who sit back in their harbour-side mansions, reflect that lack of interest in the experience of financial counsellors. As the Wesley Community Legal Service submitted, the bill will ‘disadvantage many of the poor in society and their families’ while debt collectors stand to gain. That is a shocking indictment of a government which has professed to govern for all Australians but which instead has been caught time and time again knocking down those who are least able to stand up for themselves.

The bill proposes to abolish the provisions which allow early discharge for low-income bankrupts. The first point to make is that those who will be affected by this measure will be among the most vulnerable in our society. Therefore, you would think that the government should present compelling evidence why it is necessary for the good operation of bankruptcy law in this country that the provisions be abolished. The government has not made a convincing case at all for the abolition of early discharge.

Administrative early discharge provisions were introduced in 1992 in response to concerns that low-income earners did not have any real capacity to avail themselves of the existing early discharge provisions that required an application to the Federal Court. At that time, only a very small proportion of bankrupts availed themselves of the early discharge provisions, because of the costs involved in making an application to the court. In almost all cases where early discharge was sought, the order was granted. In respect of early discharge, the second reading speech tabled by Senator Bob McMullan, as he was then, on 22 August 1995 stated:

Commonly, persons who succeed in obtaining orders for discharge have become bankrupt as a result of failed business activities, and seek early discharge so as to enable them to resume such activities. These are usually also persons who have the capacity to contribute to the estate from income, but do not do so. The proposals in the Bill will restore equity to the operation of the early discharge system, and the eligibility and disqualification criteria are designed to ensure that where a person has become a bankrupt because of commercial culpability, he or she is disqualified from early discharge.

Under the current early discharge provisions, a bankrupt may apply for early discharge after six months from the time when he or she files a statement of affairs with the registrar. The eligibility criteria are: firstly, the bankrupt has no, or insufficient, divisible property to enable a dividend to be paid to creditors; secondly, the bankrupt has not disposed of property in a transaction that is void against the trustee; and, thirdly, the bankrupt earns an income that is less than the actual income threshold amount applicable to him.
or her at the time the application for early discharge is made.

Disqualifying criteria include where the bankrupt has previously been bankrupt or the unsecured liabilities of the bankrupt exceed 150 per cent of his or her income in the year prior to the date of bankruptcy, more than 50 per cent of the bankrupt’s unsecured liabilities are attributable to the conduct by the bankrupt of business activities and the bankrupt has given false or misleading information about his or her assets, liabilities or incomes. From these qualifications and disqualifications, it is clear that the abolition of the early discharge provisions will only affect low-income earners and will only affect them in respect of their first bankruptcy. Early discharge is not available in respect of second and subsequent bankruptcies.

There is no evidence that these provisions are being abused. Public hearings by the Senate Legal and Constitutional Legislation Committee into the bill were characterised by a complete lack of evidence as to the need for the abolition of the early discharge provisions. Mr Donald Costello, Acting Adviser for the Insolvency and Trustee Service Australia, who provided evidence to the committee on the policies underlining the proposed changes, summed it up in this way:

There are no statistics which would be available to help make a decision as to whether or not early discharge is an appropriate regime to have. All we can provide is feedback from Credit Union Services Corporation of Australia Ltd, which is a significant lending group representing a substantial number of credit unions, plus persistent correspondence from mainly small business creditors over the years who say that it is too easy for people to walk away from their debts.

I believe that the abolition of these provisions is actually an expression of this government’s attempt to divide Australians by scapegoating the most disadvantaged. I am confident that Australians will reject the negativity of this government, just as Northern Territorians rejected attempts by Mr Denis Burke to divide the Northern Territory community by running on the issues that he did.

The key feature of the early discharge provisions is that they were designed to deal with the increasing number of consumer bankruptcies which were due ‘more to misfortune than misdeed’. This is happening to Australians across the country. With an explosion in the use of credit cards over the last decade, more and more people have access to easy credit and more and more people are running into financial trouble—so much more that now Australians are faced with paying an extra 10 per cent on everyday items whenever they go to the cash register.

And what is this government’s approach? Instead of recognising that its policies have forced greater financial hardship on individuals and small businesses and in many cases sent them to the wall, this government is now in denial that people run into debt trouble not because they are irresponsible about spending their money but because the pressure on them is so great that they are driven into debt. In introducing this bill, the Attorney-General said:

The provisions were targeted at a new category of bankrupt—consumer debtors with low asset backing who over-extend and then cannot repay their debts. However, many believe that bankruptcy in this group is due more to lack of financial responsibility than to misfortune.

This is a cold and heartless statement from a cold and heartless government—one which has inflicted so much hardship on struggling Australians and which then seeks to blame them for that hardship. The government should not be blaming struggling Australians for the hardship that it has visited upon them.

Labor does not support the heartless philosophy behind the abolition of these early discharge provisions and believes that no compelling justification has been advanced for their abolition. Instead, Labor will seek to amend the bill to retain the early discharge provisions but to allow early discharge only after two years. This proposal will create a greater incentive for potential bankrupts to enter into alternative arrangements such as debt agreements to avoid bankruptcy, while still providing some relief for low-income debtors who have bitten off more than they can chew by virtue of the increased difficulties forced upon them by this government. The bill also seeks to amend section 265(8) of the Bankruptcy Act, which provides:
A person who has become a bankrupt and, within 2 years before or she became a bankrupt and after the commencement of this Act, has contracted a debt provable in the bankruptcy of an amount of $500 or upwards without having at the time of contracting it any reasonable or probable ground of expectation, after taking into consideration his or her other liabilities (if any), of being able to pay the debt, is guilty of an offence and is punishable, upon conviction, by imprisonment for a period not exceeding 1 year.

The bill proposes to amend the section by removing the minimum threshold requirement of $500. The government says that the amendment will prevent the situation arising where a person could not be prosecuted when, before bankruptcy, they went on a spree and ran up a number of debts of less than $500 each but who at the time had no ‘reasonable or probable ground or expectation of being able to pay the debt’.

The government also claims that the amendment will bring the Bankruptcy Act into harmony with the equivalent Corporations Law provision. Labor’s concern is that the abolition of the threshold may result in the prosecution of debtors who have incurred small debts—of amounts less than $500—for example, in respect of unpaid utility bills or overdue rent payments. This is more evidence that the government is out of touch with the basic needs of struggling Australians. The inability to meet the costs of these necessities of life should not result in the possibility of prosecution.

While there is an interest in bringing the insolvency law into harmony with the Corporations Law, the approach should not be inflexible. After all, corporations do not have to incur basic personal expenses necessary to live, whereas people do. Accordingly, Labor will seek to amend the section so that a person cannot be prosecuted for incurring a debt in respect of a reasonable or necessary personal or household expense without any reasonable ground or expectation of being able to pay the debt.

Section 271 of the Bankruptcy Act effectively retrospectively criminalises gambling in the two years prior to the declaration of bankruptcy. There are a number of problems with this provision. First, problem gamblers are not aware and could not be expected to know that their gambling may later place them in breach of section 271 of the Bankruptcy Act. Second, the existence of section 271 acts as a disincentive to problem gamblers declaring bankruptcy to begin to address their debt problems and turn their lives around. Third, and this is probably most concerning, fear of imprisonment may actually increase suicide risk for problem gamblers contemplating bankruptcy as a last resort. I think we would all agree that a person should not be discouraged from declaring bankruptcy for fear that doing so will turn him or her into a criminal. Whatever the reason behind the introduction of section 271, it appears out of place today, now that we have a greater understanding of gambling as an addiction.

While the government has focused on removing protections for low-income earners, it has shirked the real issue: cracking down on those people who use bankruptcy as a means of avoiding their tax obligations. Labor is concerned that the proposals put forward by the government do not at all address loopholes—which are predominantly taken advantage of by high-income bankrupts—in part X of the act. Part X provides for three alternatives to bankruptcy: entering into a deed of assignment, a deed of arrangement or a composition with creditors.

While the use of part X arrangements has declined in recent years, ITSA has stated that part X arrangements are ‘generally used by higher income earners and people in business who are able to offer their assets or payment from income to creditors’. Part X has generally been seen as a useful mechanism for bringing a debtor and creditors together to work out arrangements that may result in a superior outcome for all parties than the bankruptcy of the debtor. Nevertheless, over the years it has become clear that the procedure is open to abuse and some legislative amendments have been proposed to cure perceived defects.

In 1987 the Australian Law Reform Commission report identified abuses including: debtors giving misleading or inadequate information to creditors; controlling trustees convening meetings in obscure places and not giving sufficient notice of
meetings; debtors stacking meetings with persons who exercise or purport to exercise voting rights in favour of the debtor; and conducting meetings without an impartial chairman. Many of these recommendations have never been acted upon. Labor has moved a number of amendments to address weaknesses and flaws in part X—provisions which high-income earners are over-represented in utilising.

I welcome the fact that the Attorney-General has recently responded to Labor’s call for a review of part X. It certainly came as a surprise, after a spokesperson for the Attorney-General was quoted in the Age earlier this year as saying there was no need to reform part X ‘because the rules are already designed to provide as much protection as possible to creditors’. Now it appears that the Attorney-General is not so sure. While a review is welcome, it must be backed by meaningful action to crack down on part X abuses. The government cannot simply sit on whatever recommendations ITSA makes as it has sat for 10 months on the bankrupt barristers report.

As I have said, if bankruptcy laws are being abused it is appropriate that they be reviewed and amended to ensure that loopholes cannot be exploited. Labor supports the measures in the bill which will make it harder for otherwise well-off people who are using bankruptcy improperly. However, I urge the government to support Labor’s amendments when they are moved at the committee stage because they would restore a degree of balance, equity and compassion to the government’s bill.

Senator MURRAY (Western Australia) (6.12 p.m.)—With regard to the Bankruptcy Legislation Amendment Bill 2002, the Democrats are generally supportive of the government’s program to reform bankruptcy law. In recent years there has been a substantial increase in the number of bankruptcies, particularly of individuals, and the government is attempting to encourage people to consider alternatives to bankruptcy and to clamp down on those who abuse the bankruptcy system.

Particularly offensive was the revelation that senior Sydney barristers have been using bankruptcy as a means of tax evasion. Their poncing, if you like, in the courts of this land and their assumption of morality impugn the reputation, credibility and good faith of the vast bulk of barristers and lawyers, who conduct their tax affairs appropriately. That revelation has heightened the need to ensure the integrity of the bankruptcy system. I note that some provisions in these bills increase the powers of regulatory bodies to deal with those high-income earners who do use bankruptcy for debt avoidance purposes.

Unfortunately—perhaps it is a reflection of human nature—the government’s legislation is unlikely to put an end to some of the more outrageous abuses of the bankruptcy system by a few high-income earners. Australians are rightly angry to see some corporate or former corporate high-flyers claiming bankruptcy and avoiding creditors despite having obvious wealth at their disposal through some third-party entity or third-party family member. I have heard the government’s words of condemnation of those practices and I hope that they continue to bring forward legislation which tightens the screws on such people.

Such people should not be able to avoid creditors through artificial arrangements that secure their own financial wellbeing but result in great hardship to others who have entered into business arrangements with them in good faith. While it is true that the bankruptcy system must guard against abuse, care in addressing the abuses must not result in preventing access to bankruptcy by those with a genuine need to do so. We should always understand that bankruptcy laws were designed right from the very beginning as a safety net for those experiencing unfortunate circumstances in life.

Most bankrupts today—as always, probably—are low-income earners who owe relatively small amounts of money. Those who genuinely require recourse to bankruptcy should not face unnecessary or artificial barriers or be subject to unduly punitive measures. These are matters, obviously, which will be discussed further, given the amendments before us.

I note that this bill proposes to address bankruptcy law but, regrettably, it certainly
does not address sufficiently the root causes of bankruptcy. Terry Gallagher, the Inspector-General in Bankruptcy, has commented:

While it is no easier to go bankrupt now than it has been for many years it is likely that excessive borrowing prompted by ready credit availability, perceptions of attainable living standards and a lessening of the stigma of bankruptcy have contributed to this increase.

Another cause of bankruptcy and financial difficulty is gambling. I will read some correspondence regarding this legislation that I have received from the Interchurch Gambling Task Force. It reads:

The Inter Church Gambling Task Force has for a number of years been concerned about the impact of bankruptcy provisions on the seeking of assistance by people who have developed a problem with gambling. This has become particularly evident since the mass availability of gaming machines in Victoria since 1992. Numbers of people presenting to services for assistance have gambling problems and should be encouraged to consider bankruptcy as a means of financial stabilization. This stabilization is often necessary before the gambler can consider other personal and family support services to deal with other long-standing difficulties, which may have contributed to the gambling behaviour.

The current provisions of the act serve to discourage people from seeking assistance and certainly from disclosing their gambling difficulties if they are considering bankruptcy. Section 271 of the act, as we understand it, provides that a person commits an offence if, in the two years prior to the presentation in which the person’s bankruptcy occurred, they gambled or speculated rashly or hazardously, other than in connection with a trade or business.

While few people are recorded as reporting gambling as contributing to their financial distress, the reports from services with which the Interchurch Gambling Task Force is associated indicate that gambling is a factor in many bankruptcies of individuals where there are relatively small amounts owing. The act as it currently stands appears to be doubly punitive to people with gambling addictions who have got themselves into financial trouble. It fails to give recognition to the vast changes in public policy, which have not only legalised mass gambling and ensured mass exposure but also legitimised it in the minds of some of the public as a means of getting money when times are desperate.

In the absence of mandated adequate information on gaming machines about the chances of winning and the losses accumulating, it almost seems entrapment—although that is obviously not its intention—on the part of the government to keep in place provisions which preclude gamblers from seeking relief through bankruptcy under the legislation. The Interchurch Gambling Task Force believes that, even though section 271 is little used for prosecution, the act should be amended to remove reference to gambling, thus allowing transparency for individuals with problems and for the services which support them.

The Democrats are concerned about the existence of section 271 of the act, which provides for a maximum one-year prison term for people who become bankrupt partly as a result of gambling. The provision dates back at least to the early 20th century and reflects attitudes towards gambling that are not consistent with contemporary views. Bankruptcy is not a crime. It is a legitimate option for some people and an important way of allowing people in dire financial difficulty to make a fresh start. In the process of going bankrupt, unfortunately some people commit crimes. They will steal or commit fraud in attempts to pay their debts. They are quite properly subject to punishment for those crimes, but not for the fact that they have gambled or have gone bankrupt; it is the fraud or the stealing which is the crime. Inconsistently, gamblers can be punished, possibly with a jail term, simply for going bankrupt. It is inconsistent to punish bankrupts who have gambling addictions but not to punish people with other addictions, such as alcohol or drugs, or, for that matter, anyone else who goes bankrupt.

My office has been contacted—as, no doubt, other senators have—by a number of groups who counsel gamblers. The view that has been strongly presented to us is that this punitive approach to gambling does not assist the process of helping gamblers to deal with their problems. For many gamblers, petitioning for bankruptcy provides the opportunity to stabilise and make a fresh start as part of the recovery process. If gamblers cannot take advantage of the bankruptcy system for fear of imprisonment, their progress can be significantly hampered. Frankly, if you want to help gamblers who have got themselves into difficulty in large numbers,
you need to savagely reduce the gambling opportunities available, particularly in the pokies halls. Those of us in the chamber today who are from Western Australia know that the Western Australian restriction on pokies has had very positive social benefits.

The Democrats will be moving an amendment to remove section 271 from the act so that gamblers are no longer liable to imprisonment for bankruptcy. We will also be moving an amendment to make related companies liable for the debts of an insolvent company in certain circumstances. That amendment is in accordance with the 1988 Harmer report of the Law Reform Commission into insolvency. We have moved that amendment on four occasions in the past. I recall three occasions, at least, when Labor supported it—maybe all four, but certainly three of them. We are looking, frankly, to avoid a repeat of occasions such as the Ansett-Air New Zealand situation, where one company manages another company and can simply walk away from employees and creditors.

In relation to these last amendments, I acknowledge to the government that these bills are a slightly unusual vehicle for the moving of these amendments. The situation I face is that the government has made a commitment to address the matters that form the substance of the amendments but has failed to do so. In my view, this is my only opportunity to put these essential amendments to the chamber in legislative form. I remind the chamber that these are recommendations based on the 1988 report of the Law Reform Commission, so they have been around a long time.

The government made a commitment on this issue months ago. My view is that, if they can produce a border protection bill in 24 hours—with all the complexities that go with that—they can certainly address this issue within the much longer time frame that has been available to them. Let me make it clear that, if the amendment is passed, I will be happy to accept changes the government may make in the House of Representatives to those amendments that preserve its substance. It is important that the substance and the principle get through, not that the particular words that I have put are passed.

I will be moving a second reading amendment that is designed to ask that, as part of the way in which the act is administered, a substantial review be undertaken of the causes of bankruptcy and of the operation of the changes to the act. It would explore ways of providing a solution at the point of causation to eliminate the need for later actions which result when people go bankrupt.

I know that the government will argue that there is already in place a review system—and this is correct. It is a useful review system, except that the existing review seems to us to be basically a desktop process undertaken annually by the inspector-general. While this covers some of the essential areas that need to be covered, it does not include a comprehensive, stakeholder-engaging review component. This results in the present review not actually cutting down into the core problem areas that are the causation of bankruptcy and not providing tangible solutions at the root beginnings of bankruptcy.

Most importantly, the review for which we are seeking support from the government and the opposition is designed to look far more deeply into the foundation causes of bankruptcy and methods for addressing this increasing problem. Being a second reading amendment, the government will be able to react to it and address it in a manner which achieves the outcome we want but with some freedom as to its design. We are seeking from the government a genuine commitment to investigate the causes of bankruptcy and a commitment to have a cross-representative group when that review is under way.

Bankruptcy amongst non-business people is becoming a significant problem. Wearing one of my other hats, which include the hard-headed ones of finance, I say that we are all aware that credit availability has soared and that the amount of household debt has increased. In an economic sense, the Reserve Bank has not exhibited any real alarm at this stage. But the fact remains that there are signs that some Australians in some circumstances are experiencing great financial difficulties because they have gone over the top with regard to credit availability.
Credit availability has increased exponentially. As we know, you can use the equity of your home to take out a mortgage and expand it. That mortgage can even be used for current and discretionary expenditure, which can lead people to take risks with moneys which otherwise should be locked up in their homes. It is worth noting that credit availability is now the third-highest reason given for bankruptcy, behind unemployment and domestic discord. We simply must start focusing on preventing things from getting to the stage of people using the option of bankruptcy to get their affairs in order.

Having said all that, it is obvious that we welcome the government’s bill. We are pleased that they have brought it forward and are addressing the issues at hand. The numbers of amendments assist the bill, in my view; they do not gut it or alter its intent significantly. I will conclude by moving my second reading amendment, which has been circulated on sheet 2677. I move:

At the end of the motion, add “but the Senate, noting in particular the growth in non-business bankruptcies since the late 1980s, urges the Government to undertake reviews every 5 years of the fundamental causes of business and non-business bankruptcy in Australia and to report to the Senate on the outcome of these reviews, together with suggestions for such legislative reform as may be necessary to address these causes of bankruptcy”.

I would envisage, Minister, that if that amendment were to be passed and if the government were to act on it you would obviously see means by which you could combine the existing reporting process with this proposed process so that it would be in one document. That would be the easiest way to do it.

Senator KIRK (South Australia) (6.27 p.m.)—I rise to speak on the Bankruptcy Legislation Amendment Bill 2002. As Senator Ludwig said earlier, the opposition do not oppose this bill but we will be seeking to move amendments during the committee stage to address the provisions which we believe impact harshly on low-income bankrupts. In doing so, Labor wish to emphasise that, despite the government’s claim that the bill is tough on bankrupts, the reforms will in fact impact harshly on low-income bankrupts whilst not adequately addressing bankruptcy rorts at the big end of town.

Both the Bankruptcy Legislation Amendment Bill and the Bankruptcy (Estate Charges) Amendment Bill 2002 were introduced into the House of Representatives on 21 March this year. Previous bills substantially similar to these bills were introduced during the last parliament but lapsed when the November 2001 election was called. It has been said in the chamber this afternoon that in recent times we have seen some very high-profile bankrupts—for example, barristers who have not met their tax liabilities for a number of years and have then sought to avoid those obligations through bankruptcy. Labor has argued that the law must be changed so as to prevent high-income earners from using the bankruptcy law to their advantage. It is for this reason that Labor supported the thrust of the proposed amendments in the House of Representatives but expressed its concern about the impact of the changes on low-income bankrupts. In the other place, Labor shadow Attorney-General, Mr McClelland, argued that the bill should have gone further to prevent abuses of bankruptcy law by the top end of town, particularly with respect to part X arrangements. Labor argued there, and will also argue in this place, that this should have been the focus of the government’s legislative response to bankruptcy rorts rather than aiming the reform at those at the lower end of the economic spectrum—those who are more likely to become bankrupt as a result of consumer debts.

The last major overhaul of bankruptcy was in 1996, shortly after the coalition was elected. In 1996 the government then introduced legislation that was substantially based on Labor’s 1995 bill and incorporated amendments by the Senate recommended by the then Senate Legal and Constitutional Legislation Committee in September 1995. The bill before us today introduces a number of measures. Firstly, it gives the Official Receiver a discretion to reject a debtor’s petition where it appears that within a reasonable time the debtor could pay all the debts listed in the debtor’s statement of affairs and that the debtor’s petition is an abuse of the bank-
ruptcy system. Secondly, the bill abolishes early discharge from bankruptcy. Thirdly, it will make it easier for trustees to lodge objections to a person's discharge from bankruptcy and it will make it harder for bankrupts to sustain challenges to objections. Fourthly, it makes it clear that a bankruptcy can be annulled by the court whether or not the bankrupt was insolvent when a debtor's petition for bankruptcy was accepted. Fifthly and finally, it doubles the current income thresholds for debt agreements so as to allow and encourage many more debtors to choose this particular alternative to bankruptcy. Other changes proposed by the bill have the effect of streamlining the operation of the act or are as a consequence of the Insolvency and Trustee Service Australia having become an executive agency. Those changes are of a technical nature. Labor supported them in the other place and will also support them in the Senate. The 2002 bill drops a measure that was previously included in the 2001 bill which would have introduced, in relation to most debtors, a mandatory 30-day cooling-off period under which the debtor may have withdrawn the petition within 30 days of the Official Receiver accepting it. Labor was pleased to see that provision removed from the bill.

While Labor supports the need for bankruptcy reform, there are a number of aspects of this bill which are less than satisfactory. A number of these aspects were referred to by Mr McClelland in the other place and also by Senator Ludwig in this chamber this afternoon. Firstly, it has been said that the consultation process surrounding the bill was not as broad as it should have been. This concern was expressed during the Senate committee hearings on these bills. In particular, the government paid little attention to financial counsellors who give advice to the low-income earners who are affected by debts which may lead to bankruptcy. The Senate committee heard that the bill will disadvantage many of the poor in society and their families while debt collectors stand to gain.

The first of Labor's concerns regarding the specific provisions of the bill is in relation to early discharge. The bill proposes to abolish the provisions currently contained in the act which allow early discharge for low-income bankrupts. Labor has concerns that those who will be most affected by this measure will be those who are most vulnerable in our society. As has been said, the government has not made a convincing case at all for the abolition of early discharge. Administrative early discharge provisions were introduced 10 years ago, in 1992, in response to concerns that low-income earners did not have any real capacity to avail themselves of the existing early discharge provisions that then required an application to the Federal Court. At that time only a very small proportion of bankrupts availed themselves of the early discharge provisions, because of the costs involved in making an application to the Federal Court. In almost all cases where early discharge was sought, the order was in fact granted.

Under the current early discharge provisions, a bankrupt may apply for early discharge after six months from the time when he or she files a statement of affairs with the registrar. There are restrictions on the eligibility criteria for this early discharge. Firstly, there has to be a determination that the bankrupt has no or insufficient divisible property to enable a dividend to be paid to creditors. Secondly, the bankrupt must not have disposed of property in a transaction that is void against the trustee. Thirdly, the bankrupt must earn an income that is less than the actual income threshold amount applicable to him or her at the time the application for early discharge is made; that is, they are not at a level where income would actually be distributed during the course of the bankruptcy to creditors.

There are also several disqualifying criteria. These include, firstly, where the bankrupt has previously been a bankrupt; secondly, where the unsecured liabilities of the bankrupt exceed 150 per cent of his or her income in the year prior to the date of the bankruptcy; thirdly, where more than 50 per cent of the bankrupt's unsecured liabilities are attributable to the conduct by the bankrupt of business activities; and, fourthly, where the bankrupt has given false or misleading information about his or her assets, liabilities or income. These are quite strict and, impor-
tantly, apply only in respect of the first bankruptcy. Early discharge is not available in respect of second and subsequent bankruptcies. As I and a number of other members have said, there is no evidence that these provisions are being abused.

Public hearings held by the Senate Legal and Constitutional Committee into the bills were characterised by a complete lack of evidence as to the need for the abolition of the early discharge provisions. Labor is concerned that the government, in introducing these measures, is singling out those who become bankrupt as a result of troubled times, rather than addressing the underlying causes of their difficulties. The key feature of the early discharge provisions is to deal with the increasing number of consumer bankruptcies which are due more to misfortune than misdeeds. As Labor members, including me, have said in this chamber recently, the blow-out in credit card debt, in addition to the burden imposed by the high mortgages resulting from the dramatic increase in property values in Australia, is imposing tremendous burdens on Australian families. We say that the error of the government’s approach is that the government, instead of recognising that its policies—in particular the GST—have imposed greater financial hardship on individuals and small businesses, is introducing laws that target the people who are suffering as a consequence of its policies. The Attorney-General almost said as much when he said, in introducing the bill, that the provisions were targeted at a new category of bankrupt—consumer debtors with low asset backing who have overextended and then cannot repay their debts. Labor says that this is a harsh way to treat one of the most vulnerable groups in our society. We say that the government is singling out those who become bankrupt as a result of troubled times, rather than addressing the underlying causes of their difficulties.

The second area of concern that Labor has is the incurring of debts within two years prior to bankruptcy. This is set out in section 265(8) of the act. The effect of this section is that it provides that if a person contracts a debt of an amount of $500 or more without having, at the time of contracting it, ‘reasonable or probable ground or expectation’ of being able to pay the debt then such a person is guilty of an offence which is punishable by imprisonment for a period not exceeding one year. Labor’s view is that to remove this $500 threshold is particularly harsh. The government’s argument is that the section enables rorting. The government says that the effect of the section is that people could go on a serial spending spree purchasing a number of small items but, nonetheless, running up a total of more than $500 and therefore equally offending the principles contained in the section of the act.

The government’s other argument is that it brings it into line with the Corporations Law. But it is quite clear to most of us, particularly to those on this side, that bankruptcy law applies to individuals, not corporations. Furthermore, individuals are not corporations. Individuals, particularly those who are supporting families and children, need to incur debts—everyday household expenditures such as rent, electricity, gas, telephone bills and the like—in order to survive. We say that it is harsh in the extreme to suggest a change to the law which could see a parent jailed for incurring a necessary expense for, say, their children’s schooling or other needs. We say that this is a particularly harsh and
inflexible approach. Labor has proposed that there be a proviso included in the section whereby a person cannot be prosecuted for incurring a debt in excess of a reasonable or necessary personal or household expense without any reasonable ground of expectation of them being able to pay that debt.

The third area of concern to Labor is in respect of the offence of contributing to insolvency by gambling in the two-year period prior to bankruptcy. Labor is well aware of the financial devastation that gambling can cause to individuals and families. Effectively, though, section 271 of the act retrospectively criminalises gambling. The difficulty with this section, however, is that problem gamblers are not aware, and could not be expected to know, that their habit is going to be such that it could well lead them to financial devastation. Indeed, it may well be a disincentive to problem gamblers obtaining advice before declaring bankruptcy in the fear that they could actually face these penalties. Again, imprisonment could be a penalty arising from a prosecution under this section. The effect of this could well be to increase the personal problems of problem gamblers and could lead to devastating consequences, even suicide. There is no doubt that problem gambling needs to be addressed but periods of imprisonment are not the answer to the serious social problem that gambling brings about.

The final provisions that I wish to refer to are those that go to the operation of part X of the act. These provisions apply to those who have or have had substantial assets. Labor’s concern is that the proposals put forward by the government do not address the loopholes in part X of the act. Part X provides for three alternatives to bankruptcy: entering into a deed of assignment, entering into a deed of arrangement or entering into a composition with creditors. Labor recognises that these provisions are important because, if they are properly used, they often result in debtors receiving more than they would have received if the person simply became the bankrupt. But ITSA itself has recognised that these provisions are generally used by higher income earners and people in business who are able to offer their assets or payment from income to creditors. Part X generally has been seen as quite a useful mechanism for bringing debtors and creditors together to work out arrangements that may well result in a better outcome for all parties concerned. Nevertheless, over the years it has become clear that the procedure is open to abuse and some legislative amendments have been proposed.

Back in 1987 there was a Law Reform Commission report on these perceived defects of part X. This Law Reform Commission report included four principal points. The first point was the need to prevent the use of these provisions where debtors have given misleading or inadequate information to creditors regarding their financial circumstances. The second point dealt with controlling trustees convening meetings in obscure places and not giving sufficient notice of meetings. The third point related to debtors stacking meetings with persons who purport to exercise voting rights in favour of the debtor. Finally, there were concerns about conducting meetings without an impartial chair—coming back to someone who may have been, for example, a professional adviser to the debtor.

All of these measures are measures that Labor believes need to be addressed. Labor has devised amendments that will address these concerns. It hopes that the government will see that they are constructive changes. As Senator Ludwig pointed out, finally the Attorney-General has recently responded and said that there will be a review of part X. Labor welcomes this review but urges that it must provide positive outcomes that remove the loopholes to which I have referred. I urge senators to support Labor’s amendments in the committee stage, which we believe will seek to restore, as Senator Ludwig said, balance, equity and finally compassion to this bill.

Senator ABETZ (Tasmania—Special Minister of State) (6.44 p.m.)—I thank honourable senators for their contribution in this debate. I just flag at the outset that we, as a government, I think will be opposing all of the amendments and propositions put to us but we will not be seeking to divide on them. That should not be understood as meaning
that we are not serious about pursuing the bill as drafted by us and that we do not accept that amendments have been put forward.

As I said before, I thank honourable senators for their contributions and I will seek to deal with them in order. The first contribution was made by Senator Ludwig. I simply indicate to him that I think Brian Burke has had sufficient allegations made against him without having had such a heinous allegation as you have just made in this chamber visited upon him as well.

**Senator Ludwig**—You know very well who I was referring to.

**Senator ABETZ**—Yes, I thought you might have been referring to another Mr Burke. Senator Ludwig made a number of points in relation to section 271, the gambling provision—and I note Senator Murray has moved a similar amendment. That has in fact been in the act since 1966, on my advice, so it has been around for 36 years. Labor have had 15 years in office during which time they could have dealt with it, but they were not interested in dealing with it. I will go through some of the issues that the Senate ought to take into account in relation to this.

**Senator Murray**—Times change!

**Senator ABETZ**—Times do change and what has unfortunately changed, Senator Murray, is the fact that we have a bevy of state Labor governments around on a feeding frenzy on gambling. I would not be surprised if some of them have said, ‘Wouldn’t it be a good thing to remove this provision from the Bankruptcy Act because it might act as a disincentive for people to gamble.’ I believe it just shows again that Labor is unfortunately soft on this issue.

In reality—and that is what we need to deal with here—600 bankrupts last year stated that gambling was the cause of their bankruptcy. Yet the actual number of prosecutions under this provision was small. It is a very tall high bar for the prosecution to be able to get over to prove both ‘rash and hazardous’. The statistics are: 2001-02, one person charged and a conviction recorded; 2000-01, one person; 1999-2000, one person; 1998-99, none; 1997-98, one; and 1996-97, three. So we are dealing with a very small number of people.

**Senator Ludwig**—Or a lazy government.

**Senator ABETZ**—A lazy government? In other words, we ought to be prosecuting more; is that what you are saying. Senator Ludwig? I thought you wanted to remove the section from the bill. Then when I point out how very few get prosecuted we are told that we are being lazy. That amazes me. The important thing about this section in the bill is that it acts as a great disincentive because some people who seek to play the bankruptcy law say, ‘I lost a lot of money in recent times through gambling,’ and, once the provision is read to them and the possibility of a conviction for ‘rash and hazardous’ gambling is pointed out to them, all of a sudden the truth is told, money is found in other places, and creditors benefit. The fact that the Labor Party—and, even more surprisingly, the Democrats—would seek to have this provision removed, which has been an effective tool—

**Senator Ludwig**—On anecdotal evidence.

**Senator ABETZ**—Believe it or not, Senator Ludwig, I do not stand here and just make up these things. In fact I have the benefit of being given advice from ITSA. I indicate to you that, in one recent case investigated by ITSA and recommended for prosecution, there was no evidence whatsoever of gambling prior to the person becoming aware that a bankruptcy notice was about to be issued. This person then went on a gambling spree which left no money for creditors. According to Senator Ludwig and the Democrat amendment, that is good public policy. We as a government say no to that.

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Senator Ludwig talked about the review of part X. I simply suggest that there is a review currently underway which will identify any needed changes through a process of extensive and rigorous consultation. Might I respectfully suggest that that is better than a knee-jerk, ill-considered and rather hasty change of the kind moved by the opposition. If I am correct, those consultations have been taking place as we speak. They have been in Perth and Adelaide, and in my home state of...
Tasmania today. As we speak, these consultations are actually taking place. I submit to the Senate that it would be better for the Senate to have the benefits of that review before we decide on making any hasty change to the legislation.

Senator Ludwig also referred to early discharge and suggested that this be extended from the current six months to two years. One of the present disqualifying factors from applying for early discharge is that the bankrupt’s unsecured debts exceed 150 per cent of the income derived by the bankrupt during the year immediately before bankruptcy. That is section 149Y. This provision can discriminate against some bankrupts.

Senator Ludwig interjecting—

Senator ABETZ—You are quite right when you consider a situation where a husband and a wife have gone bankrupt with joint debts and the husband earns an income while the wife is engaged in home duties or child rearing duties and has no income. He would be allowed to be discharged but of course the wife would not. Section 149Y will frequently disqualify the wife while the husband may still apply. The opposition amendments do nothing to address that situation. Senator Ludwig also suggested that financial counsellors had not been consulted properly. The financial counsellors’ peak body is represented on the bankruptcy consultative forum, and the forum was consulted extensively in relation to the bill. Senator Ludwig also referred to certain high-rolling barristers who have disgraced their profession and should have been—

Senator Ludwig interjecting—

Senator ABETZ—I am not sure if there are any in Tasmania, Senator Ludwig. I would hope not. I am not aware of any, but that does not mean that they do not exist. We know they exist, but whether they exist in Tasmania, I do not know. The fact is that they do exist in Australia and it is important for the government to deal with these high-income professionals in an appropriate way. A joint task force was established to investigate abuses of the bankruptcy and family law schemes to avoid payment of income tax. The government is well on the way in relation to that.

Senator Murray suggested it is wrong to have a punitive approach to gambling and that the offence of 271 should be repealed—which is the same point that Senator Ludwig made. I indicate that not all gamblers are in fact addicts. In one case prosecuted by the DPP, there was no evidence of gambling by the debtor, as I indicated earlier, until he was actually served with a bankruptcy notice. It is rarely prosecuted and the elements of the offence are such that only the most serious cases are prosecuted, and of course the Director of Public Prosecutions has a discretion as to whether to pursue it. The existence of the offence acts as a deterrent to dissuade bankrupts from concealing assets while saying that all their property has been frittered away on gambling.

Senator Kirk made some points in relation to early discharge, and I think we can deal with that further in the committee stage. Senator Kirk also said that the income threshold for debt agreement would be doubled—that is, increased by 100 per cent.

Senator Ludwig—Fifty per cent.

Senator ABETZ—Exactly, Senator Ludwig; it is 50 per cent. What she indicated to us was not correct. The previous bill did propose that, but it is somewhat coincidental that she just happened to make the same mistake as the shadow Attorney-General made whilst debating this bill in the lower house recently. Might I suggest to Senator Kirk—I think she used to lecture in law, didn’t she?—that there is such a thing as ‘reading other people’s assignments and then just regurgitating it’. I suggest to her that she ought should do her own research and not rely on the shadow Attorney-General for her advice. Might I add, however, she would be better advised to listen to Senator Ludwig because he did get it right. Out of the three of them who contributed, I confess Senator Ludwig did get it right, and I congratulate him on that.

Senator Kirk also referred to household goods. The opposition’s proposed amendment would exclude ‘necessary household or personal expenses’. I suppose I am a fairly
frugal sort of person, and the Labor Party’s necessities may well be my luxuries. So how we or the courts would define ‘necessary household or personal expenses’ would be a great one for the courts and lawyers to have fun with, and chances are some of these bankrupt barristers—if they were allowed to practise again, which I doubt—might be able to get some income again trying to argue about these provisions and what is actually necessary for them as opposed to a luxury for them. That is something that I will undoubtedly hear more about from the Labor Party during the committee stage. I thank honourable senators for their contributions.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! It being 7 p.m., we will now proceed to orders of the day relating to committee reports and government responses and Auditor-General’s reports.

COMMITTEES

Employment, Workplace Relations, Small Business and Education References Committee

Report: Government Response

Senator CROSSIN (Northern Territory) (7.00 p.m.)—I move:

That the Senate take note of the document.

I rise to put some comments on the public record about this response from the government. This government is in absolute denial about the state of the higher education system in this country. I was a member of the Employment, Workplace Relations, Small Business and Education References Committee that spent many months travelling around this country, taking quite a number of submissions, hearing witnesses and making the effort to go to each state and territory and to as many universities as possible during 2001. I clearly remember the President of the Australian Vice-Chancellors Committee, in about July last year, after we had heard from many lecturers, dozens of students and many university vice-chancellors, admitting to us on the record that the system was in crisis. That is why the committee came up with the title of its report: Universities in crisis. It is a report on the capacity of public universities to meet Australia’s needs in respect of tertiary and higher education.

That was not a title that we orchestrated. It was not a title which was determined other than by an admission by this country’s leading vice-chancellor at the time, who headed up the Australian Vice-Chancellors Committee, the peak body to which the vice-chancellors of each and every one of our 38 universities belong. He actually admitted to us on the public record that universities were in crisis. Now we have a government that is in absolute denial—it believes that that is not the case. It has the blinkers on and it wants to pretend that the policies that it has instigated since 1996 have been good for this country and have tried in some way to assist the higher education sector in this country. This government has ripped out over $860 million from this sector in only six years.

During the inquiry we heard evidence about the stress being suffered by university staff as they try to cope with more hours of lecturing, increased numbers of students and dwindling resources. We heard about university libraries struggling to maintain their efforts to provide higher education students with the resources they need. University libraries have had to stop subscriptions to magazines, not renew resources and not buy new library books. We heard about universities that were unable to replace outdated information technology equipment or to replace simple things such as computers, let alone buy the state-of-the-art equipment that our engineering or science students need not only to get up to speed with what is happening in the rest of the world but also to become leaders in their area of research or study.

We heard from university students who told us time and again that they would enrol in university courses at the start of the year and turn up to the first classes only to find that they were cancelled. Why was that? It was because the university did not have enough operational funding or capacity to meet the demand of students around this country. We also heard from engineering
academics, scientists and humanities staff around this country that they have had to cut courses and close departments because there was simply not enough money being put into those sectors by the universities.

The Northern Territory University has had three major restructurings since 1996. The first restructuring saw the demise of the English department. The second restructuring saw a range of faculties having to be amalgamated and some fine arts departments diminished. The most recent restructuring saw the announcement that 42 general staff would be made redundant. Why is that? It is because the sector has not had enough money put into it since 1996. It has been severely neglected by this government, to the point where it has withdrawn operational funding and made universities embark on private enterprise paths to cope with that shortfall.

One of the significant findings of our inquiry was that universities are relying heavily on the private sector to compensate for the lack of funds. We have a private institution attached to the University of Melbourne. We have a number of universities such as Adelaide University that need to encourage the donation of funds from big businesses such as Santos. While that may be a welcome development in higher education, it is becoming a replacement for the public funding that ought to be going into universities. It is not additional to it or a top up, it is replacing, and significantly replacing as the years go by, the amount of public funding that should be put into the higher education sector by this government. Students around the country were able to prove to us that they now need to undertake part-time work and, increasingly, complement it with their study. The changes to the youth allowance, combined with an anticipated HECS debt, were a very large financial burden for students. To compensate they needed to undertake significant part-time work just to survive while studying.

What have we seen this year? This year we have seen a minister who has embarked on a review of the higher education sector and has released seven documents. Each of those seven documents or discussion papers—they are not so much policy positions, although they will become policy positions—go to the very areas that I have just talked about. They go to the funding of universities. They go to the role of students and the payments that they will need to make in order to obtain a higher education in this country. They go to Indigenous students participating in this country, and there are a range of other areas.

This is a minister who is going to pretend that he is embarking upon a national consultation process in relation to these papers. He has invited submissions—although I notice that there have been no public hearings in the Northern Territory, and I suppose that is the case for most regional and rural, let alone remote, places in this country—but, at the end of the day, all I would suspect that we are going to see is a repeat of the leaked cabinet document in 1999. This minister is a little bit clever though. He is going to embark upon what he sees as a consultation process, but there is no doubt that, at the end of the day, his policy that emanates will be no different; in fact, it may even reflect those positions that were put in the leaked 1999 cabinet document—that is, that students should pay more for their higher education in this country and that there should be less public funding. This is a minister that believes that universities are not in crisis. This minister is blinded by the fact that this is a sector that is struggling to survive because of the lack of funds and the lack of good policy that this government fails to provide for it.

Question agreed to.

**Superannuation and Financial Services Select Committee**

**Report: Government Response**

**Senator** BARTLETT (Queensland—Leader of the Australian Democrats) (7.11 p.m.)—I move:

That the Senate take note of the document.

This is a very important issue. Many Australians are significantly affected by the issues relating to prudential supervision and con-
sumer protection for financial services. For that reason I think it is appropriate to keep the matter on the Notice Paper by seeking leave to continue my remarks.

Leave granted; debate adjourned.

Economics References Committee Report

Debate resumed from 22 October, on motion by Senator Jacinta Collins:

That the Senate take note of the report.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (7.12 p.m.)—The debate on this report has been adjourned and I would like to ensure that the debate continues. Again, this is a very important area and a very significant report. It contains a lot of useful information about the Democrats’ perspective, from my colleague Senator Ridgeway, which I commend to the Senate. There needs to be a lot more government action to address this issue in a consistent way and not in a way that reduces the rights of the general public. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Legal and Constitutional References Committee Report

Debate resumed from 21 October, on motion by Senator Bolkus:

That the Senate take note of the report.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (7.13 p.m.)—This is a report by the Legal and Constitutional References Committee into the migration zone excision. As well as looking into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, the committee also looked into other matters to do with how the so-called Pacific solution operates and what the impacts might be of further excising parts of Australia from Australia’s migration zone. Of course there is already a provision in the Migration Act enabling islands to be excised from Australia’s migration zone. That was passed last year, on a very sad day for our legal system and our democracy, when a number of bills dramatically reducing the rights of Australians and asylum seekers and potential migrants were all passed in the final week of sitting before the election. We are still seeing the legacy of that. This bill continues that legacy by seeking to further extend the areas where people’s rights would be removed. That is basically what the legislation does and the way that the law operates.

In being very critical of the Labor Party for supporting the government’s disgraceful package of legislation last year I should therefore be equally complimentary towards them in continuing, through this committee report, to oppose this legislation. The reasons that are set out quite extensively are very accurate and appropriate. I think the only comment one would make is that the reasons set forward as to why this is not a good idea apply equally to the bill that Labor supported last year. It is a pity the same reasoning could not have been applied at that time.

It is certainly the Democrats’ view that Australia clearly breaches its international obligations via this legislation and the general process that the government utilises. In some ways, people may say that this is an academic debate in respect of excising more islands, because no more boats are arriving anyway—and that is true, but it is still very relevant. Given that the existing provision for excising islands from Australia’s migration zone continues to operate because of the legislation that was passed last year, islands such as Christmas Island are also continuing to operate at this very moment outside our migration zone. What is also occurring at this very moment is the construction of a brand new, purpose-built detention centre—at a cost of over $200 million to the taxpayer, I might add, and in an area where it will clearly be detrimental to endangered species. I might also add that it is occurring via a mechanism that was used when the government decided to exempt itself from any obligations under the federal environment act.

If all things go to plan, that detention centre will be completed some time next year and one assumes that the government is not spending a few hundred million dollars on top of all the other hundreds of millions of dollars it has spent in this area simply for the centre to sit there idle. Presumably it will be
filled with detainees. The key point there is that those detainees will then be in an area outside the operation of Australia’s Migration Act. This is particularly relevant. It will not just be used for future boat arrivals; I suggest that it will almost certainly be used to take people off Nauru and Manus Island and to keep them on Christmas Island, where they will still be in an area where they have no rights. They will also still be in an area where they will be out of sight of the public and difficult to access and it will obviously be impossible for relatives, friends or supporters to visit them and extremely difficult for the public to know what is going on, in the same way as it is virtually impossible for us to know what is going on in Nauru or on Manus Island at the moment.

The area that the report deals with is very critical and important at the moment. The government tried to beat up a bit of fear, loathing and urgency when they first moved to extend the number of islands that were excised, by saying, ‘There’s a boat on the way. It’s out there somewhere with 16 Vietnamese or something, and we had better pass this.’ Of course, that boat was never heard of again. I do not know if it was another one we knew about but let sink, like SIEVX, or whether it never existed in the first place or what happened. It was very conveniently referred to by the minister a number of times and then forgotten and it fell from his public statements.

The other aspect that the Democrats believe the public and this parliament need to be very aware of is the fact that under the disgraceful temporary protection visa regime that also continues in place—again, sadly, because of a decision of the Labor Party back in 1999 to support the government in introducing this disgraceful visa—it is a three-year visa. It is now three years since that visa first came in and a large number of people are now starting to be reassessed as to whether they still meet their protection obligations. Many hundreds of them have already started the reassessment process and obviously as time goes by the others who came to Australia and were given protection visas because we recognised them as genuine refugees will also be reassessed, with the risk of having their visas cancelled and therefore having no lawful right to remain in Australia. The big issue is that many of those will be unsuccessful because they were from Afghanistan and circumstances have changed. I am not sure that it is necessarily a safe place to be and I think the department’s travel advice is for Australians not to go there, but somehow or other we think it is fine for refugees from Afghanistan to be sent back there.

It is quite likely many hundreds of refugees—real refugees—in Australia now will be reassessed and will be found not to meet the very strict criteria for protection visas. What is going to be done with them? A reasonably convenient solution for the government would be to put them into detention, and an even more convenient solution would be to put them into detention on Christmas Island, where they will be out of sight, outside Australia’s migration zone and therefore in an area where they would have even fewer legal rights than they would have in an Australian detention centre. That is why this is still a critical and important matter.

Were it not for this temporary protection visa, those hundreds or thousands of people would now be able to become Australian citizens. If the previous regime still applied and they had been here more than two years, they could have started to become citizens. Many refugees seek to become citizens more quickly than any other forms of migrant do. They seek to settle down, establish new roots and contribute to the country much more readily than any other forms of migrant do. They seek to settle down, establish new roots and contribute to the country much more readily than any other form of migrant. The temporary protection visa prevents them from doing that. If it were not for the temporary protection visa, instead of having to be reinterviewed about what their lives were like five years ago and continuing to live in limbo these people would most likely be at citizenship ceremonies being welcomed by the lord mayor of whatever town they are in. It is a tragic contrast and a tragic human example of the consequences of a decision of this Senate three years ago. The paths of those people’s lives have been radically changed by that decision. Instead of being welcomed as new Australian citizens in a town hall, they are being reinterviewed by
the department with a very strong possibility of being dragged off to a detention centre and then forcibly returned to a place like Afghanistan.

That is why this legislation is important. Unfortunately, stopping this legislation will not stop that situation from continuing, because the legislation that was passed last year, in addition to further rights-removing legislation that was passed in the new parliament earlier this year, continues to operate. But I do believe that this report should be examined by all senators, because it goes deeper into the way that the excision regime operates. It is an opportunity that senators unfortunately did not have last year when the original legislation was pushed through, because it was guillotined through without the Senate having the opportunity to examine it. This is the first examination and report by a Senate committee into the way that this operates. This, in addition to the excellent majority report of the Senate Select Committee on A Certain Maritime Incident, which also provided an opportunity to examine the Pacific solution in some detail, is finally starting to get the Senate looking at the issues that we should have been able to look at 12 months ago, before we introduced such a disgraceful bunch of legislation and before we enabled the enormous amount of suffering that is now occurring as a consequence.

(Time expired)

Question agreed to.

Foreign Affairs, Defence and Trade Committee: Joint Report
Debate resumed from 21 October, on motion by Senator Ferguson:

That the Senate take note of the report.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (7.23 p.m.)—It is also important to note this report, entitled Visit to Australian forces deployed to the international coalition against terrorism: parliament’s watching brief on the war on terrorism. As the title of this report suggests, there was a visit by members of the Joint Standing Committee on Foreign Affairs, Defence and Trade to some of the Australian forces that are in the Middle East region at the moment, deployed as part of the battle against terrorism. It is particularly relevant now, even more than it was at the time of the visit, because of the tragic incident in Bali. There has been a lot of debate since then about whether Australia should be focusing the use of our armed forces and resources much more in our own region. To that extent, this report is valuable because it gives an idea of the extent of the deployment of Australia’s armed forces in countries such as Afghanistan, Kuwait, Kyrgyzstan, the Persian Gulf and Dubai and whether that is the best way for us to contribute to the ongoing battle against terrorism. It is also particularly germane because, as this report itself mentions, the issue continually being raised in that region is whether there will be further and much larger conflict through an attack on Iraq by the US with support from other nations.

Again, because it quite rightly points out the value of combating terrorism, it begs the question: why is our government allowing itself to be put in a position where it will be giving support to a war where no case has been made that it would contribute at all to our campaign against terrorism, while a reasonably good case has been made, from the Democrats’ point of view, that an attack on Iraq would make the fight against terrorism more difficult? A war would destabilise the region enormously. Iran, just next door, which is obviously no friend of Saddam Hussein, is likely to be destabilised by it as well. Iran is likely to get another huge influx of Iraqi refugees, such as it has had in the past. Such a war is likely to weaken the position of the reformers in Iran and re-strengthen the position of the fundamentalists and clerics, which would make the fight against terrorism that much more difficult. Instead of lending support to a country like Iran and giving support to those people there who are trying to reform and improve that country in terms of its attitudes—to make them less extreme, more reasonable, more moderate and more workable with the rest of the world—a war will do the one thing that will cut the ground right out from under those people and make it much more likely that terrorists and extremists will again get
institutionalised support from countries like Iran.

There are plenty of arguments as to why engagement in Iraq by the United States would make our battle against terrorism more difficult. That is particularly relevant in terms of the commitment that we are already making. It is being irresponsible to the commitment that we are already making in the campaign against terrorism for our Prime Minister to be in a situation where he is basically advocating the right of George Bush to engage in war with Iraq with our country’s support. Everybody knows that, if George Bush asks Mr Howard to support his attack on Iraq, Mr Howard will say, ‘Yes.’ And everybody knows that President Bush is mighty keen to continue to prosecute the prospect of war against Iraq. In effect, our country’s commitment to the campaign against terrorism is being put at risk, and our government is doing nothing about it. Our government is helping to put that campaign at risk, and our government is doing nothing about it. Our government is helping to put that campaign at risk by willingly supporting the actions of President Bush, who will undoubtedly cause even more damage to the campaign against terrorism if he does go ahead with this.

In the Democrats’ view, that is very irresponsible. It is globally irresponsible. It sells out Australia’s interests, particularly. But, for those members of our armed forces who are putting themselves in danger as we speak in countries such as Kyrgyzstan, Afghanistan and the like, it is basically betraying all of their effort. We owe it to them, as much as anybody, to not support actions that will devalue the work that they have done for the benefit of, and on behalf of, all Australians. The views of, and the impact on, the armed forces are sometimes neglected in debates that we have about armed conflict. In a way, that is understandable. When people sign up for a Defence Force role, they go where they are sent. That is what they agree to do when they decide to enter the Navy, Army or Air Force. Nonetheless, we owe a particular obligation not to commit those people to conflict situations except as an absolute last resort. We also owe it to those people to ensure that, when their actions have concluded and they are back in Australia as veterans, their needs are adequately met.

I think that is one of the flow-on issues from reports like this, which show the good work that our armed forces do. It highlights again how unacceptable it is that our armed forces, who do such valuable actions and put themselves in such situations, do not always have their needs met when they return to Australia and are often put in a situation where they are made worse off than they should be as veterans. That is something that should also never be forgotten when we are looking at debates about and reasons for engagement in military conflict.

We saw earlier this week the fairly chilling news reports of Osama bin Laden allegedly broadcasting a radio message. I do not know whether it was him or not. People who know a lot more than I do say it was. I am not sure it matters particularly. It is fairly obvious that the message is aimed at extreme elements of the Muslim community. Of course, that message specifically mentioned Australia, Bali and the like. For that matter, it even mentioned East Timor as a reason why the Muslim community should rise up against Australia. I think it is important to emphasise that Osama bin Laden and his group are not representative of Islam or the Muslim community, as is readily and widely acknowledged by them. But again it raises the question: if these threats are real, as they obviously and tragically are, and if there is ongoing momentum for extra extreme activity in our region and the targeting of Australians, amongst others, why in that context will we then support the US’s desire to engage in war on Iraq?

Senator Ian Macdonald—What is your solution?

Senator BARTLETT—There is this idea that war is inevitable, as though we cannot figure out what else to do, so we may as well drop some bombs on the guy and worry afterwards about what happens. There are plenty of other broad solutions that should be pursued. War should be a last resort.

Senator Ian Macdonald—So you would give in to terrorism?

Senator BARTLETT—When you say, ‘Let’s try other solutions,’ the typical response is some sabre rattling from govern-
ments, who say that you are not patriotic and that you are giving in to terrorists. The reason I mentioned East Timor in particular is that the suggestion from the radio message was that Australians are being targeted in part because of what we did in East Timor. Nobody in Australia would suggest that we therefore should not have helped East Timor because we might have made ourselves more vulnerable to extremists. I am sure Senator Ian Macdonald would agree with that. Of course, the Democrats’ view is that we should have helped East Timor a lot earlier.

Senator Ian Macdonald—What are you saying, then?

Senator BARTLETT—I am saying that you should not make the case against or for war on the basis of threats from terrorists. I agree with the minister on that. You make the case for or against war on its merits. As I have said for the last 10 minutes, there has been no case made for the desirability of war on Iraq, particularly in the context of the battle against terrorism, and there has been a strong case made that war on Iraq will make our battle against terrorism much more difficult. We need to make the case on its merits.

Senator Ian Macdonald—At the moment, we are not going to war.

Senator BARTLETT—There is a very merited case for staying right away from a war on Iraq. This government is not making any case at all. It is putting Australia’s future in the hands of President Bush, which is one of the scariest concepts I can think of. Our armed forces deserve a lot better than that.

Senator McGAURAN (Victoria) (7.33 p.m.)—I rise to speak on the same report of the Joint Standing Committee on Foreign Affairs, Defence and Trade. Briefly, I wish to respond to the previous speaker, because we have received the usual anti-US—

Senator Ian Macdonald—Left-wing.

Senator McGAURAN—left-wing pitch from the Leader of the Australian Democrats. It is hard to believe he is now the Leader of the Australian Democrats. He still spends most of his Thursday on the minutiae of reports instead of the bigger picture.

Senator Bartlett—War with Iraq is not ‘minutiae’!

Senator McGAURAN—I wonder if he even thinks about September 11 and the predicament that the United States and the world were put in with that. Since then, this country has been allied with America on the war on terror. As Senator Ian Macdonald said, there is no war on Iraq to this point. But, Senator Bartlett, the pressure of the United States, Australia and their allies has brought that country to heel—

Senator Bartlett—Through the United Nations.

Senator McGAURAN—through the United Nations, exactly—to accept the new resolution. Let me say something about Mr Howard, the Prime Minister, which you probably do not know because you do not follow things as closely, as intelligently and as deeply as you think you do. It was Mr Howard, in private conversation with Mr Bush, who urged him to continue and to go along the UN security route. That has been our Prime Minister’s position all along. You did not know that, and if you did you would not give him credit for it anyway.

Senator Bartlett—He has followed, not led, all the way.

Senator McGAURAN—Senator Bartlett, do you deny that Iraq have weapons of mass destruction? You would not know. The truth is that they have. The whole world knows they have, but Senator Bartlett does not. If he did he would not admit it, because then he would have to find a solution to the world problem. The greatest problem is that if any part of those weapons of mass destruction gets into the hands of the terrorists then the consequences will be disastrous.

That is the point. There is a whole picture of the war on terror. Do not try to flog Iraq out of the war on terror that we have. I wonder if you are even part of the war on terror itself—but do not try to prise Iraq out of all this, Iraq has been a sponsor of terror since Saddam Hussein came into power, and it has just got worse. It is worse for Australia now. We are in the net. Appeasement and standing back will not win this war on terror. We cannot hide, as you would have us do. What clouds you? What is bigger than the brutal, mur-
derous dictatorship of Saddam Hussein? What is bigger in your eyes is an anti-US position. That sweeps any other problem that the world might have, that Australia might face, out of the way for you. That is how your mind works. It is atrocious, following September 11 and following Bali, that you would put that political position ahead of this country’s best interests. We are not to be intimidated, as you would be. We hold a duty and a responsibility for the security of our citizens, as they would have us hold. Heaven help us if you ever held the reins!

The ACTING DEPUTY PRESIDENT (Senator Cook)—Senator McGauran, please make sure you address your remarks to the chair.

Senator McGauran—Mr Acting Deputy President, the war on terror is multifaceted, as you would know only too well. It is long term—nothing under five years will win this war—and it is a war where you must be unflinching or you will not win it. But win it we must. If you cannot start putting aside certain dictators like Saddam Hussein who sponsor terror—

Senator Bartlett—What about the Chinese dictator?

Senator McGauran—By the way, we are not just talking about Australia’s position or the United States’ position; we are talking about the United Nations’ position—

Senator Bartlett—Their position was against the war.

Senator McGauran—There is only one person who can prevent war on Iraq and a United Nations condemnation, and that is Saddam Hussein himself. He is now in a position to meet the United Nations resolutions and to meet the demands of the world. He is now in a position to prevent war. Will you get off his fence? Will you stop supporting Saddam Hussein over your greater political dislike, even hatred, of the United States?

Senator Bartlett—Acting Deputy President, I rise on a point of order. I know that it is not worth the bother. It is not a debating point, because there is no point engaging in debate, but I think that, if accusing me of supporting Saddam Hussein is not unparlia-

mentary, we need to rewrite the standing orders.

The ACTING DEPUTY PRESIDENT—I think you have used some unparliamentary language, Senator McGauran. I would be grateful if you would withdraw it.

Senator McGauran—I do withdraw it. Of course Senator Bartlett does not see what he is doing. He knows not what he does. I do not believe he would directly support Saddam Hussein, but unless he takes a stand and supports at least the parliament and the United Nations in this war on terror then in fact he is supporting Saddam Hussein. Senator Bartlett is the sort of person Saddam Hussein likes. He is the sort of person that Saddam Hussein has bluffed, cajoled and conned for years. That is my point. I do not attribute any collaboration or evil intent to you. But what I do say is that you are weak in your approach to this matter. More than ever, we are talking about the security of the Australian people. You only have to pick up the Australian papers and read the front page. I reject everything you have said, Senator Bartlett.

Question agreed to.

Consideration

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


Corporations and Financial Services—Joint Statutory Committee—Report—Regulations and ASIC policy statements made under the Financial Services Reform Act 2001. Motion of the chair of the committee (Senator Chapman) to take note of report. Debate adjourned till the next day of sitting, Senator Chapman in continuation.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Cook)—Order! There being no further consideration of committee reports,
government responses and Auditor-General’s reports, I propose the question:

That the Senate do now adjourn.

Telstra: Privatisation

Senator BUCKLAND (South Australia) (7.43 p.m.)—Tonight I rise to speak on what is becoming a very important issue for many Australians living in rural and regional Australia. It may come as no surprise that this concern is about the further sale of Telstra. This week we have heard a lot of news about the government’s impending sale of the remainder of Telstra, and tonight I would like to bring all that has been said this week into perspective and clarify what this really means for Australians living in rural and regional Australia. The government have said that they would not sell Telstra until, firstly, regional communications are up to scratch; secondly, they can get the legislation through the Senate; and, thirdly, they can get the right price for Telstra. Earlier this week it was revealed that the government have always intended to sell the remainder of Telstra, and tonight I would like to bring all that has been said this week into perspective and clarify what this really means for Australians living in rural and regional Australia. The government have said that they would not sell Telstra until, firstly, regional communications are up to scratch; secondly, they can get the legislation through the Senate; and, thirdly, they can get the right price for Telstra. Earlier this week it was revealed that the government have always intended to sell the remainder of Telstra. That has been the government’s position since the last election and they have overtly misled the electorate.

On Tuesday, the Treasurer let it slip that the government had wanted to sell all of Telstra three years ago. I just wonder if that was a slip or whether that was a deliberate statement by him to say, ‘We always wanted to do it.’ This did not eventuate, because Labor stopped it. The Labor Party from day one has unreservedly been against any further sale of Telstra. We also learned from Treasurer Peter Costello that the proceeds from the impending sale of Telstra have been included in the budget and they have been there for some time. An amount of $654 million has been designated to go to merchant bankers in Melbourne and Sydney or overseas to assist with the sale. However, the most outstanding revelation was that the Telstra sale would proceed regardless of service levels—their key promise. On Wednesday, the coalition’s attempt to deceive voters in rural and regional Australia came to an end when National Party leader, John Anderson, admitted that rural and regional Australia would not get anything from the sale of Telstra. Mr Anderson has now agreed with the Prime Minister and the Treasurer that the entire proceeds from any further sale of Telstra will go to reduce government debt.

To add insult to injury, the government is also pushing through unfair Telstra price rises. Australians everywhere now will be paying more for phone line rentals, with no guaranteed reduction in local call costs. The government’s massive line rental increases, which are now locked in until 2005, were supported by the Democrats yesterday. That was the last bastion of keeping the bastards honest. They stumbled and they fell. By the government’s own calculations, Telstra’s profits will increase by $170 million from this new package. The Democrats dual deal with the government has left not only rural and regional Australians but Australian consumers generally $170 million worse off. All this was done with the aim of increasing the share price of Telstra when it goes on sale. It is expected that the standard phone line rentals will hit a whopping $32 per month for the next few years. Without doubt, it will hit low-income earners the hardest, but of course this government has no concern for those who are on low incomes in our country.

A recent study by Macquarie Bank has found that Australian broadband prices are 30 per cent higher than those in the US and UK, and they are the comparable countries. The government’s recent Estens report has been nothing but a whitewash—an attempt to give credit to this whole sordid, dirty affair. The Estens inquiry ignored the hundreds of submissions it received that complained of poor mobile phone coverage, phone network faults and poor Internet services in regional Australia. Those things exist and will not improve. It ignored all the critical facts and evidence. Coincidentally, the inquiry was run by National Party mates of John Anderson. It ran for only two months and held no public hearings, but that is typical of this government’s consultation process: ‘Don’t talk to the people who use the services; you might be told.’ During question time on Tuesday, Peter Costello said:

... it would take time before Telstra were in a position to have those additional shares offered to the market. As the Prime Minister said on the
7.30 Report, we would obviously take price into account so that it offers—if that should occur—at a time which maximises shareholder value.

He went on to say:
When T2 was floated off, it was $7.80, and the Labor Party opposed the offering of additional shares.

And then he said:
The financial effect of opposing that sale was, between T2 and T3, the loss of $30 billion on the share price.

The difference between the proceeds as they would have been at the time Labor stopped further sale at the time of T2 and today is $30 billion.

What does this really mean? Did the Labor Party lose $30 billion or did the Labor Party make a saving of $30 billion for the average Australian? I think that the latter was the case.

This accusation is the same as last year’s example where Peter Costello gambled and lost $5 billion in currency swaps, causing Australia to go into greater deficit. This is not to mention that in the space of six months the government was able to create a $1.7 billion turnaround from surplus to deficit, and this was after 10 years of continuous strong economic growth. It can do it well when it comes to losing money. This is a government that has gone into deficit when it is not in recession.

So it is now expected that rural and regional Australia should pay the price for this economic mismanagement. How is this the case? It is the case by their being expected not only to pay top dollar for shares in the impending sale of Telstra but also to miss out on using the proceeds from this sale to bring services up to scratch in rural and regional Australia. These same people in rural and regional Australia will also be expected to pay an increased cost of phone line rentals, another $170 million out of their pockets, as well as cope with poor mobile phone coverage, numerous phone network faults and poor Internet services—not to mention the 30 per cent higher cost of broadband prices, compared to some of our international counterparts. Peter Costello has the audacity to say that Labor caused a $30 billion loss between the sale of T2 and T3. To the average Australian, this is really a saving and not a loss. (Time expired)

Parliament: Role of the Upper House

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (7.53 p.m.)—Senator Buckland’s speech is in many ways fairly convenient for what I am about to speak on: the importance of having a strong upper house in our parliamentary system. Senator Buckland referred to issues relating to Telstra, some of them reflecting on the vote of the Senate yesterday when the Senate quite wisely voted against Labor’s disallowance motion, which attempted to prevent consumers from getting cheaper phone bills.

Yesterday we had people like Senator Conroy, Senator Mackay and Senator Lundy pouring out all this nonsense about some absurd costings and basically giving a kick in the eye and a complete insult to the community sector in the process. Obviously, the same person has written Senator Buckland’s speech and he is obliged to read it out and repeat the same flaws, mistakes and misrepresentations as yesterday.

That is why you need a strong upper house. Bad policy, such as privatising Telstra, is prevented only because we have a strong Senate. The majority of Australians want Telstra to remain publicly owned, and there are strong public policy reasons for Telstra remaining publicly owned. The Senate is the only thing that stands between John Howard and the privatisation of Telstra; the Senate is also the only thing that stands in the way of Mr Howard doing whatever else he wants to do. I accept that Mr Howard won the election—

Senator Ian Macdonald—What about the Commonwealth Bank and Qantas? I think you voted with Labor on those matters.

Senator BARTLETT—No, I think it was actually you people who voted with Labor on privatising Qantas. The Democrats have consistently opposed all privatisation, and that is why I repeatedly say that we are only sure during this parliament that Telstra will not be privatised. Clearly, the Senate will not do that; the Democrats will continue to oppose
the privatisation of Telstra, despite Labor’s scandalous and scurrilous misrepresentations yesterday. But we do not know about the next parliament, not because the Democrats’ position might change but because the Labor Party might get into government. As we all know, they promise not to privatise when they are in opposition and then, if they get in, they privatise the lot. Of course, the coalition would support them and they would be reasonable to do so; at least their position is consistent in this regard.

So the Senate is crucial in the sense of having a strong upper house to stop bad public policy. But it is also crucial that the Senate not be controlled by an opposition party; otherwise, poor public policy decisions based simply on cheap, short-term oppositional politics would have ensured the success of yesterday’s disallowance motion. It was a particularly bad idea that would have meant that cheaper phone bills for consumers would be thrown out the window, the low-income assistance package would be put in jeopardy, the extra $10 million that the Democrats were able to get for the working poor would be lost and 18 months of work by the community sector would be wasted.

I find it amazing that a pocket calculator and one misreading of one leaked, incomplete document led Labor to devise some astonishing costings that misread the situation by about a quarter of a billion dollars, yet the expertise of people who have been working in the community and directly with Telstra for 18 months on economic modelling to ensure that low-income people are better off is basically ignored and insulted. Labor’s position on the Telstra regulations and call charges has basically sent a massive insult to those groups in the community who have worked over many months with Telstra, with the interests of low-income earners as their sole intention.

Labor are quite willing to give the boot to groups like the Smith Family, Anglicare, Jobs Australia and the Federation of Homeless Organisations and to put all that at risk simply for political reasons, relying on some extraordinarily dodgy costings—that is all they had for a fig leaf. That is why you need a workable upper house: so that, when things are being done purely for political point-scoring reasons, you have sufficient point-scoring reasons, you have sufficient diversity to increase the chances of good public policy outcomes.

This is particularly relevant because at the moment, as we all know, there is an election campaign happening in Victoria. The upper house is the focus of the Democrats’ message there, because what Victoria suffers from—apart from having Senator Conroy as a representative, perhaps—is that it has a dysfunctional upper house. It has an upper house which it suffers from because it has been controlled by the conservatives for 125 years; it is no wonder that it is dysfunctional. Unfortunately, Victorians will only be able to do half the job when they elect a government in the next few weeks, because they will not be able to elect an upper house that will do its job—as the Senate does its job—of standing between absolute power and the premier of the day, yet not becoming completely obstructionist.

If we look at the situation in Victoria, we see an upper house that has been controlled by the conservatives for over 100 years. We had the same situation in Western Australia until recently. The conservatives had controlled that upper house for over 100 years and the Democrats finally broke that stranglehold and enabled the establishment of an upper house that was diverse and had no one single party controlling it. That situation has continued to exist ever since. If you look at the difference since then, whether partly under a Labor government or partly under a Liberal government, the key thing has been that the upper house has been able to operate as an independent house of parliament, properly scrutinising the actions of the government of the day, preventing bad policy decisions, supporting good ones and improving, amending, overseeing and scrutinising the financial and other activities of the government. So we have now seen in Western Australia significant improvements—leading edge improvements for all of the country—in law reform for gays and lesbians, which would not have been able to occur before under the old regime controlled by the conservatives. We will see the removal of malapportionment and gerrymanders in
Western Australia. That will only occur because the upper house has changed. Proper democracy in Western Australia, which has nearly been delivered, will only be delivered because that upper house control has moved out of the hands of just one party. So in a sense it is completely accurate to say that having a strong and workable upper house is an integral part of the functioning of our democracy. Indeed, only that has delivered proper democracy in Western Australia. Surely Victorians have the same rights, as my colleague Senator Allison would undoubtedly agree—she having had to live through the horrors of the Kennett government.

Senator Allison—And been a victim of it.

Senator BARTLETT—So you are a victim of the horrors of the Kennett government. So it is Jeff Kennett’s fault that you are here; you would be in a different job to this if it were not for him.

Senator Allison—Exactly.

Senator BARTLETT—There you go: we have something to thank Jeff Kennett for. What we have seen since under the Bracks government is a continuation of a lot of that secrecy, a lot of that restriction of FOI. The concerns that were raised by the Auditor-General so famously under the Kennett government have in many cases still not been addressed under the Bracks government because, in part, they do not have an upper house that is functional. Either it has been completely obstructive, controlled by a Liberal majority, or else, as in Mr Kennett’s day, it has been a rubber stamp. We had the disgrace of things like Albert Park. We still have the disgrace of things like Albert Park under Mr Bracks, with the continuing takeover of public parkland and the continual lack of access of the parliament to figures on what the actual cost to the taxpayer is.

We still have a reduction in people’s rights and a further centralisation of the power of the executive through the ability to change the constitution. A change to the constitution in Victoria can be done just through an act of parliament. With an upper house not acting in its proper role of scrutiny, the government of the day can simply change the constitution on a whim—so much for the rights of the electorate and so much for democracy. That is why upper house reform is crucial. To the credit of the Bracks government, they did actually put upper house reform on the agenda; they did actually introduce legislation to try to implement improvements in the upper house. The Democrats supported them in that endeavour. I am sure Senator Conroy, if he still has influence—I think he used to have lots of influence—will use it in this regard. He is shaking his head; now he is nodding his head. He does not support upper house reform!

Senator Conroy—I’m shaking my head as I’ve got no influence.

Senator BARTLETT—I am sure he will support upper house reform and will use his influence—which will no doubt return one day—to pressure the Bracks government to continue down that path, because it is in the interests of all Victorians to have an upper house that works. They should be supporting parties that will commit to a program of maintaining the push for upper house reform. Democracy deserves it, the parliament deserves it and the people of Victoria deserve it.

Rural and Regional Australia: Telecommunications

Senator COOK (Western Australia) (8.03 p.m.)—Like some earlier speakers, I also rise to talk about telecommunications policy for our regions. One of the critical issues facing Australia is the strength and vitality of our regions. This is critical not just for the regions as there are some important national implications relating, for example, to the manner in which we manage the environment of our vast land mass, how we best exploit our natural mineral resources, and what our strategic interests are in defence, coastal surveillance and quarantine matters. So how our population is distributed across our nation is an important element of national public policy as well as being of critical social and economic importance to regional Australians right across this enormous land, particularly those in my own state of Western Australia. Strong and vibrant regions are important to attract people, especially families, and businesses, and one of the many
elements of this in this modern information age is of course adequate telecommunications. This is the issue I want to speak about tonight.

Last week the Estens inquiry into regional telecommunications reported to the government. It was the whitewash that the government wanted. It was always going to be so, stacked as it was with National Party mates. The Estens inquiry gave the government the green light to proceed to the full sale of Telstra, despite the fact that most of the 580 submissions had grave reservations. But even this deeply flawed document could not escape the fact that telecommunications in regional Australia are a picture of patchy and inadequate mobile phone services, low Internet data speeds, constant Internet drop-outs and inadequate consumer protection. The Western Australian government, in its very well researched submission to Estens, points to a whole litany of problems in regional WA. For example, it quotes Mr Matt Summers, a resident of Binningup—population 1,200 and just 30 kilometres from Bunbury, a city of 25,000—who says that mobile phone service in his area is virtually non-existent: “Hardly the bush,” Mr Summers says. “I went to the Telstra office in Bunbury and asked to be connected to their broadband system. Their reply? Sorry, not possible—the lines in that area are not able to carry broadband.”

So there is no broadband at Binningup, which has 1,200 people. What about our biggest regional city in Western Australia, Kalgoorlie-Boulder, the site of my electorate office and one of our state’s economic powerhouses? If Telstra were dinkum about providing adequate services in regional Australia, you might think broadband would be available within the city limits. Well, think again. Whilst it is available within three kilometres of the central business districts, this does not extend to the major industrial area of West Kalgoorlie, where most of the engineering and transport firms that are so critical to providing services to the mining industry are located, the firms that are in fact the major employers in Kalgoorlie. West Kalgoorlie is the area that is home to a lot of Kalgoorlie small businesses. If you want a fast Internet connection, you need a massively expensive satellite system just a few kilometres down the road from the centre of Australia’s biggest outback city.

From the 1996 census to the 2001 census the fastest growing area in Western Australia was Broome, the population of which grew by 35 per cent to 18,500. A constituent from Broome sought the assistance of my office yesterday to get access to Telstra’s broadband services this week. He had been told by Telstra, extraordinarily, that only the old exchange in the old part of the town was broadband capable, not the new exchange servicing the newer sections of Broome, and that there were no plans to rectify the problem in this area as it was only ‘mostly residential’. Almost all this massive growth in Broome is from tourism and virtually all the resorts are at Cable Beach in the newer part of Broome, so this is a totally inadequate answer and a totally inadequate service.

My office, like the offices of many senators, has an 1800 number to enable free phone access for remote constituents. However, some years ago it emerged that constituents in many communities close to the Western Australian-Northern Territory border could not access it because Telstra, for reasons of their own convenience, serviced it from the Northern Territory and gave it a Northern Territory phone number. Because my 1800 number is only available to my constituents, who by definition are all in Western Australia, my constituents with Northern Territory phone numbers could not access it. Nor could they access the myriad WA state government agencies through their 1800 numbers, 1300 numbers or 13 numbers.

I must say that the staff at Telstra Country Wide in Kalgoorlie are most helpful and have been so over a long period in resolving this matter but there are two points to be made about this. The first point is that this situation should never have occurred in the first place. Had Telstra been more concerned about the needs of their customers than their own convenience and their bottom line, the necessary architecture would have been built into the system to allow citizens in regional areas to access the free call or local call cost long-distance services available to all other residents of the state. The second point goes
to the serious concern that Telstra have never adequately addressed—that the Telstra Country Wide service will be withdrawn once Telstra are fully privatised. Telstra Country Wide has been a particularly positive initiative to address telecommunications problems on the ground in regional and remote areas. Its staff are to be commended for their highly professional service but the strongest commitment needs to be made to its continuation for Australians in regional and especially remote areas.

A recurring theme in many of the submissions received by the Estens inquiry was the question of Internet connection speeds. I spoke earlier of the difficulty accessing the existing broadband system but the problems are far greater with the dial-up system. The access speed Telstra uses as its de facto standard is 28.8 kilobits per second but a recent survey by the Great Southern Area Consultative Committee found that less than 30 per cent of Internet users in its area, in the Albany area of Western Australia and the hinterland extending a few hundred kilometres north, could access the Internet at that speed or faster. This is not exactly remote Western Australia. It is one of the most closely settled rural areas of our state and includes the city of Albany and some quite large towns. If this is the best Telstra can do in comparatively easy circumstances, God help us in remote areas if it becomes fully privatised.

The customer service guarantee provides for a minimum Internet access speed of 19.2 kilobits. This is totally inadequate and therefore a meaningless standard, as it simply does not allow for an effective or even workable use of the Internet. The Western Australian government’s submission to the Estens inquiry stated:

A woman living in Dowerin, one and a half hours’ drive from Perth, enrolled in an online course to enable her to support the network at her place of employment. The Internet connection was so slow that she could not access the course as the connection timed-out before the web pages could be loaded.

Again, that is not a remote location by any means and we simply have to do better. Regional mobile phone coverage is another issue raised over and over again in the submissions to the Estens inquiry. As one farmer told my office recently:

Farming these days is a highly competitive business and any such business needs the best tools available to it. Like most other businessmen in the western world, I need a mobile phone service that works. If a road-train load of my grain is held up at the bin with a threat to be downgraded for some reason, I need to know about that so I can make an on-the-spot decision as to what to do with that load—get it cleaned or dried or shandy it with some other grain or whatever. That load will have 50 ton of grain on it that may suffer a dockage of $20 a ton. That’s $1,000. I send 100 or more such loads to the bin in an average harvest; so this is an important business matter for me. My competitors are farmers mostly in places like Europe and North America where there is much better mobile phone coverage so this is an issue of international competitiveness for me.

And so it is. We should be doing whatever we can to improve the international competitiveness of our farmers and of our regions generally. There are very good national reasons, as I said earlier, for having strong, economically and socially vibrant regions in Australia. That means having the best possible infrastructure and these days that very much includes telecommunications infrastructure.

The sale of Telstra does nothing to improve that infrastructure; indeed it greatly hinders it. There are no guarantees that regional services will even be maintained, let alone improved, and there are no mechanisms to ensure that the telecommunications gulf between city and country does not widen in the future. I strongly support Labor’s continuing opposition to the further sale of Telstra. I point out that people resident in regional and particularly remote areas of Western Australia still continue to suffer with inferior telecommunications services despite the efforts the government claim it has made to remedy the problem. If the Estens report is supposed to hold up a mirror to what is available then it is a cracked mirror indeed.

**Business: Corporate Governance**

**Senator CONROY** (Victoria) (8.14 p.m.)—I rise tonight to speak on the issue of auditor independence. This government is not committed to improving auditor inde-
pendence. It is an advocate of self-regulation and will not take the necessary steps to protect investors. Let us look closely at the CLERP 9 discussion papers. Of the government's 41 proposals, how many actually involve the government taking regulatory action? Too many of the proposals delegate responsibility to the accounting profession, the ASX or directors, in circumstances where regulation is what is needed. For example, proposal 6 in the government's paper supports the immediate application of professional statement F1 on professional independence. CLERP 9 describes statement F1 as requiring auditors to identify and evaluate threats to independence and to apply safeguards to reduce any threats to an acceptable level.

The audit failures we have seen here and in the US demand a stronger approach. The provision of certain non-audit services create an obvious conflict of interest. Relying on auditors to police themselves on this matter is nonsense. Audit has been likened to a delegated supervisory role. Auditors in effect supervise the provision of financial information to shareholders. No-one would accept ASIC supervising a company and also giving it advice on a takeover. The same has to be true of an auditor.

In other aspects, such as proposal 39, CLERP 9 replicates what the government should have already done. In August last year Professor Boros was commissioned to investigate ways that companies can use technology to improve investor relations. Surely after that report the proposal could be far more specific than the general commitment outlined in proposal 39. I say that is simply not good enough. I want a strong economy. I want people to have faith in our institutions and economic systems. I want Australians to be confident that the economic and social infrastructure supports them in their lives and is not subject to distortion and manipulation by a well-placed minority. This clearly, though, is not the desire of this government. CLERP 9 is not sufficiently rigorous. It relies too heavily on maintaining the status quo and does not give sufficient weight to the needs of investors. Nor will the advisory bodies, which the government has established to deal with these matters, fulfil their obligations to protect investors and protect our economic institutions.

I want to expand on this issue by way of a recent example. In September 2001, the National Australia Bank had to write down $3.05 billion of its US mortgage arm HomeSide. This followed a $880 million write-down announced in July—that is $4 billion in total. The write-downs stemmed from the following: bungled hedging, $870 million; wrong interest rate assumptions, $755 million; other changes in assumptions used in the business’s modelling, $1.436 billion; and goodwill, $858 million—a grand total of $3.93 billion lost to shareholders.

Properly, an independent review was commissioned into the events surrounding the write-downs of HomeSide. The executive summary of that review indicates that a combination of honest mistakes, incorrect assumptions, overvaluation of the business, poor staffing and a lack of head office control over HomeSide were behind the write-downs. Further, it concludes that in the opinion of those who conducted the review there is no basis … for any disciplinary action against any of the group executives, directors or auditors. However, I would have thought that best practice would have required that the shareholders—the losers of the $4 billion—were given the chance to vote on this conclusion. The re-election of any directors will of course require shareholder approval. However, shareholders are unlikely to be given an opportunity in relation to the auditors of the National Australia Bank.

On 14 August 2002, KPMG was reappointed auditor for NAB. As the existing auditor was reappointed, I understand that this will not require shareholder approval. This is particularly important when the following circumstances are also considered. The last four annual reports indicate that KPMG has earned $68.7 million in fees from NAB of which just over a third is for audit services, and a former KPMG auditor who signed the audit report for NAB in November 2000 was appointed Executive General Manager, Risk Management of NAB, in January 2002.
There are good reasons for rotating auditors. These reasons are becoming apparent in the many revelations at the HIH royal commission. A new auditor is more likely to expose matters which the previous auditor may not have forced management to change or note in the audit opinion. This is even more important if the auditor faces a potential conflict of interest stemming not just from substantial audit fees, which may be lost if they are no longer the auditor, but from substantial non-audit fees, which may also be lost. Yet shareholders rely heavily on auditors, and auditors should never forget their duty to the shareholders.

It must be acknowledged that NAB did put the audit out to tender. But still KPMG, the auditor who did not pick up on the errors in HomeSide, was reappointed. KPMG received substantial non-audit fees from NAB. This is a crucial issue for the good governance of NAB. It needs to be explained. Questions need to be asked and answered. Yet very little has in fact been said.

On Inside Business on the ABC on 27 October 2002, spokesmen for Moody’s and Standard and Poor’s, while not doubting the financial strength of NAB—and nor am I—both raised questions on whether NAB had learnt from its past problems and will in future properly manage risk. The following week Peter Morgan, then of Perpetual Trustees, said of NAB:

I mean again I personally don’t think there’s been a lot of accountability or transparency with regards to what went on with HomeSide.

Yet very few others have spoken out about this issue. This is an issue that fund managers and superannuation trustees should be seeking an explanation for. The investors they represent need to know that their investments are being looked after. This case also raises questions about the role played by NAB’s audit committee—and here I refer back to my comment that I suspect the government’s advisory bodies are flawed. The reappointment of KPMG was managed by NAB’s audit committee—and there have been a number of serious questions about the process that the audit committee went through. But putting that aside, the chair of the committee is Ms Catherine Walter. The chair of NAB’s audit committee is also the chair of the Business Regulation Advisory Group, or BRAG.

BRAG was reconvened by the Parliamentary Secretary to the Treasurer to provide high-quality feedback from the community on CLERP 9. I presume it will have a prominent role in advising the government on the necessary reforms to corporate governance practices required to restore investor confidence and protect shareholders. Given what I have just described as happening at NAB, I have serious doubts whether that group will be able to fulfil its stated functions.

Relevantly, CLERP 9 states that the government will amend the law to strengthen restrictions on employment relationships between an auditor and an audit client including:

... a mandatory period of two years following resignation from an audit client before a former partner who was directly involved in the audit of a client can become a director of the client or take a position with the client involving responsibility for fundamental management decisions.

It would appear that NAB has made an appointment which directly contradicts this proposal. The government must explain how the appointments to BRAG were selected. I also note that the membership of BRAG does not include any investor or shareholder groups. The input of these groups is essential. Corporate governance is not just a matter for our corporate leaders. Good corporate governance practices are essential for well-functioning capital markets. They are essential if our economic systems are to work and support all Australians. They are essential if all Australians are to feel that they can participate fairly in the economy.

Currently, Australians are not confident. Corporate excess has created distrust of Australian companies by many ordinary Australians. This is not desirable. Labor will act to restore trust and to regulate where regulation is necessary. I do not accept that the government is doing enough, nor that its approach is right. Labor has issued a directions statement. Labor has introduced a private member’s bill. We must do more than
just slap the wrist of corporate crooks and threaten them with regulation if they misbehave again.

**Victorian Transport Accident Commission**

Senator **ALLISON** (Victoria) (8.23 p.m.)—I rise tonight to speak about the shameful activities of the Victorian Transport Accident Commission, or the TAC as it is known. The TAC was set up in 1986 to provide payouts for treatment and benefits on a no-fault basis for people who are injured in car accidents or for the dependants of people who are killed in car accidents. The TAC is Victorian government owned and operates as a commercial third-party vehicle insurer. It is funded from two key sources: premiums paid by the owners of Victorian registered motor vehicles and investment earnings on funds held to meet future claim payments. Victorians will know the TAC through its very graphic and sometimes award-winning advertising campaigns on speeding, drink driving and the like. These campaigns have been hugely successful in Victoria, reducing the road toll enormously and, of course, reducing the costs of accidents as well.

Every car owner pays third-party insurance and I think expects to be treated fairly and justly by the TAC if they are unfortunate enough to have an accident on Victorian roads. However, in recent years the TAC has ignored the human dimension of traffic accidents. Before accident victims can pursue compensation through the TAC, they are required to sign a statutory declaration giving the TAC investigators full access to the records of any doctor, including psychiatrists, ambulance, hospital, insurer and state or Commonwealth department for the past, present and future. Failure to sign that document means no TAC assistance and no chance of any compensation payments. This is outrageous and a real intrusion into people’s privacy.

Complaints regarding TAC assessments must go through an internal review. If victims are unhappy, as they often are, the only other avenue for complaint is the Victorian Civil and Administrative Tribunal, or VCAT. In the case of a 15-year-old boy who was intellectually impaired from head injuries received in a car accident at the age of five, the TAC fought a claim to pay for a computer that even it agreed would help this young man’s rehabilitation. Now it concedes that it was wrong. The commission only wanted to pay half the costs of the computer on the grounds that this young man may use the computer for leisure as well as for his rehabilitation.

Justice John Bowman presided over the case, and VCAT found in favour of the plaintiff. At the time, Justice Bowman said it was the third case that he had seen recently in which the TAC had fought claims of seriously injured young people where the amount of the contested claim was far less than the court’s costs, which have been estimated to be about $10,000 in this case and others. Ten thousand dollars to save about $1,000 for a computer seems to me to be small-minded and insensitive in the extreme. I am concerned that the TAC seems remarkably prepared to use its well-resourced legal department to fight these small claims—claims against people who they often acknowledge need and deserve assistance. The commission also seems inclined not to settle legal challenges to its decisions, even though it has lost the majority of the cases that it has contested. Justice Bowman’s comments are supported by VCAT and by lawyers specialising in personal injury cases who point out that families cannot afford to fight the commission.

The Australian Plaintiff Lawyers Association’s Victorian President, Mr Peter Burt, says that the TAC denies in many cases fair and equitable treatment to road accident victims under common law. When deciding if injuries sustained by an individual were from a traffic accident, the TAC works on the principle of ‘on the balance of probabilities’. This concept is a lower standard of proof than the criminal standard that requires that a court must not find the charge proved if it is not satisfied beyond reasonable doubt that the accused committed the charge. Add to this the use by the TAC of private investigators estimated to cost around $1,500 a day. These investigators are hired to spy on victims, secretly filming them as they go about their daily lives. The TAC acknowledges that surveillance is used in around three per cent
of the 42,000 claims a year, but it is estimated that this three per cent is the number of claims that involve litigation in either the county court or VCAT. Indeed, the TAC has a history of prying into personal lives, searching medical records and trying to find material that could undermine claims in an attempt to reduce payments, as is the case with the woman who made contact with my office.

What concerns me also is the known incidence of investigators filming people within their own home, which is clearly outside the TAC guidelines. My office has had representation from several people who have been unjustly treated by the TAC. One woman who contacted my office tells of a horrendous story of personal persecution by the TAC, who have argued that she received minimal injuries in a traffic accident. The commission claimed her physical and psychiatric injuries could have possibly been sustained through being raped years before and, therefore, she cannot claim any form of compensation for injuries that she says she received from the accident. I have talked with people who have severe disabilities as a result of traffic accidents whose dealings with the TAC leave them frustrated and annoyed. Arbitrary and illogical decisions and restrictions are imposed on them very often as a condition of funding.

I would like to acknowledge the Prime Minister’s call in May last year for the establishment of a single national scheme for compulsory third-party and workers compensation insurance. The Democrats very much support that. That move would see traffic accident victims throughout Australia treated more equally and it would avoid the current situation which sees compensation dependent on the laws in the state in which you were injured. I understand that the Insurance Council of Australia has also welcomed the move, but of course we have also seen the Victorian finance minister, Lyn Kosky, claiming that putting state insurance schemes such as the TAC under uniform national codes could lead to disaster—why, I am not sure, but that is what she says. If the Victorian state government is not willing to sign on to a national compulsory third-party insurance plan, it must change and humanise the TAC, because it certainly is not working in the best interests of the people it is supposed to care for.

We need to ask: has the TAC’s legal department become a barrier to fair and compassionate compensation for traffic accident victims; what is the culture of the TAC and what are its priorities now? We know that it is not concerned with the victims of traffic accidents. Instead, we see an interest in the economic question rather than people’s lives. Those people are not in the system through their own choice. However, they have been made to feel like criminals by the TAC. We have a situation where, to access compensation, an accident victim must sign over their rights to the TAC, including the right of appeal beyond VTAC. The Democrats think that it is reasonable for people to expect and to receive compensation without being spied on or interrogated about all aspects of their lives—aspects which many people claim bear no relevance to their claims for compensation. We know that legal battles cause significant stress and inflict ‘psychological trauma’. Traffic accident victims are being traumatised by the TAC—there is no question about that. I encourage my colleagues, particularly those from Victoria, to consider the culture of the TAC and to try to influence the state government to change it.

Victoria’s TAC needs to be reformed. I suggest that the Prime Minister revisit this idea not only because the TAC needs to be refocused on the people it is supposed to take care of but also because, without compensation, the victims of car accidents can look forward to life on the disability support pension—we know that it is not very far above the poverty line—and inadequate housing. If they are very unlucky, they may end up in a nursing home for the frail aged. I have visited many victims of car accidents who spend a miserable, very long existence without their age peers in such places.

It is another example of buck-passing and another example of the state government saving money at the expense of vulnerable disabled people. The Commonwealth is picking up the tab to some extent. Certainly, people with disabilities are the ones who are
severely disadvantaged by the current culture within the TAC.

**Telstra: Services**

Senator LUNDY (Australian Capital Territory) (8.33 p.m.)—I also rise this evening to address the issue of Telstra and their telecommunications network in this country. I would like to begin by reflecting on some of the comments by my colleague Senator Cook about the situation in Broome. It is very interesting to hear even more stories about the difficulties that Telstra customers face around the country: the inadequacy of services and the ongoing insistence by Telstra that somehow they think they are up to scratch. It is probably pertinent to read out a response that we got from Telstra through the Senate estimates process. In a question on notice I asked what percentage of Telstra customers are able to access their ADSL service—that is, their broadband service—by state or territory, as a percentage, by numbers, by postcode or by any other suitable measurement that Telstra may have been able to provide through their back-of-house database. Telstra’s response was that this information was commercial-in-confidence. They were not prepared to share it, even with the parliament, through the Senate estimates process. In a question on notice I asked what percentage of Telstra customers are able to access their ADSL service—that is, their broadband service—by state or territory, as a percentage, by numbers, by postcode or by any other suitable measurement that Telstra may have been able to provide through their back-of-house database. Telstra’s response was that this information was commercial-in-confidence. They were not prepared to share it, even with the parliament, through the Senate estimates process. I suspect that that is because it is not a very pretty picture. Whilst they are able to tell us that 800 or so exchanges are ADSL enabled, they are not prepared to share the information about what that means for individual customers on a percentage basis. That is part of the problem we have with Telstra and why the concept of further privatisation is so ludicrous in the current environment.

I would like to talk about the complaint I made to the Australian Competition and Consumer Commission earlier this year in relation to Telstra’s use of pair gains. I suspected that under the Trade Practices Act there may have been some misleading representations to consumers about the impact of pair gain technology and the way Telstra were promoting their broadband services, giving the impression to people around Australia that anyone could get their widely promoted ADSL service. Needless to say, Telstra did not breach the Trade Practices Act in regard to false or misleading representations but it is worth bringing into this place details about what the ACCC found in relation to Telstra’s use of pair gains. The ACCC found that pair gain systems can have unfavourable effects on Internet dial-up speeds and limit the ability to get ADSL.

These two issues are at the core of the many thousands of complaints I have received from Telstra customers around the country. When they order a new line, not only are they unaware that they may be put on a pair gain, thereby creating Internet connection speed problems or limiting their ability to get ADSL, but Telstra previously did not provide that information willingly. Indeed the anecdotal stories I have from consumers around the country show that in relation to pair gains Telstra deliberately would obfuscate that information and blame other technology or ISPs—anyone but themselves—for difficulties in connection speed or the inability to get ADSL.

We have good news: following the ACCC’s investigation, Telstra will now provide information to consumers about the minimum telephone service that Telstra are now obliged to provide under the USO. They have also said that they will provide information about pair gains and their possible impact on the provision of data service when customers apply for a second line. This is very good news. It should be pointed out that, under the USO, Telstra are only obligated to provide a connection for voice. So anyone who orders a line from Telstra could potentially get a dial-up Internet connection speed as low as 9.6 kilobits per second. I am sure you appreciate, Mr Acting Deputy President, that people purchase a 56-kilobit per second modem so there is an expectation that they will have a data speed way beyond 9.6 kilobits per second.

The ACCC’s conclusions support what many people have been telling me, which is that Telstra have been very specifically mean and tricky about the way that they have dealt with their customers and pair gains. They have not been willing to share information and they have been very enthusiastic to try to blame others in the provision of Internet related services for difficulties with their Internet connection speeds. It is also worth re-
flecting on Telstra’s almost loopy response to the ACCC’s findings and my comments on the findings. On one particular story Telstra flatly denied my claims, saying that information regarding how services were provided to customers in relation to pair gains was readily available to the public. This is what Telstra said in response, but it is worth going back to some proof in relation to Senate estimates questions on notice when I asked whether, if people suspect they are on pair gains systems and they contact Telstra, Telstra tell them. Telstra responded as follows:

Yes, Telstra consultants are able to advise customers if they are on a pair gain system. In some instances the consultant may not have this information readily available. However, they will ensure that the information is provided to the customer as soon as possible.

That is as big a squib as I have ever heard. Clearly, again based on anecdotal stories told to me by many complainants around the country, Telstra do not tell their customers that they are on pair gains and any concept that they have a process in place to specifically inform people is ludicrous.

Further to this, Telstra defended the use of pair gain technology saying that pair gain technology is quite often the only option for customers who live more than 3.5 kilometres from an exchange, as copper based services diminish at greater distances. I am not an engineer, so perhaps they do over greater distances, but I know that the 3.5 kilometre maximum as used in that context is absolutely ludicrous. So again Telstra have this loopy response vehemently denying any wrongdoing with respect to pair gains and are unable to substantiate their own comments in what is a very shallow defence about their use. I would like to quote from the commission’s findings in relation to pair gains:

In light of the complaints to the Commission concerning Telstra’s use of ‘pair gain systems’ (‘PGS’) in the public switched telephone network (‘the PSTN’) and following discussions between Telstra and the Commission, Telstra has undertaken to increase the level of information it provides to consumers concerning the potential effect that network design decisions have on Internet access.

So here we have a decision from the ACCC requiring Telstra to provide more information. I certainly welcome this decision and look forward to Telstra doing exactly that: being honest with their customers and providing up-front information. The ACCC response goes on to say, under the title ‘Effect of a PGS’:

Although PGS do not affect the quality of voice services, they can have unfavourable effects on Internet dial-up speeds and also limit the ability to get ADSL.

These were precisely the complaints that I took to the ACCC. The response continues:

Under the Government’s Universal Service Obligation (‘USO’) regime a ‘standard telephone service’ only needs to provide a quality ‘voice’ service. The only mandated data speed across a standard telephone service is a minuscule 2400 bits per second, which is the speed necessary for teletypewriters and faxes. Transmission speeds over 2400 bps are regarded by the Government and Telstra as a bonus for consumers.

Let me tell all the Internet users in Australia that if they are getting more than a 2.4-kilobit per second Internet connection speed that is a bonus as far as the government and Telstra are concerned because they really are only required to provide that amount. I think this comes as quite a shock, particularly to those customers who have been using their copper line for an Internet connection and who may have been getting a reasonable speed, say 28.8 kilobits per second, and find that someone down the road has actually been put on a pair gain which subsequently has a detrimental effect on their speed as well. Those people would be well advised to understand that Telstra’s pitiful level of service is supported by the government. There is nothing in sight besides a pathetic attempt to provide 19.2 kilobits per second. (Time expired)

Wet Tropics Management Authority: Annual Report

Senator McLUCAS (Queensland) (8.43 p.m.)—Tonight I want to make some comments about the Wet Tropics Management Authority annual report which was tabled earlier this week in the Senate and, at the outset, note that the structure of the report has changed this year with the move to triple
bottom-line reporting. I welcome that and look forward to a continuation of an analysis of the environmental, social and economic indicators for the area.

The first part of the report includes the comments from the chair. Mr Tor Hundloe is the retiring Chairperson of the Wet Tropics Management Authority and he has written a very honest and excellent report that prefaces the report of the authority. Mr Hundloe is a person who is always prepared to tell it as it is. In his report, he identified that progress has been made over the last 12 months at the Wet Tropics Management Authority and in the management of the wet tropics, but he says:

Notwithstanding this progress, we are limited in our capacity to implement these strategies.

He is referring there to the nature based tourism strategy and to the walking strategy. The reasons he gives for that are quite significant and they are why I am speaking about this subject tonight.

Mr Hundloe puts it in context and reminds readers that, when he first came to the authority in 1996, the government had just cut the authority’s budget by a massive 40 per cent. If you lost 40 per cent of your budget six years ago and worked through six years with that cut budget, it would mean that it was pretty hard for the staff and the board to deliver what they wanted to do. However, they have done an enormous amount of work. Mr Hundloe puts that into context as well. He says that the reasons given for the 40 per cent cut in the budget had to do with poor outcomes of the authority because there was no management plan in place even though the authority had been around since 1988 and because there was division in the community at the time. I think Mr Hundloe is actually being a bit polite there. That was the first year of the Liberal government and that was when the massive cuts occurred in their first budget. However, I acknowledge Mr Hundloe’s comments in his report. An enormous amount of work has been completed in a very short time, and I believe that it is time for the federal government to recognise their responsibility and to replace the funding that was removed in 1996.

Mr Hundloe identifies two impediments to the authority’s ability to receive the level of funding required. He says that neither the board nor the staff of the authority are involved in any way in a budget bidding process—something which any other government department would naturally be part of. He says that that is very unusual, and I have to agree with that. He also says in the annual report that on repeated occasions he has asked the Minister for the Environment and Heritage in the Commonwealth parliament to change the situation so that the Wet Tropics Management Authority can make a budget bid like any other government department. However, those requests have been to no avail.

He says that the second impediment to achieving some sort of recognition of the authority’s need for funds is the fact that there is no estimate of the value of the wet tropics forests to our community, to the tourism industry, to agricultural production and to clean water, and no estimate of the expected value of the biodiversity to pharmaceuticals. Unfortunately, Mr Hundloe has to solve his own problems if the government is not going to listen and fund the authority appropriately. In the report, he suggests that an appropriate funding mechanism would be a conservation management charge. As senators will be aware, the Great Barrier Reef has a similar model, and an environment management charge is applied to visitors to the reef. Whilst it was a very controversial issue when first implemented, it is now successful and I believe accepted by the industry and certainly accepted by tourists. The only point I would make there is that there needs to be care in changing the rate of the EMC or any conservation management charge that may happen in the future without any advice to industry, because tourism products are sold many years in advance internationally and, if we changed our charge and did not give the industry a couple of years to work with it, that could cause enormous costs to operators.

I will return to the conservation management charge suggested for the wet tropics. My personal view is that we need a broader community consultation process and a
broader debate about whether that is the appropriate methodology to fund, in an ongoing way, the operations of the authority. There has to be very sound consultation with the tourism industry and there also has to be a recognition that not only package tourists would be charged but free and independent tourists would also need to be included. There has to be consultation more broadly with the community.

I put on record my concern about the use of user-pays methodology as a general rule to fund natural resource management. However, I am prepared to wait before I make a final decision. It is important to note that even Mr Hundloe recognised that a balance between government funded management and more of a move to a user-pays, or beneficiary-pays, system is necessary. There has to be a balance. The wet tropics are not only a tourist icon; they are there for the broader community.

I also want to put on record my concern that local residents need to be exempted from any conservation management charge. We are fortunate to live in the wet tropics World Heritage area but I would hate to see our local community having to pay to go to places they go to now as a matter of course for their Sunday afternoon swim or a walk through the rainforest. There needs to be a recognition that that is our home and we do not have to pay to access it. I reiterate that it is time for the government to reinstate the funding that they cut in 1996. I want to express concern about the current situation facing the Wet Tropics Management Authority. The report states:

Our funding agreement has now lapsed and funding for the authority continues on a year-to-year basis. It is very hard to do forward planning when you are not quite sure when or how much money is going to be applied to the authority.

As of a couple of weeks ago, there was no approved budget for the Wet Tropics Management Authority. The budget outcomes were dependent on bilateral negotiations on NHT2. The other point that I am very concerned about is that all World Heritage funding is now going to come from Bushcare. It is not a very sound situation where agencies that are managing World Heritage areas have to compete with community organisations and other state departments for what is basically core funding. That is not very sound management at all. Finally, I would like to acknowledge the work of Mr Tor Hundloe as the Chairperson of the Wet Tropics Management Authority. His term finished on 21 September this year, and it is disappointing that his replacement has not been found. It is very difficult for an organisation to manage the most significant rainforests in Australia without a budget and without a chair.

Senate adjourned at 8.53 p.m.

DOCUMENTS
Tabling

The following documents were tabled by the Clerk:

Aboriginal and Torres Strait Islander Commission Act—Aboriginal and Torres Strait Islander Commission (Misbehaviour) Determination 2002.

Civil Aviation Act—Civil Aviation Regulations—

Civil Aviation Amendment Order (No. 15) 2002.


Instrument No. CASA 622/02.

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Defence: Projects
(Question No. 421)

Senator Chris Evans asked the Minister for Defence, upon notice, on 10 July 2002:
With reference to question 26 from the 2000-01 additional estimates hearings of the Foreign Affairs, Defence and Trade Legislation Committee (Additional Information Received-Additional Estimates 2000-01, Defence Portfolio, Volume 1, May 2001, pp 55-57): Can an updated response be provided to this question, that is, a table showing the projects subject to delays or cost overruns to date.

Senator Hill—The answer to the honourable senator’s question is as follows:
The question is answered by comparing the table provided in the original answer to the current “Top 20” projects as at 15 September 2002. The “Top 20” projects are the 20 projects with the highest total project approval value as per the 2002/03 Portfolio Budget Statements (December 2002 prices). These “Top 20” projects represent approximately 54% of Defence’s total major capital investment program.
In respect of the table relating to real variations to project approved budgets, only one project, Air-to-Air Weapons Capability, appears in both tables. It has not had any real increases to its project approved budget since the last report.
In respect of updating the table for project delays, in terms of current contract schedules, the following information is provided:
(a) Project Bushranger negotiated a revised contract and now reports no delays;
(b) The New Submarine project – reduction in delays of 12 months;
(c) P3C Update Implementation – reduction in delays of 26 months, now on schedule;
(d) Australian Defence Air Traffic Control System – reduction in delays of 13 months; and
(e) Anzac Ship Helicopter – further delay of 25 months.

Fisheries: Illegal Operators
(Question No. 732)

Senator O’Brien asked the Minister for Defence, upon notice, on 4 October 2002:
What has been the cost to the department, by financial year since 1996, of protecting Australia’s sovereign rights in the exclusive economic zone adjacent to Heard Island and McDonald Island.

Senator Hill—The answer to the honourable senator’s question is as follows:
Refer to my reply to your Senate Question on Notice No. 491.

Australian Greenhouse Office
(Question No. 775)

Senator Faulkner asked the Minister representing the Prime Minister, upon notice, on 14 October 2002:
(1) Has the Prime Minister received correspondence from the Deputy Prime Minister concerning the future of the Australian Greenhouse Office; if so: (a) what was the date of that letter; and (b) did that correspondence recommend that the Australian Greenhouse Office be split.
(2) (a) what functions did the Deputy Prime Minister propose be handed over to the Department of the Prime Minister and Cabinet; (b) what functions did the Deputy Prime Minister propose be transferred to the Department of Industry, Science and Resources; and (c) what functions did the Deputy Prime Minister propose be retained by Environment Australia.
(3) If the Deputy Prime Minister did not propose that the Australian Greenhouse Office be split and transferred, what future did he propose for it.
(4) Has the Prime Minister responded to the Deputy Prime Minister’s correspondence concerning the future of the Australian Greenhouse Office; if so, what was his response to the proposal.

Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:
to (4) I have received views on the review of the Australian Greenhouse Office from a number of Ministers, and I am considering those views.

Environment: International Year of Freshwater
(Question No. 777)

Senator Webber asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 15 October 2002:

What plans, if any, does the Government have to celebrate the International Year of Freshwater in 2003, particularly given the importance of freshwater to Australia.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

The availability of freshwater for human consumption, agricultural production and ecosystem health is of vital importance to all Australians. The proclamation of 2003 as the International Year of Freshwater by the United Nations General Assembly provides additional opportunities for Australian communities to learn about and become more involved in freshwater issues.

The Government is developing a joint approach between the Environment and Heritage, and Agriculture, Fisheries and Forestry portfolios to coordinate information, activities and events across Australia for the International Year of Freshwater 2003.

As an initial foundation action Environment Australia will host a website, linked to the official international website, which will provide information on issues, events and contacts. A number of Australian events will focus on freshwater issues including National Water Week, Science Week, World Wetlands Day, Biodiversity month and the International River Symposium. Key organisations and individuals are to be invited to participate in a network to coordinate and promote activities throughout 2003.

Education: Central Queensland University
(Question No. 783)

Senator Harris asked the Minister representing the Minister for Education, Science and Training, upon notice, on 15 October 2002:

(1) What is the number of students who enrolled in the computer science first degree course at the Central Queensland University, Rockhampton, for the years: (a) 2000; (b) 2001; and (c) 2002.

(2) What percentage of students at the university attained a qualification in this degree in each of the above years.

(3) Does the Minister have any evidence of falsification of results that conceals inadequate tutoring in technical computer subjects at the university.

Senator Alston—The Minister for Education, Science and Training has provided the following answer to the honourable senator’s question:

(1) The number of students enrolled in the Bachelor of Information Technology degree at Central Queensland University (CQU) in 2000 was 1,635 and in 2001 was 2,084. Final enrolment data for 2002 as reported by the University through the Higher Education Student Statistics Collection administered by my Department is not yet available. This data is likely to be available by the end of this year.

(2) The number of students completing the requirements of the Bachelor of Information Technology degree at Central Queensland University (CQU) in 2000 was 227, representing 14 per cent of students enrolled in that year. Final completions data for 2001 and 2002 as reported by the University through the Higher Education Student Statistics Collection administered by my Department is not yet available. The 2001 data is likely to be available by the end of this year and the 2002 data will be available by the end of next year.

(3) The Minister has no evidence of any falsification of results that conceals inadequate tutoring in technical computer subjects at the University.
Environment: National Reserve System Program
(Question No. 785)

Senator Nettle asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 15 October 2002:

With reference to the rejection of the Blacktown City Council’s application of August 2000 for funding under the National Reserve System Program to purchase the Remnant Cumberland Plain Woodland at Lot 101, DP 863828, Norman Street, Prospect:

(1) Could the Minister outline the reasons for the rejection of this funding application.

(2) When making his determination, was the Minister aware that the Norman street bushland had been given a Category A rating in stage one of the Western Sydney Native Vegetation Mapping project as carried out by the National Parks and Wildlife Service; if so, what weight did this carry; if not, would the Minister be willing to reconsider the grant application again in the light of this information.

(3) When making his determination, was the Minister aware that the Norman Street bushland adjoins a 3 hectare parcel of land that provides for a habitat corridor, which, if fragmented, would become ecologically unsustainable; if so, what weight did this carry; if not, would the Minister be willing to reconsider the grant application again in the light of this information.

(4) When making his determination, was the Minister aware that the Blacktown Council, in conjunction with the Upper Parramatta River Catchment Trust, has conducted various studies that clearly identify the Norman Street Bushland as containing one of the most significant areas of remnant Cumberland Plain Woodland in this area; if so, what weight did this carry; if not, would the Minister be willing to reconsider the grant application again in the light of this information.

(5) When making his determination, was the Minister aware of the thousands of work hours invested into the bushland by the local community; if so, what weight did this carry; if not, would the Minister be willing to reconsider the grant application again in the light of this information.

(6) When making his determination, was the Minister aware that only 3 per cent of Cumberland Plain remains in the Upper Parramatta catchment; if so, what weight did this carry; if not, would the Minister be willing to reconsider the grant application again in the light of this information.

(7) Can details of the community consultation that took place during the decision-making process be provided.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) The National Reserve System investment aims to contribute toward the establishment of a comprehensive, adequate and representative reserve system that will protect important samples of the full range of ecosystem types across the continent. Areas purchased for addition to the reserve system represent significant habitats that will ensure long-term ecological viability and integrity of populations, species and communities. The Norman Street property contains conservation values of regional significance, but does not meet the criteria for funding for inclusion within the National Reserve System. The small size of the block, its degraded condition, cost, and the opportunity to secure other larger and more intact areas of Cumberland Plain Woodland for addition to the reserve system were the key factors in this decision.

(2) I was aware of the Category A rating (greater than 0.5 ha and greater than 10% canopy cover). In a state-wide context the site was not considered to be a high priority for purchase under the National Reserve System Program.

(3) I was aware of considerations relating to the issue of the adjacent 3 ha parcel of land, owned and managed by the Blacktown City Council.

(4) Consideration of the studies referred to formed part of the assessment and decision making process. The work undertaken by the Council helped to clearly identify the regional conservation values of the property.

(5) The information provided with the application and subsequent contact with the Council clearly indicated strong community support for and involvement in the conservation of both the Norman Street property and the adjacent reserve.
(6) Details of the extent of Cumberland Plain Woodland remaining in the Upper Parramatta catchment were known to me at the time of application. Cumberland Plain Woodland is listed as an endangered ecological community under the Environment Protection and Biodiversity Conservation Act 1999.

(7) The decision making process of the National Reserve System grant program is based on published criteria. All applications are treated as commercial-in-confidence in order to protect negotiations on price and conditions between the purchaser and the vendor. Community consultation is thus not a part of the decision making process.

**Environment: National Reserve System Program**

(Question No. 786)

Senator Nettle asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 15 October 2002:

With reference to the rejection of the Blacktown City Council’s application of August 2000 for funding under the National Reserve System Program to purchase the Remnant Cumberland Plain Woodland at Lot 101, DP 863828, Norman Street, Prospect:

(1) How many applications for National Heritage Trust funding have been received from each of the following federal electorates: (a) Prospect; (b) Macquarie; (c) Parramatta; (d) Macarthur; (e) Lindsay; and (f) Mitchell.

(2) For each of the above electorates: (a) how many of these applications have been successful; and (b) if any of these applications have been successful, how much funding has been granted.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) I am not able to provide electorate reports for Natural Heritage Trust project proposals that have been declined funding. Once the assessment process is complete and Ministerial funding decisions have been made, electorate data is generated for approved projects only.

(2) The following is a summary of the number of successful applications in each of the electorates mentioned above between the years 1996/97-2001/02.

<table>
<thead>
<tr>
<th>Electorate</th>
<th>No. of projects</th>
<th>Funding allocated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prospect</td>
<td>2</td>
<td>$45,040</td>
</tr>
<tr>
<td>Macquarie</td>
<td>32</td>
<td>$1,775,227</td>
</tr>
<tr>
<td>Parramatta</td>
<td>10</td>
<td>$575,454</td>
</tr>
<tr>
<td>Macarthur</td>
<td>5</td>
<td>$564,776</td>
</tr>
<tr>
<td>Lindsay</td>
<td>5</td>
<td>$309,275</td>
</tr>
<tr>
<td>Mitchell</td>
<td>9</td>
<td>$182,000</td>
</tr>
</tbody>
</table>

**Environment: National Reserve System Program**

(Question No. 787)

Senator Nettle asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 15 October 2002:

With reference to the rejection of the Blacktown City Council’s application of August 2000 for funding under the National Reserve System Program to purchase the Remnant Cumberland Plain Woodland at Lot 101, DP 863828, Norman Street, Prospect:

Given that, in a letter listing some of the reasons for the rejection of the application, Dr David Kay (Assistant Secretary, Parks Australian South) mentioned that the Land and Environment Court rejected a 55-lot development application by the owner of the land:

(1) Is the Minister now aware that the court is now considering a 26-lot application by the owner.

(2) Given this new information, will the Minister reconsider the funding application.

(3) Will the Minister reconsider the funding application if the 26-lot application is successful.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:
(1) Yes.
(2) The proper process in this case is to await the decision of the Land and Environment Court.
(3) It will be open to Blacktown City Council to reapply for support under the National Reserve System program with a modified application, however the basis for the rejection of the earlier application was not related to density of proposed development. Cumberland Plains Woodland is listed as an endangered ecological community under the Environment Protection and Biodiversity Conservation Act 1999. Any proposed development on the property likely to have a significant impact would require a referral for decision by the Commonwealth. The referral process provides opportunities for interested parties to comment on the proposal.

**Western Australia: Lancelin Defence Training Area**

(Question No. 788)

Senator Nettle asked the Minister for Defence, upon notice, on 16 October 2002:

(1) Who is the correct person to contact and what is the procedure for residents who have been badly affected by aircraft activities or ordnance training in the vicinity of the Lancelin Defence Training Area in Western Australia.

(2) Is there a procedure to follow for residents to recover the cost of repair of any damage caused to houses as result of training exercises.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) Flight Lieutenant Clayton Wilson, Base Legal Officer at Royal Australian Air Force Base Pearce, is the point of contact. Telephone calls relating to noise are logged into a register book and a form is sent to the complainant to confirm the alleged complaint. Once a written complaint for noise has been received, an internal inquiry or investigation will occur by either the Operations Area or, for more serious matters, the Base Executive Officer may conduct an inquiry or investigation into the affair.

(2) In the event of alleged damage arising from aircraft activities or ordnance used at the Lancelin Defence Training Area the matter may be referred to either the Base Commander of Royal Australian Air Force Base Pearce or to Flight Lieutenant Wilson. The complaint will be acknowledged and a response letter sent, informing the complainant that the matter will be directed to and handled by the Defence Insurance Office (formerly Claims Management Office) in Melbourne (details are provided in the letter). The Defence Insurance Office is responsible for policy and matters concerning Defence’s insurance and will handle alleged claims. It is best suited to assessing Defence’s potential liability arising from claims for damages and similar matters.

**Environment: World Heritage Areas**

(Question No. 799)

Senator Brown asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 16 October 2002:

(1) Is the Minister engaged in discussions with the Queensland Government relating to the Commonwealth-state legislative frameworks and arrangements which govern World Heritage areas in that state.

(2) Are there any proposals or negotiations to draft new legislation for the management of World Heritage areas in Queensland; if so: (a) what are these proposals; and (b) how far advanced are they.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) The Minister is not engaged in discussions with the Queensland Government relating to the Commonwealth-state legislative frameworks and arrangements which govern World Heritage areas in that state. However, the Queensland Minister for Environment has kept the Minister apprised of matters under consideration concerning state government arrangements for World Heritage within Queensland.

The Minister understands that the matters under consideration include improving the capacity of the State to administer and manage World Heritage properties (or parts thereof) subject to Queensland jurisdiction. In particular, the Minister understands that Queensland is examining its options
for meeting the state government’s World Heritage election commitments, and providing an enhanced capacity for Queensland to address World Heritage obligations under the Convention and relevant requirements of the Environment Protection and Biodiversity Conservation Act 1999.

(2) No formal proposals have been put to the Commonwealth, and no negotiations have been entered into between the Commonwealth and Queensland governments.

Environment: Republic of Korea

(Question No. 815)

Senator Brown asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 18 October 2002:

(1) (a) What is the status of the proposed agreement between Australia and South Korea on migratory birds; and (b) when will it be made available for public comment.

(2) What actions has the Government taken since responding to Senator Brown’s question on notice no. 385 (Senate Hansard, 21 August 2002, p. 3472) to try to prevent the destruction of the internationally significant Saemangeum wetlands.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) (a) The text of the proposed Republic of Korea – Australia Migratory Bird Agreement is being finalised. We anticipate having the agreement signed by both governments early in 2003.

(b) Australia follows international practice that a bilateral agreement remains confidential to the parties until it is signed. Once the agreement is signed and before any binding action is taken, the agreement text will be tabled in both Houses of Parliament with a National Interest Analysis prepared in consultation with the States and Territories. The Joint Standing Committee on Treaties will consider the agreement and may hold public meetings. The Committee’s report will be tabled, printed and made available on the internet.

(2) The Government has focused its efforts on progressing the bilateral agreement which will facilitate dialogue between Australia and the Republic of Korea on the conservation of migratory shorebirds and their habitat.

Research and Development

(Question No. 817)

Senator Brown asked the Minister representing the Minister for Education, Science and Training, upon notice, on 18 October 2002:

(1) For how long is the Research and Development (R&D) Start Program suspended.

(2) Of the R&D start projects currently funded: (a) can a list be provided of those based on the use of fossil fuels and those based on renewable energy; (b) what is the duration of each project; and (c) how much government funding has been committed.

(3) (a) Is it a fact that the Commonwealth has provided $46.9 million for Cooperative Research Centres (CRC) based on fossil fuels and $10.4 million for CRCs based on renewable energy; and (b) will the funding for the sole renewable energy CRC run out in June 2003.

(4) What additional funding will be provided for renewable energy in the next round of CRCs.

(5) Other than CRCs and R&D start projects, what government programs specifically fund basic research into renewable energy (as distinct from commercialisation).

(6) Other than CRCs and R&D start projects, what government programs specifically fund basic research into fossil fuels (as distinct from commercialisation).

(7) Has the Government effectively abandoned renewable energy as a field of research.

(8) Why is the Government favouring research into fossil fuels at the expense of renewable energy.

Senator Alston—The Minister for Education, Science and Training has provided the following answer to the honourable senator’s question:

All questions relating to the Research and Development (R&D) START Programme and the Commonwealth’s policies and programmes relating to renewable energy and fossil fuels are the responsibility of
and should be directed to the Minister for Industry, Tourism and Resources, the Hon Ian Macfarlane MP.

In regard to your questions concerning the Cooperative Research Centres programme, which is managed in the portfolio of the Minister for Education, Science and Training, the following information has been provided.

(3) (a) The Commonwealth has current commitments of $46.9 million in funding to support the activities of the following Cooperative Research Centres that are undertaking research relevant to fossil-fuel based industries. Each of these CRCs has a research component concerned with sustainability and environmental impacts.

<table>
<thead>
<tr>
<th>CRC</th>
<th>7 Year Funding Amount ($million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Petroleum CRC (1997-2004)</td>
<td>18.3</td>
</tr>
<tr>
<td>CRC for Clean Power from Lignite* (1999-2006)</td>
<td>14.1</td>
</tr>
<tr>
<td>CRC for Coal in Sustainable Development (2001-2008)</td>
<td>14.5</td>
</tr>
<tr>
<td>Total current commitment to Fossil-fuel based CRCs</td>
<td>46.9</td>
</tr>
</tbody>
</table>

* Lignite is brown coal

(3) (b) The Commonwealth has committed funding of $10.4 million for a seven year period (1996-2003) to the Cooperative Research Centre for Renewable Energy. The Centre has applied for a new round of funding (for a period of seven years) in the 2002 CRC selection round.

(4) An application with a focus on renewable energy was received in the 2002 CRC selection round from the existing CRC for Renewable Energy. This application progressed through the eligibility and comprehensive assessment phases of the selection process in July and September respectively. It underwent the third phase of the selection process (an interview by an expert panel) on 30 October 2002.

The CRC Committee will shortly make recommendations to the Minister for Science on the applications to be funded. It is expected that successful applications will be announced in December 2002.

It may also be of relevant interest that the CRC for Greenhouse Accounting seeks to enhance management of greenhouse emissions through improved methodologies for measuring carbon in terrestrial ecosystems. This information will assist stakeholders, including those in the energy sector, to explore available options for better management of carbon sequestration. This Centre commenced operations in 1999 and will receive $15.4 million over the seven year life of the CRC.

Environment: Dismal Swamp

(Question No. 818)

Senator Brown asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 18 October 2002:

With reference to the answers to questions on notice Nos 596, 597 and 598 (Senate Hansard, 15 October 2002, pp. 5180-81), and given the distinction being drawn by the Minister in those answers between the terms 'development' and 'operation':

(1) What advice has the Australian Heritage Commission issued on any aspect of the Dismal Swamp in Tasmania regarding any matters including development and/or operation of tourist or any other facilities or uses or planned facilities or uses, since 1992.

(2) In each case: (a) who sought the advice; (b) why was the advice sought; (c) what was the advice; (d) to whom and by whom was it given; and (e) was the Minister or any of his predecessors advised; if not, why not; if so, what action followed.

(3) What was the reason for the 1999 matter being referred for advice.

(4) (a) In what way does the present proposal differ, or what other matters intervened, to excuse the current development from reference to the commission; and (b) who made this decision.

(5) Are there matters of national environmental significance at Dismal Swamp; if so: (a) what are they; and (b) why will they not be affected by the present development.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:
(1) The Australian Heritage Commission has provided advice on a proposal by Forestry Tasmania to construct a lookout, interpretation site and parking bay at Dismal Swamp near Smithton in northwest Tasmania.

(2) (a) the advice was sought by the then Department of Industry, Science and Tourism (DIST). (b) DIST was complying with its obligations under s.30 of the Australian Heritage Commission Act 1975, to seek the advice of the Australian Heritage Commission in matters where a Commonwealth decision was to be made in relation to a place entered in the Register of the National Estate; (c) The advice provided in April 1999, stated that on-ground works should be conducted outside the area identified in the RFA process as a reserve and vegetation clearance (especially of Eucalyptus brookerana) should be kept to a minimum. The proponent was also advised to consult with the Aboriginal community so that Aboriginal cultural heritage issues could be included in the information provided for visitors. (d) The advice was provided to DIST by the Australian Heritage Commission. (e) Neither the Minister nor his predecessors was advised as the Australian Heritage Commission, a statutory authority, provides s.30 advice directly to the referring agency.

(3) The Dismal Swamp proposal was referred to the Australian Heritage Commission in 1999 because the place had been entered in the Register of the National Estate and because Forestry Tasmania was seeking Commonwealth funding for the project.

(4) (a) and (b) The present proposal has not as yet been provided to the Australian Heritage Commission for comment. Forestry Tasmania’s media releases indicate that the present proposal maintains the intent of the original to interpret the blackwood forest and its environment, but is a larger development than that referred to the Australian Heritage Commission in 1999. That project has not proceeded and the original Commonwealth funding remains unspent. Forestry Tasmania is now proposing to develop a $2 million project, including a visitor centre, timber viewing platform, a 30m slide and a 2km maze and walkway. This project will receive $1 million funding from the Tasmanian government. The project is currently before the local council for planning approval. When this has been received Forestry Tasmania will approach the Department of Industry, Tourism and Resources (DITR) to renegotiate the contract for the expenditure of the original 1999 grant. At that time DITR intends to refer the matter to the Australian Heritage Commission for advice under s.30 of the Australian Heritage Commission Act. At present neither DITR nor the AHC has a proposal to consider.

(5) The Environment Protection & Biodiversity Conservation Act 1999 currently identifies six matters of national environmental significance: World Heritage properties; Ramsar wetlands of international significance; listed threatened species and ecological communities; listed migratory species; Commonwealth marine areas; and nuclear actions – none of which apply to Dismal Swamp.