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### SITTING DAYS—2002

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>12, 13, 14</td>
</tr>
<tr>
<td>March</td>
<td>11, 12, 13, 14, 19, 20, 21</td>
</tr>
<tr>
<td>May</td>
<td>14, 15, 16</td>
</tr>
<tr>
<td>June</td>
<td>17, 18, 19, 20, 24, 25, 26, 27</td>
</tr>
<tr>
<td>August</td>
<td>19, 20, 21, 22, 26, 27, 28, 29</td>
</tr>
<tr>
<td>September</td>
<td>16, 17, 18, 19, 23, 24, 25, 26</td>
</tr>
<tr>
<td>October</td>
<td>14, 15, 16, 17, 21, 22, 23, 24</td>
</tr>
<tr>
<td>November</td>
<td>11, 12, 13, 14, 15, 18, 19, 20, 21</td>
</tr>
<tr>
<td>December</td>
<td>2, 3, 4, 5, 9, 10, 11, 12</td>
</tr>
</tbody>
</table>

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- **Perth**: 585 AM
- **Hobart**: 729 AM
- **Darwin**: 102.5 FM
SENATE CONTENTS

FRIDAY, 15 NOVEMBER

Speakers List............................................................... 6475

Business—
   Consideration of Legislation ................................................................. 6475
   Consideration of Legislation ................................................................. 6476
   Consideration of Legislation ................................................................. 6476

Notices—
   Postponement ........................................................................................ 6476

Environment and Heritage Legislation Amendment Bill (No. 1) 2002,
Australian Heritage Council Bill 2002 and
Australian Heritage Council (Consequential and Transitional Provisions)
   Bill 2002—
      First Reading ........................................................................................ 6476
      Second Reading ...................................................................................... 6477
   Australian Crime Commission Establishment Bill 2002—
      First Reading ........................................................................................ 6480
      Second Reading ...................................................................................... 6480
   Family and Community Services Legislation Amendment (Australians Working
Together and other 2001 Budget Measures) Bill 2002—
      Second Reading ...................................................................................... 6485
      Contingent Motion .................................................................................. 6505
      In Committee .......................................................................................... 6515
   Family and Community Services Legislation Amendment (Australians Working
Together and other 2001 Budget Measures) Bill (No. 2) 2002—
      In Committee ........................................................................................ 6521
      Third Reading ......................................................................................... 6521
   Bankruptcy Legislation Amendment Bill 2002—
      In Committee ........................................................................................ 6521
      Third Reading ......................................................................................... 6537
   Plant Breeder’s Rights Amendment Bill 2002—
      In Committee ........................................................................................ 6537

Adjournment—
   Immigration: People-Smuggling .............................................................. 6550
   Victoria: Bracks Government ................................................................. 6552

Questions on Notice—
   Veterans: Doctors’ Fees—(Question No. 629) .......................................... 6555
   Veterans: Medical Fees—(Question No. 630) .......................................... 6556
   Veterans’ Affairs: Request for Tender—(Question No. 748) .................... 6557
   Veterans’ Affairs: Defence Service Homes Insurance—(Question
      No. 802)................................................................................................. 6558
   Health: Bulk-Billing Services—(Question No. 805)................................. 6559
The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 a.m., and read prayers.

SPEAKERS LIST

The PRESIDENT (9.30 a.m.)—On 13 November 2002, during debate on matters of public interest, the Acting Deputy President, Senator Knowles, undertook to refer to me a question which was raised about the order of calling senators to speak. Senator Tierney was on the list of speakers provided by the whips, but was not present when he was due to be called according to the list. After one government and three non-government senators had spoken, Senator Tierney was called when Senator Murphy also rose to be called. It was suggested that Senator Murphy should have been called because Senator Tierney had ‘missed his turn’ according to the list.

It is well established that the list of speakers provided by the whips is not binding on the chair but is merely a guide. The call to speak is allocated by decision of the chair, having regard to the practices of the Senate. One of those practices is that there should be a balance between the government and the non-government parties. The Acting Deputy President was therefore entitled not to follow the list but to allocate the call having regard to the principle of balance.

The result of the chair’s allocation of the call was that two government and three non-government senators spoke, including two opposition senators and one minor party senator. While not a complete balance, this allocation was more balanced than it would have been if Senator Tierney had not been called. The decision of the Acting Deputy President was therefore correct.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.32 a.m.)—We were advised at the whips’ meeting that the Democrats will be supporting this exemption to deal with the Environment and Heritage Legislation Amendment Bill (No. 1) 2002, the Australian Heritage Council Bill 2002 and the Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002. That was our latest information from the Democrats’ party whip. If that has changed overnight, we have not been advised of it. Can I make the point that it is very hard to manage the government’s business program with incomplete information. We respect the right of people, particularly the Democrats, to change their mind, but in future we would appreciate being notified of it, because we would save this debate.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.33 a.m.)—In the interests of brevity, I would simply indicate that the Democrats also oppose the motion. We had a bit of a debate yesterday on the cut-off motion, its history and its purpose. This particular bill on a very important issue contains new variations on a past bill. From the Democrats’ point of view, it would be much better legislative practice if it were dealt with next year.
postpone it until slightly later to double-check and sort out the confusion.

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

That government business notice of motion No. 1 standing in my name, relating to the exemption of certain bills from the provisions of standing order 111, be adjourned till a later hour. My parliamentary liaison officer checked with the Australian Democrats less than five minutes ago and we were still advised that they were supporting the exemption. I will seek to clarify it and, if they are not supporting it, we will not waste any more time on it.

Question agreed to.

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate)  (9.35 a.m.)—With trepidation I move:

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

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

Senator LUDWIG (Queensland) (9.36 a.m.)—I do not particularly want to waste time, but I think it is important to at least put on the record at this point in time that it is clear that the statements of reasons for the introduction and passage of the Australian Crime Commission Establishment Bill 2002, the New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Bill 2002 and the New Business Tax System (Franking Deficit Tax) Amendment Bill 2002 clearly provide the purpose of the bills and reasons for urgency. They clearly articulate these reasons. For example, in relation to the new business tax system bills, they indicate that the reason for urgency is that the consolidation regime and the simplified imputations system commenced on 1 July 2002. It is therefore important that the measures in the legislation are enacted as soon as possible to enable taxpayers and their advisers to put an arrangement in place for the 2002-03 income year. The government has been able to make its case in relation to those matters. It is unusual to allow bills to come in to be dealt so late in the sitting pattern when there is no agreement. In this instance, there is agreement that the exemption to the cut-off should apply and therefore the opposition supports the motion.

Question agreed to.

Consideration of Legislation

Consideration resumed (on motion by Senator Ian Campbell):

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

Question negatived.

NOTICES

Postponement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.39 a.m.)—I move:

That government business notice of motion No.3, relating to the hours of meeting and routine of business for Monday, 2 December 2002, be postponed till the next day of sitting.

Question agreed to.

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (No. 1) 2002
AUSTRALIAN HERITAGE COUNCIL BILL 2002
AUSTRALIAN HERITAGE COUNCIL (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2002

First Reading

Bills received from the House of Represenatives.
Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.40 a.m.)—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) (9.40 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—

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (No. 1) 2002

The Environment and Heritage Legislation Amendment Bill (No.1) 2002 will significantly improve the conservation and management of natural, historic and Indigenous heritage in Australia. This bill forms the core of part of a package of legislation which fulfils the Howard Government’s 2001 election commitment to establish, for the first time, a truly national scheme for the conservation of Australia’s unique heritage assets. The bill is based on a national consensus reflected in the outcomes of the 1997 Council of Australian Governments (COAG) Agreement on Commonwealth/State Roles and Responsibilities for the Environment, which was signed by all levels of government. COAG agreed on the need to rationalise existing Commonwealth/State arrangements for the identification and protection of heritage places. In this context, COAG agreed that the Commonwealth’s role should be focussed on places of National Heritage significance.

The bills also represent the culmination of six years of community discussion and consultation, including the 1998 National Heritage Convention convened by the Australian Heritage Commission. During 2000, as the legislation was being drafted, there was a national briefing program where officials conducted 76 briefings in state/territory capitals and many regional centres. The National Cultural Heritage Forum, which is comprised of key stakeholder organisations, including the Australian Council of National Trusts, played a crucial role in the development of the legislation. The Government recognises the work these organisations have put into the process and commends their commitment to improving the national heritage regime.

In establishing a new National Heritage conservation regime, the reforms implemented through the bill will address the shortcomings of the existing regime. The Australian Heritage Commission (AHC) Act provides no substantive protection for those heritage places that are of truly national significance. The limited procedural safeguards in the AHC Act fall well short of contemporary best practice in heritage conservation. Indirect triggers, such as foreign investment approval, initiate the statutory process in the AHC Act, which adds to uncertainty and delay, and limits the capacity of the AHC Act to provide any real benefit for heritage conservation. The AHC Act does not, cannot, adequately protect those places that contribute to our sense of Australian identity.

There is a gap between state regimes, which protect places of local or state significance, and the world heritage regime, which protects places of significance to the world. This bill establishes a mechanism for the identification, protection and management of heritage places of national significance. Such places will be inscribed in a National Heritage List. This List will consist of natural, historic and Indigenous places that are of outstanding National Heritage significance. The Minister will be guided in his or her decision-making by advice from a body of heritage experts—the Australian Heritage Council. The Council will be established under separate legislation as an independent advisory body to the Minister, and will also be able to promote the identification, assessment and conservation of heritage on its own initiative.

The National Heritage List creates opportunities to remember, celebrate and conserve places that recall significant themes in Australian history. We should respect and value the development of our industries by recognising and protecting early mining, industrial and pastoral sites. Our national historic built heritage includes places that give an insight into the development of our own sense of Australian identity and our sense of place and, as such, should be recognised and protected for their national heritage significance. Natural heritage places that may be considered by the Australian Heritage Council include those that tell the story of our continent’s natural diversity and ancient past.

The bills move forward in the protection of the heritage of Aboriginal and Torres Strait Islander people. Indigenous cultural heritage exists throughout Australia and all aspects of the land-
scape may be important to Indigenous people as part of their heritage. The effective protection and conservation of this heritage is important in maintaining the identity, health and well-being of Indigenous people. These bills provide new opportunities for developing agreed strategies to protect Indigenous heritage places after consultation and discussion with traditional owners on management arrangements. The rights and interests of Indigenous people in their heritage arise from their spirituality, customary law, original ownership, custodianship, developing Indigenous traditions and recent history.

Places in the Australian heart are not only in Australia. The bill will establish the capability to list National Heritage and Commonwealth Heritage places overseas and develop co-operative arrangements with the sovereign country in which the place is located. Places such as Lone Pine in Gallipoli, Kokoda in Papua New Guinea or Australia House in London could be given protection under this regime.

The listing process will be open and transparent and includes a mechanism for the consideration of public nominations and a public consultation process. The Australian Government will undertake the assessment of nominated places and include a mechanism for the consideration of public nominations and a public consultation process. The Register of the National Estate will be streamlined and there will also be retained as an information resource outlining in the Schofield Report on Commonwealth Owned Heritage Properties.

Criteria for listing of National Heritage and Commonwealth Heritage places have been developed and the Government is committed to consulting stakeholders on these criteria before the bills are finally passed in this house.

The Government is committed to demonstrating leadership in relation to the management of heritage properties it owns or controls, and for the first time, there will be a single list of Commonwealth heritage places. It is the Government's intention that future regulations will consolidate the involvement of Indigenous people by providing up-front recognition of the need to protect Indigenous heritage values and the primary role that traditional owners and custodians play in such protection.

In line with the Government's election policy commitments, the Register of the National Estate will also be retained as an information resource for the purposes of heritage promotion and education. The Register will be streamlined and there will be an ongoing ability to add or remove places. Furthermore, the Minister for the Environment and Heritage will be required to consider
information in the Register when making relevant decisions under the EPBC Act.

There will be an education program to raise awareness about the new legislation, and a website to assist the public. The Government is committed to on-going consultation with community and heritage bodies to ensure that the new national heritage conservation regime continues to meet community expectations.

In addition, the Government is committed to the continued development of the Australian Heritage Places Inventory (AHPI) database, which will serve as the community’s one-stop-shop for information on heritage places throughout Australia. Places on the Register of the National Estate form an integral part of the Inventory along with State and Territory Heritage Registers.

Through the auspices of the Environment Protection and Heritage Council, the Government will also develop an Integrated National Heritage Strategy in partnership with the States, with opportunities for input by other heritage organisations.

In presenting this bill, and through the establishment of the independent statutory Australian Heritage Council, the Government is demonstrating its commitment to ongoing national leadership in relation to heritage conservation. In doing so, the bill delivers on community expectations in relation to what a contemporary heritage regime should provide for the nation.

———

AUSTRALIAN HERITAGE COUNCIL BILL 2002

The Australian Heritage Council Bill 2002 establishes the Australian Heritage Council as the nation’s primary heritage advisory body.

The role of the Council will be to provide independent and expert advice to the Minister on the identification, conservation and protection of places on the National Heritage List and the Commonwealth Heritage List. The Council will consist of eminent experts in the fields of natural, Indigenous and historic heritage.

The Council will replace the Australian Heritage Commission as the Commonwealth’s expert advisory body on heritage. The Council will assess nominations in relation to the listing of places on the National Heritage List and the Commonwealth Heritage List, advise the Minister on specified matters relating to heritage and promote the identification, assessment and conservation of heritage.

The Council will have a vital role to play in ensuring the success of the Government’s new heritage protection regime. A particularly important function of the Council will be to provide advice to the Minister in relation to the identification of places, which qualify for entry on the National and Commonwealth Heritage Lists. The Minister must consider the advice of the Council in deciding whether to add, or remove a place from the National List. Advice from the Council will also form the basis for Commonwealth involvement in the management of such places.

The Register of the National Estate is a valuable asset to the Commonwealth and under this bill it will continue as an important information resource to which the Council will be able to add places that it believes meet the prescribed criteria. The more than 13000 properties already on the Register will remain and the Register will also be used to assist the Minister in making decisions under the Environmental Protection and Biodiversity Conservation Act 1999.

The Australian Heritage Commission has played a pivotal role in the conservation of Australia’s heritage places over the last 25 years. The Australian Heritage Council will continue the tradition of Commonwealth leadership in the field of heritage conservation and management. It will contribute to a confident Australian outlook, protecting our places and our past to move forward into the future.

———

AUSTRALIAN HERITAGE COUNCIL (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2002

This bill is an adjunct to the Environment and Heritage Legislation Amendment Bill (No.1) 2002 and the Australian Heritage Council Bill 2002.

The Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002 has two primary objectives.

Firstly, the bill provides for the repeal of the Australian Heritage Commission Act 1975 and provides for consequential amendments to other Commonwealth Acts as a result of repealing this Act.

Secondly, the bill puts in place arrangements for a smooth transition from the Australian Heritage Commission Act 1975 to the new scheme established by the main heritage bills.

The bill, together with the Environment and Heritage Legislation Amendment Bill (No.1) 2002 and the Australian Heritage Council Bill 2002, establishes a truly national scheme for the conservation of Australia’s unique heritage assets. This national scheme harnesses the strengths of
our Federation by providing for Commonwealth leadership while also respecting the role of the States in delivering on-ground management of heritage places. A centrepiece of the new regime is the creation of an independent statutory heritage body, the Australian Heritage Council.

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

AUSTRALIAN CRIME COMMISSION ESTABLISHMENT BILL 2002

First Reading

Bill received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.41 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.41 a.m.)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This bill will implement the most significant refocussing and restructuring of Australia’s national law enforcement effort since the National Crime Authority was established in 1984.

During the election campaign last year the Prime Minister announced that he would convene a Summit to focus on producing an enhanced national framework to deal with terrorism and transnational crime. This government, under the leadership of the Prime Minister, has delivered, yet again, much needed reforms in the national interest.

The National Crime Authority (NCA) was established in 1984 as a national law enforcement agency whose purpose is to combat serious and organised crime. It was designed to overcome the barriers to effective law enforcement caused by jurisdictional boundaries in the Australian federal system. The continuing support for the activities of the NCA, from Commonwealth, State and Territory Governments, reflects the important role it has played. There is no doubt that the problems caused by serious and organised crime operating across jurisdictional boundaries, continue to pervade all levels of society. The NCA does not deal with simple street level crime, but with the web of complex criminal activity engaged in by highly skilled and resourceful criminal syndicates that utilise expert advice and the latest technologies.

The globalisation of markets has brought with it the globalisation of crime. There is a blurring of traditional distinctions. Modern criminal entrepreneurs pay no heed to national or international boundaries. Terrorism is funded by organised criminal activity such as drug trafficking or arms dealings. The events of 11 September last year have heightened in us all an awareness that society is constantly facing new and emerging threats. We must be vigilant, and it is up to governments to ensure that law enforcement is provided with the best possible framework and tools to combat such threats. It is timely therefore to reassess whether the NCA in its present form is best placed to combat such threats in Australia in the twenty first century.

Leaders considered this very issue and agreed, in order to strengthen the fight against organised crime, to replace the NCA with an Australian Crime Commission (ACC). The ACC will build on the successes of the NCA in developing effective national law enforcement operations in partnerships with State and Territory police forces, but will be enhanced by removing the current barriers to its effectiveness.

Agreement reached with the States and Territories to give effect to the Leaders’ Summit resolutions in relation to the establishment of the ACC, Commonwealth, State and Territory Governments have agreed that the ACC will be constituted by Commonwealth legislation as a Commonwealth law enforcement agency, supported by State and Territory legislation.

Functions

The NCA, the Office of Strategic Crime Assessments (OSCA) and the Australian Bureau of
Criminal Investigation (ABCI) will be replaced by the ACC which will provide an enhanced national law enforcement capacity through:

- Improved criminal intelligence collection and analysis;
- Setting clear national criminal intelligence priorities; and
- Conducting intelligence led investigations of criminal activity of national significance including the conduct and/or coordination of investigative and intelligence taskforces as approved by the Board.

**Intelligence**

The ACC will:

- Provide a coordinated national criminal intelligence framework;
- Set national intelligence priorities to avoid duplication;
- Allow areas of new and emerging criminality to be identified and investigated; and
- Provide for investigations to be intelligence driven.

**Governance**

The Inter-Governmental Committee of the NCA (IGC-NCA) will be renamed the IGC-ACC and it will comprise eight State and Territory representatives and be chaired by the Commonwealth representative. It will monitor the work of the ACC and the Board and provide broad direction.

The Parliamentary Joint Committee (PJC-NCA) overseeing the operations of the NCA will continue its current role and function in overseeing the operation of the ACC.

**Board and Chair**

The new ACC Board will consist of thirteen voting members and the Chief Executive Officer as a non-voting member. The Chairman of the Board will be the Commissioner of the Australian Federal Police.

The voting members of the Board will be:

- Eight State and Territory Police Commissioners (New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, Northern Territory and the Chief Police Officer of the Australian Capital Territory) and:
- Five Commonwealth Agency Heads—Commissioner of the Australian Federal Police, Director General of Security, the Chair of the Australian Securities and Investments Commission, the CEO of the Australian Customs Service and the Secretary of the Attorney General’s Department.

**Chief Executive Officer**

A Chief Executive Officer to manage the ACC and its operations and investigations will be appointed by the Governor-General on the recommendation of the Commonwealth Minister and Federal Cabinet. Before recommending an appointment, the Commonwealth Minister will accept nominations from members of the Board and consult with members of the Inter-Governmental Committee.

The CEO will be an individual with a strong law enforcement background.

**Staffing**

Initially the ACC will maintain the current combined operational staffing levels of the NCA, ABCI and OSCA. Over time this will be reviewed by the board to meet operational requirements.

The ACC will have a standing in-house investigative capacity. The mix and composition of in-house and taskforce intelligence and investigative capabilities will be determined by the Board and CEO in accordance with operational priorities.

**Offices**

Initially ACC offices will remain in all current NCA locations at current operational staffing and funding levels. Over time this will be reviewed by the board to meet operational requirements. The ACC headquarters will be located in Canberra.

**Powers**

The ACC will have in-house and taskforce access to all coercive and investigatory powers currently available to the NCA. The Board will need to specifically authorise those investigations or operations which are to have access to coercive powers.

The powers will be the same as those available to the NCA. However, having regard to the focus of the ACC on criminal intelligence the bill expressly provides that the coercive powers are also to be available for intelligence operations. It clearly sets out the matters the Board must take into account before making those coercive powers available to an intelligence operation or an investigation.

Coercive hearing powers will be exercised through independent statutory officers, to be called Examiners.

**Investigations**

Investigative and operational priorities will be determined by the Board in accordance with operational priorities.
The first priority taskforce for the ACC will be illegal hand gun trafficking both into and within Australia.

Operational Expenses
The ACC will fund all in-house resources and operational costs (including salaries, staff overtime and travel allowances) under the same arrangements as currently apply to the NCA and ABCI. The ACC will fund current NCA references as budgeted for in the Commonwealth forward estimates and during that time will maintain its commitment to in-house investigations, subject to the operational requirements as assessed by the Board.

Decisions regarding the composition of taskforces and the contributions of jurisdictions to these taskforces will be determined by agreement between the Board, CEO and relevant jurisdictions on a case by case basis.

This includes a commitment by Commonwealth, State and Territory police forces to cover salary, salary related and other costs of secondees to additional ACC taskforces that they participate in, as agreed by the Board and CEO.

After three years of operation a review will be conducted into the balance and mix of the in-house investigative capacity by the IGC.

Budget
Almost all of the funding of the ACC is to be provided by the Commonwealth.

The current levels of funding provided for the agencies as stipulated in the Forward Estimates by the Commonwealth will be provided to the ACC.

Future funding levels will be subject to the normal budgetary processes.

This, then, is the agreement reached with the States and Territories and the consensus was that this recommendation not be accepted.

Recommendation 1
The PJC recommended that the bill be amended to provide that Austrac be included as a member of the Board.

The Government does not agree with this recommendation. AUSTRAC will provide specialist financial intelligence to the Board. That intelligence will be integral to the ACC’s fight against serious and organised crime, in particular, money-laundering. It is not necessary for AUSTRAC to be on the Board to do this.

The recommendation was raised with the States and Territories and the consensus was that this recommendation not be accepted.

Recommendation 2
The PJC recommended that the bill be amended to restore the entitlement for the ACC to develop co-operative relationships with corresponding overseas law enforcement agencies.

The Government agrees to this recommendation and the bill has been amended to reinstate section 17 of the NCA Act.

Recommendation 3
The PJC recommends that the bill be amended to ensure that the relevant state/s are informed of any operation or investigation that is proposed to take place within its boundaries.

The Government agrees with this recommendation. The bill has been amended to oblige a Committee to inform all other Board members of its decisions.

Recommendation 4
The PJC recommends that the bill be amended to explicitly provide that:

- The CEO should be responsible for the overall management of the ACC. The Minister for Justice and Customs of the Commonwealth Parliament should be the Minister, under our system of responsible government, accountable to the Parliament for the work of the ACC.
The CEO appoint the head of a task force after consultation with and advice from the Board.

Heads of task forces are responsible to the ACC through the CEO.

The Government agrees with this recommendation.

The bill has been amended to provide that the CEO:
- is responsible for the administration and management of the ACC;
- must manage, coordinate and control ACC operations/investigations;
- must appoint the head of the investigation/operation after having consulted with the Board in relation thereto.

The Minister for Justice and Customs is the Commonwealth Minister responsible for the Australian Crime Commission Act and no amendment is necessary.

Recommendation 5

The PJC recommends that the bill be amended to provide that the suspension of the CEO can only take place on the initiative of the Minister until a meeting of the full Board to consider the matter and that the CEO can only be removed for cause, or, if that is thought to be insufficient scope to allow for the removal of the CEO, by the Minister following a resolution of the full Board passed by a two-thirds majority.

The Government agrees to this recommendation in principle. In relation to the suspension of the CEO, the bill has been amended to provide that the Minister must not suspend the CEO unless the Minister has consulted the Board about the proposed suspension. In relation to the termination of the CEO, the proposed provision enabling termination for “unsatisfactory conduct” is a “for cause” provision.

Recommendation 6

The PJC recommends that the Government give careful consideration to the terms and conditions of ongoing staff to be employed by the new ACC, particularly in the context of their current conditions of service.

The Government agrees to this recommendation. This is to be a priority for the CEO, who is the head of the Statutory Agency and responsible for workplace relations and accountability issues.

Recommendation 7

The PJC recommends that the bill be amended to provide that complaints against all staff of the ACC be investigated by the Commonwealth Ombudsman as a minimum.

The Government agrees with this recommendation in principle. The Commonwealth Ombudsman currently has the jurisdiction to deal with complaint against the National Crime Authority. The bill amends the Ombudsman Act to provide that the ACC is a prescribed authority for the purposes of the Ombudsman Act and maintains the jurisdiction of the Ombudsman over the staff of the ACC.

Recommendation 8

The PJC recommends that the Government, once the ACC has been established, gives urgent attention to ensuring that operational, investigative and support staff work under the same integrity and complaints regime.

The government agrees with this recommendation. This is also to be a priority for the CEO, who is the head of the Statutory Agency and responsible for workplace relations and accountability issues.

Recommendation 9

The PJC recommends that the Government, once the ACC has been established, gives urgent attention to ensuring that operational, investigative and support staff work under the same integrity and complaints regime.

The government agrees with this recommendation. This is also to be a priority for the CEO, who is the head of the Statutory Agency and responsible for workplace relations and accountability issues.

Recommendation 10

The PJC recommends that the bill be amended to establish the ACC as a legal entity.

The Government does not agree to this recommendation. Commonwealth policy provides for a presumption against incorporation of statutory bodies un-
less there are good reasons for doing so. There are no good reasons in the case of the ACC. There is also a significant increase in accountability for financial management when a body is incorporated and becomes subject to the requirements of the Commonwealth Authorities and Companies Act 1997. This includes additional auditing, reporting and disclosure requirements. To impose the additional financial reporting burdens on an organisation not intended to be covered by them merely complicates processes that the Government wishes to streamline.

The concern underlying the PJC recommendation appears to be that a person having a cause of action against the ACC could be legally disadvantaged if the ACC is not incorporated. This is not correct. As the PJC itself acknowledged the NCA was not incorporated and there is no evidence to suggest that any one has been disadvantaged by that.

Recommendation 11
The PJC recommends that there should be no blanket immunity from suit for the ACC.

The Government agrees with this recommendation. The bill has been amended to provide that the protection from liability for damages should only be available to members of the Board.

Recommendation 12
The PJC recommends that the bill be amended to provide explicitly that any decision by a committee of the Board to authorise an operation/investigation as a special operation/investigation requires ratification by the full Board.

The Government agrees in principle to this recommendation. The bill has been amended to expressly prohibit a committee determining that an intelligence operation/investigation is a special operation/investigation. The effect will be that all such decisions will have to be taken by the full Board.

Recommendation 13
The PJC recommends that the bill be amended to provide that no part-time examiners can be engaged on a per-hour or per-diem basis.

The Government agrees to this recommendation. The bill has been amended to remove references to part-time examiners.

Recommendation 14
The PJC recommends that the bill be amended to explicitly provide that examiners must satisfy themselves in each case that before they exercise special powers under the Act that it is appropriate and reasonable to do so and that they indicate in writing the grounds for having such an opinion.

The Government agrees to this recommendation. The bill has been amended to provide that examiners must satisfy themselves that it is reasonable in all the circumstances to exercise powers to issue a summons or a notice to produce and will be required to reduce to writing the reasons for taking the decision.

Recommendation 15
The Committee recommends that the bill be amended to provide for a comprehensive public review of the ACC Act to take place after three years have elapsed from the date of commencement of the ACC Act.

The Government agrees to this recommendation. The bill has been amended to provide that there is to be a review of the operation of the ACC as soon as practicable after 1 January 2006.

Additional recommendations by certain members
Finally I turn to the additional recommendations that were made by certain members of the PJC. The Government does not accept these recommendations.

These recommendations arose out of concerns that the power to authorise the use of coercive powers should not reside with the proposed Board of the ACC but should remain with the Inter Governmental Committee. This change was unanimously agreed to by all governments of Australia, Commonwealth, State and Territory and was only taken after serious consideration and debate. It was an essential part of that agreement that the existing cumbersome reference system needed to be streamlined and this bill has given effect to that agreement.

The ACC will significantly enhance Australia’s national law enforcement effort. For the first time there will be a focus on national criminal intelligence and investigations and operations will be intelligence driven. It will be under the direction of a Board comprising the heads of the key Australian law enforcement agencies. Between them they are collegiately responsible for Australia’s law enforcement and who better to set national law enforcement priorities. The ACC will significantly enhance law enforcement coordination and cooperation at the national level. It will complement rather than compete with existing law enforcement agencies. The ACC will be a key player in the fight against organised crime in Australia well into the twenty first century.

Debate (on motion by Senator Ludwig) adjourned.
FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (AUSTRALIANS WORKING TOGETHER AND OTHER 2001 BUDGET MEASURES) BILL 2002

Second Reading

Debate resumed from 23 October, on motion by Senator Ian Campbell:

That this bill be now read a second time.

upon which Senator Mark Bishop had moved by way of an amendment:

At the end of the motion, add:

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

(a) a rate reduction for first or second breaches of no more than 25% of benefits;

(b) breach and non-payment period of a maximum of 8 weeks duration; and

(c) reinstatement of benefits on compliance.

Senator NETTLE (New South Wales) (9.42 a.m.)—As I was saying previously, the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 is based on a policy of mutual obligation which, under this government, translates to onerous obligations on individuals and minimal obligations on the part of government. The government argues that people receiving income support should give back something to society in return, but this policy is founded on false premises. People rely on income support when their circumstances prevent them from earning income. They may be mentally ill, physically disabled, suffering chronic ill health, caring for young children alone, a sick partner or parent, or retrenched from their job.

These circumstances occur through no fault of the individual, and income support is provided so that they have enough to eat and a place to live. It is the minimum that a decent society should provide to those people whom our economic system has failed. Yet somehow the government has construed that these people owe the rest of us something in return for ensuring that they do not go hungry or homeless. The unfairness of this proposition is evident to anyone prepared to look. As Dr Pamela Kinnear stated in her August 2000 report on the ethical and social obligations of mutual obligation, which was prepared for the Australia Institute:

The imposition of Mutual Obligation requirements on unemployed people is based on the belief that they are able to exercise a degree of control over their situation and thus choose to accept welfare benefits. But in a modern economy subject to structural unemployment, for many unemployed people there is no real alternative to accepting welfare benefits.

Dr Kinnear noted that ‘only the least well-off in society have obligations imposed on them’. In the meantime, the government is happy to dispense public moneys to other groups without similar obligations.

If we accept that income support is the very minimal obligation we as a society owe then we have to ask what else the government needs to provide as its side of the social contract. The Australian Greens argue that government needs to provide genuine opportunities for people to participate in paid work and to recognise that they may choose to contribute to society in other ways and are entitled to an adequate income. Yet, under this government’s construction of mutual obligation, obligation is one-sided. As the St Vincent de Paul Society has noted, the only obligation imposed is on the most vulnerable and disadvantaged in our community. The government has not even adopted the McClure report recommendation of a participation allowance to assist with additional costs, such as transport and education. The government has offered a paltry $20.80 a fortnight to help people undertake language, literacy and numeracy training.

The concept of working for the dole, which this government extends through this legislation to older workers and sole parents receiving income support other than unemployment benefit, is no substitute for proper training and education; nor does it confront the truth about the scarcity of paid work, as to do so would generate an expectation that
the government should address that particular problem. But this government’s hands-off approach to economic management—that is, ‘let the market deal with it’—means it will not intervene. This exposes a major weakness in its welfare reform policy, as it claims to prepare people for work that is not available.

The Australian Bureau of Statistics report released last month illustrates the extent of this problem. Around 750,000 people wanted to work and were available to work within four weeks but were not actively looking for work when the survey was undertaken in September 2001. Another 313,000 people wanted to work but were not looking or were not able to start within four weeks. The main reasons men were not looking for work were study and ill health or disability; for women, they were child care and study. That is more than one million people on top of the official labour force of 9.7 million on which the official unemployment rate is based. Almost 82,000 people in this group described themselves as ‘discouraged job seekers’. Around half of these people were aged between 54 and 64 years. The main reasons they had given up looking for work were: employers considered them to be too old or too young; there were no jobs available in their area or field of work; they had difficulties because of their language and ethnic background; or they lacked the necessary schooling, training, skills or experience.

A couple of weeks ago, the ABS reported that almost 600,000 people working part time wanted more hours of work. Added to these figures, we know there is approximately one job for every seven people seeking employment. These statistics illustrate the kinds of structural impediments that people face. Nothing in the government’s mutual obligation policy or in this bill addresses these structural issues. Rather, this legislation offers more of the government’s blame and punishment agenda. The Pearce report, commissioned by community groups to review breaches and penalties in the social security system, found that the current system is excessive and harsh. Yet here we have the government proposing to extend the same system to more people. Far from streamlining the income support system, this bill imposes three different penalty systems.

The Minister for Family and Community Services, Senator Vanstone, told the Senate some weeks ago that the number of breaches in 2001-02 had fallen by over 30 per cent compared with the previous year and that the number should fall further following the changes introduced in July this year. The Australian Greens consider this to be fiddling with an implicitly flawed system. The harsh impact of the current requirements is all too visible, and the National Welfare Rights Network reported some weeks ago that young people are particularly hard hit. While people aged under 25 years account for one-third of income support recipients, they account for more than 50 per cent of breaches of the activity test and 61 per cent of administrative breaches. Penalties for these breaches reduce their meagre level of income support by at least $24 a week and lead to their benefits being cancelled for up to eight weeks. Welfare rights groups and community groups tell us that imposing financial penalties on people can actually diminish their capacity to look for work and engage in other required activities.

The minister has thus far rejected the Pearce report recommendations to reduce the level of penalties, arguing that the current levels reflect the community expectations. But a survey by the Brotherhood of St Laurence this year showed that the government is indeed out of step with the public on this issue. The Brotherhood of St Laurence, in its submission to the Senate inquiry into this bill, calculated that a sole parent would lose $37.90 a week for 26 weeks for a first offence, face a cut of $50.60 a week for 26 weeks for a second offence and receive no payment for eight weeks for a third offence. Around 95 per cent of people proposed penalties lower than the existing penalties and almost two-thirds believed that the current penalties for the first breach were unfair.

Community groups have asked the Senate not to support the extension of the existing breaching and penalty system until these problems are addressed. The Australian Greens oppose the imposition of penalties based on contracts that people receiving in-
come support have little choice but to sign and which the government can then vary at any time. It imposes hardship on vulnerable people whom we have a duty to assist to meet their basic material needs. The working credit which is designed to assist people in the transition from income support to paid work by allowing them to keep a portion of their social security payment is a good concept but the level proposed is inadequate, bearing in mind that many people making this transition are likely to be facing low wages.

This bill requires people who receive parenting payments and whose youngest child is between the ages of 13 and 15 to attend an annual interview with a Centrelink personal adviser and, from mid-2003, to undertake six hours of approved activity each week, which is to be set out in a participation agreement. This includes looking for paid work, training, education and community work. The secretary of the department may vary the agreement at any time. Failure to enter into an agreement will lead to income support being suspended for 13 weeks, while failure to comply with an agreement will cause an eight-week suspension. Failure to enter a participation agreement under this proposed legislation would also affect the person’s entitlement to other financial assistance, such as family tax payment and child-care benefit. The Australian Council of Social Service estimates that these measures will affect 300,000 parents. The proposals presume that raising children is not a sufficiently valuable contribution to society.

The bill also fails to provide adequate provision for people whose child-care responsibilities may preclude them from looking for work or engaging in approved activities. The bill abolishes the mature age allowance and partner allowance, moving older Australians to Newstart and imposing on them activity test requirements under threat of penalties. At the same time, the bill acknowledges the poor prospects for mature age people finding work. This demonstrates the futility of the measure. The government would get a better return for its efforts by injecting more funding into training—for example, into the Jobs, Education and Training program, which, according to community groups, cannot meet the demand.

The Australian Greens cannot support this bill. We agree that the Senate Community Affairs References Committee’s recommendations would improve the bill, but we object to the legislation’s basic premise of mutual obligation and the government’s failure to address the true causes of inequality. It is we who have an obligation to the disadvantaged members of our society, those people who struggle every day to meet their basic needs let alone plan a better future for themselves and their children. We as parliamentarians and as a community have a duty to address the real causes of social injustice and poverty. The hard edged, mean-spirited and market based approach of this government evident in the bill before us will do nothing to address these causes or to redress the growing disparity in wealth and opportunity in this country.

Senator CROSSIN (Northern Territory) (9.54 a.m.)—The Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 gives effect to the Australians Working Together measures that were announced in the 2001-02 budget. This bill also gives effect to the 2002-03 budget measure to delay the implementation of the working credit, which was announced as part of the Australians Working Together package.

The schedule in this bill sets out the proposed new arrangements for people receiving parenting payment. The measures apply to recipients of both the parenting payment partnered and the parenting payment single. Recipients with a youngest child between the ages of 13 and 15 may be required to participate in one or more activity, such as job search, education, training or community work of up to 150 hours duration over a six-month period—in other words, up to six hours per week. A participation agreement will set out those activities that the person agrees to participate in during the life of that agreement. This requirement will not apply to a person with a severely disabled child.

The penalty regime proposed for the recipients subject to the new arrangements dif-
fers significantly from the breaching regime for Newstart and youth allowance recipients. The regime has more checks and balances in place before a breach is applied and has the ability to reinstate and fully backdate payments on compliance. Before a breach may be applied to a person, Centrelink must first examine whether the person had taken reasonable steps to comply with the agreement, then examine whether the terms of the agreement were appropriate and then establish whether the person had a reasonable excuse for the failure. If at this point it is decided that a breach will be imposed, the person’s compliance will then be monitored at shorter intervals until the person starts to comply. Compliance with the terms of an agreement will trigger waiver of a breach penalty. Their payments will be reinstated and, if compliance occurs within 13 weeks, payments will be fully backdated. There will be no administrative breach penalties applicable to parenting payment customers, as is the case now. It is worth noting that parenting payment recipients whose youngest child is aged six or over will be required to participate in an annual planning interview. This will be enforced under existing rules rather than by legislative changes.

It is important for people to have the background to this bill so that they can understand why so many people find the measures in this bill to be harsh and unfair. Essentially, this bill places emphasis on the obligations of the recipients and on their failings. It does not place any emphasis on expanding opportunities for these people. It is counterintuitive to believe that bullying and punishing people will make them confident and independent job seekers. It just does not work that way. There is a need to assist those parents, both sole parents and those that are partnered, who are out of the work force, especially those who have lost skills and lack confidence. This bill does not achieve any of those aims. While Labor welcomes the additional money that will be made available to families most in need, I do not believe that, with the mutual obligations, it will be utilised to its maximum potential. In its current form, the bill will not adequately support families in Australia.

There are a number of measures in the bill that perhaps are worth noting. One of those is the establishment, albeit belatedly, of the working credit from April 2003. This will allow income support recipients to bank the unused income-free area of their payment so that irregular or casual work will not automatically reduce their fortnightly income support payments. While the $1,000 working credit will be of benefit, and it is acknowledged that it will provide some benefits to these people, when I talk to single mothers in particular who will fall under this regime their comment to me is that, although they recognise that $1,000 a year will be of assistance to them, it is really no use at all if the jobs they are seeking in order to comply with this measure require them to work after 5.30 at night when there is no child care available or require them to undertake significant training, which $20.80 per fortnight will go nowhere near to meeting the cost of. Most single parents that I come across say to me that they would much prefer this government to put that $1,000 into providing child-care assistance for them, particularly making child care available after 5.30 at night or on weekends, because that is when most of these people will find part-time work, either in the hospitality or cleaning industries or in other areas that will no doubt require some sort of shift work. Very few of these people will get regular or part-time work between the hours of nine and five in order to comply with this measure.

So most people I speak to say to me that the $1,000 is welcomed but that this government really does not have a handle on where things are at for single people trying to comply with this measure. These people would rather see this money go into providing additional child care that is available to them after 5.30 or six o’clock at night and especially on the weekends, particularly in areas such as Darwin and probably much of Northern Australia where extended families are not a run-of-the-mill thing and a lot of single people are without the support of brothers, sisters, aunts, uncles or grandparents. Finding and accessing child care after hours, when most part-time and casual work demands it, is extremely difficult. There must be greater flexibility for parents so that
any obligations do not conflict with their parenting responsibilities. There must be a scaling back of requirements that relate to social rather than economic participation.

The weaknesses in the operation of mutual obligation systems and breaching have been exposed in the recent Pearce report. That report showed that this system is arbitrary, unfair and excessively harsh and may actually diminish people’s capacity to seek work. Breaches are not investigated sufficiently and little consideration is given to individual circumstances. Some people breach because of homelessness, uncertain accommodation, literacy and language difficulties, physical or intellectual disabilities and mental illness. Some are simply unable to understand or comply for unforeseen reasons. I know that the response from the government will be, ‘But we will now be offering the new personal support program, which is aimed at people who are severely disadvantaged in the labour market.’ That is all very well if those people present those circumstances when they arrive at a Centrelink office—that is, if those people willingly advise Centrelink that they are homeless or are experiencing some sort of mental illness. Centrelink do not have the skills to be able to pick this up; so, while the establishment of the personal support program is a welcome part of this legislation and will provide the one-on-one assistance that has been needed at Centrelink for so many years, it will not be the be-all and end-all and pick up each and every person who presents themselves to Centrelink needing that support.

There are also high levels of breaching by Indigenous people—who are of course the most disadvantaged people in our society. In effect, this bill provides no real solution to this problem and imposes penalties which further prevent people from providing adequate care and economic security for their children. Job seekers incur substantial financial hardship from breaches which are minor, inadvertent and/or do not demonstrate deliberate intent. This leads to their seeking emergency aid from relatives or having to turn to charities or other sources for assistance. It will even push some into illegal or unsafe earning practices. The penalties make it even more difficult to seek work. A letter I received from the St Vincent de Paul Society National Council of Australia had this to say about the bill:

Our view is that the legislation should NOT, under any circumstances, be passed without addressing the minimization of breaching of the unemployed and disadvantaged groups. For many the immediate effect of the breaching system is that it provides the most direct path to abject poverty.

The penalty regime in this legislation is excessively harsh and unfair. Durations and rates of reduction in benefits are harsher than penalties imposed for some criminal offences which threaten bodily harm. The concept of mutual obligation implies that there will be consequences for the government as well if it does not deliver its side of the bargain. However, there are no penalties at all in the case of failure by the government. Often there is no public disclosure of this and there is certainly no public outrage when it is the government rather than the recipient that is at fault.

The concept of mutual obligation has been applied in a highly selective manner. It is interesting, for example, that married couples who receive parenting payments or those who are eligible for the government’s baby bonus are not also bound by any mutual obligation criteria. There are important considerations that need to be looked at. Sole parents have different caring responsibilities and circumstances from others in receipt of benefits. Contrary to the government’s rhetoric on supporting choice for working families, it is pushing in the other direction with the baby bonus and family tax benefit part B. This bill is disproportionate in that it provides for those on supporting parents benefits with children between 13 and 15 to take part in approved activities for 150 hours every six months, but as an approved program of work which forms part of a participation agreement with the employment secretary that may be varied at any time. Failure to enter into an agreement will result in the loss of benefit for 13 weeks. Failure to comply with an agreement will result in an eight-week breach.
There is extreme concern about the extension of the breaching provisions to single parents. This would affect children adversely, and the breaching levels are indeed excessive. The first breach incurs an 18 per cent reduction for 26 weeks. That is a loss of $987. The second breach incurs a 24 per cent reduction for 26 weeks, which is a loss of $1,316. With the third breach, there is no payment at all for eight weeks, which is a loss of $1,687. Community surveys undoubtedly show that most people think the penalties should be much lower. In return, recipients are able to be paid an additional $20.80 a fortnight to assist with employment and training needs. I do not know of too many courses you would be able to buy into or contribute to for the measly sum of $20.80.

As with the existing regime, it is the most marginal who will fail to comply. There is too great an emphasis on compelling sole parents to take up further social and economic participation regardless of the interests of the child. Measures appear to be based on the assumption that parenting needs tail off when children reach adolescence. In fact, the reverse may be true. The hardest period of parenting is during adolescence—a time of great need for children. There are tensions within that child’s life. Independence and peer pressure play a greater role. There is evidence in the United Kingdom that requiring sole parents of teenagers to work has had adverse effects. With no alternative care services for children of that age, teenagers face big issues which need parental support: bullying, truancy, leaving school, minor crime, being confronted with drug and alcohol issues, sexuality issues, mental health problems and, in some cases, even suicide. Some may argue that this is probably the time of heaviest demand in a child’s life. It is a time when a lot of teenagers may well need their parents more than they would at a younger age.

The legislation misunderstands the dynamics of people becoming sole parents, and the timing of the loss. The nominated age when people become sole parents may be at a time when most people experience peak stress levels and may be when children have the greatest need. Parents also have high needs at this time. There are unresolved tensions and changes, sometimes dramatic, in people’s lives. It is difficult to arrange work times to suit children’s needs and it is difficult to find work that fits with parenting, particularly if you are a sole parent. Parents are a significant protective force in children’s lives. Many have only one parent. Many have been through the trauma of divorce or separation, death, violence or even abuse. Will restricting parent’s choices about how they care for their children really improve the outcomes for these young people?

This legislation is based on a number of assumptions that are inconsistent and fail to take into consideration the variety of circumstances in which people live. The approach in this legislation assumes that people on various pensions do not want to work and will not make the transition to work without a threat or an imposition of penalties by the government. Incentives and encouragement to work are replaced by sanctions against remaining out of the workplace. This legislation assumes that sole parents’ responsibilities for caring for their children are less important than their labour market participation. Previously, the view was that parents needed freedom from obligations to work so as to concentrate on the key role of raising children. This in turn erodes the premise that sole mothers are primary carers. It makes assumptions that so-called welfare dependency is a more significant problem than child poverty. It is not.

The legislation makes assumptions that higher labour market participation will improve people’s material wellbeing and raise them from poverty. That, of course, is not the case. Sole parents’ participation in the work force is too low, and this legislation assumes that they are less likely to work than married women—and married women are used as a benchmark to measure failure to participate. Participation in the work force should be seen as a personal decision. In policy terms, this legislation would assume that single parents are not making the right choice. It also assumes that the breaching regimes will not result in greater poverty for more sole parents.
Many of these assumptions are flawed. Let us have a look at some snapshot data: a rise in sole parent numbers from 8.7 per cent in 1975 to 21.5 per cent in 1998. At any one time, the majority rely on social security as their principal source of income. Few sole mothers work part time—24 to 34 per cent. The majority of sole mothers were previously married mothers. But the data and analyses have consistently failed to consider the impact of marital breakdown, especially as it affects women’s ability to participate in the labour market. Often, women withdraw from the work force after separation, especially if young children are involved. In 2000, 18.6 per cent of families in Australia with children under 15 had single women as parents. This is a significant proportion of families. By enacting this legislation in its current form, the government would be putting even more pressure on these women and, consequently, on their young children.

This is a continuation of this government’s policy to abandon Australian women. This government has failed to recognise the situation women endure in their efforts to provide adequate care and financial security to their families. Single parents are already struggling to combine raising children and work or job seeking with trying to stay above the poverty line. Enforcing strict penalties and obligations upon them, as this legislation does, is not going to help anyone. Poverty and unemployment cannot be solved by forcing sole parents, with a penalty of loss of income, to do voluntary work or attend meaningless interviews with Centrelink staff or training for jobs that do not exist in their area. The research has in fact shown that women are trying to change their welfare status by embarking on part-time work or education but only have short-term success. Therefore, it is premature to assume that it is a lack of motivation that stops women entering the work force. Rather, as research suggests, skill support and appropriate employment should be found for these women.

Senator JACINTA COLLINS (Victoria) (10.14 a.m.)—In rising to speak in the debate on the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002, I would like to spend some time putting this issue in its much broader context. It is useful in relation to a number of the other political debates occurring at the moment to do so, because if there is one area of policy differentiation between the Labor Party and the government it is on how to deal with issues of mutual obligation. The Labor Party introduced mutual obligation under Working Nation, but what we see now is a very different creature. However, what we also see now, finally, is the public response to that different creature and to government intransigence in dealing with that public response.

Had there been a different response from government on this issue, we would probably have been in the committee stage of this bill by now but, as I am sure Senator Bishop will detail later, discussions with the government broke down at seven o’clock last night. The sensible, reasoned approach that the opposition has taken to this bill has been ignored by the government because, in the wider context, this is part of a much broader political agenda for the government. This takes me back to the concept of mutual obligation and how this government has introduced a system which is prepared to penalise—heavily penalise—welfare recipients in a way that is applied nowhere else within government. People have made a comparison—

Senator Ian Campbell interjecting—

Senator JACINTA COLLINS—Madam Acting Deputy President, could I ask that the Manager of Government Business in the Senate have his dialogue somewhere other than in my contribution to the second reading debate?

The ACTING DEPUTY PRESIDENT (Senator McLucas)—I agree with you. I ask Senator Campbell to hold his discussions in a different way.

Senator JACINTA COLLINS—Now that the discussions have broken down, I did want to put several matters on the public record this morning. In our clippings from the newspapers today, I think one point said it very well. In the West Australian today there is a letter to the editor entitled ‘His just de-
serts?" from a chap called Ross Sgro, who said:

I have a suggestion for the inquiry into Senator Mal Colston. Amanda Vanstone should be put in charge of it and a Centrelink accredited doctor be assigned to review his new circumstances. I am sure (like the other 30,000 Australians who have been reviewed) that a fair and honest outcome will eventuate and the Senator will get his just deserts.

Put that into the context of this matter. We have heard, through Senate question time and various debates, several examples of where the Australian public is saying, 'Hey, why have we got this heavily penalising system here for welfare recipients but, when we look at what is applied for business and for parliamentarians, you can apply the logic across the whole gamut of different government arrangements and the picture is just so different?' That does not apply just to the breaching regime, though, and this is where Senator Vanstone has got into some very hot water in recent times. This philosophy or approach applies in some other areas such as the family tax benefit. I bring to the Senate's attention what happened several months ago in relation to the family tax benefit. Australians do not like this approach to welfare recipients being extended to the family payment regime, because all Australians have families and children. When you pick up a logic which is associated with—I hope that this is not unparliamentary but I will withdraw it if it is—a bastardisation of the mutual obligation concept—

Senator Ferris—It is pretty unfortunate and it doesn't suit you, Senator Collins.

Senator JACINTA COLLINS—I struggled, Senator Ferris, for a different word to express the concepts but I could not find it. I can withdraw it but I think that the Senate understands the point that I am trying to make.

Senator Ferris—It is very unattractive.

Senator JACINTA COLLINS—Senator Ferris, as you are aware, being in here day and night from Monday morning has somewhat limited my powers of comprehension and vocabulary, but we are all trying.

Senator Ian Campbell—Very trying.

Senator JACINTA COLLINS—We are trying. The concept of mutual obligation has been changed so dramatically with, I have to say, a malevolent intent and a political intent by this government that it nowhere near represents the creature that Labor introduced under Working Nation. The problem for the government, though, is that this mutual obligation concept—the welfare system as a whole and the approach to the welfare system as a whole—does not apply now just to welfare recipients; it applies to Australian families through the family tax benefit. All of a sudden this intransigent, rigid, penalising type of approach has been extended to all Australian families. Suddenly the government started getting the message, 'Hey, this is unfair, this is gross, this is crude, this is inflexible,' and Senator Vanstone had to make the backdowns that she has made in trying to apply this approach or philosophy in that area.

Let us look at another area where, again, this broad approach has created problems for the government: disability support. Again, a rigid, penalising type approach was attempted in relation to the reforms necessary in the disability support area. Labor has continually acknowledged that to maintain a viable welfare system we need to look at serious reform in relation to disability support. There is no question of that. The problem for this government is that the way Minister Vanstone has sought to do it has created problems not only for those in the sector but for her own government. The Australian community will not accept that approach in relation to disability. Unfortunately, the Australian community might be prepared to accept that type of approach for asylum seekers or for single mothers. However, Senator Vanstone has been a bit too enthusiastic and she has exposed herself by extending it to disability support recipients, to family payments and who knows where else in the future until she and others in the government understand that this approach to welfare is simply wrong.

It might work if you could carve off some sectors of the Australian community which the community as a whole at some point is unfortunately prepared to dehumanise or to
demonise, but when it can be demonstrated—as Labor has in the disability support area, in the family payments area and now in this area—that we are quite prepared to contemplate proper reform, then Senator Vanstone is left exposed.

When I talk about proper reform, let us look at the cause of our frustration in relation to the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002. Labor’s position on the bill was that it should be amended to ensure wider exemptions because the proposed exemptions were not quite appropriate, to improve safeguards because the safeguards also were not adequate and to provide greater flexibility in the proposed new participation arrangements for parents and the mature aged unemployed. We have sought to do that in constructive dialogue with the government. However, at seven o’clock last night it became obvious that the government was not really interested in constructive dialogue. What the government really wants to do is to try and beat single parents over the head with a breaching system that we know—and this is not just the Labor Party’s view here—is not working appropriately and is not up to community expectations and standards.

When I say we know this, how do we know? We know this because the Pearce report tells us this. It tells us what the views are regarding this breaching system and it tells us that, rather than wanting to correct it, the government simply want to extend it. The bona fides of the government would be there if they said, ‘Yes, we’re prepared to acknowledge the community criticism from a broad range of areas and from the welfare sector, and we’re prepared to resolve it.’ If the government were prepared to acknowledge that and to resolve it, we could look at an appropriate method of mutual obligation. I cannot say at this stage that what the government might come forward with would be any better than what is here or even that what is better generally regarding breaching would necessarily be appropriate in relation to the circumstances of single parents or low-income families. All of that is unknown because, whereas with disability support the minister claimed that the Labor Party was not dancing, on this one the government are not dancing. If the government are not prepared to take seriously the legitimate criticisms about how breaching is working more generally, how can they expect anyone to take seriously extending them to broader groups, and particularly to broader and more vulnerable groups?

Senator Crossin referred to many of the issues relating to the vulnerability of single parent families and they were all very valid points. However, that is not to say Labor does not believe that mutual obligation should apply in a number of valid and appropriate areas, but again this is mutual obligation on our terms, not this government’s terms. This government are prepared to apply mutual obligation in a completely inappropriate way and even the community is telling us that now.

Senator Campbell is understandably frustrated that more people are now concerned to deal with the bill, because the government’s earlier cooperation is no longer there. However, many of these issues now need to be addressed and put very clearly on the record. I am sure the Senate will understand why, on this breaching issue, someone with my background and involvement in the employment services area throughout the last parliament feels that it is important to deal very carefully with how this breaching system is working. I cannot count the number of hours spent in Senate estimates and other areas in employment services dealing with the various problems and issues associated with breaching. It is unquestioned from all areas other than from government that breaching is not working appropriately and that it is imposing inappropriate and inflexible penalties on people, which is creating poverty.

We now have a system that is not alleviating poverty, which is obviously the objective, and if I pulled out the PBS it would be probably be stated there as an output for the department. However, we now have a system that is working directly and contrary to its own objective. The government’s breaching system is creating poverty and, in many cases, in quite inappropriate circumstances.
Let us take the example that Senator Crossin raised in question time yesterday. Although this is not in the breaching regime, why on earth can’t the system be flexible enough to cater for a mother whose previous partner has been withholding child support payments? Why should she be penalised because of that? There is no sense to it, and the review process, thankfully, addressed that issue. The point here is: why can’t the breaching system be flexible enough to ensure that people are not penalised inappropriately? We have no evidence that the system is acting to the contrary. We do not have that evidence but there is evidence that time and time again this rigid, inflexible system is penalising and abusing Australians.

For the general community, I should put that into perspective. We are not talking about intransigent, long-term unemployed people who will not get off their butts and who only want to sit down on the beach. We are talking about working Australian families who, for one reason or another because of the way our economy is currently operating, are moved in and out of the work force. We know what the employment statistics are. We know the unavailability of employment for so many actively engaged job seekers. We know that many of the jobs people go into have been casualised, and so people have short-term employment and move in and out of employment. That is the way our economy is operating in relation to employment in a lot of sectors. But our system is not flexible enough to ensure that our workers and our families who are suffering from the effects of the economy in that sense get the poverty alleviation that they should. One would think that the more flexible the labour market and the economy become, the more flexible our welfare system should become to accommodate those factors. But, historically, if you look at how it has gone since 1996, it has been quite the reverse. It has gone to a more flexible labour market, a more flexible economy and a more flexible everything else—except welfare.

I point out again that Senator Vanstone’s one big mistake—the one which has exposed her here—is that she thought she could extend that to a system which incorporated family payments. The Australian community’s attitude to family payments is not the same as for welfare; it is not an attitude of, ‘They’re a bunch of welfare bludgers, so we should have a really rigid system to keep them under control.’ That is why she has been left exposed. It is a great credit to the Australian community that the same attitude and view applied to disability support. Senator Vanstone tried it on there. She tried to run it but it just did not work. After the experience that occurred to asylum seekers prior to the last election, the community’s attitude on disability support reminded me that I could continue to be proud to be an Australian. It reminded me that, despite what this government has done in relation to our international standing and our record on human rights, the Australian people could still be relied upon not to demonise a sector of the community such as the disabled.

When Senator Vanstone failed in her attempt to penalise and demonise disability support pension recipients, it reminded me that within the Australian community there was still a common sentiment and cause. I think that, from their experience of how the breaching system is working, they are now saying that about other areas. That is what the Pearce report says and that is what the Senate Community Affairs Reference Committee report found. The Australian community does not believe that this breaching system is appropriate. It should be made more flexible, it should be made more accommodating and it should be made to work appropriately as a system of mutual obligation. That is what it is not, and that is what it must become before the Senate is prepared to contemplate extending it.

Senator DENMAN (Tasmania) (10.34 a.m.)—I rise to speak to the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002. I have a deep interest in welfare issues. Over the years I have done a lot of voluntary work in the welfare area. Indeed, it is one of the
issues most raised by my constituents. The greatest number of people that we get through our office are concerned about issues of welfare. The Chair of the Senate Community Affairs References Committee, Senator Hutchins, is also concerned about the direction welfare is taking in this country. I have had a number of discussions with him, as I am also a member of the community affairs committee, about the potential impact of this bill if it were passed by the Senate.

The community affairs report tabled on 25 September 2002 considered the recommendations of a number of community groups as a result of the committee’s comprehensive consultations in Sydney and Melbourne. The overwhelming opinion of groups as diverse as ACOSS, the Brotherhood of St Laurence, the Sole Parents Union, Uniting Care and the Salvation Army was that the proposed changes to the provision of benefits to groups such as single parents and the mature age unemployed could be counterproductive. The Brotherhood of St Laurence provided evidence of a survey which found that the vast majority of Australians support lower penalties for breaching participation agreements. The vast majority of Australians agree with that view, but the way it is done and how it is applied is the issue. More importantly, the proposed changes demand additional commitments from recipients without covering the costs of honouring those commitments. While the bill provides for a language, literacy and numeracy supplement of $20.80 per fortnight, numerous witnesses at the committee inquiry suggested that the additional costs incurred would be twice that amount.

The system of breaching and participation requirements must be finely balanced to be effective. On the one hand, it must provide significant incentives for welfare recipients to take part in training or work, but it must also ensure that penalties and breaches do not prevent recipients from continuing their efforts to find appropriate work and to live decently. The committee’s inquiry was required to address the Pearce review and its recommendations. The Pearce review presented a balanced and sensible approach to the issues of participation requirements and breaching. The Senate Community Affairs References Committee determined that the Pearce approach represented a way forward both in terms of this legislation and the reform of the penalties regime more broadly.

I note that in the last sitting week the Senate passed a recommendation of the Pearce review in the form of a motion. The result of that is that the Commonwealth Ombudsman should report to the Senate Community Affairs References Committee on an annual basis regarding the system of breaching and penalties. The government tried to oppose the motion, saying that the department would be a more appropriate body to deal with such a report. My suspicion is that their argument had more to do with the politics than the effectiveness of the breaches and penalties system. Having said that, I take note of the bill itself.

The legislation, as it stands, does not accurately reflect the reciprocal nature of the principles of mutual obligation. The bill propose to enforce a series of requirements for single parents which are determined by the age of their youngest child. The penalties which are proposed for a single parent’s breach of their participation agreement are based on the amount for Newstart recipients, but because single parents are paid a benefit not only for themselves but to support their whole family, any breach would have a significant impact upon the standard of living of single parents and their children.

The first breach would mean a cut of $987 for a single parent and their children, but the debate surrounding welfare reform has focused on the need to prevent the intergenerational dependency on welfare. Penalties of this order are bound to affect the life chances of any child of a single parent. If a parent were punished for not attending an interview or training, the inevitable consequence would be that the children would suffer the financial impact. The last thing our welfare system should be doing is punishing children for the choices or mistakes their parents have made. By the third breach, the parent and their children would be liable for a $3,990 decrease in their standard of living over 14 months. Such a drop in income necessitates the prioritisation of expenses. If
that means a choice between food and schoolbooks, I know which one I would choose. I am sure we all know single parents in this position. As I said, we get a lot of these people through our office. They do struggle and they really do try. One matter is absolutely clear, and that is that the penalties as high as those proposed by this bill would affect the quality of life and the opportunities for the children concerned.

There are provisions for the care of children with special needs and disabilities, but the definition of ‘disability’ is limited to disabilities of a physical nature. In this respect, the bill is sloppy and does not address well-recognised issues regarding the care of children. I have a friend who has a daughter with two different mental disabilities, and my friend’s time is spent with her daughter. She is a very demanding child who can no longer fit into the school system. This legislation does not take account of her.

There are, however, elements of this bill which do make very good sense. The bill provides for the reintroduction of the working credit scheme, which allows recipients to build on income credits at times when they receive little or no income so that they are not overly disadvantaged but they do engage in paid work. It is a great idea that was in operation under the Labor government, which the current government repealed but has now decided to reintroduce. The same system is currently in place for youth allowance recipients and has significantly prevented young people from experiencing financial disadvantage as a result of short periods of employment. Any system that punishes individuals for working is a strange one indeed. It is good to see that the government has learned from its mistakes and has decided to implement effective and proven Labor policy. It is clear to almost all of us that there has been a significant shift in the academic and political debate surrounding welfare.

Over the past two decades, welfare has moved from being an entitlement for the individual to being an obligation for both the individual and the government. I have no problems with that. Writers such as Lawrence Mead identified the need for the shift from entitlement to obligation, and he and others of his ilk won the intellectual and moral debate. Our job is to ensure that Australia’s implementation of mutual obligation is fair and that it serves a purpose. Obligation for the sake of it is quite simply demeaning. Some would consider overly punitive measures for the disadvantaged a revocation of the laws for the poor. While I hardly think that we would ever again see the unemployed breaking rocks as punishment for their misdemeanours, we must guard against any scapegoating of welfare recipients. We often overlook their disadvantage, which is the result of misfortune and systematic barriers to achieving their potential.

The principle of mutual obligation, and its practical application of participation requirements, should have the aim of improving the skills of welfare recipients and providing appropriate encouragement to take up those skills. Breaches are an essential element of that encouragement, but they must be carefully and fairly implemented to ensure that the most vulnerable members of our society do not suffer.

The bill does not take into account its impact upon children. I know I keep coming back to this but it is a real issue and, as I have said before, it is the issue that most frequently comes through my office. Nor does the bill consider the many and varied reasons why children require additional care from their parents. Mutual obligation can deliver great advantages to welfare recipients. Instead of being a tool for training and a means of increasing the employability of our work force, the government uses participation agreements as a way of deceiving the electorate and cutting costs to the tune of tens of millions of dollars. As a result, some of the measures contained in this bill reflect a serious misunderstanding of the needs of Australians.

The government must keep up its end of the bargain and allow Australians to flourish instead of punishing them and their families. The McClure report, which was commissioned by the government, recommended that ‘community capacity building’ should be a key element of welfare reform. Community capacity building is a concept where indi-
individuals, government and business work together to achieve mutually beneficial outcomes. It is a great idea which should be necessarily facilitated by the federal government. The problem is that the government’s legislative response to community capacity building has been to provide a token amount of funding for what should be a major program.

The Australians Working Together package contains spending in the order of $1.7 billion. Of that, only $22 million is to be spent on community engagement or community capacity building. Spending $22 million across the entire nation will do little to implement one of the major recommendations of the McClure report, and the spending will be on an existing program, the main aim of which is to promote awareness of the program. If the government were serious about helping the unemployed, the disabled and single parents, it would act on the advice given to it by the authors of the McClure report.

Instead, we have seen government ministers suggest that charities and the non-government sector should do more for disadvantaged members of our society. That will quite simply not happen unless the government gets serious about building community capacity and steering welfare recipients in the right direction rather than merely denying responsibility for their wellbeing. We had a hearing of the Senate community affairs committee yesterday and some of the charities came and gave evidence. Those people are absolutely stretched to the limit. There is nothing that they can do that they are not already doing in the community.

Instead of acting on an ideological basis, as this bill does, we need to legislate according to commonsense. Any change to the welfare system should have as its most basic aim an increase in the employability of all recipients. Sending single parents to pointless meetings does no-one any good. If anything, it will place a significant strain on Centrelink, which is already grossly under-resourced. There is absolutely no point in sending single parents to pointless meetings that do not have a goal. The community affairs committee was told by witnesses that single parents are already very likely to be employed or to take part in training. Instead of encouraging existing motivation, the government is proposing to impose arbitrary requirements on single parents and the mature age unemployed. That is the other group that we get through the office—the mature age unemployed who are getting very vocal about their lack of opportunities.

It is quite simply illogical not to take advantage of very practical recommendations from a report which was commissioned by the government, and instead attempt to impose a system which punishes people for not doing what may well be entirely pointless. While there are elements of the bill which provide for positive welfare reform, such as the re-introduction of Labor’s working credit scheme, many of the changes will miss the target. One gets the sense that this is change for change’s sake so that the government is seen to be reforming the welfare system.

But the government’s application of mutual obligation fails in two key areas. Firstly, while the legislation increases the burden placed upon recipients, it only offers them $10 a week in return. Reform must be fair and must take recipients’ existing responsibilities and financial circumstances into account. Secondly, the reforms will achieve very little in real terms, because the government itself will not commit to helping these people. The government is not willing to invest in people and fulfil its side of the mutual obligation bargain. Welfare reform is needed. This bill is a half-hearted attempt to reform many elements and will do little or no good for the people it affects the most.

Senator STEPHENS (New South Wales) (10.51 a.m.)—I rise to add my concerns to those of previous speakers with regard to the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002. The issues that have been raised by previous speakers—and certainly the issues raised by Senator Denman and Senator Crossin about the impact that this legislation will have on single working parents and their young children—are quite specific and are important issues that need to be raised here and placed on record.
However, I would like to consider some other implications of this legislation in terms of another issue raised by Senator Denman—that is, the impact that this legislation will have on capacity building in communities and the ability, particularly in regional communities, to embrace the principles of building capacity and engaging those people who are long-term welfare recipients in community activities. I am most concerned about the potential impacts of this legislation when I think about communities that I am very familiar with and the people in those communities who are trying to deal with the structural reform of industry in those regions, particularly in terms of agricultural restructuring. There are many communities with high levels of unemployment, particularly of mature age unemployment. We should think through the potential impacts of this kind of legislation on those people and their attempts to engage with their communities.

This issue becomes more of a concern when you think about what is currently happening in those regional communities that are so severely affected by drought. Opportunities for seasonal work, part-time employment or casual employment are limited by the flow-on effects of drought and the declining economic activity in the regions. The measures incorporated in this bill will exacerbate the situation. Really, the issue is about maintaining morale and community spirit. There is a sense in this legislation of a very punitive process that has very little flexibility for people who are experiencing the dispiriting effects of long-term unemployment and the limited extent to which they can actually get over the hump.

My concern rises when I think about particular individuals, families or communities that I have had recent contact with, and about how they are struggling with the whole process. Some of them are having to engage for the first time in the whole process of the Newstart allowance. They are trying to understand and come to terms with a real cultural issue about having to take some welfare support for the first time. Farming communities are generally considered to be very resilient communities, and the individuals who make up those communities are always described as being able to take the knocks and to carry on. But there are those people who have been reduced to being given government support through social security benefits because of an absolute lack of farm income. With the idea of mutual obligation, for example, particularly for parents and the mature age unemployed, it really is a case of how they can engage in the kinds of systems that are being set up in terms of the participation agreements.

It seems to me that this legislation, which obviously has been conceived over a long period of time, does not have in it any kind of flexibility to cover the economic circumstances that regional communities are currently facing. It concerns me very much that we are looking at this legislation almost in isolation to the economic and social circumstances of regional Australia. We do not have the capacity to find ways to work with regional communities to sustain their levels of economic and social activity, to sustain the level of community engagement and to maintain a sense of spirit in many of the communities that are so desperately affected by drought and will continue to be desperately affected by drought as the economic impacts continue probably for at least one whole season or one whole production cycle, which could be two or three years. Where the impacts of something like this will really bite will be in those farming communities that have few opportunities for people to engage in community activities, despite the fact that they have to be part of this reporting regime.

Having said that, I will look at the bill in detail. Many speakers have already spoken about the issue of the parenting payment and the new participation requirement for parents whose youngest child is between the ages of 13 and 15. I understand that the participation agreement requires an activity contribution of 150 hours over a six-month period; that equates to six hours a week. Those participation arrangements could be quite limited in regional communities. Although we have a description of what some of them can be, it seems to me that a generic application of this legislation to the particular circumstances of some regional communities could mean that they are not applicable nor appropriate.
The issues about parenting responsibilities and the impacts on young children of this kind of obligation have been quite significantly explored by Senator Crossin and Senator Denman, and they were part of the considerations of the Senate Community Affairs References Committee report that we heard about earlier. Several of the submissions to that committee’s review, particularly those of the Brotherhood of St Laurence and St Vincent de Paul, have really tried to focus on the potential impacts of that obligation and, to some extent, the perhaps unintended consequences.

I understand very well what the government is trying to do in terms of its welfare reform agenda. Even if we are being most gracious about these welfare reforms—and, of course, trying to crack down on those people who might be cheating the system—it seems to me that this legislation is very much based on sticks rather than carrots. It has a very punitive approach toward a whole range of people who are not trying to exploit the system but who are victims of their circumstances. These are circumstances which are beyond their control in terms of the social and economic environment that we are in.

I welcome the idea, in schedule 2 of the legislation, of providing a language, literacy and numeracy supplement of $20.80 per fortnight to assist people to undertake approved language, literacy or numeracy training. It is an issue of great concern to me that the level of literacy and numeracy in Australia is still recognised as being significantly lower than in many countries. At least one in five people in Australia experiences severe language, literacy and numeracy barriers. Again, this prevents them from participating in a whole lot of social and community activities and engaging in community life, which we consider to be such an important aspect of living in our society. The notion of social participation and of participating in these kinds of programs and training is very important and very valid.

The problem is that we are seeing here one piece of legislation in the legislative program that does not marry very well with some other things that are going on within the federal government’s programs. I would take issue with the fact that, while we have a requirement and an incentive for people to participate in language, literacy or numeracy training, we have not really looked at the capacity for increasing provision of language, literacy and numeracy training, particularly in the regions. The options and opportunities for engaging in those programs are very limited, simply because of the kind of cost shifting that is going on between the TAFE and ACE sectors and the private sector for private provision of basic education access services. That is a problem that we have in the application of this legislation to other things that are going on within the government’s legislative program.

I would like to speak a little about schedule 3, the Personal Support Program, which is intended to replace the Community Support Program. The concern with participation agreements is that, if the government is looking to mandate participation, how are we going to ensure that those who are homeless or extremely disadvantaged are not going to be exposed to indiscriminate breaching? Again, I am thinking of the application of this provision to people who are either itinerant workers in regional communities or, due to the current circumstances, are moving to try and find some employment or opportunities, given the fact that the drought is now moving right across the country. In the case of those people who are actually on the road, working itinerantly or looking for casual work, we have to think about how we are going to ensure that these people are not exposed to indiscriminate breaching.

My greatest concern is about the mature age allowance and whether new applicants for Newstart who are in the age range now covered by the mature age allowance will be impacted. This is an issue and a trend that we are seeing much more of in regional communities. We are seeing a decline in the manufacturing industries or traditional rural industries and more closures. This particular cohort is probably going to see the greatest increase in those registering as unemployed in coming months. How do we send a message to those people so they are not seen to be at a disadvantage and, in many respects,
being kicked while they are down? It is not their fault that they have lost their jobs if their jobs have disappeared from an industry. They certainly do not expect or need to be seen as not having community and government support in their circumstances or to have a punitive regime that sees them being breached.

My concern is about whether or not this bill has the balance right in a whole range of areas. When I am trying to think about legislation such as this and what the impacts are, it always helps me to take it back to the communities and individuals that I know will be most significantly affected by it. This is something that I have tried to do with this legislation because of my concerns. There is also the issue of the modified implementation date for the working credit scheme, which was announced in the 2002-03 budget. I see this scheme as similar to Labor’s earnings credit scheme. Its implementation should not have been delayed. It is disappointing that it has been delayed, because it is one of the few measures that I believe will play a positive part in people’s return to work.

Schedule 7 of the legislation contains an amendment that enables Centrelink to better record family homelessness. In this respect, it amends the Social Security (Administration) Act and relates to the new tax system and the Family Assistance Act. My concern is about the privacy considerations being addressed sensitively. I welcome the fact that this is the case and that it will actually help to identify people at risk to ensure that they are less likely to fall through the cracks and ensure that those people have what they need to participate in the system and get support. My concern about the delayed passage of the bill is that it will affect the start date of the measure. It is very important to make sure that that does not happen.

I ask the minister to think about the impacts of this legislation in terms of the current situation in regional Australia. We have to make sure that we consider the economic circumstances of people living there and the flow-on effects of the drought in regional communities, regional industries, regional employment. We have to make sure that we consider the winding back of a whole lot of social and community activities that occur in times like this in regional communities because of the whole process, and how that impacts on people’s opportunities for social participation and the requirements that the minister is seeking in that regard.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (11.09 a.m.)—I thank senators for their contributions to the debate, some of which I think have been particularly apposite and demonstrate a clear understanding of what the government wants to do, albeit at the edges there might be some disagreement. It seemed that Senators Bishop and Moore both understood the broad thrust of the measures for parents and for the mature unemployed and recognised that closing access to partner allowance and mature age allowance offers a better chance of providing help to get people moving back into the work force. I was certainly encouraged by what Senator Moore said—that she just wants to make the system work more effectively. I remind her that that is what the Australians Working Together process and package is all about—getting the welfare system to work more effectively. I note that, on behalf of a number of senators, views have been expressed about the current breaching system. I will come back to some remarks I want make about that in a minute. The government clearly does have a responsibility to the broader community to maintain balance in its programs but, as I say, I will return to that later.

Senator Cherry made some remarks that it might be appropriate to respond to. It was not clear to me that he understood that the requirements that are proposed for single parents of teenage children are very modest—150 hours over each six months, which might be lower if needed, depending on the parent’s circumstances. There is a lot of flexibility under the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002, with requirements being tailored to individual circumstances. People can manage their own hours...
of activity over the full six months, so they can do that during school terms and they do not have to do anything during the school holidays; it is really only a requirement over six months that needs to be looked at. There is obviously a much softer breaching regime proposed for the activities required of sole parents and I think that is appropriate.

Senator Cherry was incorrect, I am advised, because he apparently said that there were no additional JET services. If this bill were to pass, by the time the measure is fully implemented there would be more than 400 JET advisers and personal adviser resources focused on helping parents, compared to about 100 or so JET advisers at the moment. Instead of 55,000 parents getting help each year it would be more like 295,000. That is a massive increase in the sort of help that we want to provide to sole parents, who inevitably are asked to return to the work force when their youngest child turns 16. To ignore them up until that time and not give them help until that time is, in my view, close to criminal neglect. Yes, we want to make the annual interviews compulsory, but that is backed by research that such a requirement is needed to reach the people who need most help. Some of the people who need most help do not have the view that going along to an interview will be of any assistance and do not have the motivation to do that. It is cruel and abdicating your responsibility to simply say, ‘If you don’t want to come, that is fine.’ It is our job to get help for these people.

I was a little bit concerned about some remarks I heard Senator Harris making in response to Centrelink’s constant search for new and better technology to provide assistance. He is apparently particularly concerned about voice recognition technology. Voice recognition technology will be optional for customers to use; they can talk to real people if they prefer. But welfare groups and many people on income support have welcomed the fact that Centrelink is introducing the technology. For many people it will be a lot easier and they will prefer that, but I want to make it clear that they do not have to use it if they do not want to.

I would also like to make some comments about child care. I heard Senator Crossin talking about child care. I share her interest in that and her understanding that there is a need to have significant child care available, because that is one of the key inhibitors of women being able to return to the work force. I think the child-care programs that this government offers can be described as one of the most important parts of our assistance to families. It is not an exaggeration to say that for many of our customers our assistance with the costs of child care is what allows them to in fact go back to work.

Like all of the important programs, it is subject to political scrutiny—and that is healthy. But it is quite wrong to say that this government has cut child care. I will run through a few figures very quickly because I know that child care is not the central part of this bill, but I am very proud of what this government have done. We spent a record $1.6 billion on child care in 2001-02. In our first six years in government—and I hope there are many more—we have spent more than 70 per cent more in real terms than Labor spent in their last six years. If anybody wants to have a debate about which government has been of more assistance to families who are looking for work, I think the government that, in a six-year to six-year comparison, spent 70 per cent more in real terms is going to win that debate.

We have made very significant increases in child care. Child-care costs went down by 9.6 per cent after the introduction of the child-care benefit on 1 July 2000, and I am told that comes from the ABS CPI statistics to June 2002. The child-care benefit provides substantial increases in assistance for most families and, particularly for most low-income families—say, with two children in full-time care—the assistance is around 74 per cent of average centre fees and an average of 85 per cent of family day care fees. The number of child-care places has in fact nearly trebled in the last decade. The reason we have had a mammoth increase in places as opposed to money—although, as I say, a 70 per cent real increase in money spent is very significant—is that a lot of those have been outside-school-hours care places, which were not provided for adequately by the previous government and which are central for women who want to return to work; I think that is Senator Crossin’s concern.
Senator Nettle in her remarks is quite wrong in suggesting that the government wants to blame people for their own circumstances. The burden of assisting people under this bill is on the government. This is a bill that is going to cost the government money. We are investing in people on welfare and trying to help them, and there are very significant protections in the bill to ensure that penalties are applied only as a last resort. I have dealt with the remarks Senator Crossin made, but I welcome her acknowledgment of the added protections that are provided in the bill for sole parents.

It is wrong to say that interviews with Centrelink are meaningless. Of the parents on welfare when their youngest child turns 16, half are still there five years later. If anybody here wants to be in that position, fine, but I do not think anybody does. The government is committed to providing better assistance for those women during the period their child is 13, 14 and 15 so that the transition back to work is a lot easier and they have a better chance. The current system does almost nothing to help them. Senator Collins did not address the bill terribly much, so I do not think it is worth responding to her remarks. I think it is important to recognise, though, that the recent changes to administration of breaches reinforce the application of penalties only as a last resort. Those changes were announced in February and introduced in July; they have not had even five months to work.

I will now go to the breaching issue. I think it is fair to say that the government was listening to what the Labor Party wanted to say with respect to this bill and was considering changes it wanted to make. The Democrats wanted things that were a bit further out of field and the negotiations with them were not looking as though they were going to be as fruitful. This bill has been available for a very long time, but yesterday we were advised by Labor that, unless some changes are made to the breaching system outside of what we are talking about in this bill, the bill will be split—and it follows, obviously, that Senator Cherry would not like my saying this—and there will be some cherry picking out of the bill; those bits that will cost a lot will go through and the other bits will be held up. Mr McClure, in his assessment of welfare reform, made it very clear that cherry picking was not on. His message at that point was for the government: do not just pick out the bits you like; recognise that, for welfare reform across the board, you have to make significant changes; you have to have the carrots and the sticks, and you have to move together.

We have put forward a package that essentially does two things. It introduces a working credit—and I acknowledge the apparent support for that—at very substantial cost at a time when there is not a lot of money around in any event. This government are not like the previous government; we do not want to put Australia back into debt. We have spent the first six years of government paying off something like $60 billion worth of debt. That is $60 billion that, had it not been racked up in debt, could have been spent on other things. I believe the annual debt interest repayments—not the principal—were up around $4 billion, $5 billion or $6 billion. That is money to pay for promises made earlier to keep other politicians comfortable. It is very easy for a government to spend, to put the country into debt, so that it can appear popular. But, in the end, somebody has to pay it back.

Make no mistake: I urge colleagues on the other side of this place to understand that every minister in this place understands very clearly what they could have done with $60 billion over the last six years if we did not have to pay off Labor’s debt, if we did not have such high interest bills. You can pick any portfolio you like, give them whatever portion of that $60 billion you like and regret what has not been done because previous people just spent—because it makes politicians popular to spend, and someone else has to foot the bill later. We will not do that. We are in a difficult economic situation. We have got the economy on track: mortgage rates are down, interest rates are down, unemployment is down. That is why we intend to keep it on track. We do not want another recession, we do not want young people, the least successful or the least well trained—the most vulnerable—chucked out into unemploy-
ment, as inevitably happens when you do not run the economy well and you fall back into recession. We will not let that happen, so we will keep our budget in order.

We come to this chamber with a bill to spend a lot of money investing in people on welfare and we find at the last minute—the bill having been around for months and months—that some people on the other side want to play games. They say, ‘We don’t like what you’re doing in another area of welfare and, unless you change it, we’re not going to let these changes go through.’ Be that on your heads if that is what you finally choose to do, because you are actually saying to a government that keeps the budget in order, ‘Unless you cater to our whims to spend more, unless you go soft on welfare compliance, you won’t get these changes.’ We will argue that case. These changes spend money on people on welfare. They invest in them. They do not take money from them. They do not increase the amount of money they are given either. They invest in people. Both of these measures do that. They give people a greater chance. If you want to reject that, you do so. You go and tell the electorate that, because you could not go softer on welfare compliance, you have rejected the opportunity for welfare reform in a balanced package. You go and tell them that and see how you go.

Mr Acting Deputy President, in listening to some of the speakers, you would have thought that this government was a mean and nasty government. I do not walk away from welfare compliance. This portfolio spends one-third of government outlays and, I tell you what, the lady cutting tomato sandwiches for a job and the guy pushing a spanner for a job who have their taxes taken from them do not want the government to say: ‘Don’t worry, that one-third of expenditure goes on welfare. I’m sure everybody will do the right thing. We don’t want to get nasty with them, do we? That would be dreadful.’ The lady cutting tomato sandwiches and the fellow pushing a spanner do not want you to be nasty, but they do want you to make sure that welfare goes to the needy and not to the greedy. They do want us to make sure that people live up to their requirements if they are going to put their hands out and take money from other taxpayers. That is the case. That is what we will pursue. We will give the money to the needy. We want this bill to pass so more can be invested in them. But we will not go soft on compliance in order to get it.

When this government came to power, if you got breached you got a 100 per cent breach. That was the Labor system: 100 per cent, you are out—not three strikes and you are out but one strike and you are out. We changed that. We softened the breaching regime to make it more sensible. We introduced a tiered system which, I am advised on checking today, was passed in this chamber in a non-controversial bill. Help me: what does that mean? I think it means that it was a bill that went through on a Thursday and nobody objected. In other words, the bill to soften the breaching regime had the support of this parliament. When I see senators on the opposite side neglecting to mention that their parties supported the regime, which was a softening, that their parties supported the penalties that were there, I do not think terribly much of them. Those who know the truth will judge them accordingly for being very selective in what they come and say in this chamber.

We moved to a three-stage breaching system. How does Centrelink—a great agency that has terrible difficulty in dealing with clients—know whether someone who comes to the counter and did not show up for an appointment has got a reasonable excuse? It is not always easy. Someone who is an alcoholic does not always want to say to someone at the counter, ‘I got so drunk last night that I passed out and didn’t wake up and didn’t get to my appointment.’ You can understand people not wanting to say that or not wanting to say that they got an intellectual disability or not wanting to say that they got kicked out of the house because they were bashing their wife and they have got to DVO on them and they are now homeless. It is not easy to get that information from people, and Centrelink does its best to do so. We have been working on that. Senators will know that Centrelink’s extra care in looking at the vulnerable over the last
year has resulted in a significant reduction in breaches. That is not denied by anybody, including ACOSS. There has been a very significant reduction in breaches. What I said in this place—that we would look at that carefully—has clearly been done.

Then we come to the so-called independent review of breaching, the details of which were announced earlier this year. Australians ought to focus on this fact: there were 26 recommendations there; 19 of them have been implemented. So you have got a government that has been elected by the people three times that has implemented 19 of 26 recommendations in relation to breaching, that has taken them down by a third over the last year and still we have people opposite coming in here with a load of claptrap saying: ‘Unless you go softer, we’re not even interested in listening to whether these changes work. They’ve had five months. We don’t even want to know. We’re not going to give them 12 months. Either you make these changes or you do not get your bill—a bill that invests in people. This is not a bill that cuts welfare; this is an investment in welfare—with simple requirements on sole parents that they will easily accommodate. Is one interview—one interview to help them recognise where they can go and get their skills upgraded or at least maintained—a year too much to ask? Then when their youngest child is in high school there will be five or six hours a week, which most of them would be doing anyway, by way of volunteering and participating in the community—unless of course you over there have a lower view of sole parents than I have. I would be happy to hear it if you do. I would be quick to spread it around. Then there is assistance by way of the income credit.

I am very sorry that this has happened this way. We have been doing everything we can—19 out of 26 recommendations implemented—and we have had sensible discussions, and at the eleventh hour you guys pull the rug out because you want to make an issue of something else, on which we have a better record than you do. If that is where you want to have the argument, let us have it.

Question put:
Bill read a second time.

Contingent Motion

Senator MARK BISHOP (Western Australia) (11.37 a.m.)—Pursuant to my contingent notice of motion on page 34 of the Notice Paper, I move:

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.

The opposition is greatly disappointed that we have had to come to this point. Ideally, we would prefer to keep the bill intact. The unwillingness of the government to negotiate in good faith to achieve a fair and reasonable outcome is the only reason that we are moving to split this bill. There are elements in the government’s bill that would be of benefit to a number of welfare recipients. To mention a few: the working credit, the numeracy and literacy supplement and the personal support program. We fully support those measures and the intent behind them. However, in our view, other measures in the bill—for instance, the participation requirements for parents and mature age people—do require additional safeguards.

In addition, it is Labor’s view that it is not appropriate to proceed with these measures without the government taking a good, hard look at the operation of the existing breach regime for job seekers. We assert most strongly that it is seriously in need of repair. However, despite substantial efforts by the opposition to find a path through these issues, the government has refused point blank to consider a set of reasonable propositions put by the opposition to the government. We are now in the position—and the Minister for Family and Community Services outlined it in her response to the second reading debate—where the government simply wants to ram through its legislation in the Senate.

Let me talk about consultation in recent weeks and months with the government, because this bill has been on the table for some time—the minister was correct when she said that; it has been around the place. From day one, Labor has been engaged in a constructive debate over welfare reform. Labor has been clear on its position on the bill and has attempted to engage the government over the weeks prior to today’s debate. On 23 October, a brief outlining our intentions and proposed amendments was forwarded to the minister’s office. In this brief, Labor signalled to the government its willingness to work through the detailed drafting of any amendments. In the initial meeting shortly afterwards, the government said it was very prepared to work through individual amendments and viewed many of them positively.

In addition to Labor’s detailed second reading amendments circulated on 23 October, the first batch of detailed amendments were forwarded to the minister’s office on 24 October—over three weeks ago. These comprised the bulk of Labor’s amendments to the bill. After some drafting issues, the second batch of residual amendments were sent to the minister’s office on 12 November, three days ago; and the final batch on 13 November, two days ago. Labor has been willing to meet with the government and departmental officials at any time to discuss detailed drafting issues. However, the government indicated that it did not want to proceed with the detailed drafting until all amendments were received.

There was initial agreement to meet to consider these detailed issues yesterday morning. However, the government, for reasons of its own, chose to delay that meeting until 6.30 last evening. Despite having agreement before the meeting that issues would be considered in detail, the government refused to deal with specific details of
any amendments and indicated it would not enter into any discussions on any alterations to the bill whatsoever. Mr Acting Deputy President, you can imagine that that took Labor completely by surprise. We had provided the essential thrust of our amendments. We had provided detailed sets of amendments for the government to consider and to have reviewed by its departmental officials and to take legal advice if further technical changes were needed for drafting that was not appropriate.

For two days we waited for the call. We were put off yesterday, and at 6.30 last night—the eleventh minute of the eleventh hour—the government’s position was: ‘We don’t want to negotiate with you. We don’t want to have any discussions with you. We don’t want to talk about either the substance or the form of the amendments that you have had on the table for so long. We will take our chances in the chamber.’ So what has occurred is a direct result of the government’s intransigence and the government’s unwillingness to engage in serious negotiations that seek to improve the changes to the breaching regime and provide necessary, fair, just and appropriate protection for those who are in receipt of a range of welfare payments and for whom, in this country, it is appropriate they receive some protection of fundamental and basic rights.

Having outlined the background to the contingent notice of motion, let me address three issues that follow from that. Firstly, why split the bill? Secondly, what are the third party comments, interest or support for the proposal of the opposition to support the bill? And, thirdly, what would happen with the passage of the bills? Firstly, splitting the bill is a simple and straightforward method of handling the contentious aspects of the bill. Splitting would allow the government to proceed with the beneficial measures that are contained in the bill. I think there is indeed agreement around this chamber that there are beneficial measures in the bill that should be supported and should go through as a matter of urgency. Secondly, it allows the government to rethink the contentious measures to ensure its proposed changes are worked through fairly and with integrity. It will allow the government to consider the merit of the current breaching arrangement for job seekers. The government says it has had wide-ranging consultation with the community sector. We would submit that it is the height of arrogance to run this argument when there are numerous complaints anecdotally but, more importantly, from a range of peak community and welfare organisations to electorate offices. There have been numerous complaints in writing about the operation of the breaching system and the imposition of unfair penalties.

We should look at some of the comments of the Pearce review and the Ombudsman’s report. It is not beyond contest that our system of breaching is flawed and unfair; a litany of reports have drawn attention to these deficiencies. The St Vincent de Paul Society have drawn attention to the large increase in the number of people coming to them for emergency assistance as a result of breaching. The Salvation Army have emphasised that breaching activity leads to people committing crime. The Salvation Army’s Stepping into the breach report had this to say:

... breaching is compounding the already impoverished status of the unemployed, and for significant numbers, is a contributing factor in homelessness and crime.

Hanover Welfare Services have done research for the Department of Family and Community Services that shows that a majority of homeless clients have experienced breaches. Remember that these people are some of the most vulnerable in our community. Hanover found that 76 per cent of their homeless clients have been breached. Clearly, that is not what social security compliance systems should be about. Welfare Rights have done several reports that show arbitrary breaching practices and a concentration of breaching of young people. The department also knows from its own investigations that Indigenous people experience far higher rates of breaching than the general public. But the most telling statistic is the government’s own: 259,000 unemployed people were hit with breaches last financial year. Those people lost at least $800, and they lost it for six months, regardless of their actions in following that breach. As St Vin-
cent de Paul have noted, the penalty for failing to lodge a tax return is just $110 but for those who breach the social security system it can be $800 and rising. Of those who appealed those penalties, around 43 per cent—approaching half—had the breach overturned. So there is clear evidence of arbitrary penalties that in many cases have been misapplied.

Last year a number of churches and charities asked an independent committee to investigate the breaching regime. That independent review was established following a trebling in the number of penalties imposed over the three years since 1998. Despite some reforms by the government since the review was established, the number of penalties remains at least twice as high as in 1998. Individual penalties can often exceed $1,000. That committee, which included Professor Pearce, Ms Ridout from the Australian Industry Group and Julian Disney, looked carefully at the regime. The product of their inquiry, a substantial report, found that failings in the design and implementation of the system caused ‘many unemployed people to suffer arbitrary, unfair or excessively harsh penalties’. It also found:

- There are also many occasions when it diminishes people’s capacity ... to continue seeking work and become less dependent on social security.

Dennis Pearce, who is dean of the law faculty at the Australian National University, said that the review ‘found that the breaching system concentrates excessively on achieving high breach rates and penalties rather than encouraging active efforts to find work’. He argued—and who can argue with this—that it should be ‘fairer, more cost-effective and strongly supportive of attempts to escape welfare dependency’.

The review proposed a package of reforms to improve job search efforts and increase successful employment outcomes, thereby reducing social security expenditure. The package would improve help for genuine job seekers while also pursuing and punishing the small proportion of people who seek to abuse the system. The Pearce review recognises that some errors are inevitable in administering such a large and complex system, especially with severe constraints on staff resources and time. But the review found that the scale of current problems requires substantial improvements to be made. In Professor Pearce’s view, many of the problems arise when Centrelink or Job Network members fail to communicate effectively or to investigate job seekers’ circumstances thoroughly. Other problems arise through Centrelink failing to observe due process and to apply the relevant legal criteria before deciding to impose penalties.

That independent review made 36 recommendations aimed at achieving better processing for interviewing, assessing and communicating with job seekers; better decision making when imposing obligations on individual job seekers and referring them for assistance; stricter procedures for investigating potential breaches and ensuring that breaches are not imposed unlawfully; more help for job seekers who are trying to comply with their obligations; removal of excessive pressure and incentives to impose breaches and penalties; and fairer and more effective penalties.

The Pearce report is a reasonable blueprint for reform, which the community affairs committee report on this bill has endorsed. This past week we have been overwhelmed by organisations working on the front line who agree, as do we, that reform is needed and that Pearce is a fair model. I refer to Burnside, which works with vulnerable families and children; the Salvation Army; St Vincent de Paul; ACOSS; and the Brotherhood of St Laurence, who I might add engaged Newspoll to test community support for the current regime of breach penalties. Interestingly, this poll found that a majority of people do not support the current level of penalties. Those organisations have been joined by the Australian Federation of Homelessness Organisations, the Australian Association of Social Workers and People with Disabilities (NSW) in calling for the government to adopt the Pearce report. The Pearce report is not a blueprint for a weaker social security system; it is a blueprint for a stronger regime focused on getting compliance. If the government turned its attention to the totality of the recommendations, as it
has been unable to do so far, it would be able to achieve that thorough reform.

Let me refer in passing to some of the comments that the opposition has received this week from the St Vincent de Paul Society, the Salvation Army, the Uniting Church and others. The St Vincent de Paul Society says:

The breaching of welfare recipients can result in the loss of from $800 to $1,500. The initial breach begins with an “18%” reduction in payments for 26 weeks. The inevitable result of a welfare recipient being breached is that they can’t pay the rent and power bills so find themselves deeper in debt and out on the streets. We know this because our volunteers see examples of this every day.

The Salvation Army says:

The Salvation Army also believes that these penalties are excessive, unfair and out of line with penalties meted out in other forums.

The UnitingCare Burnside says:

Burnside’s work with vulnerable families leads us to the view that the AWT bill—the current bill under discussion as it stands—will impact negatively on many children, young people and families who are already vulnerable.

It concludes:

I look forward to reassurances that your government is committed to the creation of stronger families and communities by arguing for amendments to the bill that create a fair and equitable social security system.

The Australian Association of Social Workers comments in passing:

The facts are that this bill fails to address the problems inherent in the breaching system that cannot be overlooked.

It is clear that the Pearce report found a whole range of complaints going to communication, processing and contact or lack of contact. It had numerous complaints about large penalty payments being imposed on welfare recipients. It had continuing complaints about processes of communication, whether by phone, text message or other means. It had numerous complaints about people who did not receive notices that they were required to attend meetings or who did not attend meetings, pursuant to agreements, held with the department. The minister herself alluded to some of those problems: people with domestic violence problems and people with alcohol problems—people who are not able to look after themselves. However, as they fall through the cracks in the floor, the reaction of this government is to breach them and to impose a penalty for events that are essentially physically or mentally dependent or related.

We say that future progress can be relatively simple concerning the totality of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002. If the contingent notice of motion receives majority support in this chamber and the motion goes through in the committee stage to split the bill, we say that the No. 2 bill should be expedited and the government should support it if it wants to progress welfare reform. It should report on that bill at the earliest convenience. The No. 1 bill, with the contentious measures, proceeds with a wide range of amendments. The government needs to honour its prior commitment to consider those amendments seriously. The government also needs to give consideration to drafting amendments of a technical nature to take account of drafting due to the split of the bill.

In summary, the opposition are greatly disappointed by the government’s approach to this bill in refusing over the last two or three months—and particularly over the last two days—to negotiate in good faith. The opposition fully support the beneficial measures in the bill, namely the working credit, numeracy and literacy support programs and the PSP. They are supported. However, we believe and argue that the other more contentious measures in the bill, namely the working credit, numeracy and literacy support programs and the PSP. They are supported. However, we believe and argue that the other more contentious measures in the bill, for example, the bill’s participation requirements, require further consideration. We say that consultation with the government has been poor. We have had nothing but government delays. Finally, we comment that the split allows the passage of beneficial measures and allows further consultation to occur by the government, the opposition and the minor parties with the community sector. For those rea-
sons, I have moved the motion on the notice paper that stands in my name.

Senator CHERRY (Queensland) (11.57 a.m.)—The Australian Democrats will be supporting the motion moved by Senator Bishop. Like the Labor Party, we support many aspects of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 but we have great difficulty with other aspects of it. We think that whether the government accept the motion is an important test of the government’s seriousness about welfare reform and about ensuring that there is a genuine fair go for low-income earners. If they allow the provisions to proceed through the Senate today, this will set up the non-controversial parts of the package and allow the other parts to be discussed further.

I should also note that the Labor Party signalled their difficulties in negotiating on the bill and I want the Senate to note that the Democrats have also had some difficulty negotiating on the bill. I wrote to the minister on 21 October outlining some proposals dealing with the issue of forgiveness of breach penalties and we are still awaiting a response, even though the bill has been brought on today. It certainly makes it difficult from our point of view to believe that the minister was ever serious about negotiating on the bill, either with the Labor Party or with the Democrats.

I also want to note that I suspect that part of that lack of seriousness is because the government needs to save the money. The $913 million that the bill represents is something that Peter Costello already has his paws on. I would be interested to hear from the minister whether the government is prepared to discuss any amendments to these bills. The minister would be well aware that, when you deal with the schedules that deal particularly with sole parents, both the Labor Party and the Democrats are on the record as saying that they have serious concerns about those provisions. The Labor Party has indicated that it has serious concerns about the breaching provisions and the protection of family responsibilities, and the Democrats have serious concerns about the whole thing, including the notion of compulsion. The Democrats obviously favour the voluntary involvement of sole parents in labour market programs and we note for the record that they have the highest participation rate in the labour market of any recipient group. However, we have certainly had concerns about the elements of compulsion in that schedule.

It would be unfortunate, and a very sad statement on the government’s priorities, if the majority of the Senate’s concerns with the provisions dealing with sole parents, penalties and breach allowed the rest of the bill’s non-contentious provisions to fail. As I said, how the government deals with this motion will be a very important test of the government’s commitment to deal with some of these issues.

I also note that the Democrats will move a number of amendments dealing with the breaching regime when the second part of the split bill is discussed. I do not want to deal with those in any great detail today because we will have a long debate on them. But I do want to note that the breaching regime is not just a concern dreamed up overnight by the Labor Party or by the Democrats or by the welfare sector; it is also a concern shared very emphatically by the Ombudsman. His annual report this week is worth reading, and I will summarise some of the things he had to say. The Ombudsman noted that his report last year dealt with breaching and in the annual report this year he states:...

...an analysis of a sample of breach penalty complaints by my specialist Social Support team indicated that the problems identified in last year’s report have persisted, despite Centrelink’s implementation of specific training and procedural initiatives.

He went on to say:...

...there did not appear to have been any attempt to contact the person prior to arriving at a breach penalty decision ... where a person did receive an opportunity to explain their actions they were sometimes presented with an unreasonable burden of proof to verify the explanation offered

• to establish an activity test breach it is necessary to investigate and decide on a range of issues that vary according to the requirement that is alleged to have been breached. In many cases these additional issues were not
investigated or considered before imposing the breach penalty.

He continues:

The practices we identified raise concerns about basic issues of procedural fairness and proper application of legislated provisions. These practices were found in the majority of the breach complaints we investigated.

The amendments we will move to the second part of that bill are very serious and ones which I believe the government needs to take on board. The Pearce recommendations deal with the issues identified not just by Pearce or by the welfare sector but by the Ombudsman himself in terms of how the breaching regime should be applied. I accept that the government may need some time to work through those amendments, given we tabled our amendments only yesterday, although our position on Pearce would have been well known to the government before that. The Labor Party have been trying to have these amendments discussed over the course of the week. Hopefully, that delay in dealing with those amendments will be important and will result in the Senate coming to a consensus view on how it deals with the issues of social security law which have been reported to it by the statutory office bearer responsible—the Office of the Commonwealth Ombudsman—for ensuring that the law is applied properly.

I want to place on the record our very strong support for the three schedules the Labor Party proposes we deal with today. They are the provisions dealing with the language, literacy and numeracy supplement, the working credit and the personal support program. The Australian Democrats strongly support the language, literacy and numeracy supplement of $20.85 per fortnight, although we believe the amount is woefully inadequate. Having poor or absent reading, writing and numeracy skills makes it harder to get a job. When you are one of seven unemployed people competing for every job vacancy in Australia at present, it also makes it impossible. It also makes it impossible for you to decipher Centrelink correspondence, access the self-help facilities of the Job Network or even use a Centrelink touch screen. It is interesting to note that, while the government clearly places emphasis on the value of language, literacy and numeracy training in this bill, it does not seem so ready to extend that essential training to holders of temporary protection visas who are not permitted to access the full-time English language courses. But that is a matter for discussion in another bill.

There is a compelling argument for the reimbursement of fares and travel costs so as to remove disincentives to job search. The amount of $20.80 is not a lot of money; it will barely buy you three days of public transport in larger metropolitan areas. For those travelling for 90 minutes in each direction to undertake literacy training, $20.80 will certainly not cover their fare there and back in a day. But the Democrats will support any assistance given to people to overcome their disadvantage, as inadequate as this measure is. It is therefore imperative that the supplement is indexed, in line with changes to the average male total weekly earnings; otherwise, it will become increasingly irrelevant in achieving its aim of helping people to participate in training programs.

The Australian Democrats welcome the working credit, although it is a case of deja vu. The concept of an earnings credit is not new; it used to exist, albeit as the earnings concession scheme and the earnings credit, until the government abolished it in the 1996 budget. I should note for the record that the Democrats strenuously opposed the abolition of the earnings credit scheme in 1996, and we are very pleased to see that the government has reintroduced it. In fact, some form of earnings concession or working credits first started in the social services in Australia post World War II, I am informed, in order to encourage widows’ pension recipients to undertake work in the industrial boom occurring at the time. This government saw fit to discard the scheme in 1996. Regrettably, it did not replace it with tax credits or other programs to address the disincentives offered by the combination of initial costs of participation in work and tax thresholds. It was with expectation that we learned of this measure in the government’s budget of 2000-01, only to be dismayed subsequently when
we learned that its implementation was to be delayed until 2003. Again, that whole notion of saving money seems to be the underlying discussion that we are not really having today.

One does not have to be cynical to believe that the government are not serious in progressing the working credit initiative. It will cost $420 million; they have already delayed it by nine months and now they are facing a budget deficit. A government serious about assisting Australians to take up paid employment would not have linked it to disadvantageous measures of extending punitive breaching to sole parents and older Australians and to the abolition of the mature age allowance. We really cannot see how this is a package, as I am sure the minister has argued, because these measures are not interrelated; they are not linked. The tying of one to the other is purely a political ruse to try to bludgeon the Senate into submission.

The government’s opposition to splitting this bill so as to enable this measure to proceed more quickly is reflective of one that does not have the interests of unemployed Australians at heart. Whilst the measure is inadequate, the $1,000 maximum working credits will soon be used up in casual work such as a couple of weeks grape-picking. It does not reflect economic reality. However, we accept it is a step in the right direction and we will support it as a very good step on which we can build subsequent schemes. The working credit will act as a significant inducement to people to take up part-time and casual work opportunities and will allow them to offset the initial costs of participation such as fares, parking and clothing by keeping more of their payment. It will make it easier to resume payment when a short-term job ends, and it will help to put a hole in what is one of the most significant poverty traps in the Australian social security system.

The Australian Democrats welcome efforts to improve the level of people’s economic participation, as they bring benefits to the individual and the community. It would be better, however, if the ‘income free area’ were set at $62 a fortnight, the same as the current level for adult Newstart recipients. Setting the rate at $48 a fortnight, as this bill proposes, will add unnecessary complexity for income support recipients who might undertake casual employment and is likely to cause them considerable confusion.

The personal support program is welcomed but, again, it is incongruous when, at the same time, this government continues to impose breaches on young, vulnerable and disadvantaged Australians, including those with a mental illness or drug and alcohol problems. Interestingly, this government includes homeless youth in this category, at the same time as the Independent Inquiry into Breaching, the Commonwealth Ombudsman, the Hanover Foundation and the Salvation Army have all identified homelessness arising as a direct consequence of inappropriate breaching.

So it seems that this government, through punitive breaching, has created a group of homeless youth and now attempts to offer them personal support because of that homelessness. The present punitive breaching must be amended, as recommended by the Pearce report, the Ombudsman and countless other reports, and the Democrats will move to do so in the committee stage of the second bill; otherwise, the 45,000 places allocated by this program will all be taken up by those who have fallen victim to the government’s misdirected breaching program, leaving inadequate resources to identify those at risk in the first instance.

Over the last 25 years in Australia, there appears to have been constant and sometimes radical changes in the names, processes and emphasis of labour market programs that have been operated in Australia. This has been accompanied by the tendency of governments to forget or discard knowledge about what works best and for whom. We see programs come and go, and reappear again. For a government to assist individuals to find secure and sustained employment, it must sustain the elements of good practice. These are: the careful, iterative and cumulative assessment of the needs and circumstances of the individuals being assisted; the development and articulation of realistic pathways which people can follow to gain employment; the positive and constructive engagement of all the people being assisted, with
individual and consistent personal contact provided by a counsellor or adviser; ensuring that people have a clear understanding of what is expected of them and what they have a right to expect in terms of the nature of the assistance to be provided; gaining people’s commitment to, and implementing and coordinating, a sequence of assistance tailored to meet their particular needs and to overcome their barriers to workforce participation; monitoring people’s progress through sequences of assistance, and also monitoring the extent to which they are meeting their own side of the bargain in terms of effort and participation; and appropriate challenging of people who fail to reasonably meet their agreed obligations, assuming those obligations are fair and reasonable in the light of their personal circumstances and only after full consideration has been given to the reasons behind that failure.

Piecemeal approaches to policies and legislation that are being delayed or held to ransom by punitive measures, such as in the original bill that the Labor Party is seeking to split, or which have not been accompanied by job creation programs, reflect a government which is not serious about addressing the devastating social and economic impact of long-term unemployment. We support the splitting of this bill and would welcome the opportunity to impart a degree of fairness on the participation provisions for sole parents and older Australians in the deferred elements.

Senator NETTLE (New South Wales) (12.10 p.m.)—I want to put on record that the Australian Greens will also be supporting the splitting of this bill that has been proposed by the Australian Labor Party. We will be doing so because we would like to facilitate the passage of what we believe to be the good parts of this bill—that is, the support for the working tax credit that we have heard others talk about in the chamber. We would also like to see the passage of the supplement for language literacy and numeracy, although we believe the supplement as currently proposed is inadequate and does not go to the same extent to address the real training concerns of unemployed people that we would see through a genuine government commitment to vocational education and training in this country. We also would like to see the personal support program facilitated through the parliament, because we recognise the support that it provides for particularly vulnerable and disadvantaged sectors within the community.

We do not support the mutual obligation regime as currently put forward by the government and we do not support its extension to sole parents and mature age unemployed people. Whilst not supporting the mutual obligation regime put forward by the government, we are disappointed that they do not seem to be committed to implementing the Pearce recommendations that seek to reduce the impact of breaching for unemployed people. Certainly, having worked in the community sector with young people and their families and seeing the impact of the government’s breaching regime for some time now, I am certainly very well aware of the impact that it has on the ability of disadvantaged families to provide for the basic needs of their family. For those reasons, we do not support any extension of the mutual obligation and the breaching regime to sole parents and mature age students, and continue to not support the current mutual obligation and breaching regime that exists for other unemployed individuals not in those two categories.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (12.12 p.m.)—I thank senators for their contribution to this. The government will not be supporting this, and I hope senators understand the consequences of what they are doing. The House of Representatives made it very clear that they do not support this process. If people want to come in this place and talk in good faith about what they want but neglect to mention that governments on both sides have treated the splitting of a bill in the Senate with certain obvious consequences, then I think you will forgive me for not believing that people who present those arguments, without telling the whole story, are telling the truth. You can mislead people by saying things that are true but not putting the whole
perspective. I regret that was not done, so let me do it for those who neglected to do it. Perhaps they just forgot—that is the better view of humanity.

The consequences of this are that the bills will go to the Reps and the same bill that you are now splitting will come back to this place. I do not know what consequences that timing delay will have for the income credit, but that will be on your heads. I remind you: this is a bill where the government wants to spend money on welfare recipients, not by giving them more money but by investing in them and giving them greater opportunities.

Let me turn then to a couple of points that have been made. The first I would like to deal with is the question of negotiating in good faith. Senator Cherry, you are right—you did write to me with some suggestions of what you would like us to look at, and you bravely followed that with the comment that you have not received a reply. It might have been more frank of you—I will resist the temptation to say more honest of you—to say that you do in fact know the government’s position and that my office has always been available to talk to your office. All you are talking about is a method of communication, not that you do not know the government’s position. I regret that someone whom I had previously held in higher esteem chose to imply to the parliament that he had written a letter which had been completely ignored.

The second point I would like to make is to Senator Bishop. He has come into this place and said that the government has not negotiated in good faith when he, in his capacity representing the Labor Party, has indicated a range of concerns. He has put forward some amendments—by his own very honest admission, he has put forward some of them only in the last couple of days—and expected the government to negotiate with him to a final conclusion. It is very clear that the oldest trick in the book—usually only tried by the newest participants—is to say, ‘Will you agree to A? Good. Now that you’ve agreed to A, we’ve just got this other amendment B now.’ It is a never ending chain. So it is common practice for governments to say, ‘We will talk about this when we know what you really want.’ You all know that and none of you have chosen to follow that path. You have quite deliberately chosen to leave it until the last few days to give yourselves a bit of high drama and an opportunity, you think, to attack the government and get yourselves a bit of notoriety that otherwise might not be available.

Well, good luck. Good luck to you if you feel happy sleeping at night when you treat a bill which wants to invest in people in welfare that way. That is not my view. I would have preferred—and I think when you look back later in your careers you will prefer the same—that you had been a bit more frank with the parliament about the conduct of those negotiations. I do not expect you to come in and say, ‘Hardy-ha-ha-ha, we pulled the rug out at the last minute.’ That is in fact my view of what you have done. But I do expect you to be perfectly frank about the manner in which you yourselves have conducted the negotiations.

Senator Bishop, you might like to pass this message to Labor advisers. First of all they said, ‘We’ve got a second reading amendment; it just conveys our view aboutbreaching.’ They clearly led us to believe quite rightly that you are concerned about breaching—I understand that—and that a second reading amendment would be an expression of concern and that we could go on and deal with the detail of the bill. But they came back at the last minute and said, ‘Oh, by the way, we are actually going to insist on amendments that reflect that concern being in this bill.’ That is not, in my view, conducting yourselves in good faith. You might pass that to the Labor advisers with whom we have been dealing—not that I expect them to give a fig.

Let me move to breaching. We are discussing breaching here as though it is a given and everyone has to be breached. It is as though people are saying, ‘Isn’t the government nasty to people who are breached!’ You forget to mention that no-one has to be breached. You can avoid breaching by complying with the requirements on you. It is as simple as that. We are talking about applying breaches to people who do not comply with the clear requirements on them.
nounced changes, which came into place in July, and which, for an enormous number of these people, allow what might appear to be a breach to be treated as a suspension. So, when they come in pretty quickly after their pay is suspended, if they have a reasonable excuse it can be dealt with and they can usually be reinstated within 24 hours and be back paid to the extent that they have lost any back pay.

I do not hear any mention of that, because that would be inconvenient to the little political ploy that is being played out here. Equally, there is no mention of a variety of ways in which people who have done the wrong thing and who were rightly breached can have that waived. If there is Work for the Dole available in their area, they can do Work for the Dole and have their breach record waived. They can go on the Community Support Program and now the participation support program, and there are other opportunities to have this waived. Instead of that we have this implication that everybody is going to be breached and the government is nasty. There is no credit for benefit given. With that attitude you do not make it easy for any welfare minister to make more changes.

In any event, I hear mention of the notices that people do not get. I have already explained the difficulty for Centrelink. When someone does not reply, what are we meant to do? Should we leave it for 18 months so that the Auditor-General can say that we were slack in administering welfare, that we have been sending cheques to people who have moved on and got a job and that we knew because for 18 months they have not replied to letters? Is that what we are meant to do? How do we know when people are homeless? It is a very difficult job at which we are desperately trying to get better and have been getting better.

I ask Senator Bishop to consider the numbers of people who somehow find that Australia Post is very good at delivering the forms that they need to put in in order to get the money but oddly the man from Australia Post gets lost when he is delivering a letter that requires a person to come in for an appointment. It is odd how that so frequently happens, isn’t it? Australia Post delivers regularly the form that will entitle you to get the money but I do not know what they do—perhaps they rip up or chuck out the letters that ask for people to come in for appointments.

If you look at breaching through rose-coloured glasses and you imagine that no one ever does the wrong thing, you are dooming the welfare system to fall apart. I do not have a bad view of humanity, nor, incidentally, of welfare recipients. I have been asked by people opposite many times whether I think that all people who are breached are cheating the welfare system in the sense of deliberately doing so. I have made it clear that they are not. But I also understand that the dole is, in effect, payment to look for a job. You have to show up at work and you have to do your work. Otherwise, you are not likely to keep your job. So it is with the dole.

Equally, people have said in this debate, ‘Why is the penalty so high for this when the penalty is apparently quite low for not putting in a tax return on time?’ There is a clear difference. In this circumstance, a citizen is holding out to the other citizens of Australia that they are in need of assistance, that they want assistance from other taxpayers and that they will do what is required to get a job, and they are fortnightly collecting money from other taxpayers on that understanding. Therefore, having collected the money fortnightly on that understanding, when they do not comply they are in a very different position to that of a citizen who has simply put something in late. Senator Bishop, if you cannot see the difference there, there is not much I can do to assist you with that.

I think I have made my view clear, but there is one point now that needs to be very clearly made. There has been concern about the breaching regime. We have addressed it and we have made even more changes. Those changes were announced in March and implemented in July and they have not even had a full six months to run. We have a bill before parliament that will spend money investing in people on welfare. Just so that taxpayers understand this, we have done so in a difficult budgetary climate when we are in a drought. Let nobody think that the
drought does not affect everybody; it will. Once we start moving into a few more months of drought, we move into exceptional circumstances—a technical term understood by rural people—across Australia in a wide number of areas. The bill for that will go into hundreds of millions of dollars; we do not know how many hundreds of millions of dollars. We as a nation are not sitting here with money to spare. We are trying to keep our money in order, and we know that we have a tremendous expense ahead of us. I presume that nobody here would say, ‘Oh, that’s the farmers’ bad luck; we can’t afford that.’ If you are saying that, it is a different story, but I do not think that anybody says that. Everybody understands that the federal government will have a significant and expensive contribution to make to assist farmers affected by drought. This is probably the worst we have faced in 100 years. And we may have very significant additional defence expenditures. Everybody is hoping that Saddam Hussein does the right thing and everybody is working towards that. But it would be folly for a government to pretend that you do not have to be ready and to have the money there for greater expenditures in those areas.

In that climate, with a very tightly balanced budget and big expenditures expected for drought and possibly for defence, the government is proceeding with a bill to spend hundreds of millions of dollars investing in welfare recipients. Yet at the last minute Labor and the Democrats have got together and effectively said, ‘If you don’t spend between $400 million and $700 million more’—we are getting up towards $1 billion—’going soft on welfare compliance we won’t let you make this investment as you want to make it.’ Well, there is not $400 million or $700 million more, depending on which package you look at. It is just not there. We are not going to go into debt to be softer on welfare compliance when we made changes in July that you may well find—after they have been in operation for six, nine or 12 months—you are very happy with.

All of the things that have been discussed by the Ombudsman relate to a breaching system that was in effect years ago. Nobody, I noticed, in the terribly ‘frank and honest’ mode in which this debate has been conducted has carefully read what the Ombudsman said. Neither Senator Cherry nor Senator Bishop mentioned that the Ombudsman in fact knows well that his report relates to a period now gone and that the Ombudsman congratulated the government and Centrelink on the subsequent changes that have been made. I was listening carefully and I did not hear either of you mention that, Senator Cherry and Senator Bishop. But you are happy with your presentation of what the Ombudsman said. You are happy to pretend to the public at large that his remarks relate to the here and now, as opposed to your being honest about the time period to which they do relate, as opposed to your being honest and giving a true indication of the remarks the Ombudsman made in his press release, I think, when he issued his report—either the proper report on breaching or the excerpts of it in the annual report, which were in fact just precis of an earlier report released.

Lastly, Senator Cherry, it sometimes works with a child to say, ‘This is an important test for you,’ because children constantly seek the admiration of others and think, ‘Oh, gee—I’d better pass this test.’ You define the test however you like. All I say is that the public will judge the parliament as it will, not by your version of what the right test is or mine or anyone else’s. I believe that the public are happy to make a bigger investment in welfare, and the government wants to make it. But there is not $400 million or $700 million more to splash around to go softer on compliance before we have given the changes that we made in July the chance to work. You know the consequences of splitting this bill; it has been done before. I deeply regret that you appear determined to follow this path.

Question agreed to.

**Sitting suspended from 12.28 p.m. to 1.15 p.m.**

**In Committee**

Bill—by leave—taken as a whole.

**Senator VANSTONE (South Australia—Minister for Family and Community Serv—**
ices and Minister Assisting the Prime Minister for the Status of Women) (1.15 p.m.)—I think the government has made its position clear. We were happy to have sensible discussions about the bill, but we regard ourselves as having had the rug pulled out from under us at the last minute. We were given a clear indication that, unless in addition to the hundreds of millions of dollars we want to spend in this bill we were prepared to spend another somewhere between $400 million and $700 million in the next budgetary cycle, we would not get the bill in this form and it would be split.

As I indicated, Senator Bishop knows full well—or his party does, if he does not—the consequences of the Senate choosing to split a bill. The House of Representatives will not accept it. I indicated quite clearly that this bill, unamended, will come back for the Senate to reconsider its position, which I very much hope it does, because this is a spending bill. Because you want your way on other issues, to hold up a spending bill is to me a complete folly. To imagine that you can cherry pick and just take the bits that you think are the most beneficial and leave out the others is equally a folly. The bill will come back in its original form.

Senator HARRADINE (Tasmania) (1.17 p.m.)—I have listened carefully to the various remarks, including those in the second reading stage of the debate, in respect of the previous motion—the motion to split the bill—and this current motion. I look on the question as one of being able to make do and to do what it is necessary to do in regard to the areas that are non-contentious. If this goes ahead, then the contentious issues can be discussed and hopefully some sort of agreement reached in respect of the issues.

I am mindful of the fact that the Manager of Government Business in the Senate, Senator Ian Campbell, told us the day before yesterday that there are 40 bills to get through between now and Christmas. If we adopt this procedure, we will at least get a substantial piece of legislation through. To the credit of the government, it has looked at this measure and felt that this is important, and of course it is because it is beneficial for the recipients. I would hope that the House of Representatives would not adopt that attitude, since we are trying to see that at least something gets in the statute books that is beneficial and is proposed by the government and supported, as I understand it, by all parties in the Senate. It is under those circumstances that I am supporting the motion. Let us come to the merits of the bill, which appear to be of some contention around the place after discussions have been taken up outside the chamber in an attempt to achieve some reconciliation of the various viewpoints.

Senator MARK BISHOP (Western Australia) (1.20 p.m.)—The first amendment before the committee is a government amendment affecting schedules 1, 2 and 6 and clause 2, contained on sheet EX249. It is a series of amendments numbered (1) to (24). They are technical amendments and the opposition indicates its support for those amendments.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.21 p.m.)—by leave—I move amendments (1) to (24) on sheet EX249:

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

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Column 1</td>
<td>Column 2</td>
</tr>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent</td>
</tr>
<tr>
<td>2. Schedule 1</td>
<td>1 July 2003</td>
</tr>
<tr>
<td>3. Schedule 2</td>
<td>20 September 2002</td>
</tr>
<tr>
<td>4. Schedule 3</td>
<td>The 28th day after the day on which this Act receives the Royal Assent</td>
</tr>
<tr>
<td>5. Schedules 4 and 5</td>
<td>1 July 2003</td>
</tr>
<tr>
<td>6. Schedule 6</td>
<td>28 April 2003</td>
</tr>
<tr>
<td>Provision(s)</td>
<td>Commencement Date/Details</td>
</tr>
<tr>
<td>-------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>7. Schedule 7</td>
<td>The day on which this Act receives the Royal Assent</td>
</tr>
</tbody>
</table>

(2) Schedule 1, page 3 (before line 4), before Part 1, insert:

**Part 1A—Amendment of the A New Tax System (Family Assistance) Act 1999**

**A New Tax System (Family Assistance) Act 1999**

1A Paragraph 7(j) of Schedule 3

After “rent assistance”, insert “language, literacy and numeracy supplement”.

(6) Schedule 2, item 5, page 33 (table item 2, 3rd column), omit “incentive allowance”, substitute “incentive allowance; and”.

(7) Schedule 2, item 5, page 33 (table item 3, 3rd column), omit “pharmaceutical allowance”, substitute “pharmaceutical allowance; and”.

(8) Schedule 6, item 7, page 53 (lines 1 and 2), omit paragraph (g), substitute:

\[\text{the person:}\]

\[(i) \text{in the case of a woman who would, but for this subsection, cease to be receiving wife pension because of the employment income, or the combined income, referred to in subpara-}
\]

\[(ii) \text{in any other case—continues to be qualified for the pension or benefit on and from the cessation day; and}\]

(9) Schedule 6, page 55 (before line 21), before item 9, insert:

8A Subsection 1061ZB(1)

Omit all the words after paragraph (c), substitute:

the person is qualified for a pensioner concession card:

\[(d) \text{if the person is qualified for such a card under section 1061ZEA until a particular}\]

has effect as if that determination had not been made.

(3) Schedule 1, item 12, page 9 (line 19), omit “appropriate”, substitute “inappropriate”

(4) Schedule 1, item 12, page 11 (line 31), omit “6 months”, substitute “26 weeks”.

(5) Schedule 2, page 28 (before line 4), before Part 1, insert:
day—for the period of 26 weeks after that day; and
(e) in any other case—for the period of 26 weeks after the commencement or increase, as the case may be.

(10) Schedule 6, item 9, page 55 (lines 32 to 36), omit paragraph (c) and all the words following that paragraph, substitute:
(c) the balance is subsequently reduced to nil because of the commencement or increase; and
(d) the person is not qualified for a pensioner concession card under section 1061ZEA;
paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(11) Schedule 6, item 9, page 56 (lines 14 to 18), omit paragraph (c) and all the words following that paragraph, substitute:
(c) the balance is subsequently reduced to nil because of the commencement or increase; and
(d) the person is not qualified for a pensioner concession card under section 1061ZEA;
paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(12) Schedule 6, page 56 (before line 25), before item 12, insert:

11A Subsection 1061ZC(1)
Omit all the words after paragraph (c), substitute:
the person is qualified for a pensioner concession card:
(d) if the person is qualified for a pensioner concession card under section 1061ZEA until a particular day—for the period of 26 weeks after that day; and
(e) in any other case—for the period of 26 weeks after the commencement or increase, as the case may be.

(13) Schedule 6, item 12, page 57 (lines 4 to 8), omit paragraph (c) and all the words following that paragraph, substitute:

(c) the balance is subsequently reduced to nil because of the commencement or increase; and
(d) the person is not qualified for a pensioner concession card under section 1061ZEA;
paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(14) Schedule 6, item 12, page 57 (lines 22 to 26), omit paragraph (c) and all the words following that paragraph, substitute:
(c) the balance is subsequently reduced to nil because of the commencement or increase; and
(d) the person is not qualified for a pensioner concession card under section 1061ZEA;
paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(1C) If the person:
(a) is qualified for a pensioner concession card under section 1061ZEA until a particular day; and
(b) has, immediately before becoming so qualified, been receiving a social security benefit referred to in paragraph 1061ZA(2)(b) for a continuous period of less than 39 weeks;
the person is taken, for the purpose of the reference in paragraph (1)(a) to a continuous period of not less than 39 weeks, to be receiving the benefit until the particular day.

(15) Schedule 6, item 13, page 57 (lines 27 to 29), omit the item, substitute:

13 Subsection 1061ZC(2)
After “subsection (1)”, insert “(including that subsection as modified by subsection (1A), (1B) or (1C))”.

13A Subsection 1061ZC(3)
After “subsection (1)”, insert “(including that subsection as modified by subsection (1A) or (1B))”.

13B Subsection 1061ZC(4)
After “subsection (1)”, insert “(including that subsection as modified by subsection (1A), (1B) or (1C))”.
(16) Schedule 6, item 18, page 58 (line 26), omit “1061ZB, 1061ZC.”.

(17) Schedule 6, item 18, page 59 (after line 32), after paragraph (g), insert:

and (ga) the person:
   (i) in the case of a woman to whom wife pension ceases to be payable because of the employment income, or the combined income, referred to in subparagraph (f)(ii)—continues, but for that employment income or combined income, to be qualified for wife pension; and
   (ii) in the case of a person to whom pension PP (single) ceases to be payable, or who ceases to receive benefit PP (partnered)—continues, but for the requirement to have at least one PP child, to be qualified for that pension or benefit; and
   (iii) in any other case—continues to be qualified for the payment referred to in section 1061ZA;

(18) Schedule 6, item 18, page 60 (after line 2), after paragraph (j), insert:

or (k) the day the person ceases to be qualified as mentioned in paragraph (ga);

(19) Schedule 6, page 60 (before line 27), before item 20, insert:

19A After subsection 1061ZM(1)

Insert:

(1A) If the person is qualified for a health care card under section 1061ZMA until a day (the particular day), subsection (1) has effect as if the reference to 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to the period starting on the particular day and ending 26 weeks after the person ceases to be an employment-affected person.

(1C) If the person:
   (a) is qualified for a health care card under section 1061ZMA until a particular day; and
   (b) has, immediately before the commencement or increase mentioned in subsection (1), been a qualified recipient because of receiving newstart allowance, sickness allowance, widow allowance, partner allowance or youth allowance, other than while undertaking full-time study, for a continuous period of less than 52 weeks;

the person is taken, for the purpose of the reference in paragraph (1)(c) to a continuous period of 52 weeks, to be receiving the allowance until the particular day.

19B Subsection 1061ZM(2)

After “referred to in subsection (1)”, insert “(including that subsection as modified by subsection (1A)) or the period provided by subsection (1B)”.

(20) Schedule 6, item 20, page 60 (lines 31 and 32), omit subsection (1).

(21) Schedule 6, item 20, page 61 (after line 33), after paragraph (g), insert:

and (ga) the person:
   (i) in the case of a person who ceases to receive benefit PP (partnered)—continues, but for the requirement to have at least one PP child, to be qualified for that benefit; and
   (ii) in any other case—continues to be qualified for the payment referred to in subsection 1061ZK(5);

(22) Schedule 6, item 20, page 62 (after line 2), insert:

or (k) the day the person ceases to be qualified as mentioned in paragraph (ga);

(23) Schedule 6, page 62 (after line 13), after item 20, insert:
20A Subsection 1061ZN(1)

Omit “and 1061ZM”, substitute “, 1061ZM and 1061ZMA”.

(24) Schedule 6, item 26, page 76 (after line 7), at the end of section 1073J, add:

(2) If:

(a) a woman receiving wife pension is a working credit participant; and

(b) the partner of the participant ceases to receive age pension or disability support pension on and from a day (the cessation day); and

(c) the partner ceases to receive that pension:

(i) because of the employment income of the partner (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the partner); and

(ii) after any working credit balance of the partner is reduced to nil; and

(d) as a result of the partner’s so ceasing to receive that pension, the participant ceases to be qualified for wife pension on and from the cessation day; and

(e) the participant has a working credit balance greater than nil at the start of the instalment period of the participant in which the cessation day occurs; and

(f) but for the employment income, or combined income, referred to in paragraph (c), the participant would have continued to be so qualified for wife pension until the earlier of:

(i) a day determined under Division 8 or 9 of Part 3 of the Administration Act; or

(ii) the day on which the participant’s working credit balance is reduced to nil;

the participant is to be treated as if she had continued to be so qualified until the earlier of the days referred to in subparagraphs (f)(i) and (ii).

Question agreed to.

Senator MARK BISHOP (Western Australia) (1.22 p.m.)—by leave—I move amendments (1), (2) and (3) on sheet 2734:

(1) That the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 be divided into two bills as follows:

(a) a bill (the first 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

(b) a bill (the second bill) dealing with additional funding for welfare measures comprising Schedules 2, 3, 6, and 7 of the original bill; and

(2) That the first bill be amended as follows:

(a) Renumber Schedule 4 as Schedule 2;

(b) Renumber Schedule 5 as Schedule 3.

(3) That the second bill be amended as follows:

(a) at the beginning of the bill, insert:

A Bill for an Act to amend the law relating to social security, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) (No. 2) Act 2002.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

(a) Renumber Schedule 2 as Schedule 1;

(b) Renumber Schedule 3 as Schedule 2;

(d) Renumber Schedule 6 as Schedule 3;

(e) Renumber Schedule 7 as Schedule 4.

Question agreed to.
FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (AUSTRALIANS WORKING TOGETHER AND OTHER 2001 BUDGET MEASURES) BILL (No. 2) 2002
In Committee
Bill, as amended, agreed to.
Bill reported with amendments; report adopted.

Third Reading
Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.29 p.m.)—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

NOTICES
Presentation
Senator Cook to move on Monday, 9 December 2002:

(1) That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 14 May 2003:
An examination of the adequacy and effectiveness of the Government’s foreign and trade policy strategy, with particular reference to the forthcoming Foreign and Trade Policy White Paper, Advancing the National Interest.

(2) That, in examining this matter, the committee have regard to the following:
(a) the merits of new policy directions identified by Advancing the National Interest;
(b) whether Advancing the National Interest meets its stated objective of best using Australia’s credentials and attributes to enhance Australia’s national interests;
(c) the strategy’s consistency with Australia’s international obligations; and
(d) the process for implementation.

BUSINESS
Rearrangement
Senator ABETZ (Tasmania—Special Minister of State) (1.30 p.m.)—I move:
That the order of consideration of government business orders of the day for the remainder of today be as follows:
No. 3 Bankruptcy Legislation Amendment Bill 2002.
No. 4 Plant Breeder’s Rights Amendment Bill 2002.
Question agreed to.

BANKRUPTCY LEGISLATION AMENDMENT BILL 2002
In Committee
Consideration resumed from 14 November.
Bill—by leave—taken as a whole.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (1.31 p.m.)—I would make a very brief contribution, Mr Temporary Chairman Lightfoot, and indicate that the informal comment that the minister, Senator Abetz, made across the table is correct. There have been some difficulties today, as you are aware, with the shape of the legislative program in the Senate. The opposition does appreciate the fact that the Bankruptcy Legislation Amendment Bill 2002 is being dealt with in committee—because there were some concerns about dealing with the resumption of the second reading debate into the Superannuation (Government Co-contribution for Low Income Earners) Bill 2002 and the Superannuation Legislation Amendment Bill 2002. There have been issues of availability of senators around the chamber, and we do appreciate the government—

Senator Ferris—That was agreed to.
Senator FAULKNER—Yes. I am indicating that we do appreciate the—
Senator Abetz—We’re here to help!
Senator FAULKNER—in your case, Senator Abetz, I am surprised to hear that.
This will, I am sure, surprise other senators as well.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—I am feeling rather superfluous here. I wonder whether you would be kind enough to address your remarks through the chair.

Senator FAULKNER—Mr Temporary Chairman, I would not want you to feel superfluous. I feel rather superfluous myself, and so I will sit down and commend the contribution that Senator Ludwig is going to make to this very important committee debate.

Senator LUDWIG (Queensland) (1.33 p.m.)—I wish to move amendment No. 1 in my name first, and subsequently Nos 2 and 3 together, and then Nos 4 and 6, and then Nos 7 and 8. I will speak to the running sheet in relation to early discharge. I now move opposition amendment (1) on sheet 2676:

Schedule 1, item 127, page 29 (lines 19 and 20), omit the item, substitute:

127 Subsection 149S(1)

Omit “6 months”, substitute “2 years”.

As I mentioned in the second reading debate, this bill proposes to abolish the provisions which allow early discharge for low-income bankrupts. 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 with making an application to the court. In almost all cases where early discharge was sought, the order was granted. Under the current early discharge provisions, a bankrupt may apply for early discharge after six months from the time he or she files a statement of affairs with the registrar. 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.

The Attorney-General, it seems, now claims that consumer bankruptcies are ‘due more to lack of financial responsibility than to misfortune’. This is symptomatic of a government that is in the business of blaming low-income individuals for their misfortunes and failing to accept responsibility for the greater financial hardship forced on individuals and small businesses by its policies. 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’s amendment would retain the early discharge provisions but 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.

Senator ABETZ (Tasmania—Special Minister of State) (1.36 p.m.)—The proposal put forward by the government is a key measure in the government’s attempts to encourage debtors to consider seriously alternatives to bankruptcy. Too many bankrupts unfortunately consider or treat bankruptcy as the first and only option to deal with their financial difficulties. The government is in no way suggesting that low-income debtors are abusing the bankruptcy system.

Claims that removing early discharge will deny low-income bankrupts the opportunity to recover misses the point. It is bankruptcy, not discharge from bankruptcy, which gives relief to debtors and enables them to get on with their lives. I would have anticipated that Senator Ludwig would have known that if you are a bankrupt you remain on the credit reference database for seven years. Early discharge will not necessarily be of assistance because anybody that might want to give you a loan or whatever will do a credit check on that database. So your discharge after three years will be less than halfway through the seven-year period in which your name is going to remain on that credit reference database. There is a three-year term of bankruptcy, so to claim that two years is
somehow an early discharge is a bit hard to sustain.

As I understand it, the early discharge was introduced in 1992. At that stage, it was argued that it served no useful purpose to keep bankrupt for three years low-income debtors whose bankruptcy was due more to misfortune than to misdeed. However, the qualifying criteria have not been an adequate test of whether the bankruptcy arose from misfortune rather than from misdeed, and the regime has produced discriminatory results. Some 60 per cent of bankrupts are eligible for early discharge, and only about 25 per cent actually apply for and are granted early discharge. There is no evidence to suggest that the remaining 40 per cent are any less deserving of early discharge. I would urge the committee to reject Labor’s amendment.

Senator MURRAY (Western Australia) (1.39 p.m.)—Listening to the Special Minister of State, I was reminded how you can be caught by one argument you put one day and by another argument you put another day.

Senator Abetz—You weren’t even listening; you were talking.

Senator MURRAY—I was only talking for part of the listening. Yesterday, the minister asked why on earth would you want to remove something which had been in the act for, I think, 30 years and railed against it because it was a solid and integral part of the legislation, and here he is wanting to reduce something which has been in the legislation for 10 years and is a solid and integral part of the legislation. Minister, I just remind you that an argument one day can be turned against you—or can be attempted to be turned against you.

Early discharge is already limited to low-income bankrupts. It ensures that low-income people are able to get the relief which can result from that. In saying that, I stress that we are not without sympathy for the policy position of the government wanting to reduce the incentive or to reduce the attractiveness of using bankruptcy provisions when they would otherwise have undertaken better planning to find an alternative to the position they are in. But I should make it clear that the Labor Party amendment does reduce that incentive and attractiveness without going as far as the government have. It seems to me that having an early discharge provision is still an advantageous principle to retain for ITSA and the Federal Court, as it does reduce bureaucracy and does ensure that low-income bankrupts can recover more quickly. I do not think the Labor Party amendment rejects the government proposition; it simply puts forward a different time frame.

When it comes to low-income earners, anything that prolongs the crisis can result in very severe emotional and relationship issues for the bankrupt, their family and the community. The issue of credit availability is of serious concern to the Australian Democrats. We moved a second reading amendment yesterday to hopefully get some data and ideas on the table for dealing with this, especially for the increasing number of low-income earners. I am reminded a little of the imprisonment provisions, which for ease of administration were lifted from three months to six months. Anyone who has been imprisoned for a day knows that it is a long period, and I think two years under bankruptcy provisions is quite a long period for low-income earners.

In the numerous representations that have been made to me and to our political party, I am continually given the same message about the real problem of ready availability of high interest rate credit to the working poor and the lack of low interest rate credit to the working poor for sensible, well thought out purposes. This is an unfortunate situation. It is a matter of judgment. In my opinion, the government’s inclination is right, their solution is wrong, and the Labor Party proposition is to be preferred and we will support it.

Senator ABETZ (Tasmania—Special Minister of State) (1.42 p.m.)—I was unaware that Senator Murray wanted to speak on this amendment. To have saved time, I would not have jumped up early. I indicate for the record that, whilst we will be opposing all of the amendments, we will be doing so on the voices and not seeking to divide, to
save time. I indicated that in the debate yesterday and I just want to reiterate that today.

For the record, we as a government are concerned that a lot of people are going bankrupt without seeking proper advice. The information supports that when you consider that five per cent of bankrupts go bankrupt with debts of less than $2,000, 14 per cent of bankrupts go bankrupt with debts of less than $5,000 and 13 per cent of bankrupts, which is more than one in eight, have been bankrupt at least once before. ITSA's client survey shows that 43 per cent of bankrupts have not sought advice before becoming bankrupt. It is just becoming too easy, a quick option—get out of it again after six months or two months—with no real consideration being given as to whether that is an appropriate course of action. Indeed, in this survey by ITSA, 40 per cent of bankrupts do not recall reading the prescribed information before deciding to go bankrupt. Previous reforms aimed at encouraging debtors to think about alternatives are unfortunately not working.

Senator Murray quoted my argument from yesterday. With respect, the situation we are dealing with today was introduced into the act 10 years ago as an experiment. It has been reviewed and found not to be working. The matter that we will be dealing with no doubt later on was inserted into the act 36 years ago and we as a government would argue is working very well. But, Senator Murray, we will come to that debate at a later stage. We oppose the amendment.

Question agreed to.

Senator LUDWIG (Queensland) (1.45 p.m.)—by leave—I move opposition amendments (2) and (3) on sheet 2676:

(2) Schedule 1, page 37 (after line 19), after item 172, insert:

172A Subsection 215A(1)
Repeal the subsection, substitute:

(1) A resolution that is passed at a meeting of creditors and purports to:

(a) nominate one or more persons under subsection 204(4) to be a trustee or trustees; or

(b) appoint a person under subsection 220(1) to a vacant office of trustee

of a deed of assignment, deed of arrangement or composition;

is void unless the person or each of the persons:

(c) gave written consent before the meeting to act as a trustee of the deed or composition; and

(d) made a declaration in writing of the person's professional, business and personal relationships and connections (if any) with the debtor and with the creditor or creditors who proposed the resolution, and gave all persons entitled to vote on the resolution a reasonable opportunity to inspect the declaration.

(3) Schedule 1, page 37 (after line 19), after item 172, insert:

172B Subsection 215A(1A)
Repeal the subsection, substitute:

(1A) As soon as possible after the resolution is passed, each person (except the Official Trustee) nominated or appointed by the resolution must give to the Official Receiver a copy of the consent and the declaration that relates to that person.

As I said in the second reading debate on this Bankruptcy Legislation Amendment Bill 2002, Labor are concerned that the proposals put forward by the government do not address loopholes in part X of the Bankruptcy Act, which are predominantly taken advantage of by high-income bankrupts. Labor recognise that the Attorney-General has finally announced a review of part X and, accordingly, we are proposing these amendments to stimulate debate. It is important to state for the record that Labor do not have a closed mind on the reforms of part X and that these amendments are not intended to Foreclose alternative approaches that may be identified in the review by ITSA.

We do know that there is a task force report that is significantly overdue. The report was finalised but was never made public. It might have assisted the debate today if the government had produced that report. If it were in Senator Abetz’s power to produce the report and make it available during this committee stage, it would be helpful in dealing with these matters, but I know that this secretive government is not going to
make that report available—is it, Senator Abetz? I know that the task force report is going to be kept by the department. One wonders why. No reasonable explanation of why they will not provide it has been given, but we now know that there is sufficient concern for a review to be undertaken. Labor welcomes the review of part X and, as I have said, do not want to foreclose, by moving these amendments, any alternatives that may be identified. We would look at any recommendations that might come out of that review, should it end up in legislation. As with all other legislation, we would examine it in detail and come to a conclusion about it when the time arose.

In 1988 the Australian Law Reform Commission expressed concern that, as the part X procedure is initiated by the debtor, they may appoint a solicitor or trustee who is not impartial. The appointment of a person who favours the debtor could have serious implications for the quality of reports and statements produced by the controlling trustee. These reports are a crucial part of the information used by the meeting of creditors to decide on the appropriate course of action.

To address these concerns, the ALRC recommended that a person appointed as the controlling trustee, or as a trustee administering an arrangement, should make a declaration of association at the time of the appointment. This statement would detail any previous or existing association with the debtor and declare that no circumstances are known to the appointee that would prevent the appointee from acting impartially.

The government accepted this recommendation in part by amending the law to require a declaration of association by trustees administering a deed or composition under part X of the act, but not by controlling trustees. This requirement was later removed from the act. However, as recently as this year concerns have been expressed about the independence of some trustees. Restoring the declaration of association provision would be one way of reassuring creditors of the independence of trustees. These amendments would require trustees administering a deed or composition under part X of the act to make a declaration of association. I note in passing that the New South Wales division of the Australian Institute of Credit Management has suggested that Labor’s amendment may need to be strengthened by providing that a resolution nominating or appointing a person as a trustee is void where, in the previous six months, the person has been a debtor or creditor of the debtor in question or has provided professional legal or accounting services to the debtor or to a relative of the debtor. It is to be hoped that ITSA considers this proposal in its review of part X.

This matter has had a chequered history, but in our view it will ensure that there is less likelihood of people abusing their position or—perhaps even by omission—not ensuring that the controlling interests of a trustee are dealt with fairly. It upholds the idea of ensuring that, at the crucial time when you have to utilise part X, all things can be seen and there is confidence in the people who are sitting around the table. In our view, a lack of confidence in those people sitting around the table can cast a shadow over how those dealings are seen, perhaps even in a different light and much further down the track.

Senator ABETZ (Tasmania—Special Minister of State) (1.52 p.m.)—I will speak very briefly on opposition amendments (2) and (3), dealing with the appointment of trustees. We believe that this is a retrograde step. The Bankruptcy Act previously contained almost exactly the same provision, which was removed in 1996 on the basis that the requirement for a declaration of association did not prove to be of practical utility and added to the cost of the insolvency administration.

The provisions proposed to be inserted by these amendments are unnecessary and overly prescriptive. The amendments are an attempt to legislate for an ethical issue and suggest that the majority of registered trustees cannot be trusted. The code of professional conduct issued by the Insolvency Practitioners Association of Australia already provides that practitioners must make declarations of the type proposed by the amendment. The amendments would also create an inconsistency within the Bankruptcy Act, as there are no disclosure re-
quirements for trustees in bankruptcy proceedings.

In relation to the bankruptcy task force report that Senator Ludwig expressed some interest in, the government has explained that it will not make the report public at this time because it contains some information that may alert taxpayers to methods of misusing the Bankruptcy Act, the Family Law Act and the Income Tax Assessment Act in order to avoid payment of debts, especially tax debts. It is desirable that progress be made on addressing these devices before the report is made public. The opposition’s repeated calls for the report to be made public prematurely are unwise and motivated only by a spirit of political mischief-making.

Senator Ludwig—How can you hide behind that?

Senator ABETZ—Senator Ludwig knows that this bankruptcy of barristers problem, unfortunately, was going on under the previous Labor government but came to light under our government. We have looked into it. We have a task force. If we were now to release the mechanisms for how to do it prior to fixing up all those problems, then we would be broadcasting to the world at large how to get around certain tax requirements and responsibilities. I know the Australian Labor Party do not really believe it, and that is why I suggested they were into political mischief-making. Senator Ludwig, the alternative is that you deliberately want us to broadcast to the world at large the mechanisms by which these barristers have done the wrong thing by their fellow Australians and thereby allowed others to take advantage of those quite unethical schemes. You have a choice: admit to a little bit of political mischief-making or say you deliberately want this to be broadcast at large. I do not think you are that irresponsible. I reckon you are pretty irresponsible, but not that irresponsible. That is why I gave you the kind alternative of political mischief-making.

Senator MURRAY (Western Australia) (1.56 p.m.)—I was not going to rise, but I thought that was outrageous. I really do not think, on an issue of accountability and public interest, that the motives of the opposition should be impugned in that manner. Frankly, Minister, the government has a precedent that if there are sensitive items within a document they are simply blacked out and the Senate is informed of the reason for doing so. You could exclude those portions that you regard as being sensitive or that would be inopportune to release at this time. Perhaps you were just having some debating fun, but I would prefer, on issues of accountability and public interest, to always have those sorts of things made public. If you are unwilling to do so at this stage, there might be an opportunity for you to indicate at what stage you would be happy to do so—perhaps in one or two years time or something.

Turning to opposition amendments (2) and (3), the Special Minister of State has indicated that the code of conduct, which is available, does deal with these issues. As far as I am aware, that code of conduct is not enforceable and has no ability to have force, and the opposition is attempting to provide that. If the government are determined to reject this in the House, which we have been advised they will, then frankly they should address the problem and see if there is some way they could find for the existing code of conduct to be made an enforceable undertaking.

Senator LUDWIG (Queensland) (1.58 p.m.)—I was not going to add to the debate—I know we are not going to divide on it—but I do not think I can let the minister’s comments on the bankruptcy task force report go. There are numerous ways you can apprise the opposition of confidential reports that you may have some concern about. I do not need to specify the mechanisms that you can employ, Mr Temporary Chairman, but I am sure the government is aware of those mechanisms. If you say there are practices that are too horrible to mention because they might be reproduced, does that leave us with the position that there are currently practices of barristers—high-flying barristers, for that matter—that have been going on for some 10 months without your having addressed them? That would concern me. I am sure that that is not the case and that you can say, for the record, that that is not the case. It would be helpful if we were at least assured of that.
But you have had more than 10 months now to deal with that report to either bring—

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Ludwig, for the sake of Hansard, you are referring to the minister, not me, aren’t you? I would rather you directed your remarks to me, just to save any ambiguity.

Senator LUDWIG—The government has had more than 10 months to deal with it. The government has failed to resolve the matter. The government, it seems, has been derelict in resolving it. If the government is saying, through the minister, that it has been unable to resolve it in 10 months, one wonders what the government has been doing other than sitting on its hands. Turning to the more germane matter, the amendments before us, I remind the government that it accepted the recommendation in part by amending the law to require a declaration of association only by trustees administering a deed or composition under part X but not by controlling trustees. That is not to say that it is not a part that the government has not dealt with before and continued. In 1993 the government stated that ITSA, the trustees audit program, made a declaration of association provision unnecessary. But perhaps the minister can tell me this: does ITSA still do the trustee audit program? If it does not, perhaps that is why we are now seeking to have it put back in.

Senator Abetz—The answer is we do.

Senator LUDWIG—You still do the trustee audit program—is that what you are saying?

Senator Abetz—I thought that was your question, and we answered, ‘We do.’

Senator LUDWIG—Thank you. That issue was removed when you first introduced the legislation in 1996. You then said that it was no longer of practical utility and that the costs of administering it were no longer necessary. Have you changed your mind since then and reintroduced it? When did you reintroduce it and what are the costs of the program?

Senator ABETZ (Tasmania—Special Minister of State) (2.02 p.m.)—My advice is that surveillance has been taking place at all times. I am not sure what situation Senator Ludwig is trying to get at. As for costs, I invite him to ask that question during Senate supplementary estimates next week.

Senator LUDWIG (Queensland) (2.03 p.m.)—I will not delay the chamber any longer; I will take it up during Senate supplementary estimates. They provide a wonderful opportunity to discuss with ITSA directly whether surveillance amounts to an audit program. You can support this recommendation because it restores the declaration of association provisions and, on behalf of the government, it would be one way of reassuring creditors of the independence of trustees.

Question agreed to.

Senator LUDWIG (Queensland) (2.04 p.m.)—by leave—I move opposition amendments (4), (5) and (6) on sheet 2676:

(4) Schedule 1, page 37 (after line 21), after item 173, insert:

173A After subsection 222(5) Insert:

(5A) Where the Court, on the application of the Inspector-General, the trustee or a creditor, is satisfied that:

(a) if the vote or votes of a related creditor or related creditors on a proposed resolution at a meeting of creditors under this Part were disregarded, the proposed resolution:

(i) if in fact it was passed—would not have been passed; or

(ii) if in fact it was not passed—would have been passed; or

(iii) would have had to be decided on a casting vote; and

(b) the passing of the proposed resolution, or the failure to pass it:

(i) is contrary to the interests of the creditors as a whole or a class of the creditors as a whole; or

(ii) has prejudiced, or is reasonably likely to prejudice, the interests of the creditors who voted against the proposed resolution, or for it (as the case may be), to an extent that is unreasonable having regard to:

(A) the benefits resulting to the related creditor, or to some
or all of the related creditors, from the resolution, or from the failure to pass the proposed resolution; and

(B) the nature of the relationship between the related creditor or related creditors and the debtor; and

(C) any other relevant matter; the Court may make an order declaring the deed or composition to be void or declaring any provision of the deed or composition to be void.

(5B) In subsection (5A), related creditor means a creditor who is any of the following:

(a) a relative, or de facto spouse, of the debtor;
(b) a relative of a spouse, or of a de facto spouse, of the debtor;
(c) a beneficiary under a trust of which the debtor is or has at any time been a trustee;
(d) a relative, or de facto spouse, of such a beneficiary;
(e) a relative of a spouse, or of a de facto spouse, of such a beneficiary;
(f) a trustee of a trust under which the debtor is or has at any time been a beneficiary;
(g) a relative, or de facto spouse, of such a trustee;
(h) a relative of a spouse, or of a de facto spouse, of such a trustee.

(5C) In subsection (5B), relative, in relation to a person, means the spouse, parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person.

(5) Schedule 1, page 37 (after line 21), after item 173, insert:

173B Subsection 222(6)
Omit “(2) or (4)”, substitute “(2), (4) or (5A)”.

(6) Schedule 1, page 37 (after line 1), after item 173, insert:

173C Subsection 222(7)
Omit “(2) or (4)”, substitute “(2), (4) or (5A)”.

These amendments also relate to part X, so we might again be able to test Senator Abetz’s knowledge of the Bankruptcy Act 1966. In some cases, relatives or friends of the debtor may account for a substantial portion of creditors by number and by value. Unlike other creditors, their primary interest may not be in securing the highest possible rate of return on an administration. A possible solution to address this issue would be to limit the voting power of creditors who are related to the debtor. This approach is employed under the Corporations Act 2001. Under section 600A, a creditor may apply to the court to have a resolution of a creditors’ meeting overturned where the votes of related creditors determine the outcome of a resolution and the result is contrary to the interests of creditors. Related creditors are defined as persons who are related entities of the company and creditors. The definition captures relatives and spouses of company directors but not their friends. Labor’s amendment is based on the mechanism in section 600A of the Corporations Act and it would enable a court to declare a deed or composition void in the circumstances that I have outlined.

That, in short, is what amendment (4) seeks to do. It provides a level of confidence and security for these sorts of part X operations. We know, of course, that the operation of part X is being reviewed. As I said earlier, it is not our intention to foreclose any alternatives that might come up; it is simply to ensure that at this time, notwithstanding any outcomes that might come up, there are non-arms-length creditors. In some cases relatives or friends of the debtor may account for a substantial proportion of creditors by number and by value. The amendment at least adopts something from the Corporations Act. I think Senator Campbell, during his CLERP 8 contribution—and this is testing me now—in relation to the cross-border—

Senator Abetz—Good guess!

Senator LUDWIG—It was not a guess; I just had to recollect it from my memory. As I recall, in trying to deal with cross-border issues in respect of bankruptcies, only a very small part of that report refers to harmonising it with the Corporations Law. From memory, it is a matter that was also dealt with some time ago in a paper by the ALRC.
That was not picked up by the government of the day and I am not sure whether Senator Campbell is going to re-enliven that particular provision about ensuring that there is harmony with the Corporations Law in relation to bankruptcies. It is a matter that does have some peculiar problems, because of course individuals are not corporations and you would necessarily have to look at some different issues when you looked at that matter. In relation to where you can harmonise it, where you can find in other pieces of legislation apt and fair ways of dealing with it, such as what is found in the Corporations Law; it would be worth while for the government to ensure that where it can deal with similar issues they are dealt with. That is what the import of these amendments goes to. I ask the Senate to support these amendments.

Senator MURRAY (Western Australia) (2.09 p.m.)—My advice is that we should support the amendments.

Senator ABETZ (Tasmania—Special Minister of State) (2.09 p.m.)—These amendments would significantly undermine the purpose of part X, which is to provide debtors and creditors with the opportunity to come to their own arrangements outside bankruptcy for payment of the debtors’ debts. It is inappropriate to build a system on the basis that a small number of people may try to abuse it. This disadvantages the many people who are able to use it effectively. The part X arrangement can only be made following a special resolution of creditors, which requires a majority in number, and at least 75 per cent in value, of creditors voting. The creditors have the power to make decisions under part X and the amendments are setting up a rule which supposes that the creditors cannot be trusted. The amendments could also deny a legitimate related creditor the right to access to the debtor’s property under a part X arrangement. Many family creditors are legitimate creditors and it is up to the trustee to establish the bona fides of creditors. It is already open to the trustee to ask questions of any creditor in determining whether or not to admit a proof of debt. It is also open to creditors at the meeting to ask questions of other creditors about their debts and relationship with a debtor.

The proposed paragraph at 222(5)(5A) (b)(i) contradicts itself and is flawed. It is based on a presumption that the related creditors at the meeting have voted in a particular way to obtain an advantage or to provide the debtor with an advantage. Therefore, it is not possible for the resolution or its failure to be contrary to the interests of the creditors as a whole. It is also unclear what constitutes a class of creditors for the purposes of this provision. The provision also appears to be unnecessary in light of the following subparagraph, which focuses on the interests of the creditors who voted against the resolution.

Senator LUDWIG (Queensland) (2.11 p.m.)—I glean from that that you think that section 600A of the Corporations Law in relation to arms-length creditors is also irrelevant, but I beg to differ. I think amendments (4), (5) and (6) are helpful and do ensure that at least some fairness is put back into the bankruptcy situation. It does provide an opportunity to avoid misdeeds that could be envisaged creeping in and does allow proper meetings take place.

Question agreed to.

Senator LUDWIG (Queensland) (2.12 p.m.)—I move opposition amendment (7) on sheet 2676:

(7) Schedule 1, page 39 (after line 29), after item 177, insert:

177A At the end of section 237A

Add:

(3) Unless the creditors, by special resolution, agree that such of the provisions of sections 120 to 124 (inclusive) as the creditors determine do not apply to a deed of arrangement, those provisions apply, subject to such modifications and adaptations (if any) as are prescribed, to and in relation to the deed of arrangement as if:

(a) a sequestration order had been made against the debtor on the day on which he or she executed the deed; and

(b) the trustee of the deed were the official trustee.
Amendment (7) also relates to part X. When part X was developed, it was decided that the provisions of the bankruptcy law which give trustees the power to void certain antecedent transactions should not apply to forms of insolvency administration where the debtor is not divested of the whole of their property for the benefit of creditors. Therefore, the antecedent transaction provisions do not apply to deeds of arrangements or compositions. The Australian Law Reform Commission disagreed with this approach in relation to deeds of arrangement. It argued that these deeds usually deal conclusively with the debtor’s affairs by providing for the full payment of debts or, if only in part, for a complete release from those debts. The commission also said that creditors who received the benefit of antecedent transactions would be inclined to vote in favour of an arrangement or an assignment.

The ALRC recommended that the antecedent transaction avoidance provisions should apply to deeds of arrangement unless expressly excluded by the deed. In 1993, the previous government endorsed this recommendation but it has not yet found its way into legislation. Labor’s amendments will apply the antecedent transaction provisions to deeds of arrangement. I do not think it is necessary for me to reiterate in this debate that of course we do wait with some expectancy for the full report into part X by the government. That may deal holistically with part X—I did not want draw back to this—and we expect that report to be made public and available. Nevertheless, we think that it is still necessary to at least ensure that the antecedent transactions provided for in this amendment are worth while and supported, and we ask the Senate to support that amendment.

Senator ABETZ (Tasmania—Special Minister of State) (2.14 p.m.)—While I briefly outline the reasons against passing the amendment, possibly Senator Ludwig could advise why the amendment should be made to section 237A and not to section 237. It is very unclear what problem this proposed amendment is trying to address. There are sound policy reasons for excluding the operation of the clawback provisions in relation to deeds of arrangement. A deed of arrangement is in many ways the most flexible type of the part X arrangement. It is possible for the debtor to propose any means of paying his or her debts to avoid bankruptcy.

The controlling trustee is required to report to creditors on whether their interests would be better served by accepting the debtor’s proposal or by the debtor’s bankruptcy. Creditors can choose whether or not to accept the proposal, taking into account likely outcomes under bankruptcy, and can also resolve that the debtor become bankrupt. If the clawback provisions applied, the deed of arrangement would become more like bankruptcy and would certainly resemble a deed of assignment. It would reduce the effectiveness of part X for the many people for whom it works well. If the debtor does not provide details of assets disposed of in the two years prior to completing the statement of affairs, a creditor, the trustee or the Inspector-General may already apply to the court to overturn the deed of arrangement.

Senator LUDWIG (Queensland) (2.16 p.m.)—If there is a typographical error, there may be a requirement for a correction. However, I missed what the minister said in relation to the provision. I have here a copy of the Bankruptcy Act 1966. Senator Abetz, are you saying that, at the end of section 237A, we should add proposed subsection (3)? Is there a controversy as to where it should be added?

Senator ABETZ (Tasmania—Special Minister of State) (2.17 p.m.)—We are suggesting that it ought to be an amendment to section 237 as opposed to section 237A. That was the matter I sought to raise. The heading of section 237 is ‘Application of general provisions of act to deeds of arrangement’ and section 237A is ‘Certificate by trustee that provisions of deed have been carried out’. It seems that this is a general provision—not that I should be helping with this amendment, because we oppose it, but if it is going to be foisted upon us—

Senator Murray—You are always helpful.

Senator ABETZ—As always, we are a very helpful and open government and will-
ing to help the opposition, and if we are going to place it in the act it may be better placed in section 237.

Senator LUDWIG (Queensland) (2.18 p.m.)—I do not know whether I agree—

Senator Abetz—It is up to you; it is your amendment.

Senator LUDWIG—Yes, I know. I was just indicating—

Senator Abetz—And we will vote against it.

Senator LUDWIG—Yes, I know that you will vote against it in any event. We would hope that, unlike you, the Senate will have a different view and decide to accede to the request. On examination of section 237, it does have an application of general provision, but when you go to 237A, which deals with the trustee of a deed of arrangement, from my reading of it that would sit better there. I am not persuaded that it would sit better in section 237. In that instance, I will maintain the provision. I thought at first that Senator Abetz was pointing out a typographical error, so I will not take his assistance, although I do thank him for it. It comes down to a fine line as to where the provision might rightly sit. We will stay with 237A(3) as the place where the provision should be put, as it fits better with the preceding two paragraphs. I understand the way these acts grow and change and how people focus on the headings, but people should read the provisions as well.

Senator ABETZ (Tasmania—Special Minister of State) (2.19 p.m.)—The good news, Senator Ludwig, is that chances are we will have the opportunity to revisit this amendment when the bill comes back from the House.

Question agreed to.

Senator LUDWIG (Queensland) (2.20 p.m.)—I move opposition amendment (8) on sheet 2676:

(8) Schedule 1, page 41 (after line 27), after item 178, insert:

178A Subsection 265(8)

After “has contracted a debt”, insert “other than to meet necessary household or personal expenses”.

This amendment departs from part X and seeks to amend section 265(8) of the Bankruptcy Act. It is worth while setting out this provision to give some colour to the provision that we seek to amend. I also spoke to this matter in my second reading contribution. I understand Senator Murray did as well, and perhaps Senator Abetz did also, but not favourably. Section 265(8) of the act states:

A person who has become a bankrupt and, within 2 years before he 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 this section by moving the minimum threshold requirement of $500. As I said yesterday, Labor’s concern is that the abolition of the threshold may result in the prosecution of debtors who have incurred small debts of an amount less than $500—as in the example I gave yesterday of unpaid electricity bills or overdue rent or some such necessity of life. It is further evidence of this government being out of touch with the basic needs of struggling families and those who work but who do not earn a lot of money. Their inability to meet the costs of these necessities of life should not result in their becoming liable to prosecution.

There is an interest in bringing the insolvency law into harmony with the Corporations Law as well, as I have said today. The approach should not be inflexible, though; after all, corporations do not have to incur the basic personal expenses necessary to live. The controversy that I mentioned earlier today is that you do sometimes have to distinguish between personal issues and corporations issues. So, where it is necessity to harmonise, it is worth trying to harmonise. Where you want to be able to distinguish and meet personal needs, I think you can, as a caring government—which you claim to be, but which I do not believe—take a slightly different approach.
Accordingly, Labor’s amendment would ensure that a person cannot be prosecuted for incurring a debt in respect of a reasonable or necessary personal or household expense, without any reasonable expectation of being able to pay the debt. I think it is one of those areas where it is only a small amendment, but I think it does provide some comfort to those people. It is also one of those times when you can demonstrate, Senator Abetz, that you are what you say you are—a caring government—and that you do not wish to prosecute people for those sorts of minor offences; that you do understand that people do have necessities of life that they need to provide for; and that you do not think that there are people out there who would run up all these small debts, willy-nilly, without some responsibility. If you think that, I think you take a very small end—if not, an invisible end—of the market and decide that is how you will address these issues. The opposition believes that, in these sorts of provisions, good faith applies and it should be supported. We ask the Senate to support the amendment.

Senator ABETZ (Tasmania—Special Minister of State) (2.24 p.m.)—I am interested in the Labor Party’s new policy of trying to make personal liabilities and responsibilities match those of corporations. It will be interesting to see which way the Labor Party jumps in relation to the tax rates: whether the personal tax rate ought be reduced to the company rate, or the company rate ought be increased. Undoubtedly, that will be an interesting discussion on another occasion.

Subsection 265(8) makes it an offence for a debtor to contract a debt greater than $500 in the two years prior to bankruptcy, where the debtor has no reasonable prospect of being able to repay it. The bill proposes to remove the $500 threshold. That is to correct an anomaly in the current law that allows an insolvent debtor to contract a large number of debts, each of which is less than $500 and, as a result, to escape prosecution. This unfortunately occurs. It has been brought to the attention of the government. When people deliberately run up bills of, let us say, $490 plus, over and over again, if you are a caring person, have you ever spared a thought for those who have been ripped off by $490 by an insolvent debtor who has undertaken this behaviour? The amendment is not aimed at debtors who fail to pay one or two small bills. In fact, the prosecutorial discretion would not allow that to occur in any event. It would be aimed at a manner of conducting oneself by going around the community and running up such debts, knowing that one can escape prosecution. Why the Australian Labor Party by their actions would seek to support and encourage people engaging in such behaviour is beyond the government’s comprehension.

The opposition’s amendment would exclude necessary personal or household expenses from the scope of the offence. What then becomes a necessary personal or household expense? I suppose the Labor Party’s definition should be known to all of us, because they thought it was necessary to hock this nation for $96 billion worth of debt. They said that was necessary. The Labor Party’s necessities are quite often, in our terms, luxuries. So how are you going to define what is actually necessary in the circumstances? Union fees would undoubtedly be a necessity for Senator Ludwig and his party. The opposition’s amendment would introduce an undesirable level of uncertainty into a criminal offence. Debtors would be left in a state of uncertainty as to whether the incurring of a particular debt would amount to a criminal offence.

The drafting of offences that contain this level of uncertainty is contrary to basic principles of transparency and of sound legislative and public policy. For example, is the purchase of an expensive plasma screen television a necessary personal or household expense? Or is it, in fact, a luxury? Is the purchase of a top-of-the-range home computer system, costing thousands of dollars, a necessary personal household expense or a luxury? The provision may also be unworkable insofar as a creditor who fails to raise questions of other creditors in the course of a meeting will have difficulty establishing his or her credibility before the court. Rather than being an uncaring government and allowing them to escape the criminal sanction,
we do care and want to protect the community against those who would go around the community deliberately running up a whole range of bills—of up to $490 a time—knowing that they have no intention of paying them.

Senator MURRAY (Western Australia) (2.30 p.m.)—The implication in the minister’s remarks, both yesterday and today, is that the judiciary are a bunch of nitwits; that they would believe that necessary household or personal expenses would extend to what in common language would be regarded as unnecessary or a luxury. I do not accord with the view that the judiciary are nitwits. Only lawyers with a peculiar sense of morality would argue that necessary household or personal expenses would extend to what in commonsense anyone else would regard as luxuries or unnecessary.

However, the argument put by the opposition is only one of a couple of ways to deal with this. You either deal with it as an exclusion, which is what they have done, or you offer mitigating or extenuating circumstances and qualify it on that basis. The substance of this—and I say this without trying to shoot arrows across the Senate chamber—is that there are circumstances where people’s individual situations should be taken into account. The government recognise that and the opposition recognise that. If you accept our amendment, he still has the guidelines. The guidelines do not change but, if you accept our amendment, it at least makes it a little clearer for him to implement the guidelines and deal with them. You know that. It certainly does not change how his guidelines will operate. I think it is mischievous to bring in Mr Damian Bugg and the matter of the guidelines. The Director of Public Prosecutions guidelines are, within reason, relatively clear. But, as I recollect the process, the decision rests with him, on recommendation to the Attorney-General, as to what prosecutions he may take.

This matter is one where this government can show some compassion. It has not demonstrated that up to this point of time. It could; I invite it to. I thank the Democrats for supporting the amendment. They see the need for ensuring that legislation such as this does not have onerous provisions contained within it. It does provide for some latitude for those people who are less fortunate than we are. It does ensure some latitude, for instance, for problem gamblers who are not aware—and could not be expected to know—that their gambling may place them in breach of section 271 of the Bankruptcy Act. I am sure that that is not the first thing that they consider when they find themselves in debt as a consequence of their gambling.
In fact, most of them do not wish to be in that situation, I am sure, in the first place.

If a prosecution were to be recommended and were to be proceeded with, the courts are in a position to determine whether a position needs to be prosecuted and the definition of a necessity. I am confident of that. Even if Senator Abetz cannot, the courts can certainly determine whether a plasma television—and I am not sure I know what that is—is a necessity. I do not think restrictive legislation, such as is currently contained in the statute books, needs to be continued with. I thought this government was looking for less regulation and less specificity in legislation. This is one of the things where, Senator Abetz, as the representative in this chamber for small business you could make a blow. You could remove a bit of specificity and red tape from the Bankruptcy Act and assist by ensuring that that provision is removed. The specificity that you have is unnecessary. It is a framework that we could deal with, and I am sure you can bring yourself to agree to it.

Question agreed to.

Senator LUDWIG (Queensland) (2.36 p.m.)—In relation to opposition amendment No. 9, I understand that the Democrats have a similar amendment. I hope Senator Murray is listening to me. If the Democrats are intending to move that, then I will withdraw mine and allow the Democrats to move theirs. I think theirs is Democrat amendment No. 1.

Senator MURRAY (Western Australia) (2.37 p.m.)—I thank the shadow minister for his courtesy; it is appreciated. I motivated Democrat amendment (1) quite extensively in my address in the second reading debate. I am respectful of our time constraints, and I understand that the government would like to get on to further bills today if they can. So, unless there is a need to argue this case very strongly—and in view of the fact that the opposition are quite clearly supportive of this approach, having a simultaneous amendment of their own—I will simply move the amendment without further discussion. I move:

(1) Schedule 1, page 42 (after line 3), after item 182, insert:

182A  Section 271
Repeal the section.

Senator ABETZ (Tasmania—Special Minister of State) (2.37 p.m.)—The government opposes this amendment and feels very strongly about it. This is a proposal to repeal section 271, which makes it an offence for somebody to engage in rash and hazardous gambling that materially contributed to that person’s insolvency. I indicated yesterday, and I want to repeat and put on the record again, that there have been circumstances where people, when asked, ‘Where has the money gone?’ have said, ‘Oh, we knew we were in trouble, so the rest of our money was spent down at the casino and we lost everything. Bad luck.’ Then, when this particular provision is pointed out to them, all of a sudden they admit that the money was in fact given to Uncle Joe or Uncle Andrew or whoever it may have been. Then, when this offence is pointed out to them, all of a sudden they say, ‘Well, in fact we didn’t gamble it; here it is,’ and it is able to be retrieved for the benefit of creditors.

Why anybody who believes in sound public policy would believe that rash and hazardous gambling in these circumstances should not be made an offence defies the government’s comprehension. I indicated yesterday that it is very rare for somebody to be prosecuted. If I recall correctly, there are about 600 bankrupts per year who name gambling as the cause of their bankruptcies. It is a horrendous figure and ought to make all the state Labor governments around the country sit up and take notice of the social damage of gambling. That aside, on average over the last few years there has been only one prosecution per annum under this clause. So it is not used against those who have a problem or an addiction; it is for rash and hazardous gambling, which unfortunately has been tried as an excuse by certain people that have in fact squirreled away finances to their Uncle Joe or Uncle Andrew or whoever it may have been. Then, when this offence is pointed out to them, all of a sudden they say, ‘Well, in fact we didn’t gamble it; here it is;’ and it is able to be distributed amongst the creditors. We as a government oppose this amendment but, as indicated, will not divide on it. However, that should not suggest that we do not feel very strongly about the matter.
Senator MURRAY (Western Australia) (2.40 p.m.)—I will briefly remark that one of the reasons—I assume it is a reason for the opposition; it is certainly our reason—that we have approached this is that we have taken advice from a group of people with a great deal of experience in dealing with the unfortunates who are addicted to gambling and have descended into bankruptcies. That group includes the Interchurch Gambling Task Force, which comprises people such as Mr Tim Costello who are very well known for very good work in the community and have face-to-face and ‘street’ experience which is certainly unlikely to be matched in this chamber—certainly I do not have it.

I would remind you that the Interchurch Gambling Task Force said that for a number of years they have 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. I would give the minister my strongest support for his obviously sincere concern—and I hope it is the concern of the government—about the excessive provision of gambling outlets in this country. They are resulting in a social outcome which is extremely harmful, and they really do need to be curtailed in every sense. I am hoping that cross-party support for that is building, not just individual views that are held around the place.

The Interchurch Gambling Task Force said that numbers of people presenting to services for assistance have gambling problems and should be encouraged to consider bankruptcy as a means of getting out of those problems and finding their feet. Addiction is a terrible human burden. I am not skilled enough to say how you resolve it or what you do about it, but the Interchurch Gambling Task Force did say that this is one way of dealing with it. We have moved the amendment, taking their advice. I would suggest that the government consider it seriously on that basis.

Senator LUDWIG (Queensland) (2.43 p.m.)—As indicated by removing our amendment in favour of the Democrat amendment, this is a matter that we support. We believe that something needs to be done about this issue. As was revealed in this year’s Profiles of debtors, a report published by ITSA, the vast majority of bankrupts are people who are in very vulnerable circumstances—the unemployed being the most likely group to experience personal insolvency. In this regard, one of the matters that we wish to examine in a Senate inquiry is poverty amongst the working poor—to examine the nature and extent of poverty in Australia and the growing divide between the rich and poor. While the government has sought to personalise poverty by labelling the poor ‘cruisers’, ‘cheats’ and ‘job snobs’, Labor believe that it is time for an inquiry to examine and focus attention on the real factors which drive Australians into poverty and bankruptcy.

Senator ABETZ (Tasmania—Special Minister of State) (2.44 p.m.)—I can understand what Senator Murray’s comments were related to but, as I pointed out, 600 people per annum indicate that their bankruptcy was caused by gambling, yet only one person per annum is in fact prosecuted under the ‘rash and hazardous’ provisions. So that is a very small, minute, number. But more importantly, it has become a very effective device for those administering bankruptcy to retrieve money from those who assert that the moneys, or a certain amount of the moneys, were lost by one last throw of the dice at the casino: when confronted with this provision, all of a sudden the person admits that the money is in fact squirreled away, because they do not want to face the prosecution. That is the practical application of this. The Democrats and the Labor Party are opposed to it. I agree with Senator Ludwig that the unemployed are some of the most vulnerable in the community. Because we are a caring government, we have in fact created one million jobs since we have come to government.

Question agreed to.

Senator MURRAY (Western Australia) (2.46 p.m.)—I move:

(2) Schedule 1, page 49 (after line 13), at the end of the Schedule, add:
Part 3—Amendments relating to bankrupt corporations

Corporations Act 2001

238 At the end of Division 6 of Part 5.7B

Insert:

588Y Liability of a company for the debts or liabilities of a related company

(1) When a company is being wound up in insolvency, the liquidator, a creditor of the company, a nominee of a creditor of the company or the ASIC may apply to the Court for an order that a company that is or has been a related body corporate pay to the liquidator the whole or part of the amount of a debt of the insolvent company. The Court may make such an order if it is satisfied that it is just to do so.

(2) In deciding whether it is just to make an order under subsection (1), the matters to which the Court shall have regard include:

(a) whether the company provided services for or on behalf of the related body corporate; and
(b) whether the company occupied premises which are owned by the related body corporate; and
(c) the extent to which the related body corporate took part in the management of the company; and
(d) the conduct of the related body corporate towards the creditors of the company generally and to the creditor to which the debt or liability relates; and
(e) the extent to which the circumstances that gave rise to the winding up of the company are attributable to the actions of the related body corporate or an officer or officers of the related body corporate; and
(f) any other relevant matters as the Court considers just and appropriate.

(3) An order under this section may be subject to conditions.

(4) An order shall not be made under this section if the only ground for making the order is that creditors of the company have relied on the fact that another company is or has been a related body corporate of the company.

I will speak briefly, because this issue has been raised a number of times before and there is a considerable amount on the record about it. It is a fact that, if the Labor opposition supports this amendment, it will be the third or fourth time that the Senate has said to the House of Representatives, ‘This is an issue you must address.’ I must indicate—and this is my paraphrase; it is not the exact response we have had—that, in previous debates, eventually the government has said, ‘We understand the intent and motivation behind this and we will look at this with a view to doing something about it.’ The reason this is in here is that the behaviour of related corporations impacts upon individuals. If related corporations incur debts or liabilities that they cannot meet, at the bottom end of the creditors list are some very sad stories of a plumber or a carpenter or another tradesperson who is not paid and who themselves will then get into financial difficulty, and sometimes bankruptcy, as a result.

The Australian Democrats have long held that this amendment, which is based on the Harmer Law Reform Commission recommendation of 1988, should be in law. Every instance that we have—and we keep getting them, year after year—of corporations being able to walk away from a situation of debts or liabilities of a related company is just unacceptable. It has happened in the airline industry, it has happened very frequently—far too frequently, in my view—in the mining industry and it has happened in a number of other industries. So the amendment repeats the substance of what has been previously put. Unless the minister or the chamber requires me to motivate it far more strongly than I do, I am going to assume that those on both sides are familiar with the arguments and the construct that goes behind this proposal.

Senator ABETZ (Tasmania—Special Minister of State) (2.49 p.m.)—The government opposes the amendment. I will keep my comments very brief. It should be remembered that, where the other party to a transaction is a related party, the relevant transaction period can be up to 10 years prior to the
winding-up—and that is in relation to the clawback provisions—which provides substantial protection for creditors from fraudulent arrangements designed to defeat creditors’ claims. So there is the possibility in the legislation or under the Corporations Act, as I understand it, for a clawback of some 10 years—which does provide substantial protection.

Senator LUDWIG (Queensland) (2.50 p.m.)—The opposition will be supporting the amendment.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (2.51 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

PLANT BREEDER’S RIGHTS AMENDMENT BILL 2002

In Committee

Consideration resumed from 21 October.

Bill—by leave—taken as a whole.

Senator O’BRIEN (Tasmania) (2.52 p.m.)—I take it that the running sheet dated 21 October is still current for this bill. I have some comments that I seek to make prior to the packages of amendments being moved in the order that they appear on the running sheet. Firstly, I request that the first package of amendments not include Democrat amendment (3) and that that amendment be dealt with after all of the amendments—in other words, after the opposition amendments. The reason for that is that Democrat amendment (3) inserts a definition of ‘indigenous’ into section 3 of the act and this definition is consequential to a number of Democrat amendments and a later opposition amendment in relation to the Plant Breeders Rights Advisory Committee. I ask that it be placed there so that if it is not required after all of the other amendments are dealt with then obviously there would be no point in supporting it. That is the first request I make.

I have some other comments. Firstly, I have a comment about item (8), which omits the words ‘by which the variety will also be known and sold in Australia’ from section 27(2)(b) of the act, which I understand is consequential to the amendments to subsection 3(1). A member of the farming community familiar with the government’s proposals expressed some concern to me that the amendment will present an opportunity for one synonym to be presented at the time of application for a grant of PBR and an entirely different one used at the time of commercial sale. However, I have raised the matter with the office of the Minister for Agriculture, Fisheries and Forestry and am advised that this provision is entirely consistent with other legislation of this type. That is to say that legislation does not usually prescribe that products or services can be marketed under particular names. I am advised that the synonym provisions of the act do no more than recognise that some breeders may want to use different names for their new plant variety for cultural, marketing or other reasons. We remain prepared to support that amendment.

With regard to item (17), which is consequential to item (6) but goes directly to the issue of access to confidential information in a PBR application, similar sources have put to me that new seeds will be presented to growers with a glossy name designed to boost sales rather than provide complete product information. I am advised—and I have to say that I am not entirely surprised—that sometimes the claims in these glossy plant brochures are not always realised when people, particularly farmers, put the seeds in the ground. I have addressed this issue in part in relation to item (8), but it has been put to me that if a particular farmer knows the parents of a new plant variety she has a better chance of knowing if it will live up to the claims on the front of the seed packet. It has been suggested to me that this knowledge would give farmers some warning of potential problems, which might be problems they may have experienced with the source variety and problems that may be controlled with appropriate agronomic practice.
I sought advice from the minister again on whether farmers should be entitled to access the details of the parent of a new cultivar, and I understand the answer is no and that commercial confidentiality is the reason given. It is asserted that mandated public access to all information contained in applications for plant breeders rights would act as a disincentive to innovation and allow other breeders to use the same source varieties to breed similar varieties to those subject to the PBR claim. Commercial confidentiality is an often unsatisfactory argument, but I recognise it has an appropriate place in an intellectual property scheme. Accordingly, we will also support that amendment.

Item (33) of the bill substitutes the words ‘may be begun in the court’ with the words ‘may be begun in the court only by the grantee’. The effect of that is to restrict the ability of those other than PBR grantees to commence action for infringement. I do not have any advice on that and I would appreciate advice from the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry in the course of the debate during the committee stage on the rationale for this amendment.

Amendments (1), (2) and (R5) institute a requirement that all holders of plant breeders rights for genetically modified plant varieties prepare a cost-benefit analysis based on the Department of Finance and Administration guidelines. This is intended to ensure that the social, cultural, environmental and economic costs associated with the release of genetically modified plants are assessed rather than a simplistic economic assessment based on
the degree of commercial use. It is intended to ensure that we understand the implications of new plant varieties on markets and that we determine to the extent possible the viability of these markets as well. It is important to understand the financial implications of granting a right to which financial benefits may accrue.

One of our fundamental issues with the Plant Breeder’s Rights Act is the extent to which it provides rights without responsibilities. We understand that, to the extent that this act parallels patent law, it is simply about the registration of a right. However, that argument fails to recognise the extent to which that registration has the potential to impact on the rights of others. A new plant variety is not a new steak knife and not a new refrigerator—it is a living organism. It may derive from wild or traditionally used species. It may have the potential to impact on other living organisms or on habitats or species through contamination or displacement. It may impact on markets and trade.

Before granting a right, it is imperative that we understand the implications of the use and the release of that living organism. Amendment (2) defines a genetically modified plant, relying on the definition from the Gene Technology Act 2000. Amendment (R5) refers to the information that must be included in the plant breeders rights application. In addition to a cost-benefit analysis for genetically modified plants, the amendment requires disclosure of any relevant information relating to the potential for a new plant variety to become an invasive species if released in Australia and information regarding any indigenous use of the plant from which the plant variety is derived.

The Australian Democrats believe these amendments are particularly important because the current approval process for genetically modified crops through the Gene Technology Regulator does not look at the issue of economic costs; it looks purely and solely at the impacts on health and the environment. These impacts are very important, and the analysis is based correctly on the science of the effects. However, we believe there needs to be a full and proper debate in Australia about the costs and benefits of genetically modified crops before the approval of such crops in Australia. This is particularly important, and these amendments are particularly timely, given that the Gene Technology Regulator is currently considering two applications for the commercial release of genetically modified canola.

Australia, like the United States, has been one of the countries most devoted to the introduction of genetically modified crops. There have been a number of quite damning reports on and studies of the impacts and dangers of genetically modified crops—studies such as the very recent British Soils Association study, which found that American producers since 1999 have lost about $12 billion through lost revenues and additional costs due to lower crop prices, loss of major export markets and product recalls. The Australian Grain Harvesters Association have expressed deep concern at the potential cost to their industry of introducing genetically modified crops against the wishes of many farmers, who do not want machinery shifting between GM and GM-free farms and zones. A British medical report on possible health implications of genetically modified crops, including the potential reduction in the effectiveness of antibiotics to fight diseases such as meningococcus, is also on the record.

More recently, the European Union have commissioned research on the cost of segregating GM and GM-free areas, which they estimate could cost up to 10 per cent of the harvest return to the farmers involved. The Productivity Commission only last Friday released a report on the trade implications of genetically modified crops, including the potential reduction in the effectiveness of antibiotics to fight diseases such as meningococcus, is also on the record.

Only yesterday the trade minister, Mr Vaile, signalled that the labelling of GM foods in Australia could be one of the items we could relax even further, under pressure from the Americans.

These are all issues that Australia needs to consider very carefully. We need to ensure that, before we go down the North American
track of allowing the granting of genetically modified crops, we have done the research. The Plant Breeder’s Rights Act is probably the best place to do it, because it is through that that the royalties will be collected on the plant varieties which will be introduced. Without the royalties, obviously, the incentives will not be there for the seed companies to introduce those crops; and, without the incentives, we might be excused some of the excesses we have seen in North America and Canada.

We need to ensure that we keep our access to those markets that do not want genetically modified foods, particularly Europe and Japan, where resistance to GM crops is rising rather than falling. In fact, some of the research referred to by the Productivity Commission showed that the premiums in those markets were as high as 50 to 100 per cent of the prices gained in other markets. This is why the Democrats believe it is important both that the cost-benefit analyses are done and that they are done before the seed companies are able to collect any economic benefit in terms of plant breeders rights, and that is why we are moving these amendments. I commend them to the Senate.

Senator O’BRIEN (Tasmania) (3.03 p.m.)—These amendments, when taken together, seek to introduce additional requirements in relation to plant breeders rights applications. They are that a plant breeders rights application for genetically modified plant varieties would be required to include a cost-benefit analysis, and that all applicants would be required to provide the results of any tests conducted on the plant variety, information on whether the plant has established itself in the wild, information on whether the plant variety is likely to become an invasive species if released in Australia, and four other types of detail relating to indigenous origin and issue.

It is the opposition’s view that these amendments reveal a fundamental misunderstanding of the purpose of the Plant Breeder’s Rights Act. The refusal of a plant breeders rights application does not prevent the propagation of a plant variety; it merely denies the applicant breeder certain exclusionary rights. The Plant Breeder’s Rights Act establishes proprietary rights for breeders of new plants; it does not regulate or control their creation or distribution. As an intellectual property scheme, plant breeders rights coexist with other legally enforceable rights. Accordingly, despite recognition under the Plant Breeder’s Rights Act, a breeder may in fact have no right to propagate or distribute their new plant variety as a consequence of the operation of other legislation.

It appears from Senator Cherry’s media release of 22 September that the key focus of this amendment is the matter of genetically modified organisms. Indeed, that was a key focus of his supporting address in the chamber. Many stakeholders, including consumers, have concerns about the impact of genetically modified organisms in agriculture. However, it is important that this issue be addressed in the most appropriate legislative form and not dealt with in an ad hoc and opportunistic way. Additionally, it is important to know if the legislative change that is sought is actually necessary. Question 20 in part 1 of the existing plant breeders rights application form asks:

Is this variety a Genetically Modified Organism?

If the answer is yes, the application requires the submission of the relevant Gene Technology Regulator licence number. The accompanying plant breeders rights guidelines state quite clearly:

... only holders of licences issued by the Regulator may conduct dealings involving the intentional release of a GMO into the environment.

This is quite simply the wrong piece of legislation through which to seek to address the sorts of concerns the Democrats are seeking to address in this amendment. It should be clear to the Democrats that control over the commercial release of genetically modified organisms is not a function of the Plant Breeders Rights Office. Additionally, there is evidence over recent weeks that the Gene Technology Regulator is willing and able to act with respect to the potential environmental consequences of genetically modified plant varieties. I understand that the regulator has limited the release of a genetically modified cotton variety, owing to her concerns over its potential environmental impact in
Northern Australia. In our view, the Democrats betray a misplaced understanding of the role of this piece of intellectual property legislation, and the opposition is unable to support these amendments in terms of their appropriateness.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (3.07 p.m.)—Firstly, I want to deal with Senator O’Brien’s comment on item 33, which I understand to mean that an action may be begun in the court. It is not intended that any member of the public can enter into a legal dispute regarding property that is not legally theirs to dispute. This clarification confirms that it is the grantee who is empowered to take action regarding infringement of their property and no other. This is consistent with other intellectual property legislation.

With regard to Senator Cherry’s comments on his amendments, similarly I would like to point out that this legislation is neither the pivot on which all plant issues turn nor inextricably linked to such matters. This legislation is simply a registration scheme of intellectual property ownership in new plant varieties. It leaves commercial, environmental and health issues to be dealt with under the legislation relevant to those concerns. This debate has been used to raise all sorts of matters that are not related to the subject matter of this bill and that are at best only distantly related to the purpose of the bill. Legislative issues must be addressed in the relevant legislative context, which I thought commonsense would have confirmed.

Claims for damages arising from GMO contamination—or, for that matter, non-GMO varieties—have and will continue to be effectively dealt with in the courts under common law. Taking the entirely inappropriate step of making provision for damages solely in the plant breeders rights context ignores all the other possible conflicts that could arise in respect of GMO matters, patented or otherwise, animal or vegetable. Common law is available to deal with such matters, and the courts are ready to make judgments on the validity of claims.

With regard to assertions that plant breeders rights is used to misappropriate plant varieties, propaganda and truth are not always the same. The truth is that plant breeders rights do not facilitate biopiracy. Australia leads the world in its endeavours to ensure probity in respect of plant breeders rights plant intellectual property registration. If you examine the PBR web site at www.affa.gov.au/pbr, the transparency of our plant breeders rights system will be apparent to you. UPOV itself recognises the Australian system to be exemplary in this regard.

Mechanisms to oppose the registration of a variety are already in the PBR Act, which provides for both comments and objections. The application process requires information on the origin of the variety, on the breeding methodology and on any restrictions that may relate to the granting of PBR. Detailed descriptions of varieties are published and furnished to all international seed banks. Australia investigates any such allegations under existing legislative mechanisms as part of its obligations under UPOV. The truth is that there have been very few allegations, and none has been substantiated.

With regard to traditional knowledge, the Australian government is conscious of the need to provide effective protection of Indigenous culture and cultural property. This is a new and complex area where traditional, national and international legal systems interact. Accordingly, there is a need to proceed carefully and not prematurely. For example, the World Intellectual Property Organisation is currently examining the issue in the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore. Other fora, such as the World Trade Organisation through the Council for Trade Related Aspects of Intellectual Property Rights, also have an interest. Australia is a participant in these kinds of discussions. It should be also noted that the convention on biodiversity and UPOV are mutually supportive.

PBR is not the appropriate legislation by which effective protection can be provided for traditional knowledge. PBR is about new, not traditional, plant varieties. It is about rights lasting fewer than 25 years, not the long-term rights envisaged for traditional knowledge. Indeed, introducing traditional
knowledge elements into PBR will not resolve the broader complex issue. In fact, it may create other problems, as breeders from overseas hesitate to release their elite varieties in Australia because they are unsure as to whether their rights have been affected. Moreover, PBR coexists with other laws of the land, which means that, if traditional knowledge is included in the appropriate legislation, plant breeders rights will fit in.

On amendment (R5), which Senator Cherry also mentioned, the eligibility requirements for plant breeders rights are that the variety must be new, distinct, uniform and stable. Establishing additional criteria would be contrary to Australia’s commitment under article 5 of the 1991 UPOV convention. In addition, issues of invasiveness and risk to the environment are already covered by the Office of the Gene Technology Regulator.

Question negatived.

Senator CHERRY (Queensland) (3.14 p.m.)—by leave—I move amendments (3A) and (R4) on sheet 2606:

(3A) Schedule 1, page 3 (after line 14), after item 2, insert:

2D Subsection 3(1)

Insert:

traditional knowledge, innovations and practices means that knowledge and those innovations and practices that have been and continue to be developed and practiced by indigenous peoples in accordance with their traditions and customs.

(R4) Schedule 1, page 3 (after line 14), after item 2, insert:

2E Section 5

Repeal the section, substitute:

5 Definition of breeding

A reference in this Act to breeding is:

(a) the process of developing new plant varieties by cross-pollination and selection;

(b) in perennial plants, the process of discovering mutations in such plants, and then selecting and propagating from them so as to establish a new variety;

(c) the process of discovering a plant variety that has grown from seed, which has new, distinct, uniform and stable characteristics, together with its use in selective propagation over 3 generations;

(d) the process of deliberate mutation and propagation via tissue culture using in vitro techniques;

but may not include plant varieties and species that are the result of indigenous peoples’ traditional knowledge, innovations and practices unless:

(e) the prior informed consent of the holders of such knowledge, innovations and practices has been sought and received; and

(f) equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices have been agreed to amongst the parties.

Amendment (3A) to the Plant Breeder’s Rights Amendment Bill 2002 inserts a new definition of ‘traditional knowledge, innovations and practices’, recognising that these will be developed and practised by Indigenous peoples in accordance with their traditions and customs. That fits into amendment (R4), which changes the definition of ‘breeding’ in the Plant Breeder’s Rights Act. The definition we propose is stronger and more specific. As it currently reads, discovery of a species and some selective breeding may be sufficient for the granting of plant breeders rights. There are documented cases of plant varieties discovered in the wild, selectively bred and then issued a PBR even though the plant variety is not substantially different from the wild variety. This amendment elaborates on the breeding requirements for a discovered variety to be considered eligible for a PBR. This is one of several amendments being proposed by the Australian Democrats in an attempt to reduce the levels of biopiracy and to address the fact that, contrary to the assertions made earlier by the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry, Australia has one of the world’s worst records of biopiracy.
The amendment also ensures that plant varieties derived from traditional knowledge, innovation and practice cannot be granted a PBR unless Indigenous communities give informed consent to the breeding of the variety and are ensured benefits from the granting of a PBR. There are obvious reasons for ensuring that Indigenous communities are provided with proactive protection at law in relation to varieties that have been traditionally derived and used. The Australian Democrats recently spoke with a holder of a PBR variety that was, and still is, used by Indigenous people in Australia. The company has entered into an agreement with the Indigenous community but freely admitted that, if they sold the company tomorrow, there is no legislation to ensure that any subsequent owners would provide such benefits. This would be unacceptable to all Australians.

The Plant Breeders Rights Scheme allows tests of new varieties to be conducted by employees of the applicant, limits objections to new plant varieties, makes objection difficult and expensive and fails to provide rights to Indigenous communities even if the plant was originally discovered on their land. Evidence suggests that exclusive rights are being granted under the act to many plants that are not sufficiently different from plants discovered in the wild. For example, four years ago Australia was cited by the Canada based Rural Advancement Foundation as having the worst record of any industrialised country for biopiracy, being responsible for 80 per cent of the documented cases of dubious plant variety claims. Little has changed since then. Biopiracy, including the patenting of plant learning acquired through generations of Indigenous people, has continued. Plants traditionally used by Indigenous people have been claimed as new varieties and granted a PBR. There are cases where the legislation is not sufficiently followed, the tests are not sufficiently stringent or the applicants simply disguise the source of the plant variety. The Democrat amendments will reduce the chances of biopiracy of plant varieties from Indigenous lands and increase the capacity of Indigenous communities to object where biopiracy is occurring. I commend these amendments to the chamber.

Senator O'BRIEN (Tasmania) (3.17 p.m.)—Firstly, in relation to the example given of the native species plant altered to a very limited extent, the legislation provides very wide discretion for consideration of applications for revocation of a grant. There are fewer limitations on a revocation application than there are on an objection to an application for registration. The community involved in the example given may have existing rights under the legislation to challenge the grant now and in the future. In my view, in the circumstances Senator Cherry describes, that would be a stronger power in their hands than the proposed amendments—particularly amendment (R4), which replaces the more detailed definition of 'breeding' in section 5 of the act.

This issue arises from a 1999 recommendation of the Standing Committee on Agriculture and Resource Management that the Registrar of Plant Breeders Rights address the definition of 'breeding' in the act by, firstly, consulting with the breeding community to provide a clearer explanation of breeding; secondly, convening a panel of experts to provide examples of breeding methodologies that conform with the act and are in accordance with Australia's international obligations; thirdly, publishing a clearer explanation of breeding in the Plant Varieties Journal and on the PBR web site; and, fourthly, working with the plant breeding and biotechnology industries to clarify essential derivation matters, including protection for the first breeder.

The basis of the Democrat amendments is concern over so-called biopiracy where a PBR is sought for varieties that are not significantly different from those discovered in the wild. The draft report of the expert panel on breeding established by the Plant Breeders Rights Office addressed this matter in some detail. The expert panel found that the current definition is appropriate and, in the panel's words:

... encourages innovation, while providing protection for all breeders against plagiarism and vexatious challenge ...

One of the issues clarified in the panel’s draft report is that discovery alone does not constitute breeding within the meaning of the
act. I think that is very apposite to the example given by Senator Cherry. Section 5 of the act provides that:

... breeding, in relation to a new plant variety, includes ... the discovery of a plant together with its use in selective propagation so as to enable the development of the new plant variety.

This new variety must have a breeder and meet the criteria of distinctiveness, uniformity and stability. It is the preliminary assessment of the expert panel on breeding that legislative amendment is not necessary. In the absence of compelling evidence to the contrary, the opposition supports that assessment. I make the additional point that this matter is still under review by the expert panel, whose draft report is the vehicle for ongoing consultation with stakeholders and the wider community. Therefore, the opposition believes that it would be pre-emptive to introduce change in this regard without compelling evidence that such change is necessary. In the absence of comprehensive consultation with the industry on its impact, the opposition is also concerned that the particular definition proposed by the Democrats is unnecessarily restrictive and may have unforeseen consequences, including making registration of Australian plant species much easier overseas, effectively denying Australia the benefit of its own plant innovation. The provisions dealing with Indigenous rights import non-breeding related matters into the definition of breeding and are, in our view, misplaced.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (3.22 p.m.)—Democrat amendments (3) and (3A) are about definitions arising from other items and I do not believe require comment as such. Democrat amendment (R4) is a prescriptive definition that is inflexible, restrictive and cannot accommodate shifts in international best practice or emerging technology, and the government will not be supporting it. It would make it easier to breed and register Australian native species overseas rather than in Australia, which would be a major disincentive to Australian innovators and would, for example, place our competitors in a perfect position to exploit native Australian species such as kangaroo paw—an outcome that would be entirely inconsistent with ensuring that Australia benefits from the exploitation of its biological diversity. Senator O’Brien has mentioned the draft conclusions of the expert panel, and the government would agree with those.

Some of the detrimental effects that would flow on if we took up this proposed definition would be that it would exclude most of the annual horticultural plants developed from sports and it would exclude all hybrids such as maize, sorghum and rice and many of the successful traditional breeding techniques such as self-lines and double haploids. It would impose unnecessary time limits, by way of the minimum number of generations, that would make registration of some varieties unrealistic—such as mangoes, where three generations may take 60 years or more.

The proposed exclusion from breeding of plants that are the result of traditional knowledge represents a misunderstanding of the legislation. Any criteria that further limited the development of new varieties would not only place Australia at risk with its international obligations but would detract from the main aim of promoting plant innovation. Issues of prior informed consent and benefit sharing are already being dealt with by the Environment Protection and Biodiversity Conservation Act and therefore it is unnecessary and undesirable to replicate those controls in PBR. The government will not be supporting the amendment.

Senator RIDGEWAY (New South Wales) (3.24 p.m.)—I want to make a few comments particularly on Democrat amendment (3A). I understand that amendment (3) will be dealt with later at the request of Senator O’Brien. Comments have been made that this bill is not the appropriate place for the parliament to recognise and protect Indigenous intellectual property in relation to plant varieties. I want to talk to amendment (3A) in terms of the definition of traditional innovations and practices. Essentially, the amendment seeks to give some understanding and inform the bill in relation to Indigenous knowledge and the innovations and practices that can continue to be developed.
by Indigenous people in accordance with their customs and traditions. Essentially, it is recognising that there is that development and modification over time. Whilst the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry and the opposition have made it quite clear they do not believe that this is the place for that—and they have certainly mentioned the Environment Protection and Biodiversity Conservation Act—I think the issue here is one of recognising, even in the modification and patenting in the Plant Breeders Rights Scheme, that it does come down to an understanding of the need to establish some sort of starting line for what at the moment is presumably a scheme driven by an understanding of a doctrine of manifest destiny, if you like.

On the definition of traditional innovation and practices, I believe that it is the appropriate place, given that much of what occurs in the development in plant breeding in the industry has to somewhere have an original source. That original source must have some ownership, or at least some sort of intellectual propiety, in relation to other people who may claim to have an interest in it and how it might be recognised. In this case we are talking about Indigenous people. I understand the political reality that it is not going to be supported, but again I say I think it is the appropriate place. I note the earlier comments of the minister on the need to be cautious on this occasion, given the complexity of the issues that arise, and the reference to the international experiences as well as the national experience. But I certainly want to seek some indication from the minister, given what has been said, that there is a proposal to at least look more seriously at the issue of intellectual property in the sense of recognising that it is an important thing that does need to be looked at. Is the government prepared to support some sort of inquiry to further the issue to make sure, if this is not the appropriate place, that we establish where the appropriate place should be? It seems to me that everyone does regard it as being important. I do not believe that the EPBC Act provides all the necessary protection and recognition, and I certainly think there needs to be an undertaking from the government that at least this issue needs to be pursued if there is not a willingness on their part to support the definition of traditional innovation and practices, as they evolve in a contemporary sense, being recognised and accommodated in this amendment bill.

Senator O'BRIEN (Tasmania) (3.28 p.m.)—Senator Ridgeway knows that the opposition is supportive of the development of a mechanism to investigate the matters he has just raised. Indeed, I am hopeful that the government will also be supportive of finding the appropriate method for the parliament to investigate this and to make recommendations to government to deal with an issue that is important. But we maintain that this is not the piece of legislation that provides the vehicle to deal with it. Specifically, amendment (3A) would insert a definition of words that appear in amendments (R4) and (R5), neither of which it would seem are going to appear in the act. I do not really believe it is appropriate that we put in a definition for words that would not otherwise appear in the legislation. It may be that Senator Ridgeway anticipates other amendments getting up that would put them in there, but I am not aware of those.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (3.29 p.m.)—I would like to assure Senator Ridgeway that Australia, as a government, is participating in international fora for further exploration of discussion on these items and that we would be supportive of that further participation without being able to predict any further events.

Question negatived.

Senator CHERRY (Queensland) (3.30 p.m.)—by leave—I move Democrat amendments (6) and (7) on sheet 2606:

(6) Schedule 1, page 7 (after line 28), after item 18, insert:

18A  Subparagraph 37(2)(b)(i)  

After “test growing”, insert “by an independent, qualified person who does not have any financial or contractual links with the applicant or grantee of a PBR”.

18A Subparagraph 37(2)(b)(i)

After “test growing”, insert “by an independent, qualified person who does not have any financial or contractual links with the applicant or grantee of a PBR”.
(7) Schedule 1, page 7 (after line 28), after item 18, insert:

18B Subparagraph 37(2)(b)(ii)
Repeal the subparagraph.

Amendment (6) deals with PBR applications and test growing. A PBR application may include a requirement for test growing of a plant variety. Currently the test is conducted by a person or persons selected and paid for by the applicant. This amendment requires that the test be conducted by an independent person without contractual relations to the applicant. Once again, this measure is intended to prevent biopiracy and the granting of rights over plant varieties that should not be granted. In a 1998 review of the worldwide patenting of plant varieties, the Rural Advancement Foundation International out of the UK and Heritage Seed Curators Australia prepared a report called *Plant breeders wrongs*. It examined the worldwide operation of plant breeders rights, and in respect of Australia’s record it said:

Of the seven countries studied, it is clear that Australia is the only state whose abuses are so pervasive as to describe the state itself as a predator.

America, according to the RAFL, was a distant second. In our view, this change to the definition of ‘test growing’ will ensure that the system becomes much more robust and independent and that those sorts of claims will not be made about Australia into the future. Amendment (7) is a subsequent amendment, flowing on from amendment (6).

Senator O’BRIEN (Tasmania) (3.32 p.m.)—The opposition finds it difficult to understand the connection between the form of amendment (6) and the stated aim. The amendment would limit the secretary’s discretion in respect of test growing of plant varieties and it purports to require test growing to be conducted by an independent qualified person who does not have any financial or contractual link with the applicant or grantee of a PBR. The impact of the proposed amendment is unclear, given that section 37(2)(b) deals with the requirements that the secretary may impose on the applicant but not with the requirements on the secretary. I must say that in general we would not be supportive of the amendment, because we are simply unaware of any evidence that the existing test growing regime is compromised. Maybe there is some specific evidence that Senator Cherry can draw to our attention. Certainly, in the absence of that evidence, we are not convinced that amendment (6) ought to be supported. Amendment (7) would remove the secretary’s authority to require the applicant to make arrangements for an approved person to supervise or conduct the test growing. That seems to be consequential on amendment (6) but, for the reasons that I have outlined, we will not be supporting that amendment either.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (3.34 p.m.)—The government will not be supporting these amendments. We already have a rigorous system to test new plant varieties. All the available evidence indicates that the current scrutiny of the work of accredited qualified persons by two independent groups works well. The current scheme is consistent with other professional advice systems, including patent attorneys, and the PBR Act includes severe penalties, including imprisonment, for deliberately supplying false or misleading information, so we simply do not see the need for these amendments.

Question negatived.

Senator CHERRY (Queensland) (3.34 p.m.)—I move Democrat amendment (8) on sheet 2606:

(8) Schedule 1, page 11 (after line 18), after item 37, insert:

37A After section 80
Insert:

80A Liability for damage caused by genetically modified plants

(1) The grantee of a PBR in relation to a genetically modified plant and any user of that genetically modified plant shall be jointly and severally liable for any loss or damage caused by that genetically modified plant:

(a) to another plant variety through genetic contamination; or

(b) to the health of any individual.
(2) An action for any loss or damage mentioned under subsection (1) may be commenced in any court of competent jurisdiction by:

(a) any person that has suffered the loss or damage; or

(b) any other person in the public interest.

(3) Any person who brings an action under paragraph (2)(b) shall not be entitled to any award for damages, instead any damages awarded by a court shall be awarded to the Commonwealth.

(4) For the purposes of this section genetic contamination means the transfer of genetic material from a genetically modified plant to another plant variety including (but not limited to):

(a) pollen dispersal by way of wind, insects or birds;

(b) seed dispersal:
   (i) by shared sowing;
   (ii) by cultivation and harvesting equipment which has not been thoroughly cleaned between uses;
   (iii) by accidental spillage from haul trucks;
   (iv) by the delayed germination of lost genetically modified seeds among organic crops grown in fields previously sown to genetically modified crops;
   (v) by wind, water, birds or other animals;
   (vi) by other methods of seed dispersal.

Amendment (8) does two things. Firstly, it will enshrine joint and several liability so that producers of genetically modified plant varieties with a PBR that causes damage will be held liable for the damage caused. Secondly, it allows anyone to bring an action for injury in the public interest, ensuring that any recovery goes to the Crown. While lands and public lands will now be afforded the common law protections that have traditionally applied only to private property and private property owners, the provisions for joint and several liability are driven by concern that liability for genetic contamination—that is, the transfer of genetic material from a GM plant to another plant by any of a variety of means—should not rest with the land-holder alone. The current law allows a party that has suffered injury or damage or interference with use and enjoyment of their land to bring an action against the parties responsible. In general it is more difficult to prove liability against a party once removed as a source of injury. With new plant varieties, for instance, it will be easier to show that a farmer planted a particular variety of plant that caused damage to a neighbouring farmer than to show that the producer of that variety is also responsible.

As for the recovery provisions, the Democrats' amendment provide that any damages awarded for public interest litigation shall, as I said earlier, be awarded back to the Crown. This amendment would certainly ensure that we avoid some of the issues we have seen in North America in terms of liability for contamination arising out of genetically modified crops. It is something that we believe needs to be considered. I believe that this is the appropriate bill to do it in, because it essentially deals with economic aspects flowing out of the issue of the adoption of new plant varieties.

Senator O'BRIEN (Tasmania) (3.36 p.m.)—I canvassed in some detail earlier in the debate the opposition's concern about the attempt to import gene technology issues into the Plant Breeders Rights Scheme. This amendment seeks to impose liability on the grantee of a plant breeder's right in relation to damage or loss caused by genetically modified plants. The amendment seeks to establish a unique compensation regime for genetically modified plants within the PBR Scheme. It is our view that the establishment of this regime is an attempt to deal with gene technology concerns and that it is entirely inappropriate in this legislative form.

The inequity of holding PBR grantees liable for loss or damage in relation to genetically modified plants, when compared with someone who did not seek to so register a plant but caused damage, demonstrates that this legislative mechanism is not the appropriate mechanism to pursue this course of action. If this course of action were to be pursued, of necessity it could only have im-
applications for a genetically modified plant which was registered under the scheme. It would have no application to a genetically modified plant which was not registered under the scheme. It would therefore arguably be ineffective, and certainly inequitable, that a regime designed to protect the environment and impose penalties applied only to one group of people and not potentially to another. In our view, that demonstrates that this is not the appropriate vehicle for this legislative amendment.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (3.38 p.m.)—I think my comments on the application of common law earlier dealt with this matter and, in addition, the Gene Technology Act 2000 already provides for substantial clean-up powers and fines of up to $1.1 million per day for breaches of the act in relation to the environment. Therefore, the government will not be supporting this amendment.

Question negatived.

Senator CHERRY (Queensland) (3.39 p.m.)—by leave—I move Democrat amendments (9) to (15) from sheet 2606:

(9) Schedule 1, page 6 (after line 32), after item 16, insert:

16A Subsection 35(1)

Repeal the subsection, substitute:

(1) Any person who considers, in relation to an application for PBR in a plant variety, that his or her interests may or would be affected by the grant of that PBR to the applicant may lodge a written objection to the grant of PBR with the Secretary at any time after the giving of that public notice of acceptance of the application and before the end of the period of 6 months starting with the public notice of that detailed description.

(1A) The interests mentioned in subsection (1) include, but are not limited to, cultural, economic, social and environmental interests.

(10) Schedule 1, page 6 (after line 32), after item 16, insert:

16B At the end of section 35

Add:

(4) No fee or charge shall be imposed for an objection to an application for a PBR to the extent that the objection is based on cultural, social or environmental interests.

Note: Fees may be charged for an objection to the extent that it is made on economic interests under subparagraph 37(5)(b)(ii).

(11) Schedule 1, item 20, page 8 (line 19), omit “in any other case”, substitute “to the extent that the objection is based on economic interests”.

(12) Schedule 1, item 20, page 8 (line 24), omit “in any other case”, substitute “to the extent that the request is based on economic interests”.

(R13) Schedule 1, page 8 (after line 34), after item 22, insert:

22A At the end of section 42

Add:

(4) If a plant variety is a traditional landrace plant variety or a variety which is essentially derived from such landrace plant variety, PBR must not be granted to that variety.

(4A) For the purposes of this section, traditional landrace plant variety means a variety developed over millennia by selecting favourable characteristics within a cultivated crop species, or a variety that is the outcome of indigenous peoples’ traditional and customary innovations and practices. It may also be known as a “traditional variety”, “local variety” or “farmers’ variety”.

(5) If an application for PBR deals with a plant variety which is a “discovered” variety as specified under section 5 of this Act:

(a) on lands owned by the Crown; or

(b) in national parks; or

(c) in world heritage areas; or

(d) on Ramsar sites; or

(e) on lands in respect of which native title has been granted, that are subject to
native title claims, or that can be shown to be the subject of rights and interests by indigenous peoples, including customary and other forms of ownership unless:

(i) the prior informed consent of the holders of such knowledge, innovations and practices has been sought and received; and

(ii) equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices have been agreed to amongst the parties.

PBR must not be granted to that variety.

(5A) For the purposes of this section, Ramsar site means a site declared under the Convention on Wetlands of International Importance especially as Waterfowl Habitat done at Ramsar, Iran, on 2 February 1971, as in force for Australia immediately before the commencement of this Act.

(14) Schedule 1, page 10 (after line 25), after item 31, insert:

31A After subsection 50(9)

Insert:

(9A) The interests mentioned in subsections (8) and (9) include, but are not limited to, cultural, economic, social and environmental interests.

(15) Schedule 1, page 10 (after line 25), after item 31, insert:

31B At the end of section 50

Add:

(11) No fee or charge shall be imposed for an application to revoke a PBR to the extent that the application is based on cultural, social or environmental interests.

Note: Fees may be charged for an application to revoke a PBR, which is made on economic interests under subparagraph 37(5)(c)(ii).

Amendments (9) to (15) amend the provisions relating to objections to PBR grants so that a party may object on economic, social, cultural and environmental grounds. Currently, objections may be lodged only on economic grounds. Additionally, objectors are required to pay application fees and the costs of any trials associated with the objection. The effect is twofold: one, it restricts to only a few people those who are entitled to object and, two, it narrows that even further by requiring that objectors are able to afford the costs of objection. This is simply unacceptable and, in many respects, undemocratic. This bill clearly has the potential to impact on the rights of traditional owners, public lands and the broader community.

While we recognise that there can be substantial benefits from innovation in new plant varieties, this government must also recognise that there can be substantial costs as well. Biopiracy, which I mentioned earlier, is an obvious example. If a plant variety is discovered in the wild, selective breeding takes place and an application is made for a PBR. Assume that plant is not substantially different from the wild variety; assume too that the discovery took place on public land and that the plant represents a potential drug. This scenario is not speculative but historical. Under current objection provisions, it is arguable that no-one could object in the scenario I have just set out. It is certainly true that the objections could not occur on cultural, environmental or social grounds. The Democrats are amending these provisions to ensure that fees and costs will not be charged to the extent that the objection is social, cultural or environmental. This means that one can object to an application for the grant of a PBR on the basis that the plant does not represent a new variety and that the costs associated with trials to determine the singularity of the variety are borne by the broader community in recognition that such an objection serves an important public interest.
One of the dangers or potential costs associated with new plant varieties, particularly those derived from overseas plant varieties, is whether that plant variety has the potential to become an invasive species. There is nothing in the current act that requires an applicant to indicate whether the plant type has become an invasive species elsewhere and to set out the nature and results of tests of plant varieties conducted overseas. For instance, if a plant variety has become an invasive species in Florida, there is substantial reason to be concerned at the capacity of the plant variety to become a menace here also.

For too long we have underestimated the costs of invasive species in Australia. Recently at a conference in Perth on invasive species an Australian scientist made the statement that, in terms of habitat and species loss, invasive species were a significantly larger problem than salinity. It is, or should be, a basic precautionary approach to recognise that new plant varieties have the potential to become invasive species and the potential to become significant problems in Australia and that the costs associated with invasive species can be huge over the longer term. These amendments simply add a layer of caution should the application for a PBR represent the point at which a new plant variety may be introduced into Australia.

Amendment (13) amends section 42 of the act. It ensures that plant varieties derived from varieties that have developed over millennia by selective breeding or by way of traditional knowledge and innovation cannot be granted a PBR. The exception is when Indigenous communities give informed consent and are guaranteed to benefit from a PBR. The amendment also ensures that plants discovered on public or Aboriginal lands, regardless of the degree of selective breeding that takes place, cannot be granted a PBR. The purpose behind this amendment is to ensure that the plant varieties discovered on public or Aboriginal lands remain in the hands of the community where they were found. Currently, there is no provision for Aboriginal communities, for instance, to exercise any rights over new plant varieties when the original variety was found on Aboriginal land.

Progress reported.

ADJOURNMENT

The PRESIDENT—Order! It being 3.45 p.m., I propose the question:

That the Senate do now adjourn.

Immigration: People-Smuggling

Senator KIRK (South Australia) (3.45 p.m.)—I rise to speak today to a petition that I tabled in the Senate on Tuesday, 12 November 2002. I was more than pleased to be able to present this petition to the Senate. The petition, signed by 220 of my constituents in South Australia, stated:

We request that the Senate call for a full independent judicial inquiry into the role of Australian Defence Force personnel and the Australian Federal Police in immigration-related activities including (a) the circumstances surrounding the sinking of the SIEV-X and (b) the people-smuggling disruption program in Indonesia.

As honourable senators are aware, on 23 October 2002 a report into such matters by the Select Committee on a Certain Maritime Incident was tabled. This report raised serious doubts about the government’s role in the sinking of the SIEV-X. The SIEV-X departed Indonesia on 19 October 2001 with approximately 400 passengers on board. During the boat’s journey it sank and, tragically, 352 people drowned. There were only 44 survivors, and these were picked up by an Indonesian fishing boat. The select committee found that the intelligence available to the government in relation to the SIEV-X was insufficient and it also found there were several gaps in the chain of reporting of evidence. These gaps included, firstly, the failure to provide DIMIA with intelligence on the same day as it was received and expedited to Defence; secondly, the failure to raise the substance of that intelligence at the daily meeting of the People Smuggling Task Force on 20 October, even though it was directly related to the discussion; and, thirdly, Coastwatch’s omission of the personal assessment of an AFP officer that overcrowding placed SIEV-X at increased risk.

The committee thought it particularly unusual and disturbing that a human disaster of
such scale and magnitude could not only happen within a theatre of intensive Australian operation but also go undetected for a period of three days. It was also particularly disturbing that no agency that was involved conducted any review into the disaster of the SIEVX to discern what further steps could have been taken, until it was clear that there was public controversy regarding the tragic events. It is also unusual and disheartening that the interdepartmental oversight bodies, the Illegal Immigration Information Oversight Committee and the Operational Coordination Committee, did not take action to reveal whether or not this catastrophe raised serious questions about the government’s procedures and about the relationship between intelligence and operations.

Our border protection measures must take into account the international and domestic obligations that Australia has to ensure safety of life. It is for these reasons that there is a growing community sentiment against the way the government handled the SIEVX problems, similar to the sentiment against the alleged ‘children overboard’ incident. The South Australians who signed this petition are angry about the problems which occurred last year leading to the relevant authorities being unaware of the SIEVX’s overcrowding and its potential for disaster. They seek answers as to what the problems were and why there was no internal review after the sinking. A judicial inquiry would be a good, open and independent way of ensuring that the truth will be known about this incident so that such future tragedies can be prevented.

The other issue that this petition raises is the people-smuggling disruption program in Indonesia. The government believes that its disruption program has been the main reason that boat arrivals have stopped during this past year. According to Minister Ruddock, the government’s disruption involves ‘physically disrupting the work of people smugglers’, although it is unclear exactly what this means and what activities happen on Indonesian territory. There are no costings, no legislative mechanisms and no accountability. Recently, a Federal Police informant, Kevin Enniss, admitted to Channel 9 Sunday reporter Ross Coulthart that he paid Indone-
sian officials to scuttle boats on four or five occasions. It is also claimed that he claimed to be a people smuggler, often taking money from asylum seekers.

Commissioner Keelty of the Australian Federal Police has also acknowledged that the AFP provide training, equipment and costs of travel to those who carry out disruption. The truth is that no-one can really know what happens or what does not happen in the Indonesian disruption program. It is only through a judicial inquiry that the truth can be found out about this program. We do know, however, that, firstly, government agencies have never sought legal advice on the activities; secondly, there are no legal mechanisms operating in the disruption program; and, thirdly, the Australian Federal Police acknowledge that they have no way of ensuring Indonesian authorities act in a proper way. As Commissioner Keelty has said:

We have to largely leave it in their hands as how best they do it.

Law professor Mark Findlay told Channel 9, regarding the supposed activities of Mr Enniss:

... under Australian law if he’s a people smuggler it’s a crime. If he’s not a people-smuggler but purporting to be one, that’s a misrepresentation. And to obtain a financial advantage as a consequence, that’s a crime—you can’t have it both ways.

Professor Findlay also claimed that there was little likelihood that Enniss would be covered under controlled operations legislation. Federal ministers have used carefully crafted words to deny that federal agencies are involved in sabotaging vessels, although they will not provide adequate answers to the questions of whether or not individuals working for federal agencies have undertaken such tasks. It is unknown whether any disruption occurred to SIEVX prior to the vessel leaving Indonesia. It is clear that the boat was low in the water and Indonesian police were forcing asylum seekers aboard what became a horribly overcrowded boat. It is also the case that the Australian authorities and the government were aware that a heavily overcrowded boat was leaving Indonesia. So many questions about this incident re-
main unanswered, particularly those in relation to the specifics of the disruption of boats leaving Indonesia.

The parliament and the Australian public do not know specifically what is involved in the disruption of boats departing Indonesia. We do not know what is and what is not acceptable, how much the exercise costs, whether or not the activities are illegal, what controls are operating and, most importantly, what consideration is given to the potential loss of life. The SIEVX tragedy is a painful reminder that the journey from Indonesia to Australia is incredibly difficult and could only become worse if the boats are being disrupted. These questions need to be put before an independent judicial inquiry, because at this stage there is so much Australians do not know and so many unanswered questions that remain.

I was pleased to present and support this petition to the Senate. It is an indication of the level of disenchantment felt by so many of my constituents in South Australia about the shady and unaccountable manner in which the government seeks to deal with unlawful arrivals to our shores. A judicial inquiry can only serve the interests of truth and justice. It has the potential of revealing to the Australian people the true state of intelligence and disruption, the legality of the policies and the improvements that are necessary. I commend the petition to the Senate.

Victoria: Bracks Government

Senator TCHEN (Victoria) (3.53 p.m.)—Mr President, it has been a long week and I am sorry to keep you back a little longer. In the other chamber, the member for Bendigo, Mr Steve Gibbons, earlier this week attempted to make a silk purse out of a sow’s ear in referring to the Bracks Victorian Labor government’s ineptitude, and that should not and cannot be allowed to go unchallenged. Given the nature of my topic, it is unlikely that the opposition would agree to let me incorporate this speech into Hansard.

When seeking proof of a claim, we can proceed in two ways: by demonstrating that the claim is true or by demonstrating that the contrary is false. Conversely, if it can be demonstrated that the contrary is actually true, it follows that the claim has been disproved. Mr Gibbons makes some claims about the superiority of the Bracks government by citing a number of achievements, especially in the context of Bendigo, in the areas of health, education, job creation, provision of regional fast train services and economic management. On Wednesday night, I debunked the government’s fictitious achievements, particularly in the context of Bendigo, in the areas of health and education. Today, I would like to go on to the other issues that Mr Gibbons raised. On the matter of job creation, it was indeed a very strange claim to come from Mr Gibbons, who has over the last three years consistently cried wolf over the loss of jobs or the expected loss of jobs in Bendigo. In my office, I have a whole file of newspaper cuttings of his claims. In fact, according to ABS employment statistics, unemployment in Bendigo has slowly but steadily been dropping. The examples that Mr Gibbons cited are actually very good support of that, because he has been counting only the losses and now he has discovered that there have been increases. Mr Gibbons attributed all these increases to Mr Bracks’s good management, but he could not nominate a single state government policy or program that led to such jobs. I maintain that that job creation was as a result of good economic management on the part of the federal government, particularly the federal government’s programs that support regional Australia and which flow on to regional Victoria.

Yesterday, Mr Bracks, as part of his election campaign, promised to create 150,000 new jobs in Victoria. Just how a state government creates jobs, and over what period, is not quite clear. As usual, Mr Bracks was short on practical details, but the disdainful expression on the face of the man standing next to him during the announcement—the man who really runs Victoria’s economy, the Victorian Treasurer, Mr Brumby—really told the story. I invite senators to look at the picture in the Age newspaper of Thursday, 14 November. It is truly a case of a picture being worth a thousand words.

I move on to the fast rail, because this is a really good one. I am really surprised that Mr
Gibbons nominated this as a Bracks government achievement. It shows how confused or desperate one can get when one is trying to find something positive to say about the Bracks government. Let me lay out the whole sorry saga for senators’ consideration. During the 1999 state election, the Labor Party’s policy called ‘Fast rail links to regional centres’ stated that Labor would work in partnership with the private sector to significantly reduce travel times to Geelong, Ballarat, Bendigo and Traralgon. The target for each of these regional centres was to reduce the travel time from Melbourne to Geelong to under 45 minutes, to Ballarat to under 60 minutes, to Bendigo to 80 minutes, and an unspecified time to Traralgon. I do not quite know why Traralgon got the short end of the stick in this list. Maybe the fact that it has always been a Labor town means that it could be set to one side, but I shall leave that for the time being and will concentrate on what this Bracks 1999 promise has meant for Bendigo.

Part of the Bendigo fast rail promise was a specific promise that a feasibility study would be completed within 100 days of Labor attaining office. It would have been nice if I could inform the Senate that at least this promise had been kept. I suppose that, in a manner of speaking, it is a promise that was kept, as Mr Bracks did release his regional fast rail feasibility study in September 2000, only about a year after taking office. If we assume that the Bracks government customarily works for two days a week—a very reasonable assumption on other evidence available—this promise may even be considered to have been delivered on time, but only if we accept that it is reasonable for a government to work for only two days a week.

The bad news is that the study shows that the cost of this fast rail project for Bendigo will be $270 million instead of the $20 million the Labor Party assumed it would cost. The total project cost for the four cities had blown out from $80 million to $810 million, plus or minus 30 per cent. That means that the cost of this project could well reach over $1 billion. So much for the Labor Party’s grasp of economic reality!

But the story gets worse. According to this wishful promise, the Bracks government would seek private sector contributions of $260 million of the $810 million, with the remainder being met by the government. In September 2001—another year later—the Bracks government released a document entitled Regional fast rail project request for tender country works packages tender. What detail is missing in that title? This showed that the government funding promise had declined from $550 million to a net present value of $430 million as at 1 July 2000 and would only be worth between $340 million and $380 million for project funding at construction time. The document also revealed that the project would deliver only two additional peak services and one counter peak service on the Ballarat, Bendigo and Latrobe Valley lines.

At the time this Bracks election promise was made, the existing passenger train service between Melbourne and Bendigo took 101 minutes. Three years later the service still takes 101 minutes—but that is getting to the punch line in advance—and the train makes four stops on the way. It now transpires that the new ‘fast train’—if it ever eventuates—will take 84 minutes but would be express and not make any stops on the way. If the existing service ran express and did not stop on the way, it would take about 89 minutes. So the promised new service would only be delivered by a slightly faster train—not a fast train at all. Mr Bracks’s promise to Bendigo is not only a broken promise but a broken pretzel promise.

What is more interesting is that Mr Gibbons tellingly illustrates his desperation when it came to finding good things to say about Mr Bracks’s three years at the helm of his state with his leading example of what he called the Bracks government’s ‘quite astounding top achievements’. He cites the fact that the Bracks government has maintained the state’s AAA credit rating. Isn’t it the least a state can do, and must do, especially at a time when the nation as a whole—under the able leadership of the Howard coalition government—is experiencing outstandingly strong economic performance, or is Mr Gibbons saying that he fully expected the Bracks
state Labor government to reduce the state’s credit rating? He could be right, of course. After all, it was the Cain-Kirner Labor government that famously ran Victoria’s credit rating down and the Kennett Liberal government that restored it.

Finally, Mr Gibbons cites *Melbourne 2030*—a 30-year planning blueprint for metropolitan Melbourne—as one of the Bracks government’s crowning achievements. That was in a speech that supposedly highlighted his ‘own area of Bendigo specifically’—those are his words. What about a planning blueprint for regional Victoria? What about a 30-year planning blueprint for Bendigo? Mr Gibbons is entirely silent on that.

Victoria needs a government that will honour its election commitments and properly manage the affairs and development it is responsible for. In two weeks time the Victorian voters have a chance to choose such a government, and it should not be the Bracks government.

*Senate adjourned at 4.04 p.m.*
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Veterans: Doctors’ Fees
(Question No. 629)

Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 13 September 2002:

With reference to the answer to question on notice no. 463:

(1) What is the department’s estimate, based on surveying its state offices, of the proportion of reimbursements made to veterans and widows because of the refusal of doctors to accept the Gold Card.

(2) Has the department sought to reissue Medicare cards; if so, in how many cases.

(3) (a) In how many cases has the department reimbursed veterans the Commonwealth Medical Benefits Schedule payment, plus any co-payment, regardless of the reason for the reimbursement; and (b) what were the reasons in each case.

(4) (a) On how many occasions in 2002 has the Repatriation Commission formally considered the need to approve ‘exceptional circumstances’ as set out in paragraph 3.5.1 of the Treatment Principles; and (b) what specific ‘exceptional circumstances’ have been approved.

(5) On a monthly basis, what is the value of reimbursements made since 1 July 2001.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answers to the honourable senator’s questions:

(1) The records held by the Department of Veterans’ Affairs State Offices do not include the detailed reasons for reimbursement and the data covers reimbursements for medical, allied health, dental and rehabilitation appliances. As a consequence, no reliable estimate can be made, and any estimate could potentially be misleading. Consequently, this information cannot be provided.

(2) The Department of Veterans’ Affairs does not issue Medicare cards. The Health Insurance Commission (HIC) is responsible for issuing Medicare cards. Any veteran seeking assistance in regard to a Medicare card would be offered assistance to apply through the HIC.

(3) (a) and (b) As described in (1) above, the records do not include the detailed reason for reimbursement and the data includes reimbursements for other services. The data also includes reimbursements that have been made for medical and other services provided in the period between the effective date of eligibility under the Veterans’ Entitlement Act 1986 and the date on which the person was notified of his or her entitlement. Consequently, this information is not available.

(4) (a) Up to 31 October 2002 formal consideration has been given on 2 occasions.

(b) The veterans’ clinical need determined the exceptional circumstances in both cases.

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Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 13 September 2002:

With reference to the answer to question on notice no. 459 (Senate Hansard, 29 August 2002, p.3787):

(1) What provision was made in the department’s forward estimates for increases to the Commonwealth Medical Benefits Schedule.

(2) What contingency plans have been put in place in the event that doctors cease to be bound by their agreement and refuse to accept the Gold Card.

(3) Can the Minister confirm that an inter-departmental committee chaired by the Department of the Prime Minister and Cabinet has been established to progress the Government’s consideration of the matter; if so: (a) what is the membership of that committee; and (b) when will it report.

(4) Has consideration been given to an extension of the agreement with the Australian Medical Association (AMA) pending settlement of this issue.

(5) Is the Minister aware of the results of a survey conducted by the AMA that, of 1 409 doctors surveyed, 41 per cent have responded that they will no longer accept the Gold Card if fees are not increased.

(6) (a) How many veterans and widows have contacted the department, by telephone or in writing, in the past 3 months on this matter; and (b) of those, how many have been seeking assistance with finding another doctor.

(7) In the event that alternative doctors are found, will travel costs be reimbursed.

(8) How many: (a) local medical officers (LMOs); and (b) hospitals, do not accept the Gold Card for treatment outside normal surgery hours.

(9) In the event that veterans are treated by after-hours clinics that do not accept the Gold Card, is reimbursement made of the full fee charged.

(10) In the event that prescriptions are issued by LMOs or others, what provision exists for reimbursement where the script is for a non-approved drug.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answers to the honourable senator’s questions:

(1) No provision is made in the Department of Veterans’ Affairs (DVA) forward estimates for increases to the Commonwealth Medicare Benefits Schedule, other than for projected indexation movements.

(2) In circumstances where a doctor refuses to accept the Gold Card the State Offices of DVA will assist veterans to locate a doctor who will accept the Card.

(3) (a) and (b) The Government fully recognises the importance of this issue in the care of veterans and is seeking advice at the highest level of officials. The level of remuneration for specialists treating members of the veteran community cannot be separated from the broader issues currently impacting upon the medical community generally, in particular medical indemnity insurance issues. The Government is fully aware of the concerns of medical specialists and these matters are under careful consideration by the Government.

(4) The current Memorandum of Understanding (MOU) between DVA and the Australian Medical Association (AMA) for services provided by Local Medical Officers (LMOs) expires in December 2002. DVA offered the AMA an extension of the MOU until 30 June 2003 but that has not been accepted. DVA has now offered currently registered LMOs the opportunity to extend their current
contracts, including all current terms and conditions to 30 June 2003. There are no contractual arrangements for specialists.

(5) Yes.

(6) (a) Telephone calls to DVA from veterans and widows involved inquiries on many matters. The DVA does not keep records on the number of telephone calls received on this particular matter. DVA received 26 letters from veterans and widows on this matter during the months of June, July and August 2002.

(b) This information is not recorded routinely and veterans will often be referred by the Local Medical Officer to another specialist without DVA being notified. However, since June 2002, DVA has 15 recorded cases where veterans have required specific assistance from DVA with finding another doctor.

(7) Under the Repatriation Transport Scheme, if a veteran is required to travel in order to see the nearest suitable provider who accepts the Gold Card, they are entitled to seek travel assistance from DVA to offset these costs. If a veteran attends a practitioner who is not the nearest suitable provider who accepts the Gold Card, DVA can only provide assistance with transport costs to a maximum of 100 kilometres from the veteran’s home.

(8) (a) DVA is aware of 3 entitled persons being billed for Local Medical Officer services outside normal surgery hours.

(b) DVA is not aware of any DVA contracted hospital Accident and Emergency department that does not accept the Gold Card.

(9) In the event that a veteran has treatment for an emergency situation (as defined in the Treatment Principles, prepared under Section 90 of the Veterans’ Entitlement Act 1986), at an after-hours clinic, full reimbursement can be made.

(10) If the prescription is for a non-approved item, and prior approval was not sought or given to the prescribing Local Medical Officer, no reimbursement is made.

Veterans’ Affairs: Request for Tender

(Question No. 748)

Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 4 October 2002:

(1) Does the Minister recall that at Senate Estimates hearings in June 2002, the Department of Veterans’ Affairs undertook to review the draft request for tender (RFT) in light of comment by industry and to consult with providers and the veteran community before progressing to an appropriate tender arrangement.

(2) Has the Community Transport Organisation (CTO) been consulted in that process.

(3) (a) Who was present at consultations with the CTO; and (b) on what dates were those consultations on the draft RFT undertaken.

(4) What was the outcome of those consultations.

(5) Has the original draft RFT been amended as a result of those consultations; if not, why not.

(6) Has the original draft been amended as a result of concerns raised by the New South Wales CTO; if so, in what way has it been amended.

(7) What is the current status of the draft tender process.

(8) When will tenders be called for and when will they close.

(9) Will the CTO be invited to tender; if not, why not.

(10) Has the CTO sought an appointment with the Minister; if so, why has the Minister not agreed to meet with CTO representatives; if not, will the Minister undertake to meet with CTO representatives.

(11) Has there been a decision that the Commission should continue providing community transport arrangements in New South Wales as separate arrangements, as foreshadowed in the Senate Estimates hearings in June 2002.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answers to the honourable senator’s questions:
(1) Yes. This review and consultation process is ongoing.
(2) Yes, along with all other interested parties. Furthermore, consultation will continue throughout this process.
(3) (a) and (b) Two meetings have been held between CTO representatives and the Department of Veterans’ Affairs (National and NSW State office representatives). Other organisations such as the NSW Council on Social Services (NCOSS) and the NSW Department of Transport have attended these consultations.
   The dates of consultations and the attendees are as follows:
   • 11 April 2002 – CTO representatives, Department of Veterans’ Affairs (National and NSW State Office representatives) and the NSW Council on Social Services (NCOSS).
   • 24 October 2002 – CTO representatives, Department of Veterans’ Affairs (National and NSW State Office representatives) and the NSW Department of Transport.
   Further consultations have occurred through written correspondence.
(4) The Department of Veterans’ Affairs is considering the representations and feedback received from community transport operators in response to the release of the exposure draft Request for Tender (RFT). All the feedback received is now receiving further consideration in the review.
(5) Yes. The final RFT is in the process of being developed. It will reflect the necessary changes identified through the feedback and consultation process, to ensure that any new system suits the health needs of the veteran community and provides the best possible service.
(6) The RFT has not yet been finalised, however, all feedback is being fully considered including the concerns expressed by the NSW CTO.
(7) See part (5) above.
(8) No specific time frame has been set as yet for the tender process.
(9) Any organisation that meets the Department of Veterans’ Affairs standard requirements and relevant State regulations covering licensing and accreditation of vehicles for hire may submit a tender.
(10) There is no record that CTO representatives have sought an appointment with the Minister on this matter, however, if a meeting was requested full consideration would be given to such a request.
(11) The NSW Department of Transport is responsible for regulating the services provided by community transport operators in NSW. In developing the final tender documentation, the Department of Veterans’ Affairs has consulted with the NSW Department of Transport, along with the Community Transport Organisation, about ways in which veterans in NSW can continue to access community transport services, subject to the appropriate regulations. These discussions between the Department of Veterans’ Affairs, the NSW Department of Transport and the CTO will continue.

**Veterans’ Affairs: Defence Service Homes Insurance**

(Question No. 802)

Senator Mark Bishop asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 16 October 2002:

(1) For each state, how many insurance policies for household contents for veteran clients are current under the contract with QBE Mercantile Mutual.
(2) What fee has been paid to QBE for each year of its contract.
(3) What other operating costs are incurred by the department over and above the fee to QBE.
(4) For each state: (a) how many claims have been made and paid out; and (b) what was the average value in each of the past 3 years.
(5) For each of the past 3 years, how many claims of fraud have been: (a) claimed; and (b) prosecuted.

Senator Hill—The Minister for Veterans’ Affairs has provided the following answers to the honourable senator’s questions:

(1) The number of current QBE/Mercantile Mutual Contents policies held by Defence Service Homes Insurance per State is as follows:
State Number
- New South Wales/Australian Capital Territory 8,526
- Queensland/Northern Territory 15,090
- Victoria 7,063
- Western Australia 5,585
- South Australia 4,157
- Tasmania 1,345

(2) There is currently in place an agency agreement between Defence Service Homes Insurance (DSHI) and QBE/Mercantile Mutual (QBE/MM). Pursuant to that agreement, DSHI does not pay a fee, however, QBE/MM pay commission to DSHI for every Contents policy placed. The commission is 20% of the gross premium (the policy is underwritten by QBE/MM). The purpose of this arrangement is for DSHI to be able to offer to Veterans a combined Building/Contents cover for their convenience.

(3) See part (2) above.

(4) (a) and (b) As Defence Service Homes Insurance (DSHI) does not underwrite any portion of the Contents Insurance business, it is not appropriate for DSHI to be involved in the management of claims. DSHI is therefore unable to provide specific Contents claims data.

(5) (a) and (b) As per part (4) above, Defence Service Homes Insurance (DSHI) are not privy to information relevant to the management of QBE/Mercantile Mutual (QBE/MM) claims, including allegations of fraudulent claims. However, DSHI are aware of a recent incident of alleged fraud because it involved a DSHI staff member. This matter was investigated by the Department of Veterans’ Affairs National Fraud Control Unit (NFCU) and QBE/MM independently. The matter has now been resolved and no criminal charges will be laid.

Health: Bulk-Billing Services
(Question No. 805)

Senator Crossin asked the Minister for Health and Ageing, upon notice, on 16 October 2002:

(1) How many medical services provided a bulk-billing service in the federal electorate of Solomon in each of the following years: (a) 1996; (b) 2001; and (c) 2002.

(2) How many medical services were there in the federal electorate of Solomon in each of the following years: (a) 1996; (b) 2001; and (c) 2002.

Senator Patterson—The answer to the honourable senator’s question is as follows:

(1) Information is not available on individual medical services that utilise bulk billing. However, the number who provided a bulk billing service in the electorate of Solomon in:

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<td>Jan to Jun 2002</td>
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(2) The number of medical services in the federal electorate of Solomon in:

(a) 1996 was 800,540;
(b) 2001 was 860,351; and
(c) January to June 2002 was 414,234

Notes
The above statistics relate to providers of services on a ‘fee-for-service’ basis in the nominated region, for which Medicare benefits were processed by the Health Insurance Commission in the periods in question.

To the extent that some practitioners have more than one active provider number, there will be some multiple counting of practitioners.
In compiling the data, each practitioner was assigned to his or her principal practice postcode in the respective years, having regard to service volumes. Since some postcodes overlap federal electoral division boundaries, the requested data, by servicing provider postcode, were mapped to electorate using data from the Census of Population and Housing showing the proportion of the population in each postcode in each federal electoral division. Where the principal practice postcode for some practitioners could not be mapped to federal electoral divisions, counts of the practitioners in question have been omitted from the above tables.

Caution should be exercised in interpreting bulk billing statistics by electorate of provider. Since the statistics relate to providers of at least one service for which Medicare benefits were paid and there are a large number of relatively low activity providers under Medicare, some of whom move between active and inactive etc. each year, significant variations in the number of practitioners and the number of practitioners bulk billing can occur from year to year. Similarly, since the statistics on bulk billing relate to providers of at least one bulk billed service, volatility can occur in bulk billing numbers.