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Tuesday, 19 November 2002

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

AUSTRALIAN CRIME COMMISSION ESTABLISHMENT BILL 2002

Second Reading

Debate resumed from 18 November, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator DENMAN (Tasmania) (9.31 a.m.)—I am continuing my speech in the second reading debate on the Australian Crime Commission Establishment Bill 2002.

A clear single rationale or a clear reason why the National Crime Authority, an agency that has always been acknowledged by both governments for its good work, has suddenly become redundant is yet to emerge in public debate. Speculative reasons have included the National Crime Authority’s support for a heroin trial conflicting with official government policy and that the means of referring matters to the National Crime Authority are unnecessarily complex. The Labor Party supports the latter reason.

A review of the National Crime Authority in December last year, conducted by Mr Mick Palmer, the former Australian Federal Police Commissioner, and Mr Anthony Blunn, the former Secretary of the Attorney-General’s Department, was reported to cabinet. That report has never been made public, although it seems likely that the report formed the thrust for the summit. It is the government’s intention to have the Australian Crime Commission in operation before 1 January 2003. The Labor Party has cooperated with the government over this short time frame. However, I will make the comment that it has been a particularly short time frame for examining legislation of this importance. The Labor Party recognises the importance of issues of law, justice and national security. These are issues that should have bipartisan support and I think this has been evident in the way we have tried to work with the government to improve the legislation.
ment experience. One of the witnesses, Mr John Broome, who is a former chair of the NCA, when commenting on the management structure and accountability, repeated the description that 'what may have set out to be designed as a racehorse has become a five-legged camel'. I think the committee recommendations do give us a more effective model, one that is closer to a racing horse.

There were two areas in the legislation that attracted the most attention: the governance arrangements and the use of coercive powers in special investigations. I want to spend my time today concentrating on these two issues. From the outset, I want to make the comment that these weaknesses have been picked up largely in the committee recommendations. Firstly, I would like to address the governance arrangements. It is proposed that the Australian Crime Commission management structure will include (1) a chief executive officer; (2) a 13 voting member board, of which the majority will be police commissioners; and (3) that the intergovernmental committee and the parliamentary joint committee will have an oversight role. This is unlike the current National Crime Authority, where there is a chair and at least two other members.

It was initially proposed that the chief executive officer would implement and resource the decisions of the board. For example, the board would select a person to head a task force and the CEO would then implement that decision. Yet, ultimately, it would be the chief executive officer who would be considered answerable for the success or otherwise of those decisions. In strengthening the ability for the chief executive officer to be accountable for the overall management of the ACC, amongst its recommendations the committee stated that it should be the chief executive officer who makes the decision about who heads up the task force, on the advice of the board. This makes the line of accountability more logical, as it is still the chief executive officer who is answerable for the success or otherwise, but at least it is the chief executive officer who has made the appointment.

In the Attorney-General's second reading speech, he stated that the new position of the chief executive officer would require 'an individual with a strong law enforcement background'. Currently, the chair of the NCA must be a judge, a former judge or a lawyer of at least five years standing. In the proposed model, the chief executive officer may be suspended or terminated by the Minister for Justice and Customs for unsatisfactory performance. The parliamentary Joint Committee on the National Crime Authority considered:

It is paramount that the new body is free from any possible perception that political interference may either be possible or could take place. However, the parliamentary Joint Committee on the National Crime Authority also acknowledged that nonperformance should not be ignored. In addressing this dilemma, it is recommended that the chief executive officer can only be suspended on the initiative of the minister until a meeting of the full board can take place to consider the matter, and that the chief executive officer can only be removed for cause. There must also be a resolution of the full board passed by a two-thirds majority.

The other area of concern was the coercive powers. The current NCA can use coercive powers only in very defined circumstances, with accountability lying with the intergovernmental committee made up of state and territory ministers. Under the proposed legislation, the Australian Crime Commission will have powers, when conducting special investigations, similar to those of a standing royal commission—powers that are not given to police forces. It is proposed that the decision to authorise these powers in special investigations will rest with the board or with a committee of at least two board members established at the agreement of the board.

The parliamentary joint committee received concerns that, because the majority of board members were going to be police commissioners, perhaps there would not be a measured and unbiased consideration of the use of the coercive powers. The effect would be that powers not generally available to police would be placed in the hands of police. For example, the Australian Bar Association
and the Victorian Bar Association commented:

Firstly, we submit that there has been a significant dilution of control over the exercise of the coercive powers that are available to be used in the course of a criminal investigation. Secondly, there has been most recently a significant increase in the potency of the coercive powers granted to the NCA and now taken over by the Australian Crime Commission. To put it in a nutshell, the combination of those two issues means that we now have a police force with coercive powers.

This feature of the new model represents a major change in the arrangements for coercive powers. Interestingly, even the police commissioner, Mr Mick Keelty, prior to this legislation seeing the light of day, commented:

"It is inappropriate for any police organisation to have the special powers conferred upon the NCA."

In response to this concern, and as a safety precaution, the parliamentary joint committee recommended that any decision by a committee of the board to authorise an operation or an investigation as a ‘special operation investigation’ requires ratification by the full board. Three additional recommendations were made by certain members of the committee—again, Mr Duncan Kerr, Mr Bob Sercombe and me—which attempted to put in some safety checks to reduce the opportunity for the coercive powers to be abused.

The Labor Party does not dispute that, in our current climate, Australia should evaluate its ability to respond to terrorism and transnational crime. Whether the Australian Crime Commission can be as good or better than the current National Crime Authority is something that will be seen in the fullness of time. It is important to remember that the National Crime Authority was a competent agency. However, I am confident that the model for the Australian Crime Commission, incorporating those recommendations agreed to by the government, is an improved model. Importantly, there are a few more checks and balances, and that is a very good thing in a law enforcement agency that is going to be given coercive powers.

**Senator NETTLE (New South Wales)**

(9.43 a.m.)—The Australian Greens, like others in the community and those involved in the committee process, have some concerns about the **Australian Crime Commission Establishment Bill 2002**. The first of those concerns relates to the process by which the legislation was developed. Mr Frank Costigan put it well in his submission when he said:

"I think it is a matter of great concern that these various very significant changes in such important legislation have been propelled by discussion at an executive level over a period of many months with no input sought or allowed from the public."

Here he is referring to the restricted and confidential review of the NCA carried out in 2001 by two individuals in four weeks over the Christmas holidays. Mr Costigan goes on to say:

"Complicated legislation has now been presented to Parliament with a timetable which allows insufficient time for proper consideration."

Here he is referring to the five weeks allowed for public inquiry into this piece of legislation. He also points out that at the same time the NCA is being wound down even before the legislation is debated or passed.

The Greens would concur with his statement that for a law that requires serious and prolonged consideration by parliament and which is intended in a significant way to give powers to police forces in this country, it is bad process. It certainly does not mirror the sort of consultative process that was carried out with public involvement in the initial establishment of the National Crime Authority. That process was part of a recognition that the extension of police powers necessarily has an effect on the privacy and civil liberties of Australians and, as such, requires an extensive public consultation process.

The process described by Mr Costigan reminds me somewhat of the short time frame that the Legal and Constitutional Affairs Committee has with regard to the ASIO legislation. I recognise that this is the second time a committee has looked at the ASIO legislation but, in the context of that legislation constantly changing with amendments, it is important that the public get an opportunity through a fulsome review to comment on the legislation as it changes when they are...
in fact commenting on a new piece of legislation because of those changes.

Another process concern raised by a number of people in their submissions was that the Australian Crime Commission is being created through a modification of the National Crime Authority Act rather than through the creation of a new act. But these process concerns are, to a large extent, secondary to the primary concerns raised in a number of submissions that relate in particular to issues of accountability and to the extension of coercive powers to police forces—and we have heard others talk about those in the chamber.

Essentially, the Australian Crime Commission Establishment Bill will replace the National Crime Authority Act 1984. It will replace the NCA with a new national policing body that has a much wider ambit than the National Crime Authority and it removes many of the safeguards and accountability mechanisms that were built into the NCA Act and practice. Overall, the process shifts the NCA from being an independent body dominated by lawyers to one controlled by police and the federal government.

The recent inquiry into the bill by the Joint Committee on the National Crime Authority highlighted many of the dangers of the bill but failed to make the recommendations that we believe would have addressed all the problems that were raised. The main problems are that the intergovernmental committee of ministers will no longer be able to determine which areas have priority, nor will it be able to determine the ability to set the references, the scope of inquiries and the use of special coercive powers such as searches and compulsory questioning. Instead, such powers will be decided by a 13-member board of police commissioners and ASIO, chaired by the Commissioner of the Federal Police. In so doing, some of the restrictions and accountabilities in the use of special coercive powers are being removed.

The legislation also severely erodes the privilege against self-incrimination by failing to provide a ‘derivative use immunity’. Although an answer compelled cannot be used in evidence for a prosecution, the information it contains can be used in the prosecution. The extent of the problems with this legislation is reflected by the many eminent people who, in their submissions, made strong criticism of this legislation. The Australian Bar Association in their submission to the inquiry said that the bill:

... creates an extremely powerful Commonwealth police agency with jurisdiction over almost every criminal offence when the constitution confers primary responsibility for the criminal law on the states. Indeed the definition of the types of criminal offence which can constitute ‘serious and organised crime’ could be extended even by Commonwealth Regulation.

They then go on to describe the ACC as, ‘a roving police force with the powers of a Royal Commission’. Frank Costigan stated:

... we have a new body to be set up, dominated by police forces and possessed of powers which the Parliament has always refused to give to police forces. This has been done without any sensible justification for the abolition of the National Crime Authority.

Indeed, the former CEO of the National Crime Authority said:

Putting all these considerations together, reasonable observers might be moved to ask: is this a step towards a police state?

The Australian Federal Police Association submitted a very detailed submission to the inquiry on this piece of legislation that focused on accountability. The submission recognised the crucial point that any extension of police powers needs to be accompanied by an equal extension of police accountability mechanisms. This is an appropriate expectation for the public to have. It is an expectation that the public and the parliament hold in relation to the rest of the Commonwealth Public Service and it should equally apply in relation to the police services such as in this bill when operating in a Commonwealth capacity.

The AFPA submission recognises that the ACC will be expected to utilise powers and responsibilities ‘well above any other normal public service agencies’ and above any existing police forces by adding the investigative tool of coercive powers. Their submission stated:

... it would remain a fundamental failure of public policy to enshrine legislation establishing high
level investigative capacity on any agency that fails to meet a very basic test of integrity oversight ... The AFPA believes employees of the commission, in the same way as the AFP, should face high levels of integrity and accountability.

A number of submissions raised this concern, recognising that it is difficult for a police force to 'enjoy public confidence and trust unless it is accountable, and moreover, is seen to wish to be accountable.' The AFPA submission proposed the extension to the Australian Crime Commission of the same accountability regime that AFP officers are subject to under the AFP and the AFP complaints act. The Commonwealth Public Sector Union's submission to the inquiry suggested an alternative mechanism of accountability through the Public Service Act.

Recommendation No. 8 of the committee recognises that this issue needs to be addressed, but it proposes to look at these staffing arrangements after the Crime Commission has been established and does not make any suggestions as to the appropriate way to go forward. The Greens believe that decisions about what accountability mechanisms are going to be used in an extension of police powers must be made before the establishment of any body such as the Crime Commission.

The AFPA submission recognises that concerns have also been raised about accountability and particularly the complaints mechanism regarding the previous National Crime Authority. It raises questions about the unfair responsibility placed on the Joint Parliamentary Committee on the National Crime Authority in dealing with complaints relating to the NCA. These sorts of concerns highlight even further the need to get accountability mechanisms right from the start. Recommendation No. 9 from the committee does not address these concerns, but recommendation No. 7, whereby complaints about the Australian Crime Commission can be directed to the Commonwealth Ombudsman, goes some way to addressing the need for an appropriate and accessible complaints mechanism.

The Australian Greens also have grave concerns about the extension of coercive powers provided for in this bill. The associated penalties for failure to answer questions were substantially increased, and the contempt provisions were also expanded with increased penalties. We note that many of the bodies involved in this exercise, some of which it is proposed to confer coercive powers upon, also have concerns and reservations about such an arrangement taking place—and we have already heard others in the chamber talk about that today. As I said previously, the decision to use coercive powers will now be made by a board of police commissioners rather than representatives of the legal profession, as in the NCA model. The Law Council of Australia notes:

... as a matter of precedent, neither the NCA nor the State Crime Commissions currently allow the level of police force influence on the activation of the coercive powers as will be the case with the ACC.

The Law Council of Australia expresses the view that, whilst the best levels of inter-agency cooperation are important for the new body, this should not be achieved by putting coercive powers into the hands of the police. In recognition of the difficulties of the extension of police powers, the New South Wales Privacy Commissioner, Chris Puplick, states:

... the exercise of such powers challenges received assumptions about ... the right against self-incrimination and the presumption of innocence.

He says:

There is a danger that the mere invocation of a broadly defined public interest will override these legitimate interests of individuals, and that coercive intelligence gathering powers, once established, will be extended to a wider range of activities than those where they are justified by special circumstances.

As a means of addressing some of these concerns, the Australian Greens will be supporting the amendments that have been discussed in this chamber and put forward by the committee process, but at this stage we do not believe we can support the bill in its current form because of our concerns about the extension of coercive police powers and the lack of an extension of appropriate accountability mechanisms, especially relating to the use of coercive powers by police forces.
Senator GREIG (Western Australia) (9.56 a.m.)—I rise to speak on the Australian Crime Commission Establishment Bill 2002 and to express the strong concerns and reservations that we, the Australian Democrats, have about this legislation. The bill, in part, brings into effect the government’s 2001 election platform relating to terrorism and transnational crime. In launching that platform, the Prime Minister flagged an intention to address inefficiencies associated with the operations of the National Crime Authority, the NCA. He described the referral process for NCA investigations as ‘a complex cooperative scheme which can be very time consuming in commencing investigations’.

A meeting between the Prime Minister, premiers and chief ministers in April this year resulted in a 26-point plan to address terrorism and transnational crime. As part of that plan, it was agreed that the NCA would be replaced by the Australian Crime Commission, the ACC, which would also incorporate the Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments. This bill aims to bring those changes into effect. It also invests the ACC with new intelligence related functions and powers above and beyond those currently undertaken by the ABCI and the OSCA.

The Australian Democrats acknowledge the importance of intelligence resources in effectively combating transnational and transborder crime. However, we are not yet convinced that the regime proposed in this bill, in its current form, represents an appropriate model for the collection of criminal intelligence. One of the primary justifications advanced by the government for the introduction of this legislation is that it establishes a more efficient and effective regime to deal with transnational and transborder criminal activity than that which currently exists under the National Crime Authority Act. The Australian Democrats accept that efficient procedures in the context of criminal investigations and intelligence operations are important and necessary and that, in many cases, the ability of the ACC to act quickly will determine the effectiveness of a particular investigation or operation. However, we do not believe that efficiency should be pursued at any cost. In particular, fundamental accountability mechanisms must not be sacrificed in favour of greater efficiency.

With this in mind, the Democrats have a number of serious concerns in relation to the bill in its original form. We note the substantial improvements advocated and made to the bill during its passage through the House of Representatives and, in particular, the government’s adoption of 13 of the 15 recommendations made by the Parliamentary Joint Committee on the National Crime Authority. The most significant of the changes under the new regime relate to the governance and oversight of the ACC. At present, the intergovernmental committee has primary responsibility for overseeing the exercise of the NCA’s functions and powers. Moreover, it is the IGC that determines which investigations should be treated as special investigations in which the NCA can exercise its coercive powers.

Under the new regime, the ACC board is responsible for the primary oversight of the ACC. The ACC board consists of the Australian Federal Police Commissioner, who acts as chair, the Secretary of the Attorney-General’s Department, the CEO of Customs, the Chairman of the Australian Securities and Investments Commission, the Director-General of ASIO, the state and territory police commissioners and the CEO of the ACC. The intergovernmental committee is retained under the new regime, but its functions and powers are reduced dramatically and a number of them are transferred to the ACC board. Perhaps most significantly, the power to authorise the use of coercive powers is transferred to the ACC board. In other words, the bill effectively transfers this power from a ministerial group to a board consisting of police commissioners and Commonwealth agency heads. This has significant implications for the accountability of the ACC.

It has been a fundamental concern of the Australian Democrats in considering this bill to ensure that the substantial coercive powers of the ACC are subject to proper external scrutiny and accountability mechanisms. We
note that the IGC comprises democratically elected members of parliament who, in their capacity as ministers, are accountable to their respective parliaments. For this reason we believe that the IGC is the more appropriate body to provide oversight to the ACC. Moreover, we concur with a number of submissions to the joint parliamentary committee which raised concerns about the appropriateness of vesting these powers in a board dominated by police representatives. For example, the Law Council of Australia noted:

The idea of a police force having a power to compel a person to attend a 'hearing' and be compelled to provide answers is simply unheard of in Australia.

It suggested:

The potential for police interest to dominate key decisions may undermine public and governmental confidence in the ACC.

Mr Denis Lenihan, a former CEO of the NCA, noted in his submission that, in determining whether an investigation or operation is a special investigation or operation, the ACC board must consider whether ordinary police methods of investigation into the matter are likely to be effective. He asked:

Is it not paradoxical—or even suspect—that persons from those very agencies whose methods have been ineffective will now be in the position of authorising the exercise of powers designed to remedy those defects?

Ideally, the Democrats—like the Law Council—would like to see the power to authorise special investigations and operations retained by the IGC.

The Attorney-General's Department has sought to justify the transfer of this power to the ACC board on the basis that the current reference process is 'cumbersome and unwieldy'. However, the committee received conflicting evidence regarding the alleged inefficiencies of the current process and it is unclear how a nine-member ministerial group could be so much more inefficient in the exercise of this power than a 13-member board of police commissioners and agency heads.

I note that the bill in its original form empowered the board to authorise a committee, consisting of at least two of its Common-wealth members, to determine whether an investigation or operation was a special investigation or operation. Whilst this provision may have facilitated more efficient decision making, the Democrats strongly opposed it on the basis that it resulted in an inappropriate concentration of power. In any event, that provision was omitted during the bill's passage through the House of Representatives. With the omission of this provision, it is unclear just how the new regime established by this bill will be substantially more efficient than the existing regime. As Mr Frank Costigan QC, in his submission to the parliamentary joint committee, noted:

There has not yet been any explanation why it is necessary to abolish the NCA rather than improve it, if improvement is necessary.

One of the recommendations made by the three Labor members in the parliamentary joint committee's report was that the IGC should be required to approve any use of coercive powers by the ACC, except in circumstances of urgency where the ACC board could make such an authorisation. An authorisation made by the board in these circumstances would then lapse after 45 days unless ratified by the IGC.

We Democrats held the view that this recommendation represented an appropriate balance between the need to ensure the accountability of the ACC in the exercise of its coercive powers and the government's claim that the current procedures are inefficient. We understand that the government has indicated that it is not prepared to adopt that particular recommendation, but instead is proposing amendments which will invest the IGC with the power to veto determinations made by the board regarding special investigations and operations. Whilst this would represent a substantial improvement to the original bill, we Democrats have yet to be convinced that that approach will achieve the best and most appropriate balance. However, having not yet seen the government's proposed amendments we reserve our position on them for the time being.

The Democrats also have concerns relating to the limitation on the ACC board's obligation to provide information to the Commonwealth minister. Under the present re-
gime, the NCA must keep the Commonwealth minister informed about the general conduct of its operations and provide information at the minister’s request about special investigations. This obligation is retained by the chair of the ACC board under the new regime. However, it is subject to the limitation that the chair must not provide any information to the minister if the chair considers that disclosure of the information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies.

We Democrats accept that such a limitation may be appropriate in relation to the disclosure of information to the IGC. However, it is unusual for a limitation of this nature to apply to the minister responsible for the administration of the act. It is also unclear why the test is whether the disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, since the information is to be disclosed to the minister and not to the public. Surely a different standard would apply to the minister than would apply to members of the public.

Finally, the limitation on the provision of information to the minister sits uncomfortably with the provisions enabling the PJC to refer requests for information that the ACC chair has denied it on the basis that the information is potentially prejudicial. Clearly, the ability of the minister to look into such matters may be impaired by the fact that he or she may also be denied access to the information in question. We Democrats are interested in exploring amendments to address that concern. In essence, our principal concern with the legislation is that it retains a number of areas that we feel might be better addressed or not embraced in the first instance.

In the broader Australian community there are increasing and general concerns about police powers, particularly in the antiterror climate that we experience, and increasing concerns about what they mean for civil liberties, which was reflected in part by the recent announcement by the New South Wales Premier Bob Carr of state based home security and antiterror laws in his state. That brings home more than ever the fundamental need for parliamentary oversight, both for accountability and for restraint. There were some concerns expressed during the committee process and public lobbying in relation to this legislation that perhaps some of the powers that were originally proposed for the ASIO legislation, which have since been removed or watered down, may be attempted to be laundered into the Australian community by way of the back door via this bill. I think that emphasises the very strong need for parliamentary oversight and scrutiny.

The bill contains a statutory limitation on the ability to challenge a determination of the board relating to a special investigation—except in a proceeding instituted by the Attorney-General of the Commonwealth or the Attorney-General of a state—or any act or thing done by the ACC, because a determination must not be challenged, reviewed, quashed or called into question in any court on the ground that the determination was not lawfully made. So there are also changes to the obligation of the ACC to provide certain information to various bodies or persons. For example, the NCA is currently obliged to provide information to the Commonwealth minister on request, as I said, regarding a special investigation reference made by the minister; yet, under the new regime, the chair of the board must provide the information regarding the ACC’s activities to the minister on request, except if the disclosure of that information could prejudice safety.

That remains one of the key areas of concern that we Democrats have. But in a broader sense, while we understand the need for reformation of the NCA—we understand the arguments behind it—we accept the arguments in favour of amalgamating the various agencies that deal with transnational and transborder crime into one, more effective, unit. Fundamentally for us, the overriding concerns are and always will be civil liberties, human rights and the question of accountability. We can and will explore those areas further in the committee debate, particularly in relation to proposed and circulated amendments.

Senator McGAURAN (Victoria) (10.11 a.m.)—The Senate is debating the important
Australian Crime Commission Establishment Bill 2002. It is important as it not only restructures Australia’s main organised crime fighting body, the National Crime Authority, and gives it a new name—the Australian Crime Commission—but also significantly enhances the government’s Tough on Drugs policy, a program that philosophically has at its heart the need to take the fight right up to the peddlers of menace and sorrow in our society. We have had to battle critics of this policy—critics of the government’s rejection of safe injecting rooms or rejection of the legalisation of heroin—but it is one that the government are committed to.

The Tough on Drugs program has an integrated three-pronged approach. Firstly, funds are provided for the implementation of the government’s schools drug strategy to educate the community, especially the young, about the dangers of drug taking; secondly, there is funding for the establishment of national treatment and rehabilitation centres; and, thirdly, there is the law enforcement aspect aimed specifically at the drug pushers and drug barons, and that is what this bill deals with today: enhancing the law enforcement capacity to take on the drug barons and the drug syndicates.

It has been the job of the NCA to carry on this important work since 1984. It is true that it was established with caution because of the need to balance concerns about civil liberties with the legitimate pursuit of organised crime and the illegal drug trade. In 1984 the focus was more on civil liberties. In many ways, the National Crime Authority was handicapped in its ability to properly investigate organised crime and the drug trade in this country. It was new in Australia to set up a single-minded police force, and there were initial concerns. However, progressively over the 17 years, the NCA has been able to win the parliament’s and the public’s confidence, primarily through spectacular success and dedication to its mission statement. Admittedly, there have been moments best forgotten, but they are not specifically related to drug investigations or to any of the NCA’s work. You have to say that every organisation has its ups and downs, and the NCA is no different. Overall, the NCA, as previous speakers have said, has been a dynamically successful organisation since its establishment in 1984.

A big leap forward in organised crime fighting in this country was through the introduction of the National Crime Authority Legislation Amendment Bill 2000. That was the second big leap forward following the establishment of the NCA in 1984. It was a bill that gave full powers, sorely needed at the time, to the National Crime Authority. It was an important stage in the drug war. While the bill was very legalistic, in a nutshell it gave the full powers of investigation and interrogation to our major organised crime fighting authority, the NCA. Previous to this the NCA was handicapped in its ability to interrogate the drug lords or any of their associates, because the syndicates and the drug barons had been able to use their very expensive lawyers to avoid questioning and investigation. The amendments in that bill stopped that. For example, the bill increased to a term of imprisonment the penalty for not answering questions and it removed the defence of reasonable excuse—which was the greatest delaying tactic of all used by the drug barons—and codified it. The powers of surveillance were also increased. That was an important piece of legislation at the time. I cannot stress enough the importance of that reform legislation when it was introduced and the effect that it has had, in that short time of two years, on the fight against major crime. That successful structure is something this country really should be proud of and it is something in which governments of both sides of politics have been involved.

The government now seeks to take the next very bold step to maintain the necessary vigilance in the war on drugs and major crime. It was timely to assess whether an improved structure would meet our future needs, particularly as we had been working off a structure first formed in 1984. Now we have the added effect of transnational terrorism where often the money trails of terrorist groups cross over the trails of organised crime or drug syndicates. The Australian Crime Commission originates from this in-
vestigation and from an agreement between the states and the Commonwealth.

While the powers of the NCA will be transferred to the new ACC, there will be one fundamental difference, which has been mentioned by previous speakers, between the new structure and the NCA, and that is the controlling board. The NCA was controlled by three: a chairman and two commissioners. Usually they had legal backgrounds. The new ACC board will take on a completely different complexion and will consist of 13 voting members and a chief executive officer as a non-voting member. The chair 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 and five Commonwealth agency heads: the Commissioner of the Australian Federal Police, the Director-General of the Australian Security and Intelligence Organisation, the chairperson of the Australian Securities and Investments Commission, the CEO of the Australian Customs Service and the Secretary of the Attorney-General’s Department. That differs from the three people in control of the NCA.

The concerns about this new structure are that it represents the ‘blueing’ of the NCA; that is, that the new organisation will be controlled by a body the majority of whom will be law enforcement officers. The critics ask: will the balance between the operational requirements and strategic priorities be skewed towards what could be termed ‘police priorities’ because of the number of police on the board? Further, there were concerns that, with the police predominantly running the show, the powers of investigation and interrogation that I referred to earlier—that the NCA had, by the way—could now, in the hands of the police, be misused, aggressively used or misdirected. That is a fair concern, but I have to say that this was more a lawyers’ argument than anything else: that the police may not be trusted to administer such unbridled interrogation powers. Remember that the NCA was fundamentally run by lawyers, and they did a good job; there is no question about that. But the ACC will be predominantly run by the police.

That is the nub of the argument that the joint parliamentary committee, of which I am a member, heard. And that is the nub of the argument put to the Senate by previous speakers. As I said, it is a worthy concern but one which, nevertheless, on balance, I reject. In fact, this new board structure will progress the fight against crime, not just because the police commissioners from each state, who are specialists in their fields, will know better how to administer investigations but because there are so many more specialist authorities—such as the Customs officers and the ASIO officers—on the board to make it a new and formidable organisation.

Equally, the other members on the board are a good check and balance on the dominance of the police commissioners. In the end this is a matter of balance between the fears that the civil libertarians have and the will to pursue major crime, in particular the drug syndicates. The problem of attacking organised crime does present legitimate concerns to those of us who are defenders of civil liberties. All of us in this parliament would be defenders of civil liberties, but just to different degrees. Yet it must be remembered that the civil liberties of Australians are affected by the directions of the crime bosses.

Both the United States of America and Italy have realised that a drastic problem requires a drastic solution. Both have taken legislative and common law measures to preserve the credibility and sanctity of their social, economic and political systems which are under threat from the mafia in those countries—the organised crime, the drug syndicates and the major crime syndicates. The United States government has taken extraordinary steps in electronic surveillance in order to untangle the web of serious crime. Australia can proudly say that, in regard to surveillance and interrogation powers, we are not far behind them. The success in both of those countries should not be underestimated, just as the success in Australia should not be underestimated.

I support this legislation as it stands. The fight against organised crime and the drug syndicates requires vigilance today or that fight will be lost tomorrow. It is a never-
ending fight and it requires all the power that we can enhance our police forces with. The establishment of the ACC, with the amendments the government are introducing, should be supported and hopefully will be successful. I say that with more confidence: I believe they will be successful. But it should be noted that there will be continual monitoring of this new body. I believe that within three years there will be a full investigation to see how it works. Just as the NCA was put under scrutiny, so will the ACC be. We know the powers that this new body will be getting. We know that the fight that they have before them has many traps and is open to corruption and open to influence by these very wealthy syndicates. That is why this parliament will maintain a monitoring role over the ACC. We should get started by supporting this legislation.

Debate (on motion by Senator Ian Campbell) adjourned.

WORKPLACE RELATIONS AMENDMENT (GENUINE BARGAINING) BILL 2002

Consideration of House of Representatives Message

Consideration resumed from 17 October.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.25 a.m.)—I move:

That the committee does not insist on its amendments nos 4 and 5 to which the House of Representatives has disagreed.

Senator COOK (Western Australia) (10.25 a.m.)—I want to speak on the message received from the House of Representatives in relation to the Workplace Relations Amendment (Genuine Bargaining) Bill 2002. I am sure that my colleague Senator Sherry will be here shortly and that he will wish to speak as well. I have some remarks, however, about this bill. I particularly want to refer to its title: the ‘genuine bargaining’ bill. This comes on a long list of government changes to legislation in which they think up a catchy title as if that title reflects the content of the bill. It is more like a slogan or a marketable image that they try to insert into legislation. The Workplace Relations Amendment (Genuine Bargaining) Bill 2002 is not about genuine bargaining at all. The title says ‘genuine bargaining’ but the fact is that this bill is not about genuine bargaining.

The best example I can come up with to illustrate that point is from the front page of the Australian newspaper today. Over the years in this chamber since the conservatives have been in power, when Senator Nick Minchin was the Minister for Industry, Science and Resources, we became used to having a Dorothy Dixter bowled up to the minister every now and again in question time about the state of the car industry. The minister for industry, Nick Minchin, would get up and eulogise the achievements of the Australian car industry: how its production levels were up; how we were exporting cars to the Gulf states—the rebadged Holden was everywhere in the Arab states in the Gulf; how we are now exporting the Holden Monaro to the United States, the home of the automobile industry; and how well the Australian car industry was going.

There is quite a bit in what Senator Minchin said about those productivity and quality improvements and the reduction in price of Australian cars over the years. We think that it was caused by the introduction of the Button car plan right back when we were in government and that those changes have come through because of good managerial leadership in the car companies and because of high productivity levels of workers employed in those industries. While the government has had a framework role, the actual productivity levels and quality improvements have come about because of the people in the industry, not because of the government. But that is a tangential point.

The government is fond of boasting about the achievements of the Australian car industry. Therefore it is a bit surprising that, when the genuine bargaining bill comes on this morning, we should see on the front page of the Australian the lead story with the headline ‘Fighting fund to tame car unions’. According to the government this industry is going gangbusters, but suddenly there is a need to have a fighting fund to tame the car unions, who have been contributors to the success of this industry. This story is a salutary example of the government’s attitude to
industrial relations. ‘Ideology overtakes every-thing’ is the government’s approach to industrial relations, and we saw that on the waterfront when the now discredited minister, Peter Reith, was the minister for industrial relations. Peter Reith was proven to be a liar by the Senate inquiry into a certain maritime incident and, by the way, did not succeed—

Senator Kemp—I rise on a point of order. The word ‘liar’ is, as far as I am aware, not a parliamentary term to use. I suggest that Senator Cook be asked to withdraw it. Peter Reith, as all of us know, was one of the most distinguished people that we have seen in this parliament for a very long time. To have him called a liar by the likes of Senator Cook is an absolute disgrace. I urge you to ask Senator Cook to withdraw that expression.

The CHAIRMAN—Senator Kemp, there is no point of order.

Senator COOK—Thank you, Mr Chairman. I was just reporting on the finding of the ‘kids overboard’ inquiry regarding the then Minister for Defence. However, I will not digress. We have the Cole royal commis-sion into the building industry, we have had efforts to interfere with coalmining unions and now we have the government intruding into the car industry. Senators in this place may recall that, on 22 June this year, the weekend edition of the Australian Financial Review carried a story—buried, I think, on page 5—on the government approaching the Productivity Commission for the purposes of linking so-called ‘industrial relations reform’ with industry supports for the car industry. These supports relate to export achievements—that is, Commonwealth government supports for reducing tariff protection and for supporting the transitional costs of Mitsubishi in South Australia, where this car company is going through problems.

Essentially, the government is saying: ‘If you don’t enact our industrial relations changes as we want them, then we will not support the continuing viability of this industry. We will suddenly drop tariff protection overnight. You’ll be exposed to international competition. You’ll be wiped out. We won’t give you the export support you need, so our achievement of exporting cars to the Gulf will have a big question mark over it, and whether the Monaro ever goes to the United States in future has a big question mark over it—unless you comply with our strictures on industrial relations.’

Now we have this bill, the Workplace Relations Amendment (Genuine Bargaining) Bill. What have the government said to the Australian community about industrial relations? It was always a PR stunt; it was always government propaganda, but they said first of all, ‘There has to be choice.’ The question here is: what choice do the car companies have if the viability of their industry is threatened unless they toe the line with the government’s ideological view about the car industry? Hence we have this morning’s front-page story in the Australian, which was entitled ‘Fighting fund to tame car unions’. The article stated:

Senior government ministers, led by Tony Abbott, are challenging automotive companies to get serious about workplace reform ...

Watch the words ‘workplace reform’ very carefully. They sound lovely—

Senator Sherry—Reith-speak.

Senator COOK—They are Reith-speak—that is exactly right, Senator Sherry. You could not have put it more nicely. The words ‘workplace reform’ in the mouth of this government mean the destruction of unions and the destruction of the industrial relations protection of workers’ wages, working conditions, occupational health and safety conditions and right to a bargaining agent to achieve their fair share of productivity gains.

Productivity gains in the car industry have been quite spectacular. They have been brought about partly by the investment of companies in new plants and equipment which are more productive, and partly by the higher skills of the workers in the industry. Those gains should be shared fairly between those who have invested, the shareholders, and those who actually make the cars, the workers. Management are entitled to their fair cop as well. But without a union to bargain with some of the biggest companies in the world—General Motors, Ford, Toyota and Mitsubishi—individual workers have no
chance up against the monoliths of industry. Therefore it is not surprising that the car industry is a unionised workplace. But, when the government talk about genuine bargaining on their terms, they mean breaking down the industrial protection of those workers.

As far as I can remember, in every poll conducted in this country which has asked, ‘Who is best suited to handle industrial relations?’ the answer has been resounding, ‘Labor is’. That is irrespective of whether Labor’s fortunes have been up or down. This is not surprising. This government talks about fair bargaining and here it is on the one hand saying—

Senator Ian Campbell—We are better on the environment, health, the economy—

Senator COOK—No. As a matter of fact you are not, but I am not going into that point. Let me go back to the *Australian* newspaper, which stated:

Cabinet is expected to soon approve a $2 billion assistance package for the car industry and announce a phased reduction of tariffs for the sector.

The article on front page of the *Australian* went on to quote Mr Abbott:

“I don’t want to dictate to the industry how it runs its industrial relations. But I do expect the companies, collectively and individually, to have a workplace relations strategy in place before the Government signs off on a new package of assistance,” Mr Abbott said.

In other words, could anyone believe that the biggest companies in Australia do not have an industrial relations strategy? Of course they do, and they have had one for years. I remember when I was the Minister for Industrial Relations in this country—

Senator Ian Campbell—Those were the days!

Senator COOK—Thank you! I remember that, when I was industry minister in this country, I worked closely with the car companies in Australia, because they are the heart of our Australian manufacturing sector. We worked closely to foster cooperation in the workplace—not division, not setting worker against worker and worker against boss, but cooperation to achieve higher levels of productivity, a safer workplace and an objective of making the car industry an export industry for Australia. We achieved that objective.

We ran a number of programs in which we encouraged the units of production—workers, employers, plant and equipment—to work together to lift productivity and to share the outcome of that productivity achievement. We had a relatively harmonious car industry—one that achieved high productivity goals in the face of reducing protection through tariffs as we exposed the industry slowly, but in a way which strengthened it, to international market competition. We were quite successful. The car companies told me and told Australia how important it was to have employees working cooperatively with them in the workplace.

What are the government now doing? They are now saying—and you do not have to be Einstein to read the real meaning of Mr Abbott’s words here—’This package to continue the process of making the car industry more competitive is dependent upon you accepting our industrial relations ideology.’ Is this genuine bargaining? Sooner or later if these car companies succumb—and the report in the *Australian* today is about the car companies setting up a fighting fund to deal with unions—and there is an industrial dispute, what will Mr Abbott do? He will say, ‘You toe the line, because the car companies are only operating an industrial relations approach which is fair and reasonable.’ It is an approach forced on them, not one they want, because the survival of the industry is dependent upon their toeing the line with Mr Abbott. There is no doubt about that at all. And they wonder why people in Australia become alienated from the government! The economy does not reward all Australians in anything like the same way.

We want to see some harmony return to the workplace. That means respecting workers as individuals. That means regarding workers not as units of production, as extensions of a machine or as statistics but as human beings who seek job satisfaction, who have skills, who want to improve those skills and who want to earn a wage packet honourably and fairly to take home to their families to support a standard of living. Un-
less we start appreciating people in the workplace as the biggest single input of production and the most important element in industry, the industrial sector will end up in decline and people will become alienated from the workplace process. That is the logical outcome of the Abbott industrial relations approach. The logical outcome of Labor’s industrial relations approach is harmony, respect for individuals, safe workplaces and shared rewards of increased productivity.

There have been a number of industrial disputes in the car industry, mainly in the component parts sector, over the last year. It is worth while to pause for a minute and to ask ourselves what they were about. They were about this: workers wanted to have enshrined in their agreements some protection for when companies go bankrupt and the workers lose all of their benefits. When the company of Mr Howard’s brother went bankrupt, the federal government bailed it out. However, we know that in other cases where companies go bankrupt the workers lose all of their benefits. When the company of Mr Howard’s brother went bankrupt, the federal government bailed it out. However, we know that in other cases where companies go bankrupt the workers lose all of their benefits. When the company of Mr Howard’s brother went bankrupt, the federal government bailed it out. However, we know that in other cases where companies go bankrupt the workers lose all of their benefits. When the company of Mr Howard’s brother went bankrupt, the federal government bailed it out. However, we know that in other cases where companies go bankrupt the workers lose all of their benefits.

The government has called this legislation a ‘genuine bargaining’ bill. The title is a joke; it is meant for PR purposes. Senator Sherry will shortly tell us Labor’s position on this issue. I want to conclude by saying that what this government is doing for when companies go bankrupt and the workers lose all of their benefits. When the company of Mr Howard’s brother went bankrupt, the federal government bailed it out. However, we know that in other cases where companies go bankrupt the workers lose all of their benefits. When the company of Mr Howard’s brother went bankrupt, the federal government bailed it out. However, we know that in other cases where companies go bankrupt the workers lose all of their benefits. When the company of Mr Howard’s brother went bankrupt, the federal government bailed it out. However, we know that in other cases where companies go bankrupt the workers lose all of their benefits. When the company of Mr Howard’s brother went bankrupt, the federal government bailed it out. However, we know that in other cases where companies go bankrupt the workers lose all of their benefits.

Of course, we know from past experience what the agenda of the Liberal government is. Minister Abbott has continued the tradition of Minister Reith. We only have to look back at the collusion in which Minister Reith was involved with employers in respect of the waterfront, smashing the union movement and reducing wages and conditions. As Senator Cook so rightly highlighted, we have a very important manufacturing industry in this country that is going gangbusters. The motor vehicle industry has done very well, in large part because of the firm foundations of cooperative reform that the Labor Party put in place going back to the Button times.

Senator McGauran—Senator McGauran groans. What would he know about the motor vehicle industry? I challenge him to get up and contribute to this debate and to point out to us what the Liberal government has
done in respect of genuine reform in the motor vehicle industry. It has done very little. We have an industry going gangbusters, but what else do we have? We have the current Minister for Employment and Workplace Relations, Mr Abbott, setting up a secret gang to bust the unions and to reduce the wages and conditions of workers in the motor vehicle industry.

Here we have an example of a government that does not like the genuine workplace relations activities that employers have in place and it wants to interfere. This is the essential contradiction: a Liberal government, not agreeing with the genuine workplace bargaining that has been going on, is saying, 'We don’t like what you are doing, so we are going to interfere and impose an agenda by blackmailing the motor vehicle industry and helping to set up this million-dollar fighting fund.' I challenge the minister—I am sure he will be talking to the press today as a result of this particular exposure by Mr Lewis in the Australian about the secret plan by Minister Abbott to smash the unions and to reduce the wages and conditions of workers in the motor vehicle industry. The Liberal government want to circumvent the commission when it suits them. When it suits the government, they say that the commission has to deal with a matter. But, if the government disagrees with the parties or with the independent industrial commission adjudicating between the parties, the minister, Mr Abbott, in time-honoured Liberal party tradition, seeks to set up a secret fund of $1 million and to say to the employers, under some blackmail arrangement, 'If you don’t take on the unions as we dictate and you don’t reduce their wages and conditions, you will get no more assistance.' The government want to circumvent the Industrial Relations Commission—the independent commission—when it suits them.

Labor’s good faith bargaining provisions were designed to take unnecessary heat and conflict out of bargaining. Bargaining can be a difficult and emotive process, and a party should not be allowed to get away with rude and unprofessional conduct. Labor’s amendments will act to keep the bargaining process on the rails, with debate focused on the issues at hand and not diverted to petty obstructions.

The bill now provides for, firstly, the insertion of a note referring to Justice Munro’s decision in the Campaign 2000 case. The note gives legislative recognition to His Honour’s decision when the commission is called on to consider whether to suspend or terminate a bargaining period on the ground that the notifying party is not genuinely try-
ing to reach an agreement. Secondly, it allows parties to apply for suspension or termination of bargaining periods affecting an employer, without having to identify the specific bargaining period involved. Thirdly, it provides an express power for the commission to prevent the initiation of a new bargaining period or to attach conditions to any new bargaining period where a bargaining period has been terminated or suspended. The bill, as amended, effectively codifies the current state of case law on genuine bargaining. This will provide the parties that operate in the federal system with some degree of certainty over what will and will not be countenanced.

The Senate is sitting; the House of Representatives—of which Mr Abbott is a member—is not sitting. It is very appropriate that Senator Alston, the minister who represents the Minister for Employment and Workplace Relations in this place, should contribute to this debate. I call on Senator Alston to come into this chamber, while we are debating this genuine bargaining bill, and explain, on behalf of Minister Abbott whom he represents, what is going on with this $1 million secret fighting fund. What plans does Minister Abbott have to force the employers to take on the unions in the car industry and to reduce the wages, working conditions and superannuation provisions of workers in the motor vehicle industry? It is a very appropriate time for Minister Alston to come into the Senate chamber and, on behalf of Mr Abbott, to explain the government’s position. What is going on in the car industry? What are the government planning to do? They are planning to take on the unions, in the same way as they did with the waterfront workers, and to circumvent the Industrial Relations Commission. This is a government of this country actively engaged in setting up a $1 million secret slush fund and actively engaged in pushing the employers to take on the unions in the car industry, in order to reduce the wages and working conditions of workers. It is very appropriate that Minister Alston should come into this chamber and explain just what Minister Abbott and the Liberal Party are up to.

This bill would also enable the parliament to move on to consider more pressing matters, such as protection of employee entitlements. We do not have full protection of employee entitlements in this country. I know some out in the community might believe that the Liberal government has done something in this area—but we do not have full protection of employee entitlements.

Senator Kemp—You did nothing. You had 13 years and you did nothing.

Senator Sherry—Let me give you one example. Senator Kemp, a well-known and distinguished former minister with responsibility for superannuation, who is now handling the Arts and Sport portfolio after his terrible failures in the superannuation area, is interjecting. Senator Kemp, when he was the minister with responsibility for superannuation, did not provide an employee protection scheme. When a company goes under and there is superannuation outstanding, there is no employee protection.

Senator Kemp—You did nothing for 13 years.

Senator Sherry—There is no employee protection. The failed minister for superannuation, Senator Kemp, continues to interject.

Senator Kemp—Where is your policy, Nick? Six years and no policy. Never has a policy taken longer to produce—unbelievable!

Senator Sherry—What is not well known is that, under the employee protection provisions in this country, if a company goes bankrupt and there are substantial moneys outstanding in respect of superannuation—the figure often exceeds the amount for workers’ redundancy pay—the workers lose the superannuation. Senator Kemp is fond of calling on us to put forward our policy. I put forward, as one of our 26 policies, that we should be protecting the superannuation entitlements of workers when a company goes under. I note that Senator Kemp is nodding his head; he should do so because he did nothing about it when he was the responsible minister. He has since been promoted to the Arts and Sport portfolio.
Senator Kemp—You have put forward no policy.

Senator SHERRY—We look forward to your policy contribution in respect of the arts and sport.

Senator Kemp—The arts community will be very pleased to read your speech.

Senator SHERRY—You were a total failure in respect of superannuation. To my knowledge, Senator Kemp, you have not made one policy announcement about the arts or sport. What a miserable failure as a minister; he would not protect workers’ superannuation when a company went bankrupt; he did not lift a finger to protect workers’ superannuation when a company went under.

We should consider other issues, such as paid maternity leave and the work and family balance. These are all things about which Senator Kemp is concerning himself, in the world of the arts. We all know that, Senator Kemp. Certainly, in my priority of issues, there are some more important issues that we should be getting on with, having regard to the time allocated for parliamentary debate on this bill.

Once again I challenge Senator Alston to come into this chamber and tell us what is going on in respect of the secret plans that were exposed in today’s Australian by a reporter, Mr Lewis. He is a very good reporter, I might say. He is usually right on the ball. He has uncovered what is being plotted and planned by this government. I say to Minister Alston: it is part of your responsibilities to represent the Minister for Employment and Workplace Relations, Mr Abbott. The House of Representatives is not sitting. Come in here and explain what this Liberal government is up to with this $1 million fighting fund. Explain what you mean by ‘workplace relations strategy’—forcing the employers to try to break the unions and reduce the wages and conditions and superannuation of workers in the motor vehicle industry. These are conditions of which they should be rightly proud, I might say, which have been achieved largely through a cooperative effort that this government does not like or want, so it decides to impose its agenda; hence my comments. As I say, we heard the very incisive and comprehensive comments by my colleague Senator Cook, a former industrial relations and industry minister—I might say a very fine minister.

Senator Kemp—You’d be the only one.

Senator SHERRY—Senator Kemp, I knew you would bite.

Senator Kemp—Where is he now? He was so good that he is on the back bench.

Senator SHERRY—He has a much finer record than you will ever have as a minister. The accidental minister, Senator Kemp: that is what we call you. We all know how you became a minister. I conclude my remarks on the bill.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.56 a.m.)—Firstly, in relation to the government’s performance in the Arts and Sport portfolio, since Senator Kemp has moved into the portfolio, Australia’s performance in a range of sports has massively improved. At the Commonwealth Games, under Senator Kemp’s leadership, we saw our greatest performance in an international sporting event in Australia’s history. One needs only to look at the Australian cricket team’s performance to see what a wonderful influence Senator Kemp has provided since taking over the sport portfolio, not to mention the arts. Labor is a bit embarrassed about this, because former Prime Minister Keating spent almost all of his time devising an arts policy and forgot about the economy and everything else.

Senator Murray—What about the Wallabies?

Senator IAN CAMPBELL—He is working on the Wallabies, Senator Murray. Many of us who follow the game that they
play in heaven will know that he needs to do a bit more work in that area, and that is why Senator Kemp is leaving the chamber now.

We are considering the Workplace Relations Amendment (Genuine Bargaining) Bill 2002. There are a number of points that should be made. We welcome Labor’s agreement to the passage of this bill, with a compromise in relation to two or three provisions. In relation to the attack on the government’s overall policy, the government has had a quite clear commitment to improving the wages and conditions of workers. In fact, the record clearly shows that workers in Australia, particularly low-paid workers, have done particularly well under the coalition’s industrial relations policy.

We believe that workers should have a true choice regarding how they go about making arrangements within the workplace. We do not agree with Labor’s ideologically driven position—a position driven, of course, by the fact that the Labor Party is a wholly owned subsidiary of the trade union movement. The trade union movement has a preferred and powerful voting bloc in the preselection of all Labor members. In fact, it has a majority vote at the national conference. It is interesting that the Australian Labor Party will not allow the Australian government to reduce its 50 per cent holding in Telstra but it guarantees a 50 per cent voting bloc by the trade union movement at Labor’s national conference. That is why Labor insists, in all of its industrial relations policies, that there has to be a special place at the table for a trade union.

What we say to individuals in Australia is that, if you want to join a union, you should be free to join a union; if you do not want to join, you should be equally free. It should be a matter of birthright, a matter of choice. We think that is fair. We think no-one should be forced to join a union. No-one should have to face a sign, for example, on the front fence of a car yard, a vehicle manufacturing plant, a construction site or a university campus that states that you cannot walk onto the premises if you have not joined a union. We think that is obscene; we think that is unfair; we think that belittles people and we think it takes away their human rights by saying that you cannot work somewhere unless you have joined an organisation that you may choose not to join. It is an obscenity. In Western Australia we see the Premier of that state now saying to university students that they cannot get a degree or even go to university unless they join the student union and pay $200 or $300 up front. It is the same principle that we have stood by.

Senator Sherry—Are you a lawyer, Ian? Are you one of the majority of lawyers over there? You’re a wholly owned subsidiary of the Law Society.

Senator IAN CAMPBELL—I am not a lawyer, actually.

Senator Sherry—You’re not a lawyer?

Senator IAN CAMPBELL—No.

Senator Sherry—How many others over there are?

Senator IAN CAMPBELL—It is an interesting point but the Law Society does not have a majority in the Liberal Party national conference—I can tell you that. What we do not have in the Liberal Party are special votes for any special interests. In fact, whether you are a doctor, a teacher, a farmer or a sheetmetal worker, you can actually get an equal vote in the Liberal Party’s preselection processes. It does not matter where you come from; you can join the Liberal Party and get an equal vote. But if you join the Labor Party your vote is worth only half of the membership of the Liberal Party because you are always outvoted, 50 per cent at the minimum, by the trade union movement. That is why Labor’s industrial policies always say that there has to be a special place at the table for a trade union.

What we say to individuals in Australia is that, if you want to join a union, you should be free to join a union; if you do not want to join, you should be equally free. It should be a matter of birthright, a matter of choice. We think that is fair. We think no-one should be forced to join a union. No-one should have to face a sign, for example, on the front fence of a car yard, a vehicle manufacturing plant, a construction site or a university campus that states that you cannot walk onto the premises if you have not joined a union. We think that is obscene; we think that is unfair; we think that belittles people and we think it takes away their human rights by saying that you cannot work somewhere unless you have joined an organisation that you may choose not to join. It is an obscenity. In Western Australia we see the Premier of that state now saying to university students that they cannot get a degree or even go to university unless they join the student union and pay $200 or $300 up front. It is the same principle that we have stood by.

Senator Sherry—Weren’t you in the Democrats when you were in the student union?

Senator IAN CAMPBELL—In fact it is the same principle that Don Chipp stood by when he formed the Democrats in the first place. One of their core policies was to get rid of compulsory unionism, to get rid of the industrial relations club. That was one of Don Chipp’s early strong policies in the Democrats, which I have to say I found very attractive. I would hope that, with Andrew Murray’s influence within the Democrats,
that same principle of voluntary unionism and protecting individuals’ rights with regard to their choices when they get to the workplace will be upheld within the Australian Democrats. The Australian Democrats have in fact, particularly in 1996, assisted the coalition in bringing in significant reform of Australian workplaces.

To rebut the argument made by Senator Sherry about just where the coalition stands on industrial relations/workplace relations policy, during the years 1983 to 1996 low-income earners—low-paid workers—had a reduction in their real wages of 5.2 per cent; so you can argue about who cares most about workers. When people abuse coaches when they walk off the football field, coaches point up to the scoreboard—and the scoreboard for low-paid workers is a significant improvement under more flexible workplace arrangements under the coalition. Low-paid workers had a reduction in their real wages of 5.2 per cent under Labor, and the result under the coalition’s policies has been a real wage increase of 6.8 per cent. That is a very significant turnaround. They also benefit of course from broader, strong economic management: lower interest rates, lower inflation, lower taxes.

Senator Sherry—Higher taxes!

Senator IAN CAMPBELL—much lower tax rates for low-paid workers, and much lower interest rates. Senator Sherry’s economic policies gave low-paid workers 17 per cent interest rates and massive inflation, so their savings were run down, and of course much higher tax rates and much lower tax-free thresholds. So the situation of low-paid workers has significantly improved under a coalition government.

The reality at the workplace level is that you get greater productivity and a much better atmosphere of cooperation between employers and employees. You build a workplace culture that is focused on achievement: focused on delivering better service, better quality products and servicing an international market. Senator Cook and Senator Sherry have said, ‘Oh, well, we’ve got the automotive industry in Australia doing really well.’ It is doing very well—but what happened when we introduced significant reform to the waterfront? Crane rates—that is, the number of containers that are moved across the wharves on an hourly rate—have increased from around 15 or 16 per hour under the old prereform days and are now better than 25 per hour. That is a massive increase in the number of containers getting onto ships. We talk about crane rates, and that term probably does not mean a lot to a punter. But I think most Australians would understand that one good way to measure productivity in the workplace is how quickly you can load and unload a ship; how quickly a ship can come into a port in Australia, be unloaded and then loaded and then sent back out to sea. In broad terms, that is happening twice as fast now than it was before the reforms introduced by this government and put in place, against massive opposition by organised labour, by former minister Peter Reith, who is demonised by the Labor Party and demonised by the union movement because he dared to take them on.

Senator Sherry—Through action deemed illegal by the courts! He broke the law!

Senator IAN CAMPBELL—Peter Reith had the guts and the intestinal fortitude to take on organised labour. He said that Australia could do better on the waterfront. He said, ‘We are a trading nation and we cannot have the wharves controlled by a militant trade union. We need to improve Australia’s export performance, and you cannot do that if you have a bottleneck on the wharves,’ and he took the unions on and won. And of course he is demonised and he will be demonised for all his days because Labor cannot stand the fact that Peter Reith was such a successful workplace relations minister and such a successful reformer. Again, as the coaches show you, look at the scoreboard: the crane rates have massively improved with a much lower work force, so productivity has gone up and the waterfront of Australia is doing better.

Senator Buckland interjecting—

Senator IAN CAMPBELL—It raises the question, Mr Deputy Whip: why can’t the Australian automotive industry do better?

The TEMPORARY CHAIRMAN (Senator Collins)—‘Chair’, please.
Senator IAN CAMPBELL—The Deputy Whip was interjecting very softly. I picked it up and you did not.

The TEMPORARY CHAIRMAN—Yes, but through the chair, please.

Senator IAN CAMPBELL—But, Madam Temporary Chairman, we are a very small nation with two per cent of the world’s capital markets and Labor would be happy for us to just chug along and do relatively well. For Australia to succeed in the new century and in the new millennium, we have to do exceptionally well. You cannot just say, ‘The automotive industry is doing really well. There is no need for improvement. We don’t need to lift productivity. We can’t have better workplace relations in the car industry. It is all hunky-dory.’ That is Labor’s policy—no change; steady as she goes. We are doing really well, but we cannot improve any more. The Liberal government rejects that. We say that there is need for improvement. If you are going to have ongoing reform, you have to keep improving. The Button plan was back in 1983. Senator Sherry is saying, ‘We’ll just stick to the Button car plan.’ That was a very good plan back in 1983.

Isn’t the Labor Party unfortunate that it does not have any people of the quality of former Senator John Button in the place anymore? The bloke had guts. He would write a policy, get it through cabinet and implement it. Where are the John Buttons in 2002? They are long gone. You wonder what to believe in anymore. They are leaderless and rudderless. John Button must be despairing.

The government would have preferred this bill as originally introduced to pass without amendment, but we are prepared to accept the changes. We welcome the opposition’s agreement to allow this bill to proceed with amendments, and the government will accept the amendments. We would ask the chamber to reconsider its decision not to insist on amendments (4) and (5). We wish this bill a speedy passage.

Senator MURRAY (Western Australia) (11.09 a.m.)—That the debate has been, in Senate parlance, wide-ranging I think would be an accepted judgment around the chamber. It is a sure sign that behind the scenes others are scrambling to prepare themselves for other bills, simply because the Senate has been so efficient, productive and effective that we have roared through the legislative agenda for this week so far, on which everybody should congratulate themselves.

Senator Hogg—You have done very well.

Senator MURRAY—We have. Where are we with the Workplace Relations Amendment (Genuine Bargaining) Bill 2002? There are a few things in the wide-ranging debate that I should pick up on. The first thing is that the Labor Party is seldom given enough credit, or gives itself enough credit, for introducing the first wave of industrial relations reform in 1993-94, which broke the nexus with the past and introduced the modern industrial relations regime that we now live under. The second wave, which the coalition introduced in 1996, built on that foundation. As a result, the combination of those two changes has seen a marked improvement over time in Australian productivity and job creation, and it has led to less industrial action and to greater choice being available to members of the working public.

The Labor Party is sometimes also not given enough credit—perhaps it does give itself credit—for assisting in initiating the decade of strong growth that we have enjoyed. The workplace relations reforms, the first wave of which the Labor Party introduced in 1993-94 and which the coalition followed on with in 1996, have been very much part of that strong growth. The Democrats supported both the first wave and the second wave. When I hear some of the exaggerated remarks concerning the Workplace Relations Act, I am often of the view that they are driven more by an attitudinal objection from a Labor movement than by a real assessment of the act as it stands. I suspect that, if there were a change in government, the actual principles, background and spine
of that act would be unlikely to be significantly altered.

Regarding the remark on the issue of choice, which the Democrats feel very strongly about, I must say that, whenever I hear student unions brought into the debate, I just think that you are way off-line. Student unions are not unions at all. They are not there to negotiate for wages, conditions and the basic returns. In fact, they would do themselves a great favour if they dropped ‘union’ out of their name, because the coalition parties have used it as a convenient whipping ground for what is a fundamental principle: when you provide services to students, all the students should pay for them. It is really straightforward. Of course, I must confess that I have a bias in this, as probably the strongest student union representative in the Senate. Having been the Vice President of the National Union of South African Students, I know of what I speak. I just think that you are way off beam there. But the minister, in his remarks, emphasised the importance of choice. The Democrats thoroughly agree with that. The choice of whether or not to join a union or an employees organisation is an essential choice. Sometimes, when I hear it, I just wish that the coalition would go that extra step and recognise that the Labor Party, in fact, discriminates against non-union members who may not join the Labor Party.

I cannot understand how you can quite properly prohibit discrimination on race, gender, disability or origin and yet in politics you can refuse a person access to your political party simply because they are not a member of a particular organisation. I hope one day that matter will be addressed, and the day that bill is brought before this chamber—whether it is from Labor or the coalition—I personally will vote for it. Let us get that issue of choice on the ground.

The other issue which was raised in the broad ranging debate was Steve Lewis’s article in the Australian today about the car fund. One of the really interesting facts to have emerged over the last year is the admission by the department that they actually do not know whether days lost to industrial disputes are due to protected action or to unprotected action. The great advantage of the Workplace Relations Act is that it provides for people to have a blue—if you want to have a blue, you have protected action. At the close of an enterprise bargaining period or within a bargaining period you can have a blue. It goes all the way up to strikes and lockouts, which are possible under protected action, and you may not be punished for them.

However, unprotected action has extremely strong penalties available to it, and one of the complaints I have is that, when unions quite properly and aggressively argue for terms and conditions that advance the cause of their members, employers want to come running in here and say to the Labor Party and the Democrats and the coalition, ‘Change the law so that you can protect us in a situation of bargaining.’ Frankly, if it is protected action, they should not be protected from that and, if it is unprotected action, they have the force of law available to them. What has distinguished many employers is that they have been afraid to be as strong as the unions in confronting unprotected action. Frankly, if they are going to introduce a fund to give themselves a bit of backbone in that area, I do not see much wrong with that if it is going to address the issues of unprotected action. If it is going to try to erode the principles and the protections that are deliberately provided under protected action provisions, then I would have more concern.

Turning back to the bill itself, the Workplace Relations Amendment (Genuine Bargaining) Bill 2002 does follow in the footsteps of what we all know as the ‘mojo bill’, the more jobs, better pay bill. There are people in this chamber who it seems have been debating these issues forever. They include Senator Sherry, Madam Temporary Chairman Collins—who is very well-informed—and Senator Ian Campbell, who managed the entire Workplace Relations Act debate from the government side; and of course I was involved too. So this is an informed gathering, and there are a few Labor senators here who, I know, have deep experience in this.

The mojo bill was in fact the third wave, and it was quite properly rejected by Labor
The focus needs to be on genuine bargaining. I think the government is quite right to focus on genuine bargaining, and I disagree with some of the points Senator Cook made in terms of their motive. But the Labor Party have also said that you should focus on genuine bargaining, as we have, and they believe that genuine bargaining includes bargaining in good faith, and I agree thoroughly with that. Whether you want to call it genuine bargaining or bargaining in good faith, it has the same intent: you are sitting down to resolve issues of workers’ pay and conditions with the proper respect needing to be given to the corporate needs for productivity, outputs and profitability.

The bill itself really addresses protected action circumstances for collective enterprise agreements. As everyone here knows, collective enterprise agreements cover about one-third of all employees—the rest being on individual contracts and awards. The bill affects only one-third of workers and then of course, if you knock off all the state workers that do not fall under it, I guess you are down to 20 per cent or one-quarter or something like that. So it would not change the face of the earth.

However, in manufacturing in Victoria, where the workers very much fall under federal awards, it has particular importance. One of the statistics which has emerged relates to what everybody regards as a distinctive Victorian culture—something like 33 per cent of all days lost are lost in Victoria. Frankly, we have got to improve that. Whether it is a Labor government or a coalition government, you cannot have one state which produces way less than one-third of all gross domestic product for the country producing one-third of the industrial disputation. It signals that something is wrong there. Personally, I think it arises from many causes, not all of which I understand or am equipped to understand. But one of the causes has been a confrontational and somewhat mean approach to workers by successive groups of employers and, indeed, governments—and we discussed that the other day with respect to schedule 1A. A bit more goodwill towards the workers of Victoria might assist in changing what is at its extreme an ugly, confrontational and aggressive culture.

The fear of manipulated enterprise bargaining, primarily in manufacturing—manipulated so that, as a pattern, it would revert to industry-wide bargaining—emerged in the year 2000. Thankfully, the fears related to that proved largely unfounded. But on 31 March 2003 and 30 June 2003 approximately 1,000 manufacturing industry agreements will expire, and that coordinated expiry might lead to some problems. The bill that we were presented with was significantly altered by Labor and us, with five successful Democrat amendments and two successful opposition amendments. Some very important technical provisions survived. Senator Sherry, in his wide-ranging remarks, neatly summarised them into three areas.

The government has, very sensibly, accepted all of those amendments apart from the two that refer to bargaining in good faith, although, as Senator Sherry pointed out, a note on the good faith case did survive. Frankly, nothing much hinges on the survival of the good faith amendments. I think it would advance the law. I think it is an important recognition of both jurisprudence and legal precedent. It has been around in law, and in industrial relations law, forever and it is not going to go away simply because you refuse to accept it into workplace relations law. Nevertheless, the workplace relations law has been without it since 1996. The sky has not fallen in—using the Chicken Little analogy—and I think we can therefore afford to say that we like the good faith amend-
ments but we will not insist on them. I will not be insisting on them on behalf of the Democrats. I am glad that the government has accepted the Labor and Democrat amendments otherwise and I hope that the therefore modest changes which go forward will improve the prospects for genuine bargaining.

Senator BUCKLAND (South Australia) (11.24 a.m.)—I rise to make a few comments on the Workplace Relations Amendment (Genuine Bargaining) Bill 2002. This bill has come back before the Senate. Labor are supporting the bill in its amended form and I have no difficulty with that. I guess I, like many others, have difficulty with the term ‘genuine bargaining’. It could equally be ‘industrial bargaining’ in this case because it does not appear that the Liberal government is really genuine about how industrial relations matters are bargained between the parties. My interpretation of genuine bargaining is that all parties are equally committed and all parties are equally involved in developing the industrial relations regime that will apply in various industries, factories or places of work. So I do not think that term is the most appropriate for this bill, but it is there and Labor have already indicated that we are supporting it in its current form.

In its previous form, the bill sought to prevent unions from organising and bargaining for decent wages and conditions within industry. That is one of the reasons that the Labor Party originally could not support this bill. I think it needs to be pointed out, too, that not all industry bodies are supporting the approach of this government when it comes to bargaining and dealing with industrial relations; many organisations of employers do not fully support the government line on this. It is an issue which does need to be addressed. The unions are always genuine when they go in to bargain with industry on behalf of their members and it would be nice, on occasions, not to have a bunch of lawyers, solicitors or barristers fronting up to represent a company. When you get that sort of involvement, you find that there is no real knowledge of the industry held by the lawyers. They are not involved in the integral part of daily activities. They go there with a very legalistic approach and take away the genuineness of trying to negotiate a settlement agreed to by all.

I have to say that, during the late 1980s and early 1990s, under Labor governments, bargaining and genuine bargaining were practised. That is the reason that we brought about the great reforms in industry, where both parties sat down and worked together. This involved all of the work force and all of the employer and employee associations that could be involved in any enterprise. That brought about genuine change within industry that is ongoing today. The principles brought in by Labor to bring about reform are still practised by many large organisations in Australia today. Forget about the hopes and aspirations of the current and the former ministers, Labor’s reforms were not confrontationist; it was by consent and by agreement that things were changed—and changed for the better.

All that can be brought down by this government and its confrontationist approach to industrial relations. The government adopts this approach for reasons I have never really understood. It cannot be just a matter of ideology; it is driven by some hidden agenda which it has tucked away in its back pocket. For some reason the government just wants to hate the workers and work against them. Senator Campbell made some comments about better earnings and conditions for workers under the Liberal government. The statement about performance and better wages may be correct, but where are those better wages actually being paid? They are being paid in areas where the unions have had a great involvement in bringing about changes in conditions, changes in performance and changes in wage rates.

Senator Ian Campbell—Where is your evidence for that?

Senator BUCKLAND—The evidence comes from the industry itself, Senator Campbell. You go and have a look for that yourself and get your facts correct. There is now greater involvement in the work force by casual workers and by part-time employees, so the full-time wages are not as good as you are putting to this Senate today.
Union-negotiated wages and conditions in industry today are far better than what was created by the Reith and Abbott program for change and reform. As I have said before, their program is about confrontation rather than consultation. Indeed the Button car plan, which was referred to by my colleague Senator Cook, brought about change in that industry which this government is currently trying to undermine by its lawyers and its confrontation. The steel plan brought about massive change in the steel industry. I was proud to be part of that change and the reform that took place. I was proud because it involved all parties on an equal footing, and that is what brought about the change.

I well remember being at Whyalla with the then general manager of the Whyalla steelworks when Minister Reith made a visit. He was told very clearly by the industry on that day, ‘It is no good coming here and telling us about your plans; we have done it. The machine is not broken; we don’t need to fix it and we don’t need the changes that you are suggesting.’ That is on the record. The government can say all it wants about what it is doing for industrial relations but it is only creating an environment that engenders unrest and confrontation.

The government’s long-term plans for industrial relations are not in the best interests of this country. The bill that we are supporting today has come about because the government has seen that change can take place. It would be very good if we could see the government involved in things like fair dismissal, secret ballots and fair termination. If those things were negotiated and worked out in advance, we would not be going through such a great debate on this single issue. There has to be more for this government to look at—health, people with special needs, and aged care. These are things that we should be putting our—

Senator Marshall—It’s too hard.

Senator BUCKLAND—It is too hard, Senator. It is too hard for this government because they do not want to face the hard work that is ahead for government in this country. They look at something else—not the workers or the underprivileged—and tell us that lower-paid people are better off under this government. That is an absolute sham and it is not believed. We believe that the bill in its current form is now worthy of support. It would be nice if the government could bring other bills before us in this way.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that the committee not insist on its amendments (4) and (5) to which the House has disagreed.

Question agreed to.

Resolution reported; report adopted.

MEDICAL INDEMNITY AGREEMENT (FINANCIAL ASSISTANCE—BINDING COMMONWEALTH OBLIGATIONS) BILL 2002

Second Reading

Debate resumed from 21 October, on motion by Senator Ellison:

Senator RIDGEWAY (New South Wales) (11.34 a.m.)—Today I rise to speak regarding the Medical Indemnity Agreement (Financial Assistance—Binding Commonwealth Obligations) Bill 2002. I speak on four main areas: the reasons for the bill; issues about the insurance industry; issues about the relationship between what this bill seeks to do and health care generally; and, more particularly, the circumstances of midwives. The purpose of this bill is to provide a legislative basis for the payment of Commonwealth obligations made under a medical indemnity agreement. The bill is confined to the agreement to provide assistance to United Medical Protection Ltd or, as it is commonly known in the press, UMP, and its wholly owned subsidiary, Australasian Medical Insurance Ltd.

The legislation is necessary in order to ensure the stability of future medical treatment to all Australians, and it certainly has been topical in the press recently. Future governments, in my view, do need to be bound to this agreement through legislation. The claims period for medical indemnity insurance can extend to 18 years. Therefore, to ensure that this agreement does have standing, and following Supreme Court rulings to that effect, the government has agreed to put this legislation into place.
UMP got itself into this predicament as a result of strategies to obtain an increased market share by offering unsustainably low premiums. Returns on investment became tight as the reinsurance market began to tighten, which was quickly followed by the HIH collapse and then finally September 11. By this stage UMP found itself unable to remain solvent. The situation that occurred was allowed to happen because, as we know, prudential regulation through bodies such as APRA does not apply in the same way to medical defence organisations such as UMP as it does to those organisations in the broader insurance industry. This allowed the organisation to get into the dire circumstances that it did without coming to the direct attention of anyone who could have acted appropriately. Disappointingly, the organisation decided to remain on its market growth strategy after knowing that it had sunk into serious trouble. UMP, with AMIL, was the largest medical insurer in Australia, with coverage of about 60 per cent of medical practitioners nationally and 90 per cent in New South Wales and in Queensland. As 90 per cent of doctors in my home state of New South Wales are covered by UMP, the Democrats will be supporting this bill through necessity, but not without extreme concern at the depths to which UMP was allowed to sink before its collapse.

What adds further disappointment is that the state, territory and federal governments have used the general insurance crisis, which the UMP collapse is a part of, to make harsh changes to civil rights through tort law reform without proper regard to what happened in the industry. The failure of the government to offer support initially was part of a strategy to let UMP fall and then to put back together what was necessary only at a reduced cost to government. It seems to me that that failure led to people panicking about the availability of medical care. In particular, it led to medical professionals having serious concerns about the future of their insurance and adequate cover. Many within the medical profession stripped themselves of assets following the UMP collapse so as not to lose everything in any future claims, an unnecessary panic and chaos caused by this government not acting decisively. As a result of this bill being put forward, it now looks as though it may cost taxpayers up to $500 million.

I want to take a moment to put to the chamber that reform in the insurance and indemnity area is twofold. It means short-term support measures and long-term changes to provide a sustainable framework. I have previously raised in debates the matter of APRA and the prudential regulation. I also believe that greater restrictions should be put on preventing insurance companies from engaging auditing and accounting services from the same provider at the same time. What needs to be considered is the introduction of a restriction of a period—for example, three to five years—for the provision of services from the one accounting firm, and there should then be a 12-month break before that same firm can be engaged to provide its services to the same insurance company.

Whilst it is not reasonable to accuse insurance companies or, for that matter, medical defence organisations of being managed like Enron or Andersen, it would be naive to think that the sorts of problems that have been experienced in the United States recently cannot arise in Australia in the future. The introduction of these types of measures might be a positive step towards alleviating that type of danger locally—being able to deal with it before it occurs. Medical defence insurance organisations should also be required to report to APRA where the one provider is carrying out both accounting and auditing functions. The current requirements that an APRA approved actuary be appointed, in my view, will not provide the assurance that is necessary to protect the rights of policyholders. Nonetheless, it should, at the very least, be extended to cover medical defence organisations. To provide further assurance of independence, it is also advisable that insurance companies be required to get APRA approval when they
seek to use the same provider for accounting and auditing services.

Another issue that needs to be raised in this debate is the coverage that APRA has with respect to the insurance industry. As a matter of principle, it seems to me that APRA should have the power to monitor medical indemnity organisations and to make sure that the problems that arose do not occur again.

On the matter of long-term changes, I ask that the government give serious consideration to a scheme whereby the focus is on preventive care and on people being able to get well. A no-fault scheme or a hybrid of such a scheme seems to me to be a better way to use resources and provide for a much more sustainable framework. The government has been ineffective in its monitoring of insurance organisations, and during the crisis it has been lax in taking insurance organisations to task. As a result, I will be moving a second reading amendment condemning the government’s inaction and condemning the business practices of UMP in getting into the position that it did.

As we all know, insurance costs have risen sharply over the past five years for those within the medical profession and, at the same time, the medical benefits scheme standard consultation rebate has almost halved in real terms. In relation to general practitioners, the 2001 interpractice comparison survey claims that medical indemnity costs were 4.1 per cent of overhead costs, which is more than 33 per cent higher than they were in 1996. These results are based on 77 practices or, for that matter, 343 individual doctors. Whilst these statistics may not be representative of all general practices, the cumulative increases must ultimately be passed on to patients and will inevitably place further pressure on the ability of general practitioners to bulk-bill.

Furthermore, according to the Australian College of General Practitioners, in its submission to the Senate inquiry into the insurance crisis, GPs continue to face increasing pressures and stress in the fear of being sued for non-negligent adverse events. It is thought that, as a consequence of the fear of litigation, the number of tests and procedures done for defensive purposes have increased. It is also claimed that this is an indirect but real cost associated with increased litigation. Some of the research that has been commissioned by the ADGP also revealed that GPs are stopping procedural work because of the rise in indemnity premiums.

I will give an example of the state of our health services. Only a couple of weeks ago, I was talking to a paediatrician who told me about one of his colleagues being flown from Melbourne to Taree, on the mid-north coast in my home state, to work for 18 days straight and on call 24 hours a day. He cannot be outside a 15-minute radius of the hospital at any time. His colleague was using his holiday leave from his home hospital to be available to help out in Taree. This commitment to the community is to be applauded, but it cannot be the way to fill the gap in terms of sustaining a practice for any length of time. It highlights the critical shortage: hospitals are closing their maternity wards. Because of the lack of specialist care, they cannot make provision for births.

We have to ask: seeing that Medicare bulk-billing in obstetrics dropped by 2.9 per cent in the last financial year, is it any wonder that only 20 per cent of doctors now offer obstetric care under bulk-billing? This leaves patients with no option but to travel long distances, often away from their communities, to have babies or even to access other routine medical services. It seems to me that we are not going to attract people into the medical professions, especially to regional and rural parts of the country, under these types of conditions compounded by the percentage of insurance cost increases as proportionate to the MBS rebate.

I turn to the matter of coverage for midwives. Many in the chamber will be aware that on a number of occasions I have raised the matter of the inability of independent midwives, a number of midwives in training and—only weeks ago—contract and casual midwives to get professional indemnity insurance cover. It seems to me, having considered this bill and what it seeks to do, that the legislation fails to offer support for any of these groups. Medical indemnity insurance is not just an issue for doctors but one
that directly affects the availability and affordability of medical services for all Australians. It is for this reason that it is properly regarded as a national issue that requires a national response led by the Commonwealth government. Unless medical indemnity insurance is available to doctors and other health professionals at affordable levels, we put at risk the very integrity of the health system itself.

When independent midwives and midwifery students lost their insurance coverage, the government ignored their plight. That initially affected 200 midwives and around 500 students enrolled in university midwifery courses across the country. It appears from this bill that the government is once again prepared to ignore their plight. We are now talking about some 3,000 midwives being affected, which is over one-quarter of all midwives working at the current time.

This is a bill put forward by the government to prop up United Medical Protection with around $500 million. I think we have to ask the question: where is the government when it comes to assisting midwives, those who are responsible for the safe birthing of our babies, who support our women and who look after our babies pre birth, during birth and post birth? The World Health Organisation has stated on a number of occasions that midwives are the most appropriate and cost-effective type of health care providers to be assigned to the care of women in normal pregnancy and birth, including for risk assessment and recognition of complications. Midwives provide continuous care to women from the early stages of pregnancy until four to six weeks after the birth of a child. That kind of care is not readily available from any doctor or obstetrician. The use of midwives also makes good economic and health sense, cutting hospital and health care costs. The continuity of carer model of care has been proven to reduce the use of obstetric interventions in labour and birth, including the need for pharmacological pain relief, inductions, augmentations, instrumental deliveries, episiotomies and caesarean sections.

But all of this sounds very hollow when the agencies that are supposed to be out there representing these essential health care workers cannot find professional indemnity insurance cover. It is not a case of the insurance premiums being too high; in the case of midwives, it is a case of finding any cover at all. As I have stated previously in the chamber, it seems to me that the government has the opportunity to take action regarding midwives and it consistently fails to do so despite all of the evidence provided.

I presume that Senator Coonan, as the minister, will have an opportunity to speak directly to the issue. It is not enough for government members to explain that the government is not here to provide insurance cover. I want to remind the government that it provided support to the aviation industry and to doctors and other professional specialists. But it is unwilling to extend the same level of care and obligation to make sure that midwives are given the same options and same treatment in their capacity to deliver services to the community.

In that regard I will be moving an amendment to the motion for the second reading, to draw the government’s attention again to the plight of midwives. At the end of that motion I will add:

but the Senate, noting the dire position of midwives across the country, urges the Federal Government to act to include midwives in the medical insurance rescue package so as to address the crisis in the safe birthing of babies in both public and private hospitals and for assisted home births. It is an important issue for me because, as I said when I raised the issue during debate some weeks ago, not only does it make economic sense and provide for the integrity of the health care system but, particularly for people living in rural and remote locations and people whom I know living in the Aboriginal communities across the country, it has always been found that the most cost-effective type of health care, and the one that ought to be available, is one that is delivered locally.

As we all know, there is a shortage of doctors out there in the bush. We should be serious about trying to fill the gap in some way, and it is not enough to send people from Melbourne to Taree or from any other capital city to bush locations. I think it also goes without saying that we must keep re-
minding ourselves that 98 per cent of births
in this country are conducted by midwives;
very rarely is the obstetrician seen when it
comes to the birthing process. Even with the
birth of my own child, who is now 7½
months old, we went through the process
with midwives. Granted, that was in the
public health system.

The point is that we have to put forward
options that will allow women to make deci-
sions about what is appropriate for them.
More and more these days the tendency is to
look at natural processes—not the ones that
are provided by doctors, who see birth as a
medical intervention. Medical intervention
should only be necessary in the event of
medical complication; that is the appropriate
time. In the interim, we have to recognise
and support the crucial role that midwives
play in guaranteeing the safe delivery of our
children in this country. Again, I encourage
the Senate to support the second reading
amendment as it will be put forward.

In closing, I would like to say that the
tragedy of errors as the government has
bumbled its way through this insurance crisis
has in my view almost defied belief, because
the greatest area of mismanagement by this
government was when, on 29 April—when
UMP was first seeking provisional liquida-
tion—through the minister, the government
placed on the record that the government had
no plan to guarantee the 32,000 general
practitioners and specialists future insurance
cover. I am still trying to work out whether it
was a cunning plan or sheer incompetence,
because the industry needed reassurance and
instead it certainly became a pawn in a po-
itical game. When the government comes to
the chamber with something to offer security
to those providing care and those needing
care, the longer term solutions to the prob-
lems that have arisen must also be placed on
the table. Although we have seen some mea-

sures—mostly in regard to tort law re-
form or limitation on civil liberties—serious
long-term solutions have been neither
mooted nor drafted. It seems to me that this
must be addressed.

Time and time again, but for this debate
occurring, we would never know the signifi-
cance of the work that midwives contribute
to the population increases in this country.
We must ensure that midwives and those
undertaking midwifery courses in our uni-
versities are guaranteed an ongoing place in
the birthing processes in this country. We
support the bill for those in the medical pro-
fession and those who are going to be cov-
ered by this bill, but we would expect the
Senate to see sense and support our amend-
ment to include midwives, who play a cru-
cial role in the integrity of our health system.
I move:

At the end of the motion, add:
“but the Senate, noting the dire position of
midwives across the country, urges the Fed-
eral Government to act to include midwives
in the medical insurance rescue package so
as to address the crisis in the safe birthing of
babies in both public and private hospitals
and for assisted home births”.

Senator CHRIS EVANS (Western Aus-
tralia) (11.55 a.m.)—The opposition supports
the Medical Indemnity Agreement (Financial
Assistance—Binding Commonwealth Obliga-
tions) Bill 2002. The purpose of this bill is
to appropriate funds for payments in accor-
dance with an indemnity agreement between
the Commonwealth, United Medical Protec-
tion, UMP, and its wholly owned insurance
subsidiary Australasian Medical Insurance
Ltd, or AMIL, and to confirm the govern-
ment’s commitments relating to UMP and
AMIL. Senators would be aware that, prior
to its provisional liquidation, UMP-AMIL
was the largest medical insurer in Australia,
with coverage of approximately 60 per cent
of medical practitioners nationally and 90
per cent of those in New South Wales and
Queensland. The bill provides for an appro-
priation out of consolidated revenue for the
purpose of payments in accordance with the
indemnity agreement between the Common
wealth, United Medical Protection, UMP, and
AMIL, and to confirm the govern-
ment’s commitments relating to UMP and
AMIL. Senators would be aware that, prior
to its provisional liquidation, UMP-AMIL
was the largest medical insurer in Australia,
with coverage of approximately 60 per cent
of medical practitioners nationally and 90
per cent of those in New South Wales and
Queensland. The bill provides for an appro-
priation out of consolidated revenue for the
purpose of payments in accordance with the
bill. These will be payments, when required,
under a medical indemnity agreement be-
tween the Commonwealth, UMP, AMIL and
an insolvency representative of both compa-
nies. The actual extent of the payments re-
quired by the Commonwealth is not known.

As the bill facilitates arrangements previ-
ously announced by the government to en-
sure continuity of medical indemnity insur-
ance cover for doctors insured with UMP
and AMIL, it is supported by the opposition.
The opposition does, however, have a range of very serious concerns about the government’s handling of the matter and the medical indemnity insurance issue generally. As a consequence, on behalf of the opposition I will be moving a second reading amendment, which I have circulated to senators and which is available in the chamber. This amendment calls on the government to at last take a proactive role in managing the medical indemnity insurance problem which has been looming for all to see since the year 2000. The amendment also proposes a raft of specific measures aimed at preventing such a process recurring and urges the government to extend the indemnity to private hospitals, midwives, family planning clinics and Aboriginal medical services. To the extent that Senator Ridgeway’s second reading amendment on midwives and our amendment are complementary, I indicate that we will also be supporting Senator Ridgeway’s amendment. He has done some useful work in bringing to the attention of the chamber the very serious concerns that are also impacting on the operations of midwives as well as on GPs. It is a very important issue which that second reading amendment gives some attention to, and we will be supporting that as well.

I think it is worth revisiting some of the events leading to the problems with UMP and AMIL in order for the parliament and the community to be able to appreciate how the government has mishandled this issue. In November 2000, UMP announced at its annual general meeting that it would call on members to contribute an extra year’s subscription, spread over five years, with an estimated total of $75 million and that its premiums would increase by eight per cent. In March 2001, following HIH Insurance’s seeking of voluntary liquidation, the chief executive of UMP is reported to have stated that UMP continued to exceed the solvency requirements of the industry regulator, APRA. In June 2001, UMP announced it had written off $30 million due to the collapse of HIH. UMP was confident that it could continue to satisfy APRA’s requirements. However, it was also reported at the time that no calculation had been made for the situation if there were no return from HIH, in which case the loss would be $56 million. In November 2001, it was reported that UMP had not recorded approximately $455 million of incurred but not reported—IBNR—claims that it expected to pay over the next 20 years.

In February 2002, UMP announced that, after appointing an inspector to AMIL, it was directing AMIL to raise additional capital by 30 June 2002 to ensure that it met the minimum capital requirements under the Insurance Act. In March 2002, the Minister for Health and Ageing and the Assistant Treasurer jointly announced that the government would provide a short-term guarantee of up to $35 million to enable AMIL to meet its capital requirements as of 30 June. In April this year UMP sought further government assistance, which was refused by the Prime Minister.

From that history of events, senators will appreciate that the government have been more than sufficiently placed on notice, since at least November 2000, about the difficulties associated with UMP and AMIL. On 29 April, UMP-AMIL announced that it would seek to have a court appoint a provisional liquidator for the group. On the same day, the government announced that they would provide a short-term indemnity to UMP-AMIL to allow members insured with them to continue practising. However, the AMA’s concerns about the nature of the government guarantee led some medical practitioners to defer patient treatment and cancel operations due to uncertainty about their insurance coverage.

On the day UMP announced it was seeking provisional liquidation, Senator Coonan conceded that the government had no plan to guarantee the ongoing provision of medical services and that the government could not bind future governments. That obviously sent shock waves through 32,000 GPs and specialists insured by UMP. The government’s confusion about their own position gravely undermined the confidence of the medical profession, when what was urgently required at that time was some certainty.

The Prime Minister said that the government’s guarantee would be backed up by legislation, which was news to all concerned—I think in particular to the Assistant
Treasurer, Senator Coonan. At the time, Senator Coonan promoted consideration of a special levy on doctors, despite the Prime Minister ruling it out at the time. Treasurer Costello weighed in by singling the doctors out for special attack. The Prime Minister said it was not the fault of any one group.

From the first day that this legislation was proposed, Labor confirmed that we would support it in order to ensure continuity of medical services in this country. On the other hand, the government have been on notice since at least November 2000 about the inadequate financial position of UMP and AMIL and have delayed bringing this legislation to the parliament for some two years. An extension of the guarantee to 31 December 2002, which had originally been given to the end of June 2002, was made as late as May 31 this year. This means the provisional liquidator can meet claims notified in the period between 29 April and 31 December 2002, renew policies on a claims-made basis until 31 December 2002, and continue to meet claims that were notified before 29 April and were properly payable in the period from 1 July to 31 December 2002.

It is clear that the government’s inadequate handling of UMP-AMIL’s gradual demise has rocked the confidence of the medical profession, which in turn has led to a disruption of medical services. As I have indicated, Labor supports the provisions of the bill but debate on it allows the parliament to cast its mind more broadly to the adverse effects of medical indemnity insurance problems on medical services. Medical indemnity is not just an issue for doctors; it is one that directly affects the availability and affordability of medical services for all Australians. Unless medical indemnity insurance is available to doctors at affordable levels, doctors will no longer offer bulk-billing to their patients and will charge copayments. In the case of GPs, this will result in people who cannot afford to pay for a visit to the doctor not being able to access the primary and preventative care that they need. We have already seen very worrying trends developing in the number of visits to GPs that are bulk-billed.

There will be an exodus of doctors from the profession as they retire early, and new doctors will choose not to enter high-risk specialisations. Unless and until long-term, substantial reforms are put in place, the crisis in confidence within the medical profession will continue and Australian patients will suffer through both reduced availability of medical services and higher prices. We already know that some patients have been asked by specialists to make up-front payments before surgical procedures are carried out. They have been advised that these payments are necessary to meet the cost of medical indemnity insurance, that bookings cannot be completed until payment is made and that the payment is not rebatable.

There have also been reports of general practitioners taking matters into their own hands and deciding to charge patients an indemnity levy assessed subjectively on factors such as the length of the consultation, the financial status of the patient and the legal risks associated with a particular treatment. It has also been reported that other GPs have asked patients for donations to cover their increased medical indemnity costs.

Rising insurance premiums have contributed to the decision by many GPs to cease bulk-billing and charge a copayment or to increase the level of the existing copayment. Private hospitals, midwives, family planning clinics and Aboriginal medical services have also reported difficulties in obtaining the insurance necessary to fulfil their responsibilities. If this trend continues, more Australians will inevitably need to be treated in our public hospitals for serious conditions that could have been treated earlier if it were not for patients being deterred from seeking expensive medical treatment.

The Howard government has been very reluctant to address these core issues. On 19 December 2001 the Prime Minister belatedly announced a national medical indemnity insurance summit, but the government then failed to progress the issue until the summit was convened on 23 April 2002. Indeed, on the eve of the summit the Minister for Health and Ageing, Senator Patterson, told the Australian newspaper that it was not her job to develop a policy to fix the problem. She said:
The Government is really the facilitator and we expect the states, the insurers, the doctors and the patient groups to come up with suggestions for significant policy changes ...

The summit’s communique did little more than announce that work would begin on a range of issues which had been identified by many and which had been included in Labor’s medical insurance policy package, released on 31 July 2001. A comprehensive plan is needed to solve the medical indemnity crisis, coordinated at the Commonwealth level and requiring cooperation and agreement with each of the states on necessary reforms in each jurisdiction. Earlier this year, state and territory governments each moved to implement reforms, in particular to the law of negligence in each jurisdiction. New South Wales has been the most aggressive in its tort law reforms and has been held out by some as a model for other states to follow.

Federally, Labor have repeatedly called on the Howard government to assume a leadership role in the coordination of reforms necessary to state and territory laws, and have highlighted the desirability of achieving uniformity of tort law reforms. Labor have also called on the government to act in those areas for which they have responsibility, including dealing with the quality and safety of medical care, the establishment of a scheme for the care of catastrophically injured Australians and a heightened role for the ACCC in ensuring that patients do not unreasonably bear the increased cost of medical indemnity insurance.

While much of the debate about medical indemnity insurance has focused on the need for tort law reform, comparatively little attention has been given to reducing the number of adverse events through the encouragement of safer medical practices. Improvements in the quality and safety of medical care would lead to better health outcomes for patients and reduce the likelihood that doctors will be sued for inappropriate treatment. Ensuring that mechanisms are in place to improve the quality and safety of medical practices is clearly within the Commonwealth’s sphere of responsibilities. Improving clinical outcomes and reducing clinical risk will only come from a greater national focus, led by the Commonwealth.

There are a range of things that the Commonwealth can effect to promote that outcome, including promoting national open disclosure legislation; requiring mandatory reporting of claims in national data collection; requiring the medical profession to develop nationally acceptable clinical practice guidelines; working with universities to ensure that medical education places emphasis on improving the doctor-client relationship; and including performance indicators relevant to patient safety, adverse events and quality assurance in the Australian health care agreements, which are currently being renegotiated.

The Commonwealth should also consider the establishment of a national system for the long-term care of the most catastrophically injured. The number of people who suffer catastrophic medical injury is very small but their needs are very high and the costs are great. Complex cases involving catastrophically injured people take years to resolve through the courts and waste thousands, if not millions, of dollars in legal fees. These cases place a disproportionate burden on the cost of medical indemnity insurance, and the Commonwealth putting in place a catastrophic injuries scheme would be a significant contribution to stemming the exponentially increasing premiums for medical indemnity insurance. Labor has suggested that the Commonwealth consider this, particularly in areas involving brain and spinal injury and obstetrics. Reolving these cases through normal negligence channels contains substantial disincentives for early rehabilitation, and there is no guarantee that the award of substantial sums of money means that the much needed medical services are provided in the long term to the catastrophically injured individual. The Commonwealth should also ensure the prevention of price exploitation as a result of increased premiums, with a major role there for the ACCC.

As I have indicated, some patients are now being asked to make up-front payments. Whilst it is to be expected that medical service providers will not be able to absorb the increased cost of medical indemnity in-
insurance, the Commonwealth should make sure that the ACCC ensures that there is no price exploitation so far as on-costs of these matters are concerned. These are just some of the steps that the Commonwealth should be taking to address the medical indemnity crisis in this country. Unless the Commonwealth government takes action and does so urgently, there is a grave risk that services will be withdrawn and Australians will not be able to access the health care they need. I urge the Senate to give serious consideration to Labor’s second reading amendment, which I will move on behalf of the Labor Party at a later stage. I think it helps focus attention on some of the issues that we have raised and that need to be considered more by the government. It also allows us to escape the crisis response mentality that has characterised the government’s attitude to medical insurance challenges in Australia and to move into a new era of competent health insurance administration that health professionals and Australians alike can have confidence in. In closing, I also indicate that it is our intention to support the motion just moved by Senator Ridgeway on behalf of the Australian Democrats and the motion that he will move later on.

Senator NETTLE (New South Wales) (12.11 p.m.)—I rise to speak to the Medical Indemnity Agreement (Financial Assistance—Binding Commonwealth Obligations) Bill 2002. This bill gives legislative effect to the Commonwealth government’s undertaking to provide financial assistance to United Medical Protection Ltd and its wholly owned subsidiary, Australasian Medical Insurance Ltd. UMP-AMIL provided medical indemnity insurance for around 60 per cent of medical practitioners nationally and 90 per cent of medical practitioners in New South Wales and Queensland, before financial difficulties led to their seeking a court appointed provisional liquidator earlier this year. UMP-AMIL had not made adequate provision for incurred but not reported liabilities, estimated to be valued at around $500 million. Under this legislation, the Commonwealth government will pay an unspecified amount of money to UMP and/or AMIL or their insolvency representative and will be obliged to make payments to any other person under a medical indemnity agreement. This bill paves the way for the package of measures that the Prime Minister announced last month, enabling the legislation which was introduced in the other place last week.

The Australian Greens will be supporting this bill. Hardship to individuals and considerable disruption to the provision of medical services are likely to occur in the absence of this short-term assistance from the Commonwealth government. We do, though, have concerns about the package of measures that is designed to provide long-term responses to the medical indemnity insurance issue. The government has estimated that measures will cost $45 million a year, but they could expose the public to unknown financial costs, particularly with the government proposing to contribute 50 per cent of the costs of claims greater than $2 million and subsidising premiums for high-risk specialties. These are open-ended commitments, unlike the guarantee to UMP-AMIL, and they assume the unfunded liabilities of medical defence organisations.

At the same time, the measures fail to adequately address the core issue, the quality of patient care. The measures reflect a narrow approach to a matter that deserves more thorough examination and public debate if we are to reduce injury or adverse events to patients and provide adequate care and treatment to those who are injured. There could also be a further reduction in bulk-billing, as the government proposes to recoup the cost of assuming unfunded liabilities for medical defence organisations by levying medical practitioners. The Australian Medical Association has said that doctors are likely to pass the additional cost on to patients. This concerns the Australian Greens at a time when bulk-billing rates have fallen to a 10-year low. Bulk-billing is an essential component of a national health system. Assistant Treasurer Helen Coonan has said that the additional cost is likely to be less than 20c per consultation, but this assessment seems impossible to make at a stage when the amount of the levy is not yet known.

The government says that it is aware of the need to make the contribution affordable
for doctors and allied health professionals, and for this reason it has decided to spread the levy over several years. It says there should therefore be no justification for doctors to increase their charges significantly or to cease bulk-billing due to medical indemnity costs. It is not clear whether there will be any mechanism to ensure that doctors do not increase their fees, and we are concerned about any measure that could lead to further falls in bulk-billing and to financial hardship through higher out-of-pocket costs for patients.

A number of factors have led to the situation that we now face. With rising costs, medical negligence claims and insurance premiums, doctors, nurses and midwives are finding it increasingly difficult to obtain insurance coverage, and insurance companies are finding themselves in financial difficulties. The Australian Council of Professions advised the Senate Economics References Committee inquiry into the impact of public liability and professional indemnity insurance cost increases that professional indemnity premiums had risen by between 20 per cent and more than 200 per cent in recent years.

Rural towns, many of which already have difficulty attracting and retaining health professionals, now face a dwindling number of doctors able to practise, because medical indemnity insurance premiums are rising beyond their capacity to pay. Independent nurses and midwives working in private homes cannot obtain insurance, and midwifery students cannot undertake clinical training, which has longer term implications. Midwives attend the births of around 250,000 babies each year. We cannot afford for them to be unable to practise. We note that the Prime Minister’s package did not address the problem confronting either of these professions and we call on the government to rectify this situation. The problems facing these professions are no less pressing than those problems facing the doctors.

One problem identified as contributing to the current crisis is the absence of oversight in the medical indemnity insurance sector. We support the government’s plan to bring the sector within the scope of regulatory requirements that will apply to general insurers from July of next year. This measure, along with requirements to submit claims information to government, should improve oversight. The government has also proposed measures to change the mechanics of medical indemnity insurance, such as clearly setting out what is covered to assist prudential supervision, protecting disclosure laws and enabling practitioners to obtain continuous coverage when they switch insurers. These measures will improve the operation of the medical indemnity insurance market.

A large part of the government’s focus and efforts has been on litigation. For example, it moves, with the support of state and territory governments, to restrict the rights of individuals to take legal action in cases of negligence and to cap compensation payments. The adversarial approach to dealing with injuries arising from medical treatment is fraught with problems. But in the absence of a better model, the Australian Greens are concerned about moves to constrain the rights of people to seek compensation without any arrangement to provide for the long-term care and treatment of people who suffer medical injuries. Adequate arrangements should be in place before the changes to tort law reform take effect. We call on the Commonwealth government to give this matter urgent attention.

The Senate committee report recommended that the Commonwealth, states and territories examine how best to provide for these long-term needs. There was no mention of this in the Prime Minister’s statement of 23 October when he announced the Commonwealth government’s package on medical indemnity insurance. The Prime Minister did acknowledge the need to reduce injuries through negligence or adverse events and to improve patients’ safety. We note the work that is being done through the Australian Council for Safety and Quality in Health Care and the open disclosure project to improve communication when adverse events occur.

We note that the heads of state and territory treasuries are examining the idea of a no fault scheme for long-term care of people who suffer catastrophic injuries. We note
also that the Commonwealth has undertaken to look at the outcome of this work, although Senator Coonan appeared sceptical about such a model in her speech to the Structured Settlements Group late last month. We acknowledge that this issue needs to be examined thoroughly and it should not be rushed, but in the meantime people who suffer serious injury as a result of medical treatment should not be left without adequate provision for their long-term care and treatment, in a rush to constrain the right to seek compensation through the courts.

The main thrust of the Commonwealth’s response to the medical indemnity insurance crisis has been to prop up an adversarial system that experts tell us can actually inhibit the kind of changes required to improve the quality of care that patients receive. The issue of quality care has been on the national agenda for almost a decade. The federal Labor government commissioned a study that showed more than one in every six hospital admissions was associated with an adverse event and concluded that about half of those events were potentially preventable. A change in federal government and a failure of political will has meant that the Commonwealth, state and territory governments did not pursue this matter, but the problem has not gone away.

Stephen Duckett, Professor of Health Policy at La Trobe University, argued in a paper that he presented to a conference in September this year that focusing policy attention on restructuring of professional indemnity arrangements detracts from more systemic action to strengthen the other aspects of accountability and improving patient care. He noted that the focus on tort law reform placed Australian policy development at odds with developments in the United States and the United Kingdom, where governments are looking at system changes to reduce the incidence of injuries occurring through medical treatment and in turn were giving serious consideration to no fault systems for compensating medical adverse events. No fault compensation systems operate in New Zealand, Finland, Norway, Denmark and Sweden.

Professor Duckett has pointed to the need to develop a culture of openness and innovation within organisations as the key to improving the quality of management. He argues that such a culture is essential to ensure that staff feel comfortable to report adverse events and not to cover them up. He says that a legal environment where compensation for adverse events can only occur with proof of negligence does not facilitate a process where fault is acknowledged and used as an immediate opportunity to learn. Decisions on compensation rarely address prevention, and the adversarial system is not designed to ensure that similar events do not happen again.

In addition he argues that the system is unfair because two people who suffer identical adverse events may obtain different outcomes on the basis of whether they can prove negligence but they both continue to require identical services, although one may not obtain compensation to help pay for the cost of additional care and treatment. Professor Duckett’s arguments highlight the shortcomings of the government’s main focus in addressing the medical indemnity insurance crisis.

Another approach has been proposed to Commonwealth, state and territory health ministers but has received little attention so far. Earlier this year the ministers commissioned an options paper on medical litigation reform from the Legal Process Reform Group. The group, chaired by Professor Marcia Neave of the Victorian Law Reform Commission, released its report in September. It proposes a more thorough approach to this issue than we have seen thus far, and certainly one that is more appropriate to the medical field than the review of the law of negligence, which has become known as the Ipp review, on which the proposed tort law reform is founded.

The Neave paper proposes an integrated package that is designed to produce long-term solutions—in particular, to reduce the numbers of adverse medical events and minimise litigation by improving patient safety; to reduce the need to litigate and encourage early finalisation of disputes; to provide fair compensation to people who suffer loss as a result of medical negligence; and to
ensure affordable and sustainable insurance premiums. The Australian Greens urge the health ministers to give serious consideration to the proposals in the Neave paper.

The collapse of HIH and the financial difficulties of UMP-AMIL, along with the difficulty that community groups have found in securing public liability insurance, have led to a rush to restrict legal rights of people seeking compensation for negligence. The sense of crisis surrounding this particular issue is not a good environment for sound policy making. The decisions that governments and parliaments are making now in response to these problems will have long-term consequences for many people, and it is important that the best possible outcomes are achieved. In the area of medical indemnity it is vital that we pay proper regard to the special considerations that apply.

The Greens will support this bill but we urge the government, working with states and territories, professional and consumer groups, to look beyond the most obvious responses to the problems that now confront us and work towards changes that will reduce adverse events and ensure adequate arrangements to cover the ongoing cost of care and treatment for people who suffer injuries in the course of medical treatment and have to live with the consequences.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.25 p.m.)—I thank all of my colleagues for their contributions to the debate on the Medical Indemnity Agreement (Financial Assistance—Binding Commonwealth Obligations) Bill 2002 and for their support for the substance of the bill. Obviously, when amendments are moved during the committee stage, I will respond to some of the matters that have been raised.

We need to focus on the fact that the purpose of the bill is to appropriate funds for payments in accordance with the guarantee between the Commonwealth and United Medical Protection Ltd—UMP—and the Australasian Medical Insurance Ltd—AMIL—and the provisional liquidator of those companies. The provisions of the bill are not intended to imply that any future Commonwealth indemnity needs to be supported by legislation. The bill simply confirms the government’s existing legal obligation to make payments to UMP-AMIL and the provisional liquidator in accordance with the guarantee.

There are three elements to the government’s guarantee. On 1 May this year, the Minister for Health and Ageing wrote to medical practitioners, stating that the Commonwealth would guarantee to the provisional liquidator the obligations of UMP-AMIL to pay any amount properly payable in the period 29 April to 30 June 2002 for claims under a current or past policy. The government also committed to providing a guarantee to the provisional liquidator or to any subsequently appointed liquidator to enable the provision of cover in respect of valid claims that arise at any time for holders of a current policy for events that occurred between 29 April and 30 June 2002 and holders of a policy that expires and is renewed by the provisional liquidator before 30 June 2002 for events that occurred between 29 April and 30 June 2002.

On Friday, 31 May 2002 the guarantee to UMP-AMIL was enhanced to cover claims to the end of 2002. The Prime Minister announced that the enhanced guarantee would allow the provisional liquidator to meet claims notified in the period 29 April to 31 December this year under an existing or renewed policy; to renew policies on a claims-made basis for the period until 31 December this year; and continue to meet claims that were notified before 29 April 2002 and that are properly payable in the period 1 July 2002 to 31 December 2002. This is an extension of the arrangement set out in the letter of 1 May from the Minister for Health and Ageing.

The Prime Minister also announced on 31 May that the Commonwealth would introduce a levy to fund any liability incurred by the Commonwealth under a medical indemnity agreement as a result of the extension of the guarantee on modified terms. This levy is part of broader levy arrangements to meet the unfunded incurred but not reported, or IBNR, liabilities of medical defence organisations. Separate legislation for the levy on certain medical practitioners and for funding
these IBNR liabilities will be introduced once the details have been finalised. The deed of indemnity was required to give formal effect to the government’s undertakings. On 25 July 2002 the New South Wales Supreme Court approved the provisional liquidator on behalf of UMP-AMIL entering into a deed of indemnity between the Commonwealth, UMP-AMIL and the provisional liquidator, and it was formally executed on 30 July 2002.

On 23 October the Prime Minister announced that the government had agreed to offer to extend the guarantee to the companies, UMP and AMIL, and their provisional liquidator for a further 12 months to 31 December 2003. This offer will be on substantially the same terms as the current guarantee and will enable the provisional liquidator to meet amounts payable in the period 29 April 2002 to 31 December 2002 in respect of claims notified or finalised prior to 29 April 2002 and amounts payable in respect of claims notified in the period 29 April 2002 to 31 December 2003, whenever the claim is finalised, including after 31 December 2003.

The extension of the guarantee to 31 December 2003 will provide certainty to doctors to enable them to continue to practise and to have their premiums renewed so that vital health services are available to all Australians. The guarantee will also provide time for the provisional liquidator to continue to pursue restructuring options in relation to the companies, UMP and AMIL. As with the previous offer of guarantee announced by the government on 31 May 2002, acceptance of this offer will be subject to the approval of the New South Wales Supreme Court and to the court allowing UMP-AMIL to continue in provisional liquidation. This bill then provides for an appropriation out of the consolidated revenue fund for the purposes of payments in accordance with the indemnity agreement. While funding is not required immediately, the bill will provide for the funds when and indeed if required. The government sees the passage of this bill as an important element of a broader strategy to stabilise the medical indemnity insurance market in Australia. The broad strategy has several component parts.

I want to take issue with some of the statements—I will obviously not be able to deal with all of them—that have been made by my colleagues in their speeches in the second reading debate. The subtext of each of the speeches seemed to suggest that somehow or other the government was sitting on its hands throughout this issue and had done virtually nothing. Nothing could be further from the truth, because the government has assumed a leadership role throughout all of the steps taken necessary to stabilise this most important industry and to develop a comprehensive response to what is indeed a complex and very multifaceted problem. It would be unfair to the government if I did not briefly run through the government’s major measures and steps taken in this matter.

In September last year, the government announced that it would be amending the tax law to make structured settlements tax exempt. The purpose of this is to remove the tax incentives to accepting damages awards as lump sums instead of as a stream of payments that can better match the awards with the needs of a plaintiff. Since last year, the Australian Prudential Regulation Authority—APRA, the regulator—has been working with medical defence organisations on an appropriate model for bringing these organisations into the prudential framework and for providing out of that a discretionary medical indemnity provider. On 19 December last year, the Prime Minister announced that a high-level forum on medical indemnity insurance would be convened with the aim of developing a coordinated approach to issues including reinsurance, prudential arrangements, litigation and settlement levels. Obviously, this requires negotiation and cooperation with all of the stakeholders and the state and territory governments. UMP wrote to the government on 19 March 2002, seeking financial assistance to assist AMIL in meeting its statutory capital requirements. The government acted quickly by offering a short-term capital guarantee of $35 million to AMIL on 27 March to ensure the continued availability of medical services. On 26 March, the government released the first ACCC insurance market pricing review,
which identified drivers pushing premiums upwards.

On 27 March, I chaired a meeting with state and territory colleagues to consider what measures could be undertaken by all governments to address problems as to the affordability and availability of public liability insurance, which of course brought in the very important issue of tort law reform that, quite rightly, has spread its tentacles into underpinning reforms in medical indemnity and professional indemnity. On 23 April, the Minister for Health and Ageing, my colleague Senator Patterson, convened the forum announced by the Prime Minister in December. I attended that meeting with her. On 30 May, I convened a second meeting on public liability with state and territory colleagues. Important outcomes from this meeting included the Commonwealth providing the ACCC with a watching brief over the insurance industry, and the commissioning of a report into the law of negligence by a panel chaired by Justice David Ipp. The reason for that was that, if you are going to embark on law reform, it is advisable to do it from a principled basis, particularly when you are dealing with different jurisdictions and different provisions in different jurisdictions, to get some consistency and clarity throughout the laws of negligence. I think it was a very good idea, and I commend the recommendations of the Ipp report as providing a very good blueprint and benchmark for nationally consistent law reform.

On 31 May, the Prime Minister announced an extension of the guarantee to UMP on modified terms and said that the government was working urgently to develop a comprehensive and considered package of reforms to address all aspects of the medical indemnity issue. On 6 June 2002, the government introduced into parliament the Taxation Laws Amendment (Structured Settlements) Bill 2002, the one that I referred to as having been announced last year, and on 27 June 2002 the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 was introduced into parliament.

On 2 September, the government released the first of two reports provided by the Ipp panel. This report contained recommendations for reform to the law of negligence that were specifically designed to address the problems of medical practitioners. The panel was asked to deal with that issue because it was obviously significant and important. On 2 October, at a further meeting I convened of state and territory ministers, the second Ipp report was released. It contained a number of overarching recommendations to allow significant law reform for liability issues and the standard of care. On 23 October, the Prime Minister announced the government’s comprehensive medical indemnity package. On 15 November, just last Friday, I chaired the fourth ministerial meeting on public liability insurance and, as I informed the Senate yesterday, the meeting reached an historic agreement for national law reform consistent across each and every state and territory in Australia. In addition, APRA is conducting preliminary work on establishing a national claims dataset and the Productivity Commission has been asked to conduct a benchmarking study into Australian insurers’ claims management practices against world standards. This is a pretty extensive list apart from the ongoing work.

The government’s package for medical indemnity comprises not only the guarantee that we are dealing with today but also a levy to take account of the incurred but not reported liabilities of UMP-AMIL and, indeed, other medical indemnity organisations, if appropriate. It also obviously contains arrangements to move all medical indemnity providers into the prudential network. It has also looked at the need for the Commonwealth to provide some assistance for high claims. The high claims scheme allows some assistance to both insurers and doctors and it brings down the pressure on premiums for doctors in the high claims scheme. It further contains measures to subsidise high-risk specialists who were otherwise faced with premiums that simply could not be afforded. Underpinning it all is tort law reform. There is other ongoing work. Not only are ministers working on public liability but my colleague Senator Patterson is working with her colleagues and we are looking at catastrophic care in a broader sense. While I appreciate that my colleagues want to make statements relating to this bill from their own perspec-
and, of course, they are entitled to do that—I think that it is completely unfair to suggest that the government is not taking action on the ground where it is needed to deliver much needed stability to this whole area.

It is a very complex field. I appreciate that some of the subtleties and finer details may not necessarily be clear to my colleagues. To deal with some of the points that have been brought up in the debate—I will not go again into the extensive actions taken by the government—clearly the communique that was issued just last Friday indicates that the heads of Treasury’s Insurance Working Group will undertake a comprehensive review of current arrangements and possible alternatives. Part of that is to collect relevant data and to analyse the nature of problems for discussion at the ongoing ministerial meeting, which will be early in April 2003.

There are some issues that we have to appreciate are not necessarily in the province of the federal government. The federal government can play a leadership role, it can provide a coordinating role and it can encourage state and territory jurisdictions to do what they can to address what is in their own province and jurisdiction. But the Commonwealth government should not, and cannot, simply assume all obligations that might otherwise be seen to be a good idea by those on the other side of the chamber. My colleagues can certainly be assured that my colleague Senator Patterson, I and, to the extent that it was involved, the Prime Minister’s office, have made a very considered response to what has been a very difficult problem which has involved many cross-portfolio interests. It is important that the assurances that we have given—that we will continue to look at what needs to be done as these matters that we have announced are bedded down—will continue and will be the subject of ongoing ministerial meetings and negotiations.

Senator Ridgeway raised the issue of the difficulties facing midwives, which I think deserves a specific response. I think that there are some difficulties facing midwives. I think that they do provide an alternate service for birthing, perhaps outside the hospital system—at least, some of them do—and we need to look carefully at whether there is anything further that can be done. I would not accept that there is a crisis. My information is that some 90 per cent of midwives are employees and are covered for insurance purposes by their employers, either in the private hospital system or in public hospitals. In relation to self-employed midwives, the ACT and Western Australian governments have extended public coverage to this group. I would certainly encourage other jurisdictions to follow their example and, to the extent that I can, I will certainly bring it up and pursue it in any of the discussions that I have.

I have met with some groups of midwives and have suggested that a way forward for them may well be to try to work further on industry standards so that those of them who may fall between the cracks and do not get any cover—and, obviously, there are not many of them if it is correct to say that 97 per cent of midwives are employees and are covered—might then, as part of a national organisation that has looked at risk management and industry standards, have better prospects. But I do not in any way disparage the efforts of midwives. In fact, I think that they are to be supported and commended on the service and alternative that they provide.

I also want to deal very briefly, in the couple of seconds I have left, with the suggestion that somehow or other you can control prices in the insurance industry. The ACCC has said—and has made very clear in its reports and in its insurance pricing review—that controlling insurance prices and premiums is unlikely to be effective. This is not me saying it; it is the ACCC saying it. As the ACCC has pointed out pretty graphically, you can control prices but you actually cannot control supply. Rather, there are obviously huge difficulties with commercial insurance relating to controlling prices and cross-subsidisation, because in the end the low-risk people end up subsidising the high-risk people. It is not a good idea, but in any event the ACCC has been charged with continuing to monitor medical indemnity issues. This is a very good bill. It is something that has been necessary as part of a considered and comprehensive package of reforms to
stabilise the medical indemnity industry and to bring some of the pressure off doctors’ premiums, and I do commend it to my colleagues.

Question agreed to.

**Senator CHRIS EVANS** (Western Australia) (12.45 p.m.)—I move:

At the end of the motion, add:

“...But the Senate, while supporting the provisions of the bill:

(a) condemns the Government for not adequately recognising the medical indemnity insurance problem and not acting quickly enough to address its adverse effects, including higher medical costs and reduced availability of services for Australians and their families;

(b) recognises the ongoing problems in the general insurance, reinsurance and medical indemnity insurance industries and that confidence in those industries has been rocked by the collapse of HIH Insurance Limited and the provisional liquidation of United Medical Protection/Australian Medical Insurance Limited; and

(c) calls on the Government to:

(i) assume a leadership role in the co-ordination of reforms necessary to state and territory laws with the aim of uniformity in tort law reforms;

(ii) consider putting in place a national scheme to ensure the long term care and rehabilitation needs of catastrophically injured Australians;

(iii) ask the Australian Competition and Consumer Commission to ensure that whatever changes occur in medical indemnity insurance, no unfair or unreasonable oncosts flow to patients for the cost of their health care;

(iv) play a more active role in bringing together medical defence organisations and representing them in negotiations with reinsurers;

(v) support Australian Prudential Regulation Authority with appropriate resources to fulfil a greater regulatory role in medical indemnity insurance;

(vi) require mandatory reporting of negligence claims and national data collection on health care negligence cases to help assess where major problem areas and issues lie;

(vii) promote the enactment of national “open disclosure” legislation, including provision that an apology made as part of an open disclosure process is inadmissible in an action for medical negligence; and

(viii) ensure that medical services provided by private hospitals, midwives, family planning clinics and aboriginal medical services are not disrupted due to a lack of appropriate and affordable insurance.”

Question agreed to.

**Senator RIDGEWAY** (New South Wales) (12.45 p.m.)—by leave—I move:

At the end of the motion, add:

“but the Senate, while supporting the provisions of the bill:

(a) condemns the business practices of United Medical Protection Limited in engaging in a strategy of market dominance ahead of sustainable returns; and

(b) condemns the Government for allowing the insurance industry and medical defence organisations to conduct unhealthy business practices which created this indemnity/liability insurance crisis and then failed to hold them accountable”.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

**Third Reading**

Bill passed through its remaining stages without amendment or debate.

Bill read a third time.

Sitting suspended from 12.47 p.m. to 2 p.m.
QUESTIONS WITHOUT NOTICE
Small Business: Superannuation

Senator SHERRY (2.00 p.m.)—My question is to Senator Abetz, representing the Minister for Small Business and Tourism. How does the minister for small business propose to minimise the massive fines to be imposed on business, particularly small business, that are contained in the government’s so-called Choice of Superannuation Funds (Consumer Protection) Bill 1999, which contains $13,200 per employee in fines on a strict liability basis—a penalty hit of $264,000 on a small business with 20 employees?

Senator ABETZ—I congratulate the opposition on asking yet another question on small business. This is now the third question in over 12 months. As Senator Sherry would well know, it was half-yearly questions and now it has gone down to quarterly. We congratulate the Labor Party on their new-found interest. Of course, the real problem facing small business is—

Senator Conroy—Unfair dismissal.

Senator ABETZ—Senator Conroy has it right; he knows that it is unfair dismissal. There are penalties that will apply. The amount that may or may not apply will depend on capacity to pay et cetera and the size of the business. As is always the wont with fines that are imposed by a legislative regime, it will be interesting to see whether this sort of scaremongering is correct. What Senator Sherry undoubtedly is seeking is to once again is cause concern in the small business community when he knows that the real issue for them has nothing to do with superannuation but everything to do with superannuation. Senator Sherry is right to be concerned in the small business community when he knows that the real issue for them has nothing to do with superannuation but everything to do with union domination of the Australian Labor Party and their refusal to deal with unfair dismissal laws which, as we speak, are denying 50,000 fellow Australians a job.

The repeal of that legislation would create an extra 50,000 jobs for our fellow Australians. The Australian Labor Party are deliberately standing in the way of that reform, as are the Greens and the Australian Democrats. If the Australian Labor Party were genuinely concerned about small business they would ensure that the repeal legislation that we have put forward is considered and dealt with expeditiously. Overnight we could see literally tens of thousands of fellow Australians gaining a new job.

Senator SHERRY—Mr President, I ask a supplementary question. Senator Abetz, who could not answer the question about small business strict liability, might care to know that the Senate committee, including his own Liberal colleagues, has unanimously condemned these fines. What does the minister for small business propose to do to remove the potential legal liability and the additional costs of compliance and complex red tape that employers will have to meet to pay their employer superannuation? In fact, there are 35 new steps of compliance and red tape. All of this, Senator Abetz—what are you going to do about it?

The PRESIDENT—I draw to Senator Sherry’s attention the need to conform with the standing orders. He is well aware that it is not permitted to do that.

Senator ABETZ—When you do not have the arguments on your side, you have to go for the stunts. Senator Sherry has learnt that from Senator Brown, his colleague from Tasmania. If the arguments do not suit you, use the stunt to try to obviate them. We, as a government, are concerned about small business and have taken action to ensure that these costs are minimised. Senator Sherry ought to know that but, instead, he comes in with his colourful little chart and tries to pull off a stunt to make people in Tasmania think that he is still in the Senate. Most people have not heard from him for so long that he needs to pull a stunt like this to remind people that he is actually in the Senate. We, as a government, are concerned about small business. That is why we have dealt with all these issues of unfair dismissal, lowering interest rates, seeing reform—(Time expired)

Workplace Relations: Saizeriya Food Processing Plant

Senator TCHEN (2.06 p.m.)—My question is to the minister representing the Minister for Employment and Workplace Relations, Senator Alston, and it is of particular
significance to Victoria. Is the minister aware of reports that the developer of the $200 million Saizeriya Japanese food processing plant in Melton, Victoria, may pull out of the project because protracted union action has almost brought the project to a halt? Is this another example of the failure of the Bracks government to stand up to militant trade unions and protect jobs and investment in Victoria?

Senator Faulkner interjecting—

Senator ALSTON—I understand what Senator Faulkner is saying. The Labor Party think they are cruising to victory in Victoria and that we are a long way behind. I understand the basis of that assessment, and that is presumably why the Bracks government think that they can treat the voters with contempt. The Victorian public ought to be quivering in their shoes at the prospect of the declining standards of living that will inevitably occur because of the Bracks government’s pusillanimous approach to industrial relations anarchy in Victoria. Senator Tchen, as a Victorian, has followed these issues closely and has precisely the same concerns that the majority of Victorians ought to have. The Saizeriya project is a tragic example of the devastation being wreaked on Victoria by unchecked trade union militanism.

Senator Faulkner interjecting—

Senator ALSTON—Senator Faulkner might think it is amusing, but the fact is that this project, a food processing plant for the giant Japanese food chain—and there are about another seven food chains that are looking very closely at Victoria to see how these things play out—was to be worth up to $400 million.

Senator Conroy interjecting—

Senator ALSTON—Senator Conroy might not think that is very big, but that is a pretty substantial project—up to 3,000 jobs. I know you do not understand job creation, but that is a pretty significant contribution to the Victorian economy. But now we find that the company have had a gutful—that is their expression—of union problems and the state government’s inability to resolve disputes at the Melton site. It is quite clear that the company are sick to death of the Victorian government’s approach.

All that has happened to date is that there has been a huge demarcation dispute between the George Campbell forces on the one hand and the Simon Crean forces on the other. We all know that Senator George Campbell represents the AMWU in this chamber. They all have their representatives. Senator Campbell’s mob were not preferred by the state government or by the company, but of course, in their usual easy-going, friendly manner, they had to be injunctioned in the Federal Court to stop the sort of thuggery that goes on. And what did Mr Bracks do? He wrote a limp-wristed letter asking Craig Johnson to pull his head in, basically. Of course, that got nowhere, so as a result this whole project is about to fall over.

The Bracks government appointed a so-called facilitator. What the company said about that was that it was extremely disappointing that the IR consultants, appointed on-site by the state government, basically hindered progress for a period of 10 weeks, because they caved in on all sorts of rorts that are commonplace in the industry. Of course, the Bracks government turned a blind eye to those rorts, but the idea of appointing a facilitator who turns a blind eye is, I would have thought, a first.

Nonetheless, the Victorian government have now promised to provide at least $2 million of taxpayers’ money, in a secret deal, in an attempt to placate the company. The exact amount of money, of course, is not known. But we do know from senior public servants that other restaurant chains in Japan are watching the progress of this dispute very closely indeed. In other words, we have faced the real prospect of a mass exodus to Queensland, New Zealand or wherever else. Mr Beattie must be rubbing his hands with joy because Victoria is going to be a no-go zone for industrial development, manufacturing and the construction industry, unless you want to pay a premium of 25 per cent extra over New South Wales to appease the unions. That is what it is all about.

Senator Carr—What a load of drivel!
Senator ALSTON—You can imagine the Senator Carrs of this world—who are they barracking for? Are they in favour of jobs or an expansion in productive capacity in Victoria? Of course they are not! They are all in favour of encouraging employers to cave in to militant trade unions. That is what you are looking at. If Mr Bracks thinks that he is cruising to government—(Time expired)

Medicare: Bulk-Billing

Senator JACINTA COLLINS (2.11 p.m.)—My question is to Senator Patterson as Minister for Health and Ageing. Can the minister confirm reports that cabinet will consider a proposal to require GPs to bulk-bill low-income patients in return for higher incentive payments? Won’t this just result in increased pressure on doctors to cease bulk-billing and charge even higher fees for patients who do not meet the government’s low-income test? Why is the government determined to change Medicare from a guarantee of good quality medical care for all Australians into a second-class safety net only for those who cannot afford to pay for their own health care?

Senator PATTERSON—Senator Collins has fallen for the three-card trick, believing everything she reads in the newspaper. I would not believe everything I read in the newspaper. With all due respect to the journalists, they often get it wrong. First of all, I am not going to discuss what we were discussing in cabinet and, secondly, I am not going to discuss whether or not cabinet has discussed what was in the paper today. I can confirm, though, that it is my priority to work with the doctors groups to ensure that we have affordable access to GPs and to GP services.

Yesterday I was asking whether in 1991, when bulk-billing rates were about the rate they are now, Labor were running around talking about the world caving in. No. Were they talking about the fact that there was an uneven distribution of bulk-billing? No. Bulk-billing rates in rural areas have always been low. There has been a distribution of bulk-billing which is not fair and equitable and there has been a distribution of doctors which is not fair and equitable. When we came to government in 1996 there was a dearth of doctors in rural areas. What had Labor done about it? Nothing.

Mr Smith, in a statement yesterday, talked about the number of positions for general practice trainees—450 of them—but he did not talk about what happened to those 450 training places. Nor did he talk about the increased number of medical students: 160 more will now be graduating every year as a result of the increase. He did not talk about that and he did not talk about the 450 training places, 200 of which are located in rural areas. That means that trainees who do general practice training must work in rural areas. As for the other 250 places, trainees have to spend six months in a rural training position.

One of the things we are doing is turning around the neglect of Labor, when there was a maldistribution of doctors. We saw bulk-billing increasing unevenly in inner-city areas and going down in rural areas. To say that you are going to get the bulk-billing rates back up is not the answer; it is about access and affordability. Regarding people having access to doctors in rural areas, nothing was done by Labor. We have spent $560 million on attracting doctors into rural areas; $80 million is about to be rolled out to get doctors into outer-metropolitan areas to undo the maldistribution that Labor presided over.

As I said yesterday, you cannot turn these work force issues around overnight. They take a long time to take effect. One of the factors that impacts on bulk-billing is the number of doctors in any given area, and what Labor presided over was an increase in bulk-billing in metropolitan areas—inner metropolitan areas, in particular—and a dearth of doctors in country areas. Labor did nothing. Mr Smith did not say anything about any of that. He talked about the restriction on training places. He did not talk about the fact that, of those 450 training places, 200 were in rural areas. Labor did nothing about getting doctors into rural areas and nothing about ensuring that doctors went into outer metropolitan areas. Access and affordability are the important issues we should be addressing here. Labor ought to put its mind to that rather than telling half the
story in statements that it makes about access to doctors in the Australian community.

Senator JACINTA COLLINS—Mr President, I ask a supplementary question. Can the minister confirm, in the broader context, that this year the Howard government has presided over a catastrophic decline in bulk-billing, a massive increase in co-payments for a visit to the doctor, rising private health insurance premiums and larger gap payments for those who are privately insured? Can the minister confirm that the government will persist with its unfair proposal to increase the costs of essential medicines for the sickest and the poorest Australians? Why is the government determined to shift the costs of health care away from Medicare and onto individual Australians and their families?

Senator PATTERSON—Senator Jacinta Collins ought to think about what Labor presided over: a maldistribution of doctors. They presided over the decline of private health insurance to the point that it was not viable. We have now seen admissions to private hospitals go up by 12 per cent and admissions to public hospitals go down by minus one per cent. We have taken the pressure off Medicare. That is what we have presided over. We have presided over a relocation of doctors, improving the distribution of doctors. That was one of the issues driving the lack of affordability and lack of access, especially for people in rural areas and outer metropolitan areas. We have committed $560 million to rural areas and $80 million to outer metropolitan areas to see that the location of doctors will ensure that people have access and affordability. We also presided over a decrease in the out-of-pocket payments that people have to make. Under Labor it was very small. That failed system of Carmen Lawrence’s, of contracts with doctors, was an example. (Time expired)

Forestry: Management

Senator McGAURAN (2.17 p.m.)—My question is to the newly titled and sworn in Minister for Fisheries, Forestry and Conservation, Senator Ian Macdonald. Could the minister outline the impact on Commonwealth policies and on rural and regional Victoria of the Victorian government’s recent forest policy announcement? Is the minister aware of any alternative policies which will secure jobs in country Victoria?

Senator IAN MACDONALD—Senator McGauran has raised an issue that is very important for Victoria and very important for the Commonwealth government. We have a lot of dealings with the Victorian government across a range of policies, but their announcement of a forest policy just the other day shows us one thing that is very concerning to the Commonwealth—that is, the Bracks government cannot be trusted. Let me demonstrate why I say that. Mr Bracks deliberately and callously breaks promises. In March 2000 Mr Bracks personally signed the West Victorian Regional Forest Agreement with Mr Howard. Not three years later he has completely repudiated that agreement that he signed. That agreement provided for around 63 per cent of the west Victorian forest area to be in reserve with around 37 per cent of it to be logged. Not three years later, he has completely repudiated that policy.

Earlier this year Mr Bracks, in the Victorian government’s major forestry report entitled Our forests, our future, said there would be no reduction of logging in the Otways. Not eight months later, he has completely repudiated the policy he made in February. Again, in February 2002, Mr Bracks was encouraging the establishment of a charcoal facility in the east of Victoria in the Gippsland area. He did that because East Gippsland is a very depressed area with a lot of unemployment. Not 10 months later, Mr Bracks has completely repudiated that policy by determining that there will be no charcoal plant in East Gippsland.

The concern about this is that you simply cannot trust the Victorian government to keep the promises they make. That will have a big impact on the dealings the Commonwealth will have with the Victorian government in the years ahead. That charcoal plant would have provided something like 370 jobs in a very depressed area. It involved an investment of something like $173 million. But, because Mr Bracks deliberately broke his promises, he has caused those jobs and that investment simply to dissipate.
There is a greater concern because any number of Mr Bracks’s backflips have occurred without any consultation with the communities and the unions involved or with those who will lose their jobs as a result of his statement. These backflips and broken promises by Mr Bracks are done for one reason: to pander to the radical conservation movement in this country for the benefit of getting second preference votes in the suburbs of Melbourne. So pandering to minority groups is Mr Bracks’s aim in the deliberate and callous breach of these promises that he made not more than 10 months ago.

**Australian Securities and Investments Commission: Endispute Pty Ltd**

*Senator Faulkner (2.22 p.m.)*—My question is directed to Senator Coonan, the Assistant Treasurer. In giving her prepared answer to the Senate yesterday concerning her resignation as director and the divestment of her shareholding in Endispute Pty Ltd, why did the minister fail to answer the direct question of to whom she divested her share in this private company? Can the minister now inform the Senate to whom she transferred her 50 per cent interest in Endispute Pty Ltd on 3 January 2002?

*Senator Coonan*—I thank Senator Faulkner for the question. Senator Faulkner is obviously an assiduous searcher of records, and I am sure he can search the ASIC record and find out for himself.

*Senator Faulkner*—Mr President, I ask a supplementary question. The minister has now had three opportunities to answer a direct question. Does the minister seriously expect the Senate to believe she is unable to answer the question of when she transferred her 50 per cent shareholding in Endispute Pty Ltd, which she told the Senate yesterday occurred on 3 January 2002? I ask her again: to whom did she divest her shareholding in Endispute Pty Ltd? Perhaps she can also assure us that her divestment of that shareholding was not in breach of the Prime Minister’s code of conduct, which states unequivocally that transfer of interest to a spouse or dependent family member, a nominee or a trust is not an acceptable form of divestment. Could the minister please directly answer these questions? *(Time expired)*

*Senator Coonan*—I thank Senator Faulkner for the supplementary question. The answer to Senator Faulkner’s question will be revealed if he wants to search the ASIC register. I have checked my obligations under the ministerial guidelines and I have checked my obligations under senators’ interests. I have absolutely nothing to add. What I do have to add is that I did not even have an obligation to divest myself of an interest in a shelf company in any event. It is a private company. I did it simply because I wished to have absolutely no potential for any conflict of interest as a director or as a shareholder. I have nothing further to add.

**Environment: Greenhouse Gas Emissions**

*Senator Allison (2.25 p.m.)*—My question is to the Minister representing the Minister for the Environment and Heritage. The Parer energy report last week pointed out that, far from achieving a 14 megatonne reduction in greenhouse emissions, energy market reform will in fact increase emissions by 2010. Given the Parer analysis, will the minister now admit that energy market reforms have not made our industry energy efficient? Why did the *Third national communication on climate change* earlier this year fail to mention the 14 million tonne blow-out? Minister, the so-called two per cent renewable energy measure was supposed to reduce emissions by seven million tonnes but clearly it will not—it is more like 0.5 per cent. Will you now fix the hydro loophole and raise the renewables target in real terms to five per cent so Australia can close that 14 million tonne gap in its Kyoto commitment?

*Senator Hill*—We support energy market reform because it can achieve win-win outcomes—wins for the economy and wins for the environment. Obviously, if you are more efficient in relation to your energy resources, that reduces cost. That helps grow the economy, create jobs and do all those sorts of things that are good for the people. But, in using energy more efficiently, you also have the consequence of using less and drawing on our natural resources less and therefore achieving environmental gains as
well. So this government makes no apology for energy market reform. We believe, as I said, it is good for the country.

In relation to the renewable energy legislation, yes, our legislation was designed to encourage a take-up of renewable energy in this country. It has been successful in that goal. The Australian Democrats are apparently opposed to hydro. We on this side of the chamber believe that more efficient hydro is also in the national interest. It means that that resource is used more efficiently, and again that can achieve economic benefits and environmental benefits. As is well known by this Senate, because the Senate put it into the legislation, there is a time for review of that legislation, and that review would be expected to include the target.

Senator ALLISON—Mr President, I ask a supplementary question. Minister, the Democrats are not opposed to hydro. They are opposed to windfall gains that do not achieve anything for renewable energy. The draft report says an increase in emission-intensive coal-fired generation is mostly to blame for our 14 million tonne blow-out. Does this suggest that serious efforts need to be made, in particular to reduce Victoria’s reliance on brown coal? The COAG report recommends developing a national emissions trading system, potentially ahead of an international scheme. Will the government at least support this recommendation?

Senator HILL—The only new coal-fired power station I can think of in recent times has been as a result of the Beattie Labor government in Queensland. Certainly, our coal reserves are very valuable to this country and we have an embedded infrastructure in relation to energy production from coal. What we in the government want to see is that coal is used more efficiently. There are new methods coming on stream that will allow, again, the benefit of cleaner fuel and economic advantages as well. I repeat that those dual goals are the aim of this government.

Australian Securities and Investments Commission: Endispute Pty Ltd

Senator FAULKNER (2.28 p.m.)—My question is directed to Senator Coonan, the Assistant Treasurer. Is the minister aware that the Corporations Act requires that, when a person ceases as a director, the company must inform ASIC within 14 days? Can the minister confirm that, in the case of Endispute Pty Ltd and her resignation as director, that would have required form 304 to be lodged with ASIC not later than 17 January 2002? Can the minister explain why the company did not inform ASIC of her resignation as a director until 15 November—that is, last Friday—which was two days after the opposition raised the issue of a breach of the law that the minister is responsible for administering? Can the minister responsible for corporate governance matters therefore confirm that Endispute Pty Ltd has been in breach of section 205B(5) of the Corporations Law for 303 days of this year?

Senator COONAN—It is easy to see that there is not much policy around and not much that those on the other side of the chamber can ask anyone here. I think the only thing correct in what Senator Faulkner has said is that he might be able to count. But I will take this in bite-sized pieces. As I explained, a former director and a former shareholder has no obligation to notify ASIC. However, I can say that the pro forma annual return prepared by ASIC and sent to a company contains provision for notifiable changes on its face and on the form, and it is not at all unusual for office holders to use the annual return to provide notifications and changes. That is the way it goes; that is the way it usually happens—there are two ways in which you can notify changes to ASIC.

Senator Faulkner, you can go backwards and forwards for these records. It is a shelf company. I do not think it has any assets. It might own a bank account. I have no interest in it. I have not had any interest in it since 3 January this year—since before I filled out my ministerial declaration and my second senator’s interest form, after I divested myself of any interest in shares and any directorships at all. There is just nothing further I can add.

Senator FAULKNER—Mr President, I ask a supplementary question. I ask again if the minister, as the minister responsible for corporate governance matters, can confirm
that Endispute Pty Ltd has been in breach of subsection 205B(5) of the Corporations Act for 303 days this year. Can I also ask why the Assistant Treasurer failed to use the opportunity provided under subsection 205A of the Corporations Act to notify ASIC herself that she had resigned as a director of Endispute Pty Ltd? Given the failure of the company secretary to comply with the law’s requirement to notify within the specified period, wouldn’t such a notification under subsection 205A by the minister herself have ensured that ASIC’s records were accurate?

Senator Abetz—I raise a point of order, Mr President. Standing order 73(1)(j) says: questions shall not ask: questions shall not ask: (j) for legal opinion ...

The first question in the list of questions that Senator Faulkner asked was clearly seeking a legal opinion as to whether or not a certain section of an act had a certain application. That is clearly the seeking of a legal opinion. It is against standing orders. I believe that the other questions in that long list were not offending standing orders but the first question clearly was and should be ruled out of order.

Senator Faulkner—Mr President, on the same point of order: as you would understand from carefully listening to the three-part supplementary question I asked, I did not seek at any stage a legal opinion. In fact, if Senator Abetz thought that was an appropriate point of order to take, heaven knows why he did not take it when I asked the primary question. I would respectfully suggest to you that these are important matters. They are matters that have been consistently asked of ministers when both non-Labor and Labor administrations have been in office. They are important matters of accountability and transparency. I would respectfully suggest that Minister Coonan should not pathetically attempt to be protected by Senator Abetz but she should be required to answer all parts of the important supplementary question that has been asked.

Senator Alston—Mr President, on the point of order: the fact that Senator Faulkner might think these are important questions or the fact that Senator Faulkner says that they have been consistently dealt with has nothing at all to do with relevance and nothing to do with whether a legal opinion is involved. Senator Faulkner’s question asked the minister to confirm whether the company had been in breach. That is not only a legal opinion; it is asking her to find the company guilty of an offence. She cannot possibly be expected to answer those sorts of questions. Whether Senator Faulkner has been able to get away with these things in the past or whether he says it is important—because he has no other policy issues to deal with—the fact is that he is gone on both counts, because no-one is required to make those sorts of judgments. You cannot ask a question along those lines.

Senator COONAN—I must say that I have every respect for the requirements of accountability, and in this place I answer questions for Senator Ian Campbell’s portfolio. But, having said that, whether or not there was any inadvertent breach by the company—and I am not providing any opinion about that whatsoever—

Senator Robert Ray—So that’s your defence now—it is an unintended breach?

Senator COONAN—It has been corrected. That is what the Corporations Act provides, that is what the rules provide and that is what the annual return provides. If there has been any inadvertence, it has been corrected. That is about all I can say.

Human Rights: China

Senator HARRADINE (2.36 p.m.)—My question is directed to the Leader of the Government in the Senate, representing the
Minister for Foreign Affairs. It relates to the latest Amnesty International report on serious human rights violations in the People’s Republic of China, which says:

Amnesty International remains deeply concerned by grave human rights violations committed throughout China, including arbitrary detention and imprisonment, unfair trials, torture and numerous executions.

The human rights situation includes a massive escalation in death sentences and executions, and it has deteriorated over the last 18 months. My question to the minister is: what official protests have been made about the general situation of human rights violations in China and about the individual cases mentioned in this report? Wouldn’t this also give heart to institutions and legal societies in China—(Time expired)

Senator HILL—I am aware of an Amnesty International press release of 4 November condemning 46 executions in China, and I assume that is the report to which Senator Harradine is referring. As Senator Harradine knows, the Australian government are opposed to the death penalty in all circumstances in all countries. We believe that it is an inhuman punishment that violates the most fundamental of human rights—the right to life. Each year we have expressed Australia’s firm opposition to China’s use of the death penalty, most recently during the sixth round of the bilateral human rights dialogue held in Canberra on 14 August this year. We also expressed unequivocally Australia’s concerns about human rights abuses caused by the so-called strike-hard anticrime campaign in China, including its increased use of the death penalty. We will persevere in raising Australia’s concerns about capital punishment and other abuses of human rights in China for as long as is necessary.

Achieving progress in improving China’s human rights record will be difficult, but the government are convinced that our annual bilateral human rights dialogue is the best means of pursuing progress towards the goal of improved human rights. We can point to certain achievements which might in part relate to that dialogue—in particular, seven individuals whose cases were raised in the previous year’s dialogue have been released in the last year. Most recently, the Chinese MFA informed us directly of the early release of the Tibetan nun Ngawang Sangdrol, who was serving a lengthy period of imprisonment for political activities. We have also noted progress in judicial reform and the protection of the rights of women and children. Therefore, the government are convinced that the dialogue we have with China is the best means of achieving progress in this difficult area.

Senator HARRADINE—Mr President, I ask a supplementary question. The Amnesty International report deals with more than the executions issue, to which both I and Senator Hill referred. Apart from those that have been mentioned, what improvement has been achieved by that annual bilateral dialogue on human rights? Isn’t it a fact that torture and other violations of human rights have escalated over the last 18 months? What monitoring is done of the work of the bilateral review of human rights?

Senator HILL—The dialogue is monitored by the Department of Foreign Affairs and Trade, and we are committed to it as a tool to help achieve a better human rights record in China. That is a goal, I think, of all parliamentarians in this place, but I also think Senator Harradine would acknowledge that it is a difficult task. When we know of particular violations, we draw them to the attention of the Chinese officials. I think it is encouraging that we are now experiencing instances where they come back to us and inform us of the release of particular individuals. I think it is also encouraging that we have got to the stage where we have been able to note progress, as I said, in judicial reform and in the protection of the rights of women and children. That is not to understate what still remains to be done, but I think it demonstrates a process that is achieving some benefit and should be continued.

Business: Corporate Governance

Senator CONROY (2.42 p.m.)—My question is to Senator Minchin, representing the Treasurer, and it comes in light of the
minister’s comments yesterday in which he said:

It is hard to think of a finer businessman in this country than John Uhrig.

Is the minister aware that while Mr Uhrig was managing director of Simpson Pope the Federal Court found that Simpson Pope had breached the Trade Practices Act? Is the minister aware also that the court fined Simpson Pope for those breaches and subsequently ordered the company to pay damages to two of the parties which it had illegally withheld supplies from? Further, is the minister aware that the board of Santos, which Mr Uhrig then chaired, awarded one million shares, worth over $6 million, to the new CEO of Santos six days prior to his appointment, thereby deliberately avoiding the need for shareholder approval? Does the minister still believe that it is appropriate for Mr Uhrig to be heading a government review which is required to assess the corporate governance arrangements for Australia’s corporate regulators?

Senator MINCHIN—The Labor Party have so dismally failed in the policy debate in this country that they are reduced in this Senate to the sad spectacle of muckraking, of trying to attack the Assistant Treasurer and now of attacking a leading Australian businessman—all this because they have failed so absolutely dismally in the policy debate; they are nowhere to be seen. They are spending all their time attacking each other and worrying about who is going to lead them to the next defeat. So what do they do? They come in here and try to attack ministers over their personal affairs and try to attack a leading Australian businessman over issues that occurred, in the case of Simpson as I understand it, 30-odd years ago. I think it is a pathetic spectacle. I am very disappointed that someone like Senator Conroy would be reduced to this silly tactic of muckraking in the way that he has.

I repeat that the government is blessed to have someone of the calibre of John Uhrig, who is over 70, has retired from public company boards and has decided to make his time available to conduct what is a very important review of the governance relating to statutory authorities and office holders of the Commonwealth. My department has had a discussion with Mr Uhrig about any matters that may affect the conduct of this review. The department and I, on the basis of the information available to us, are entirely satisfied that there is nothing in relation to Mr Uhrig and his business career or his chairmanship of any operation that will affect in any way the conduct of this particular review into the corporate governance of our statutory authorities.

As I said yesterday, it is critically important that we get the balance right between the independence of these statutory authorities and their accountability to the parliament, the government and the people of Australia. This is all about developing a set of inherent principles of corporate governance for these statutory authorities. It is then for individual ministers to decide whether those principles should be applied, and in what way, to the statutory authorities within their portfolios. I am not aware of the details in relation to the latest accusation about Santos.

Senator Conroy—There were $6 million of shares—to avoid shareholders.

Senator MINCHIN—I do not know the details of that particular transaction. I do know Mr Ellice-Flint personally and he is an outstanding CEO of a very important company in South Australia. Labor senators from South Australia would know just how important that company is to the future of South Australia and how critically important it is for that very important company to have the highest calibre CEO it can get to run it. It is a very competitive field. I do not know the details of his particular remuneration package, but Santos obviously want to get, and need to get, the best possible CEO, which they have in John Ellice-Flint. So I strongly support his position as CEO.

I will check out Senator Conroy’s latest accusations as to whether there was any breach of any rules or regulations regarding the remuneration that Mr Ellice-Flint has been paid. All I can say is that it was critical for Santos to attract the best calibre person. It is a highly competitive field for CEOs. We have all had things to say about CEO remuneration. But that company has to get the
best possible CEO—and in Mr Ellice-Flint they have that.

Senator CONROY—Mr President, I ask a supplementary question. Is the minister aware that, in the Federal Court case I previously referred to, the judge said:

I find it impossible to accept the evidence of Mr Uhrig, whom I do not regard as an entirely satisfactory witness.

Isn’t this review really about allowing the big end of town to nobble the ACCC and ASIC? And isn’t it a case of corporate capture, not corporate governance?

Senator MINCHIN—Senator Conroy is repeating these horrendous, horrible and outrageous slurs against Mr John Uhrig, one of the best Australian businessmen and a great leader of Australian business.

Senator Conroy—The judge said it.

Senator MINCHIN—I do not know the details of that case. I am not going to give any credence to that. You say that he said it: I will check it out afterwards. I am afraid I have got to a point where I find it very difficult to accept at face value anything that any member of the opposition says—as we all do. With respect to the Simpson matter, when John Uhrig was running Simpson, I think some 30 years ago, we will have a look at that. But I totally reject the accusation or any suggestion that this is about big business and corporate governance.

We want to make sure that Australian statutory authorities do have good corporate governance, that they are accountable and that we balance against their independence their proper accountability to the people of Australia.

Small Business: Employment

Senator BARNETT (2.48 p.m.)—My question is to the Minister representing the Minister for Small Business and Tourism, Senator Abetz. Is the minister aware of any obstacles preventing small businesses from employing more Australians? What is the Howard government doing to remove these roadblocks to growth?

Senator ABETZ—I thank Senator Barnett for his genuine and ongoing interest in small business. I can inform Senator Barnett that the biggest roadblock stopping small businesses from employing Australians is the current Labor, Democrat and Green dominance of this place, which is denying the passage of our repeal of the unfair dismissal legislation. The roadblock for small business is not about bank fees; it is not about late payment of bills or choice in superannuation.

Opposition senators interjecting—

The PRESIDENT—Order! Senator Carr, Senator George Campbell and Senator Sherry: shouting across the chamber is definitely against standing orders, and I would ask you to keep quiet while the minister attempts to answer the question.

Senator ABETZ—According to the voice of small business itself, the biggest problem facing small business is Labor’s support for the ridiculous job-destroying, growth-limiting, unfair unfair dismissal laws. Trade union leaders and Labor seem determined to destroy the 1.2 million small businesses in this country that have the capacity to immediately employ 50,000 of our fellow Australians if this legislation were passed. Labor’s attitude is anti jobs, anti workers and anti small business. By taking this attitude, they threaten the livelihood of the very people that they claim, quite falsely, to represent: namely, the Australian workers. But will Labor listen to the voice of reason or will they continue to take their orders from the megaphones of the union leaders?

In Victoria, Labor has comprehensively failed to stand up to the thugs of the union movement. Small business in Victoria has suffered as a consequence of Mr Bracks’s industrial cowardice. After three short years of state Labor government, Victoria now holds the dubious distinction of accounting for 32 per cent of all days lost due to industrial action. One wonders what the record would be if Labor were given another term. The Labor government in Victoria admitted to the royal commission into the building industry that it engaged in ‘inappropriate conduct’ in letting the CFMEU influence the awarding of government building contracts. Victoria, as Senator Barnett would be aware, is the state where Craig Johnston’s thugs run through small businesses, terrorising staff and destroying property, while the Labor
government stands idly by. Mr Bracks believes Craig Johnston is such an outstanding individual that he appointed the same Craig Johnston to the manufacturing industry consultative council. Craig Johnston on the consultative council: I would like to see that!

But let us have a look at the list of union thuggery casualties: Federation Square, the National Gallery, the Austin Hospital, the Latrobe Valley Hospital, the Myer Music Bowl and the Vodafone Arena. The list goes on—the MCG, Melbourne Museum, Patricia Baleen Gas Plant—and on and on. Now all of these are big projects but, as Senator Barnett would be fully aware, when you have big projects they are the lifeblood of small contractors who are able to gain contracts in those big projects. It is time for Labor to stand up against this union thuggery. (Time expired)

Senator BARNETT—Mr President, I ask a supplementary question. The minister has correctly outlined a number of the damaging reports in respect of what is happening in Victoria. I would like to know what further action the Howard government is taking to remove these obstacles.

Senator ABETZ—I thank Senator Barnett for the supplementary question. The minister has correctly outlined a number of the damaging reports in respect of what is happening in Victoria. I would like to know what further action the Howard government is taking to remove these obstacles.

Senator ABETZ—I thank Senator Barnett for the supplementary question. As I have indicated, as a federal government we have moved to try to repeal the unfair dismissal laws. We have also moved to have a building royal commission that the Australian Labor Party opposed tooth and nail. Why? Because now the Victorian state Labor government have had to front up and confess that they in fact did engage in inappropriate conduct, awarding contracts on the basis of what the thugs in the CFMEU told them. It has been said that Mr Bracks is all smiles and no spine, and the people of Victoria, in relation to this matter, have a clear choice: they can have a Howard-Doyle regime or a Crean-Bracks regime, and in the Crean-Bracks regime they would not find a backbone between them.

Defence: Contracts

Senator CHRIS EVANS (2.54 p.m.)—My question is directed to the Minister for Defence, Senator Hill. Can the minister confirm that the former Minister for Defence, Mr Peter Reith, had been given details of all the initial bids for the Defence Integrated Distribution System before he cancelled the process and restarted the tender round in July last year? Can the minister provide an absolute guarantee that the former minister has not conveyed highly sensitive commercial information he possessed from his previous capacity to his new employer, Tenix, which has just won the $900 million contract for DIDS? What steps did the minister personally take to ensure the integrity of this tender round, given Mr Reith’s previous involvement and his involvement with the successful bid team?

Senator HILL—This does rely in part on the integrity of Mr Reith, of which I have no doubt at all.

Opposition senators interjecting—

The PRESIDENT—Order! Senator Evans has asked a question and members on his own side should remain silent to listen to the answer.

Senator HILL—I will repeat it: Mr Reith is an honourable person. He was a very fine minister and he caused great discomfort to the Australian Labor Party, I have to say, which is why they continue to pursue this vendetta. He was also a very good defence minister, I might say for the benefit of Senator Evans. The DIDS tender process was cancelled by cabinet, as I understand it, before I came to my position. It was restarted and all bidders had an opportunity to participate. The advice to government was that the most cost-effective bid was from a consortium of Tenix and Toll. It was an independent advisory body, I might say for the benefit of Senator Evans, that gave that advice to government, and government accepted that advice. Obviously, I do not know the detail of knowledge that Mr Reith might have had when he was minister. I was obviously not the minister and that is why I say to some extent in these things it is necessary to rely on the integrity of individuals. But in the case of Mr Reith, I am very confident that I can rely on that integrity and I would advise Senator Evans that he can as well.
Senator CHRIS EVANS—Mr President, I ask a supplementary question. Given the minister’s confidence in the integrity of both Mr Reith and the tender process, can the minister confirm that the claimed 30 per cent savings that prompted this privatisation or outsourcing of DIDS will be realised? Further, does the minister have full confidence in the Tenix-Toll bid meeting the full requirements of the tender?

Senator HILL—Through the process, and the reforms that have been engendered through the process, significant savings have already been achieved and further savings are expected to be achieved. That is why we entered into the DIDS process, because obviously on this side of the chamber we are interested in cost efficiencies, which is more than we can say for the Australian Labor Party, which of course ran up huge deficits and huge debts. We have a different way of doing business on this side of the chamber. So we have continued with the DIDS process because it is in the best interests of the taxpayer and will lead—

Senator Chris Evans—And don’t worry about the cost!

Senator HILL—No, it is a cost-saving measure. Significant savings have already been achieved and further savings will be achieved. This government is interested in efficiency in government—cost efficiency—and we are very pleased to see that in the terms of balanced budgets. (Time expired)

Health: Pharma-Foods

Senator STOTT DESPOJA (2.59 p.m.)—My question is addressed to the Minister for Health and Ageing and it continues on from my question yesterday about pharma-foods. Given there are several biopharmaceutical companies in Australia—including the federally funded CRC for bioproducts—that are actually conducting research on pharma-foods, can the minister tell us if the government has any protocols or measures in place in relation to biopharmaceutical research and the potential application, sale and use of those technologies and techniques? Specifically, can the minister assure us as to what the government is doing to make sure that the technologies and techniques are not used for illicit purposes, such as the production, sale and consumption of illicit drugs or drugs that would otherwise require a prescription? Also, can we find out what the government is doing to ensure that the technologies that are being developed are not used by organisations for terrorism purposes?

Senator PATTERSON—I thank Senator Stott Despoja for her question. Part of the question that she asked relates to part of the question that she asked yesterday. It is a very detailed question to ask me whether it is being used for bioterrorism. I know that there was an article, and I went back and read the article that was in the paper over the week-end. I know that Senator Stott Despoja is obviously concerned about it. We have processes for food standards in order to ensure that any genetically modified foods have all met the Food Standards Australia New Zealand stringent data assessment requirements. The ministerial council has given final approval for 19 of these genetically modified foods. As I said in the chamber yesterday, Trish Worth is responsible in detail for this area. Because I do not see all the applications, I am not sure whether an application has been made for food that has medication in it. I am not even sure that they have got to that point yet. But I know that people are saying, ‘Can they put antibiotics in bananas and, if you put them in bananas, how do you determine whether people eat a whole banana or half a banana?’ I think that that is the sort of stuff that Senator Stott Despoja is talking about.

Senator Vanstone—Or how big the banana is.

Senator PATTERSON—Or how big the banana is, as Senator Vanstone says. I am not a biologist. The other day I said that I wish that I was a medical ethicist. I wish that I had done law, despite what the people say on the other side. I am not sure whether it is considered to be genetically modified food when something like an antibiotic is put into a food. I do not know whether any applications have been made. I will check that. I will get you a full answer to this very detailed question. I know that Senator Stott Despoja is very interested in it, but I am sure that, given
the attention that Food Standards Australia New Zealand gives to this and the concern that the ministerial council, especially the health and agricultural ministers, have—we have met and discussed some of these issues on this area—I am sure that those things would have been considered. However, I will give the senator a detailed answer and table it here in the chamber for those people who have a particular interest in it. But it seemed to me that the article in the paper was a little ahead of what is actually happening. It was predicting what might potentially be possible in the future, with regard to antibiotics in food, for example.

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I thank the minister for the offer, again, to take it on notice. I ask when the minister believes that she will have that information available for the Senate, and if she can include information as to what exact research is taking place in relation to biopharmaceuticals in Australia, particularly in relation to those that are receiving federal funds through the CRC. Can the minister also undertake to advise the Senate when protocols and measures will be in place, as well as her analysis as to whether the Gene Technology Act and the former ANZFA regulations are appropriate? I think that the minister should have at least known by today what applications were available. I look forward to hearing from the minister.

Senator PATTERSON—With due respect to Senator Stott Despoja, I have a lot more to do than delve around trying to immediately find the exact answer for Senator Stott Despoja.

Senator Stott Despoja—That is why you have a department.

Senator PATTERSON—I will attempt to get her an answer as quickly as possible, but I want it to be as full as possible. I will table that answer as soon as I have it, but the department is obviously very busy. I will table the answer as soon as possible. But I have to tell you that I do not think that it is going to be a major issue for tomorrow, Senator Stott Despoja. It is an issue that we should be looking at. It is an issue of concern, and I accept Senator Stott Despoja’s concern. But, in order to give her a full answer, I think that I need a reasonable time, because it is a very detailed question. It involves the gene technology regulator, Food Standards Australia New Zealand and the act. I will get as full an answer as possible as soon as I possibly can, in a reasonable time, given the detail that she requires.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Nuclear Energy: Lucas Heights Reactor

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (3.05 p.m.)—Senator Nettle asked me a question without notice on 18 November, regarding shipments of spent nuclear fuel from Lucas Heights to France for reprocessing. I undertook to provide additional information. I seek leave to incorporate the response in Hansard.

Leave granted.

The response read as follows—

The Minister for Science has provided the following additional information in relation to the question asked by Senator Nettle:

Contrary to Senator Nettle’s information, there will be no shipment of spent fuel from ANSTO in 2002. Pursuant to ANSTO’s reprocessing contract with COGEMA, and in accordance with Government policy, there will be future shipments of spent fuel from Lucas Heights to France.

In accordance with Australia’s obligations under international conventions on the security of nuclear materials, shipment details are not published in advance.

The Australian Radiation Protection and Nuclear Safety Agency and the Australian Maritime Safety Agency have the prime regulatory responsibility for the shipments. Other Commonwealth and State agencies are involved, as appropriate, including the NSW Police.

Planning of shipments is undertaken in the light of current assessments of the security situation, based on advice from national security authorities and the Australian Safeguards and Non-Proliferation Office.
Telstra: Chief Executive Officer

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (3.05 p.m.)—by leave—I also wish to add to an answer that I provided yesterday to Senator Ray, who asked about the cost of installing a microcell on the property of Dr Switkowski. My office has been informed by Telstra that the microcell was a hand-me-down from the infrastructure that Telstra provided for the Sydney Olympics. Hence, Telstra did not incur any additional capital costs. Telstra has informed my office that it cost between $5,000 and $7,000 to install this microcell, which has a range of about 200 metres and will also benefit other residents in this mobile phone black spot.

Senator Carr—We all want one!

Senator Sherry interjecting—

Senator ALSTON—Your black spot is up here, son—that is the problem. Telstra has also informed my office that having the microcell on Dr Switkowski’s property meant that Telstra did not have to pay the normal costs of leasing land to carry such infrastructure.

Environment: Endangered Species

Senator HILL (South Australia—Minister for Defence) (3.06 p.m.)—Senator Bartlett asked me a question without notice on 13 November, relating to the EPBC Act and the spectacled flying fox. I seek leave to incorporate the answer into Hansard.

Leave granted.

The answer read as follows—

Senator Bartlett asked the Minister representing the Minister for the Environment, and Heritage, upon notice, on 13 November 2002:

(1) The minister would be aware of a recent announcement by the federal government of an agreement they reached with the Beattie Labor government authorising the shooting by fruit farmers of up to 1.5 per cent of the total population of the listed threatened species the spectacled flying fox. What is the legal basis in the Environment Protection and Biodiversity Conservation Act for this agreement.

(2) How is the agreement different from a section 29 action declared by agreement not to need approval.

(3) If they are the same, why hasn’t the minister tabled the agreement in the Senate as a disallowance instrument, as required by section 33 of the EPBC Act.

(4) Will he now agree to table that agreement?

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) Consultations between the Commonwealth and Queensland have resulted in agreement that the total number of Spectacled Flying-foxes to be killed in accordance with State permits/licences in the 2002-2003 season will not exceed 1.5 per cent of the agreed national population estimate for the species. Under this agreement, if a person is operating within a valid State permit or licence to shoot a specific number of Spectacled Flying-foxes, they do not need to make a referral under the EPBC Act.

The scientific data currently available indicated that this level of authorised shooting will not have a significant impact on the species and as such would not be prohibited by sections 18 and 18A of the EPBC Act.

Anyone operating outside the Guidelines in a manner that is likely to have a significant impact on the Spectacled Flying-fox would need to refer their activity to the Commonwealth Minister for the Environment and Heritage for assessment.

(2) Section 29 of the EPBC Act deals with actions covered by bilateral agreements. This national approach was not made for the purpose of making a declaration under a bilateral agreement.

(3) The Administrative Guidelines on Significance—Supplement for Spectacled Flying-fox are guidelines to assist people comply with the Act.

Administrative Guidelines like this do not require tabling in Parliament.

These Guidelines, and any other scientific information available on the conservation status of the Spectacled Flying-fox will be reviewed in June 2003.

(4) See answer to question 3.

Transport: Australian Transport Safety Bureau

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.07 p.m.)—On 17 September Senator O’Brien asked me a supplementary question, in my role as representing the
Minister for Transport and Regional Services, concerning a review into the Coroner’s report dealing with the plane crash near Burketown of a charter flight which left Perth heading for Leonora in September 2000. I have an answer from the Minister for Transport and Regional Services and I seek leave to have that incorporated in Hansard.

Leave granted.

The answer read as follows—

The Minister for Transport and Regional Services has provided the following answer:

The review was initiated after the Coroner released his report on 12 September 2002. Senior management of the Australian Transport Safety Bureau (ATSB) reviewed the report and provided comments to me. Separately, a review was conducted by a senior lawyer from the Australian Government Solicitor (AGS).

The AGS review fully supports the position and action taken by the ATSB and its officers.

A copy of the ATSB review and comments, together with the AGS review will be available to Senator O’Brien and Mr Ferguson if they wish to view this.

On the basis of the AGS comments and a review of the ATSB’s comments, Mr Anderson is satisfied the ATSB has conducted its investigation appropriately and in accordance with Australia’s international obligations.

The ATSB has acknowledged that there are some areas of its investigatory activity which can be further improved. Mr Anderson has asked the Executive Director of the Bureau to introduce these improvements as quickly as possible including:

- better information flow to the families of the deceased explaining the ATSB’s role and contact details;
- regular publication of preliminary and interim factual reports prior to the final report;
- providing a deceased pilot’s family with a copy of the draft report where appropriate;
- improving cooperation with all Coroners through the provisions proposed by Coroner’s representatives that have been incorporated in the Transport Safety Investigation Bill and through a draft memorandum of understanding that will cover future pathology/toxicology and evidence sharing.

ANSWERS TO QUESTIONS ON NOTICE

Question Nos 61 to 76

Senator ALLISON (Victoria) (3.07 p.m.)—Pursuant to standing order 74(5) I ask the minister representing the Minister for Environment and Heritage for an explanation as to why an answer has not been provided to questions on notice Nos. 61 to 76, which I asked last year but which were subsequently put on the Notice Paper for February this year.

Senator HILL (South Australia—Minister for Defence) (3.08 p.m.)—I have got no explanation. I do not know the questions. The usual courtesy is that you are told before question time in order that you can explore the matters.

Senator ALLISON (Victoria) (3.08 p.m.)—I advise the minister that my office did inform his office and I move:

That the Senate take note of the minister’s failure to provide either an answer or an explanation.

The questions that I referred to were all about the Commonwealth’s management of heritage. The government is asking us to deal with the heritage legislation, which the Democrats are very keen to do. However, that legislation includes a very substantial and important section about the Commonwealth and its management of heritage legislation. In anticipation of that legislation coming on, the Democrats decided it would be useful for each department to indicate how it is managing its heritage. So we asked when each department had conducted the last audit of heritage values in its properties and whether that report could be made available.

We asked whether the department has policies, protocols and/or guidelines for the protection of heritage values in its properties, and if not, why not. What is the budget for maintenance and conservation works in the department for the 2001-2 financial year? How does that compare with the previous four financial years? Which properties has the department sold over the past five years and which of those have heritage value? Which of those were listed on the Register of the National Estate? Which of those have
state government and/or local protection? What are the department’s policy protocols and/or guidelines for archiving the documents? Does the department have a collection of art works and/or artefacts including documents of heritage value? Are these documented and is there a budget for acquisition or conservation of such work? Does the department use the National Culture-Leisure Industry’s statistical framework prepared by the Cultural Ministers Council in compiling data, and if not, why not? And for those services contracted out, what arrangements, guidelines and requirements are in place to safeguard records for archiving?

I think that it is quite clear that some departments do better than others in looking after their heritage. We accepted the government’s argument in fact that this was relatively complex for many departments—probably those that do not care too much for their heritage—and that the Minister’s Department of the Environment and Heritage would in fact compile or coordinate the responses. That was back in February this year and still we have seen nothing. As I said earlier, the Democrats are keen to debate the heritage bills. We are not however prepared to insist and force that debate on other parties in this chamber, as we rarely are. It would be useful—

Senator Hill—You voted against them!

Senator ALLISON—No, we are certainly not against it, Senator Hill, and you know that. We did that because we do not believe that it is reasonable in this place for debate to be forced on parties that want to observe the cut-off, and I am sure you will agree that is a proper position to take. If the government was really serious, it would have answered these questions long ago. We would have been more assured about the care with which all of our Commonwealth departments are looking after heritage that is owned not just by the federal government but by everybody in this country. I think they are reasonable questions. I think they should have been answered by now, and I hope that the minister can get back at least by the next sitting week with an answer to those questions that are on notice.

Senator HILL (South Australia—Minister for Defence) (3.12 p.m.)—I am told that Senator Allison’s office contacted Minister Kemp’s office about 15 minutes ago on this matter. So Senator Allison comes in here claiming to be interested in this issue and she has had the whole year to raise it with me and she has not raised it even once. I wonder why, suddenly, it has become of concern. I will tell you why. It is because the Democrats are embarrassed that they have again joined with the Australian Labor Party to avoid debate on an important environmental and heritage matter. That important matter is the government’s determination to reform heritage laws at the Commonwealth level in order to give the Commonwealth for the first time some real powers to ensure that matters of major heritage importance in this country are properly protected.

I would have thought that the Australian Democrats, with all the troubles that they are facing, would have jumped at that opportunity to join with the government to put in place better heritage legislation for this country. But did they do that? No, they did not. Why didn’t they do it? They did not do it because the Labor Party said that they did not want to debate the matters. This is supposed to be the chamber of debate. It is not as if these matters are new. They have been floating backwards and forwards through the environment groups and through the parliament for years. Finally they have passed through the House of Representatives and we bring them to this chamber to be debated and what do the Australian Democrats say? They say, ‘We have no interest in these matters. We are not prepared to even consider them until next year.’

I know it requires a little bit of work; it requires reading the legislation and developing some views on the legislation. But the Democrats have plenty of time. They need not debate it this week; we will be up for a couple of weeks and back in a fortnight. They would be able to debate the matter then. The government would like to see the heritage legislation debated in this session of parliament so that by Christmas we have a chance to put into effect better heritage laws in this country. The Democrats have a
choice: they can either be part of wanting to achieve better heritage laws or they can jump as demanded by the Australian Labor Party and put it off again until next year. It is obvious that the Australian Democrats have jumped as demanded by the Australian Labor Party but they feel a little embarrassed by it, so what have they done? They found some questions they put on notice about a year ago that have not been answered and they suddenly get up and they demand answers.

The Australian Democrats cannot have it both ways. Either they are interested in heritage matters, in which case they come in here and debate the government’s bill and contribute constructively to an improvement in heritage laws in this country, or they do not. They disappoint again all the environmental and heritage groups out there in the community that want to see the proposed law debated and that would actually like to see an improvement in heritage laws in this country. What is the purpose of the Australian Democrats in those circumstances? I would have thought that Senator Allison of all people would at least have enough intestinal fortitude to say to the Australian Labor Party, ‘You’ve got a couple of weeks to consider this legislation; let’s bring it on in the last two weeks of the session and get the debate before the chamber.’

Senator Sherry—What’s this got to do with not answering questions in over a year?

Senator Hill—As for the Australian Labor Party, we know they have no interest whatsoever. They do not even put questions on notice on the subject, let alone debate the government’s legislation on the subject. It is disappointing that after a year Senator Allison has finally brought this to the attention of the Minister for the Environment and Heritage. I will raise it with the environment minister and see if I can get an early response. I take the opportunity to say to Senator Allison and the Australian Democrats: use this chamber as it is supposed to be used—as a chamber of debate. Allow the government’s legislation to be debated. Join with the government in putting into effect better heritage laws in this country. Join with the government to provide some real power and authority in relation to preserving the best of Australia’s heritage. If the Australian Democrats did that, at least they would be doing something relevant and useful.

Question agreed to.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Small Business: Superannuation

Senator Sherry (Tasmania) (3.17 p.m.)—I move:

That the Senate take note of the answer given by the Special Minister of State (Senator Abetz) to a question without notice asked by Senator Sherry today relating to superannuation and small business.

Significant red tape, legal liability and draconian fines are to be imposed on business, but particularly small business, from the government’s so-called superannuation choice legislation. Senator Hill was right about one thing: the chamber is about answering questions, and Senator Abetz could not answer the questions posed by me today in the Senate chamber in question time or the questions posed unanimously by Senator Abetz’s own colleagues on the Senate Select Committee on Superannuation. I will be interested to hear contributions from Senator Watson, the chair of the committee, and Senator Chapman and Senator Lightfoot, who are members of the committee. The Senate committee unanimously reached the conclusion that the proposed changes and their draconian impact on small business had very serious consequences and recommended some change; hence, my questions to Senator Abetz today.

The so-called superannuation choice legislation, which we are to consider shortly, involves the deregulation of retail superannuation in Australia.

Senator McGauran—Yes?

Senator Sherry—Just listen, Senator McGauran, and you will actually learn something. This is a unanimous committee report. Under the proposed legislation, 654,000 employers will be required to enter into 35 new steps of red tape with their em-
ployees in respect of payment of superannuation. Let me describe it very briefly. The new requirement is that over 600,000 employers will be required to put in writing to each and every existing employee or future employee a request about their superannuation fund. The employer will be required to record the date of that request and the date of the written response back from the employee. They will then have to determine whether the fund to which the moneys are to be paid is a complying superannuation fund.

Senator McGauran—That all makes sense.

Senator SHERRY—I have not finished yet, Senator McGauran. They will then have to determine whether the money should be paid to a default fund—and it goes on and on. There are 35 new steps the employer has to take to meet these particular new superannuation provisions. If the employer gets it wrong once—

Senator McGauran—Whose side are you on?

Senator SHERRY—I do beg to ask: whose side is the Liberal Party on? This is new red tape being imposed on over 600,000 employers. If the employer gets it wrong once in those 35 steps, there is an absolute liability breach fine provision of $13,200 per employee. You are going to hear a lot more about this from small business, I can tell you that, Senator McGauran. For each one of these steps the employer gets wrong there is a fine of $13,200 per employee. Hence I ask Senator Abetz what he is doing—

Senator McGauran—Whose side are you on?

Senator SHERRY—I do beg to ask: whose side is the Liberal Party on? This is new red tape being imposed on over 600,000 employers. If the employer gets it wrong once in those 35 steps, there is an absolute liability breach fine provision of $13,200 per employee. You are going to hear a lot more about this from small business, I can tell you that, Senator McGauran. For each one of these steps the employer gets wrong there is a fine of $13,200 per employee. Hence I asked Senator Abetz what he is doing—what is the minister for small business doing—about a small business that might inadvertently make a mistake. If the business has 20 employees, it could face a penalty hit of $264,000.

What was the response of the Senate committee on this matter? Unanimously, Senator Watson, Senator Chapman and Senator Lightfoot agreed that this was draconian and that it should not proceed. The committee unanimously identified this as an absolute overkill in respect of fines for employers. There are two other problems. If the employer engages in any form of advice, they open themselves up to common law legal liabilities. The third major problem is the administration cost. Many small business employers—obviously the government is not aware of this—pay by cheque. For 20 employees you pay 20 different cheques to 20 different funds. That is adding to additional compliance costs and red tape. Senator McGauran waves his hand as if it is nothing for small business to have to face these new horrors, this new red tape. In fact, the Queensland Retailers Association, ask Senator Boswell, describe this—

(Time expired)

Senator BRANDIS (Queensland) (3.23 p.m.)—Senator Sherry’s speech cast him in an unusual light: that is, as a champion of the interests of small business.

Senator Sherry—On this issue.

Senator BRANDIS—On that issue, Senator Sherry, it is a very uncharacteristic role for you to assume, I must say. Let us ask: what is the purpose of the legislation? The purpose of the legislation, which was first foreshadowed as long ago as the 1997 budget, which in an earlier form was blocked in this chamber by the Labor Party and the Democrats and which has now been reintroduced, is to give employees rights of choice over their superannuation fund. Stripped to its essentials, it is as simple as that. Let me ask rhetorically: why shouldn’t an employee, a worker, be able to decide the superannuation fund for which their savings are to be invested? Of course they should be able to, but it is against that proposition that the Labor Party has set its face. The legislation that has been introduced into the chamber again not only provides a right of choice for employees in relation to the direction of their savings into superannuation funds but also promotes transparency and competition in the industry and provides, as market solutions always do—the Labor Party cannot accept this—for cost efficiencies. But it is based in the end on that really elementary proposition: it is the worker’s money; it is the employee’s money. Why shouldn’t they have the right to decide into which superannuation fund it will be invested? We on the government side say that they should.

There will be compliance costs; there is no secret about that. An assessment has been
made by the government in introducing the legislation and that estimate is that employers will, on average, in the first year of operation of the new system incur an initial compliance cost of $54 and an ongoing compliance cost of $36 in meeting their choice of fund obligations. Those estimates assume that the average employer will take three hours to comply initially and two hours in subsequent years and that the cost of compliance per employer will be approximately $18 per hour after tax. The estimate is based on the assumption that some 500,000 employers will incur those compliance costs. The total compliance cost to employers is estimated to be $27 million in the first year and approximately $18 million in each of the subsequent years.

It is a matter of commonsense and commercial notoriety that whenever a new obligation is imposed upon business there will be a compliance cost. We do not run away from that; there is no secret about that. It is nothing surprising or dramatic. The policy question against which that has to be tested is simply this: is the expectation that the employer will incur a compliance cost justified by the policy grounds of the scheme? Absolutely! That is this government’s position. It is a small price to expect employers to pay an average, in the first year, of $54 per employer. This is not an overwhelming burden to business in anybody’s language to instate a system which we have not had before in this country and under which employees will have the right of choice of their superannuation fund. Most Australians, at the time of retirement, have two principal assets: their home and their superannuation fund. Over their home, they have complete autonomy—complete control—of their asset. Over their superannuation fund, as the law stands at the moment, they have very little control and over the superannuation fund in particular they do not have, under most systems that operate in Australia today, a right to determine which superannuation fund will entertain their investment. The purpose of this legislation is to give them that right and we on the government benches say that if the cost of providing that right to men and women in Australian families who will be leaving the work force is so—(Time expired)

**Senator BUCKLAND (South Australia) (3.28 p.m.)—**When we are talking about superannuation and choice we really have to look at the evidence before the Senate committee that examined this very issue of choice. A leading business body said it could create excessive paperwork for employers. The Australian Chamber of Commerce and Industry’s workplace relations spokesman said that the burden had some parallels to the GST business activity statement debacle and warned that business was hypersensitive to red tape. The spokesman from the Australian Chamber of Commerce and Industry said:

There would be obviously some resistance from employers to increased administrative obligations.

The Motor Trades Association, the National Farmers Federation, the Australian Industry Group and the Queensland Retail Traders and Shopkeepers Association have also expressed similar concerns. In addition, the groups with close experience in superannuation, such as Mercer Investment Consulting, the Corporate Superannuation Association and CPA Australia, have their doubts. CPA Australia stated:

The additional responsibilities will most certainly place a further compliance burden on employers. This is in addition to other burdens employers currently face, for example, compliance costs associated with the New Tax System and The New Tax Business System.

Mercer’s submission said:

... the introduction of Choice as set out in the Bill will result in:

- Significant compliance costs for employers;
- Increased difficulties in meeting payment deadlines for SG contributions resulting in more late payment breaches;
- ... ... ...
- ... the advantages to the member of being able to exercise choice would need to be weighed against potential disadvantages which may include:

An increase in expenses due to higher distribution costs as well as the loss of employer subsidies that apply in many existing corporate funds;

A reduced willingness of employers to contribute more than the minimum contribution

... ... ...

...
The implementation of Choice in the proposed form will not only result in considerably greater costs than the estimates in the EM but in addition, many small business operators will be diverted from their business activity for many hours.

In a written response to questions asked during the Senate inquiry Treasury confirmed that not a single representative of small business has been consulted at any time over the last five years that the so-called choice proposal has been under consideration. However, Treasury and tax officers have consulted with the government’s favourites such as the Australian Bankers Association, the Business Council of Australia, the Financial Planning Association and the Investment and Financial Services Association but not a single representative of small business. Labor has proposed to amend the bill to exempt small business from the choice regime. Labor has consulted with the Council of Small Business Organisations of Australia and they have fully supported this exemption to reduce red tape. It remains to be seen whether the government support the Labor amendments.

Senator Brandis asked, ‘Why shouldn’t employees choose their own fund?’ A number of difficulties have come to light during the inquiry. One of those difficulties is the complexity of comparing the multitude of funds that they would have to examine. Most of these funds have prospectuses of 60 pages or more, plus a multitude of pages for the actual application. It is hard to imagine that a worker, after a day of work, is going to go home with an armful of these applications and prospectuses, sit down calmly during the night, go through each one and make a choice. That is one reason why choice is not a good way to go. (Time expired)

Senator CHAPMAN (South Australia) (3.33 p.m.)—As my colleague Senator Brandis said a few moments ago, this is a fundamental issue of the rights of workers. It is a fundamental issue of the employee having the right to determine where their money is going to be invested—not to have some third party, legislation, employer or union tell them where the money that they are saving for their retirement through superannuation funds is going to be invested, but to have the right to determine where that money is going to be invested.

Senator Wong interjecting—

Senator CHAPMAN—I am sorry, I cannot hear Senator Wong’s bleating, so I cannot respond to the issue that she is raising.

The DEPUTY PRESIDENT—All you need to do is address the chair, Senator Chapman.

Senator CHAPMAN—Thank you, Mr Deputy President. This is a fundamental issue as far as employees are concerned. Employers and self-employed people have the right to determine where their retirement funds are going to be invested, so why shouldn’t employees? Of course, the Labor Party comes in here and stands up as the knight to defend small business. It claims that some of the administrative costs associated with this choice regime are excessive as far as small business is concerned. That is simply a subterfuge, as we all know, because what the Labor Party is really defending are the union superannuation funds, the industry funds, which until now the superannuation payments made on behalf of employees have had to reside in. That is the only option that employees have had in the investment of their funds for retirement—the industry funds, the so-called union funds. That is what the Labor Party is really defending here. It is not defending small business at all. It knows that when employees have the right to choose the fund into which their retirement savings will be invested then those union funds are at significant risk.

We heard a minute ago from Senator Buckland that the Labor Party therefore wants to exempt small business from this choice regime—completely ignoring the fact that small business is a major employer in this country. If that segment of the economy is exempt then a significantly large number of employees will be denied completely the right of choice as to where their retirement savings will be invested. Their rights are being trampled on.

The Labor Party trumpets itself as the defender of workers’ rights. It is nothing of the sort. The fact that it is nothing of the sort is demonstrated by its attitude to choice in em-
ployee superannuation. The Labor Party is the defender of union power. It is the defender of the union rights, not the defender of individual workers’ rights at all. It does not represent workers; it represents trade union power. That is no wonder when we look across the other side of this chamber and see how many Labor Party senators come from a background of trade union involvement such as being trade union office-bearers and the like. That is what this debate is really all about.

In contrast to that, the government remains committed to introducing choice of superannuation funds from 1 July 2004 because it will not only give employees that fundamental right to determine where their retirement savings are invested but also promote greater competition and efficiency in the superannuation industry. In regard to compliance, it is important to note that the government has allocated some $28.7 million over four years to allow the Australian Taxation Office to conduct an information and education campaign on choice and portability and to cover associated administration costs.

That education campaign will ensure not only that employees know how the choice regime will operate but also that the small business sector, about which the Labor Party feigns such concern, will know how this system will operate and will know how to minimise their administrative costs. While there might be some additional administrative work for employers in the transition period, it will certainly be substantially outweighed by the long-term benefits not only to employees, who will have the benefit of this choice, but also to the community as a whole because of the greater flexibility that it provides for employers and employees. The government is determined to ensure that this measure is implemented in a way that minimises impact on small business operators. The government is listening to small business and it will listen to the recommendations of the Senate select committee. (Time expired)

Senator WONG (South Australia) (3.38 p.m.)—I rise to speak to the motion that the Senate take note of the answer, or non-answer, given by Senator Abetz to a question without notice asked by Senator Sherry. The question, as the chamber may recall, is about the compliance burden which is to be shouldered by small business under the proposed choice regime pressed for by this government. We say that Senator Abetz’s answer demonstrates a blatant disregard for the interests of small business and a blatant disregard for the evidence which was presented by the small business sector to the Senate Select Committee on Superannuation. The minister failed to answer the question and, instead, bleated on like a broken record about the unfair dismissal legislation. It is as though the only small business policy that the government has is to tell Australian workers that it wants employers to be able to dismiss you more easily. That is the sum total of its small business policy.

When the Minister for Small Business and Tourism is asked about an important issue such as compliance and about the burden of compliance that is intrinsic in your choice of fund legislation, all he can do is respond by saying that the Senate has to pass legislation to make it easier to sack people. He is not interested in discussing the concerns regarding compliance. It is pretty familiar, really. It is similar to the way the government approached the GST and imposed on small business such a significant burden of compliance with the GST. In fact, those are not simply my analogies. The Australian Chamber of Commerce and Industry, in evidence to the Senate select committee, said that the burden that was set out in the government’s proposed legislation had some parallels to the GST’s business activity statement debacle and warned that business was hypersensitive to red tape. We all remember the BAS debacle and the fact that this government, despite trumpeting its small business credentials, imposed a significant burden on small business, which it still faces.

The government’s proposal is effectively a choice maze. It requires 35 steps to be entered into and passed by employers, with significant compliance costs if the small business operator fails to observe those steps properly. It is no wonder that the Queensland Retail Traders and Shopkeepers Association,
when it summed up public criticism of this choice regime on small business, said:

When will bureaucrats and politicians realise there is a limit to the ability of a small business to cope with all of this?

Those are the words of small business. It is unfortunate that Minister Abetz refused to answer the question and refused to indicate what the government is actually proposing to do about the significant compliance problems associated with their choice model.

In addition, we know already that significant compliance costs to employers are likely to result from the choice regime that the government is seeking to impose. Treasury officials have given evidence to the select committee that employers would pay $27 million more a year in administrative costs in the first year and $18 million a year for three years after that. That is as a result of the choice regime that the government is proposing. In fact, the Australian Chamber of Commerce and Industry, in its submission to the Senate Select Committee on Superannuation, suggested that the cost of compliance that Treasury has set out is:

... a real stab in the dark—and one that we suspect underestimates the real cost impact.

One wonders, in light of these sorts of concerns and in light of the government’s professed interest in small business, why the government is proposing to proceed with what is a flawed choice of fund model that puts increased compliance and administrative costs on business, particularly small business. The reason is that it thinks that this is a union busting exercise. It thinks that this is a way of getting to the unions. It fails to understand that the funds that it is seeking to disadvantage are industry funds which have equal numbers of employers and employees on their boards of trustees.

Labor’s solution, as proposed by Senator Sherry, is to seek to amend the bill to exempt small business from the choice regime. We have consulted with the Council of Small Business Organisations of Australia, who support the exemption to reduce red tape. The Labor Party has actually gone to small business and said, “If this choice of fund legislation goes through, what is needed for you?” (Time expired)

Question agreed to.

Environment: Greenhouse Gas Emissions

Senator ALLISON (Victoria) (3.43 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Allison today relating to greenhouse gas emissions.

I must say it was a non-answer to a question, and that is disappointing. The minister, generally speaking, makes an effort to answer questions that are put to him in this chamber, but today’s effort was abysmal. I started my question by pointing out that the Parer energy report, which came out last week, indicates that far from achieving a 14 megatonne reduction in greenhouse gas emissions, energy market reform will increase emissions by 2010—by only 0.1 per cent but, nonetheless, it is an increase. So it is a difference in what we have projected will happen by 2010 and what we told the international community, which was an equivalent reduction of 14 million tonnes of greenhouse gas emissions.

I also asked if the minister would admit that the energy market reforms that this country has had under way for some years have not made our industry energy efficient. They have done the opposite. They have made electricity cheap, and they have advantaged brown coal generation. As a result we have had a blow-out in our emissions. I will just quote from the Parer report because I think it is instructive. It says:

Government policy makers anticipated that energy market reform and its acceleration would lower the average greenhouse gas intensity of energy. Analysis now shows that far from achieving 14 Mt reduction in 2010, as estimated in Australia’s Second National Communication to the United Nations Framework Convention on Climate Change, energy market reform is now estimated to have resulted in an increase of 0.1 Mt of CO2-e by 2010.

The growth in emissions from electricity supply since 1990 is attributed to an increase in the brown coal share of electricity generation and a corresponding reduction in the combined share of some of less greenhouse-intensive energy forms. In fact, it was the Environment, Communications, Information Technology and the Arts
References Committee that identified this as a problem in its report more than two years ago. We had a very close look at energy market reforms and we were persuaded by the submissions and those who presented before the committee that this would be a major problem for Australia in meeting its Kyoto commitment. Lo and behold, that is how it has turned out.

Sadly, the government chose not to report this. Having sent a second communication to the climate change committee earlier last year that we would abate 14 million tonnes of greenhouse gases, in the third communication this year the government failed to mention that. They hinted at it but they did not indicate that this was the scale of the problem. They said:

Accordingly there has been an increase in greenhouse intensity of energy supply. However, this is not expected to persist over the longer term.

There is no justification for that or explanation as to why it will not persist over the longer term. What is the longer term? Is that 2010 or some other time? Who knows. The government clearly does not want to admit to this problem. On top of that we have the ridiculous situation that the two per cent renewable energy measure—passed in this place without Democrats support because of all the problems associated with it—turns out to be not two per cent at all. The figure of 9,500 gigawatts turns out to be 0.9 per cent—on the best, most favourable calculations—but more likely to be 0.5 per cent of our emissions by 2010.

So we have a situation where the government refuses to fix the ‘hydro loophole’ where all of the measure of the so-called two per cent renewable will be taken up for hydro, for which there has been no extra investment in renewable energy at all, due to the baseline and the calculations that allow that enormous windfall to go to Hydro Tasmania. I am glad to see they are spending it on renewable energy. That is a very good thing. However, they could choose to do otherwise and do nothing. We have a loophole which means that even the 0.5 or 0.9 per cent is probably far less than that amount. (Time expired)

Question agreed to.

NOTICES

Presentation

Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes that, in the week beginning 17 November 2002, the Australian Medical Association called on the Federal Government to ratify the Kyoto Protocol on climate change as an important first step in reducing greenhouse gas emissions;

(b) calls on the Government to assess the future costs of predicted increases in disease from vector-born diseases; and

(c) again urges the Government to ratify the Kyoto Protocol and increase efforts to abate greenhouse emissions.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) opposes:

(i) the privatisation of Bankstown Airport, and

(ii) any expansion of the runways or infrastructure of Bankstown Airport and the diversion to it of regional turboprops and/or 737 jet aircraft from Kingsford Smith Airport; and

(b) supports a legislated curfew for Bankstown Airport.

Senator Stott Despoja to move on the next day of sitting:

That the Senate—

(a) notes:

(i) with concern, that the 12th Conference of the Parties to the United Nations Convention on International Trade in Endangered Species of Wild Fauna and Flora, held from 4 November to 15 November 2002, passed resolutions allowing Namibia, Botswana and South Africa to sell a total of 60,000 kilograms of stockpiled ivory after May 2004,

(ii) that these resolutions are inconsistent with the international ban on the sale of ivory, which came into force in 1989, and

(iii) evidence suggesting that these resolutions are likely to increase the incidence of illegal poaching of
elephants from other African states in order to meet the increased demand for ivory;

(b) acknowledges that the Australian Government voted to oppose these resolutions; and

(c) calls upon the Australian Government to maintain pressure on other states, both directly and through multilateral frameworks, to adopt a full trade ban on ivory.

Postponements

Items of business were postponed as follows:

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

General business notice of motion no. 247 standing in the name of Senator Greig for today, relating to the reference of matters to the Joint Standing Committee on Treaties, postponed till 2 December 2002.

General business notice of motion no. 266 standing in the name of Senator Allison for today, relating to tobacco laws, postponed till 2 December 2002.

General business notice of motion no. 267 standing in the name of Senator Allison for today, relating to the use of photovoltaic energy, postponed till 2 December 2002.

COMMITTEES

Environment, Communications, Information Technology and the Arts References Committee

Extension of Time

Senator ALLISON (Victoria) (3.51 p.m.)—I move:

That the time for the presentation of reports of the Environment, Communications, Information Technology and the Arts References Committee be extended as follows:

(a) urban water management—to 5 December 2002; and

(b) environmental performance at the Ranger, Jabiluka, Beverley and Honeymoon uranium operations—to 4 March 2003.

Question agreed to.

INSURANCE AND SUPERANNUATION COMMISSION

Senator LUDWIG (Queensland) (3.52 p.m.)—At the request of Senator Conroy, I move:

That there be laid on the table, in accordance with their respective ministerial responsibilities, by the Minister representing the Treasurer (Senator Minchin) and the Minister for Revenue and Assistant Treasurer (Senator Coonan), by 2 December 2002, the following documents:

(a) the Treasury files, as described in paragraph 10.1.4 of the report to Messrs Corrs Chambers Westgarth from John Palmer, FCA, entitled ‘Review of the role played by the Australian Prudential Regulation Authority and the Insurance and Superannuation Commission in the collapse of the HIH Group of Companies’ and provided as a witness statement to the HIH Royal Commission;

(b) the files of the Insurance and Superannuation Commission in relation to the application of FAI Insurance Limited for an authority to carry on insurance business following the proclamation of the Insurance Act 1973 containing the application and all correspondence and documentation relating to the consideration of the application and leading to and including the company’s eventual authorisation;

(c) the files of the Insurance and Superannuation Commission in relation to the application of Fire and All Risks Insurance Company Limited for an authority to carry on insurance business following the proclamation of the Insurance Act 1973 containing the application and all correspondence and documentation relating to the consideration of the application and leading to and including the company’s eventual authorisation;

(d) the files of the Insurance and Superannuation Commission in relation to the application of Car Owners’ Mutual Insurance Company Limited for an authority to carry on insurance business following the proclamation of the Insurance Act 1973 containing the application and all correspondence and documentation relating to the consideration of the application and
leading to and including the company's eventual authorisation; and

e) the files of the Insurance and Superannuation Commission in relation to the application of Australian and International Insurance Limited for an authority to carry on insurance business following the proclamation of the Insurance Act 1973 containing the application and all correspondence and documentation relating to the consideration of the application and leading to and including the company's eventual authorisation.

Question agreed to.

IMMIGRATION: ASYLUM SEEKERS

Senator CROSSIN (Northern Territory)  (3.52 p.m.)—On behalf of Senators Bartlett, Brown and Nettle, I move:

That the Senate—

(a) notes that:

(i) more than 1 500 asylum seekers from East Timor have had the processing of their refugee claims put on hold for many years and that many of these applicants were, and still are, suffering the effects of torture and trauma, and

(ii) the Australian Government sought to avoid offering protection for these asylum seekers and deliberately delayed processing, causing great hardship to those involved due to the ties they have formed in Australia;

(b) acknowledges the persecution and suffering that these people endured before leaving East Timor and that many of these people have lived in our community for up to 10 years, and have formed close links with their community;

(c) recognises that two organisations of the Australian Catholic Bishops' Conference, Caritas Australia and the Australia Catholic Social Justice Council, and the Australian East Timor Association have also renewed calls to grant residency to the East Timorese asylum seekers who are facing deportation; and

(d) calls on the Minister for Immigration and Multicultural and Indigenous Affairs (Mr Ruddock) to acknowledge the commitment and contribution this group of asylum seekers is making to the Australian community, and the enormous uncertainty and trauma they have endured, by granting these people permanent residency in Australia on humanitarian grounds by means of a special visa.

Question agreed to.

COMMITEES

Environment, Communications, Information Technology and the Arts Legislation Committee

Extension of Time

Senator FERRIS (South Australia)  (3.53 p.m.)—At the request of Senator Eggleston, I move:

That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts Legislation Committee on the provisions of the Telecommunications Competition Bill 2002 be extended to 22 November 2002.

Question agreed to.

Economics Legislation Committee

Meeting

Senator FERRIS (South Australia)  (3.53 p.m.)—At the request of Senator Brandis, I move:

That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 19 November 2002, from 4 pm, to take evidence for the committee’s inquiry into the Inspector-General of Taxation Bill 2002.

Question agreed to.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT (INVASIVE SPECIES) BILL 2002

First Reading

Senator BARTLETT (Queensland—Leader of the Australian Democrats)  (3.54 p.m.)—I move:

That the following bill be introduced: A Bill for an Act to amend the Environment Protection and Biodiversity Conservation Act 1999 to provide for the regulation of invasive species, and for related purposes

Question agreed to.
Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.54 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.54 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

On the wall of the new National Museum in Canberra is a large electronic map of Australia. It shows graphically the threat we face from insecure borders and unwanted entries.

It is not a story of desperate people on leaky boats seeking a better life in Australia. It is the story of weeds and feral animals.

The map tracks the rapid spread of several introduced species across Australia. It shows how in the space of 40 years, or 20 or even 10, some species have become so widespread that they will now never disappear from the Australian continent.

The IUCN has said, “The impacts of alien invasive species are immense, insidious, and usually irreversible. They may be as damaging to native species and ecosystems on a global scale as the loss and degradation of habitats”.

Introduced species are capable of rapid and devastating colonisation of Australia. We all know the worst offenders, particularly the feral animals such as cane toads, foxes and rabbits. Cane toads are at the doors of Kakadu. Foxes have reached Tasmania for the first time. Queensland is in a desperate battle to eradicate the fire ant before it establishes itself. Those who live in sugar country may know of pasture grass weeds such as hymenachne, which in the space of a decade has become one of the major weed problems in Australia, choking watercourses in the coastal lowland tropics.

There are a number of ways of defining invasive species and a number of problems associated with those definitions. In introducing this bill, the Democrats recognise that questions of what is natural and what is invasive are legitimate and extremely difficult questions to resolve.

I want to acknowledge these difficulties, but also acknowledge that there needs to be a workable definition of an invasive species. The definition I am using is “a non-indigenous species that has been introduced into Australia and, either directly or indirectly threatens, will threaten or is likely to threaten, the survival, abundance or evolutionary development of a native species, ecological community, ecosystem or agricultural commodity”.

Recently, the Prime Minister’s Science Innovation and Engineering Council reiterated what a number of Australian and international scientists have said previously—invasive species are one of the most serious environmental problems in Australia.

The priority actions identified in National Objectives and Targets for Biodiversity Conservation 2001-2005 (Environment Australia 2001) included:

1. Protect and restore native vegetation and terrestrial ecosystems
2. Protect and restore freshwater ecosystems
3. Protect and restore marine and estuarine ecosystems
4. Control invasive species.

It is notable that the control of invasive species rates above the control of salinity—a problem for which there is now a national approach and significant funding.

In fact, while invasive species have become increasingly prominent in the scientific and NGO areas and increasingly recognised by governments, there is still little awareness in the public of the extent of the problem, the sources of the problem and the potential solutions. There is still far too little funding, far too few successes and far too little public education.

For instance, although most invasive weed problems derive from ornamental plants sold by the nursery trade to gardeners all over Australia, it is a rare nursery that alerts the buying public to the dangers of non-native plants. Or one that provides instructions on preventing the release into the wild of plants you may be putting in your backyard.

It is now well documented that invasive species cost Australia over $3 billion dollars a year. That figure represents the costs to the agricultural and rural sector, and includes both lost production, lower yield, downgrading of grains and the cost of management and control.
That figure doesn’t include all the costs associated with introduced invasive species. It doesn’t for instance include the costs associated with introduced marine species—an area of increasing concern and major damage.

What that figure also doesn’t include are the environmental costs of invasive species. It doesn’t include the loss of productivity of wetlands and waterways because of invasive aquatic plants such as hymenachne—a pasture grass introduced by the Queensland Department of Primary Industries and still promoted by some in that department. Or para grass; or African lilies or mimosa pigra, all of which have run riot in the nation’s waters.

The costs don’t include the loss of Australia’s unique flora and fauna as highly aggressive species with no natural predators are let loose upon the Australian landscape.

Garnett and Crowley (2000) estimated that 16 birds are threatened or vulnerable due to weeds. The PMSIEC Report estimated 9,600 species of birds at risk.

PMSIEC also estimated that some 4-10 native plant species are at risk from every serious weed. As the IUCN noted, “the ecological cost is the irretrievable loss of native species and ecosystems”.

The losses associated with animal species such as foxes are relatively obvious as they prey on a variety of native species, including native predators. Weed species are more insidious. They can outgrow and outcompete native species. Their spread can be rapid and silent. The plants themselves can be beautiful. They can displace native species of plants—removing food sources, habitat or nesting areas. They can create habitat or food for other species—altering the dynamic that exists in a particular area. They can simply smother habitats—creating a monoculture or a desert.

Every State has numerous examples of invasive species that threaten biodiversity, health, food production or some other aspect of the Australian landscape and culture.

The statistics in relation to invasive species are frightening:

- There are 32,000 exotic plant species in Australia.
- More than 2,700 varieties of weed have become established in Australia.
- Of the 2,700 plants naturalised in Australia, only around 1% are nationally listed weeds that have measures in place for their control.
- There are 336 declared noxious weeds and over 10 new exotic plant species become established each year.
- The rate of weed incursions has doubled over the last 100 years.
- More than 15 million hectares of grazing lands and natural ecosystems are badly affected by weeds alone.
- Of the 32,000 species introduced into Australia, 96.5% are intentionally cultivated.
- Most established environmental weeds are also intentional introductions—most are ornamental plants species, from nurseries and backyard gardens. 7% are agricultural varieties.
- There are about 20 species of introduced mammals in Australia, 25 species of birds, one amphibian and 19 freshwater fish.
- There are about 500 introduced invertebrate species.
- There are more than 250 introduced marine pests and one in 6 introduced marine species is a pest or is predicted to become a pest.
- About 150 million tonnes of ballast water is discharged into Australian waters every year. One study found 67 different species in the ballast tanks of only 23 bulk cargo carriers. The extent of the marine problem is demonstrated by the explosion in the number of northern pacific seastar in Port Phillip Bay. The first few seastar were introduced in the early 1990s. The population is now believed to be about 100 million.

This is the real border protection issue in Australia.

Invasives are the primary environmental problem in our national parks. Invasives are the primary problem in urban bushland and reserves. Invasives have been identified by farmers as their number one on-farm issue.

The problem of invasives is also latent. Many non-indigenous species are sleepers—species already in the country—in gardens, aviaries, aquariums, on farms and plantations—simply waiting circumstances or conditions that will propel it into the wild.

The problems of invasives are well recognised. In the last few years, increasing funding and attention have been given to invasives. There is a National Weeds Program as part of the NHT. There is a CRC for Weeds. There is Weedbusters Week.
There are native nursery programs in many cities and states. There is formal recognition of weeds of national significance, although the State of the Environment Report 2001 noted that, “Considering the number of environmental weeds in Australia, and the potential threat posed by ‘sleeper weeds’, there is some concern that focusing resources on a small number of nationally significant species may not be the best approach”.

There is an increasingly stringent risk assessment for potential new imports of plants and animals that attempts to prevent the introduction into Australia of new invasives, but risk assessment is not foolproof and does not ensure that new introductions won’t become major invasive problems.

States struggle to keep up with the new species that find their way to Australia. The fire ant, found in Queensland earlier this year, has been an example of rapid and dedicated response to a major invasive threat. Over $123 million dollars has been budgeted for eradication of the ant. Despite the speed of the response and the cooperative approach taken, success is by no means guaranteed. If it fails, the federal government has estimated that the costs will rise to $6.7 billion.

The reality is that for most invasives, including new ones, we are not prepared, we do not fund rapid response and eradication and we are not capable of preventing the continuing introduction and release of new invasive species.

The current regulatory framework is not adequate to prevent, eradicate and control invasive species in Australia. It is that simple. The reliance on voluntary measures—such as that in place for the nursery industry—hasn’t worked. The reliance on ad hoc measures—NHT funding for instance—hasn’t worked.

There is no doubt that there is the will and the expertise to deal with the issue, but not the willingness to manage and regulate this at a national level. It is time that we recognised that this is a national issue. It is a national issue because of the scope and cost of the problem. It is a national issue because the majority of invasives arrive in Australia from overseas—an area of exclusive federal jurisdiction. It is a national issue because invasives know no boundaries—they cross state lines, on food, in the air, in water, on the bottoms of shoes and tires and boats. It is a national issue because this problem cannot be addressed at a state level no matter how well intentioned and informed. There must be a consistent and coordinated approach, which can only occur through a national structure.

The Convention on Biological Diversity states as one of its goals for contracting parties to “Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species”. Those three levels—prevention, eradication, control—are at the heart of the Democrats’ bill.

Outline of Provisions of the Bill

The bill primarily aims to prevent the introduction of further species in Australia and to eradicate or control those already here.

Subdivision A contains the main categories of invasive species. The listing of invasive species, which is set out in section 266AA, is to be determined by the Minister or relevant agency to be species Prohibited for Import, Permitted for Import and Currently in Australia.

Under section 266AB the categories of invasive species are a species permitted for import, a species prohibited from import and listing of invasive species already present in Australia for management purposes.

A species is Permitted for Import if:

- it is not listed as a prohibited import, and
- it has been assessed as representing a low risk in Australia of threatening a native species, ecological community, ecosystem or agricultural commodity, and
- the Minister with advice from the Invasive Species Advisory Committee (ISAC) is of the opinion that there exists adequate risk management strategies in place to prevent the species from becoming a threat.

A species is a Prohibited Import if it falls under any of the following:

- pasture grasses,
- ornamental plants,
- aquarium fish, or
- any other species determined by the Minister.

As I have said, these are the categories of invasive species most common in Australia. For instance, in relation to plants, the vast majority of invasive plant species are ornamental plants originally sold by nurseries. There are already thousands of introduced plant varieties in Australia and it is the view of the Democrats that additional varieties cannot be justified.

Those species currently in Australia will be deemed either:

- Eradicable,
- Substantially containable,
Beyond eradication, or Controlled.

It is the intention of the legislation that species that can be eradicated are eradicated. There is no point in spending millions of dollars in an eradication campaign that isn’t going to work. For instance, no one is arguing for an eradication of the cane toad—there are many arguing for management and control approaches that will protect ecosystems, species and habitats under most severe threat from cane toads.

This prioritising of management will occur on the advice of the ISAC. Under the bill, there is recognition that many introduced species are held in controlled environments, such as universities or laboratories. A species is controlled if it is not known to occur in Australia outside controlled environments and if released, it poses a significant risk to the ecological community, ecosystem or agricultural community. The Minister must also be satisfied on the advice of the ISAC that it is considered capable of being successfully contained to the controlled environment in which it is present and that there is an invasive species threat abatement plan that is in place to contain the species within that environment.

A species that would otherwise be an invasive species is disregarded as an invasive species if the Minister is satisfied on the recommendation of the ISAC that the species is not considered a risk to the survival, abundance or evolutionary development of a native species, ecological community, ecosystem or agricultural commodity or to a listed threatened species or registered critical habitat.

The Democrats recognise that many introduced species represent valuable food crops and valuable domestic animals for Australians. It is not the intent of this legislation to prevent the introduction of new food crop varieties or new domestic animals. However, the bill will require risk assessment before new varieties can be introduced. This is an important recognition of how expensive mistakes can be in relation to new imports.

Under this bill a species is exempt from listing if:

- the Minister is satisfied that it is an established commercial agricultural commodity in Australia, or
- a species of domesticated animal established in Australia, and
- a risk assessment has determined that the species does not pose a risk, either directly or indirectly to the survival, abundance or evolutionary development of a native species, ecological community, ecosystem or agricultural commodity.

The remainder of the Subdivision relates to the amending of the invasive species lists by the Minister based on advice from the ISAC. The Democrats’ bill ensures maximum public input and maximum accountability in these processes, including the capacity for any person to nominate a species to be included on an invasive species list.

**Subdivision B**—The permit system in this Subdivision sets out penalty units that will be incurred if a person imports or possesses a prohibited invasive species for import as set out in section 266AA. The Subdivision specifies that a person must apply for a permit if importing, possessing or controlling a listed invasive species for the purposes of trade or commerce. The administrative requirements of applying for permits must be satisfied before the Minister will issue a permit.

Subsection 266BE (3) states that the Minister may issue a permit for the commercial sale, trade or propagation of a non-indigenous species for the purposes of food production if:

- there is a demonstrated need for the species to be used for food production in Australia; and
- there is a low risk that the species will have an impact on listed threatened species or ecological communities; and
- the Minister has approved an invasive species threat abatement plan in Subdivision C.

The conditions of permits are further set out in section 266BF which allows the Minister to vary, revoke or impose further conditions. Sections 266BG to 266BL contain other administrative provision with respect to permits.

**Subdivision C**—Contains provisions which deal with invasive species threat abatement plans and all administrative compliance provisions that must be adhered to in making or adopting of such a plan. Section 266CD states that the Minister must exercise his or her powers to ensure that there is always in force a plan for each listed invasive species once the first management plan for the species has come into force.

**Subdivision D**—Contains various miscellaneous sections. Of particular interest is section 266DB which requires that those involved in trade of introduced species must provide warnings with the sale of any member of a non-indigenous spe-
cies. The purpose of the warning is to educate the consuming public regarding the threats associated with non-native species. For instance, many plant varieties can be grown quite safely in urban residential gardens. They become a threat when clippings or flowers or seeds are disposed of in river or creek beds and the seeds are carried to areas, such as reserves or parks, where they become established. Warnings should educate purchasers about the threats of such disposal.

This bill represents the fulfilment of an election commitment made by the Democrats at the last federal election. At that time, the Democrats’ then Leader, Senator Natasha Stott Despoja, released a discussion paper, along with the party’s policy on invasive species. At that time we said there is an urgent need for public discussion and public education in the area of invasive species. Since that time two events have highlighted how right we were and how urgent this legislation is. The fire ant arrived in Brisbane in a cargo ship and the fox arrived in Tasmania, courtesy of a misguided landowner. Since that time also, we have received many comments, ideas and inspirations. We have seen the establishment of the first ever NGO in Australia dedicated exclusively to invasive species.

This bill reflects many ideas and many views and we hope it is the catalyst for further debate—a debate that is long overdue. The Democrats introduce this bill not as a final document, but as the beginning of much needed discussion and debate about invasive species in Australia. It is not intended to denigrate any of the work that has been done in recent years by dedicated professionals but to recognise and further that work.

In coming months, I hope to hear the views of farmers, nursery owners, backyard gardeners, aquarium owners and others about this bill, the issues raised and the opportunities we have to protect our land, our species and the unique values that make it such a special place.

I commend the bill to the Senate and seek leave to continue my remarks later.

Leave granted; debate adjourned.

FOREIGN AFFAIRS: COLOMBIA

Senator BROWN (Tasmania) (3.55 p.m.)—I move:

That the Senate—

(a) notes that former Columbian Senator Ingrid Betancourt and Ms Clara Rojas have been held captive by Revolutionary Armed Forces of Colombia (FARC) guerillas in Colombia since February 2002; and

(b) requests the Australian Government to write to President Uribe asking that he take urgent and active steps to secure the release of Ms Betancourt, Ms Rojas and other captives of the FARC.

Question agreed to.

GREATER SUNRISE GAS PROJECT

Senator NETTLE (New South Wales) (3.56 p.m.)—As amended, by leave—I move:

That the Senate calls on the Australian Government:

(a) to negotiate a unitisation deal concerning Greater Sunrise that considers for the purpose of negotiating the Timor Sea Treaty that at least 80 per cent of the Greater Sunrise gas field is deemed to lie within the Joint Petroleum Development Area (JPDA);

(b) if it will not negotiate in good faith about the proportion of Greater Sunrise deemed to lie within the JPDA, to ensure that negotiations regarding the Timor Sea Treaty proceed independently of the Greater Sunrise unitisation arrangement being finalised; and

(c) in order to facilitate ongoing negotiation in good faith, to recommit to the jurisdiction of the International Court of Justice with respect to the determination of maritime boundaries.

Question put.

The Senate divided. [4.01 p.m.]

(The President—Senator the Hon. Paul Calvert)

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Senator Collins has subsequently written to the committee, pointing out the substantial number of amendments which have been proposed in relation to the bills and suggesting that the committee scrutinise amendments, whether made, moved or circulated. Others also asked if the committee could look again at certain provisions for the making of guidelines. The committee thanks Senator Collins for her letter, which raises significant issues for its operation. The committee has now discussed the letter, and the special Alert Digest, which I have just tabled, sets out its conclusions.

In relation to the scrutiny of amendments, the committee has decided not to change its present practice of commenting only on amendments actually passed, rather than extend its scrutiny to amendments which are moved but not passed or which are merely circulated. The committee decided that, on the basis of principle, precedent and practicality, it would not be feasible to implement the proposal.

In brief, the practicalities alone would preclude the committee from scrutinising all circulated amendments, at least without substantial notification of its methods of operation. At present, the committee’s processes include receiving a report from the legal adviser on each bill, meeting to discuss the Alert Digest, sending and receiving ministerial correspondence and, finally, reporting to the Senate. This timetable would be difficult for most amendments but would be impossible for many others. For instance, drafting instructions for amendments may be given at short notice with only a brief period before circulation. In such cases, the committee would be simply unable to respond in a meaningful way which would assist chamber’s consideration of amendments. The proposal is not realistic at the present time, given the committee’s existing role and procedures.

The committee, however, has agreed to raise with the minister the question of clauses in the Research Involving Embryos Bill 2002, providing for the issue of guidelines which may be legislative in nature but which are not subject to parliamentary scrutiny. Legislative instruments should, in gen-
eral, be subject to parliamentary scrutiny by possible disallowance or at least by tabling. In the present case, the only safeguard is that one set of guidelines must be specified in the *Gazette*, which may not sufficiently protect parliamentary propriety. The position is exacerbated by the fact that several of the guidelines have effect or are in force from time to time, which means that legislative power is not simply delegated as a single but as a continuing exercise of power. One of these provisions allows the regulations in effect to subdelegate legislative power to any person at all and to permit its operation from time to time without any parliamentary scrutiny. Here the regulations could be disallowed, but the subdelegated power will not have parliamentary supervision. I should add that the powers which I have described relate to an offence provision, the penalty for which is imprisonment for up to five years.

Finally, at its meeting yesterday the committee discussed its future direction and ways in which it could enhance the assistance which it gives the Senate in relation to personal rights and liberties and parliamentary propriety. The committee has now been operating for 20 years, and I think all members are keen to see the committee develop. When this topic was raised at the meeting, members brought forward numbers of what I thought were original and exciting ideas. Members are agreed that it is appropriate to expand our activities, and so it is now a question of refining some of the concepts which we have. On behalf of the committee, I will report again when we have advanced further along these lines.

Question agreed to.

**BUDGET**

**Consideration by Legislation Committees**

**Additional Information**

*Senator McGauran (Victoria)* (4.10 p.m.)—On behalf of the Chair of the Community Affairs Legislation Committee, Senator Knowles, I present additional information received by the committee relating to hearings on the budget estimates for 2002-03.

**COMMITTEES**

**Membership**

The **Acting Deputy President** *(Senator Knowles)*—The President has received letters from party leaders seeking variations to the membership of committees.

**Senator Abetz** *(Tasmania—Special Minister of State)* (4.11 p.m.)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

- **Foreign Affairs, Defence and Trade Legislation Committee**—
  - Appointed—Substitute members for the consideration of the 2002-03 supplementary budget estimates:
    - Senator Barnett to replace Senator Ferguson, in place of Senator Eggleston, on 22 November 2002
    - Senator Faulkner to replace Senator Evans on 22 November 2002

- **Public Accounts and Audit—Joint Statutory Committee**—
  - Appointed—Senator Lundy
  - Discharged—Senator Moore.

Question agreed to.

**Procedure Committee**

*Senator Abetz* *(Tasmania—Special Minister of State)* (4.12 p.m.)—I move:

That the recommendations of the Procedure Committee in its second report of 2002, presented on 18 November 2002, be adopted as follows:

(a) standing order 25(10), relating to chairs of committees, be amended as set out in the report and circulated document with immediate effect;

(b) standing orders 29(2), 25(7) and 26(8), relating to quorums in committees, be amended as set out in the report and circulated document with immediate effect;

(c) a temporary order relating to the adjournment debate on Tuesdays, as set out in the report and circulated document, operate till the last sitting day in 2003.

Question agreed to.
AUSTRALIAN CRIME COMMISSION
ESTABLISHMENT BILL 2002
Second Reading

Debate resumed from 18 November, on
motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator ABETZ (Tasmania—Special
Minister of State) (4.14 p.m.)—I would like
to thank all senators for their contributions to
the debate on the Australian Crime Commis-
sion Establishment Bill 2002. During the
election campaign last year, the Prime Min-
ister announced that he intended to convene
a summit on terrorism and transnational
crime. That summit was held in April and,
amongst other things, it decided to replace
the National Crime Authority with an Aus-
tralian Crime Commission. Details of the
ACC were agreed between police and justice
ministers in August. The Australian Crime
Commission Establishment Bill was intro-
duced in the House of Representatives in
September and amends the National Crime
Authority Act to establish the ACC. The
ACC will combine the functions of the NCA,
the Australian Bureau of Criminal Intelli-
gence and the Office of Strategic Crime As-
sessments. The ACC will have an enhanced
national criminal intelligence capacity and is
designed to complement rather than compete
with existing law enforcement agencies.

The bill has received close scrutiny. It re-
flexes the agreement that has been reached
with the states and territories after extensive
consultation. It also reflects the majority of
the recommendations made by the parlia-
mentary Joint Committee on the National
Crime Authority. The committee is to be
commended for its efforts, and I would like
to reinforce the comments made by the At-
torney-General in the House. I wish to place
on record my appreciation, and that of the
government, of the efforts of the chair, the
member for Cook, Bruce Baird, the members
of the PJC and the staff of the secretariat to
the PJC.

I would like to briefly respond to some of
the major points that have been raised during
the debate. Labor senators have raised con-
cerns about coercive powers being given to
the police and have quoted public comments
by the Commissioner of the Australian Fed-
eral Police from early last year. I wish to
place on record again the government’s po-
sition on this very important issue. The gov-
ernment agrees that it is not appropriate that
coercive powers be given to police and there-
fore agrees with the AFP Commissioner’s
views. There is no inconsistency with this
position and the proposal before the Senate
for the ACC.

There is a clear distinction between the
authorisation of coercive powers and the ex-
ercise of those powers. It is proposed that the
board of the ACC be able to authorise the
use of the powers, but the exercise of those
powers will be by independent statutory offi-
cers, to be called examiners. The legislation
makes it clear that the examiners are not
subject to direction by the CEO or the board
in the exercise of those powers. The legisla-
tion also makes it clear that examiners are
expected to exercise an independent discre-
ption in relation to whether the power should
be used in particular circumstances. They
will be required to act reasonably, and they
will be required to record in writing the rea-
sons for deciding to exercise the powers in
each case. So it is not the case that coercive
powers have been given to police.

A further concern expressed during the
course of the debate related to a perceived
lack of ministerial accountability. There is no
lack of accountability under these proposals.
As a Commonwealth body, the ACC will be
accountable to the Minister for Justice and
Customs. The ACC will also be accountable
to an intergovernmental committee and to the
joint committee of this parliament. The gov-
ernment has responded to the PJC’s recom-
endations in the debate in the House of
Representatives and has summarised that
response in the second reading speech. The
government, with the concurrence of the
states and territories, agreed in whole or in
part with 13 of the 15 recommendations of
the PJC. The government moved amend-
ments to the bill in the House to give effect
to those recommendations for which legisla-
tion was required. However, the government
does not accept the additional recommenda-
tions made by certain members of the PJC.
In the course of debate in the House, refer-
ence was made to negotiations with the opposition about possible further amendments.

I want to place on record the government’s appreciation of the cooperation of the opposition in engaging in constructive negotiations. I am pleased to advise the Senate that those negotiations have been successful. The concern underlying the additional recommendations was that there should be some involvement by the IGC in the decision to authorise the use of coercive powers. However, the additional recommendations would have the effect of placing the authorisation power with the IGC, subject to an exception in case of urgency. The agreement reached by leaders was that this power should rest with the board and that the IGC would monitor authorisation decisions as part of its oversight role. The compromise reached with the opposition is that the board will be able to authorise the use of coercive powers and the IGC will have a power to revoke that decision. Put another way, the IGC will be given the power to veto authorisation decisions of the board.

The solution provides for an enhanced role for the IGC but permits the board to authorise the use of coercive powers with those decisions taking effect immediately. The government has circulated amendments to give effect to this compromise. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.22 p.m.)—by leave—I table a supplementary explanatory memorandum to the bill and I move government amendments (1) to (4) on sheet EJ319:

(1) Schedule 1, item 35, page 13 (after line 25), at the end of section 7C, add:
Informing the Inter-Governmental Committee

(5) The Chair of the Board must, within the period of 3 days beginning on the day a determination under subsection (2) or (3) is made, give a copy of the determination to the Inter-Governmental Committee.

When determination takes effect

(6) A determination under subsection (2) or (3) has effect immediately after it is made.

(2) Schedule 1, page 16 (after line 25), after item 36, insert:

36A At the end of subsection 8(5)
Add “There must be a minimum of 2 meetings each calendar year.”.

(3) Schedule 1, page 16, after proposed item 36A, insert:

36B Subsection 8(7)
Repeal the subsection, substitute:

7) A resolution:
(a) which, without being considered at a meeting of the Committee, is referred to all members of the Committee; and
(b) of which:
(i) if subparagraph (ii) does not apply—a majority of those members, or if a majority including a particular member or particular members is required for the resolution to have effect, a majority including that member or those members, indicate by telephone or other mode of communication to the member of the Committee representing the Commonwealth that they are in favour; or
(ii) if the resolution is that the Committee make a request under subsection 9(2) or that the Committee revoke a determination made under subsection 7C(2) or (3)—the member of the Committee representing the Commonwealth is in favour and at least 5 other members indicate by telephone or other mode of communication to the member of the Committee representing the Commonwealth that they are in favour;

is as valid and effectual as if it had been passed at a meeting of the Committee duly convened and held.

(4) Schedule 1, item 38, page 17 (after line 11), at the end of section 9, add:
Request for more information about special determination

(2) Within the period of 30 days beginning on the day the Committee is given a copy of a determination (a special determination) under subsection 7C(2) or (3), the Committee may by resolution, with the agreement of the member of the Committee representing the Commonwealth and at least 5 other members of the Committee, request the Chair of the Board to give further information to the Committee in relation to the determination.

(3) Subject to subsection (4), the Chair of the Board must comply with the request.

(4) If the Chair of the Board considers that disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Chair must not give the Committee the information.

(5) If the Chair of the Board does not give the Committee information on the ground that the Chair considers that disclosure of the information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Committee may refer the request to the Minister.

(6) If the Committee refers the request to the Minister, the Minister:

(a) must determine in writing whether disclosure of the information could prejudice the safety or reputation of persons or the operations of law enforcement agencies; and

(b) must provide copies of that determination to the Chair of the Board and the Committee; and

(c) must not disclose his or her reasons for determining the question of whether the information could prejudice the safety or reputation of persons or the operations of law enforcement agencies in the way stated in the determination.

Revoking the special determination

(7) Within the period of 30 days beginning on the day the Committee makes a request under subsection (2) in relation to a special determination, the Committee may by resolution, with the agreement of the member of the Committee representing the Commonwealth and at least 5 other members of the Committee, revoke the determination.

(8) The Committee must notify the Chair of the Board and the CEO of the revocation. The revocation takes effect when the CEO is so notified.

Note: One of the effects of the revocation is that the coercive powers in Division 2 of Part II are no longer able to be exercised in relation to the ACC operation/investigation concerned.

(9) To avoid doubt, the revoking of the determination does not affect the validity of any act done in connection with the ACC operation/investigation concerned before the CEO is so notified.

Committee under no duty to consider whether to exercise powers

(10) The Committee does not have a duty to consider whether to exercise the power under subsection (2) or (7) in respect of any special determination, whether the Committee is requested to do so by any person, or in any other circumstances.

I will add to Senator Abetz’s comments by thanking the opposition for its cooperation in this matter. I thank especially the parliamentary joint committee on the National Crime Authority and its chairman, the member for Cook, Bruce Baird, and also the senators in this chamber who have contributed to the debate.

This package of proposed amendments will introduce a further level of ministerial oversight in relation to the functions of the board by providing the IGC with the power to revoke a decision of the board to authorise the use of coercive powers. During the course of the parliamentary joint committee’s hearings, this issue came up and was discussed. The government was minded to reject the additional comments made by opposition members of that committee but, during the course of discussions with the opposition, a number of issues were identified and I believe that this package addresses those concerns.

Government amendment (1) inserts a provision requiring the chair of the board to
provide a copy of a determination that an Australian Crime Commission operation or investigation is a special ACC operation or investigation to the IGC within three days of having made that determination. This amendment also provides that a determination made by the board takes effect immediately it is made. You have here a situation in which an operation or investigation can be determined to be a special operation or investigation, and the significance of that is that coercive powers then attach to that determination. It is one of the unique aspects of the ACC that you can have coercive powers involved; that is, a person is required, under the provisions of those coercive powers, to answer questions if brought in. That is unknown to Australian law and Australian law enforcement generally, because normally a person has a right to silence.

Now, in relation to the exercise of these powers, we have been very careful to distance them from those police commissioners who sit on the board because we believe that the police should not have those powers, nor do the police want those powers. So this is part of the oversight that I mentioned, and you cannot have that sort of oversight by the intergovernmental committee, which comprises government ministers from the territory, state and Commonwealth level, without having a communication of the determination to that board, and that communication should be made within three days. That ensures that it is not left hanging around. As well as that, the decision by the board should also not be hindered by this mechanism of oversight; that is, the decision by the board to investigate a matter of public importance that of national significance in the criminal sense should stand. The investigation should then ensue but of course whilst that is being done the IGC, if it has any concerns, can then look at the determination that has been made.

Amendment (2) amends section 8(5), which provides that the meetings of the IGC shall be held at such times and places as are from time to time agreed by the members of the IGC, to insert an additional requirement that there must be at least two meetings of the IGC in each calendar year. That is of course something which was mentioned, that we should ensure that the IGC, to maintain proper scrutiny, should meet a certain number of times each year. That is addressed by government amendment (2).

Government amendment (3) repeals and substitutes a new section 8(7), which deals with out of session resolutions of the IGC. The effect will be that the voting in relation to resolutions that do not relate to revoking determinations will remain by a majority vote but that any resolution that relates to revoking a determination must be agreed to by the members representing the Commonwealth and at least five other IGC members. That is also another important part of the package.

Amendment (4) inserts provisions enabling the IGC to revoke a determination that an ACC operation or investigation is a special operation or investigation. This is the nub of the scrutiny and of the transparency, because this means that the board, which is made up of law enforcement officers, can determine that the coercive powers should be used, albeit that the board members will not have personal power over the exercise of those powers. They make the decision that the powers should be used but there will be some mechanism of oversight by the intergovernmental committee, which is made up of ministers who are of course accountable to their parliaments. We have to put in place a mechanism for that to be workable.

This power of revocation is exercisable if, within 30 days of having received the determination from the board, the member of the IGC representing the Commonwealth—that is the Minister for Justice and Customs at present—and at least five other ministers decide that they need more information in relation to the determination and resolve to request the chair of the board to provide that information to them. The chair of the board then has to comply with that request and provide information, but that information must not prejudice the safety or reputation of persons or the operations of law enforcement agencies. The IGC may, within 30 days of having requested that additional information by a resolution which is agreed to by the Commonwealth’s representative and five
other members, revoke the determination. So within 30 days of receiving the determination you have the ability to call upon the chairman of the ACC board to give further details as to why this power was needed, why this determination was made and if upon hearing the chairman the IGC is not so satisfied it can revoke that determination within 30 days. That is very important because it gives that ministerial oversight to the operation of this very important national law enforcement body which has the ability to exercise coercive powers.

Of course, you have to give protection to law enforcement officers who are going about their duties and who have embarked upon an investigation. Therefore, included in this package of amendments is that the revocation of a determination would mean that the ACC operation or investigation, while no longer a special ACC operation or investigation, would be still valid up to that point—that is, those officers are indemnified from any action against the fact of revocation. You do not want law enforcement officers thinking, ‘I’m too scared to act in this matter, because the ministers might overturn it.’ You do not want some law enforcement official to be reticent because of some potential revocation. So, while a determination remains on foot, law enforcement goes about its business and investigates. If a determination is revoked, the coercive powers that I have mentioned fall away but the revocation does not invalidate any past acts up to that point, and I think that is very important.

One point worthy of note is that the amendments also provide that the IGC is not required to consider whether to exercise the powers either to ask for more information or to revoke a determination—that is, the IGC does not have a duty to reconsider and make a decision in relation to each and every determination. Importantly, this operates only where the IGC is of a mind that there has been an overstepping of the mark by law enforcement. Remember that, from a law enforcement point of view, the safeguards here are that the politicians have constraints placed on them as to their decision. Several politicians could interfere with law enforcement by revoking a determination, but you would have to have five ministers from the states and territories who are on that government committee plus the Commonwealth representative, who is normally the Minister for Justice and Customs, so one would think that would make it a requirement that would come about only in the most exceptional circumstances. Similarly, in the case of the board when it is determining whether or not there should be a special investigation or operation, it too has a requirement that there be a two-thirds majority of the board in relation to that determination. You just cannot say willy-nilly, ‘We’re going to use coercive powers.’

In summary, this package of amendments involves heightened scrutiny of the exercise of law enforcement powers without presenting undue hindrance to the pursuit of organised criminals in Australia. This has come about as a result of discussions since the parliamentary joint committee report, and Senator Abetz in his speech outlined how we have taken on board the vast majority of recommendations from the parliamentary joint committee. We did not take on board the suggestions of the opposition members of the PJC in relation to ratification; that was a more onerous requirement which would have had the IGC playing a part in every determination that dealt with coercive powers. This allows the IGC to be involved if it sees a need. If there is no need to be involved, there is no need for the IGC to then become an impediment to the swift operation of law enforcement.

We have here a bill that is perhaps one of the most significant in recent times in relation to the pursuit of transnational and organised crime in Australia. The NCA, which was set up in the early eighties, was perhaps the last significant step we as a nation took in fighting organised crime. This bill brings the fight against organised crime into modern times. It brings together a more streamlined approach. It brings together security and law enforcement for the first time ever: we will have ASIO and the head of Customs sitting on the board with state police commission- ers. This is what is required if Australia as a nation—the states, the territories and the Commonwealth government—is to fight or-
organised and transnational crime in this country.

This bill gets rid of the references system, which was plagued with red tape and a process that was convoluted. Law enforcement often has to act quickly. We saw that in the murder of Don Hancock in Western Australia last year. We saw how coercive powers needed to come into play quickly in that instance in relation to the pursuit of the killers, who law enforcement believed were linked to organised motorcycle gangs in Western Australia. What we did not need was a complicated reference system that had to be voted upon by ministers around the country before law enforcement could use these important powers. We have here safeguards and balances that I think are appropriate and that provide the scrutiny that I think is required by the Australian community.

**Senator LUDWIG (Queensland) (4.35 p.m.)—**In my contribution in the second reading debate last night, I highlighted that the model proposed by the government in the Australian Crime Commission Establishment Bill raised fundamental points of principle for the Labor Party. Labor is serious about fighting crime, but Labor is also serious about upholding the important principles of responsibility and accountability within our parliamentary system of government. That is why we are seeking amendments to this bill that are designed to support important principles that inform the establishment and operation of the NCA in the first place.

Labor supports the additional three recommendations made by the majority of the Labor members of the parliamentary Joint Committee on the National Crime Authority, which relate to the system for approving the exercise of coercive powers. A defining feature of the NCA is that it holds coercive powers similar to those of a royal commission. These are powers to obtain documents and other evidence and to summon a person to appear at a hearing to give evidence under oath. As it now stands, these coercive powers can be used only in very defined circumstances and with ultimate accountability lying with the intergovernmental committee, which is made up of the various ministers. At the time that the NCA was set up, there was extensive debate about the nature of these coercive powers and a recognition of the fact that no government would allow them to be solely in the hands of the police forces, bureaucrats or politicians. That is why the architect of the NCA devised the references system whereby the ministerial level intergovernmental committee refers matters to the NCA for investigation.

Under the proposed new model for the Australian Crime Commission, the board—and remember that it is made up of police commissioners and bureaucrats—will not only determine priorities for the organisation but also have the power to press the green button on the use of coercive powers. The board can also approve the use of the powers for the purpose of intelligence gathering—a move away from the investigative focus of the National Crime Authority. Overall, the new model is a major departure from the current regime, where special powers may be exercised only after a matter has been referred to the NCA by the intergovernmental committee.

The shadow minister for justice and customs told the House last week that he understood the government would introduce amendments to address the additional three recommendations of the Labor members of the PJC. The government has today tabled those amendments. In essence, Labor’s objective in seeking amendments was to ensure ministerial accountability under our system of responsible government. In fact, the three recommendations of the majority of the Labor members of the parliamentary joint committee were designed to do exactly that. The government amendments go some distance towards achieving that objective by effectively giving the ministerial level intergovernmental committee the power of veto over a decision of the board to authorise the use of special or coercive powers of the new Australian Crime Commission. In a sense, the amendments approach the issue of ministerial accountability via the route of a power of veto rather than via a power of approval.

This is certainly a significant improvement on the original model, which would have given the board an unfettered power to
approve the use of coercive powers. Indeed, the original model even allowed a subcommittee of the board to authorise the use of coercive powers—a situation that was reversed last week with the introduction of a suite of amendments in the House by the government. Under these amendments the ministerial level IGC must be given a copy of the board’s determination to authorise the use of the coercive powers. The intergovernmental committee can then request further information about the board’s determination. Armed with that information, the ministers have 30 days in which to make a decision whether to overturn the board’s determination. An absolute majority of the members of the IGC, including the Commonwealth Minister for Justice and Customs, is needed to overturn the board’s decision.

The overall effect of these amendments is to reinstate the important principle of ministerial accountability into the process for the authorisation of the special powers that will be held by the new Australian Crime Commission. On the basis that these amendments achieve Labor’s stated objective of ensuring an appropriate level of ministerial accountability and responsibility, Labor is prepared to support the bill with these amendments. I might also add that, in a letter from the Hon. Chris Ellison, those principles put forward by Mr Melham were agreed to, and we are now actually in a position of being able to say that the process of coming to that agreement was well worth it to ensure that there was ministerial accountability and to ensure that the Australian Crime Commission will have the powers that it requires to fight crime. In that process, Mr Melham joined the government in ensuring that the Australian Crime Commission is a body that will be able to effectively fight crime. We think the amendments assist in that process. Labor is in a position to support the four amendments as circulated today by the minister, along with the supplementary explanatory memorandum.

Senator GREIG (Western Australia) (4.41 p.m.)—We Democrats will support the amendments as circulated, as they do go some way to improving the accountability of the Australian Crime Commission Establishment Bill—something we care very strongly about. The transfer of power to authorise the use of the Australian Crime Commission’s substantial coercive powers from the intergovernmental committee to the ACC board represents one of the most significant changes under the new regime that will be established by this legislation. Whereas this power has previously been exercised by a ministerial group, it will now be exercised by a board consisting of police commissioners and Commonwealth agency heads.

As I outlined in my speech in the second reading debate earlier today, this has significant implications for the accountability of the ACC, and we Democrats share many of the concerns expressed by the individuals and organisations who made submissions to the parliamentary joint committee. In particular, we are concerned that these powers are to be vested in a body which is dominated by police interests and which is not subject to parliamentary accountability in the same way that the IGC is. For that reason, we Democrats would ideally like to have seen the power to authorise the use of coercive powers retained by the IGC. Unfortunately, however, the government indicated that it would not agree to such a regime, and it was in this context that the amendments before us were negotiated between the government and the opposition.

The amendments seek to ensure greater accountability of the ACC board to the IGC when making determinations as to which investigations and intelligence operations should be classified as special investigations and operations, thereby enabling the ACC to exercise the coercive powers which it has. The amendments effectively invest the IGC with a power of veto over a determination by the ACC board that an investigation or operation is a special investigation or operation. The chair of the ACC board will be required to notify the IGC of a determination relating to a special investigation or operation within three days of that determination being made. This is covered by amendment (1). The IGC then has the power to request further information regarding the determination or to revoke the determination within 30 days of
receiving notification of the determination, as covered by amendment (4).

A resolution to request further information or to revoke a determination must be supported by the Commonwealth representative on the IGC and at least five other members of the IGC, as covered by amendment (3). The chair of the ACC board must comply with a request from the IGC for further information unless the chair considers that disclosure could prejudice the safety or reputation of persons or the operations of law enforcement agencies, as covered by amendment (3). If the chair refuses to provide the information on that basis, the IGC may refer the request to the minister, who must then provide the chair of the board and the IGC with a determination in writing, as covered by amendment (4), in proposed sections 9(5) and 9(6).

If the IGC revokes a determination of the board relating to a special investigation or operation, it must then notify the chair of the board and the CEO of the revocation. The revocation comes into effect upon the notification of the CEO, and at this time the ACC will no longer be authorised to use coercive powers, as contained within amendment (4), proposed section 9(8). The revocation of a determination regarding a special investigation or operation will not affect the validity of any act in the ACC in connection with the investigation or operation prior to the revocation coming into force, as explained in amendment (4), proposed section 9(9). Finally, amendment (2) will require that the IGC meet at least twice a year.

These amendments represent a compromise between appropriate accountability measures and the alleged need for greater efficiency in the determination process. We Democrats do not believe that these amendments go far enough or that they get the balance quite right, as I have said. We would ultimately have preferred to have seen the determination powers retained by the IGC. However, we do acknowledge that the amendments will bring about some substantial improvements in the accountability of the ACC board and, accordingly, we support them.

Question agreed to.

Senator GREIG (Western Australia) (4.46 p.m.)—by leave—I move Democrat amendments (1) and (R3) on sheet 2747:

(1) Schedule 1, item 253, page 55 (line 23), omit “Subject to subsection (2), if”, substitute “If”.

(R3) Schedule 1, item 253, page 56 (line 4), omit “(1) or”.

Democrat amendment (1) was foreshadowed in my speech in the second reading debate. It addresses one of our key concerns regarding the accountability of the ACC board. As I have mentioned, the bill transfers the power to authorise the use of coercive powers from the IGC to the ACC board—that is, from a ministerial group subject to parliamentary accountability to a board dominated by police commissioners. The amendments negotiated by the opposition and the government do substantially improve the accountability of the board and the exercise of its coercive powers by vesting in the IGC a power of veto over determinations made by the board.

The provision of relevant information to the IGC and to the Commonwealth minister is another important accountability mechanism. Amendment (1) relates to the obligation of the chair of the ACC board to provide information to the Commonwealth minister about a specific matter relating to the ACC’s conduct in the performance of its functions. This obligation flows on from a similar obligation which applies to the NCA under the present regime. However, the bill introduces a new limitation on this obligation. Pursuant to proposed section 59(2), the chair must not provide information to the minister if the chair considers that disclosure of the information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies. We Democrats understand and accept that such a limitation might be appropriate in relation to the disclosure of information to the public.

Moreover, the limitation would create difficulties for the minister in considering a refusal by the chair to provide information to the IGC, pursuant to proposed section 9(4). Where such a refusal has been made, the IGC may refer its request to the Common-
wealth minister for determination. Clearly, the ability of the minister to consider such a referral could be impaired by the fact that he or she may also be denied access to the information in question. It is imperative that the minister have access to the information in question in order to exercise this power effectively and fairly. The Democrats do not foresee any serious risk of disclosure to the public by the minister. For this reason, we believe that the limitation must be removed.

This will facilitate the provision of all relevant information to the Commonwealth minister and increase the accountability of the board. Amendment (R3), moved conjunctively here, is simply consequential to amendment (1), should that be supported.

Senator LUDWIG (Queensland) (4.49 p.m.)—The opposition supports amendments (1) and (R3) that have been moved by Senator Greig in relation to the Australian Crime Commission Establishment Bill 2002. Senator Greig has outlined what our position is also, so we adopt the submission of Senator Greig in relation to amendments (1) and (R3). The opposition is of the view that the first part of proposed section 59(1)—which provides that the chair of the board must keep the minister informed of the general conduct of the ACC in the performance of the ACC’s functions—is a necessary corollary of the powers and ensures ministerial responsibility. Having a caveat on it, or a subsection (2) proviso, could be difficult to construe in the longer term anyway. Proposed section 59(2) says:

If the Chair of the Board considers that disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Chair must not provide the information under subsection (1) or (1A).

Consequential amendment (R3) amends that section. It would ensure that the minister is kept within the loop. In proposed section 59(1), the general conduct of the ACC becomes a matter that the minister can request information about. The minister should not be denied access to information that he or she should rightly have at his or her disposal to ensure the proper conduct of the ACC in all its work that it undertakes in fighting crime. The Labor opposition supports these amendments; they find favour with us.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.51 p.m.)—The government will be supporting Democrat amendments (1) and (R3). These, as outlined by both Senators Greig and Ludwig, do provide further transparency. Democrat amendment (1) amends section 59 so that there are no limitations on the information that may be requested by the Commonwealth minister. This is necessary to ensure that the minister will have access to sufficient information to determine whether sensitive information should be disclosed to the IGC and the PJC and whether it is consistent with the Commonwealth minister’s responsibility for the Australian Crime Commission. It also reflects the current practice. Amendment (R3) is an amendment consequential on this. I can see there is merit in these amendments. I take on board the comments made by Senators Greig and Ludwig and concur with them.

Question agreed to.

Senator GREIG (Western Australia) (4.52 p.m.)—I move Democrat amendment (2) on sheet 2747:

(2) Schedule 1, item 253, page 56 (lines 1 and 2), omit “to the public”, substitute “in the circumstances”.

This amendment is intended to ensure that the appropriate test is applied in determining whether the limitation should apply. It requires that the chair consider whether the disclosure of information in the circumstances—that is, to the minister or ministers in question—could prejudice the safety or reputation of persons or the operations of law enforcement agencies. The limitation on the chair’s obligation to provide information also applies to the provision of information to the minister of a state. Yet curiously the test as to whether this limitation applies is whether the disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies. The Democrats would argue that the standard which should be applied to disclosure of the information to the public will necessarily be substantially higher than that which would apply to the disclosure of the
information to the minister of the Crown. Hence this amendment, which I commend to the committee.

Senator LUDWIG (Queensland) (4.53 p.m.)—Labor is not persuaded by the Democrat submission in respect of this amendment to proposed new section 59(2). Their amendment would delete the phrase ‘to the public’ and replace it with ‘in the circumstances’. In our view the phrase ‘in the circumstances’ does not shed sufficient light on what the outcome would be and, on balance, we consider that it is not an improvement to the clause as it currently reads. The phrase ‘to the public’ seems to easily capture the meaning of proposed section 59(2). We are not persuaded that the phrase ‘in the circumstances’ would add any benefit to, or improve the operation of, the provision. On the basis, we do not find favour with the amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.55 p.m.)—The government will not be supporting the Democrat amendment in relation to this matter. It believes the proposal will change the test to be applied by the chair of the board from an objective one to one which would vary with the circumstances. As Senator Ludwig has said, the current test does not deal with the circumstances; it deals with the public. The proposed new subsection states:

(2) If the Chair of the Board considers that disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Chair must not provide the information under subsection (1) or (1A).

We would rather have it as it is; it is a more objective test. We believe that this amendment would be a more variable one. On balance, we therefore believe that we should oppose the amendment, notwithstanding that the government has supported amendments (1) and (3).

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.56 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

REVIEW OF THE IMPLEMENTATION OF OCEANS POLICY

Return to Order

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.57 p.m.)—by leave—On behalf of the Minister for the Environment and Heritage, I wish to respond to the order agreed to by the Senate on 18 November 2002 relating to a document entitled Review of the implementation of oceans policy: final report. The document has been prepared for cabinet as part of the government’s ongoing review of the national oceans policy. The Commonwealth’s 1998 oceans policy committed the government to a comprehensive review of the effectiveness of the policy every five years to ensure that the identified strategic directions and specific actions contribute effectively to the achievement of the policy’s goals. The government is committed to ensuring that Australia’s oceans policy is effective in achieving the best possible management of our oceans.

I note the statement of former Senator Gareth Evans in December 1993, where he stated:

The truth of the matter is that executive governments from time immemorial have claimed some degree—not a complete degree—of immunity from scrutiny of their internal processes in order to enable decision making to take place in an orderly way, and allow communications to pass between ministers and policy issues to be addressed in a way that is not necessarily the subject of intense public scrutiny at the time that that decision making process is still under way.

This position has been accepted by both Labor and coalition governments. In accordance with this established precedent, I do not consider it appropriate for the report to be released at this stage.

Senator LUDWIG (Queensland) (4.59 p.m.)—by leave—I wish to respond briefly
to the minister’s comments. I acknowledge
the minister’s comments in relation to Sena-
tor McLucas’s motion for an order for the
production of the final report of the TFG
International. However, I wish to take the
opportunity to remind the minister of the 13
other orders for the production of documents
which, according to today’s Senate Notice
Paper, remain outstanding. That number
does not include the 15 other orders for the
production of documents still current from
previous parliaments. This is disgraceful!
These orders of the Senate—and I wish to
remind the ministers present that they are
orders of the Senate, made under this gov-
ernment—date back to May 1998. This is a
shocking and abysmal record and continues
this government’s complete lack of account-
ability. I have spoken before of this govern-
ment’s lack of accountability. In the interests
of time, I shall not repeat myself. However,
the government’s lack of transparency and its
unwillingness to explain its actions to the
electorate and to be accountable to the Aus-
tralian public through this parliament’s proc-
esses undermine the strength of our demo-
cratic system. The Senate’s brief on orders
for the production of documents states:
The power to require the production of informa-
tion is one of the most significant powers avail-
able to a legislature to enable it to carry out its
functions of scrutinising legislation and the per-
formance of the executive arm of government.
I can put no greater emphasis on it than that.
This government’s failure to respond, or
slowness in responding, to orders for the
production of documents is frustrating the
function of the legislature. It is frustrating to
the opposition. We ask in good faith for the
production of documents and they are not
forthcoming. It is not explained in any detail
why they are not forthcoming. It is not explained in any detail
why they are not forthcoming. It would be
far better if this government took notice of
the order for the production of documents
and provided that information. The govern-
ment needs to explain the reasons for the
disrespect that it is showing to the orders of
the Senate and to drastically improve its
compliance with orders. More than that: it
needs to start complying with the orders. It is
not good enough to ignore the orders.

The government talks frequently about
 corporate governance and about companies
being accountable. However, it does not set a
good example itself. Complying to orders for
the production of documents is about ac-
countability. We have just had an opportunity
to pass a bill dealing with the Australian
Crime Commission, and in that bill we
talked about ministerial responsibility and
accountability. Yet, when we come to orders
of the Senate, the government has been
lackadaisical. You have to come to the con-
clusion that the government’s noncompliance
of the orders for the production of documents
is more than just a lacklustre performance by
this government; it is something that de-
serves criticism. The government should do
better. The government clearly does not un-
derstand that its actions in not complying
with the Senate’s orders only confirm what I
have long suspected: this government is not
interested in corporate governance in relation
to the big end of town or as it applies to it-
self.

I want to remind the Senate of what
Senator Ian Campbell said in relation to an
order for the production of documents in
1994. At that time he moved a censure mo-
tion condemning a minister for not comply-
ing with an order for the production of
documents. I am not about to do that today,
but I reserve my right to do it at a later
date—this is not a threat—if the government
does not respond more readily to orders for
the production of documents, or provide
good and cogent reasons why it is not com-
plying or cannot comply with the order for
the production of documents so that this
Senate can take note of and heed them.

Senator Campbell said at that time:
The subject of the censure motion is that the
minister has breached an order of the Senate. That
is a serious offence. The Senate considered the
points I put to it last week and made the decision
to order the minister to table documents. The
minister has breached that without any apology or
explanation and without even seeking to have
discussions, and that requires censure.
If the Senate loses its power to compel the ex-
cutive to table these sorts of documents then we
may as well go home.
That is a euphemism, but this is the point
that Senator Campbell made back then: if
you do not produce the documents, then you are remiss as a government, you have missed the boat and you may as well go home. I am not going to go home this time, but this government’s failure to respond to the orders of the Senate is frustrating the processes of the Senate and the democratic processes in Australia.

On another occasion, in relation to the same return to order, Senator Campbell said:

When the Senate is not able to be properly informed about these matters, we are undermining the democracy and the accountability processes that are quite proper in this parliament.

I hope that Senator Campbell is listening. I will certainly convey to him what I have said, and I expect the advisers and the minister on duty may do so as well. This government is making a habit of hiding information and of not disclosing information that Australians deserve and are due. It is not acceptable that orders for production are not, without proper reason, complied with or complied with in a timely manner. It is disappointing, but I am hoping that the government will take heed and seek to comply with the orders still current.

**Senator Ellison**—We all feel duly chastened.

**BUSINESS**

**Rearrangement**

**Senator Ellison** (Western Australia—Minister for Justice and Customs) (5.06 p.m.)—I move:

That the intervening business be postponed until after consideration of government business order of the day No. 11, the Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002.

Question agreed to.

**FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (DISABILITY REFORM) BILL (No. 2) 2002**

**Second Reading**

Debate resumed from 23 September, on motion by **Senator Ellison**:

That this bill be now read a second time.

**Senator Mark Bishop** (Western Australia) (5.07 p.m.)—The Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002 contains minor alterations to a previous piece of legislation that sought to implement the government’s budget decision to cut, by $54 per week, the payments of tens of thousands of people with disabilities. The previous piece of legislation, the Family and Community Services Legislation Amendment (Disability Reform) Bill 2002, was withdrawn by the government in the Senate in the face of its certain defeat. As far as the Labor Party is concerned, nothing has changed.

Like the first bill, this bill seeks to give effect to the government’s mean-spirited 2002-03 budget measure to alter eligibility requirements for a person to receive the disability support pension. Initially, the changes were portrayed as being about assisting and supporting people with disabilities to find employment. However, as soon as the community saw the inconsistencies between the budget measures and the welfare reforms expressed in the McClure report, the government resorted to the familiar ramped rhetoric of welfare rorts and bad backs. People with bad backs were now the target, according to the Minister for Family and Community Services, Senator Vanstone, and the Prime Minister. Never mind the fact that people with serious disabilities would also be affected by the cuts.

Make no mistake, the changes represent an unprecedented attack and affront to the 3.1 million Australians who have a disability. Contrary to the government’s claim that their motivation was to help people with disabilities to find work, they will not assist one person with a disability to gain work. The changes are about removing 12 per cent of the income and a substantial amount of material assistance available to people with disabilities while at the same time asking them to go out and secure a job. The question that no government member from the Prime Minister down has asked is: why do you need to cut someone’s income to help him or her find work? The difference between the bill we are debating today and the one that the government withdrew earlier this year is that the government propose to save or grandfather existing recipients of DSP from
the new rules. The proposition is that the new rules only apply to those people who apply for the DSP on or after 1 July 2003. As was the case with the first version, this bill seeks to amend the current work test which applies to those applying for DSP and to those having their entitlement reviewed.

Specifically, schedule 1 seeks to alter the definition of ‘work capacity’ from 30 hours a week at award wages or above to 15 hours. It should be noted that the current test is whether a person is capable of working 30 hours a week inside a period of two years and follows a fairly stringent medical determination that a person has a disability. Item 15 of schedule 1 contains the new transitional provisions that protect claims lodged for DSP prior to 1 July 2003. Schedule 1 also seeks to broaden the types of assistance or intervention that can be considered in determining work capacity. This has the effect of giving the Secretary of the Department of Family and Community Services greater flexibility in making a judgment about whether, with appropriate intervention, a person has the capacity to work at the threshold level or above inside two years. The schedule also seeks to remove the ability to consider local labour market conditions for people aged over 55 in determining work capacity. As a result, an individual within 10 years of retirement and living in a community with negligible labour market programs or employment prospects would no longer have their limited employment or training opportunities taken into account and would not qualify for the more generous DSP. Again, claims lodged prior to 1 July 2003 would not be affected by this measure.

The bottom line is that the government’s intention to tighten access to DSP and to place people on lower paying benefits has not changed. Figures provided during Senate estimates hearings confirm that the revised measure would result in approximately 103,700 claimants for DSP having their application for the payment rejected over the forward estimates period to 2005-06. Many of these claimants would qualify for the lesser Newstart allowance—a difference of $54.40 per fortnight; some would qualify for other pension payments; and a small proportion of people would qualify for no payment at all.

This would entrench a two-tiered system that would create two classes of disability support recipients depending on when the claim was lodged. We would have a situation where two people with exactly the same disability and barriers to employment would be on different payments. One would receive the higher paying DSP, along with ancillary benefits like the pensioner concession card, the pharmaceutical allowance, access to the pensioner education supplement and greater incentive to work, with an income test that claws back less of any earnings they make. The other person with the same disability would receive the lower paying allowance, Newstart, worth $54.50 less per fortnight. They would not have a pensioner concession card to reduce public transport costs, car registration, rates or utilities. They would also not automatically receive the pharmaceutical allowance, which would see them pay more out of their pocket for medicines that help control their illness or disability. If they try to improve their skills through study, they would not be eligible for the education supplement to help with study related costs. In addition, the disabled person on Newstart would have to actively look for work, line up in the dole queue, fill out a dole diary—and they may also be forced to work for the dole. Same disability—different payments and requirements. To any reasonable person, it should be apparent that this is unfair.

But the government’s compromise position, which separates people with disabilities on the basis of the timing of their claim, does not address its own concerns. Those concerns are, firstly, that people with so-called bad backs be separated out from those with genuine disabilities. The fact is that the work test changes will affect people with varying levels and types of disability, including those with severe physical disabilities and chronic psychiatric disabilities. The second concern is that people with disabilities who work in business services—that is, sheltered workshops—be protected. The changes protect only those currently on the DSP, and so people with disabilities who take business service work after 1 July 2003 may do so on
Newstart, with a responsibility to look for other jobs.

The government says people working for or below award wages are protected. With respect, the test is not what people are doing now but what they are judged to be capable of doing within a two-year time frame. The government’s instrument for separating out so-called malingerers is a very blunt one indeed. I suggest that if the government is serious about malingerers who are not genuine it should step up compliance efforts, not cut them back as it has through the disbanding of front-line fraud-detecting staff in Centrelink.

In the changes being proposed in today’s legislation, we are particularly concerned about those people who have serious disabilities who will be caught up. In terms of disability type, the three largest groups of recipients of DSP are people with musculoskeletal or connective tissue impairments, those with psychological or psychiatric impairments, and those with an intellectual or learning disability. The changes would affect people from each of these main disability groupings. This gives the lie to the government’s claimed concern to stop people with bad backs rorting the system.

In particular, the changes will hurt those with episodic disabilities such as mental illness. Many of this substantial group of people receiving DSP find it impossible to live normally for any sustained period. Placing people with these disabilities on a payment that has strict daily and weekly obligations would be extremely detrimental to their welfare. They are unlikely to be able to consistently comply with mutual obligation requirements and would, therefore, be likely to lose further income through the breaching regime. There will also be those who will be caught by the new test who do have obvious physical difficulties if it is assessed that they have a work capacity of 15 hours a week or more. These changes will open the door for people with significant physical and intellectual disabilities to be forced onto the dole queue.

I urge government senators to listen closely. People must meet a minimum level of impairment and the work test. The two cannot be traded off. If a person has a serious and significant disability but slips in under the new work test—too bad. The only specific and defined exception is for those with permanent blindness. The changes put forward will see people with paraplegia, acquired brain injury, profound deafness, rheumatoid arthritis and other manifest disabilities and illnesses forced onto the dole queue. There are other pitfalls in the bill before us today. The compromise position will also mean that an individual who moves off payment to work or for another reason but returns later on will lose benefits. This, of course, will create a disincentive for those already on the DSP to take work or other opportunities, which is at odds with the government’s stated aim of increasing participation.

Labor also has very good policy reasons for opposing these changes. Put simply, the 15-hour test is too low, entrenching people in poverty. What do I mean by that? By definition, people forced onto Newstart or another allowance may only have a capacity to work 15 or 16 hours but no more. At minimum wages, this is just $340 per fortnight before tax. These people will be trapped on an allowance-level payment intended as a short-term benefit and earning a paltry income with no ability or prospect to increase their income to a reasonable level. They, by definition, cannot move off the payment, unlike existing allowance recipients who have no disability and who, given the skills and a willing employer, may increase their earnings by moving off the payment, even into full-time work. This is patently unfair.

So what is the alternative? Are there problems with the disability support pension? In short, yes. Let us have a look at the total numbers. They have increased substantially over the last decade in particular. Disturbingly, under the coalition the annual increase has not slowed, despite a strong economy. It is easy to be alarmist about the increase, but it is not as dire as the coalition claims and it is not because of an influx of roters and malingerers. Firstly, we have seen a loss of full-time work and an increase in part-time work. The losers have particularly been mature age people who have worked in traditional industries and who, in many in-
stances, have worn and broken bodies after a lifetime of work. They may also have few skills with which to re-enter employment in other areas. They are often also subject to discrimination from employers. But the largest growth areas of late have come from older women, resulting from the progressive increase in the female aged pension age and the phasing out of widows pensions and allowances. Additionally, under the coalition, growth has flowed from the liberalisation of the income and assets tests for pensions, which has seen people with disabilities but with higher levels of private incomes from savings and investments become eligible.

Also responsible is an increase in the level of disability in the community. The incidence of disability within the community increases with age. So as our population ages the disability support pension take-up increases. The ABS measures the level of disability in the community at regular intervals. The most recent survey, conducted in 1998, showed an increase from 15 per cent in 1981 to almost 19 per cent. So this is not simply a case of malingerers. The causes for the increase in disability pension numbers are many and varied. To suggest otherwise is simplistic and does no service to foster intelligent and rational debate.

Labor’s approach is to address the increase in the number of people on disability pensions who would like to participate, either by working or through other means, but who are not given the opportunity. Labor agrees that too few people with disabilities are working where they can or, indeed, are willing to do so. The problem is that the government does very little to encourage and prepare people with disabilities for participation. We do not need to cut their pensions. Labor will not support pension cuts, nor should the Prime Minister who promised before the election that they would not occur. The government must recognise that there are considerable up-front costs attached to real reform of the DSP. In fact, there is a large up-front investment needed. But, in the longer run, such an investment for some will save the equivalent of a whole pension—$429 a fortnight, rather then just $54 a fortnight—and improve someone’s life. Labor are not going to negotiate on any aspect of this legislation. When 100,000 people are going to pay the price, it is not the time for negotiation. Labor oppose this bill.

Senator GREIG (Western Australia) (5.24 p.m.)—For Australians with a disability, the Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002 is yet another case of ‘Here we go again’. This bill is yet another step in this government’s making. There have been six years of neglect of active strategies which would ensure those who can participate are assisted to do so.

To conclude, the Labor Party have no problem with welfare reform. We have been active reformers in this area in the recent past. We do have a problem with cuts to the social safety net that have no other aim but to save money. That is what this bill seeks to do and that is why Labor will not support it. We need positive reforms. We need heightened public awareness of the unmet need for disability services so that people get the support they so desperately require. We need to have as our goal helping people with disabilities to participate. We need to encourage and prepare people with disabilities for participation. We do not need to cut their pensions. Labor will not support pension cuts, nor should the Prime Minister who promised before the election that they would not occur.

The government must recognise that there are considerable up-front costs attached to real reform of the DSP. In fact, there is a large up-front investment needed. But, in the longer run, such an investment for some will save the equivalent of a whole pension—$429 a fortnight, rather then just $54 a fortnight—and improve someone’s life. Labor are not going to negotiate on any aspect of this legislation. When 100,000 people are going to pay the price, it is not the time for negotiation. Labor oppose this bill.
time frame of application in order to ‘preserve’, as it so inappropriately puts it, current recipients. People with disabilities, their families, their carers and those who support them would disagree that any rights have been preserved. Rather, this bill is just a slightly watered down version of the diminution of the rights of people with a disability, one which blatantly seeks to divide and, presumably, conquer the disability community. It does not deserve the support of the Senate.

The bill still proposes to tighten eligibility requirements by restricting eligibility to those people with disabilities who are capable of working for a maximum of 15 hours a week at award wages—currently that is 30 hours; removing the discretion for Centrelink to take account of the labour market circumstances of applicants over 55 years of age; and making it even tougher for those on Newstart allowance to gain an exemption from the activity test because of their disability by nebulously extending the definition of ‘on-the-job training and work activity’.

The clear intention of the government is to substantially reduce the number of people on the pension over time. Most of those no longer eligible would instead receive the lower Newstart allowance. Those not granted a pension will therefore have income support of at least $53 per fortnight less than their counterparts on the disability support pension, and many people with part-time earnings will be hundreds of dollars worse off every fortnight. Additionally, those unable to receive the disability support pension will miss out on the other support benefits—including pharmaceutical and other concessions, such as transport and communications—which are attached to the DSP and they will be expected to compete with non-disabled job seekers out there in a very competitive job market.

They will also be subjected to the harsh penalty regime for unemployed people who fail to meet Centrelink’s activity requirements. At a time when breaching is already having a catastrophic impact on the lives of unemployed Australians, this bill will place thousands more Australians directly into the firing line of the breaching regime. At the same time as this government refuses to act upon the recommendations of the Independent Inquiry into Breaching and the Ombudsman’s report, it is determined to force more people down the devastating path of breaching and poverty.

This bill is not about helping Australians with a disability. The government chooses to overlook the fact that $53 per fortnight is a 12 per cent reduction in income and many people will lose more than this. The government chooses to overlook the costs of disability—of personal care, transport, remedial aids, equipment and additional daily living and job-seeking costs that people without a disability do not have or experience. You do not get people with a disability a job by simply putting them into the dole queue without support, to compete with the hundreds of thousands of job seekers who do not have a disability.

This bill is about revenue raising and it is a revenue-raising exercise. The government wanted to save some $450 million over four years and even this new offer puts only a $161 million dent in the government’s budget figures. People with a disability are still the target of this government’s revenue raising and we are glibly expected to believe that taking less away from people with a disability, as this bill proposes, is somehow going to advantage them.

We know that there are many different types of disability. Disabilities may be physical, affecting the body; psychiatric, affecting the mind; sensory, affecting seeing or hearing; or cognitive, affecting learning and understanding. People also experience different degrees of disability. They can be from very mild to very severe. Many people have more than one type of disability. Yet the government’s panacea-style mantra of ‘use it or lose it’ does not apply evenly across the range of impairments. Try saying ‘Use it or lose it’ to a person suffering from uncontrolled and episodic epilepsy or a mental illness.

The minister makes much of the increasing number of disability support recipients as the sole impetus for this bill. With no empirical research into the reasons behind this—in fact, for seemingly no other reason
than ‘There are too many of them’—the minister has decided the number must be curbed. Any pressing for research into this has been countered with the general suggestion that it has become ‘too easy to get the pension’. Even more alarmingly, ministers have merely implied that too many people with bad backs receive the disability pension.

We do not dispute that the number of DSP recipients has increased—and data shows that the number of DSP recipients almost doubled during the 1990s—yet there has been no thorough examination by the government of the principal causes of this growth in DSP. Furthermore, the government has provided no research to support its assumption that people with disabilities in receipt of the DSP or making a claim in the future will attempt to get off the DSP and back into the workforce only if forced to do so with punitive rules and attitude.

Research has indeed been conducted into the main causes of the rise and number of disability support pensioners—not by government but by the Australian Council of Social Service, whose report entitled Key causes of the rise in disability pensioners was issued last week, and I thank ACOSS for their comprehensive research and well-supported findings. Surprisingly, the strongest rate of growth in DSP recipients was among mature age women—not mature age men, the archetypal DSP recipients. This is a very different trend from that in previous decades when growth among mature age male recipients predominated. Of the 263,000 increase in the number of recipients between 1990 and 1999, 141,000 were men and 122,000 were women. However, since only 27 per cent of recipients were female in 1990, this represents a much faster rate of growth in female recipients. The most dramatic growth was amongst mature age women. Although mature age males are the largest group of recipients, comprising almost half of all recipients, the rate of growth in their number over the decade was the lowest.

Importantly, ACOSS research analysis completely contradicts the government’s assertion that it is ‘too easy to get the pension’. In fact, government policy decisions to restrict access to other payments, especially for mature age women, have diverted people to the DSP, and this is responsible for approximately 20 per cent of the rise in DSP recipients. In the late 1990s, women’s eligibility for the age pension was raised above 60 years, and many mature age women with disabilities had to apply instead for a disability support pension. The government’s DSP proposals mean that these women will now be pushed onto lower paid unemployment benefits. We are considering a further bill in this place which will close off altogether entry to the mature age allowance and the widows allowance.

The report also found that growth in the number of people with disabilities is responsible for approximately 40 per cent of the rise in DSP recipients. Likely reasons for this include the ageing of the population, with mature age people being more likely to have disabilities; the improved identification of disabilities such as mental illness; and improved care and treatment that has improved life expectancy rates for people with disabilities, such as head injury. Labour market factors, such as the recession, are major factors in the increase in DSP recipients. During and after the recession of the early 1990s, many people became jobless, and those with disabilities and related workforce barriers such as age and limited skills faced greater difficulty securing jobs. At the same time, investment in employment assistance for the most disadvantaged job seekers was reduced.

Over the past 10 years the abolition of the sheltered employment allowance and the rehabilitation allowance saw the transfer of most recipients onto the disability support pension. In addition, restrictions were imposed on long-term receipt of sickness allowance—for more than 12 months—and many former long-term sickness allowance recipients also transferred to DSP. These changes to other illness or disability related payments boosted the number of people on the DSP. Policy and other changes have closed off access to alternative payments, such as the abolition of the wife pension for the spouses of people on DSP, many of whom themselves have a disability. Population ageing itself is a contributing factor in
the increase in DSP recipients, together with an increase in the incidence of disabilities among people within various age brackets.

The ACOSS research further finds that the phasing out of partner-widow payments and age pension for those over 60 years over the late 1990s, along with the decline in receipt of DVA pensions—mainly wife pensions for the partners of former veterans—also had an impact in the early part of the decade. Another possible factor is changes in state government policies regarding workers and accident compensation payments, which are also a substitute for the receipt of DSP. Indeed, the ACOSS research concludes that, in consideration of all the policy changes above, it would have been surprising if the numbers of DSP recipients had not increased. ACOSS’s findings are supported by the interim McClure report on welfare reform, which reported:
The more rapid increase—that is, in DSP recipients—recently appears to be primarily due to the combined impact of government policies and demographic trends. Government policies have added to the growth, as the availability of other payments has declined.

If these factors are the principal causes of growth in receipt of DSP, the appropriate policy response is not to make it harder to obtain and keep the pension. In that event, the DSP is performing its proper role as an income support payment for people with serious disabilities. So let us dispense once and for all with the public denunciation and demonisation by this government of disability support pensioners as rorters who are living off the taxpaying public and undertaking bricklaying jobs on the side. This ill-dreamt theory has been comprehensively denounced. Ask any person with a disability and they will tell you that those whose impairments permit require incentives, support, encouragement and assistance to get back into the work force. Those for whom paid work will never be an option want to participate in their communities, and for this they require adequate training and support, both short and long term. People with disabilities are among the most disadvantaged in Australian society. We know from thousands of Australians with a disability who have contacted my office and those of my colleagues that even this latest version of the bill will further disadvantage many people.

The Reverend Richard Miller, the chair of UnitingCare Australia’s national advisory committee on disability, said:

UnitingCare Australia is concerned that the changes will put many people who do genuinely contribute to society into a position of double jeopardy.

While official figures demonstrate that few people currently receiving the DSP are able to work, many who do are only able to work between 15 and 30 hours per week. Despite provisions of quarantine for current recipients, this revised legislation does not ensure that recipients will retain their disability support pension. People move off DSP for a number of lifestyle reasons, such as marriage or to raise children on parenting payment. When their circumstances change or relationships break down such that they again need income support, they will find themselves subject to the new rules, notwithstanding that their disability has not changed, and will not be eligible for disability support pension. Even for those who have not yet claimed disability pension, in particular the new requirement that people must be unable to work 15 hours a week before being able to access DSP shows a misunderstanding of many chronic illnesses such as HIV-AIDS.

The government thinks this legislation will encourage people with disabilities to consider the possibility of part-time work when, for chronic illnesses such as HIV and AIDS, the reverse is more likely to be the case. Many people with HIV-AIDS are currently unable to sustain full-time jobs because their energy levels and treatment side effects and toxicities simply do not allow it. The cyclical nature of their illness means that in the future they may need the support and entitlements that the DSP provides, yet this bill will greatly increase their financial and emotional stress—which, as people with a very unpredictable and unstable illness, they can well do without.

On top of the recent attempts to increase copayments for PBS items, this is more of the same bad legislation for people with
chronic illnesses. This government is targeting the most vulnerable people in society with a range of new measures which give out a strong message that all people with a disability are somehow frauds and cheats. Rather, it is this government that is cheating people with disabilities of their right to a basic standard of living. The proposed changes are about budget cost cutting when a positive strategy to improve the job prospects of people with disabilities is required. They fail to take account of the complex and varied difficulties faced by people with disabilities and chronic illnesses who wish to participate economically and socially in the life of the community. We Australian Democrats reject this bill outright.

We are pleased that the government has withdrawn its ransom conditions that were originally attached to the earlier bill for the extra $547 million for disability services funding in the next Commonwealth State Territory Disability Agreement. In reality, the additional funds are a conjuring trick—a sort of ‘now you see it, now you don’t, now you see it again’ trick. The promise of an additional $547 million over the next five years is an extension of the extra $100 million offered as part of the Commonwealth State Territory Disability Agreement which expired on 30 June. The additional $100 million a year is offered over the next five years for each year of the length of this agreement. While we are pleased to note that funding has not been cut from the new agreement, we are not blind to the fact that much of the touted funding for the agreement is in fact no additional funding from two years ago.

People with disabilities can feel relieved that the CSTDA offer is no worse than the status quo, but it is certainly not an increase. Indeed, the offer does nothing to improve the parlous state of unmet need as identified by the Australian Institute of Health and Welfare, nor will it cope with the expected growth in need as the number of people requiring support increases over the next five years. We Democrats oppose this disability reform bill in its entirety. It does nothing to assist people with disabilities to participate economically in the community or in society.

We stand by our commitment and promise made on budget night and will vote to reject this bill outright.

Senator DENMAN (Tasmania) (5.41 p.m.)—I rise to speak on the Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002. Having undertaken voluntary work with the disabled community on the north-west coast of Tasmania, where I live, and having engaged in many discussions on the need for adequate funding and support, I express my strong opposition to this bill. This bill represents one of three painful battles that the disability sector have been fighting in recent times, along with the funding for the Commonwealth State Territory Disability Agreement and the New South Wales SACS award. It is a very difficult time for Australians with disabilities—a time when, as one representative has commented to me, ‘Resources are stretched like never before, and it only looks like getting worse.’

While this strain on resources is being felt by many industries, it disturbs me that this legislation proposes cost-saving measures to the detriment of disabled Australians. Let us not forget that these are Australians who are sometimes invisible to much of society and also to this place. Through no fault of their own, they often rely on others to stand up for their rights. I fear that this government regards the disability sector as an easy target. The flaws in this legislation suggest a lack of understanding of the unique lifestyles of disabled Australians, and the proposed measures in the legislation are also short-sighted. This legislation is not in the spirit of the McClure report, which emphasised maintaining current benefit levels and said that increasing the work readiness of some social groups would require increased levels of public expenditure.

The Labor Party oppose this bill today, as we opposed the former bill announced at budget time. It is not good enough to hope that it will only be those with—and I quote the minister’s own poor choice of words—‘bad backs that aren’t as bad as they should be’ who will be affected by this bill; people with a range of other disabilities and illnesses, people suffering from mental ill-
nesses and people living with HIV-AIDS, as Senator Greig has already mentioned, will also be affected. Before going on, though, I acknowledge that bad backs are legitimate and painful injuries that can leave someone incapacitated one week and fine the next. It is unfortunate that the comment about bad backs was made. It is negative comments like those that do nothing to improve employee and employer attitudes towards disabilities in the workplace.

This legislation does not contain adequate safety measures to ensure that after 1 July 2003 vulnerable Australians, who for very good reasons rely on the disability support pension, will not suffer from measures contained in the bill. This bill is a slight improvement on its predecessor in one area—that was announced in the May budget; otherwise, it still contains all the original flaws. The improvement in this bill is for the 650,000 people currently receiving the disability support pension and also for those who will be eligible before 1 July 2003. Their entitlements to the disability support pension will not be altered, and this knowledge is undoubtedly saving them considerable distress. The government’s decision to allow this safety net period demonstrates that it is aware of the dangers of moving people with disabilities abruptly onto Newstart allowance and forcing them into a competitive work market. It is a shame that the same reasonable consideration cannot be shown to people after 1 July 2003.

From 1 July 2003, it is likely that some people who would have been eligible for the disability support pension will be forced onto the Newstart allowance and will receive $52 per fortnight less than those who qualified prior to that date. A new criterion will need to be satisfied that will require that individuals be unable to do 15 hours of award work, rather than the previous requirement of 30 hours, in order to access the disability support pension. These are harsh measures, and they will impact on the lifestyles of people with disabilities. It is inevitable that this bill will divide the disability sector by 1 July 2003, as it advocates a welfare system that contains inequalities and that discriminates.

The Labor Party strongly opposes such a system.

It is unfair and illogical that two people with identical disabilities and similar capacities can receive different amounts of government assistance even though those two people may have similar needs and costs. That will be the effect of this bill. This bill chooses to divide those with disabilities not by the degree of their disability or need for a pension but simply by their timing. Applying such arbitrary criteria to the disability support pension shows a complete disregard for people with disabilities.

In its briefing paper produced as a response to the McClure report in 2002, ACOSS warned against tightening the eligibility criteria for the disability support pension in a way that would result in many people being worse off. Instead, it argues for a fairer and more positive approach to reform which aims: (1) to improve the resources and support that people need to participate fully; (2) to educate and encourage employers to view employment of people with disabilities more positively; and (3) to minimise the difference in the conditions of payment for the disability support pension and Newstart by increasing the pension levels. Yet in 2002 the Liberal government has chosen to ignore these suggestions that show a thorough and considered approach to reforming disability welfare. Instead, the government proposes legislation that will implement quick and easy measures that ignore the difficult financial position of people with disabilities and the social infrastructure that they require, even if their disability is less severe.

Commentary by the government suggests that these changes are necessary if we are to ensure that the payment continues to support those who need it. However, the reality is that due to the clumsy design of this legislation the proposed system will support some people a lot better than others, simply because they satisfied the criteria for the disability support pension earlier. This serves to make a mockery of qualities like fairness and equality that should be at the basis of our country’s welfare system. The difference between the disability support pension and the Newstart allowance is a considerable
decrease in payment for people who are likely to remain on low incomes because, for physical or intellectual reasons, they are not able to participate in open employment. This cut also represents a lack of understanding about the host of special needs and services that people with disabilities have to pay for—costs such as special shoes, taxis, mobility aids, a cleaner or a handyman. In all certainty, these special needs and services will not be any less expensive for disabled Australians after 1 July 2003.

I believe this cut to the disability support pension also begs a much broader question: what should the purpose of Australia’s welfare system be? Should it be to provide assistance and support to those who need it to participate in work and society, and are we satisfying that goal? I believe that unless we provide adequate support and assistance through our welfare system we are not satisfying this goal—and that is highly undesirable. This legislation risks placing Australians in difficult living conditions. It is also heartless and un-Australian. I believe that, contrary to the measures in this bill, Australians are more sympathetic to the needs of their fellow Australians. I am confident that few would support a welfare policy that would make economic mileage at the cost of social responsibility.

It is easy to get lost in numbers when talking about welfare reform, but I think it is important that we also try and understand the unique context and situation of the many Australians with disabilities who stand to be affected by these changes. Anyone who witnessed the rally organised by the disability sector outside Parliament House on 19 June 2002 would probably dispute the invisibility of this group of people on that occasion. The disability sector have fiercely and energetically voiced their opposition to cuts to the disability support pension. At this rally, many disabled Australians and supporters turned out to express their anguish and dismay. While it was moving to see a group of people—for many of whom mobility is in itself difficult—go to the huge effort of travelling from many parts of New South Wales to rally the government, it also clearly showed the sheer desperation and fear many Australians with disabilities are feeling at this time.

I would like to spend a few moments describing a situation that has recently been brought to my attention on the north-west coast where I live:

It involves a 38 year old male. This man has an intellectual disability and displays challenging behaviour, as well as, suffers from underlying health problems. Previously, because of his skills and abilities, he has been successful in gaining open employment. In this employment, he was provided with one to one support to assist him in adapting to the workplace. However, despite his abilities, due to the challenging behaviour that he displayed on a number of occasions, and the associated threat he posed to his fellow workers, he is no longer employed and receives a Disability Support Pension. It entitles him to a mobility allowance that he relies on heavily for transport. It also entitles him to a healthcare card that is very important because of his underlying medical problems.

From my understanding of the difficulties this gentleman faces daily, it seems an unlikely choice of words to describe his situation as ‘fortunate’, but he is fortunate—fortunate that his eligibility for the disability support pension was determined prior to 1 July 2003. Otherwise, as a result of this proposed legislation he would be forced to undergo an entire change of lifestyle.

Under this legislation, it is likely he would lose his disability support pension and be moved to the Newstart allowance to find open employment, as he has proved successful in finding employment before. Yet he has also demonstrated before that he is clearly unsuitable for open employment even when support was provided. In losing his disability support pension he would also likely lose his mobility allowance and health care card. This would make it very difficult for him, in the first instance, to meet his Centrelink commitments, such as attending interviews and training sessions, and also make him more vulnerable to suffering the financial penalties of being breached by Centrelink. Later it would be difficult for him to travel to and from work each day. Also, his medications would be more expensive as he may lose his health care card. While he is currently living independently, this has only
been possible because of the support he receives from a community disability organisation. If he were no longer eligible for the disability support pension, he would likely lose his eligibility for support from this particular organisation. Without support, he could not live independently or participate in society as easily. The most likely outcome is that he would be forced to move in with his family, which would place his family under stress.

The government has told us that one of the motivations for this legislation is that the focus is on the capacities of the individual. That is all very well as long as individuals are not penalised for participating in work by losing valuable assistance or income. In the case of this young gentleman, the focus on his abilities would likely lead to his other special needs being ignored, such as his challenging behaviour, his underlying medical problems, his lack of mobility and the support he requires to live independently. This is not good enough. As a result of this legislation’s short-sightedness the outcomes for this young man and his family would be devastating.

In a joint statement, released on 19 June 2002, peak disability and community groups acknowledge this shortcoming in the government’s current approach to welfare reform and suggest that a ‘change of direction is needed’. They say:

Many people with disabilities and chronic illness want to work and would be able to do so with the right support. We believe income support policies for people with disabilities and chronic illness should emphasise capacities rather than incapacities. This means the focus must be on the removal of disincentives for participation in work and compensation for the extra costs of workforce and social participation to the degree compatible with capacity.

One of my concerns is that, while the government claims this legislation focuses on an individual’s capacities, the legislation does not remove disincentives for participation in work or compensate individuals for the extra costs of work force or social participation.

On a number of occasions since the budget the government have indicated, under pressure from the Labor Party, the Democrats and the Greens, that there is room for movement on the cuts to disability pensions. They recognised immediately that the proposed changes were too harsh and not the fairest means to bring about welfare reform. The Labor Party acknowledges the need for welfare reform and supports welfare reform in the way that is indicated in the McClure report. We should work towards a system that rewards work over welfare. However, it needs to go beyond fixing a date to enact a harsher eligibility criteria for the disability support pension. It needs to allow people with disabilities to participate in and contribute to society without penalising them for all the things they are unable to do or taking away necessary support. It is ridiculous, not to mention grossly unfair, to have two people with exactly the same type of disability and a similar level of need each receiving a different type of welfare assistance from the government. Labor strongly opposes this legislation.

Senator STOTT DESPOJA (South Australia) (5.58 p.m.)—I rise on behalf of the Australian Democrats to support the comments made by my colleague Senator Brian Greig on the Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002. This legislation, and the policy direction it represents, makes the Democrats very mad. The precursor to this legislation, which was opposed by the Democrats and was made evident in the budget this year, was strongly opposed by the Australian Democrats as soon as we were made aware of the policy direction and the intent of this government, particularly in relation to the disability support pension issue.

I commend the comments by Senator Denman and my colleague Senator Greig, who spoke before me. Indeed, I think Senator Denman’s point about the opposition of the disability sector to this legislation is particularly important. It was very clear to those of us who were involved in that rally on 19 June to which she referred that this issue has angered many people in our community, not just those with disabilities. I have no doubt that, as a result of that quite rightful anger, we have seen some consequent changes to legislation, although I think the general pol-
ICY DIRECTION OF THIS MINISTER IN PARTICULAR REMAINS PRETTY MUCH UNCHANGED.

I noticed that during a brief radio interview on *The World Today* on Thursday, 27 June—a week or so after that rally—Senator Amanda Vanstone, while talking about the legislation, specifically used the terminology ‘bad back’ not once, not twice but three times, all in the space of a brief two-minute interview. At no time in that interview did the minister mention any other impairment. That is sheer demonisation of people with a disability. The minister was doing what the government has been doing all along: trying to trick Australians who do not have a disability into believing that all people receiving a disability support pension are in some way faking a back injury. Not once in that interview did the minister find it fit to mention that people with a disability suffer all types of impairment including physical, affecting the body; psychiatric, affecting the mind; sensory, affecting seeing or hearing; or cognitive, affecting learning and understanding.

The minister did not mention the hundreds of thousands of Australians who actually suffer from these impairments. In fact, I think the government’s approach has been to forget about physical, mental or psychiatric impairment, choosing instead to refer to people who have a disability as ‘having a bad back’. I am conscious of the comments that Senator Denman made in her address to the chamber in relation to bad backs. She made some pertinent points about the fact that a bad back is, of course, a legitimate and painful injury. What about those people who do have the bad back to which Senator Vanstone refers regularly? For example, what about a labourer who has worked for 35 years in an industry where occupational health and safety was not even known about, where employers did not know about ergonomics or safe work practices, and who, as a consequence of repetitive unaddressed poor work practices, has suffered a spinal injury? As a result of that spinal injury the worker has, say, lost a range of movement in his or her back and is in constant pain. He or she possibly—and this is certainly something borne out by the statistics and research—only went to high school for a couple of years, may have a poor grasp of English or literacy and numeracy and, therefore, went into a labouring profession because other skilled occupations were not available to him or her.

Fortunately, today’s better work practices and legislation compel employers to better manage the occupational health and safety of their workers. But the fact remains that these people still exist in their thousands throughout this country. So I say to the minister: bad backs do occur, and ‘use it or lose it’ does not apply to a person with a spinal impairment. It is not easy to get a disability support pension for a bad back, as anyone involved in this debate knows. Schedule 1B to the Social Security Act 1991 provides the absolute minimum requirement for disability support pensions for cervical or lumbar thoracic spine impairment—or, as the government would say, a bad back. No wonder Senator Vanstone does not use that terminology: it does not slip off the tongue so easily. The schedule requires—and I am sure the advisers, and I hope Senator Alston, are aware of this—that a person must firstly have suffered:

- Loss of three-quarters of normal range of movement and constant neck pain—or—
- Loss of half of normal range of movement as well as back pain or referred pain:

  - with most physical activities and
  - with standing for about 15 minutes and
  - with sitting or driving for about 30 minutes.

Bear in mind that this is the absolute minimum impairment level for people with spinal impairment, and it does not get them a pension. In addition to the above, the person must be unable to work for 30 hours or more. So it is not a case of having a sore back, and it is time the government stopped trying to fool the Australian public in relation to people who are on disability support pensions.

In less than two weeks we will recognise the International Day for People with a Disability. Many people with disabilities want to work, and many people with a disability would be able to do so with the right support. The answer is not to make it harder for them by reclassifying them as unemployed and
reducing their income. The bill before us ignores the needs of people with disabilities and fails to recognise the barriers they face. The McClure welfare reform report recognised that people with a disability need more, not less, money due to their disability and recommended a participation allowance.

Two days ago in the Senate, the minister reminded the Democrats that we do not like the words ‘cherry picking’. They are not the only words we dislike; we also dislike the practice of selectively choosing from the McClure reform report those elements that will disadvantage Australians and send them into poverty, because that is what the government has done in most cases. It has selectively chosen to take people off the disability support pension while selectively forgetting to pay them the recommended participation allowance. The government has selectively chosen to ignore the barriers that people with a disability face, such as discrimination by employers and a lack of accessible transport, personal care and accommodation. They are some of the issues that people with a disability face. That is something that McClure recognised and that is something that the government is not recognising. It remains that eligibility for a disability support pension is already tight. That is the reality, and further restrictions will not reduce the number of people with a disability in our community.

We believe the changes that will be brought about by this bill will only lengthen the so-called dole queue. It will put additional pressure on employment services and, of course, it will increase hardship for those people with a disability. The Minister for Family and Community Services has defended this bill by saying:

I think personally, we do the worst thing possible to disabled people by saying to them: ‘Oh look, if you can’t work 30 hours or more, gee we’ll pay you more to stay at home’. I think that’s criminal, absolutely criminal.

The Australian Democrats believe that it is not criminal to have a disability, and we should not be punishing people, demonising them or targeting them in any way. Clearly, that is our concern with the policy direction of this government. Every single day in our community there are going to be victims of unsafe work practices and road traumas, people with acquired impairments and, of course, children who will come into the world with an impairment, and all of these people potentially face disability for the rest of their lives. They are not criminals, and it is not criminal to be able to work 16 or even 29 hours a week. It is about time we recognised that when we are shaping our nation’s laws.

Take, for example, the case of a young woman who came into my office recently. She has multiple sclerosis. She is barely able to hang onto part-time employment of around 20 hours a week, and she is desperately concerned about what is going to happen to her in the future. She is not a criminal; she is a young woman who did not choose to be struck down with MS. She will eventually face a life of nursing home care, because there is no suitable accommodation for young, severely disabled Australians with MS—or, for that matter, any disabilities. They are forced to spend their days in the kind of nursing home accommodation that we have in Australia which caters specifically for older people. Anyone who is familiar with this debate would be aware of the work that Senator Lyn Allison from the Democrats has done on this issue over the years.

This young woman with MS can work, although for how much longer is uncertain. She needs the additional income supplement that the disability pension provides because she needs to pay her personal carer to get her out of bed in the morning, shower her, assist her to dress and transport her to her workplace. She needs to pay someone to cut her lawns and clean her gutters at her home. She cannot choose to do those things herself. But, according to the minister and this government’s policy direction, it is almost considered criminal for a person in her situation to receive a part disability support pension, because she is a person with a disability who is struggling to hang onto a part-time job. This bill will not offer her any assistance to pay for the care she needs and the additional cost she encounters in being able to work, because the government has cherry picked—or, should I say, ‘selectively chosen’—from the
McClure report. The government has selectively overlooked the notion of a participation payment for people in that very situation. This young woman is in a situation where she is not able to save for her retirement; yet, according to this bill, other Australians in exactly the same situation will no longer qualify for the disability support pension.

People with a disability, particularly women with a disability, have a reduced opportunity to participate in employment. Those who can do some work may be restricted in the type of work they have access to due to poor access to the workplace, higher costs involved in gaining access to such things as transport, and a decrease in work skills and the value of qualifications due to long-term unemployment. Once a job is secured, there are obviously other barriers that are faced, such as a lack of suitably modified equipment or special facilities or an inability to work regularly or on a full-time basis.

The Democrats oppose this bill because it penalises those who manage, despite significant barriers, to gain part-time work. This bill penalises those people. Disability is not about bad backs and it is not about things that happen to other people. We should remind ourselves that, in our families, among our friends and in the community there are people who are suffering from a disability or who, unfortunately, could join the ranks of people with a disability. That applies to any of us. Who knows what can happen to us? It is clearly the responsibility of the Commonwealth government and the state governments to ensure that the rights and the needs of those people are looked after.

The government’s announcement of additional funds for disability employment services is welcome. The Australian Democrats have acknowledged that; however, we have also acknowledged that those funds are, regrettably, woefully inadequate. There is already a recognised shortage of services for Australians with a disability. People with disabilities are already queuing up to use services offered. Service providers report to us that they are still unable to meet the current demand, even with the welcome new employment places. Instead of making it harder for them, the government should be expanding the services and support available for people with a disability and assisting them in getting jobs and maintaining those jobs. The government’s commitment to meet its share of unmet need for accommodation, respite and other supports for people with severe disabilities will not result in any new services. This is simply keeping the government’s promise to meet a backlog of need up to 1997 on an ongoing basis—something the states committed to long ago. Further, we believe the need to meet any demand since then or any future needs of people with disabilities has been ignored.

The DSP changes to this bill are counter-productive and do not help people with a disability to gain employment. People shunted on to unemployment benefits will instead face additional poverty traps and disincentives to take up work. From July next year, anyone judged to be capable of working 15 hours a week at award wages will be pushed on to the Newstart allowance. The current test is 30 hours a week; as I said earlier and as Senator Greig has pointed out, there is no evidence that this is not appropriate. Despite the fact that this bill is grandfathering current recipients, it still provides that Australians with a disability will be forced on to Newstart and, unlike disability support pensioners, must actively seek work or be stripped of part of their payment.

We already know that Australians with a mental illness are more likely to face breaching because of the episodic nature of their impairment. Those people with a mental illness who have been unable to comply with the hoops of mutual obligation and have had their payments cut off will be the least likely to be able to front up to Centrelink to explain their situation. We know that is the case. Mental and psychiatric illness prevent a person from functioning in a cognitive manner. Yet the minister would have us believe that it is okay to cut off the income support of someone who is suffering a psychiatric illness because all they have to do is pop into a Centrelink office, explain their situation and everything will be fine. A person suffering a severe psychotic episode will be the
least likely to be able to do this and the least likely to be able to live without income support. This sort of approach to mental and psychiatric illnesses shows not only a lack of insight but also a lack of compassion.

The Australian Democrats’ message to the government all along has been quite clear: fix up the devastating social and economic disasters of breaching which have been identified by numerous reports before extending them further to people with a disability. We know that people with disabilities are among the most disadvantaged in our community. We know this from case studies that have been given a lot of publicity since the budget and from the hundreds of people with a disability who have contacted our offices and who I am sure have contacted government and opposition offices as well. The bill overlooks the fact that people with a disability already contribute positively to the Australian community and society and to the social good through volunteer work. The activity tests required by the Newstart allowance will prevent this work, placing people who are genuinely contributing to our society into a position of double jeopardy.

The disability support pension is not a desirable goal. Being on a disability support pension condemns a person with a disability to a very low fixed income and prevents them from being active in their community or even purchasing the essential items needed to live a decent lifestyle and regain the self-esteem, confidence and dignity needed in many cases. Being young and on a fixed low income such as the disability support pension is an automatic setback in today’s society. Those in this situation, as we all know not only from research but from reports from people directly, find it difficult to participate in social activities, to afford medical equipment and medicines or to obtain appropriate accommodation, good clothing and easy mobility. The solution is not to deny these people their income support, the solution is not to force these people with a disability, without specialised assistance, to join the ranks of the seven unemployed people for every job vacancy in Australia.

In Australia, recent surveys reported that 29 per cent of the population had at least one impairment and that more than half of the Australian women with a disability—compared with 39 per cent of the men with a disability—needed assistance. If the need for assistance is used as an indication of the difficulty of participating in our society, it is obvious that more women than men with a disability are facing this disadvantage. Clearly, education and employment are two of the most important areas to be able to participate in in order to be economically sufficient. Those born with a disability may have experienced segregated education, but even those who avoid that particular segregation or discrimination face other barriers. Having a disability often means extra time is needed for study itself or for the personal care, travel and maintenance of good health needed in order to study. Clearly, additional income and resources are needed to ensure that the equipment needed for study, such as braille equipment or tape recorders et cetera, is provided.

This bill does nothing to eliminate the employer prejudice that people with a disability encounter every day. It does nothing to encourage an employer to take on a person with a disability. It does nothing to increase the competitiveness of a person with a disability in the open labour market. The Democrats recognise the social, cultural, physical and economic barriers that exist for these people within existing employment environments, and we call on the government to address those before they start introducing mean, cruel, discriminatory measures such as these, which have emanated this year from one of the cruellest and meanest budgets that we have seen in a long time.

Senator CROSSIN (Northern Territory) (6.18 p.m.)—I rise to speak on the Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002. This bill modifies an earlier bill that has previously been through this parliament and was opposed in the Senate and subsequently withdrawn by the government. The government is now attempting to have a second bite of the cherry in respect of this particular group of people within the commu-
nity. Senator Stott Despoja in her speech summed up quite well the attitude of this government towards people with disabilities and the way in which these people are being treated through this bill.

Like the first bill, this one seeks to give effect to the government’s 2002-03 budget measure to alter the eligibility requirements for a person to receive the disability support pension. However, this new bill proposes to save existing recipients of the disability support pension from the new rules—in other words, to just modify the first bill by putting a little fence around current recipients of the DSP. The legislation proposes that the new rules apply only to people who would be seeking for a DSP on or after 1 July 2003. So it might be all right for current recipients of DSP, but this bill will apply to new recipients of that pension.

Figures provided during Senate estimates hearings in June confirm that the revised measure would result in approximately 103,700 claimants for DSP having their applications for the payment rejected over the forward estimates period to 2005-06. Many of these claimants will qualify for the lesser Newstart allowance. This will mean for those people a difference of $52.80 per fortnight. However, a small proportion will qualify for absolutely no payment at all. There are over 5,000 people in the Northern Territory who currently receive DSP, and no doubt many of these people would be affected adversely if this legislation were passed. The government has stated that the purpose of this bill is to separate people with so-called bad backs from those with genuine disabilities. However, this bill does no such thing. There is nothing at all to say that those people who do have bad backs are not also suffering from a genuine disability. The bill affects people with varying levels and types of disabilities, including those with severe physical disabilities and those with chronic psychiatric disabilities.

The government is trying like crazy to reinforce stereotypes that people who are on benefits are exploiting the system and are not deserving of any assistance, rather than trying to create legitimate social policy which will benefit those most in need. The government is determined to build a surplus for the next election in 2005. This bill is all about additional money in the piggy bank. Because social policy is not a priority of this government, it will come at the expense of those least able to afford it—the people whom the government has no affinity with. This bill, like the earlier version, also seeks to alter the rules relating to access to training and rehabilitation for those on Newstart (Incapacitated) and Youth Allowance (Incapacitated). Specifically, schedule 1 seeks to alter the definition of work capacity from 30 hours a week at award wages or above to 15 hours. It should be noted that the current test is whether a person is capable of working 30 hours a week inside a period of two years and follows a medical determination that a person has a disability.

I share the anger of many Australians, not only those with disabilities, their families and carers, but the many other Australians who are appalled at what this bill represents. That is why we rejected this bill when it was first introduced in parliament. The government, in proposing this bill, has shamelessly broken the election promises it made. The changes proposed in this bill go to the heart of our tradition as a caring and compassionate nation. The fact that we are considering this bill at all shows that this government is prepared to tear down this tradition to pay for their pre-election spending spree. Since the budget was announced, members of the coalition, including the Treasurer, Prime Minister and the minister for employment, persisted in trying to dress up the changes before us as ‘welfare reform’. But anyone can see that what we are considering today is nothing more than a quick and dirty recovery plan for recouping on its spending during the election campaign. The government has spent $14 million of current and future surpluses and is now asking the DSP recipients to pay for it.

Make no mistake, this bill is not about welfare reform; it is about welfare cuts. It is not about genuine welfare reform; it is just a means of dealing with the deficit the government have plunged us into as a result of their pre-election spending spree that they embarked on in order to get themselves re-
elected. Do not forget that, in the context of this bill, the government have a bigger advertising budget than McDonald's or Toyota. Have a think about that. The government confirmed the worst suspicions of everyone when it brought down the budget. Even Patrick McClure was moved to comment on it and said that it was not what welfare reform is about. Patrick McClure is the author of the report on welfare reform commissioned by the government. Mr McClure said the measures were not balanced and did not reflect the spirit of the report. The government are arguing that they want to encourage more disabled Australians to participate in the work force. Apparently, the government have chosen to take $52 a fortnight out of the pockets of disabled Australians as the one best measures to secure this outcome.

On this side of the chamber, we have been asking and will continue to ask: how is cutting someone's income going to help them get a job? We are still waiting for the answer. Patrick McClure was in no doubt about what he thought the effect of the measure would be when he spoke to ABC radio on 16 May this year. He said:

Where I have concerns is this modification of eligibility criteria, so one of the modifications is that they're going to reduce the hours worked from 30 to 15.

He went on to say:

It just doesn't have the balance and it's not in the spirit of our report which was that there was no aim to disadvantage people who were on a disability support pension.

He then went on to add that not only would they be disadvantaged by the cut to their payment but they would also lose the pensioner concession card and be subject to an income test.

Mr McClure's comments leave no doubt that with this bill the government have taken one aspect of the recommendations of the welfare reform report and used it in a way that was never intended. They have used this aspect of the reform proposals in a way that diminishes the capacity of disabled Australians to participate in work, and they have taken this measure to meet their own budgetary aims without implementing the other recommendations necessary to meet a sincere welfare reform agenda. Last year the government said that the McClure report would pave the way. This year they just want to take the bits out of the report that help them meet their bottom line. They will take $52 a fortnight out of 200,000 disabled Australians and send them out to find a job.

In considering the legislation before the Senate today, I want to put on the record the hypocrisy and bullying tactics to which the government have descended in a crude attempt to force through this cost-cutting exercise at the expense of some of our most disadvantaged fellow citizens. It is pretty ironic that at the same time they are about to take $52 a fortnight out of the pockets of 200,000 disabled Australians, the government have been crowing about how they are providing a record level of funding for disability services. As we know, the minister has put a caveat on an undertaking that the government made two years ago, which was to increase the level of funding under the Commonwealth State Territory Disability Agreement. This is an unprecedented move, holding the disabled in our community and the parliament to ransom.

The government engaged in nothing less than deception when they stated that there was an extra $500 million in the budget for disability services. But the government have already been forced to look again and to go back to the drawing board. It is clear that the government's own market research has shown that this measure is seen by the Australian community as mean-spirited—but the unfortunate fact is that we are still here today considering these ill-conceived measures and unfair means of clawing back the deficit brought about by the government's pre-election spending spree. The government have been keen to characterise the provisions of the bill in terms of a necessary evil to ensure the sustainability of the social security system—but to characterise the issue as one of welfare reform is simply false. In fact, this bill just takes $52 a fortnight out of the pockets of the disabled and then requires them to go out and find a job.

Labor supports genuine welfare reform which provides appropriate assistance and support in the transition from welfare to
work, but this bill falls far short of that. There is no appropriate system and there is no support at all in order to assist these people to do what this bill sets out to achieve. The bill before us is merely a cost-cutting exercise. It has absolutely nothing to do with genuine welfare reform. The government has not budgeted to ensure that all those people kicked off DSP will be provided with assistance to participate in the workplace. The current proposal for reassessing those on DSP is a quick, mean fix, two-hour assessment. This government is not prepared to provide adequate reassessment of people who apply for the DSP. This will see those deemed under this inadequate assessment returned to the job queue, competing—with no extra assistance—with the job seekers without disabilities.

On top of all this, we were told at estimates in the Northern Territory, the state I represent, that those pensioners who have disabilities and who are kicked off DSP would not have the benefit of a Job Network provider who specialises in disability employment. Instead, they will be sent to a provider who is contracted to service people who are disadvantaged in the labour market, a Job Network provider who provides generalist intensive assistance. We were told at the estimates hearing that no organisation in the Northern Territory sought to operate as a specialist provider but that the Department of Employment and Workplace Relations is still trying to find a provider willing to take on this group of job seekers. At this stage it appears that the current Job Network providers in the Territory either do not have the capacity or the interest to provide these services. In the estimates of 4 June this year, Senator George Campbell asked the following question:

This is in relation to the disability services. How many Job Network contracts are currently held by specialist service providers for people with disabilities?

Mr Correll, from the Department of Employment and Workplace Relations, provided the following answer:

There are 11 organisations operating out of 27 sites that are specialist providers.

He went on to say:

There are nine sites in Sydney, seven sites in Melbourne, four sites in western Victoria, three sites in Brisbane, two sites in Adelaide and two sites in Perth.

Senator Harradine picked up on that, as well he should, and asked about the lack of providers in Tasmania. Mr Correll said:

We do not have a specialist provider for people with disabilities under the current contract located in Tasmania. People with disabilities in Tasmania would, therefore, be getting services at the present stage through Job Network members who are providing services not only to particular categories of people with disabilities but also to the broader group of people who are disadvantaged in the labour market as well.

I then asked a question about the Northern Territory. Mr Correll responded:

The Northern Territory does not currently have them.

That is, the Northern Territory does not have specialist providers. Mr Douglas, from the department, went on to say:

There were no organisations from the Northern Territory that tended to operate as a specialist organisation offering its services to people with a disability.

Round 3 of tenders for Job Network providers is under way. It would be interesting to ask this government what exactly they are doing to ensure that existing Job Network providers—or in fact any new Job Network providers who might be in Tasmania or moving to the Northern Territory—will tender for and be successful in providing a contract that actually assists these people.

Let us say that after the third round we find that in the Northern Territory there are still no Job Network providers who have the interest or the skills or the capacity to provide intensive assistance and support for people with disabilities. On the one hand, you have a government that wants to penalise people on DSP by altering the hours that they are required to work, taking $52 a fortnight off them and pushing them into the Job Network queue in order to look for work. On the other hand, there no Job Network provider out there who has a contract or who is
interested in having a contract or who is there to assist these people. It really shows what a blinkered approach this government has to any sorts of reform measures. It confirms that this is not about genuine welfare reform; this is about getting as much money as you can for your piggy bank, to top up your coffers at the expense of any group in the community. The group that is being targeted under this bill is people with disabilities.

Where would this leave disabled people in the Northern Territory who will be kicked off the DSP? It would leave them with $52 less a fortnight, in a place where the cost of basic necessities is very high. It would leave them without a pharmaceutical benefits card; it would leave them without access to the pensioner employment supplement to help cover the costs associated with training and education; and it would leave them joining the dole queue with others and, in the case of the Northern Territory, without a specialist disability provider.

The women’s budget statement this year, under the heading ‘A Fair Go for Mature Age Workers’, told us that the government will spend a total of $146 million over four years in new assistance for workers over 50, and $177 million in improving disability assessment and expanding assistance for people with disabilities. Strangely enough, there is no mention of the fact that this budget will see 200,000 disability support pensioners get a pay cut of $52 per fortnight. The McClure report talked about introducing an integrated payment system over five to 10 years and providing add-ons to reflect people’s circumstances, including a participation supplement. There is no participation supplement here in this bill, but there is a pay cut of $52 per fortnight.

Funding an additional 73,000 new places in disability employment assistance over three years refers to existing programs only. There is no reference to new or more innovative assistance, and the performance of these programs in the past for the DSP recipient population raises the issue of their effectiveness. Current disability assistance programs have already received serious criticism from the Head Injury Council of Australia as well as the Association for Competitive Employment, which stated that Job Network was ineffectual in locating employment for people with a disability.

The Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002 does nothing to address those criticisms or concerns. This second disability bill is a compromise on the government’s behalf, as it now only applies to those who seek the disability support pension on or after July 2003. So the government want us to believe that they have moved in some way, that they are a little compassionate, that the legislation will not affect people now; it will only affect people in the future. However, this is still not providing welfare reform in any sense. The government are still attempting a cost-cutting scam to save their own back. The Labor Party does not believe that cutting people’s benefits will encourage them to seek employment—in fact, it inhibits their ability to do so.

This bill is obviously a continuation of the government’s use of harsh and unfair tactics aimed at increasing participation in the labour market and subsequently reducing the deficit in the budget—despite the negative impact that this will impose on people in our community. This bill is not even an attempt to genuinely reform disability pensions. This bill has failed to deal with the situations that people are facing every day in Australia as a result of the government’s absolutely poor record on social policy.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (6.38 p.m.)—I thank honourable senators for their contributions.

Question put:
That this bill be now read a second time.

The Senate divided. [6.48 p.m.]
(The President—Senator the Hon. Paul Calvert)

| Ayes | 30 |
| Noes | 33 |
| Majority | 3 |
AYES
Abetz, E. Alston, R.K.R.
Barnett, G. Brandis, G.H.
Calvert, P.H. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ellison, C.M.
Ferris, J.M. Hill, R.M.
Johnston, D. Kemp, C.R.
Knowles, S.C. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J. *
Minchin, N.H. Patterson, K.C.
Reid, M.E. Santoro, S.
Scullion, N.G. Tchen, T.
Tierney, J.W. Troeth, J.M.
Vanstone, A.E.

NOES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Bolkus, N.
Buckland, G. Carr, K.J.
Cherry, J.C. Collins, J.M.A.
Conroy, S.M. Cook, P.F.S.
Crossin, P.M. * Denman, K.J.
Faulkner, J.P. Greig, B.
Harradine, B. Hogg, J.J.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Mackay, S.M.
Marshall, G. McLucas, J.E.
Moore, C. Murphy, S.M.
Murray, A.J.M. Nettle, K.
Ray, R.F. Ridgeway, A.D.
Sherry, N.J. Stephens, U.
Stott Despoja, N. Webber, R.
Wong, P.

PAIRS
Boswell, R.L.D. Forshaw, M.G.
Campbell, I.G. Campbell, G.
Ferguson, A.B. Hutchins, S.P.
Heffernan, W. O’Brien, K.W.K.
Payne, M.A. Evans, C.V.

* denotes teller

Question negatived.

DOCUMENTS
Civil Aviation Safety Authority

Senator SANDY MACDONALD (New South Wales) (6.52 p.m.)—I move:

That the Senate take note of the document.

The Civil Aviation Safety Authority is a statutory authority within the Transport and Regional Services portfolio. It was established in 1995 under the Civil Aviation Act to regulate aviation safety in Australia and the safety of Australian aircraft overseas. It is a large organisation: it has 727 staff around Australia and a budget of just over $104 million. Frequently people wonder what CASA does. It has a role in maintaining, enhancing and promoting civil aviation safety in this country. It sets aviation standards; certifies aircraft maintenance organisations and operators; licenses pilots and engineers; very importantly, carries out safety surveillance; enforces safety standards; and manages and administers carriers’ liability insurance requirements. Those are some of the things it does. It is a very important organisation, especially to those of us in the Senate who travel a lot. It has had a particularly busy year because of the Ansett collapse and the result and impact that September 11 had on the aviation industries worldwide and in Australia in safety requirements and the checking of passengers. It has also had to deal with new entrants and new opportunities for existing operators that have flowed from the Ansett collapse and other changes to the aviation industry in the last 12 months.

Yesterday the government announced further far-reaching reforms to CASA. These will strengthen its accountability, improve consultation with the industry and temper its ability to act as judge, jury and executioner at the same time, but it maintains its powers to take appropriate safety action. The Minister for Transport and Regional Services and Deputy Prime Minister, John Anderson, announced yesterday that aviation safety and compliance will be improved in the capital cities and regional areas under the reforms. As I said, the reforms announced yesterday and proposed to come into effect on 1 July include that the CASA board be abolished and the director of aviation safety be designated the chief executive officer. The minister will be given powers to set policy directions and performance standards for CASA but will remain at arm’s length from the day-to-day safety regulatory decisions. The minister will also be given powers to establish consultation mechanisms for industry and stakeholders. Measures will be introduced to reform CASA’s enforcement processes, including the granting of a stay of suspension and the cancellation of decisions not invol-
ing an immediate risk to air safety, the introduction of a demerit points system for minor breaches of the regulations and the formal establishment of an air standards advisory body to complete the reform of the aviation safety regulations.

The review of the structure and reporting arrangements for CASA was a key element of the aviation reform agenda that was announced I think in February this year. The government has agreed to a series of bold measures to ensure that CASA remains a robust, independent safety regulator, but at the same time its accountability to government and its standing with the industry will be strengthened. Under the new enforcement regime, CASA will retain the power to ground an operator where there is imminent risk to safety, but it will be required to have its decision confirmed by the Federal Court within five days. Where a decision is taken to vary, suspend or cancel an aviation approval and a review is sought, an automatic stay of the decision will be granted. This will mean that no operator will be put out of business as it waits for a court or tribunal to determine whether CASA acted appropriately. These changes improve the capacity of CASA to operate as a regulatory authority. It has had some troubles over the years and it is working through those problems. The changes announced yesterday will certainly improve CASA’s performance. I would certainly like to extend my thanks to the CASA board for completing the CASA review, and I look forward to it continuing its good work.

(Time expired)

ADJOURNMENT

The PRESIDENT—Order! There being no further consideration of government documents, I propose the question:

That the Senate do now adjourn.

Health: Marijuana

Senator FERRIS (South Australia) (6.58 p.m.)—Cannabis, grass, weed, pot, hooch, dope and hemp are all very popular names for marijuana. Back in the sixties, cannabis was considered almost part of the youth culture, but the scientific and medical community are increasingly challenging the soft status of marijuana in Australia. The question now being asked is whether marijuana is still the soft drug it was considered to be and whether the distinction in title between soft and hard drugs is appropriate now, given current medical and scientific studies. In fact, a picture of cannabis is now clearly emerging that is far more disturbing.

So what do we know about this widely accepted and so-called soft drug? We know that cannabis is the most widely used illegal drug in Australia. More than two million Australians have used it in the previous 12 months, with an additional three million having used it at some point in their lives. The 2001 National Drug Strategy Household Survey found that one in three Australians aged 14 years or older have used cannabis at some point. More than one-third of teenagers have used marijuana in their lifetime. Almost three in five Australians aged between 20 and 29 have admitted to using the drug during their lifetime.

We also know that when cannabis is smoked it is twice as carcinogenic as tobacco. A recently released research paper from the British Lung Foundation, appropriately called A smoking gun, shows that a cannabis cigarette can contain concentrations of carcinogens that are up to 50 per cent higher than in a tobacco cigarette. The paper also found that a cannabis cigarette deposits four times as much on the respiratory tract as an unfiltered cigarette of the same weight. The paper concluded that the cannabis smoked today is much more potent than that smoked in the sixties—for example, the researchers found that the average cannabis cigarette smoked in the 1960s contained 10 milligrams of THC, the ingredient which accounts for the psychoactive properties of cannabis, compared with 150 milligrams of THC today. As well, clinicians quoted in the Financial Review in October this year have speculated that the increase in the THC content has led to the emergence of cannabis induced psychosis. The British paper also concluded that cannabis has a significant negative impact on respiratory health. The researchers found growing evidence linking the smoking of cannabis to serious lung problems, that three to four cannabis cigarettes a day does the some bronchial damage
as 20 or more tobacco cigarettes a day and that the main effects of cannabis smoking on the lungs are increased risk of pulmonary infections and, most importantly, respiratory cancers.

There is increasing evidence that marijuana contributes significantly to depression and motivational problems. Psychotherapist Ken Huth works with street youth, mainly those with drug problems, and talks of a spiral of depression and the removal of all motivation after prolonged use of marijuana. A seven-year study of 2,000 youths conducted by the Royal Children’s Hospital in Melbourne found that cannabis can be bad for the mental health of young people who had previously not been depressed. However, there is still a lot that we do not know. Although it is still not proven, there is increasing evidence that cannabis causes impairment of brain function and leads to psychosis. Mental health and drug and alcohol workers are reporting an alarming increase in the amount of cannabis induced psychosis and schizophrenia, particularly in young adults and youths. But cause and effect are still very hard to establish.

A senior lecturer from the Australian National Drug and Alcohol Research Centre, Maree Teesson, has said that there is increasing evidence that marijuana is often the key to ‘unlocking’ psychosis in vulnerable people. In August this year, she told the Sydney Morning Herald:

New data shows you are twice as likely to develop psychosis if you have used cannabis.

And in those who already have a condition like schizophrenia, the symptoms are exacerbated and the onset of serious symptoms is hastened. Because rates of cannabis use have increased steadily over the last five years, Dr Teesson has expressed the view that health services may not have the capacity to deal with a greater number of people who develop psychosis. We still do not know that there is in fact a direct link between marijuana and high rates of youth suicide, but rates of suicide and self-harm are high in young people aged between 14 and 29 when cannabis use is highest. I am pleased to say that in South Australia the laws relating to marijuana have been significantly strengthened. For example, only one plant can now be owned for personal use—down from 10 plants—with an expiation fee of $150, and tougher penalties for hydroponics are now on the way.

In conclusion, it is important that the public, especially young people, are well educated and well informed of the effects that cannabis smoking these days can have on their lungs and their pulmonary and respiratory systems. There is an increased risk of pulmonary infections, particularly of respiratory cancers, associated with cannabis smoking and possible short- and long-term effects on brain function. As a member of the board of a drug rehabilitation house in South Australia, I am very well aware of the number of young people who go on to harder drug use having begun experimenting with drugs using either alcohol or cannabis, both of which are often regarded in the community as soft or relatively harmless drugs. There is now increasing evidence to very clearly show that they are not. A combination of education and information will be crucial in making sure that young people—and their parents—understand that the marijuana cigarettes that were smoked in the sixties are no longer the marijuana cigarettes that are being smoked in the new century. They are in fact a good deal stronger and potentially a great deal more carcinogenic with very strong risks to our young people.

Immigration: Asylum Seekers

Senator Bartlett (Queensland—Leader of the Australian Democrats) (7.06 p.m.)—I rise tonight to speak on behalf of the Australian Democrats about the appalling situation of well over 1,000—closer to 1,500—asylum seekers from East Timor who are currently being faced with deportation from Australia after having lived here for many years. I note and pay tribute to the Senate for the resolution passed this afternoon. I moved the motion, so naturally I think it was a good one—but it was also moved on behalf of Senator Crossin and others to bring the public’s attention to this situation and to call for action. Of course, it is one thing to speak about a problem and point to the injustices involved and another to put forward a course of action.
It is a situation that I think many Australians find difficult to believe, particularly people in communities such as Darwin, where many of these people have lived for a number of years—and the East Timorese community is in many ways a more significant part of Darwin than of other cities around Australia. There was coverage on the 7.30 Report last night again highlighting the real human toll and human suffering being caused by the government’s refusal to act on this issue. By way of background, for people who are not aware of the situation, we have more than 1,500 asylum seekers who have had the processing of their refugee claims put on hold for many years. In some cases, these people have been living in Australia, working, having families and being effective members of the Australian community for as long as 10 years. For a number of years the Australian government put all of those claims on hold using a specious legal argument that they were Portuguese citizens or the responsibility of the government of Portugal and that they were therefore entitled to gain safety or protection from persecution by going to Portugal. The irony of that, given that the Australian government was one of the few in the world that recognised Indonesia’s occupation of East Timor, was no doubt not lost on the people who were the victims of this policy.

Eventually—to the great credit of the people of East Timor—the people there very recently achieved independence and the government are now saying: ‘The situation has changed. We have now decided we will assess your claims but we will assess them against what is happening now as opposed to what the situation was 10 or five years ago when you lodged them.’ It is an appalling artificial device the government have used to prevent people from being able to have a secure future. What these people have gone through for the last five to 10 years—having an insecure and uncertain future, living in limbo—is bad enough. As anybody who works with, or in the area of, refugees would know, the uncertainty about having a secure future is part of what makes life difficult for asylum seekers and refugees. So these people were put in a particularly appalling situation and, according to the law as it stands, the department is required to assess their claims against the situation in East Timor now.

The key issue in most cases—we shall see if it applies to all—is that those people will not meet the very strict criterion for being a refugee. It does not apply to just difficulties that you may face in returning to a place where you do not live, in some cases with children who have been born here and will be returned to a place where they have never lived, or in having nowhere to go back to—no home at all in some cases. That does not meet the criterion for being a refugee; you have to be persecuted for specific purposes by the state or a state agent on the grounds of political belief, race, religion and/or membership of a certain social group. So it is fairly unlikely that, assessed now, many of these people—if any—will meet the very tight criterion of refugee status. But that does not mean that they are not in a situation of hardship and suffering. As we have seen in the past, the Australian government has made exceptions in certain circumstances and given out specific humanitarian or other visas because of the special circumstances that people find themselves in. That was done most notably for the Chinese students here at the time of the Tiananmen Square massacre who were allowed to remain in the country in an ongoing capacity. The same thing could easily apply here. The Democrats believe that we as a country still owe a debt to the East Timorese because of our actions and our failure to support them as a government over nearly 25 years and also because of the very specific difficulties that we put these people through.

If the Australian government had acted honourably at the time, all of these people would have got permanent visas—protection visas—back in the mid-nineties or earlier and many undoubtedly would now be Australian citizens. It is worth noting that refugees have the quickest take-up of citizenship after they have first got a permanent visa—much more so than people coming here under family reunion and even more than those who come here on business or skilled visas. Refugees are the quickest to take up citizenship to try to establish new roots and become productive members of the community and
of Australian society in an ongoing way. We could have had these people in that situation for up to 10 years but, because of a quite inexcusable policy of the federal government, that is not the case, and we are now adding to their suffering by potentially forcing them back. According to figures provided to the Senate by the minister in a response to a question I asked last week we have already had decisions on 564 people from 235 families, all of them being refusals. All of those people whose claims have been rejected by the department, as well as those who will subsequently be knocked back, have the opportunity to appeal to the Refugee Review Tribunal. If they are again knocked back, as one would expect they are likely to be, they have the opportunity to make a personal request that the Minister for Immigration and Multicultural and Indigenous Affairs exercise his discretion under the Migration Act.

Basically, the resolution passed by the Senate today is asking the minister to acknowledge the special circumstances of this group of people and the uncertainty and trauma they have endured by granting them—should they wish it—permanent residency in Australia on humanitarian grounds by means of a special visa or by means of the minister exercising his discretion under the Migration Act.

Foreign Affairs, Defence and Trade Committee Report

Senator PAYNE (New South Wales) (7.16 p.m.)—I rise this evening to continue some remarks I made in the previous sitting period on a report of the Joint Standing Committee on Foreign Affairs, Defence and Trade that was tabled last month entitled Visit to Australian forces deployed to the international coalition against terrorism. My remarks are in the context of my having had the opportunity to participate in that delegation, which, as I think I said on an earlier occasion, was an extremely valuable, educational and compelling experience in every conceivable meaning of those words.

On this occasion I want to refer in the first instance to the visit of the delegation to Ganci Air Base at Manas International Airport in Bishkek, Kyrgyzstan. This was an interesting opportunity for most members of the delegation, who had not previously had the chance to visit that particular part of the world. Having visited Uzbekistan myself over a decade ago, to visit another of the Central Asian republics and make the com-
parisons that one inevitably makes in these situations was extremely useful.

One of the most important things about this aspect of the delegation, which is in fact referred to in the report, was that this visit was particularly welcomed by the senior ministers of the Kyrgyz government. Both the delegation leader, Senator Ferguson, and deputy leader, Mr Brereton, had the opportunity to meet with senior ministers of the Kyrgyz government and also the chief of the General Directorate of Politics in their Ministry of Foreign Affairs. That discussion enabled them to identify some of the key issues between Australia and Kyrgyzstan, and also Kyrgyzstan’s interest in participating in the international coalition.

One of the aspects of that discussion that I think is important to record here is that there was much welcoming of a closer association between Australia and Kyrgyzstan, which had grown out of the presence of the Australian RAAF troops in Bishkek. They also made very clear their views on the importance of having an opportunity to contribute to the war on terrorism and to participate, through their hosting of the international coalition at the airfield, in that process.

I mentioned at the conclusion of my previous remarks that the briefings the delegation received from RAAF officers at Ganci Air Base were extremely valuable and gave us a real idea of what an important role the RAAF was playing at that time. We were also honoured to be briefed by Brigadier General George Patrick from the US Air Force, who was the Coalition Commander at the base. The RAAF 84 Wing Detachment, which has since completed its deployment in Kyrgyzstan and returned to Australia, was praised for its extraordinarily high level of activity. I want to refer to one paragraph of the report, which gives some indication of the amount of work that it had actually been doing. Paragraph 5.13 of the report says:

At the time of the visit, the two Australian aircraft had refuelled 530 fighters and bombers from the United States Navy, the United States Marine Corps and the French Air Force. By the completion of the deployment in September 2002, the RAAF aircraft and crew had offloaded more than 6 million pounds of fuel to more than 800 Coalition combat aircraft.

That information comes from a defence media release issued after the return of the Air Force personnel. I think it indicates the extraordinary level of work and productivity that the RAAF detachment contributed for this particular aspect of the international coalition. It is also very important to note the extremely positive comments that we received from the Coalition Commander about the effectiveness of the Australian’s contribution to the air operations. He indicated that the professionalism of the RAAF was unequalled and that the reliability and quality of the Australian operations in the air-to-air refuelling process were contributing overwhelmingly to the success of the coalition’s efforts.

On touring the air base, the delegation had the opportunity to meet with a number of RAAF personnel, US service personnel, French pilots and so on. It gave us a chance to explain the reasons for our visit, particularly to those Australians deployed there. I think any member of the delegation would indicate to you that the response to those remarks was overwhelmingly positive.

In visiting the airport itself, we had the opportunity to inspect one of the 707s and have the refuelling system explained to us. There were also some fascinating details provided about the air-to-air refuelling process at night—if you think about what they are required to do, it is a very fascinating and challenging activity to be carrying out at night. The report also comments on the extraordinarily high morale and great commitment of the Australian troops deployed there. I think that is shown in the achievements of both aircraft serviceability and mission completion rates, which are on the record as a result of their contribution.

On leaving Kyrgyzstan, having spent a very brief time there, the delegation went on to spend a short time at Bagram Air Base in Afghanistan itself. The movement of the delegation to Kyrgyzstan and from Kyrgyzstan was, as I have remarked before, carried out in a Hercules C130 aircraft. The delegation was particularly grateful to the RAAF for their exceptional flying skills in
that process. Having landed at Bagram after a tactical air approach, which we were advised was fundamental to this process, I have only overwhelming admiration for those members of the Air Force involved.

The base itself at Bagram is an ex-Soviet military air base. It is in a state of disrepair and disarray. There is an ongoing and serious threat from landmines both in and around the base and the coalition of forces are compelled to regularly conduct demining operations and run both anti-mine education and awareness training for the villagers living around the base. Historically Afghanistan has faced an extraordinary challenge from the presence of landmines in its cities and countryside. I think the stories of the mining of Kabul about 10 years ago certainly focus the attention on the damage and destruction that those mines cause to the most innocent in the community—in Kabul’s case it was very often children.

Bagram is an operational base for the international coalition but is operated within the International Security Assistance Force—commonly known as the ISAF—area of responsibility. The ISAF was established in accordance with UN Security Council resolution 1386. Although the ISAF and the international coalition against terrorism are separate forces with separate command structures and different objectives, I think it is important to note that the two forces have been working in very close contact and are working closely together on matters of security, particularly in the Kabul area, as necessary. We had the chance to meet and be briefed by the Australian special forces task group in Bagram, and a visit to the task group headquarters was also made available to the members and senators of the delegation.

It is not often that one has an opportunity to experience such an extraordinarily close viewing, if you like, of Australian troop deployments in such a sensitive and important area as this, and doing such important work. We were very grateful for the comprehensive briefing that we received from the special forces task group—from their commander and his intelligence officer, and as many of the other members of the group as we could possibly speak to. That one-on-one interaction between members of the delegation and members of the special forces deployed in Afghanistan is, at the end of the day, probably one of the most acute memories that I take away from that experience. Discussing with those men their opportunities and their roles in the patrolling of the area and hearing their observations really did bring home to every single member of the delegation what an extraordinarily important role we have been playing in that process.

In conclusion, parliamentarians are often criticised for the sorts of things we do and do not do, but I think sending a parliamentary delegation to meet our troops on active deployment in such onerous circumstances is a very good way of enabling the parliament to convey messages about what they are doing and the contribution they are making to the Australian community.

**Australia: Engagement with Asia**

Senator WONG (South Australia) (7.26 p.m.)—I wish to speak tonight on an issue that is very important to me personally and that has also been an important policy position of the Australian Labor Party, and that is the importance of Australia’s engagement with Asia. I believe, and the Australian Labor Party believes, that Australia’s future does lie in the region in which we find ourselves—that our future economic prosperity and our regional security relies on us having good relationships with our neighbours and a good understanding of the Asian region. It certainly was a political priority of the Keating government to try to refocus Australia’s social and economic ties and priorities towards the Asian region. Unfortunately, that is a focus that has not been shared by the Howard government; however, it is an issue which does require national leadership, and it requires national leadership because culturally and historically this country has not been focused on Asia, other than perhaps one might say to regard some Asian nations as a threat. For various historical and cultural reasons we have seen ourselves as a bastion of British culture, of Anglo-Saxon culture, isolated in an Asian region and surrounded by countries that have not shared our political or cultural heritage. This can be demon-
strated by looking at many aspects of our history, not the least of which is, of course, the White Australia Policy, which was abolished within the lifetime of quite a number of members of this parliament.

To try to change the way in which Australia views its relationship with the region is an issue that requires national leadership and one that, I was very proud as a member of the Labor Party, the Keating government took as an important issue. It certainly sent very clear messages throughout our region about the focus of the Labor government—that we were no longer looking to the crumbling empire of England and no longer simply looking to America for our future prosperity and security but that we actually understood that relationships with the South-East Asian nations and East Asia generally were critical to Australia’s future. I think there would be very few who could seriously argue against the economic imperatives of having good relationships with our Asian neighbours. Indeed, in today’s troubled times I would assert that it is even more important for us to have deep, strong, close relationships with our neighbours. It is very difficult to build security relationships with countries when you do not have strong diplomatic relationships with them and when those countries are questioning your position in relation to them and in relation to different religions and different cultures.

I want to speak about that tonight in relation to a report that was issued some months ago by the Asian Studies Association of Australia. The report is called Maximizing Australia’s Asia knowledge: repositioning and renewal of a national asset. The Asian Studies Association of Australia seeks to provide focus and direction for the study of Asia in Australia and comprises many academics engaged in the study of not only Asian languages but Asian culture and Asian politics. It is an excellent report which I commend to the Senate and to anyone who is interested in looking at the way in which different policy areas can impact upon the knowledge that many Australians have or do not have of the region in which we live. I want to very briefly quote from one part of the report, which reads:

Australia’s capacity to understand its nearest neighbours and largest trading partners is stagnant or declining at a time when pressures of globalisation impel us to interact effectively and sensitively with the countries of Asia. This is a national concern. Australians need to be equipped for a world in which people from different places and histories increasingly talk to each other, work together and understand the complexities of each other’s political and social pressures. Australians know less about Asia than other parts of the world, yet Asia’s role in Australia’s trade, security and culture is inescapable—and growing.

These are very important and very cogent words, particularly at this time. I note that this report obviously preceded the recent terrorist attacks in Bali and the imperative which has become obvious from those attacks—if it were not already obvious—of having good security relationships with our Asian neighbours, in particular in this instance with Indonesia. This report, Maximizing Australia’s Asia knowledge, shows that we are going backwards; that Australians are learning less about Asia than they did some years ago; that fewer Australian students are studying Asian languages both in schools and in the tertiary education sector; that there are fewer Australians who are gaining a deeper cultural and political understanding of the countries that are around us.

In this context I want to comment on the government’s recent decision to pull out of the national Asian languages strategy. The national Asian languages strategy is a program jointly funded by the Commonwealth and state governments with bilateral support. The federal Minister for Education, Science and Training, Dr Brendan Nelson, recently announced that the Commonwealth is pulling out of the program four years early and is cutting funding by up to $30 million a year. This could affect around 750,000 school students who are currently studying Chinese, Japanese, Indonesian or Korean in around 5,000 schools. These are students who benefited from this program.

I find it extraordinary that at this time, when the importance of engaging with Asia and of Australians having an understanding of Asian countries and Asian language as part of that process is so obvious, the gov-
Government is choosing to take $30 million away from an extremely good program that supports the study of Asian languages in our schools.

Senator Ian Macdonald—Why don’t the states take it up?

Senator WONG—The states are funding it, but the Commonwealth’s funding is being cut. The Commonwealth is providing neither national leadership nor support for this program. The states are putting in their fair share; this government has chosen to take away the Commonwealth part of the funding. I would have thought it would have been self-evident that our future economic prosperity does require that we have in our people an asset in Australians who understand Asian languages, who can speak Asian languages and who understand the cultures of Asia so that we can maximise our position and maximise our economic relationships with these countries. Yet we see government taking money away from the study of Asian languages, reducing funding in this area and failing to support this extremely useful program, and doing it at a time when, as the report I referred to has made clear, Australia’s Asian knowledge is declining rather than increasing.

I want to make some brief mention of the issue of trade, because that is obviously a key area where we can see the benefit of having close economic relationships and ties with South-East Asia, and China in particular. This government is intent upon progressing as a priority a free trade agreement with the United States. I hope that will not be at the expense of multilateral trade negotiations. In particular I want to note that we are being left behind in terms of the free trade discussions that are occurring in our region. In November this year, the ASEAN plus 3 meeting—ASEAN plus China, South Korea and Japan—commenced discussions for an East Asian free trade agreement, which would obviously exclude Australia. From Department of Foreign Affairs and Trade figures we know how important this region is in terms of our exports. This area counts for approximately 47 per cent of Australian merchandise trade—

Senator Cook—$79 billion in exports.

Senator WONG—Senator Cook reminds me that it is worth $79 billion in exports. This is what could be closed off to us if a free trade agreement occurs in East Asia. The government should address this as a national priority.

National Headscarf Day

Senator NETTLE (New South Wales) (7.36 p.m.)—I rise to bring to the parliament’s attention an innovative idea that was born of one woman’s desire for a positive gesture to support Muslim women across Australia in increasingly difficult times. I am talking about the first National Headscarf Day, which is to be held on 29 November this year. Since September 11, we have witnessed a sharp increase in racially motivated attacks on Muslims in this country. Indeed, over the last three years, the number of formal complaints about racial vilification in New South Wales has more than doubled. Perhaps the even more frightening aspect of this is that, according to Chris Puplick, the President of the New South Wales Anti-Discrimination Board, 16,000 phone calls to the discrimination board have been from people who are too afraid to make a formal complaint or cannot identify their attackers. This is symptomatic of the climate of fear that has emerged in Australia, unchecked by our government. Last month, Mr Puplick said in a speech at the University of Sydney:

At the end of the day racism like any other great social evils of our society, needs to be combated by a combination of education and leadership. Leadership comes from many quarters, from our public intellectuals, from our community role models and from our politicians.

There are simple ways in which politicians can help to stem this tide of violence, but unfortunately the government has failed to meet this challenge. Indeed the government’s divisive response to recent world events, as well as the continued and appalling mistreatment of asylum seekers, has fanned the flames of racist sentiment in this country, thereby adding legitimacy to these senseless attacks.

Muslim women, particularly those who wear the traditional headscarf, are an easy target for racial violence. The majority of anti-Muslim attacks have been directed at
women of all ages. Women have been taunted, had their headscarves ripped off and, in the most serious cases, have been physically abused. Women have had lit cigarettes thrown at them, have been spat on in the streets and have been pushed off trams and buses. In a Sydney shopping mall, one Muslim woman’s face was smashed into the floor. She was reportedly told by her attackers to ‘go home’. The awful irony of that particular incident is that the woman was Aboriginal.

In another incident in Melbourne a young pregnant Muslim woman was harassed by two young men on a tram. Appallingly, no passengers came to her aid. Eventually, the tram driver stopped the tram and told the men responsible to get off. I find it profoundly embarrassing to hear of these incidents occurring in Australia, especially when I hear that others have not come to the assistance of the women involved. Supporters of peace and harmony in our society, when continually hearing of these incidents, are compelled to act. The irrational basis of these kinds of attacks is exemplified by the reports of young girls being cruelly taunted on their way to and from school.

Not long after September 11, we heard about a Muslim woman who was verbally assaulted on a train in Sydney. When she alerted security guards to this abuse, she was told to ‘move to another carriage’. This kind of attack, and the sometimes indifferent response of authorities, has escalated since the Bali atrocities. Indeed, this abuse has escalated to the point where many Muslim women prefer to live in a state of virtual home imprisonment rather than run the gauntlet of racial abuse in their towns. It is unacceptable that women in Australia should have to put up with this kind of harassment.

In the current political climate, and whilst our government continues to advocate a war on Iraq, attacks against members of the Muslim community will continue. It is often difficult to know what we can do to express our opposition to this racial scapegoating. National Headscarf Day provides us with a symbolic opportunity to voice our opposition. It is a national day of solidarity with Muslim women and a protest against racially motivated attacks on Muslim women in Australian cities. The woman who proposed the idea for National Headscarf Day is a Jewish woman, a former Israeli and now Australian citizen who gave up her Israeli citizenship because she was appalled by the Israeli treatment of Palestinians. She made the courageous decision to organise National Headscarf Day because, with her background, she felt she simply could not sit by and watch while Muslim people, and women in particular, became the target of racism.

On 29 November this year I will be visiting a mosque in Melbourne with other women from the Greens. We will be wearing headscarves in public to show the Muslim community that the perpetrators of these cowardly attacks, and indeed our government, do not speak for us when they engage in racial vilification, harassment and abuse. I will be joining thousands of women across Australia who will be part of this solidarity action. I invite other female parliamentarians to do likewise.

**Papua New Guinea: Ministerial Summit**

**Senator COOK (Western Australia) (7.42 p.m.)—**Last Friday, the Minister for Foreign Affairs, Alexander Downer, led an Australian delegation of ministers to talks in Papua New Guinea. It was a regular ministerial summit. One of the other members of the delegation was Senator Hill, the Minister for Defence. Among the key issues being discussed by the joint governments of PNG and Australia was the state of the Papua New Guinean economy and steps that needed to be taken to improve the economic outlook for that country.

Papua New Guinea is Australia’s closest neighbour. We are joined across the Torres Strait by a chain of islands. Papua New Guinea is a developing country in which the per capita income is quite low. It is a mineral-rich economy in which the art of exploiting the mineral wealth of the country for the good and benefit of the citizens of the country is one of the major development challenges. It is a country with a standard of education which is good for a developing country, but all of the development economists agree that elementary education for boys and girls is a key building block for
economic development in a developing country and Papua New Guinea needs to spend more money on education in order to achieve the types of skills and intellectual framework necessary for growth.

In Papua New Guinea the AIDS epidemic that is besetting Africa and parts of Asia has not yet broken out but is threatening to. Papua New Guinea is on the verge of having AIDS reach epidemic proportions. If things continue unabated, an epidemic is likely. Expenditure on health will be fundamental to stopping the epidemic. Also, lifting education standards generally will improve the health conditions of that country and remove a considerable drain in expenditure on health services generally.

Apart from resource development and timber and cellulose production, Papua New Guinea’s economy is based on subsistence farming. There is a real need to put roads through the highlands and to improve other infrastructure so that remote farmers can bring their produce to the main markets at Port Moresby and elsewhere in that country to create the fundamentals of an economy.

Papua New Guinea’s economic outlook in the present circumstances is not bright, because the revenue stream that supports government expenditure is drying up; it is falling. The budget of Papua New Guinea is in deficit to the tune of six to seven per cent of GDP, which is quite high. The IMF and the Australian government are pressing the Papua New Guinean government to bring its budget back into surplus and to start making provision against any decline in the general economy as a budgetary outlay.

The PNG government wants an agreement from Australia whereby we provide a holiday from repayments of debt that has been incurred between Papua New Guinea and Australia. Alexander Downer, on behalf of this country, said to the camera on ABC news on Friday night that Australia had declined to agree to the Papua New Guinean proposition. He made it sound as if we had done them a good turn. He said that, if Papua New Guinea does not have to service its foreign debt, the international investment community will mark down Papua New Guinea and international investment will not flow to that country. That sounds like we did them a good turn! In fact, we did them a very bad turn. International investment in Papua New Guinea is related to the mineral wealth and hydrocarbon resources of that nation. International investment flows according to the market for those commodities and is otherwise in support, infrastructure and other services. The amount of international investment that primarily flows to that country is dependent on the world market for PNG’s exports.

With a collapse in revenue to the budget, we are looking at this situation: the budget deficit is growing; the level and proportion of outlays from that budget to retire debt and pay off foreign debt is growing; the interest burden of the foreign debt is increasing; and the ability of that budget in a contracting economy to meet health, education infrastructure and other payments is being reduced at the very time when just about every economist who ever looks at this classic set of circumstances would argue that the economy needs to be stimulated. The stimulus is unlikely to come from the private sector; the stimulus has to come from the public sector. If it is to come from the public sector, you cannot be reducing your deficit and retiring debt at that level and you cannot be making provision for any further deterioration in your exchange rate—you cannot be doing all those things necessary to build an economy.

For Australia, the real question is: how do we play a role in helping Papua New Guinea to get a sustainable growth economy? We put big bucks of Australian aid into PNG, and it keeps going to PNG. The key question is: how can PNG be put on a path where its growth is sustainable and self-generating so that the foreign aid we supply them with will not be necessary? As is well known in development and economic circles, the answer to that question is: you put into place the education building blocks and the infrastructure necessary, you keep the economy moving along, you remove the debt burdens from the economy and you go for growth. That is what you do. You hit a level of growth which becomes self-sustaining and the economy takes off, and when ignition occurs it usually takes off at very high
growth rates. But what we are doing is asking the reverse to occur. We are smothering the economy. Australia should have said that we would examine and support the debt relief proposals from PNG in order to enable their economy to grow.

The other thing that needs to be said is that Papua New Guinea is a democracy, and it is a relatively stable democracy, irrespective of the fact that governments in that country do come and go. Recently, Michael Somare was re-elected as the Prime Minister of Papua New Guinea. One of the platforms on which he stood, which the voters in that constituency endorsed, was that he was against privatisation. It was a 'no privatisation' platform. The Australian government has now asked—

Senator Ian Macdonald—It would be no good for you after Qantas and the Commonwealth Bank.

Senator COOK—That is the democratic decision of the voters of PNG, Senator Ian Macdonald. All I am saying is that we should respect the democratic right of those voters to make a decision. The Australian government is now saying to PNG: 'You've got to reverse your anti-privatisation stance. You've got to sell off your electricity authority. That is what you've got to do. And you've got to generate a capital gain from that sale to retire debt—not to stimulate the economy, not to invest in infrastructure, not to fight the growing incipient problem of AIDS, not to invest in education but to simply retire debt at a time when the revenue from power generation can add to the declining revenue going to the budget.

We are telling them, a democratic government with a mandate, to reverse their mandate. We are saying, 'Don't do what the voters asked you to do; just change your role.' Then we talk about democracy in developing countries being fragile while we stand over them with a big stick and an aid bucket, which we are not helping them with, saying, 'If you do as we tell you, we'll provide a bit of aid.' Australia ought to respect the democratic decision that put the Somare government in office and protect the political stability of the country by not undermining a democratically elected government and by helping the economy to expand.

The economy of Papua New Guinea is in a parlous state. We will have a Biafra of the Pacific on our doorstep if we do not do something about it. Watching this economy in decline is not an option; we need to take positive steps. Insisting on a strict monetarist approach in a developing economy does not face up to the realities of the needs of a developing economy. By applying this harsh economic medicine to PNG, we may well bring about the demise of the economy and therefore a greater debt that Australia will have to meet in the future. If we do that, it will be a tragedy for them and a tragedy for us.

Victoria: Melbourne 2030

Senator MARSHALL (Victoria) (7.52 p.m.)—Tonight I want to raise the matter of planning issues in Victoria and, specifically, Mr Petro Georgiou's article in last Thursday's Melbourne Age in which he discussed the Victorian government's Melbourne 2030 plan. By any fair analysis, Mr Georgiou's article was misinformed at best and scare-mongering at worst. The Bureau of Statistics projects that the Melbourne area will have an additional 620,000 households in the year 2030. The Melbourne 2030 strategy reflects the challenges facing the Victorian government in accommodating these people while, at the same time, protecting the things we value most about Melbourne. The Liberal opposition in Victoria attempt to paint this projection as an invention of the Bracks government. They should be reminded that, as an independent assessment, that projection stands irrespective of who is in government in Victoria. The key difference is that the Bracks government have a plan to meet that challenge and the Liberal opposition do not.

Mr Georgiou attempts to discredit the Melbourne 2030 plan by disingenuous arithmetic. He takes the projected increase in households, divides it by 31—that number being the number of metropolitan councils—and uses the resulting figure to announce that each of those councils must accommodate that additional number of people. Mr Georgiou fails to acknowledge that where people live is a matter of choice and that the Mel-
bourne 2030 strategy caters for, and supports, that choice. Melbourne 2030 breaks the larger projection down so that regions in Melbourne have an idea of the growth they will have to accommodate. Across the board, it is projected that growth will be slow over the next 30 years.

In existing suburbs, the degradation of suburban streets that was so evident under the Kennett government will be prevented by encouraging development around activity centres. The nature of that development will be determined by all interested parties—residents, councils, developers and the government—in the knowledge that no two centres are the same. With regard to the urban fringe, Melbourne 2030 has two key principles. Firstly, it stops the ad hoc and damaging sprawl of the city into green wedges set aside by Sir Rupert Hamer. It does this by introducing an urban growth boundary and by special laws within the wedges. Secondly, it provides for ongoing development in five designated growth corridors. Crucial to the success of this strategy is the ongoing supply of land to ensure that it remains affordable. Land supply will, of course, be closely monitored. The combined effect of these two principles is that the things we value about Melbourne are protected. Melbourne 2030 ensures that we are building communities, not just housing estates.

This plan allows the Victorian government to better focus on the delivery of the whole range of government services to our communities, particularly on the fringe. Providing services closer to home and smarter public transport links will allow the government to start to reduce our dependence on cars. Mr Georgiou would have us believe that Melbourne 2030 is without any intrinsic merit or support from interested parties. Nothing could be further from the truth. The Planning Institute of Australia states that Melbourne 2030 is:

... the best plan we’ve seen from a State Government in over thirty years, possibly even the best since the very first 1929 plan.

This appraisal of the Bracks government plan is echoed by the Property Council, the Housing Industry Association, Save Our Suburbs and many green-wedge groups across Melbourne. Support for Melbourne 2030 has also come from international organisations. Sir Peter Hall from the Institute of Community Studies in London said:

It builds on Melbourne’s strengths as a major Australian city. The main elements—strengthening centres, maintaining green wedges—all make eminent good sense and are mutually reinforcing.

Mr Josef Konvitz of the OECD said:

The Strategy recognises the fact that uncoordinated, small-scale efforts ... will only perpetuate problems. I am very impressed by the clarity and balance between general and particular.

This level of support for Melbourne 2030 more than justifies the two years spent in its creation and is a clear endorsement of the consultation undertaken by the Bracks government. Far from seeing consultation as the negative Robert Doyle would like it to be, the Bracks government actively involved thousands of Victorians in the formation of the strategy through information forums, submissions and focus groups. Currently, consultations on the implementation options are taking place with community, industry and council representatives. In Melbourne 2030, the Bracks government has a strategy that has attracted local and international accolades, built on community consultation and involvement. The opposition have nothing—no policy and no direction on planning issues. Their attitude to planning issues is best remembered in the approach of the Kennett government. Remember the ‘Good design guide’—the callous removal of community involvement in the planning process, the culture of development at all costs? Victorians have not forgotten either.

**Health Group IT Outsourcing Tender Process**

**Senator LUNDY (Australian Capital Territory)** (7.57 p.m.)—The Australian National Audit Office report tabled very recently in the chamber entitled *Health Group IT outsourcing tender process* was undertaken at the request of the Senate Finance and Public Administration References Committee. This request was made following a Senate Finance and Public Administration References Committee inquiry into the coalition’s IT outsourcing program. During this inquiry, serious questions were raised about
the probity of the Health Group tender. In June 2001, the Auditor-General began a performance audit into the Health Group tender process. The auditor’s report concluded:

On the basis of the available evidence, ANAO—that is the Audit Office—is not able to provide an assurance that no tenderer unfairly gained a competitive advantage in the Health Group process."

There was a lack of transparency of the manner in which probity issues were considered by OASITO—that is the Office of Asset Sales and IT Outsourcing. This is a very serious finding. It is an adverse finding that invites questions about whether or not there was corruption involved in the process. The auditor also found that the successful bidder, IBM GSA, had access to the detailed bids of the other two tenderers; may have substantially reduced its own bid after this access; lodged this revised offer after the stipulated deadline; and was awarded the Health Group contract without all of the relevant tender oversight committees being informed of these irregularities. Possible corruption by OASITO, the Office of Asset Sales and IT Outsourcing, of the tender process involving a major IT outsourcing contract is a very serious matter indeed. Yet, in respect of this Health Group tender, the Auditor-General found maladministration and raised the possibility of corruption of the tender process.

This tender goes back to 1999, when IBM GSA was one of three tenderers for the IT outsourcing contract for the Department of Health and Aged Care, the Health Insurance Commission and Medibank Private Ltd. This group was known as the Health Group. The other tenderers involved in this process were CSC and EDS. The request for tender was issued in November 1998, and closed on 15 February 1999. IBM GSA was announced as the successful bidder in September 1999, and on 6 December 1999 contracts were exchanged to the value of $351 million.

It is important to note that the CEO of the Office of Asset Sales and IT Outsourcing at this time was Mr Mike Hutchinson. He oversaw the Health Group tender process. Also at that time, Mr Greg Barns was advising the then Minister for Finance and Administration, Mr John Fahey, on IT outsourcing. In relation to the Audit Office report, one of the main issues of the Auditor-General’s inquiry was that, during the tender process, OASITO gave IBM GSA a computer disk containing critical information relating to the final pricing of their rival tenderers. This has come to be known as the ‘disclosure event’. OASITO, the agency then responsible for overseeing the tender process, claimed that they inadvertently sent IBM GSA the computer disk containing information about their competitors’ bids. OASITO accepted IBM GSA’s assurance that they did not examine or copy their rivals’ bid information contained on the disk. However, the Audit Office found that, after receiving this computer disk, IBM GSA were not able to prove that they did not revise their tender bid. IBM GSA then lodged their revised bid after the due deadline. At the time, OASITO described giving IBM GSA details of their rivals’ bids as an inadvertent error and the then Minister for Finance and Administration, Mr John Fahey, dismissed my repeated calls for an immediate halt to the tender process.

On 8 February 2000, during Senate estimates, which was the first available opportunity to ask questions, I questioned officers from OASITO, including Mr Ross Smith, about the probity of the tender process. OASITO representatives made the following statements about the tender:

The management of the event ... was conducted in accordance with the advice from both the probity auditor and our legal advisers engaged for the initiative. All parties concurred at the time that the process could continue unchanged.

They said that OASITO briefed the probity auditor in person and that the probity auditor:

... immediately came back to us with a proposed course of action ...

... we engaged the probity auditor to participate in all of our discussions with us, to make sure that he fully witnessed the nature of the discussions ... and he was happy that we had delivered the messages in accordance with his proposed course of action.
The management of the event, including the consultation with the agency heads and other tenderers in the process, was conducted in accordance with the advice from both the probity auditor and our legal advisers engaged for the initiative. All parties concurred at the time that the process could continue unchanged.

The following day OASITO officials briefed the probity auditor in person. The probity auditor wrote to OASITO proposing a course of action to address the situation, on the same day, and initial statutory declarations were received from the tenderer employee that opened the disk.

In sharp contrast to this statement, the ANAO’s findings that a probity auditor report did not exist expose the misleading evidence provided to me by OASITO at Senate estimates. The Audit Office report concluded:

... all requests by OASITO for advice from both the Legal Adviser and the Probity Auditor regarding the disclosure event were oral.

There was no record retained by OASITO of its conversations with either the Legal Adviser or the Probity Auditor in relation to the disclosure event, the instructions provided about the event and the nature of the advice sought by OASITO, nor of the options discussed with either party.

There is no written advice from the Probity Auditor (who was overseas at the time), nor from his representatives, regarding the probity aspects of accepting the late offer from IBM GSA following the disclosure event; either before or after the decision to accept it had been made.

That is from page 10 of the Audit Office report. This means, firstly, that OASITO appear to have misled the Senate by saying that a probity auditor had provided advice that the tender could proceed. The Audit Office found that this had not happened. Only on request, through estimates, for this probity report did the Department of Finance and Administration begin to prepare such a report. Secondly, the legal adviser was not empowered by OASITO to advise that the tender process could cease, thus compromising the status of their advice. Thirdly, IBM GSA may have altered their price and included as yet unknown ‘out of scope’ industry development commitments between the disclosure event and the late lodgment of their final offer, as they were unable to prove otherwise. Finally, the relevant Health Group departments and agencies were not informed of the disclosure event at the time, the subsequent changes in final bids, or the late lodgment of the IBM GSA bid.

It is interesting to note that, following this period, Ross Smith was awarded a Public Service Medal. It is hard for me not to draw the conclusion that the government was rewarding Mr Smith for his protection of the minister’s political interests. Almost three years later and no longer accountable to the parliament or taxpayers, former minister John Fahey told the Audit Office in September 2002:

When the disc containing all three bids was delivered to IBM GSA in error my reaction on being informed directly by OASITO was to cancel the tender. I could not see that a tender process with integrity could continue. At the conclusion of the tender, I was both disappointed and annoyed at the limited role of the Probity Auditor and the absence of a separate report on the issue.

But, as we know, the tender did continue and IBM GSA was awarded the Health Group contract. Having originally raised concerns about the Health Group bid in 1999, and having carefully followed this debacle over the course of a number of Senate inquiries and estimates questions, I can only conclude that OASITO officers deliberately misinformed the Senate to cover up possible corruption of the Health Group tender process and that this was designed to ensure that IBM GSA won that bid. The government must immediately take action to satisfy all the parties involved, and Australian taxpayers, that this tender process was not corrupted in any way. If they cannot demonstrate this, they must accept responsibility for this debacle. I will continue to pursue the government in the appropriate forums about their culpability to ensure that this shambles of a tender process does not ever happen again.

Victoria: Melbourne 2030

Senator TCHEN (Victoria) (8.07 p.m.)—I take great pleasure in following my Victorian colleague Senator Marshall to speak about Victoria. I think Senator Marshall
ought to be admired because he chose, once again, to defend the indefensible by trying to praise the achievements of the Bracks government over the last three years. Tonight is not the first time Senator Marshall has done this; he has done this a couple of times. Having chosen this course of action, he is in the unfortunate position of not being able to find any achievements on which to praise the Bracks government. Tonight Senator Marshall said that the Melbourne 2030 planning document—a strategic plan for Melbourne’s development over the next 30 years—was something of an achievement of the Bracks government. In particular, he criticised Mr Petro Georgiou, a Victorian colleague in the other chamber, who has written an article exposing Melbourne 2030 as a con job.

Senator Marshall took great exception to some of the comments Mr Georgiou had made about Melbourne 2030. But, instead of arguing whether Mr Georgiou was right or not, I would like to draw Senator Marshall’s attention to the comments of another critic, Mr Kenneth Davidson, who, I think, is much more politically acceptable to Senator Marshall. In the Age last month, when Melbourne 2030 was first released, Kenneth Davidson described this particular document not as something which was to be a highlight of any government’s achievements but as simply a restatement of the main elements of the Kennett government’s 1995 planning document entitled Living suburbs. This is something which Senator Marshall should think about. The Bracks government produced something which the Kennett government had put up seven years before. So it is not fair to paint the Kennett government as evil when the Bracks government has replicated something which was done seven years earlier.

Metropolitan planning strategies are notoriously difficult to produce because in metropolitan areas you do have conflicting interests. There are various development interests and environmental interests, there are issues about whether public transport and/or cars are the best way to move people around and there are competing land uses. These are always difficult issues. It takes determination and vision to achieve the balance between development needs, environmental needs and social needs.

So every government from time to time will undertake a plan for long-term development of a major city like Melbourne. Whether they can achieve the goal will depend on whether they take their job seriously or not. It is pretty obvious that anyone looking at Melbourne 2030 will find that not only is it a wholesale regurgitation of old ideas but, worse than that, it is a wholesale regurgitation of old ideas which are presented in the wrong way. I will give an example.

Melbourne 2030 proposes a solution to eliminate excessive transport and to redirect development to ensure that it meets community needs. The key centrepiece is the concept of activity centres. The idea is that, instead of all the activities being concentrated in the CBD developments, activities will be encouraged to occur right across the metropolitan area so that people will have shorter distances to travel. In the 1950s, the then Melbourne metropolitan area planning authority, the Melbourne and Metropolitan Board of Works, had already come up with this idea. They proposed that there be a small number of major centres, about six, around Melbourne—mini CBDs. More than 50 years later, we find that the Melbourne metropolitan structure actually reflects the old Melbourne and Metropolitan Board of Works planning proposals in that we have these activity centres, which anyone who lives in Melbourne knows about. These centres include Box Hill, Frankston, Dandenong, Footscray and Preston. They are the centres around which a lot of activities occur now.

Many people in Melbourne live in regional divisions; they do not have to travel long distances to go to a CBD. Instead of trying to develop this idea further, Mr Bracks, through Melbourne 2030, thought that he was on to a good thing and that he would push this further. His plan proposed not five or six, not 10, not 20 activity centres but 104 such activity centres right across the metropolitan area. I cannot imagine a metropolitan area of Melbourne’s size having 104 activity centres. The only way for these activity centres, such dispersed structures, can be linked is to rely on private cars.
Melbourne 2030 proposes that the government intend the public transport share of metropolitan Melbourne’s trips to double to 20 per cent by 2020. This is all very nice, but how you would service a dispersed distribution of services and population through a public transport system is not clear. Showing that the government is not genuine about what they propose to do about public transport, when Mr Doyle came up with the proposal that a Liberal government would abolish zone 3 of the public transport zones—which is the very outer zone—so that people in the outer areas would only have to pay the same amount for their public transport as the people in the inner and middle areas, Mr Batchelor, the Minister for Transport, attacked the Liberal Party’s proposal. He said it would not work because it would bring too many people onto the public transport system. That is the most ridiculous argument that a Minister for Transport could come up with, particularly a Minister for Transport who supposedly supports the idea of public transport. Mr Batchelor says reducing ticket costs for public transport is not workable because it will bring too many people onto the public transport system.

So Senator Marshall has taken on a lame duck idea. I come back to what Mr Kenneth Davidson said about this plan. He said that Steve Bracks tried to sugar-coat the same pill that Jeff Kennett came up with, with phoney consultative processes and documents in warm, earthy colours, subliminally evocative of a sustainable environment with lots of people enjoying caffelatte society, trams and trains and hardly a freeway in sight, apart from the odd blurred picture evoking speed and mobility. Maybe these are the freeways that Mr Bracks claims he has already built, like the Scoresby freeway, which he spent a lot of public money advertising.

**Victorian Liberal Party**

Senator ROBERT RAY (Victoria) (8.17 p.m.)—Tonight we have actually heard from the last great Kennett legacy project—that is Senator Tchen. He is here, of course, not on any particular merit, although I think he has got some; he was sent here to replace Senator Karen Synon. You would understand this, Mr Acting Deputy President Brandis. Senator Synon was sent here by the Kroger-Costello forces. Jeff Kennett was not too pleased with someone he often referred to as ‘the dog’ and so he made sure, for once, that he worked hard at the numbers—and I assume Senator Troeth backed him up on this—and rolled Senator Synon. So they looked all around the state to find some harmless fellow to send into the Senate whom no-one could criticise, and they came up with the previous speaker. To repay them, he loyally comes in here and trots out the dreary, drudgy Victorian Liberal lines.

There is nothing positive of course. They have no vision for Melbourne—none whatsoever. Their only vision is to allow people to speed on the freeways they want to build. We have spent a long time in Victoria trying to get the speed limits down and trying to protect the Victorians—look at the death toll this year; it is far less than the previous year—and what does Senator Tchen’s ally want to do? He does not want people booked for speeding; he wants to extend the limits. That is the sort of pathetic policy they are involved in.

Their whole policy on Melbourne 2030, their whole criticism and their whole critique is aimed at defending seats that Labor would need a six to 10 per cent swing to win. They are not out there campaigning in the marginals and they are not out there campaigning in rural and regional Victoria; they are out there defending the eastern suburbs heartland. That is what zone 3 is about. They are out there defending a non-existent six to 10 per cent swing. They are not out there contesting, as they should be.

Senator Tchen comes in here and says, ‘Kenneth Davidson is critical—look at him. He is normally a weak, soft, pink left-winger. He is critical.’ You only have to have read the Age for the last three years to have seen what a pathological hater Kenneth Davidson is of the Bracks government. Every second week there is an article. It is the same article with the paragraphs in a different order.

Senator Troeth—He is hiding it very well.

Senator ROBERT RAY—‘He is hiding it very well,’ says Senator Troeth. He hates the
Bracks government from a left-wing perspective, Senator Troeth. Don’t you understand that? He is the old pinko not willing to accept the modernised Labor Party. He is out of date and he is gone, but he has an ally in Senator Tchen and that is very good to see—Senator Tchen coming out and supporting the left-wing journalist in the Age. I am very impressed by that!

But if in fact this party is serious, it is about time it started answering questions rather than running. Let us turn our attention for a minute to Dr Robert Dean. When you look at the press conferences that have been held by either Dr Dean or Mr Robert Doyle, they have run from answering the crucial questions. There is no difference between what Dr Dean did and what some of the rascals in the Labor Party in Queensland did. Both are unforgivable and both should be punished—and, in the case of Queensland, they were punished by their own political parties.

Senator Ferris—Where did Paul Keating live when he was Treasurer?

Senator ROBERT RAY—Senator Ferris asks where someone lived. The first thing you have to do is live for 30 days at the address at which you enrol, and Dr Dean never lived there for one night! So when he filled out his enrolment form he lied, he misled and he deceived—he never lived there. He not only deceived the electorate but committed an illegal act.

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Senator Ray, I think that the prohibition under standing order 193(3) applies to members of other parliaments as well. Dr Dean, as I understand it, is a member of the Victorian parliament.

Senator ROBERT RAY—No, he is not anymore.

Senator Mackay—News flash!

Senator ROBERT RAY—A news flash for you! Thank you for keeping up to date and reinforcing my case. In fact, Mr Doyle himself told us he was no longer a member of the parliamentary Liberal Party. So what do we have as the second thing he did? When, according to the records, new tenants moved in there, did Dr Dean inform the Electoral Commission that he had moved back to Hawthorn, even though he had never moved in the first place? No, he did not. That was the second act of deception and the second illegal act. But the most illegal act of all was that a few days ago he nominated for parliament. He signed a declaration that he was enrolled and living at that address in his electorate when he lived 30 kilometres away in Hawthorn. That was a third act of illegality, a third act of deception.

Dr Dean did none of this to rort the electoral system directly. I acknowledge that. He did not try to maximise the vote in the electorate of Gembrook by voting there himself when he lived in Hawthorn. That was not the intention. It was for internal political reasons—the very same stupid internal reasons that people in the Labor Party in Queensland got into strife over. It was not to rort the election outcome but to affect internal operations of a political party. Seats were abolished after a redistribution in Victoria. Things got a bit nasty out Gembrook way when Mr Robert McClelland wanted to run again for the seat because it was a merged seat. Dr Dean wanted to run because his neighbouring seat was abolished. So he wanted to establish his local credentials. He had moved down to Hawthorn 10 years ago. So he rented a place and enrolled there. He never went there—all of the neighbours say that they have never seen him. He will never answer a direct question as to whether he has ever been there. Mr Doyle says he will not even ask that question. What an intellectually rigorous Leader of the Opposition we have in Victoria. He will not even ask his close friend Dr Dean, who is not only a close friend but also his numbers man. You would think Mr Doyle would have been to the Hawthorn residence for the odd dinner or made the odd phone call there. But, in fact, none of them know anything.

I suppose the most despicable thing of all happened on Saturday morning. The excuse for all of this was a very intense personal thing that had nothing to do with the issue whatsoever. It was dragged in as a red herring and it has disgraced all politicians.

Senator Troeth—How would you know?
Senator ROBERT RAY—Because I do know this, Senator Troeth: no matter what your personal circumstances are in terms of the size of house that you live in, you do not have to move 30 kilometres away to find a small house. It was an absolute furphy, and it is recognised by most of your people in Victoria as that. I will not have to remind you that the last time that happened in this chamber some seven or eight years ago we were all massively embarrassed when someone said that it was the death of a senator that caused him to resign, when there were a dozen other reasons. Introducing that personal aspect that had nothing to do with his false enrolment—absolutely nothing; it was for preselection purposes—has embarrassed all of us, because it makes us all look like cynical users. I do not forgive him for that.

I understand the problems he had with his preselection. I do not condone the way he tried to resolve it and maximise his position in the internal affairs of the Liberal Party in Victoria, but I can at least understand that the motive was not to rort the election or the electorate per se. We accept that. But he will not answer the questions directly and he will not say whether he ever lived there even for one night. All the neighbours know he never lived there for one night and that it was just a convenience. When you look at Mr Doyle’s original press conference when he announced all of this, he said that it was an inadvertent mistake. That can lead you only to two conclusions: either Mr Doyle was not telling the full truth that he knew about the matter or he is such a naive leader that anyone can give him any story and he automatically accepts it. He should have looked beyond the explanation that it was an inadvertent mistake that Mr Dean was not in fact enrolled.

It is interesting that some Victorian Liberals are saying, ‘This must be a deliberate act by the Victorian Electoral Commission to fix up Mr Dean.’ I am pretty sure—but we will find out—that this was a proper act by the Australian Electoral Commission in the joint roll arrangements. They went through the normal procedures. The great irony is that Dr Dean would not have been caught if he had put in a redirection order—$33 has cost him his career—because no-one would have known. Why did he not put in a redirection order? He never lived there and no-one was ever going to send him any mail, so why spend the $33? After all, it was only seven years ago that he was quoted in the local newspaper saying that he had continued his profession at law whilst he was in the state parliament because he could not live off his parliamentary salary of close to $100,000 a year. Indeed, for $33 we have seen a political career go down the drain. I would have a lot more sympathy for him if he had not run that red herring out about personal circumstances which had no relevance to this case whatsoever.

Port Hedland: Muslim Community

Senator EGGLESTON (Western Australia) (8.27 p.m.)—After listening to Senator Nettle’s miserable story of anti-Muslim behaviour around this country earlier tonight, I would like to tell a different story of racial and religious tolerance in the north-west of Western Australia in the mining towns up there, particularly in Port Hedland, where the Muslims are very much accepted as part of the community. In fact, some 10 per cent of the population of Port Hedland are Malay and Indonesian Muslim people. These people originally came from Christmas Island and Cocos (Keeling) Islands, where they worked for the British Phosphate Commission. When Christmas Island became an Australian territory they were brought to work in the Pilbara for Goldsworthy Mining, which was the very first of the great iron ore mining companies in the Pilbara. Now they work for BHP Billiton iron ore. These people worked at Shay Gap, Goldsworthy and Finucane Island, which was the Goldsworthy port community. As I said, they are very much part of the community in Port Hedland. There is certainly no question of racial intolerance or vilification of the kind Senator Nettle expressed to the Senate earlier tonight was occurring in Sydney.

The Muslims in Port Hedland are regarded very much as part of the community. They are regarded as hard workers and they fit in well. They certainly do not disguise the fact that they are Muslims. The women can be seen in the shopping centres in Port Hedland
and South Hedland in traditional Muslim garb. They wear head coverings and long dresses, and many of them wear these garments even in the height of summer. The more conservative Muslim women and children dress in black, with black head coverings, black face masks and long black dresses. These women are obviously Muslims. Their menfolk also wear fairly identifiable clothing. They wear skullcaps and make no secret of the fact that they are Muslims and very proud of their ethnic identity. They maintain a very cohesive community which is, nevertheless, part of the broader Port Hedland community.

The community, which, as I have said, is some 10 per cent of the population of Port Hedland, has a mosque in South Hedland. It was built, I believe, with the support of Muslims in Indonesia. Many of their children attend the Baler Primary School, which is in one of the four or five suburbs of South Hedland. Their older children go to the South Hedland High School, and many of them attend Hedland college, which is the East Pilbara College of TAFE. The Muslim women work not only in the shops but also as part of the secretarial force of the mining companies in the Pilbara, other offices within the town and government offices, both federal and state, in Port and South Hedland. These people have transformed the community of Port Hedland, in the sense that Port Hedland is just another Australian regional town, but instead of the CWA ladies putting on Devonshire teas and scones at town festivals Muslim ladies serve satays and curry puffs, and the people in that part of the world really enjoy the contribution that these Muslims make to the town of Port Hedland.

There is quite a lot of intermarriage between the Muslim community in Port Hedland and the rest of the community. But not all of the marriages are intermarriages between European Australians and Indonesian or Malay Muslims. Quite a lot of these young Muslims bring in brides or husbands from Malaysia, Indonesia or Singapore, and the marriages are quite memorable because the ceremonies last three or four days with endless feasting. I have been to a few weddings where the bride has changed her costume no fewer than seven times in the course of a three-hour afternoon.

The great event of the Muslim year is the Ramadan festival. At the end of Ramadan the Muslims have what they call the Muslim Christmas, which is really the beginning of their new year. In South Hedland the Muslims throw their homes open to anybody who wants to visit and they have a great feast. As I said, they are very much part of the community. This happens not only in Port Hedland but also in other north-western towns, such as Geraldton and the inland mining towns like Newman and Tom Price, and in south-western towns such as Katanning, where there is a halal abattoir.

Rather than tell the grim and miserable tale of racial and religious intolerance and anti-Muslim behaviour which Senator Nettle claims is now common in Australia, I want to tell the other side of the story. I want to tell the story of these towns in the north-west where the Muslims are a significant part of the population—where they do fit in, they are accepted and there is no hint of the kind of racial vilification and religious intolerance that Senator Nettle portrayed. I must say that one finds that kind of model of racial and religious tolerance across the north of Australia, not just in the north of Western Australia—although there are great examples, such as Broome, in the north of Western Australia, where the population is very much a multiracial mix of Indonesian, Malay, Japanese, Chinese, Aboriginal and European people. As I have said, in towns like Port Hedland there is a high degree of racial tolerance, and I think that that kind of tolerance is more typical of Australia than the kind of miserable depiction which Senator Nettle presented to the Senate tonight.

**Senate adjourned at 8.35 p.m.**

**DOCUMENTS**

**Tabling**

The following government documents were tabled:

Australian Centre for International Agricultural Research—Report for 2001-02.
Civil Aviation Safety Authority—Report for 2001-02.

**Tabling**
The following documents were tabled by the Clerk:
Customs Act—CEO Instrument of Approval No. 39 of 2002.
Sydney Airport Curfew Act—Dispensations granted under section 20—Dispensation No. 11/02 [3 dispensations].
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Aviation: BAe 146 Aircraft
(Question No. 461)

Senator Knowles asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 18 July 2002:

1. Why does the Civil Aviation Safety Authority (CASA) consider that an Australian Airworthiness Directive (AD) which ‘requires all operators to undertake inspections of oil contamination at intervals not to exceed 500 flights’ is adequate, when that many flights could constitute around 125 days (at a rate of 4 flights per day) before any check is made.

2. (a) How are the ‘inspections of oil contamination’ undertaken and by whom; and (b) what empirical method is used for determining the presence of oil in the entire cabin air system.

3. Given that there is considerable evidence of poor cabin air quality in Australia, why is it considered that Australia will have ‘a more timely and effective response into cabin air quality’ if we wait for more international studies to determine the approach to be taken.

4. Why would it be ‘premature to develop unique Australian cabin air quality standards at this stage’.

5. Given that Australia has been at the leading edge of many aviation discoveries such as the black box, microwave landing system, slide rafts, doppler navigation, distance measuring equipment and T-VASIS (visual landing slope guidance), why can Australia not set the pace and determine corrective action that needs to be taken to eliminate the problem.

6. The Government may have been ‘satisfied that the aircraft met the design standards applicable at the time of the introduction of the aircraft into Australian service,’ however, given how much evidence is available about toxic fumes entering the cabins of BAe 146s: (a) why is the Government relying on out-of-date information to certify the airworthiness of the planes; and (b) who in the Government is satisfied today.

7. Given that many crew and passengers are still getting sick: (a) how does the Government consider that ‘the modifications subsequently introduced by the aircraft manufacturer and incorporated by the airlines,’ are adequate to resolve the problem sufficiently to be able to ensure the complete safety of crew and passengers; (b) what percentage of these modifications, have been completed by National Jet Systems; and (c) how do these modifications completely fix the problem.

8. Why has Australia agreed to a further delay inremedying a fault that is causing illness among crew and passengers by establishing a Reference Group.

9. (a) Why has the Government asked CASA to establish a “Reference Group” ... that could monitor the appropriateness of these reporting arrangements in light of overseas developments’; (b) why is another inquiry being established to provide the same information that has been provided by all other Australian and overseas inquiries; and (c) when is this reference group due to report and to whom.

10. (a) Who comprises the reference group; (b) will the group be quite independent; and (c) what are its terms of reference.

11. With reference to the statement that, ‘air conditioning packs are subject to regular overhaul, the engine seals are replaced at frequent intervals and the air conditioning ducts are thoroughly cleaned or replaced at each servicing’; (a) how many thousand hours is ‘regular’; (b) how frequent is ‘frequent’; (c) what is an example of ‘each servicing’; and (d) can it be guaranteed that the thorough cleaning and/or replacement have been carried out.

12. (a) Why does ‘the Authority ... not propose to introduce additional maintenance requirements for the BAe 146 aircraft’; and (b) why does the Government consider ‘that maintenance procedures currently performed on the BAe 146 aircraft are appropriate,’ when there is much medical evidence of sickness among crew and passengers.

13. With reference to the statement that, ‘changes to the BAe 146 Aircraft Flight Manuals ... provide for improved procedures for the isolation of any source of fumes into the aircraft,’ and that, ‘This process allows faulty components, such as leaky engine seals, to be isolated and the problem corrected at an appropriate time and location’: (a) how can contaminated air be ‘isolated’ when the air
ducting has already been contaminated; and (b) what is considered an ‘appropriate time and location’ for the problem to be corrected.

(14) Considering that crew members are too afraid of losing their jobs if they speak out about cabin air contamination, why is it that ‘a specific reporting mechanism for cabin air complaints is not considered necessary at this time,’ even though, ‘there are already several types of incident reporting systems in place’.

(15) If the current structures are adequate, why have the problems not been rectified.

(16) Given that Australia appears to be at the international forefront of the BAe 146 air contamination problem with the Senate committee report and the report of Professor Chris Winder, why do we have to wait for third parties to catch up and report to us.

(17) Given that the average flight for a BAe 146 amongst the world fleet is 55 minutes, and that Australian BAe 146 aircraft average flight times are over double this and, that apart from the crew, passengers receive twice the world average oil contamination exposure, why can we not be world leaders in fixing this problem.

(18) Why has the Government asserted that there is ‘no causal link between contamination and health effects [that] could be substantiated using available data,’ when a number of aviation experts and doctors have provided much learned information on the subject.

(19) How can such a statement be made when all traditional research on toxicity of the oil components on humans is based on conditions at ground level and not at an 8000 foot cabin altitude or after the oil has been burnt or modified through a jet engine.

(20) Why is the Government relying on the reference group to ‘consider whether a specific reporting mechanism needs to be introduced based on research currently under way,’ instead of all the research that has repeatedly confirmed the problem.

(21) As CASA maintains that ‘Australian operators have already completed air circulation modifications that are designed to improve the cabin air environment of the BAe 146,’ and ‘that National Jet Systems has also completed modifications to its aircraft’: (a) does this mean that all National Jet Systems planes have had all the modifications; if so, when was each plane modified; (b) have any aircraft had all the modifications; and (c) has there been any reported cabin air contamination in any of those planes since modification.

(22) With reference to the comments about testing conducted on aircraft VH-NJY: Is this the same aircraft that had both its wings so badly corroded that it had to be returned to the factory in England to be repaired; if so: (a) has this aircraft had any adverse reports made about it since its return to Australia; and (b) what were those reports.

(23) With reference to Airworthiness Directive AD/BAe 146/86, issued by CASA, which requires that, whenever oil contamination of the cabin air system is confirmed, a copy of the associated report be forwarded to CASA addressed to the Section Head, Systems: (a) how many such reports have been received since 3 April 2001 and on which aircraft; and (b) have there been multiple reports on the same aircraft.

(24) Given that contaminated air, once in the cabin air ducting system, cannot be ‘isolated’, what useful purpose does the AD requirement of ‘[e]ither before further flight, or within 10 flying hours provided the source of the contamination is identified and isolated from the cabin air environment before further flight, using either flight operations procedures or maintenance procedures’ serve.

(25) (a) Is Mobil 291 still toxic; (b) what specifically is the difference in composition of the new and old oils; (c) how many of the ingredients are listed on the National Occupational Health and Safety Commission (NOHSC) Designated List of Hazardous Substances; and (d) is Mobil in full compliance with the regulations.

(26) Is the Government satisfied that Mobil 291 is safe when humans are exposed to it and its by-products.

(27) Why does the Government believe ‘it is not necessary to develop new codes covering fuel substances used by these aircraft,’ when crew and passengers continue to get sick from cabin air contamination.

(28) Why does the Government believe ‘it is not necessary to develop new codes covering fuel substances used by these aircraft,’ when the oil and its by-products have toxic properties.
(29) How is the Government sure that operators of all BAe 146 aircraft in Australia use Mobil 291 oil.
(30) (a) Does the Minister accept that the government’s response to the toxicity of the oil is question-
able; (b) does the Minister accept that the fact that ‘several of the ingredients used in ... Mobil jet Oil II are already listed on the National Occupational Health and Safety Commission (NOHSC) Designated List of Hazardous Substances’ and that this ‘is generally reflected in the regulatory framework of all Australian occupational health and safety jurisdictions’ is an insufficient re-

(31) Why did CASA not issue the manufacturer’s Service Information Leaflet in full as an AD regard-
ing the cabin environment as a matter of occupational health and safety regardless of whether it would or could ‘establish a precedent where the Authority is involved with mandating various aspects of customer comfort, such as number of toilets, colour scheme, quality of food etc’.
(32) Given that there is evidence to suggest that flight crews have been seriously affected by contami-
nated cabin air on the aircraft, particularly during take-off and landing: (a) why is the Government supporting CASA’s view not to mandate introduction of the modifications for all BAe 146; and (b) does the Government agree that such sickness among flight crew does in fact create ‘an unacceptable risk to safety’.
(33) (a) Does the Minister accept that aviation safety is something that someone outside this important industry would understand to cover all aspects of safety, including the health and safety of its workers, however, this does not seem to be how industry insiders see it—to them aviation safety is about making sure airplanes keep flying; (b) is the Minister aware of claims that Mr Toller, CASA’s Director of Safety, arguably the highest aviation safety professional in Australia, thinks occupational health and safety is not CASA’s business; (c) why is this so; and (d) given that section 28BE of the Civil Aviation Act (duty to exercise care and diligence) states that the holder of an Air Operators Certificate (AOC) must at all times take all reasonable steps to ensure that every activity covered by the AOC and everything done in connection with such an activity is done with a reasonable degree of care and diligence: If CASA will not look after the health and safety of workers in the industry, who is assigned to do so.
(34) Why does the Government consider committee recommendation 3 as unnecessary, given that the work allegedly carried out on all BAe 146 aircraft has allowed contaminated air to continue to flow into the cabins of some aircraft.
(35) What has been the outcome of the advice of the Minister for Employment and Workplace Relations to his state and territory counterparts on the Workplace Relations Ministers’ Council on the Senate committee’s recommendation for future workers compensation and other insurance cases.
(36) (a) Why does the Government agree with the assertion made by the National Health and Medical Research Council ‘that the issue of aircraft cabin air does not meet the criteria against which ur-

(37) (a) Why does the Government agree with the UK Committee that ‘triorthocresyl phosphate and volatile organic compounds ... have been found in such low levels that concerns about significant health risk are not substantiated,’ when Australian experts in their fields conclude otherwise; (b) were the aircraft on which these tests were completed suffering from oil contamination at the time; and (c) were the tests carried out by an independent party that was free to choose how and which aircraft were to be examined.
(38) Given that changes to air-conditioning filters fitted ‘by Ansett were designed to remove the pres-
ence of odours in the cabin environment,’ but ‘National Jet Systems currently do not have fil-

(39) Even though the new filters may remove odours, how do they remove toxic gases from air enter-
ing the cabin.
What useful purpose does ‘improving the galley air extraction and increasing the airflow in the aisle and vestibule areas’, as done by National Jet Systems, serve if the air entering the cabin is contaminated.

(a) How did the galley modification correct the air contamination problem; and (b) is that modification still installed on all the aircraft or has it been removed.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

This answer is based on advice from the Civil Aviation Safety Authority (CASA), the Department of Employment and Workplace Relations (DEWR), the National Occupational Health and Safety Commission (NOHSC), the National Industrial Chemicals Notification and Assessment Scheme (NICNAS), and the National Health and Medical Research Council (NHMRC).

1. Airworthiness Directive (AD)/BAe 146/86 includes two inspection requirements: one after any suspected fume event; and the other at the fixed period of 500 flights as required by BAe Inspection Service Bulletin ISB.21-150. CASA believes these inspection requirements are adequate. In addition, recent advice from the aircraft’s manufacturer indicates that due to the few problems being found during these inspections, it is considering whether the inspection interval can be extended.

2. A suitably qualified maintenance person must conduct the inspections in accordance with the procedures in the BAe ISB.21-150. ISB.21-150 provides information on detecting oil in the environmental control system.

3. The issue of cabin air quality is not restricted to Australia and it would be inappropriate for CASA to initiate Australian unique regulatory requirements while international research that may lead to an internationally accepted approach to this issue is underway. Nevertheless, significant work has already been done in Australia to address this issue. For example, despite operating only a small percentage of the world’s BAe 146 fleet, Ansett developed all of the current aircraft modifications, which were then accepted by the aircraft’s manufacturer and issued as the manufacturer’s data. Ansett also instigated a comprehensive review of the quality of the BAe 146 cabin air, including convening a panel of Australian authorities.

4. In Australia, an aircraft is certificated against standards which apply at that time of certification. For example, the BAe 146 was certificated in 1983 by the United Kingdom Civil Aviation Authority (UK CAA) against Joint Aviation Requirement (JAR) 25 as existing at that time. Similarly the United States Federal Aviation Administration (US FAA) certificated the aircraft in 1983 against Federal Aviation Regulation (FAR) 25.831 that existed at that date. As a signatory to the Convention on International Civil Aviation, CASA performs its functions in a manner consistent with procedures established by the International Civil Aviation Organization (ICAO). The ICAO Manual of Procedures for an Airworthiness Organisation Doc 9389-AN/919, Para 5.2.1 states: The airworthiness standards which were complied with are identified clearly in the Type Certificate/Approval and become the regulatory basis for the Certificate/Approval. These standards normally continue to be applicable to individual aircraft/components built in accordance with the design. The intention of ICAO is that the basis of certification continues unchanged through the life of the aircraft, not-withstanding subsequent changes in the certification standards.

5. BAe Service Information Leaflet (SIL) 21-45 identifies seven modifications, which comprise several sub parts, to improve cabin ventilation. The modifications have been carried out in a phased manner. All applicable modifications have been carried out on 22 National Jet Systems (NJS) aircraft and the last NJS aircraft was scheduled for the last set of modifications in October 2002.

Tests show greatly improved distribution of cabin air and qualitative assessments during aircraft tests.

6. The Reference Group (RG) comprises representatives from CASA; Department of Transport and Regional Services; Australian Transport Safety Bureau (ATSB); Aviation Safety Forum; National Occupational Health and Safety Commission; Qantas; NJS; Flight Attendants Association of Australia; Australian Federation of Air Pilots; Australian Licensed Aircraft Engineers Association and Airline Passengers Safety Association.

The RG’s Terms of Reference is as follows:
Scope:
The Cabin Air Quality Reference Group would be responsible for:

- Following the progress and analysing the outcomes of international research and developments and working co-operatively with other countries, major regulatory bodies and those conducting related research to develop a harmonised view of the cabin air environment; and
- Finalising any actions arising from the Government’s response to the Recommendations of the Senate Rural and Regional Affairs and Transport References Committee Report on Air Safety and Cabin Air Quality in the BAe 146 Aircraft.

Meetings:
Held on a six monthly basis in Canberra, or as required or agreed by the members of the Reference Group.

Reporting Timelines/Guidelines:
The Reference Group shall report, through the CASA Chairman, Mr Ted Anson AM, to the Deputy Prime Minister and Minister for Transport and Regional Services following each meeting of the Group.
The Terms of Reference of the Reference Group and ongoing meetings of the Group shall be reviewed after four meetings of the Group, or as requested by the Deputy Prime Minister and Minister for Transport and Regional Services.

Funding:
The Civil Aviation Safety Authority will provide secretariat support for the operations of the Reference Group.

It will be the responsibility for each agency or representative body to meet the costs of its involvement in the work of the Group, including the costs of attendance at meetings.

(11) (a) - (d) As per AD/BAe146/86, Requirement 2, inspection, cleaning and replacement as required of the air-conditioning packs and the associated hardware are to be carried out per paragraph 2A of the BAE ISB 21-150 at 500 flight hour intervals. This scheduled activity is in addition to the inspection and replacement of components as required based on Requirement 1 of AD/BAe 146/86 when a cabin air contamination event is reported. Each of the above inspection and maintenance activities are carried out in accordance with the procedure determined by the aircraft/engine manufacturers and are certified by authorised maintenance personnel.

(12) (a) - (b) CASA does not propose to introduce additional maintenance requirements for the BAe 146 aircraft, as the Authority believes that the current maintenance requirements are adequate.
CASA is aware of work to improve cabin air quality and expects that in the near future, maintenance enhancements will be available to check for the presence of oil in the aircraft’s sound absorber and introduce an improved number 1 engine seal to reduce the potential for fume events.

(13) (a) - (b) Early detection of any problem and rapid isolation of the source of the problem is vital in limiting any contamination of the total system. The amount of engine oil that can enter the system is believed to be small, which aligns with in-service experience. CASA has limited the time between isolation of the problem and correction of the problem, depending on the source of the problem. These procedures for isolating, reporting and repairing fume contamination events are detailed in AD/BAe 146/86.

(14) The Confidential Aviation Incident Report (CAIR) system, managed by the ATSB allows crew members to lodge confidential reports. These reports are provided on a confidential basis to CASA and do not name the individuals concerned.

(15) Since the introduction of AD/BAe 146/86 and the completion of modifications to the aircraft’s ventilation system, there has been a decrease in the incidence of fume events.

(16) to (17) See response to questions 3, 4 and 5.

(18) to (19) The results of the National Academy of Sciences (NAS) review found that there was no causal link between contamination and health effects that could be found using the available data.

(20) A specific reporting mechanism for cabin air complaints is not considered necessary at this time, as there are already several types of incident reporting systems in place, including the ATSB’s CAIR, CASA’s Major Defect Report and the operator’s own internal reporting procedures. How-
ever, the RG will monitor the appropriateness of these reporting arrangements in light of overseas developments.

(21) (a) - (b) See 7 above. The modifications are primarily intended to improve cabin air circulation. (c) There have been cabin air contamination events reported in these aircraft after the modifications were fully incorporated. It must be noted however that the modifications are not guaranteed to prevent contamination events from occurring. The modifications have focussed on improving the comfort of cabin crew, and AD/BAe 146/86 has focussed on isolating and identifying the source of the contamination to allow rectification within an appropriate timeframe.

(22) (a) Yes. (b) Four reported fume events.

(23) (a) 51 reports relating to aircraft VH- NJA, NIC, NJD, NJE, NJH, NJL, NIQ, NJR, NJT, NJU, NJW, NJX, NJY, YAD, YAE and YAF have been received. (b) Yes.

(24) Engine seal failures generally result in slow leak of oil, and the human olfactory system will normally detect the presence of such fumes very quickly. Any contamination of the cabin air ducting would be very small, if any, and the isolation of the contamination will allow the aircraft to be returned for maintenance within an appropriate timeframe.

(25) The Government considers that the Committee’s recommendations directed at the National Occupational Health and Safety Commission (NOHSC) to undertake substantive changes in relation to occupational health and safety (OHS) and workers’ compensation arrangements, were misplaced. It is the States and Territories (and the Commonwealth in relation to its own employees) that have legislative responsibility for regulatory and operational matters concerning these arrangements. The Government’s response to the Committee’s recommendations and to the following questions on notice that may refer to NOHSC, have been framed against that background. (a) Mobil 291 has not been referred to the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) as a chemical of concern, hence no assessment of its toxicity has been undertaken. (b) The data is not publicly available to do a comparison of composition. (c) In the absence of information on the ingredients of Mobil 291, it is not possible to determine how many of the ingredients are on the List of Designated Hazardous Substances. (d) It is a matter for the relevant State and Territory regulators to determine whether Mobil is in full compliance with their respective regulations.

(26) The States and Territories have primary responsibility for regulating occupational health and safety, with the Commonwealth Government responsible for its own employees. Each OHS jurisdiction has established regulations that govern the usage, safe storage and handling of materials.

(27) to (28) The States and Territories, and the Commonwealth, regulate chemicals in respect of workplaces. Fuel substances, like other hazardous and/or dangerous chemicals, are covered by existing regulations and thus do not warrant additional legislation specific to fuels. These include the Codes of Practice for MSDSS and Labelling of Hazardous Substances, the National Model regulations for Hazardous Substances, the Approved Criteria for Classifying Hazardous Substances, and the National Standard and Code of Practice for the Storage and Handling of Dangerous Goods.

(29) Operators may choose any engine oil that is approved by the engine manufacturer. Both Ansett and NJS implemented a programme to change their oil to Mobil 291. Since the tabling of the Government’s response to the Air Safety and Cabin Air Environment report, the aircraft’s manufacturer has withdrawn Mobil 291 from its list of approved oils, for use in Bae 146 aircraft, due to mechanical problems, and Australian operators of the BAe 146 are converting to the use of another oil.

(30) (a) No. (b) There are a range of Commonwealth, State and Territory regulations, national codes of practice and national standards that exist, which apply to Mobil Jet Oil II along with any other hazardous substances. (c) There is a single national standard used to classify hazardous substances, namely the Approved Criteria for Classifying Hazardous Substances (the Approved Criteria). The List of Designated Hazardous Substances (the List) is an advisory document that provides information on the hazard classification of chemicals to assist manufacturers and importers to meet their obligations under State and Territory regulations. (d) No. The hazardous nature of Mobil Jet Oil II has been determined by the manufacturer, based on available toxicity test data on the product, as required by occupational health and safety regulations. This classification against the NOHSC Approved Criteria indicated that Mobil Jet Oil II was not a hazardous substance. (e) See (d) above.
(31) CASA did not issue the manufacturer’s SIL in full as an AD, as the Authority is not responsible for matters of occupational health and safety.

(32) (a) CASA has taken appropriate action by mandating certain actions to be taken in accordance with AD/BAe 146/86. In addition, the establishment of the RG, responsible for following the progress and analysing the outcomes of international research and developments and working cooperatively with other countries, major regulatory bodies and those conducting related research to develop a harmonised view of the cabin air environment is an important first step to developing a globally accepted approach to this issue. The Reference Group will continue to closely monitor this issue, and appropriate action will be taken when an internationally accepted approach to this issue is developed. The Government supports CASA's approach in regards to this issue. (b) Since the introduction of AD/BAe 146/86 with its resulting mandatory inspection and reporting requirements, there has been a marked decrease in the incidence of fume events. CASA does not consider that this constitutes an unacceptable risk to aviation safety.

CASA also notes that very few events have affected both pilots. Finally, if a fume event occurs, both pilots can use their oxygen supply, which is provided for such purposes, and they are then completely isolated from the cabin air environment.

(33) (a) - (d) CASA’s powers and functions are defined in the Civil Aviation Act and do not include occupational health and safety. Employers in the aviation industry (including CASA in relation to its own employees) are responsible for the occupational health and safety of their workers through the duty of care provisions in relevant Commonwealth, State and Territory OHS legislation. The States and Territories (and the Safety, Rehabilitation and Compensation Commission in relation to Commonwealth employees) are responsible for enforcing/regulating this duty of care.

(34) The Government’s position is clear in the response.

(35) The Minister for Employment and Workplace Relations proposes to bring this matter to the attention of the Workplace Relations Ministers’ Council’s next meeting on 8 November 2002.

(36) The NHMRC determines research priorities (under the NHMRC Act, Part 2 Section 10(2). The Council cannot be directed by the Minister to recommend the allocation of research funds to a particular person, organisation, State or Territory). NHMRC determined this did not meet the criteria.

(37) As indicated previously, the Government is seeking to adopt an internationally harmonised approach to this issue.

(38) (a) - (b) The introduction of carbon filters was a commercial decision for the operator; there was no manufacturers’ recommendation.

(39) The filters fitted by Ansett were designed to only remove the presence of odours in the cabin air environment.

(40) Oil leaks from the engine is found to depend among other things on the flight phase, engine thrust levels and aircraft attitude. An adequate ventilation system can ameliorate the contamination that might have entered the cabin in any of those transient situations. The modifications carried out by NJS improve the cabin air environment by removing the galley air, and hence galley odours, directly from the aircraft and increasing airflow in the aisle and vestibule areas.

(41) (a) Food processing and the use of dry ice in the galley area is considered to be a contributor to cabin air contamination and hence ventilation is improved in this area to reduce contamination. The modifications carried out by NJS improve the cabin air environment by improving the galley air extraction and increasing airflow in the aisle and vestibule areas. Since the introduction of AD/BAe 146/86 with its resulting mandatory inspection and reporting requirements and the completion of modifications carried out by the aircraft’s operators, there has been a decrease in the incidence of fume events. (b) Yes, it is still installed.

Telecommunications: Ombudsman

(Question No. 655)

Senator Harris asked the Minister for Communications, Information Technology and the Arts, upon notice, on 19 September 2002:

(1) Does the Minister agree with the Macquarie Dictionary’s definition of the word ‘ombudsman’, meaning, ‘An official appointment by parliament, or some other legislative body, as a city council, to investigate complaints by citizens against the government or its agencies’.
(2) Do Telstra, Optus and other independent telecommunication carriers or suppliers nominate the Ombudsman to the Telecommunications Industry Ombudsman Limited (TIO Ltd), a company which independently hears telecommunication subscribers complaints.

(3) (a) Is the TIO Ltd, a privately-owned company, fully funded by various independent carriers, including at least 60 per cent funding from Telstra; and (b) do the carriers’ employees have the power to hire and fire the TIO Ltd Ombudsman or his staff.

(4) If the answer to any part of (3) is yes, does the Minister consider that the credibility of the Ombudsman could be perceived as being tarnished.

(5) Can the Minister, who is responsible under administrative law for the conduct of Telstra, guarantee that all of the TIO Ltd’s determinations have been independent determinations; if so, can the Minister guarantee that they will remain just and fully independent determinations if privatisation of Telstra proceeds.

(6) With reference to ministerial decisions and judgements on the TIO Ltd Ombudsman’s determinations, is the Minister certain that justice has been done in all cases.

(7) What action will the Minister take to have any unjust TIO Ltd determinations rescinded, if proof could be provided of injustice.

(8) Is it a fact that in-house Telco witnesses or outsourced TIO Ltd experts or independent professional witnesses are not required to submit sworn evidence during TIO Ltd independent investigations; if so, could this not also affect the correctness or truthfulness of evidence and further cast doubts on the TIO Ltd Ombudsman’s credibility and ability to make any independent and just determination, and prevent him from being able to make lawful or just findings of fact.

(9) Is the Minister aware of any cases where Telco witnesses, by not having to give sworn evidence to the TIO Ltd, could tamper with, ignore, destroy or alter evidence without fear of recrimination to ensure a factually incorrect, unjust and improper TIO Ltd determination or, by concealing systemic faults, conceal potential liabilities from the shareholders.

(10) Under administrative law, is the Minister’s office ultimately responsible for the production and presentation of freedom of information (FOI) documents on request, which may or may not be detrimental or prejudicial to Telstra Corporation Limited.

(11) If a TIO Ltd company employee was named or held out to subscribers as an independent ‘ombudsman’, could it not be perceived that he is not an ombudsman under the true meaning of the term.

(12) Is it a fact that, on 1 July 1995, Telecom Protective Services instructed Registrar Brockie at Telecom’s premises in Brisbane to destroy 46 boxes of investigation files (FOI Folio number A68767); if so, can the Minister advise whether these destroyed investigation files belonged to Ms Sandra Wolf, Mr Kenneth Ivory or his Solar-Mesh related identities, or to any other ‘Casualties of Telstra’ complainants based in Queensland, such as Mrs Ann Garmes of the Tivoli Theatre and Restaurant.

(13) If these 46 boxes of Telecom/Telstra investigation files were destroyed on 1 July 1995 while TIO Ltd, Austel and or Senate Estimates Committee investigations were on foot, what is the Minister doing to have Telstra held accountable before any further privatisation of Telstra proceeds.

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

(1) This is an accurate description of a government ombudsman, such as the Commonwealth Ombudsman. The Telecommunications Industry Ombudsman (TIO) is an industry ombudsman. In accordance with Part 6 of the Telecommunications (Consumer Protection and Services Standards) Act 1999, the TIO scheme requires the TIO to investigate complaints by consumers against telecommunications companies an intermediaries.

The TIO scheme is an independent, non-government scheme. The TIO, and the Telecommunications Industry Ombudsman Limited (TIO Limited) Board and Council are responsible for the day to day running of TIO scheme operations subject to the TIO Limited Memorandum and Articles of Association.

The Government’s role is to establish the legislative framework within which the TIO and its members must operate. The Minister for Communications, Information Technology and the Arts does not have power to direct the TIO in relation to any of its functions. Nor is the Minister privy to its investigations, funding or recruitment procedures.
I understand that the Council is composed of an equal representation of member representatives and of consumer interests, chaired by an independent Chairman; and that Council members are selected for their knowledge of consumer interests and customer service issues within the context of the telecommunications industry.

(2) I understand that the TIO Limited Memorandum and Articles of Association require that the TIO Limited Council make binding recommendations to the Board on appointments to the position of TIO.

(3) (a) The TIO is a company, and is fully funded by its members, which are carriage service providers and carriers. I understand that this funding derives from members who are charged fees for complaints received by the TIO. The amount of contributions received from individual members is not publicly available information.

(b) I understand that the TIO Limited Memorandum and Articles of Association require that the TIO Limited Council make binding recommendations to the Board on appointments to the position of TIO. I am not in a position to comment on staffing procedures for other positions within TIO Limited.

(4) No. See answer to part (1).

(5) I am unable to comment on individual TIO determinations. See answer to part (1).

(6) I am unable to comment on individual TIO determinations. See answer to part (1).

(7) I am unable to comment on individual TIO determinations. See answer to part (1).

(8) I am unable to comment on TIO investigation procedures. See answer to part (1).

(9) No.

(10) My office is subject to the Freedom of Information Act 1982. Any documents in my possession as Minister, unless covered by an exemption, are subject to FOI Act requirements. I note however, that under subsection 16(3) of the Act, any FOI requests made to me regarding Telstra’s commercial activities would be required to be transferred to Telstra in compliance with the requirements of the FOI Act.

(11) See answer to part (1).

(12) Telstra advises that:

As part of normal Telecom archival practice in 1995, and in accordance with National Archive Policy and Procedures, a Telecom employee, L H Quinn, Account Services Manager, confirmed a National Archives request in May 1995 that some 46 boxes of files be destroyed. The files covered subject matter raised between 1 July 1988 and 30 June 1989.

Subsequent Telstra investigations in 1996 confirmed that two files in the 46 boxes had included the name Wolfe in the file name. One file may have related to a request by Ms Sandra Wolfe to connect certain equipment to her service. The second file related to Public Telephone crime and Telstra does not believe this file related to Ms Sandra Wolfe.

From a review of the index of the files stored in the 46 boxes, Telstra does not believe that any of those files related to the other listed people.

(13) Telstra has been a corporation subject to Australia’s Corporations Law (now the Corporations Act 2001) since 1991. Consistent with the arrangement for Government Business Enterprises, Telstra’s Board and management are responsible for the day to day running of Telstra’s operations.

Agriculture: Sheep Mortalities on Export Voyages

(Question No. 724)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 4 October 2002:

(1) What information does the Minister possess that suggests reportable sheep deaths are related to the preparation of livestock for voyage rather than on-board management.

(2) What is the source of this information.

(3) Who provided this advice to: (a) the Australian Maritime Safety Authority (AMSA); (b) the Minister’s department; (c) the Minister’s office; and (d) the Minister.
(4) When was this advice received by (a) AMSA; (b) the Minister’s department; (c) the Minister’s office; and (d) the Minister.

(5) Why does the live sheep export moratorium apply to Portland only.

**Senator Ian Macdonald**—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) Industry representatives from the Australian Livestock Exporters’ Council (ALEC) and Livecorp briefed the Minister on 26 September 2002 regarding the outcome of research commissioned by Livecorp, which examined sheep mortalities on export voyages. The research suggested that certain aspects of the pre-export preparation of sheep exported from Portland were major contributing factors to sheep mortalities during voyages, rather than on-board practices.

(2) See the response to question 1.

(3) The live export industry provided a copy of the research report to the Minister’s department, the Department of Agriculture, Fisheries and Forestry (AFFA). AFFA subsequently provided a copy to the Australian Maritime Safety Authority (AMSA). The Minister was advised on the contents of the research report by both the livestock export industry and AFFA.

(4) The research report was provided to AFFA by the live export industry on 21 September 2002 and to AMSA on 26 September 2002, by AFFA. The Minister was advised of the contents of the report by AFFA and the livestock export industry during the meeting on 26 September 2002.

(5) Consignments originating from Portland have been identified by the livestock export industry research, and in statistics gathered by AFFA, as being associated with a substantially greater number of unacceptable mortalities during export voyages than consignments originating from other ports.

**Superannuation: Australian National Audit Office**

(Question No. 759)

**Senator Sherry** asked the Minister representing the Minister for Foreign Affairs, upon notice, on 8 October 2002:

With reference to Australian National Audit Office (ANAO) audit report no. 65 tabled on 28 June 2002, Management of Commonwealth Superannuation Benefits to Members—Comsuper:

(1) In key finding 25 and in paragraphs 3.41 and 3.45 the ANAO report states that up to 45 per cent of new commencements in the Department of Foreign Affairs and Trade were not reported to ComSuper from 1 July 2001 to 1 October 2001: (a) What steps has the department taken to ensure that new commencements are reported to ComSuper in a more timely manner; and (b) in each of the quarters after 1 October 2001, what proportions of new commencements in the department were not reported to ComSuper.

(2) In figure 3.10 the ANAO report states that, in the period from June 1999 to August 2001, the department failed to report 65 per cent of changes in member contribution rates to ComSuper: (a) what steps has the department taken to ensure that changes in member contribution rates are reported to ComSuper in a more timely manner; (b) in the period since August 2001, what proportion of changes in member contribution rates were not reported to ComSuper and (c) in each of the years starting 1 July 2000 and 1 July 2001, what proportion of changes in member contribution rates was not reported in ComSuper.

**Senator Hill**—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:

(1) and (2) The inaccuracies noted in the ANAO report originated from the standard Human Resource Management Information System (HRMIS) interface, used by the Department to electronically transfer payroll data to Comsuper. The HRMIS interface was designed by the vendor to conform with the specifications of the Office of Government Information Technology (OGIT). The inaccuracies noted by ANAO relate to 14 out of 31 new DFAT employee records. Prior to the audit, the Department put in place with Comsuper interim measures to ensure that members’ entitlements were being correctly reconciled and Comsuper confirmed that these interim measures were providing accurate details which meet their requirements. The ANAO did not consult with the department during the preparation of the report.
The Department has been working intensively with the vendor and Comsuper to correct the problem. The issue is common to a number of agencies using similar HRMIS software and the Department is also consulting with these agencies in an attempt to find a permanent automated solution to the problem.

The intermittent nature of the records being incorrectly reported or omitted from the HRMIS data transmissions does not allow them to be readily identified by the department. Nevertheless, Comsuper have confirmed that they are satisfied with the accuracy of the information being provided under the interim arrangements noted above.

**Fisheries: Dusky Whaler Sharks**

*(Question No. 789)*

**Senator Nettle** asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 15 October 2002:

With reference to the growing concern about the conservation status of the population of Dusky Whaler Sharks, *Carcharhinus obscurus*, off the Western Australian coast:

(1) How many Dusky Whaler Sharks are taken off the Western Australian coast by Commonwealth fisheries?

(2) Has this information been provided to the Western Australian Department of Fisheries; if not, why not?

(3) What steps is the Australian Fisheries Management Authority taking to manage the by-catch of Dusky Whaler Sharks in the Commonwealth fisheries operating off Western Australia, and in accordance with the National Plan of Action for Sharks?

**Senator Ian Macdonald**—The answer to the honourable senator’s question is as follows:

(1) The Australian Fisheries Management Authority (AFMA) advises that Southern and Western Tuna and Billfish Fishery (SWTBF) logbooks record in 2001, 81 dusky whaler sharks being retained (approximately 1.2 tonne in total) and a further 398 individuals were released.

(2) No. I am advised that AFMA only received a request from the Western Australian Department of Fisheries (WA Fisheries) on 22 October 2002 at a meeting in Fremantle, regarding the development by AFMA of a formal plan of management for the SWTBF. A commitment was made to provide data at that meeting. Subsequently further details on the request have been sought from the WA Fisheries on the parameters, such as the boundaries, for the data request.

(3) AFMA informs me that it has taken steps to increase monitoring of the shark bycatch limit in response to a range of concerns about sharks, including shark finning. In addition, wire traces, commonly used in longline fisheries, were banned in the SWTBF in 2001 as a means of reducing shark catches.

AFMA, the Fisheries Research and Development Corporation and CSIRO have recently produced a field guide to sharks and rays to assist in the identification of shark species and improve the data on shark catches throughout all shark bycatch fisheries.

The WA Fisheries officers participate in the Southern and Western Tuna and Billfish Fishery Management Advisory Committee (MAC). A working group formed by this MAC (including WA Shark expert) is to consider the AFMA held data, including that for sharks, and possible spatial and temporal management measures.

While drafting of the National Plan of Action for Conservation and Management of Sharks developed under the United Nations Food and Agriculture Organisation International Plan of Action has been completed, it is yet to be nationally endorsed.

**Forestry: Plantations**

*(Question No. 795)*

**Senator O’Brien** asked the Minister for Forestry and Conservation, upon notice, on 15 October 2002:

(1) Since 1999, how many meetings have been held between Agriculture, Fisheries and Forestry Australia, or its relevant predecessor, and the relevant state government departments to coordinate Commonwealth and state environmental legislation in relation to plantation forestry.
(2) Who attended each meeting.

(3) What was discussed at each meeting.

(4) What records were kept of each meeting.

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

(1) My Department advises me that, as direct responsibility for Commonwealth environmental legislation falls outside the portfolio responsibilities of Agriculture, Fisheries and Forestry – Australia (AFFA), there have been no meetings between AFFA, or its relevant predecessor, and state government departments specifically to coordinate Commonwealth and State environmental legislation in relation to plantation forestry since 1999.

(2) Not applicable.

(3) Not applicable.

(4) Not applicable.

Trade: Wood and Forestry Products

(Question No. 797)

Senator O’Brien asked the Minister representing the Minister for Trade, upon notice, on 15 October 2002:

(1) Can the Minister advise what meetings he, or his predecessor, has conducted since 1999 with international counterparts in order to increase market access for Australian manufactured wood and forestry products.

(2) Who attended each meeting.

(3) What was the outcome of each meeting.

(4) What records were kept of each meeting.

(5) Would the Minister advise what meetings he, or his predecessor, has conducted since 1999 with international counterparts in order to increase market access for Australian non-manufactured wood and forestry products.

(6) Who attended each meeting.

(7) What was the outcome of each meeting.

(8) What records were kept of each meeting.

Senator Hill—The following answer has been provided by the Minister for Trade in response to the honourable member’s questions (1)-(8):

The Minister for Trade has, where appropriate, during his meetings with international counterparts, taken the opportunity to seek liberalised market access for Australian exports across a broad range of sectors including for Australian manufactured wood and forestry products and unmanufactured wood and forestry products. Records of formal meetings are prepared by representatives of the Minister’s portfolio.

The Minister has also promoted a joint initiative with New Zealand, agreed at the annual Australia New Zealand Trade Ministers’ meeting in 2001, to gain additional overseas markets for softwood plantation forestry products.

Under close Ministerial direction, the Department of Foreign Affairs and Trade has successfully pursued, and continues to pursue, market access outcomes for the Australian manufactured wood and forestry products and unmanufactured wood and forestry products industry. For example:

The Government pursued increased Australian furniture exports to the United States as a priority under the Market Development Group in 2000-02 resulting in additional sales of $6 million;

Australian officials met with Japanese counterparts on several occasions in the 1999-2002 time frame to achieve the following outcomes: recognition of equivalency between Japanese standards and Australian standards for plywood and laminated veneer lumber; approval of an application to the Ministry of Land, Infrastructure and Transport (MLIT) for the use of Australian cypress pine as an equivalent of Japanese Hinoki; and recognition of Australian certification body JAS-ANZ, which forms a crucial layer of recognition by the Japanese Ministry of Land, Infrastructure and Transport (MLIT) for recognition of Australian standards; and
The Government is currently supporting the Australian Plantation Timber Association and the Australian Building Construction Board in their efforts have Australian timber species, grades and measures included in the new Chinese timber construction codes currently under development. This would support export of Australian timber for construction framing now and into the future.

Forestry: Standards
(Question No. 816)

Senator Brown asked the Minister for Forestry and Conservation, upon notice, on 18 October 2002:

To ask the Minister for Forestry and Conservation—are the new Australian Forestry Standards the same as international standards; if not: (a) what are the international standards; and (b) in what ways are the Australian standards more stringent, or more lax, than the international standards.

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

Development of the Australian Forestry Standard (AFS) has been cognisant of the emerging international standards for mutual recognition amongst certification schemes and meets all of the key requirements for future mutual recognition.

The AFS has also been intentionally drafted to be compatible with common sustainable forest management concepts and approaches, as contained in the two international certification schemes, the Forest Stewardship Council (FSC) and the Pan-European Forest Certification scheme (PEFC). A large degree of commonality exists between the performance requirements of the AFS and those of other initiatives. However, the AFS takes into account:

- the unique character of Australian ecosystems;
- Australia’s international agreements and commitments and national and State/Territory legislative frameworks; and
- Australian community expectations for sustainable forest management.

While the AFS is not identical to other approaches to forest certification, the differences reflect our national circumstances and I consider that the AFS is substantively equivalent to the FSC and PEFC frameworks in achieving the same goal of supporting sustainable forest management.

Currently an internationally recognised independent consultant has been engaged to complete a benchmarking review of the AFS against the FSC and the PEFC. This benchmarking study will look at content and processes with a view to independently establishing compatibility with the two international schemes.