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Tuesday, 3 December 2002

The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 2.00 p.m., and read prayers.

QUESTIONS WITHOUT NOTICE
Ministerial Conduct: Senator Coonan

Senator CONROY (2.00 p.m.)—My question is to the Minister for Revenue and Assistant Treasurer, Senator Coonan. In light of the Prime Minister’s statement yesterday that the Assistant Treasurer would be making a full explanation of her position to the Senate, and given that the minister has now had time to consider whether she witnessed her husband’s change of enrolment, can she today inform the Senate what the facts are in relation to her husband’s change of enrolment to Clareville? Minister, did you or did you not witness the form and thereby attest to the accuracy of the statements he made in that form?

Senator COONAN—The answer is no.

Government senators interjecting—

Senator CONROY—Mr President, I ask a supplementary question. Can the minister now confirm when she first became aware of the details of this enrolment, whether the purpose of this change of enrolment did in fact relate to taxation arrangements and what action the minister took when she became aware of the enrolment?

Government senators interjecting—

Senator Abetz—Mr President, I rise on a point of order.

The PRESIDENT—Senator Abetz, I did not hear the last part of that question. If you are taking a point of order on what Senator Conroy said, I cannot answer it because I did not hear it for the noise on my right.

Senator Abetz—My point of order relates to relevance to the minister’s portfolio responsibilities. What was in the mind of a certain person when they filled out a form is clearly not within the minister’s capacity to answer and should be ruled out of order. It has no bearing on her ministerial responsibilities. Above all, it would fall under the standing order of not allowing hypothetical questions, because she could not know what was going on in that person’s mind at the time he filled out the form.

Senator Faulkner—Mr President, on the point of order: among other things, above the din caused by the government trying to cover up and make a lot of noise while Senator Conroy asked his question, he was asking when Senator Coonan was aware of these matters relating to Mr Rogers’s enrolment. That surely is in order, and I ask you to direct the minister to answer the question.

The PRESIDENT—As you would know, I cannot ask the minister to answer a question in a particular way, but I did hear that first part. Minister, would you answer the first part of the question? I did not hear the second part.

Senator COONAN—I thank Senator Conroy for his supplementary question. Senator Conroy, you are in the very unfortunate position of having made an allegation against me that you cannot make stick. You clearly tried to set up an inference yesterday that I had witnessed an enrolment form, and you made allegations that the enrolment was false—which you could not know. You have now come an absolute cropper, because I had nothing to do with that enrolment. What I can do, because I think it is appropriate, is table a statement from my husband that he put out yesterday. I think it should be part of the record of the Senate and I table the document.

Telstra: Privatisation

Senator EGGLESTON (2.05 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Does the government remain committed to its election promise not to progress any further sale of Telstra until arrangements are in place to ensure adequate services? Is the minister aware of plans to break up and sell off parts of Telstra by people who promised the Australian public before the last election they would not sell another share in Telstra?

Senator ALSTON—Our policy position has been clear for a very long time. Indeed, the reason we conducted the Estens inquiry was to be in a position to make a judgment about whether we were satisfied that service
levels were adequate—or, as the Prime Minister says, 'up to scratch'. Of course, that precedes any further moves along the path towards privatisation. But we remain very firmly of the view that it is in the company's interests, it is in the shareholders' interests and it is in Australia's interests that Telstra ceases to be a political football and that it is able to get on with running its business against the background of a regulatory regime that this parliament can impose, can adjust and can finetune. That is the way to run a great Australian company. Our position is on the record.

I asked myself recently who from the opposition represents communications in the Senate. I do not know if anyone on our side knows, but the answer is Senator Conroy. In fact, Senator Conroy has been out there pretending to be the acting shadow minister for the last few weeks. I do not know why. I presume it has something to do with the fact that Mr Tanner is busy writing speeches on education, the republic, the role of men in society and basically everything but communications. One would have thought, therefore, that Senator Conroy would have had a bit more to do than dredge the gutter and try and sink the slipper into Senator Coonan's husband.

Maybe Senator Conroy could address the issue of the future of Telstra, because I received a phone call a couple of months ago from someone who was very much in a position to know, who told me the Labor Party realised their position on Telstra was untenable and they were proposing to reconsider, but after the Cunningham by-election. This is very relevant, because the Australian public need to know what the future of that company might be and, of course, what the Labor Party's alternative approach might be. They have been a policy free zone up until now, but we are entitled to know where they stand. Is this the only policy that is going to be ruled out from any change or not?

When we saw the structural separation paper that Mr Tanner put out in May this year we all had a bit of a laugh because it was ludicrous. It was proposing that Telstra be broken up into pieces. This was the Keating model. But of course when everyone from the company to the markets to Col Cooper from the union came out and bagged him we all assumed that the proposal had been stillborn. In fact, I think Senator Mackay led the charge against him in caucus. But, no, what do we find? Only last week I got further information that told me that in the new year the Labor Party would be again going down this path and would be proposing a very different alternative. In other words, they would not accept that Telstra ought to remain a full services operator but that it ought to be broken up. In other words, what you do is keep the dog—the poorly performing network. The once Great Dane remains in government hands and of course all the greyhounds and the thoroughbreds get sold off so you then are able to get some real money in to fund all your other extravagant promises.

That is the Labor Party alternative. If it is not, of course, all Labor have to do is what they do very well at the present time, and that is just say no. But I am sure they will not do that. So let us have a serious policy debate. We believe Telstra has got a real future. We do not want to see it turned into a basket case; we do not want to see its arms ripped off; but Labor do. That is the proposition. My information is that in the new year not only will they promise to break up Telstra and keep the network, thereby saying they have still got Telstra, but also they will force it out of Foxtel. In other words, they want it hidebound to the point where it is not in any businesses that might make money, like mobiles, Internet or anything else. Now is their big chance to get serious about policy. (Time expired)

Ministerial Conduct: Senator Coonan

Senator WONG (2.09 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Does the minister recall telling the Senate yesterday that the weekender at Clareville was owned by her husband and later saying she was not sure who owned it, but at all times maintaining that it was a pre-1985 asset with no CGT liability? Is the minister aware that her husband has confirmed to the Sydney Morning Herald that he acquired the property upon the deregistration of Karnick in 1993,
and that therefore the property is within the CGT regime? Doesn’t this mean that the minister misled the Senate yesterday, that she misled the Prime Minister and that she caused the Prime Minister to mislead the House?

Senator COONAN—I think Senator Wong has fallen into the error of believing everything she reads in newspapers. The statement that I have just tabled from my husband says that he acquired the beneficial interest from the company—I think it was in about 1983. Anyway, it was before capital gains tax. That is what the statement says, and I certainly have not misled the Senate.

Senator WONG—Mr President, I ask a supplementary question. Doesn’t this confirmation that the luxury weekender at Clareville has been attracting CGT liability for nearly 10 years, a liability of some hundreds of thousands of dollars, cast a new light on the owner’s enrolment declaration to the Electoral Commission? Doesn’t this revelation show that the real motive for the change of enrolment was to avoid hundreds of thousands of dollars in capital gains tax on the massive increase in the value of this luxury waterfront property?

The PRESIDENT—I find that question very difficult to accept, because you are asking for an opinion. As you know, under standing order 73 you cannot ask for opinions. I would have to rule that out of order.

Senator Vanstone—You’ll be very sorry that it’s on record you asked that question.

Senator Jacinta Collins—Is that a threat?

Senator Vanstone—There was no threat at all. She for herself will be sorry she got sucked in by the likes of you!

Senator Bolkus—That is a threat and you know it! It’s a threat and you’re being a bully again.

The PRESIDENT—Order! Senator Bolkus!

Senator Faulkner—Mr President, I rise on a point of order. On what basis has the supplementary question been ruled out of order?

The PRESIDENT—She was asking the minister for an opinion. That is not allowed.

Senator Faulkner—With respect, could I ask you then, if you are going to make—

Senator Hill—You have taken your point of order. You’ve got an answer.

Senator Faulkner—I am not debating it. I am taking a further point of order. Is that all right with you? You want to be the President as well as the Leader of the Government in the Senate, do you? I will just take a point of order.

The PRESIDENT—Order!

Senator Hill—You look as though you’re going to have a chat.

The PRESIDENT—Order! Senator Faulkner, you wanted to raise a point of order?

Senator Faulkner—On a further point of order, Mr President: I do not believe that that ruling is accurate.

Government senator—We are not interested in what you believe!

Senator Faulkner—I am not going to debate the matter now. I ask you if you would check the Hansard record, given the nature of the supplementary question that was asked. I believe it was absolutely in order and should have been ruled in order. I ask you to check it and report back to the Senate.

The PRESIDENT—It sounded to me as if the senator was asking for an opinion. I will check the Hansard.

Senator Vanstone—Mr President, I rise on a point of order. There was an interchange across the chamber when Senator Collins interjected that I had made a threat. I regard that as an offensive statement on her part. I made a simple statement of fact to Senator Wong that she will at some stage later regret having asked that question. I do understand from the union thugs that when you say to someone, ‘You’ll regret that’—

The PRESIDENT—Senator, I do not believe that is a point of order.

Senator Vanstone—I am making a point about why this is an offensive remark to me. And I do understand why when people opposite say, ‘You will regret that,’ they do mean it as a threat.

The PRESIDENT—Order!
Senator Vanstone—But what I am saying is that I made a simple statement of fact that she will regret having asked that question.

The President—Senator Vanstone, there is no point of order.

Health Insurance: Premiums

Senator Payne (2.14 p.m.)—My question is to the Minister for Health and Ageing, Senator Patterson. Will the minister provide the Senate with an update on the success of the government’s policies to make private health insurance affordable for more Australians? Is the minister aware of any alternative policies?

Senator Patterson—I thank Senator Payne for bringing us back to the real issues about policy and the things that really matter to Australians, not the gutter crawling that the Labor Party is involved in at the moment. We restored the balance between the public and private hospital systems. When we came into government, private health care membership was running at 34 per cent, which was totally unsustainable, and private hospitals were up against the wall. What we have been able to do is increase the number of members in private health insurance to 44 per cent. That means that private hospitals are now sustainable. Over the last 12 months we have had a 12 per cent increase in private hospital admissions and a minus one per cent decrease in public hospital admissions. We imagine that that might turn around slightly, but there has been a rebalancing between the two sectors. The people who were waiting in long state hospital queues have now been able to have their elective surgery undertaken under private health insurance.

Last night on the 7.30 Report, Mr Crean was asked eight times by Kerry O’Brien whether he would keep the rebate for private health insurance. He would not commit. Having said in February this year that they would keep the rebate, the Labor Party did not commit. There are more than eight reasons why they should keep the private health insurance rebate. It makes private health insurance more affordable. It is a 30 per cent member’s rebate, which means 30 per cent more in the pockets of families. The second reason he should have given Kerry O’Brien for keeping the rebate is that it is an important part of the family budget. The Labor Party admitted that before the last election, but now they are going to renege on that and take it away. The third reason he should have given Jenny Macklin is that Australians have more support to meet their health care needs, their dentistry needs and their optometry needs—

Senator Chris Evans—And their music needs and their camping needs and their shoes!

Senator Patterson—They are screaming over the other side about the very small items. I have argued that the health funds ought to look at the direct health benefits. But they are very small compared with the 50 per cent of dental needs that are met under private health insurance ancillaries. The fourth reason Mr Crean should have given is that the rebate restores the balance between private and public health care. But Labor are not committed to any aspect of private health care. In fact, Jenny Macklin is totally opposed to it; she is leading the review of it, so God help the private health system. The fifth reason he should have given, when he was asked a fifth time, is that it takes pressure off Medicare. Labor would not give Kerry O’Brien a commitment and they would not give the Australian public a commitment that they would keep the private health insurance rebate.

The other thing the rebate does is free up public hospitals. When Kerry O’Brien asked a sixth time and again gave him the opportunity to say that they would keep the rebate, Mr Crean could have had a sixth reason—that is, it frees up resources for public hospitals. I have demonstrated how that is done, with a 12 per cent increase in private hospital admissions and a minus one per cent decrease in public hospital admissions. He was asked a seventh time, and a seventh reason he could have given for supporting the private health insurance rebate was that more Australians have subsidised access to dentists, physiotherapists, optometrists, chiropractors and all the other allied health professionals that assist them in keeping well and maintaining their health and in delivering direct health benefits.
When he was asked for the eighth time by Kerry O’Brien whether he would keep the rebate, the eighth reason he could have given was that more resources are being invested in health care. He was not asked a ninth time, but the ninth reason he could have given is that there are nine million Australians who have private health insurance and one million of those earn less than $20,000 a year. I am sure they would have been very interested last night to hear Mr Crean on the 7.30 Report not committing to the rebate. Labor are not committed to assisting people to pay their private health insurance, giving them choice in the health system and reducing the strain on public hospital systems. Mr Crean had eight opportunities and the ninth reason was probably the best—that there are nine million people who will lose the rebate. (Time expired)

Ministerial Conduct: Senator Coonan

Senator FAULKNER (2.18 p.m.)—My question is directed to Senator Coonan, the Minister for Revenue and Assistant Treasurer. I refer to the minister’s claim yesterday that she had ‘complied meticulously with the ministerial guidelines’ for the declaration of interests. I ask the minister how meticulous it is to declare her family home as an investment property, as she did in the form she lodged on 18 September last year. Can the minister also explain why she declared ownership of a property in Manuka in that same declaration whilst stating to the Senate yesterday that the Woollahra property ‘is the only property I own’?

Senator COONAN—In terms of the issue of my property being declared inadvertently as an investment property—my goodness, if it were, you would have capital gains tax and problems with tax—it is in fact a residence. I did clarify the record yesterday when I said that the description of my home in Woollahra as an investment property was an error as it is my residence and that, in being transcribed from my earlier form, it had been inadvertently—

Senator Robert Ray—You didn’t read it, you just signed it.

Senator COONAN—put in as an investment property. I have written today to the Registrar of Senators’ Interests to advise of the error and have requested that the Register of Senators’ Interests be amended to accurately reflect the status of my Woollahra property. The facts are not in any way in dispute. I regret that that error was made but I did take immediate steps yesterday to inform the Senate of the error the moment I became aware of it. I have also written apologising for the error and requesting that it gets corrected. The facts are straightforward. My property in Woollahra is my residence and—Senator Ray is correct—on the day that I signed my most recent statement I had limited time to review the document. I had absolutely no reason to believe that it had been incorrectly transcribed from my 1996 form, which talked about it being an investment property and which, at the time, it was. So there is not much of a mystery about it. I have written to correct it. What I said in reference to any other property—and it is in my press statement—is that I own one property in New South Wales, which is my home in Woollahra, and I have obviously got something that I live in in Canberra, and that is my only property.

Senator FAULKNER—Mr President, I ask a supplementary question. I ask the Minister for Revenue and Assistant Treasurer to explain why she declared ownership of her property in Manuka in the same declaration she has now corrected whilst stating to the Senate yesterday that the Woollahra property ‘is the only property I own’. Those are your words, Minister, in the Senate yesterday. Did the minister actually sign—

Senator Hill—In Sydney.

Senator FAULKNER—Check the Hansard record, Senator. Did the minister actually sign the declaration of interests which was lodged on 18 December? Minister, did you read that declaration—

Senator Ian Macdonald—Mr President, I raise a point of order. As Senator Faulkner should know, because he has been here long enough, any question has to be addressed through the chair and not directly to the minister at the table.

The PRESIDENT—That is correct, Senator.
Senator FAULKNER—But it is okay for that shouting to occur across the chamber.

The PRESIDENT—Shouting is disorderly, as you well know.

Senator FAULKNER—Mr President, did the minister read the declaration before signing it? Does the minister stand by her claim that the declaration she has now corrected was ‘meticulous’?

Senator COONAN—What I said was that I had complied with the ministerial code of conduct meticulously, and I have. What I was referring to yesterday was the distinction between the allegation that I had some interest in Clareville and an interest in the property at Woollahra. It was in that context that I said that I owned only one property. My declaration of interests very clearly refers to the fact that I have some accommodation in Canberra. That is a public record and open for all senators—and, presumably, any member of the public—to see.

National Security

Senator BARTLETT (2.23 p.m.)—My question is to the Minister for Defence and the Minister representing the Prime Minister, Senator Hill, and it concerns the important public policy matter of Australia’s potential support for a first strike on Iraq. Minister, given that Mr Howard has in the past said that he expects Australia to be invited to take part in any military action against Iraq—and he has previously described military action as probable—why is the government continuing to support the justification for a first strike on Iraq? Given that there is still no evidence that Iraq has direct links to the terrorists responsible for the September 11 attacks or for the Bali bombings, given that there is still no evidence that Iraq has weapons of mass destruction that will reach Australia, unlike several other countries, or that Iraq is considering attacking Australia, and given that this country is sufficiently unconcerned about the way in which Saddam Hussein treats his citizens and that he is consistently trying to return asylum seekers from Australia to Iraq, why is the government continuing to refuse to rule out Australian support for a first strike against Iraq?

Senator HILL—I do not think the government has actually been talking about a first strike on Iraq; the Australian Democrats might be. What the government has said is that it wishes to see an end to Saddam Hussein’s program of weapons of mass destruction and that it wishes to see his existing weapons destroyed. The government is particularly pleased that the United Nations has risen to its responsibility, finally, and passed an appropriate resolution and sent in inspectors to give confidence to the international community that that objective can be achieved. So the government is pleased that there is an opportunity to resolve this issue peacefully. But we do believe that it has to be resolved in a way in which the threat of weapons of mass destruction is removed. That is the key issue here. As we said, there is now the chance of a peaceful resolution, which everyone would prefer, and the efforts of this government go towards achieving that goal.

Senator BARTLETT—Mr President, I ask a supplementary question. Minister, the purpose of the question was to ascertain why the government continues to indicate its support for a ‘potential and likely military action against Iraq’, in its own words. Given that the minister has said it is in order to keep weapons of mass destruction out of the hands of terrorists, I draw the minister’s attention to a recent Australian Strategic Policy Institute publication entitled Beyond Bali: ASPI’s strategic assessment 2002, which states:

And Iraq’s WMD are more likely to find their way into al-Qaeda’s hands in the chaos that might follow a US invasion, than under Saddam Hussein’s closely-controlled regime.

Given that an attack against Iraq is clearly more likely to put weapons of mass destruction into the hands of terrorists, why is the government continuing to allow itself to be seen as supporting a potential attack against Iraq?

Senator HILL—We certainly want to keep weapons of mass destruction out of the hands of terrorists; that is true. But we also want to get weapons of mass destruction out of the hands of Saddam Hussein, somebody who has used those weapons on his own people, somebody who has invaded his
neighbours and somebody who—according to the British government, anyway—still has regional aspirations. We believe that that weapons program—the weapons he holds and the weapons he wishes to continue to develop, including the prospect of nuclear weapons—is a threat that should be alleviated through international pressure. Hopefully, as I have said, that can be achieved peacefully.

**Ministerial Conduct: Senator Coonan**

**Senator Ludwig** (2.27 p.m.)—My question is to Senator Coonan, the Assistant Treasurer and Minister for Revenue. Is the minister aware of the Prime Minister’s statement yesterday in which he said:

If there were any arrangement to avoid tax, and I was satisfied of that, I would take appropriate action.

Can the minister also confirm that the Prime Minister did not limit this arrangement to avoidance of Commonwealth tax? When did the minister first become aware of the weekend claim by her husband, made public in the media today, that he personally acquired the Clareville property in 1993? Is she now aware that, by apparently failing to properly register the 1993 acquisition of the Clareville property, the new owner has avoided the payment of many thousands of dollars in stamp duty? What action did the minister herself take when she first became aware of this tax arrangement?

**Senator Hill**—Mr President, I raise a point of order. It is the same as the point of order that I made yesterday: that what is being asked is for the minister to speak of the state of mind of her husband, her husband’s intentions and why he did certain things. That is clearly outside of her ministerial responsibility. That is a matter that the honourable senator might like to take up with her husband, but it certainly is not an issue that he is entitled to take up with the minister in this place.

**Senator Ludwig**—Mr President, in relation to that point of order, what I asked was when the minister first became aware, which is in her personal knowledge and, secondly, what action the minister has taken. I did not ask in relation to what might be in the mind of her husband but when she became aware and what action she has taken now that she has become aware from the newspaper report. I think that it is within the rules of this house, and it is within the knowledge of the minister, to answer that question.

**The President**—That may well be, but the fact of the matter is, as you would know, Senator, successive presidents have consistently ruled that matters outside the ministerial responsibilities of a minister—matters regarding family—are out of order. I ask the minister to answer the questions that she sees as being within her portfolio responsibilities.

**Senator Coonan**—Thank you, Mr President. I do not think any of the matters go to my portfolio interests; however, what I would wish to correct is Senator Ludwig’s unfounded assertions that the transfer of this property was in 1993. That is false. The statement that has been tabled by my husband says:

Subsequently, and well prior to the introduction of capital gains tax in 1985, the beneficial interest was transferred to me—

with that ‘me’ being my husband, not me. Clearly, if it is well before 1985, it cannot be in 1993. Senator Ludwig is obviously falling into the trap of believing something he has read or some comment attributed, perhaps incorrectly, to somebody else. Senator Ludwig should know better than to be making these kinds of allegations and framing a question in which assumptions are all rolled up as though they are fact; they are not. Senator Ludwig really needs to try to lay his groundwork a bit more carefully before he makes unfounded assertions in a question, because the allegations that are flying around this place—and outside this place, for that matter—are so wildly reckless about the truth that it is really quite worrying that parliamentary privilege can be abused in such a way.

I must say that it is of some considerable alarm that parliamentary privilege, which is here for a very good reason and for proper purposes, can be so abused to vilify a third party who is not a party to anything that I am responsible for in this place. We do not have a joint interest in the property that is in ques-
tion. It does not go to my ministerial responsibilities. The opposition have so far, over the course of about two weeks, not come up with one shred of evidence that there is any conflict with my ministerial duties, which is clearly a matter before the Senate and quite rightly so. One could not object to any proper investigation of ministerial conflict, but to be subject to questions on the basis of something that goes way beyond any conflict of duties and attributes to me some part in some activity about which allegations are then made, without any foundation, is surely not what parliamentary privilege is all about. I just remind the senators opposite of the standing orders and of the injunction in the standing orders to be very sure of what you say before you fling this mud about.

Senator LUDWIG—Mr President, I ask a supplementary question. I did hear that answer in respect of the beneficial ownership. The question of the legal ownership as reflected in the legal titles to the property might be a different matter, as Senator Coonan would know. Did the minister inform the Prime Minister of this arrangement to avoid tax before his statements to the House yesterday, and has the minister now informed the Prime Minister of the inaccuracy of his statements to the House yesterday in relation to the ownership history of the Clareville property?

Senator Abetz—Mr President, I rise on a point of order. That question clearly has an imputation in it. Under standing order 73(1)(d) imputations are not allowed, and the imputation in Senator Ludwig’s question is that certain arrangements were entered into to avoid tax. Nobody knows that. It is a bland assertion with no support for it being made by Senator Ludwig and, as a result, it is an imputation and the question should not be allowed.

Senator Hill—Mr President, further to the point of order; what Senator Coonan says to the Prime Minister is her business and certainly nothing to do with Senator Ludwig.

Senator Faulkner—Mr President, I rise on the point of order. I would have thought it was up to Senator Coonan to answer these questions. Mr President, you have already deemed fit to effectively rule out questions asked by Senator Ludwig in his primary question when he asked whether the minister was aware of a prime ministerial statement and two separate questions about her knowledge of the Prime Minister’s statements. Such questions have been consistently ruled in order by every president in every question time prior to this question time in the Senate today. They were ruled out of order by you today. You ruled out of order part of Senator Ludwig’s primary question in relation to what action the minister herself took. That is absolutely unprecedented in this chamber. I would ask you to reflect on that. If you wanted to rule part of Senator Ludwig’s question out of order, no doubt Senator Ludwig could frame his supplementary question in accordance with such a ruling. Mr President, you effectively ruled the whole question out of order. Senator Coonan ought to be obliged to answer those sorts of questions. Every other minister in this parliament, in this chamber, up until today has been expected to answer such questions, and I think that should apply to Senator Coonan.

The PRESIDENT—Senator, I did not rule all of Senator Ludwig’s question out of order. I asked the minister to answer those parts that were relevant to her ministry, and in this particular case I will repeat that statement. I will ask the minister to answer those parts that are relevant to her ministry and her ministerial conduct.

Senator COONAN—I have not been a party to any arrangement to avoid tax, and so the conversation does not arise.

National Stem Cell Centre

Senator MURPHY (2.36 p.m.)—My question is to Senator Minchin, the Minister representing the Minister for Industry, Tourism and Resources. On 12 November I asked a question in relation to the National Stem Cell Centre and, in particular, the management of intellectual property for maximum national benefit. Given the response I received on 13 November, for which I thank the minister, I now ask: can the minister inform the Senate whether the government is satisfied that the Patents Act 1990 is sufficient in its current form to ensure that the Patent Office is considering and will be required to consider the community interest
and public health care implications when assessing a patent claim in the human biotechnology area?

Senator MINCHIN—I do not have the information on the patent office and the particular matters to which Senator Murphy refers, so I will have to get him some information on that as quickly as I can.

Senator MURPHY—Mr President, I ask a supplementary question. Can the minister also inform the Senate whether or not the government has indeed given any consideration to the need for changes to the Patents Act to deal with patent claims in the human biotechnology area?

Senator MINCHIN—Again, I will have to seek information on that and get it to Senator Murphy as soon as I can.

Ministerial Conduct: Senator Coonan

Senator COOK (2.37 p.m.)—My question is to Senator Coonan, the Assistant Treasurer and Minister for Revenue. I refer to the minister’s obligations under the Prime Minister’s code of conduct. Can the minister confirm that, for the period in which she was a director of Endispute Pty Ltd—that is, for the second half of 2001—the only other director, her husband, also listed his address on ASIC documents as Rosemount Avenue, Woollahra? During this entire period, wasn’t the company director also declaring to the AEC that his principal place of residence was Paradise Avenue, Clareville? When did the minister herself become aware of these dual claims of principal places of residence more than an hour’s drive apart?

Senator COONAN—I do not think it does relate to my ministerial code of conduct. I am having difficulties seeing how it could. In any event, I have today tabled a statement from my husband which sets out chronologically the arrangements that applied over a period of time, and I have nothing to add to that statement.

Senator COOK—Mr President, that did not answer any of the questions I put, but I ask a supplementary question. Isn’t it also the case that Endispute has always had its registered address at Woollahra? Doesn’t Mr Rogers regularly conduct business for Endispute from this address?

The PRESIDENT—that is patently out of order because you are asking the minister for an expression of opinion and you are asking the minister about something which is outside her ministerial responsibilities and which is to do with a family member.

Senator COOK—I rise on a point of order, Mr President. I put it to you, with great respect, that it is not out of order and it is appropriate for the question to be asked and to be answered. I do that by drawing your attention to Senate practice. I believe, with great respect, Mr President, that you were a member of the Senate when President Beahan ruled on questions to then Senator Richardson about his family affairs that it was appropriate, if the senator so chose, to answer those questions. Those questions were put by the now government, then opposition, to a minister at that time and that minister was required by the chair to answer those questions. That is a matter of historical fact. It is in the Hansard. You were present in the chamber at the time. I ask simply that you observe the same practice, as President of the chamber now, as was observed on that occasion when questions were being put to Senator Richardson about his family business when Senator Beahan was President of the chamber.

The PRESIDENT—I am led to believe that other presidents have ruled out of order matters outside the ministerial responsibility of a minister and they have consistently ruled out questions relating to family members. So my ruling stands.

Gun Control

Senator SCULLION (2.41 p.m.)—My question is to the Minister for Justice and Customs. Will the minister update the Senate on the Commonwealth proposal for comprehensive hand gun reforms? Are there any impediments to the Commonwealth’s hand gun reform plan?

Senator ELLISON—I thank Senator Scullion, who has taken a keen interest in what is a very important subject to all Australians. It is good to have a question in this question time which does touch on something which Australians are concerned about. What we are talking about is a once in a life-
time opportunity for this country to reform its hand gun laws. This Friday will see a meeting between the Prime Minister, premiers and chief ministers in relation to that very subject. In October the Prime Minister took to the leaders of this country a comprehensive plan for hand gun law reform. We all saw the tragedy at Monash, and people across Australia felt great sympathy for the victims and the families of the victims of that tragedy. What the Prime Minister took forward to COAG was a balanced plan. It was a plan which accommodated the legitimate interests of sporting shooters but also public safety and concern. We have had two meetings of the Australian Police Ministers Council—one in Darwin and one in Sydney—and we have made great progress in relation to comprehensive points of reform. These included areas such as graduated access, a probationary period for someone who is just becoming a sporting shooter, things like licensing requirements and minimum participation rates so that you have a requirement for those people who say they are a sporting shooter to participate in that sport, and the giving of authority to sporting shooting clubs to expel those members who are undesirable and show a lack of interest in the sport.

It is very unfortunate that just recently we saw some grandstanding by the ministers from the states of New South Wales, Queensland and South Australia. In this plan, we have to look at what sorts of hand guns will be outlawed as a result of these reforms and how we determine that. We agreed that you have a requirement for those people who say they are a sporting shooter to participate in that sport, and the giving of authority to sporting shooting clubs to expel those members who are undesirable and show a lack of interest in the sport.

The opposition spokesman, the member for Werriwa, Mark Latham, attacked the Commonwealth and said that not enough is being done. But there was deafening silence from him in relation to his state colleagues, especially his state mate from New South Wales, Michael Costa. Why didn’t he attack him for the plan of leaving on the table a plan of doing nothing? We have a comprehensive package to take to the leaders of Australia. It is a fair balance between public safety on the one hand and the legitimate concerns of sporting shooters on the other. Let us see some responsibility from the premiers of New South Wales, Queensland and South Australia in agreeing to this plan and addressing the concerns of all Australians.

Ministerial Conduct: Senator Coonan

Senator FAULKNER (2.44 p.m.)—My question is directed to Senator Coonan, the Minister for Revenue and Assistant Treasurer. I refer to the minister’s statement to the Senate on 19 November, when she twice described her family company, Endispute Pty Ltd, as a non-active, non-trading company. Is it not the case that Endispute Pty Ltd is in fact a trading company—that it does operate with a cash flow, that it does issue invoices for services it provides and that it receives payment for those services rendered? Why did the minister mislead the Senate on this matter? Will she again correct the record?

Senator COONAN—The only question here is whether there is any conflict of interest with my portfolio areas by reason of the company’s activities, and there was not. The ministerial guidelines make no distinction, it is true, between a shelf company and any other for the purposes of establishing whether a company’s operations are capable of creating a conflict with portfolio responsibilities. But where a company had received no moneys other than shareholder loans, had
no unmet liabilities and had not declared a dividend by reason of those activities, it is highly unlikely, you would have to say, that a conflict of interest existed with my portfolio area—and certainly no conflict existed with mine.

This is what I had in mind when I referred to a shelf company. When I was asked a year later by Senator Faulkner about the company, I answered honestly that I believed it was a shelf company but that it might have a bank account. That was on 19 November. Since Senator Faulkner’s questions, I have checked the position of the company up to the time of my resignation on 3 January 2002, which is when I transferred my share. I have also asked about any bank records up to the time of acceptance of my resignation at the meeting on 3 January. At the time, the only money the company had received were small shareholder loans to a grand total of $7,500. It had no unpaid liabilities and it had not declared a dividend. These inquiries have confirmed my recollection—as to my knowledge, anyway—of the state of the company’s activities at the time of my resignation. There was no conflict or possible conflict with my portfolio areas at the time I resigned and none was planned.

The company has no technical capacity to provide advice in my areas of tax, super and prudential regulation, so it certainly was not going to be doing anything that could even conceivably conflict with my portfolio responsibilities. But, in any event, I did decide to resign, because I wished to have no interest in any companies at all, either private or public, and I wished to simplify my financial arrangements for the precise reason that I anticipated that this sort of slur could be made if I continued to have any interest in the company. So I did transfer my interest. The only issue for the Senate is whether there was any conflict of interest with my portfolio areas by reason of the company’s activities. There was not. Senator Faulkner has not provided one scintilla of evidence that there was any conflict of interest with any of my portfolio areas.

Senator Abetz—Up another dry gully!

Senator COONAN—Another dry gully; that is right. In the circumstances, while I am happy to answer questions for as long as the opposition want to ask them, it is clear that they have given up on ever trying to do anything relevant to the Australian people. They have given up on trying to do anything that is actually going to advance the interests of Australians. They are like Mr Micawber in Charles Dickens’s book—they are waiting for something to turn up. Mr Micawber was entitled to wait for something to turn up, but he was not holding up the Australian people and the Australian Senate while he did so.

Senator FAULKNER—Mr President, I ask a supplementary question. As the minister does recall the claim in the Senate on 19 November that she was no longer actively involved in the administration of her family company, Endispute, and she has checked the records, I ask the minister if today was the first available opportunity to correct the record about her misleading statement on 19 November. Can the minister confirm that the registered company address and the principal place of business for Endispute Pty Ltd is the minister’s home address in Woollahra? If Mr Rogers, the company secretary of Endispute, lived at Clareville, as he claimed to the AEC, why was Endispute being run from the minister’s home in Woollahra? Is this another case of the minister misleading the parliament?

Senator Alston—Mr President, I raise a point of order. Once again, all of these matters relate to the affairs, behaviour and attitudes of the spouse of the minister. I thought Labor had previously ruled spouses off-line, but it seems that, when it suits their purposes, nothing is off-line. There can be no possible basis for this being relevant. Whatever arrangements someone else might make about where they live, how they conduct their affairs and what level of business activity might occur there—even though that might or might not be within the knowledge of the minister—they simply have nothing to do with her responsibilities or any possible conflict of interest, so the whole question, in my submission, should be ruled out of order.

The PRESIDENT—I will not rule it out of order, because the part that was raised was relating to Senator Coonan’s ministerial con-
duct and the question was asked whether she had misled the Senate.

Senator COONAN—I am not sure whether it was put quite like that. Certainly I did not mislead the Senate. That is just an absolute nonsense. I have explained what I meant by a shelf company, and that seems to be perfectly consistent with what I have told the Senate. I have given a very full and complete answer about why I said that. In those circumstances, when I asked about the records, it seemed that I was pretty close to the mark. There had not been any activity that would otherwise have impacted on my portfolio responsibilities. As I said, the company only had two small shareholder loans. It had not received any moneys other than those shareholder loans. On the other issue, I really do not know how it is said—(Time expired)

Health Insurance: Rebates

Senator ALLISON (2.52 p.m.)—My question is to the Minister for Health and Ageing. The minister said yesterday that the government is moving on gym shoes and CDs in relation to private health insurance benefits. How much difference is this really going to make to the huge cost of the rebate to the taxpayer, which is set at $2.5 billion over the next three years? Isn’t it the case that in a recent survey large numbers of high-income earners cite tax avoidance as the reason for signing up to private health insurance? Isn’t it also the case that around $1 billion could be saved if this government means tested that rebate? Why does the government refuse to consider this option?

Senator PATTERSON—Obviously this question is coming from Senator Allison, who does not believe in private health insurance, and so we have to get that premise right. She is in good company on that side of the chamber because the Labor Party does not agree with rebates on private health insurance either. Of the ancillary costs for private health insurance, over 50 per cent goes towards dental treatment, a significant proportion goes towards optometry, more goes towards physiotherapy, more goes towards chiropractic and something like $64 million goes towards other products. I know that Senator Allison will be very interested in this point, because she is one of the great campaigners against cigarette smoking. There are three areas covered by that $64 million. One significant portion goes towards Quit type programs, behavioural programs to encourage people to stop smoking. Another portion goes towards diabetes management and assists members to manage their diabetes. Some funds actually ring patients to talk about whether they have been back to their doctor to have their annual or two-yearly check. The third one assists people with heart disease to manage their disease process. They are three major components of that $64 million. I have said to the health funds that I want them to look very carefully at the other ancillaries, to make sure they have a direct health benefit. In fact, I think MBF took gym shoes off the ancillary benefit.

One of the guidelines for prescribing the drug Zyban, which is on the Pharmaceutical Benefits Scheme, is that people are undertaking a Quit or behavioural type program. We want to encourage doctors to prescribe according to the guidelines, because it has been found that with Zyban there is a 30 per cent efficacy of the medication if the person is actually in a Quit program. If you want to get rid of those three areas, which would mean that people on private health insurance cannot attend a Quit program, cannot be encouraged to manage their diabetes and cannot be encouraged to manage their heart disease, you go about it!

If you want to talk about asset testing or income testing the rebate, that is not cost effective. You are now running at some dreadful score in the polls. If you go out and tell the nine million Australians who have private health insurance that you are going to join with the Labor Party—if they ever get onto the benches on this side—to assist them in cutting out the rebate, you will have no votes left. Out of those nine million Australians, one million of them are Australians who earn less than $20,000 a year and make a choice to pay private health insurance. You will increase their Medicare rebates by, on average, $600 or $700. They will lose $638 under Health Plus programs and $768 under Smart Plus programs. Some of them will lose up to $1,300. Go out and tell Australian families which have budgeted for that rebate...
that you are going to join in cahoots with the Labor Party and get rid of it. You have already sold us out on the PBS and the copayment. You think that it can just keep increasing. During a discussion we had, you said, ‘We’re interested in negotiating.’ But what happened? The next day I get a press release saying that we are not going to have copayments. (Time expired)

Senator ALLISON—Mr President, I ask a supplementary question. The minister acknowledges that the cuts to exclude gym shoes and the like are not going to make any difference whatsoever to the cost of the rebate for private health insurance. Minister, now that almost half of all Australians have private health insurance, how is it that only one per cent of public hospital beds have been freed up? Isn’t it the case that it is the wealthy who are using the public health system but not declaring that they have private health insurance? Are you tracking this extra benefit to the private health insurers and, if so, how much is it costing the public health system?

Senator PATTERSON—This gives me an opportunity to say that in New South Wales Mr Knowles has people in hospitals—three staff members in one hospital—encouraging people to use their private health insurance in public hospitals. They do not have to. Australians do not have to declare that they have private health insurance when they go into public hospitals. Every Australian should have admission. What are the Labor states doing? They are trying to cost-shift, to make us pay twice, by increasing the number of private health insurers going into public hospitals. Private hospital usage has gone up by 12 per cent, and public hospital usage across Australia has gone down by minus 0.1 per cent. I think I might have said minus one per cent in my excitement earlier today in answer to a question. It is taking pressure off the public hospitals, and it is not just the rich. As I said, one million Australians who earn less than $20,000 have chosen—I hope you have private health insurance, Senator Allison—to take out private health insurance to ensure that they have choice, but they do not have to declare it when they go to a public hospital. All Australians have the right to go to a public hospital without being marauded by the Labor states. (Time expired)

Ministerial Conduct: Senator Coonan

Senator FAULKNER (2.59 p.m.)—My question is directed to Senator Coonan, Minister for Revenue and Assistant Treasurer. Is the minister aware of the obligation in the Prime Minister’s code of ministerial conduct that ministers should:… have regard to the interests of members of their immediate families as well as their own when ensuring that no conflict or apparent conflict between interests and duties arises. Can the minister confirm that Endispute Pty Ltd is actively engaged in the provision of alternative dispute resolution services with an emphasis on commercial disputes? Now that we know that Endispute is an active trading company, not a shelf company, can the minister assure the Senate that none of the activities of Endispute Pty Ltd constitute a conflict or an apparent conflict of interest with her ministerial responsibilities?

Senator Hill—Mr President, I raise a point of order. If we accept that Senator Coonan has disposed of her share and ceased to be a director, how can the activities of that company be in any way relevant? On that basis, the question is out of order.

The PRESIDENT—I do not rule in favour of your point of order, Senator Hill.

Senator COONAN—Senator Faulkner is making no allegation, so far as I know, that I can deal with. But I certainly can give an assurance that I have complied with the ministerial code of conduct. Once my resignation as a director and the transfer of my share were effected, no other conflict arose anyway. It is a non sequitur.

Senator FAULKNER—Mr President, I ask a supplementary question. Does the minister recall the Prime Minister saying in 1996 that former Senator Gibson and former Senator Jim Short had to leave the ministry:… because they were in technical default of the rules because they breached the requirement that there must be no appearance of a conflict of interest.
But they were technically in breach and in those circumstances—there was an apparent conflict of interest—they had to go. I’m very sorry about that, but they are the rules ...

Why does the minister believe that there is any difference between her current situation and that apparent conflict of interest that former senators Gibson and Short found themselves embroiled in?

Senator Hill—Mr President, I raise a point of order. How can she be expected to debate the differences in the Prime Minister’s application of his terms of reference in relation to different individuals? In no way is that relevant to her portfolio; in no way is that relevant to her responsibility to uphold ministerial standards.

Senator Cook—It is.

Senator Hill—It might be a question that could have been asked of the Prime Minister or the Prime Minister’s representative in this place, but it is certainly not a question that is appropriate to be asked of somebody who is the Minister for Revenue.

The PRESIDENT—Senator, I believe part of the question may have been hypothetical, but I would ask the minister to answer that part of the question that was within her portfolio.

Senator Alston—Mr President, on the point of order: you cannot possibly expect her to make invidious comparisons between her own conduct and that of others, when a whole range of factors might be taken into account which are beyond her knowledge. So I presume you are only inviting her to deal with any matters of fact.

The PRESIDENT—I might not have said it in as many words, but I meant for the minister to deal with any part of the question that was within her ministerial portfolio or ministerial conduct, which I have consistently ruled today.

Senator COONAN—I do not think there is anything within my portfolio that I need to respond to. The question was so convoluted that I found it very difficult to follow how it was actually framed and what was being asked. I have complied with the ministerial code of conduct, and Senator Faulkner makes no allegation, as best I can tell.

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

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Ministerial Conduct: Senator Coonan
Senator FAULKNER (3.03 p.m.)—I move:
That the Senate take note of answers given by the Minister for Revenue and Assistant Treasurer (Senator Coonan) to questions without notice asked by opposition senators today relating to her pecuniary interests.

Through newspaper reports and Mr Rogers’s own statement, which was of course released last night in the dead of night, we do have the undignified situation where Mr Rogers has been scurrying around, trying to organise his and Senator Coonan’s affairs into some semblance of legitimacy. This is a very sorry episode. We do know that Mr Rogers had to hightail the company secretary of Endispute to ASIC to lodge the late company report of Endispute on Friday, 15 November—two days after Senator Coonan’s status as director was exposed in the Senate. But of course the plot thickens. On Monday, 18 November, Mr Rogers contacted the Office of State Revenue and told them that Clareville was no longer his primary place of residence and asked for a land tax bill. November 18—as you would recall, Mr Deputy President—was the Monday after the opposition started asking detailed questions about Endispute and was the same day that Senator Coonan made a statement to the Senate in relation to her involvement with the company.

Mr Rogers wrote to the AEC at the same time and he re-enrolled at his Woollahra address. He is now officially on the roll back where he lives. Mr Rogers received the land tax assessment for Clareville on Friday last week and paid it yesterday. In relation to that, I say: score one up for Senate accountability. On the other hand, Senator Coonan has a real problem. She has been proven to be a comprehensive and serial misleader of the Senate. Endispute, it turns out—

Senator Brandis—Mr Deputy President, I raise a point of order: that is an attribution against Senator Coonan which is in violation
of standing order 193(3). It is an allegation of dishonesty.

The DEPUTY PRESIDENT—Senator Faulkner, on the point of order, I would ask you to withdraw ‘serial misleader’.

Senator FAULKNER—I withdraw the words ‘serial misleader’. If that is unparliamentary, let us examine the record. As it turns out, Endispute is not a shelf company, although that is what Senator Coonan claimed in the parliament. She said it was; it is not. It is an active, trading family company. We know that Endispute provides alternative dispute resolution and mediation services to, I think, the top end of town. It is not an inactive shelf company at all. I believe that Senator Coonan has misled the parliament in that regard and has almost certainly contravened the code of ministerial conduct. And, of course, she is still to explain a conflict of interest.

Senator Coonan misled the parliament over her property in Manuka, having stated yesterday that the only property she owns is in Woollahra. Senator Coonan misled the parliament with her declaration of pecuniary interests, stating that the Woollahra address was an investment property. She blamed her staff. She signed the form. She has now corrected the record, having had the discrepancy pointed out again by the opposition in the Senate. We do not know the details of the status of Mr Rogers’ electoral enrolment. Senator Coonan may be the Assistant Treasurer and the Minister for Revenue, but she clearly does not have a head for detail. This is a person who claimed triumphantly before the Senate that she is meticulous.

Worst of all, Senator Coonan has ministerial responsibility for insurance matters, yet apparently this family company has been involved in providing services to the insurance industry through dispute resolution. Minister Coonan’s policy recommendations for the reform of the insurance industry in Australia included, for example, her statement to the Senate on 17 October when she said that she was looking at:

... how one can better do further work to encourage mediation and pre-trial dispute resolution.

The truth is that heads in this place have rolled for less than this. It is about time that Senator Coonan faced the music on these issues and explained this serial misleading of the parliament. I believe that Mr Howard should act.

Senator Ian Campbell—Mr Deputy President, I rise on a point of order. Senator Faulkner repeated his unparliamentary words ‘serial misleader’, and he should once again be asked to withdraw.

Senator Faulkner—Mr Deputy President, on the point of order: when you called on me to withdraw those words, which I am not certain are unparliamentary—

Senator Ian Campbell—You should withdraw them again!

Senator Faulkner—No, no. I am speaking to the point of order.

The DEPUTY PRESIDENT—Senator Faulkner, I may be able to assist you. The advice from the Clerk is that the offending word is ‘serial’. The two words together are offensive, but in particular ‘serial’.

Senator Faulkner—I thought I made a very strong case that she is a serial misleader; so no, I will not withdraw those words. I will withdraw the word ‘serial’.

Senator Ian Campbell—Mr Deputy President, I would ask you to direct the Leader of the Opposition to withdraw the unparliamentary words ‘serial misleader’. You have told him that twice now. He is not prepared to accept it. I ask that he be asked to withdraw those words immediately without qualification and then to sit down.

The DEPUTY PRESIDENT—As you know, Senator Ian Campbell, I cannot instruct anyone. I can rule on the point of order and I will do that. My previous ruling on the point of order was that the words ‘serial misleader’ are unparliamentary because the phrase implies deliberate misleading. That is unparliamentary, and I asked the Leader of the Opposition to withdraw. I repeat the request for the Leader of the Opposition to withdraw the unparliamentary comments.

Senator Faulkner—Mr Deputy President, you asked me to withdraw the words ‘serial misleader’ earlier in my contribution.
I doubted that they were unparliamentary but I withdrew them in deference to your ruling. Towards the end of my contribution, you explained further that it was the use of the word ‘serial’ that made the term ‘serial misleader’ unparliamentary, and I have withdrawn the word ‘serial’.

The DEPUTY PRESIDENT—The point that I was making in my ruling was that the words ‘serial misleader’ together are unparliamentary. The word ‘serial’ implies deliberateness, so I ask you to withdraw the whole phrase ‘serial misleader’, please.

Senator Faulkner—I withdraw the whole phrase ‘serial misleader’ and just replace it with ‘misleader’.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (3.12 p.m.)—I think in court you would probably say, ‘The defence rests.’ He is a beauty, isn’t he! The struggle that the Leader of the Opposition has had today is one he has quite often, although on this occasion he has been assisted by Senators Ludwig, Wong and Cook, who should probably just give up and go home really: he has run out of steam, hasn’t he! The trouble that the opposition have had today is that they have no additional evidence—no new ammunition, as I guess we call it in politics—to sustain an attack on Senator Coonan. We found out yesterday that Senator Coonan was not being attacked personally. She was being attacked via her spouse. Because the Sydney Morning Herald and the Fairfax press have an interest in this, we saw Mr Ses-combe come into the gallery today. He was obviously worded up by the opposition—‘Come in! We’re going to continue the attack. Listen to me. We are going to get a scalp here. We can smell blood!’ The poor old opposition—they cannot come up with a policy, they cannot come up with a new idea. Poor old Mr Crean—it must be very embarrassing for you, Mr Deputy President, being a member of this party—that was to go out with Julia Gillard today and say, ‘This isn’t a policy. It’s not a policy. We’ve nearly got a policy. It’s not even a discussion paper. It is sort of an idea, but it is not a policy yet.’ It is a little bit sad. Labor have just got to try to find some relevance. They cannot hurt Senator Coonan, so they find that they have to attack her through her spouse.

As the Prime Minister described in the other place today, you have got these raving feminists on the other side of the place who you think would stick up for the fact that you can have a successful woman go into politics and who is married to a successful man who is running an internationally successful practice in mediation and dispute resolution. It would be absolutely outrageous if we on this side sought to attack someone on the basis of what their spouse did. But, of course, these Upholders of morals and ethics on the other side would seek to do that.

Senator Cook—You have.

Senator IAN CAMPBELL—who was the big misleader in the Senate yesterday? In a gutless and spineless attempt, Senator Conroy was waving around a piece of paper and pretending he had an enrolment form. Using innuendo, he would have had the Senate—and in fact anyone who looked at the Senate yesterday—believe that that is what he had.

The DEPUTY PRESIDENT—Order! Senator Ian Campbell, I advise you to withdraw the statement in respect of Senator Conroy.

Senator IAN CAMPBELL—I withdraw unreservedly, Mr Deputy President. Who misled the Senate in relation to the innuendo and the assertion that Senator Coonan had made some breach in relation to Justice Rogers’s enrolment? There is a difference in ethics between this side and the other side—and I do not say that just because Bob Brown is over here at the moment. The difference here is that Senator Coonan was alerted to an error in her statement of senators’ interests yesterday. The first minute she was allowed, she rose to correct the record and has since put it in writing. She has corrected the record and has apologised. The difference between Senator Coonan and the Leader of the Opposition is that he will never correct the record and he will never apologise. He is the serial offender in attacking people who do not have the protection of parliamentary privilege, and when he has been proven wrong—as he has comprehensively in relation to at least two people that I can recall at the moment—he
has not apologised and he has not forgiven. He wears it as some sort of mark of honour.

We on this side do not regard it as a mark of honour; we regard it as typical of his performance and typical of his reputation as someone who is prepared to get into the gutter, throw mud around and attack people. He attacked members of the Baillieu family who had in fact passed away. He actually accused them of breaching the law, many years after they died. He has yet to apologise to the Baillieu family. More recently than that, he attacked members of Senator Winston Crane’s family in relation to some matters, and they were unable to defend themselves. The allegations were comprehensively proved to be entirely inaccurate, and he has yet to apologise to former Senator Winston Crane’s sister or to former Senator Crane himself—two people who were not able to defend themselves. At least, where Senator Coonan has made honest mistakes, she has actually corrected the record in this place. We will not hold our breath waiting for Senator Faulkner to apologise for what he has done to innocent people outside this place in abusing parliamentary privilege, but we expect that tomorrow we will have to struggle through yet another hour of question time. *(Time expired)*

**Senator ROBERT RAY** (Victoria) *(3.18 p.m.)*—I have read the statement by Mr Andrew Rogers, which Minister Coonan tabled in the Senate today, in which he gives reasons for his changed enrolment circumstances. I must say that a more unconvincing rationale have I never read. It is just gobbledegook. It was only a few months ago that in a puff piece about the Coonans—and we have all been subject to those—they were quoted as lamenting that the weekender at Clareville ‘has not been visited this year’. In other words, neither Minister Coonan nor Mr Rogers had been to Clareville this year. How can you be on the electoral roll for a property you have not visited once in 2002? It is just a nonsense.

Mr Rogers was registered at the Woollahra address from 5 January 1998 to 14 March 2001, and that is consistent with everything else. He then moved his registration to Avalon from 14 March until just a week or two ago. But, of course, he did not change his address for Endispute. That is curious in itself. But, as with the Dr Dean case, it is the neighbours who tell you the story about Mr Rogers. One who lived next door said, ‘It’s very rare to see him down here.’ Another one, two doors away, said, ‘No-one lives here permanently; it’s a weekender. We rarely see anyone there.’ When confronted with these contradictions, what did Mr Rogers do? He said, ‘I moved up there whilst renovating.’ Anyone who has ever been through renovating immediately is sympathetic, because of course you have to get out when you are being renovated. But then Minister Coonan corrected the record herself and informed the newspapers that the renovations had been complete for 11 months—before he changed his registration.

**Senator Brandis**—Haven’t you read his statement?

**Senator ROBERT RAY**—Yes, I have read it, and it is gobbledegook. I am not today going to go to the motives of all this. Rogers was not entitled to be on the roll at Clareville. That is absolutely clear from his own statement, clear from the neighbours’ statements and clear from the fact that he initially misled the newspapers as to his motive for making the change. Like all other electoral fraud here when it comes to registration, it is not actually to try to change votes at the other end. The point was made time and time again when everyone in this chamber, including some present, condemned electoral fraud in Queensland, it was not to affect the end result; it was for sordid internal party reasons. In Dr Dean’s case, just two weeks ago, Dr Dean falsely enrolled not to get an extra vote in his electorate but to deceive the preselectors into thinking that he was a local and that he was not living 20 kilometres away in the leafy suburbs of Melbourne. In fact, he rented this particular property and then never lived there; he was not entitled to be on the roll. The Queenslanders were not entitled to be at the wrong address, Dr Dean was not entitled to be at the wrong address and neither was Mr Rogers. He did not live at Clareville. No evidence has been produced.

**Senator Brandis**—There is evidence.
Senator ROBERT RAY—I wonder if Justice Rogers—as he then was—would have believed this sort of hearsay evidence of residence himself when he was presiding over a case. Of course, he wouldn’t; he would have dismissed it as absolute nonsense. His reasons have been given—no explanation, of course—as to why he basically lied to the Sydney Morning Herald when first confronted. He said that he moved out because they were renovating. His own spouse had to correct the record and say, ‘Hold on.’ He transferred his enrolment basically 11 months after the renovation was completed.

I do not know what his motive was. Some people allege that it was to dodge land tax; I do not know. I find it curious that he would put out a second statement. When these issues were raised in the Senate, all of a sudden he ran to the land tax office and said, ‘I really shouldn’t be registered at Clareville; you should really bill me.’ They billed him and he paid it straight away, so there has been no tax dodged at this stage. But why go to Clareville initially? Why put up the false reasons? We want to know why. We know it is not for reasons of direct electoral fraud—none of these cases ever are; there is always some other motive—but where are the witch-hunters on electoral enrolment now? Where is Mr Christopher Pyne, who likes running on these issues? He is dead silent.

rule No. 3: I withdraw. Rule No. 3: never climb out of the sewer. I dwell for a moment on the word ‘innuendo’, because that is what it is. Senator Ray used the word himself. Innuendo is being piled upon innuendo, because there is no factual basis for the allegations that are being made.

The Clareville property has been the subject of a series of mischievous and quite false allegations. First of all, we had Senator Conroy in question time yesterday waving a document around and alleging—his question is recorded in Hansard—that Senator Coonan had falsely witnessed an electoral enrolment form. We now know that he had no such document—that the document he was waving around was not an electoral enrolment form at all but a theatrical prop. When asked, ‘Did you witness this document?’ Senator Coonan, very truthfully and frankly, simply said, ‘I don’t know, Senator Conroy; I’d have to have a look.’ Nevertheless, in all the newspapers—in all the media—this morning the allegation is articulated as if it were true. That part of the case fell flat on its face with the first word of the first answer in question time today, after Senator Conroy rose to his feet and directly asked Senator Coonan whether she had signed Mr Rogers’s electoral enrolment form at the Clareville property and her simple answer was no. All of that innuendo, all of the implications and all of the insinuations piled one upon another and then published through the national media today to smear Senator Coonan’s reputation amount to nothing more than a falsehood—the sort of disgraceful innuendo which Senator Conroy has made his trademark.

The second allegation about the Clareville property, which we just heard from Senator Ray, was another cowardly attack on someone, not directly but through their family. The suggestion is that Senator Coonan’s husband, former Supreme Court judge Justice Andrew Rogers, was practising electoral fraud. It is preposterous to suggest so. As anybody who knows the impeccable reputation of Mr Justice Rogers, as he then was, as a senior judge of the Supreme Court of New South Wales, as for many years the chief judge in the Commercial Division of the Su-
preme Court of New South Wales and as a patron and benefactor of many charities in Sydney, he is a great Australian. He is an eminent and distinguished Australian and it is pitiful—it is pathetic—that this Senate should be used by Labor Party politicians who are bereft of an issue to attack a man who has done more for this country than Senator Conroy, Senator Faulkner or Senator Ray will do in their entire public lives.

Nevertheless, Mr Rogers’s statement published today does have a complete answer. Mr Rogers and Senator Coonan moved to Clareville during the renovations of Senator Coonan’s house in Woollahra. Then, as Mr Rogers said in the bits of the statement that Senator Ray did not read, because of his extensive overseas commitments he continued to use Clareville as a residence. He said:

In this context I decided that I would stay at Woollahra when Helen was in Sydney and able to spend time with me but otherwise use the Clareville residence.

Because I regarded Clareville as my principal place of residence I transferred my electoral enrolment to there in 2001.

As you know, Mr Deputy President, that is the requirement, that enrolment be at the principal place of residence. Mr Rogers decided that that was where at that time he was spending most of his time and so, quite properly, he chose to enrol there. That very honest act has been sordidly distorted.

Senator COOK (Western Australia) (3.28 p.m.)—Senators in this place should operate on a basic political principle: if there is nothing to hide, hide nothing. When answers are given that obscure the facts, when answers are given that do not reveal all of the facts and when answers are given that refuse to answer the question put, a reasonable issue arises as to why there is an effort not to tell all the truth. We are dealing with a minister, with a code of ministerial conduct and with a principle that justice must be done and that justice must equally be seen to be done. And the only way in which it can be seen to be done is for everything to be put on the record openly and without bias so that the record can speak for itself. On this occasion, that has not been done. Things have been prised out. The memory of a key minister has been found lacking on issues of their own personal management and repeatedly, in answers to questions from the opposition, the minister has suddenly recalled things. That is just not good enough for a person in public office.

Senator Brandis—Mr Deputy President, I raise a point of order. That statement entirely misrepresents what the minister said. What the minister in fact very truthfully said was, ‘I do not recall, but I will check.’ Having checked, she came back to question time today and gave accurate answers that totally destroyed the allegations made against her yesterday.

Senator COOK—Mr Deputy President, there is no point of order. It was an attempt, under the guise of a point of order, to have a further say in the debate that was closed for this senator a few moments ago. Of course, if the senator curbed his zealotry on this matter and got some balance into his conduct, he would wait and see what other things I was going to say, because that will establish beyond any doubt that my headline remarks are entirely justified.

The DEPUTY PRESIDENT—There is no point of order. Senator Brandis was on a debating point rather than a point of order. Senator Cook, I ask you to resume your contribution.

Senator COOK—We have now seen Senator Coonan engage in the White Rhinos loophole. Senators in this place all know about White Rhinos trust—it was former Senator Parer’s trust. We know that Senator Parer was in breach of the ministerial code of conduct, and we know that the Prime Minister changed the ministerial code of conduct to bring it into conformity with Senator Parer’s financial arrangements through the White Rhinos trust. The facts of the trust were that, under the ministerial code of conduct, you could not hand over your benefits to a family member. What did the Prime Minister do? He changed that to a spouse or a dependent family member, thus allowing Senator Parer’s adult children to take over his trust. In the case of Endispute, that is exactly what Senator Coonan has done. She has used the White Rhinos loophole to hand over
her beneficial interest in Endispute to her 25-year-old son—a principle that of course was first illegal under the ministerial code of conduct, was then made legal to allow Senator Parer off the hook and is now being benefited from by other ministers.

We know as well, by the conduct of the key players in this issue, that there is something to hide. We know that Rogers himself lodged an ASIC report and paid his taxes on 15 November, after this matter became publicly notorious. We are left with the hanging question: if it were not publicly notorious, would he have done that? The fact that he only did it after the event and not before it is a matter of considerable interest. We know that Endispute is not a shelf company—it is an active trading operation—and we know in all probability that it would be pretty hard to disguise that from Senator Coonan, because it trades out of the property that she owns in Woollahra, in Sydney. It would be pretty hard for her not to know that a company operating from her private home was in fact an active company. We know that Senator Coonan could not remember, when she spoke yesterday, that she actually owned a house in Manuka, when she said the only house she owned was the house in Woollahra. This is from a minister who is in charge of taxation and insurance in this government, and we know that Endispute provides services to the insurance industry.

There is a further question that ought to be answered, and it ought to be answered forthrightly, straightforwardly and without any qualifications—just tell it as it is up-front and do not duck and weave and hide. It is about the active trading company Endispute, which is not a shelf company but an active business whose business premises is the Woollahra home entirely owned by Senator Coonan—we know that those two things are facts. Does this company pay any rent to Senator Coonan for the use of her private premises? That is a question that ought to be answered.

Senator Brandis—Mr Deputy President, I raise a point of order. This is the oldest trick in the book, and Senator Cook is a serial offender. There is, once again, an innuendo in that question—by the use of the device of a rhetorical question—to suggest a conflict of interest by the minister. That is in violation of standing order 193(3). The allegation does not have to be made as a statement; it can be concealed in a rhetorical question, but the allegation still lingers in the air. It is a very intellectually dishonest thing to do. In this case, it is also in breach of standing order 193(3).

Senator COOK—Mr Deputy President, this is quite an outrageous point of order. There is nothing in what I have said that is in the slightest bit out of order in this chamber. The intellectual dishonesty of Senator Brandis is quite staggering. He is a serial offender in terms of intellectual dishonesty in this place, and has been intellectually dishonest on major questions on many occasions. That having been said, it is quite appropriate—

Senator Ian Campbell—You should withdraw that immediately, before you are told to.

Senator COOK—I beg your pardon?

The DEPUTY PRESIDENT—I think you should withdraw unparliamentary language, Senator Cook.

Senator COOK—I withdraw unparliamentary language, but in doing so I merely say that I was repeating exactly the phrases used by Senator Brandis when he spoke of me. If it is unparliamentary language for me to use those phrases in speaking of Senator Brandis, it must equally be unparliamentary of Senator Brandis to use those phrases when speaking of me. In which case, Mr Deputy President, surely you should now invite Senator Brandis to do the honourable thing—something that he is not keen to do, because he remains seated—and withdraw those reflections.

Senator Brandis—Mr Deputy President, if you have ruled the expression unparliamentary in relation to Senator Cook, as I understand you have, then the ruling would apply equally to me.

The DEPUTY PRESIDENT—Senator Brandis, without getting into a lengthy debate, are you withdrawing?

Senator Brandis—Yes.
The DEPUTY PRESIDENT—Senator Cook, there is no point of order. I ask you to continue your remarks.

Senator COOK—The point I was making was that the owner of this property is Senator Coonan. A business is conducted from this property. It is worthwhile to know whether Senator Coonan charges that business a fee for the purpose of the use of her property or not. If she does, then surely she knows it is an active business. If she does not, she is providing an in-kind, free good to that business. I would like to know if that is then set out in their profit and loss accounts and in their records of transactions, because the use of the property is a key input in the ability to conduct a business of this nature. Since it is entirely conducted from the premises owned by Senator Coonan—(Time expired)

Question agreed to.

Health Insurance: Rebates

Senator ALLISON (Victoria) (3.37 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Health and Ageing (Senator Patterson) to a question without notice asked by Senator Allison today relating to private health insurance rebates.

The minister of course is defending the private health insurance rebate scheme despite the fact that by 2004-05 this will be costing taxpayers $2.5 billion. That is an enormous amount of money to pay for what the minister admitted was a 0.01 per cent reduction in pressure on the public health hospital system. I do not think the minister can justify that level of subsidy by ordinary taxpayers. Half of the population of this country who do not have private health insurance are effectively subsidising those who do, and subsidising a system which is a very expensive one compared with the public health and hospital system.

What started this off this week was the indication from the minister that benefits for things like gym shoes, golf clubs, tennis costs and classical music CDs should not be claimable under private health insurance under the ancillary benefits because this was obviously a very large cost to the fund and it could not be justified. But the minister said today that in fact that was a fairly small percentage of the $64 million that was spent on ancillary benefits. So the Democrats come back into this chamber and again say, ‘Isn’t it time, given that this is not going to deliver any cost to the $2.5 billion, that we looked again at means testing private health insurance rebates?’

The minister was not able to provide any information that would suggest that the minister has seriously even looked at the question of what implications this might have for private health insurance. I would suggest to the minister that those on the highest incomes are unlikely to shift from private health insurance onto the public system just because we do not give them back their 30 per cent rebate. That may cost them an extra $600 or more a year, but the Democrats argue that this is fair to high-income earners and that there is no good reason why the public health system, particularly the hospital system, should be suffering because we are having to pay so much for private health insurance. As I said earlier, we all know that private hospital cover and private hospitals are much more expensive than the public hospital system, and there are really good reasons why that is the case—reasons we should take account of when we look at the whole system of health care in this country.

It is clear from surveys that high-income members of private health insurance schemes admit that the reason they have joined this scheme is for tax avoidance. They have done it on economic grounds. I imagine that one of the reasons they are taking advantage of the opportunity to buy gym shoes and fitness club membership is not only because they want to get tax benefits but also because they want to take advantage of the amount that they pay in fees to private health insurance. They are just making sure that they get their money’s worth, as it were. We know that. We also know that people who have private health insurance very often—and we do not know how often, but very often—go to the public health hospital system and the minister has no way of knowing how many people are involved in this practice. I can guess what sorts of procedures they prefer to use the public hospital system for. I can guess it
is the most serious and the most costly kinds of procedures that they are in the public system for. The minister seems not to care that this is not just putting pressure on the public hospital system but is going against what this whole scheme is supposed to be about.

In our view, the whole rebate scheme was a nonsense to begin with. It was an unfair measure and one which was never going to improve the situation for public hospitals in this country. There are bed shortages; there are serious problems associated with shortages in terms of funding for public hospitals. The rebate scheme was never going to solve that problem. It has been a very expensive solution to a problem. In fact, it has not been a solution at all. The figures, as the minister admitted today, show that only 0.01 per cent of hospital beds have been freed up by the private health insurance rebate scheme. So it is time to look at this question again. It is time, if we are not going to collapse the whole thing—and I can understand that the minister is not prepared to do that—to at least look at means testing it. We could save $1 billion, maybe $1½ billion, by means testing this system. *(Time expired)*

**NOTICES**

**Presentation**

Senator George Campbell to move on the next day of sitting:

That the time for the presentation of the report of the Employment, Workplace Relations and Education References Committee on the education of students with disabilities be extended to 10 December 2002.

Senator Brandis to move on the next day of sitting:

That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 5 December 2002, from 4 pm, to take evidence for the committee’s inquiry into the provisions of the Financial Sector Legislation Amendment Bill (No. 2) 2002.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.43 p.m.)—I give notice that, on the next day of sitting, I shall move:

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

Charter of the United Nations Amendment Bill 2002,
Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002,
International Tax Agreements Amendment Bill (No. 2) 2002,
Medical Indemnity Bill 2002,
Medical Indemnity (Consequential Amendments) Bill 2002,
Medical Indemnity (Enhanced UMP Indemnity) Contribution Bill 2002,
Medical Indemnity (IBNR Indemnity) Contribution Bill 2002,
National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2],
Trade Practices Amendment Bill (No. 1) 2002,
Trade Practices Amendment (Small Business Protection) Bill 2002 [No. 2], and
Workplace Relations Legislation Amendment Bill 2002.

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

Leave granted.

The statements read as follows—

**CHARTER OF THE UNITED NATIONS AMENDMENT BILL 2002**

**Purpose of the Bill**

The Bill will amend section 22 of the Charter of the United Nations Act 1945 to:

- clarify the section to ensure that the Minister would have authority to issue a permit under section 22 regardless of whether he has received an application for permission, as originally intended;
- provide for holders of freezable assets to apply to the Minister for a notice permitting the dealing in that asset; and
- provide for holders of assets to apply to the Minister for a notice permitting the giving of that asset to a proscribed person.

Section 22 was inserted into the Act by the Suppression of the Financing of Terrorism Act 2002.
Reasons for Urgency
If the amendments are not made by 6 January 2003, section 22 of the Act will commence with the effect of removing the existing ability of the Minister for Foreign Affairs (under the Charter of the UN (Anti-terrorism Measures) Regulations to issue permits relating to dealings with freezable assets or proscribed persons; and key procedures relating to holders of freezable assets that cannot be included in regulations will not be able to be implemented. This could have adverse impacts on cooperation between a significant class of asset holders (the financial sector) and the Australian Federal Police in the investigation of the existence of terrorist assets in Australia.

(Circulated by authority of the Minister for Foreign Affairs)

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (SPECIAL BENEFIT ACTIVITY TEST) BILL 2002
Purpose of the Bill
This Bill will give effect to the measure agreed to as part of the 2000-2001 Budget to introduce activity testing arrangements for special benefit recipients who hold a temporary protection visa and who are of work-force age.

Reasons for urgency
The initiative contained in this Bill is to commence on 1 January 2003. It is critical that the Bill is passed in the 2002 Spring Sittings ahead of the commencement date so as to have sufficient time to finalise supporting administration.

(Circulated by authority of the Minister for Family and Community Services)

INTERNATIONAL TAX AGREEMENTS AMENDMENT BILL (No. 2) 2002
Purpose of the Bill
The Bill will give effect to Protocols amending the 1980 Double Tax Convention between Australia and Canada and the 1980 Double Tax Agreement between Australia and Malaysia; and make certain minor technical amendments to the International Tax Agreements Act 1953.

Reasons for Urgency
It is desirable that the Protocols take effect from the earliest possible date (withholding taxes must take effect from 1 January) to ensure that taxpayers obtain certainty and the benefit of lower withholding taxes. In the case of the Canadian Protocol, Canada has already taken steps to implement the agreement. It is desirable that we follow suit without delay. In the case of the Second Malaysian Protocol, it is desirable that the tax sparing provisions (which have retrospective application) take effect as soon as possible.

Early consideration of the technical amendments in this bill is desirable as the amendments are consequential upon the passage of the legislation containing the US Protocol (the International Tax Agreements Act (No. 1) 2002) and it should take effect at the same time as that Protocol.

(Circulated by authority of the Treasurer)

MEDICAL INDEMNITY BILL 2002
MEDICAL INDEMNITY (CONSEQUENTIAL AMENDMENTS) BILL 2002
MEDICAL INDEMNITY (ENHANCED UMP GUARANTEE) CONTRIBUTION BILL 2002
MEDICAL INDEMNITY (IBNR INDEMNITY) CONTRIBUTION BILL 2002
Purpose of the Bills
These bills cover a package of measures which are designed to address medical indemnity issues. The main features of the package are:

• assumption by the Commonwealth of the liability for incurred but not reported liabilities (IBNRs) for those medical defence organisations (MDOs) which have not fully funded them;
• assumption by the Commonwealth of the liability for a portion of high cost claims of $2 million or above; and
• imposition of levies on members of those MDOs with unfunded IBNRs to recoup the liability of the IBNRs; on doctors benefiting from the extension of the guarantee to the provisional liquidator of United Medical Protection/Australian Medical Indemnity Limited to recoup costs arising from the extension; and on doctors to recoup future costs of the high cost claims scheme, once the IBNR levy has ceased to operate.

Reasons for Urgency
The reasons for urgency are:

• to honour public commitments that a comprehensive framework of measures to resolve medical indemnity issues would be in place by 31 December 2002;
• to provide certainty to the medical defence industry, and to potential new entrants to the medical indemnity insurance market; and
• to meet the expectations of the medical profession that the Commonwealth will respond
quickly to medical indemnity issues and provide a stable insurance environment, so that doctors are reassured that they can continue to practise with adequate medical indemnity cover.

(Circulated by authority of the Minister for Health and Ageing)

NATIONAL HEALTH AMENDMENT (PHARMACEUTICAL BENEFITS—BUDGET MEASURES) BILL 2002 [No. 2]

Purpose of the Bill
The purpose of this Bill is to effect savings in the Pharmaceutical Benefits Scheme by increasing the general and concessional copayments, and general and concessional safety nets.

Reasons for Urgency
If the Bill is not introduced and passed in the 2002 Spring sittings, projected savings to the Pharmaceutical Benefits Scheme will not be achieved.

(Circulated by authority of the Minister for Health and Ageing)

TRADE PRACTICES AMENDMENT BILL (No. 1) 2002

Purpose of the Bill
The Bill will correct a significant drafting oversight in a recent amendment Bill and improve the Trade Practices Act 1974 to facilitate its use as a model for national consumer protection laws.

Reasons for Urgency
Imprisonment as a penalty for a contravention of section 155 was inadvertently removed in redrafting the provision and its reinsertion is desirable as a matter of urgency.

(Circulated by authority of the Treasurer)

TRADE PRACTICES AMENDMENT (SMALL BUSINESS PROTECTION) BILL 2002 [No. 2]

Purpose of the Bill
The proposed Bill will amend the secondary boycott provisions (sections 45D and E) of the Trade Practices Act 1974 to allow the Australian Competition and Consumer Commission to take representative action and intervene in proceedings in matters of restrictive trade practice.

Reasons for Urgency
The Government has on several occasions sought the introduction of protections for business, and particularly small businesses, against secondary boycott actions. Most recently, the proposed amendment was rejected by the Senate on 19 August 2002.

Industry views the introduction of adequate protections for businesses against secondary boycott action as an important matter. Businesses, and particularly small businesses, continue to be effectively denied adequate protection from costs and damages produced by unlawful conduct.

(Circulated by authority of the Minister for Small Business and Tourism)

WORKPLACE RELATIONS LEGISLATION AMENDMENT BILL 2002

Purpose of the Bill
To make a range of mostly minor and technical amendments to a variety of acts administered by the Employment and Workplace Relations portfolio, including (relevant to this context):

• an amendment to the Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001 to rectify a drafting error that had the unintended effect of possibly decriminalising three offences in the Industrial Chemicals (Notification and Assessment) Act 1989; and

• an amendment to the Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002 to ensure that section 317 of the Workplace Relations Act 1996 correctly identifies offences relating to secret ballots.

Reasons for Urgency
The reasons for requesting that this Bill be introduced and passed in the current Sittings revolves around the two amendments outlined above.

Regarding the change to the Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001, there is currently a possible (and unintended) gap in the Industrial Chemicals (Notification and Assessment) Act 1989 (the ICNA Act) which means that prosecutions in relation to contraventions of three provisions of the ICNA Act may not be able to be brought. The amendments proposed in the Bill to remedy this are to commence retrospectively, that is from immediately before the relevant amendments to the Criminal Code Application Act commenced on 2 October 2001. Although there appears to have been no contraventions of these provisions in the intervening period in respect of which prosecutions are contemplated, it is highly desirable that the
amendment be passed and take effect as soon as possible. This will reduce, as far as possible, the extent of the proposed retrospectivity and return certainty to the operation of the provisions in the event that any breaches necessitating criminal prosecution occur.

The second reason in relation to the Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002 is to avert the need for the amendment to have retrospective effect. The 2002 Act will commence on 12 May 2003 and it is preferred that the amendment—proposed to commence immediately before relevant provisions in the 2002 Act—take effect before that date.

Senator O’Brien to move on 9 December 2002:

That the Primary Industries (Customs) Charges Amendment Regulations 2002 (No. 6), as contained in Statutory Rules 2002 No. 293 and made under the Primary Industries (Customs) Charges Act 1999, be disallowed.

Senator O’Brien to move on 9 December 2002:

That the Primary Industries (Excise) Levies Amendment Regulations 2002 (No. 10), as contained in Statutory Rules 2002 No. 294 and made under the Primary Industries (Excise) Levies Act 1999, be disallowed.

Senator O’Brien to move on 9 December 2002:

That the Primary Industries Levies and Charges Collection Amendment Regulations 2002 (No. 7), as contained in Statutory Rules 2002 No. 295 and made under the Primary Industries Levies and Charges Collection Act 1991, be disallowed.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.45 p.m.)—I seek leave to move a motion relating to the hours of meeting today.

The DEPUTY PRESIDENT—Is leave granted?

Senator HARRADINE (Tasmania) (3.45 p.m.)—Leave is not granted as yet, Mr Deputy President. I was not consulted about this in any shape or form. The first I knew about it was at one o’clock, when the PLO kindly brought a document around to me. If this is open to debate or open to amendment I will be happy to grant leave.

The DEPUTY PRESIDENT—If Senator Ian Campbell gets leave to move the motion then it will be open to debate.

Leave granted.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.45 p.m.)—I thank my colleagues. I move:

That, on Tuesday, 3 December 2002—

(a) the hours of meeting shall be 2 p.m. to 6.30 p.m., and 7.30 p.m. to midnight;

(b) the routine of business from 7.30 p.m. shall be consideration of the Research Involving Embryos Bill 2002; and

(c) the question for the adjournment of the Senate shall be proposed at 11.20 p.m.

To pre-empt Senator Harradine’s concerns, I will make a few comments. I did hold discussions with a number of people late last night when it became clear that the debate on the Research Involving Embryos Bill 2002 would not conclude last night. We had hoped that with a lot of goodwill and discussion between the office of the Minister for Health and Ageing and participants in the debate it would be possible to finish it tonight. But I had clearly indicated to the world at large that if it was not then we would have to look at when hours could be extended to do it. We indicated to anyone who asked that we would obviously have to look at Tuesday night, but I did not want to flag that too much because I was hoping that it would be finished last night.

I did hold discussions late last night with Senator Ludwig, and other people who were around, and suggested that we sit late tonight. We did not get that agreement until, I think, about half past 12 today. I immediately prepared a draft motion, which is now before the Senate, and asked the Parliamentary Liaison Officer to hand it around, as is normal practice, to all whips and leaders and minority parties and private senators. The Parliamentary Liaison Officer asked that if anyone...
had any concerns with the proposal they contact us as soon as possible.

The proposal is basically to sit the same hours as we did last night and hopefully make progress with the bill. So that Senator Harradine and others know what is in my mind and, I think, in the mind of the Manager of Opposition Business in the Senate, I will say that if we can get the bill finished that will be very desirable. We have now debated the bill for 32 hours or thereabouts, and we will have many more hours tonight, obviously. If it is not possible to complete it tonight then we will seek to continue with it tomorrow. I can assure the Senate that, for a number of reasons, we will not seek changes to sitting hours tomorrow. We will deal with what happens after Wednesday if we are still going.

I am trying to ensure that we deal with the bill before the Senate in a sensible, sound and diligent way to ensure that it is debated fully and that ultimately democracy prevails and a bill that represents the will of the Senate emerges. All honourable senators would recognise that I in particular—although also with the assistance of other leaders and whips and the Manager of Opposition Business in the Senate—have a responsibility to ensure that between now and the Christmas break, and hopefully by the end of next week, which is what we are aiming for, the Senate considers the remainder of the government’s program. So we need to juggle both of those things.

We only have limited hours between now and the end of next week. It is my hope that we will finish all of the business, including the Research Involving Embryos Bill 2002, by the end of next week, so the Senate will not need to come back for extra sittings either the following week or on the Friday and Saturday as has happened in the past. It is our aim to try and get all the bills finished in a reasonable time and to ensure that senators can operate in an effective manner during that time.

Senator HARRADINE (Tasmania) (3.50 p.m.)—I was around last night. In fact, I did not leave until 12.45 this morning and, indeed, I was back here at 7.30 a.m. I would have been grateful to have been consulted. I have been asking, ‘Why don’t we sit on Friday if you need extra time?’ I would be very happy to do it and I think I mentioned that at the whips’—

Senator Ian Campbell—We may have to sit on Friday.

Senator HARRADINE—What I have been attempting to do in this—

Senator Ian Campbell—It is just that some people have families and live on the other side of the country; some people live in Queensland and some people have to make arrangements. We are trying to basically facilitate everyone’s lives.

Senator HARRADINE—I understand that, through you, Mr Deputy President.

Senator Ian Campbell—It is hard to get flights to the other side of the country; there is only one airline in some parts of the country.

Senator HARRADINE—I understand that.

The DEPUTY PRESIDENT—Senator Harradine, I think you should proceed with your comments and others should desist.

Senator Ian Campbell—I am only trying to be reasonable and some people are not.

Senator HARRADINE—Was the Manager of Government Business in the Senate saying something about being unreasonable?

Senator Ian Campbell—I said I am trying to be reasonable.

Senator HARRADINE—I would have been grateful if you had consulted. I would have put the view strongly that we sit on Friday, because this is a very major bill. It is one of the most important pieces of legislation that has come before this chamber in all of the 28 years that I have been in this chamber. I recall very well the concern that was expressed by Julius Stone, that great international jurist, when I first proposed the ban on experiments on human embryos in 1984. Professor Julius Stone said that this is the area that will ‘pose grave problems for the whole of humankind’, and he compared it to the Manhattan project. That came from an international jurist and in fact the person who was responsible for the Moscow-Washington hotline during the Cold War.
I asked the minister to explain a few things in relation to a number of amendments and I withdrew some amendments after her explanations. I was proposing to hasten things, as far as that was possible, but we have to give the major issues full consideration. I acknowledge what Senator Ian Campbell has said in that regard. But I saw what happened last night. I have also been told by others that from about half past nine until about a quarter to 10 things got really touchy around the joint. People were getting very tired, and it was observable last night. What we want in this particular debate is calm presentation of arguments and the ability of people to listen to the arguments, because of the importance of the issue.

I appeal to the Senate that we should not go to midnight tonight, as we did last night, for the very reason that I mentioned. I would hope, and I make this appeal to the chamber, that we go until 11 p.m. — and I think that is pretty well stretching it. I am glad to see the minister, Senator Patterson, in the chamber; of anybody she had the most difficult job last night. I really am appealing to the chamber that we do not go until midnight but that we go until 11 o'clock and that we have the question for the adjournment proposed at 10.20 p.m. I am quite amenable to sit further hours, if that is necessary. I cannot guess what the end result will be — whether we will finish tonight or whether we will not — but I know that it will be far easier and far more conducive to getting through the program if the chamber is not forced to sit until midnight. In that event, I move:

Omit “midnight”, substitute “11 pm”; and omit “11.20 pm”, substitute “10.20 pm”.

I make this appeal; we will all be better off doing it that way.

Senator Patterson — If we could get on with it, it would be good.

Senator Harradine — All right.

Senator Brown (Tasmania) (3.57 p.m.) — I support Senator Harradine’s amendment. I would make a constructive suggestion to the Manager of Government Business in the Senate that maybe, for a number of people who are really concentrating hard on the Research Involving Embryos Bill 2002, it would be a help if we just reordered the program if we have to sit so long, so that speeches in the second reading debates on other legislation are brought on at nine or 10 o’clock to give some respite to those, including the minister, who have such a big burden, and also to prepare for the rest of the debate if it does not get that far. I think it would expedite the program overall if we were to look at that option.

Senator Ludwig (Queensland) — Manager of Opposition Business in the Senate (3.58 p.m.) — Having listened to the debate in relation to this issue, it is worth putting the position of the Labor Party. The Research Involving Embryos Bill 2002 is important. It has attracted considerable attention from all parties. The consideration of the bill does require, and has required, a significant number of hours, both during the second reading debate and in the committee stage.

To date, as I understand it, there have been some 32 hours set aside for this bill. I think it is worth mentioning that, of those 32 hours, the opposition has by and large conceded a significant amount of time to the government to allow the debate to be progressed — not only in the last period but also in other periods such as that relating to the understanding that we would not during estimates week, and particularly the Monday or the Tuesday, deal with the Research Involving Embryos Bill and that we would go on to other business. The opposition were required to concede a significant amount of time to allow for that to occur and also additional time to allow for second readings of other legislation of the government to be debated.

Wherever possible and wherever it has been able to, the opposition has met the requirements of this bill to allow significant time for it to be debated and thereby a considered approach to be taken. As it turns out, the opposition has allowed the debate to stretch over some time and not be compacted. The chamber has not been put in a position where it has had to run the debate over a very short timetable over a very long number of hours. In fact, this debate has gone on for some weeks. An intervening break was called for, as I recall, to allow
parties to discuss amendments with the government and to come to positions on them. So there has been an intervening period of a week to allow parties to understand the amendments, for people to become familiar with the amendments and for discussions about those amendments to take place.

An additional three hours and 50 minutes was put forward for Monday, 2 December. We have already had a Friday where an additional six hours and 15 minutes was put forward. On Thursday, 14 November, the opposition agreed to an additional three hours and 13 minutes; on Wednesday, 13 November, an extra two hours and 46 minutes. So the opposition have allowed two things to occur: significant hours to be put forward for this bill to be debated fully and for the committee stage to be progressed, and sufficient time for the general business of this government to be dealt with—either with it or in addition to it—to allow those matters to be progressed.

The opposition have taken the view that this bill does need time to be debated. My understanding—and I am open to correction on this—is that we had agreed that if the committee stage of the bill was not completed on the Monday then Tuesday night would be needed. The opposition expressed the view that Wednesday night would not be granted but that certainly—at least to my mind—additional hours up to at least Monday and Tuesday, possibly more, might be requested to ensure that the debate on the bill has sufficient time, that no-one feels constrained, that we do not go beyond ordinary hours into what we would regard as excessive hours. The government’s motion is still within those parameters, given that we have only had one late night in a fresh week. We are now looking for a second late night. To that extent, the opposition will oppose the amendment moved by Senator Harradine but will agree to the motion moved by the government.

It is also worth commenting that Senator Harradine did refer to Friday. That was an issue that the opposition had also considered. The last time we were here, it considered early in the week whether or not Friday of this week would be required. Because of air-fares and a whole range of arrangements that people make, the opposition said, ‘If you are going to utilise Friday then let us know with sufficient time for people to make arrangements.’ That was on the basis that Friday could be made available if the government so requested it to be utilised. The government made no request to the opposition for the use of Friday. The opposition, I suspect, was in a position, if the request was made last week or with sufficient time to allow people to make arrangements for that day, to consider that favourably. But no request was made by the government, and still no request has been made. However, today I heard Senator Ian Campbell say that Friday might be needed. I will consider that, depending on the progress of this debate. However, we would expect that, with the additional time given to the committee stage on Monday and Tuesday and all parties cooperating, the committee stage might be concluded tomorrow.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.04 p.m.)—I will try to be brief, because I am sure that Senator Ian Campbell does not want us to chew up all the extra time he is trying to get us for the debate on the Research Involving Embryos Bill 2002 on debating whether or not to sit. However, I do think these are important issues, even if they seem a bit arcane and administrative, and it is appropriate for the Democrat position to be put on the record. I do not envy Senator Ian Campbell his job, particularly in trying to negotiate this bill through the Senate and the timings in relation to that. The pressures from his own people, let alone everybody else in the chamber, would make it more difficult than usual.

I would note, though, that my colleague Senator Allison, the Democrat whip and deputy leader, has been involved in a number of meetings and discussions about potential sitting times. It has been a bit of a movable feast. The pressures from his own people, let alone everybody else in the chamber, would make it more difficult than usual.
with larger numbers than others on the crossbench, this bill has been handled in effect by just the one senator. The load on that senator—Senator Stott Despoja—is the same as that for independent senators in terms of needing to spend all of the time in the chamber. There is that extra burden on people. We all know that this is just the start of a sitting fortnight that history tells us is likely to be quite an arduous one. So to wipe ourselves out with late sittings right at the start of that fortnight is probably not the brightest idea. That the Senate should have midnight sittings for the first two days of a fortnight when there is a real prospect of late sittings next week, as well as Friday sittings and the like, is less than ideal. For that reason, the Democrats are very supportive of the suggestion put forward by Senator Harradine, who is one of the people who has obviously participated deeply in this debate.

Government senators interjecting—

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Could the private meetings on my right keep the noise level down to below 100 decibels.

Senator BARTLETT—I think suggestions that have been put forward, that if we are sitting late we could possibly have a bit of a respite from this one particular bill and fit in some of the others that have been sitting around on the Notice Paper, are also good ones. I would urge the Manager of Government Business to consider them when we revisit the issue of sitting hours, as I am sure we will over the next week or two. It can be a useful way to get some bills out of the way whilst giving those involved in the major one a bit of a break. In recognition of the extra strains put on the crossbenches in particular, the Democrats are supportive of Senator Harradine’s amendment. We recognise that it will not be successful and that the need to enable adequate debate on the stem cell bill is obviously very real. As Senator Ludwig pointed out with his extensive outlining of statistics on the hours and minutes spent on the debate, there has been a lot of time spent on the debate already. The need to actually conclude the debate at some stage obviously has to be acknowledged.

I also take the opportunity to point out once again, as I have a number of times in the past, the Democrats’ view that part of the problem is the very limited number of sitting days that the government puts forward in this chamber. We now see the sitting program for next year, which also has, by historical standards, quite a low number of sitting days. If next year is going to continue the trend we have seen in recent times, there will be an ever-increasing amount of legislation to be dealt with in that smaller number of sitting days. In a sense, the problem gets worse each year, with less time spent debating legislation and more legislation that we have to debate. The Democrats once again make the point that we believe that one solution to slightly lessen the difficulties that we face at this time of year with these types of bills would be to recognise that, given the way the Senate’s role has developed, we need to spend more time debating legislation in the chamber.

In conclusion, we are supportive of Senator Harradine’s amendment but we do recognise the difficulty of Senator Ian Campbell in trying to get the government’s legislative program concluded. Obviously, his motion will go through, but we suggest that some of the things that have been put forward in good faith by the ever-constructive crossbench be considered for future purposes.

Question negatived.

Original question agreed to.

COMMITTEES

Economics Legislation Committee
Extension of Time

Senator FERRIS (South Australia) (4.10 p.m.)—by leave—At the request of Senator Brandis, I move:

That the time for the presentation of the report of the Economics Legislation Committee on the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 be extended to 5 December 2002.

Question agreed to.

BUSINESS

Rearrangement

Senator MACKAY (Tasmania) (4.11 p.m.)—by leave—At the request of the Chair
of the Legal and Constitutional References Committee, Senator Bolkus, I move:

That business of the Senate order of the day no. 1, relating to the presentation of the report of the Legal and Constitutional References Committee on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and related matters, be postponed till a later hour.

Question agreed to.

NOTICES

Postponements

Items of business were postponed as follows:

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 4 December 2002.

General business notice of motion no. 275 standing in the name of Senator Allison for today, relating to child abuse, postponed till 4 December 2002.

General business notice of motion no. 283 standing in the name of Senator Brown for today, relating to the introduction of the Parliamentary Commission of Inquiry (Bali Bombings) Bill 2002, postponed till 4 December 2002.

BUSINESS

First Speech

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.12 p.m.)—I move:

That immediately after prayers on 4 December 2002, Senator Santoro may make his first speech without any question before the chair.

Question agreed to.

WORLD AIDS DAY

Senator ALLISON (Victoria) (4.13 p.m.)—At the request of Senator Ridgeway, I move:

That the Senate—

(a) notes that:

(i) Sunday, 1 December 2002, was the annual World AIDS Day, and sought to draw international attention to the need to refocus our efforts on:

(A) eliminating all forms of discrimination against people with, or suspected of having, HIV through education about HIV/AIDS,

(b) advocacy for people living with HIV/AIDS, and

(c) promotion of legal protection for people living with or affected by HIV/AIDS,

(ii) the joint United Nations Program on HIV/AIDS (UNAIDS) and the World Health Organisation released the 'AIDS Epidemic Update 2002' in the week beginning 24 November 2002, drawing attention to the fact that the virus is fuelling a widening and increasingly deadly famine in southern Africa, where more than 14 million people are now at risk of starvation and more than 29 million people are already infected with HIV,

(iii) more than 90 per cent of the 42 million people who have HIV or AIDS live in developing countries, and only 2 to 3 per cent have access to antiretroviral drug therapies that are designed to stop or inhibit the spread of HIV,

(iv) the infection rate from HIV in Australia has remained relatively stable over the past few years, but in many countries around the world, particularly in southern Africa and parts of the Asia-Pacific region, the virus is spreading so rapidly that it is now a pandemic, and

(v) some 5 million people were infected worldwide during the past year;

(b) welcomes the decision at the recent meeting of World Trade Organisation ministers to endorse the developing world’s better access to affordable medicines, including drugs used in the treatment of HIV/AIDS, but encourages further progress to be made, particularly in relation to access to affordability of antiretroviral drugs; and

(c) reminds the Australian Government that, as a signatory to the United Nations Millennium Development Goals, which includes a commitment to stopping the spread of the AIDS pandemic by 2015, Australia needs to do all that is financially and medically possible to assist those countries, especially our nearest neighbours, which are struggling to contain the spread of the virus and to care for those already infected.

Question agreed to.
PHARMACEUTICAL BENEFITS SCHEME

Senator NETTLE (New South Wales)  
(4.13 p.m.)—I move:
That there be laid on the table by the Minister for Health and Ageing (Senator Patterson), no later than 4 pm on 4 December 2002, all documents relating to the inter-departmental committee (IDC) examining the effectiveness of the Pharmaceutical Benefits Scheme, including but not limited to submissions received by the IDC, the IDC’s recommendations to the Minister, and any response by the Minister to those recommendations.

Question agreed to.

REVIEW OF JUDICIAL REMUNERATION

Senator LUDWIG (Queensland)  
(4.14 p.m.)—I move:
That there be laid on the table, no later than immediately after motions to take note of answers on Thursday, 5 December 2002, the Commonwealth Government’s submission to the Remuneration Tribunal’s major review of judicial and related offices’ remuneration.

Question agreed to.

COMMITTEES

Select Committee on Superannuation

Extension of Time

Senator McGAURAN (Victoria)  
(4.15 p.m.)—At the request of Senator Watson, I move:
That the time for the presentation of the report of the Select Committee on Superannuation on tax arrangements for superannuation and related policy be extended to 12 December 2002.

Question agreed to.

Rural and Regional Affairs and Transport Legislation Committee

Extension of Time

Senator McGAURAN (Victoria)  
(4.15 p.m.)—At the request of Senator Heffernan, I move:
That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the Transport Safety Investigation Bill 2002 be extended to 5 December 2002.

Question agreed to.

FREE TRADE AGREEMENT: PHARMACEUTICAL BENEFITS SCHEME

Senator NETTLE (New South Wales)  
(4.16 p.m.)—I move:
That there be laid on the table by the Minister for Health and Ageing (Senator Patterson) and the Minister representing the Minister for Trade (Senator Hill), no later than 4 pm on 4 December 2002, all documents relating to the possible inclusion of the Pharmaceutical Benefits Scheme as an item for discussion in negotiations for an Australia-United States free trade agreement, including but not limited to correspondence between the Australian and United States governments, recommendations to the Australian government and/or any Commonwealth government minister, and any Australian government response to those recommendations.

Question agreed to.

BANKSTOWN AIRPORT: PRIVATISATION

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

Question put:
The Senate divided.  
[4.21 p.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes………… 11
Noes………… 47
Majority……… 36

AYES
Allison, L.F. *  Bartlett, A.J.J.
Brown, B.J.  Cherry, J.C.
Greig, B.  Harradine, B.
Lees, M.H.  Murray, A.J.M.
Nettle, K.  Ridgeway, A.D.
Stott Despoja, N.
Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Campbell, I.G.
Carr, K.J. Chapman, H.G.P.
Colbeck, R. Collins, J.M.A.
Cook, P.F.S. Coonan, H.L.
Crossin, P.M. Denman, K.J.
Evans, C.V. Ferris, J.M.
Forsyth, M.G. Heffernan, W.
Hogg, J.J. Hutchins, S.P.
Johnston, D. Kemp, C.R.
Kirk, L. Knowles, S.C.
Lightfoot, P.R. Ludwig, J.W.
Lundy, K.A. Mackay, S.M.
Marshall, G. Mason, B.J.
McGauran, J.J.J. * McCluskey, J.E.
Moore, C. O’Brien, K.W.K.
Patterson, K.C. Ray, R.F.
Reid, M.E. Santoro, S.
Scullion, N.G. Stephens, U.
Tierney, J.W. Troeth, J.M.
Watson, J.O.W. Webber, R.
Wong, P.

* denotes teller

Question negatived.

MINISTERIAL STATEMENTS

Managing Migration

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.25 p.m.)—On behalf of the Minister for Immigration and Multicultural and Indigenous Affairs, Mr Ruddock, I table a statement entitled Managing Migration, together with Migration Series Instructions Nos 370 and 371.

DOCUMENTS

Responses to Resolutions of the Senate

The ACTING DEPUTY PRESIDENT (Senator Lightfoot) (4.25 p.m.)—I present a response from the South Australian Minister for Aboriginal Affairs and Reconciliation, Mr Roberts, to a resolution of the Senate of 20 August 2002 concerning Indigenous Australians.

WORKPLACE RELATIONS LEGISLATION AMENDMENT BILL 2002

First Reading

Bill received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (4.27 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (4.27 p.m.)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Workplace Relations Legislation Amendment Bill makes a number of mostly minor and technical amendments to various pieces of legislation within this portfolio.

The bill presented today is an amalgamation of the original bill introduced into the House of Representatives, and Government amendments that only made additions to the bill as introduced, and did not change any of the initial provisions. The bill as amended received bipartisan support in the Lower House.

The first set of provisions, which comprised the whole content of the original bill, contains changes to Commonwealth workers compensation legislation.

Workplace health and safety is an important responsibility of the Commonwealth and promotion of injury prevention and good occupational health and safety practice is a key focus of this Government. The Commonwealth is responsible for two workers’ compensation and occupational health and safety schemes. The purpose of this bill is to make amendments which will ensure the effective operation of both schemes.
The Seafarers Rehabilitation and Compensation Act 1992 (the Seafarers Act) and the Occupational Health and Safety (Maritime Industry) Act 1993 establish a rehabilitation, compensation and occupational health and safety scheme (the Seacare scheme) for certain seafarers. This scheme is administered by the Seafarers Safety, Rehabilitation and Compensation Authority (the Seacare Authority). The Safety Rehabilitation and Compensation Act 1988 (the SRC Act) and the Occupational Health and Safety (Commonwealth Employment) Act 1991 establish a workers’ compensation and occupational health and safety scheme for Commonwealth employees. Comcare provides operational support for the Commonwealth employees’ scheme. Comcare is the major provider of workers compensation management and OHS advice and expertise in the Commonwealth sphere, while the Seacare Authority provides a specialist service to the small industry-specific scheme.

Administrative support for the Seacare Authority is currently provided by the Department of Employment and Workplace Relations. The main amendments in this part of the bill will authorise the relocation of administrative support for the Seacare scheme from the Department to Comcare. The amendments will therefore provide the Seacare Authority with the benefit of Comcare’s skills and expertise.

The amendments will require Comcare to provide assistance to the Seacare Authority in the form of secretarial or other resources, including staff, to enable the Seacare Authority to undertake its responsibilities to seafarers. The bill also proposes related technical amendments, including changes to delegations under the Seafarers Act.

Consequential amendments to reflect that the Seacare scheme will be administered by Comcare are also proposed to the Seafarers Rehabilitation and Compensation Levy Collection Act 1992 (the Levy Collection Act). These amendments are similar to those proposed to the Seafarers Act.

Some other minor amendments to the SRC Act are included in this bill. One amendment will remove the requirement for Ministerial approval of contracts involving the payment or receipt by Comcare of an amount exceeding $500,000. The Government considers that the current requirement is unnecessary.

The bill also includes a technical amendment to the SRC Act to correct a drafting error which occurred during the passage of amendments to the SRC Act last year. The amendment restores the original intention of those amendments that the Chief of the Defence Force may delegate his or her powers and functions as a Rehabilitation Authority under the Act in the same way as the Principal Officer of a Government Department.

The remainder of the provisions, all of which were added by Government amendments in the House of Representatives, involve minor matters such as the correction of drafting errors, clarification of various terms, implementation of better administrative procedures and updating language and named entities to reflect current custom and practice.

Amendments to modernise the operations of the National Labour Consultative Council will change the name of the Council, update the purpose and membership provisions and include a regulation-making power to allow setting of rates of travelling allowance for members.

The bill requires the Rules of the Australian Industrial Relations Commission to allow for the electronic lodgement of certified agreements with the Australian Industrial Relations Commission. Further amendments involving the Commission will clarify its power to arbitrate in respect of an application for equal pay orders during a bargaining period for a certified agreement; provide a mechanism for the Commission to refer certain entitlements matters, including equal remuneration matters, to a Full Bench; and provide for the regular provision of operational data by the Australian Industrial Relations Commission.

There is also an amendment to transfer responsibility for determining the rate of travel allowance for members of the Commission to the Remuneration Tribunal.

Amendments to the Defence Act 1903 to clarify membership provisions in relation to the Defence Force Remuneration Tribunal and to remove sexist language from that Act are proposed. Definitions of the terms ‘responsible minister’ in the Equal Employment Opportunity (Commonwealth Authorities) Act 1987 and ‘higher education institution’ in the Equal Opportunity for Women in the Workplace Act 1999 will be amended, and references to the Parliamentary Service Act 1999 where the Public Service Act 1999 is mentioned will be inserted into the Workplace Relations Act 1996.

A drafting error in the Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001 is to be rectified, to reverse previous amendments that possibly had the unintended effect of decriminalising three offences in the Industrial Chemicals (Notification and Assessment) Act 1989. Offences regarding ballots will also be clarified in light of the passage of the Em-

The Industrial Relations Court of South Australia will be made a ‘court of competent jurisdiction’ for specified purposes in the Workplace Relations Act 1996, and lastly a number of minor typographical and drafting errors in that Act will also be made.

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

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES
Message received from the House of Representatives agreeing to the amendments made by the Senate to the following bill:
Australian Crime Commission Establishment Bill 2002

BANKRUPTCY LEGISLATION AMENDMENT BILL 2002
Consideration of House of Representatives Message
Message received from the House of Representatives agreeing to the amendments made by the Senate to the following bill:

BAKruptcy Legislation Amendment Bill 2002

INSPECTOR-GENERAL OF TAXATION BILL 2002
Report of Economics Legislation Committee

Senator McGauran (Victoria) (4.29 p.m.)—On behalf of the Chair of the Economics Legislation Committee, Senator Brandis, I present the report of the committee on the Inspector-General of Taxation Bill 2002, together with the Hansard record of proceedings and submissions received by the committee.

Ordered that the report be printed.

RESEARCH INVOLVING EMBRYOS BILL 2002
In Committee

Consideration resumed from 2 December.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The committee is considering the Research Involving Embryos Bill 2002 as amended, and amendment (R1) on sheet 2713 revised, moved by Senator Brown on behalf of Senator Nettle. The question is that the amendment be agreed to.

Senator Brown (Tasmania) (4.30 p.m.)—I certainly do agree with the amendment as it is an extremely important amendment. I will not fully canvass once again the reasons for the amendment but I will refresh the memories of senators regarding the amendment. The Greens are moving to establish a national stem cell bank which would effectively hold as property stem cells and would ensure that they are available on an equal basis to those entities who would put those cells to research and other use as laid down in this legislation. It would be a holding bank with guidelines and ethics that many people would want to see in place if embryonic stem cells or, indeed, adult stem cells were to be made available for research purposes.

Before consideration of the bill was adjourned last night, I said that some senators had got this matter back to front. We need to establish processes which will reassure the public that embryonic stem cells in particular are not going to be misused and are not going to be used for commercial advantage with that as the driving ethic rather than the humanitarian grounds that we hear propounded by supporters of embryonic stem cell and embryonic cell research. The best way of doing that is to establish institutions with guidelines and an overview to ensure that this research is kept within the bounds that society wishes it to be kept within; otherwise we will continue to build on the current situation in which there are largely no checks and balances.

I know some people will say, ‘There is cell research taking place at the moment; we don’t want to stop that. What you’re proposing here is that we wait until July next
year to work out how to set up a national cell bank such as the one being set up in Britain.' I say, ‘Let us wait.' If somebody wants to move that the current slate of experiments be allowed to continue in the meantime, I would certainly entertain that. But what I do not entertain is the alternative proposal that is before us which effectively says, ‘Let us wait some years before establishing the organisational basis and the guidelines that go with it.' This amendment only puts into play what the majority of senators, I believe, would want to see happen—that is, we know what the boundaries are; we know who is writing those boundaries and we know that stem cells from any source are not going to be inappropriately used. So you set up a national bank for these cells first. You do not pass this legislation and then say, ‘Further down the line, we will move to the appropriate mechanism, which is the bank.'

This is a very important amendment, as far as I am concerned. I have great difficulty with this legislation. A while ago Senator Harradine mentioned the Manhattan project—I do not know whether it was in this context or not. I do not think that science was adequately regulated when the explosion of nuclear potential and power into the living fabric of the planet occurred much less than a century ago. I am very concerned that there are laboratories at the moment in the United States and elsewhere fabricating viruses for no other purpose than to allow scientists to see if they can do it. Quite recently, one laboratory in the United States announced that they had fabricated the polio virus from building block proteins—a virus which a good many of us had thought had been effectively eliminated from human society. When the head of that laboratory was asked, ‘Why did you do that?' from behind his white coat he said, ‘To show that terrorists could do it.' That is an appalling failure on the part of scientists to regulate themselves, to have an ethic which is appropriate and which puts at the forefront the security of life, in both the short and long term, on this planet.

We are dealing with legislation to regulate the use of embryonic stem cells which are a by-product of the IVF process. One of the strongest arguments put forward in this chamber is, ‘These cells will be disposed of anyway and effectively killed.' But it seems to me that the legislative process is not tight at all; we have open doors everywhere. Senator Nettle and I are proposing that we establish a national public human stem cell bank. It is an idea which is new, just as research involving these cells is new. But it is an idea which is commensurate with the public concern about these cells. It is an idea which suggests: ‘Let us have a central holding authority so that we can assure the public that there is clear and transparent use of these cells and ethical guidelines at a one-stop shop,' a one-stop bank on this occasion, ‘which is under scrutiny by the parliament—that is, by the people.'

This is a simple reassurance mechanism but a vitally important one. I commend every senator to look at this stem cell bank proposal. I also ask every senator to make sure that we put it in place. The amendment that we have is worded to say, ‘No, don’t put it off. Don’t separate it out from this legislation. Make it part of it; put it in the schedule.' Let us have the investigation that is required and make sure that it is done properly. It is a learning process but not so much as the experimentation taking place with embryonic stem cells at the moment. It is much easier to set up an institution than it is to work out the processes that should be divined, what the ethics are or how we as a human community draw the line on stem cell research. Let us do it, and let us assure ourselves that a transparent, publicly backed authority is in charge.

One of the concerns that would allay things, as far as I am concerned, is the recognition that we are being driven by a profit motive—the corporate sector sees huge returns coming out of stem cell research—and that the foot is on the accelerator because there is a race to get there first. That is very different from the humanitarian motive and the possibility that there might be a breakthrough which would help human beings with disabilities or those who are suffering in one way or another. If we are going to make sure that it is for the humanitarian motive and not for the profit motive then we have to
legislate for that. It is a complex matter but this proposal makes it as simple as possible. It comes out of the findings of a committee in the House of Lords. The United Kingdom is moving to set up a stem cell bank. We should do so too. I ask senators not to allow this to be put on the shelf for future investigation without a time line being set for implementation down the line after this legislation has been brought in. That is a prescription for ensuring that it does not happen. It is much better for the bank to be set up—and then we can change the laws, adjusting them to help the bank to work fully and in the best interests of the people—than for the bank not to be set up because we think we are unprepared. I think we are unprepared for stem cell research, frankly, in many ways.

It would help me greatly in determining how I should vote on this legislation if I knew that there was an authority in place whose full-time, whole and sole concentration was to ensure that stem cell research was for the wider public good and for humanitarian purposes. It would have its eye on the pitfalls and the things that could go wrong and it would ensure that stem cell research was absolutely not driven by the market, which is a great place for making money but a very poor place for manufacturing ethics. I commend very strongly the amendment by Senator Nettle for the establishment of a national public human stem cell bank and believe that we should await the establishment of that bank rather than give licences out first. Let us have the bank and put the money in it and in an orderly and judicious fashion allow that to be distributed, rather than put out the money now and say, ‘Let’s get a bank later and see if we can gather it all together at a later date.’

Senator STOTT DESPOJA (South Australia) (4.42 p.m.)—Like Senator Brown, I will reiterate my comments from last night, with a few additional comments inspired by Senator Brown’s contribution. For the benefit of the chamber and the community, I have indicated that the preference of the Australian Democrats is for the stem cell bank amendment, standing in my name and that of Senator McLucas—the same amendment that was successfully passed when we debated the legislation in relation to the prohibition of human cloning.

There are a couple of issues that I want to put on the record in addition to those that were raised last night. There has been a suggestion—and I hope that Senator Brown does not mean this as a reflection—that moving this amendment is in some way a recipe for ensuring that it will not happen. When I move or support amendments in this place, I do so believing that they will happen, specifically in relation to science; I take that area particularly seriously. With regard to the amendments that I have moved in relation to law, including private member’s bills over the last seven years as science spokesperson for the Democrats, I have moved them with the belief that they should happen. I am not quite sure why there is a sense among some senators in the chamber that an inquiry will not necessarily result in a recommendation and an outcome.

Certainly I would not be very happy, and I do not think many other senators who supported the amendment moved in my name and that of Senator McLucas would be very happy, if the inquiry amendment was not acted upon. It will depend on the recommendations of the inquiry as to whether it is a stem cell bank or another mechanism. That is the point that I have made before. The previous speaker is right in saying that this is complex. Scientific debates in this place and in the community generally are complex. The nature of legislation is, of course, often reactive. The nature of science is, by definition, innovative. It is very hard for us to keep up with some of the changes that take place, especially when it comes to research and invention.

I am not suggesting that there is no role for parliament—quite the opposite. I am a strong believer in regulation of these areas but I also want to make sure we get it right. I think it is really important to remember that the legislation that we are debating is different from that of the UK and other parts of the world. We have seen other examples from Singapore, Taiwan, Israel et cetera. We have a different legislative mechanism, a uniquely Australian one, which we are debating at the moment. It is much more conservative than
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the UK legislation and I think that is a really important point to remember too.

I have a question for Senator Nettle, who has moved this amendment in good faith—I recognise that and I recognise the idea behind that. I am just wondering about the funding of the stem cell bank proposal. Senator Nettle, I presume you recognise that the funding arrangement in the UK is £2.6 million, as I understand it. That is not ‘easy’.

Senator Patterson—that is difficult.

Senator STOTT DESPOJA—I am not suggesting that we should not find the money to come up with an appropriate regulatory mechanism—because we should do that and we have to do that—but is an institution comparable to the one in the UK what we want in Australia? We may want that, and that is why Senator McLucas and I have put forward an amendment to ensure an inquiry into just that issue.

I think senators have touched on broader issues here. I will not go into the debate concerning the intellectual property environment again, but there is clearly a need for broader investigation of the issue of intellectual property patents in relation to this current and emerging technology—hence the successful second reading amendment moved in my name on behalf of Democrats in relation to these broader matters. I am not suggesting we duck this issue; I am not suggesting that we postpone it. What I am suggesting is that we do it correctly, and I think there is majority support for that. I really do not want this to be misconstrued as a lack of support for the protection of the rights of the community as well as the rights of scientists and researchers, who, as I think we all would recognise, in the majority of cases do work that is not just for a personal or ‘financial pecuniary interest’, to utilise the terminology of last night. This is a common good debate. To ensure that the common good is protected, let us investigate these issues. Just because we have seen the example of a stem cell bank from one jurisdiction that has very different legislation from the bill that we are debating—

Senator Patterson—that’s not a federation either.

Senator STOTT DESPOJA—it is not a federation. I recognise that state and territory jurisdictional issues have to be investigated. So I think that is why Senator McLucas has got it right, certainly in our committee report and in our amendment. Time lines are important, and ascribing time lines to the government is important. Indeed, as I said last night to Senator Brown, if this debate is about postponing the issuing of licences or if
it is about the time line—because that would be a consequence of this issue, and I understand that it might have broad-ranging consequences not simply in relation to stem lines but also in relation to ART—then let us talk about the time line.

In terms of the UK model of the stem cell bank, I would like to see whether there is an Australian equivalent or an even better solution. I would like to see that take place in a broader debate about the intellectual property framework that guards scientific invention and in particular scientific research in what is a fascinating, interesting and undoubtedly controversial area, as we have seen during the debate on this legislation over the last couple of weeks. So our preference is not for a quick fix, ad hoc solution that we believe has not been investigated thoroughly. It certainly has not been investigated in the same way as in the House of Lords inquiry, which had comprehensive investigations and thus comprehensive recommendations into these issues.

It is certainly a very different scientific environment and economy here. In respect of the idea of £2.6 million, the other thing is the overseeing role, which in the UK is the responsibility of the MRC, the Medical Research Council. I do not think these issues have been fully explored. We touched on some of these ideas in the report of the Senate committee inquiry—certainly Senator McLucas and I did that in the committee inquiry. I suggest that the other people who were involved in that committee inquiry are aware of these issues as well, regardless of differing views. It is an idea that warrants investigation, but I do not think a couple of hours of debate in the Senate is sufficient to set up this overarching institution. I think there are other ways of going about this—thus the suggested inquiry into the applicability of a stem cell bank.

**Senator JACINTA COLLINS (Victoria)**

(4.51 p.m.)—I agree with Senator Stott Despoja that at this stage we should be looking at the time frame. Whilst I indicated in the debate on the cloning bill that I supported the Stott Despoja and McLucas amendment, I think I indicated quite strong reservations at the time that I preferred a stronger regime but, at that point in time, that was not available in the form of amendments to that bill. I now have the opportunity to reflect on a number of issues, and I agree with Senator Stott Despoja that the time frame issue is quite critical. She and others from the debate will recall that Senator Patterson made the point that already the review would look at some of the commercial interest issues and that what was being proposed in relation to the Stott Despoja and McLucas amendment in part fitted into the process that was already in train. But my critical concern here—and this is why I pick up Senator Stott Despoja’s comment in relation to time lines—is that, unless we do something now, we cannot stop the horse from bolting.

As I understand it, we are dealing with Nettle amendment (R1). So what we are actually dealing with is a Green proposal on how to stop the horse from bolting. I would be quite happy to support, for instance, an alternative version of the rest of the Green proposal, which is the stem cell bank, if we were to amend it to refer to a commercial interests regulator—the point being, though, that we do not issue the licences until we have the regulation in place. I am also flexible on other ways of trying to prevent the horse from bolting.

As did other senators on the inquiry—and I certainly acknowledge Senator Stott Despoja’s longstanding interest in this area, which has been much deeper than mine—I found very illuminating the contribution of Mr Ilyine from Stem Cell Sciences during the committee inquiry, because he addressed one of my most critical issues in this bill, which was that the bill was not really picking up the strict regulatory regime that COAG had promised us. The Senate will recall that the first issue that arose in this debate in a sense developed from issues raised in the inquiry, which was an objective to limit the number of embryos that would be utilised in this endeavour. Mr Ilyine reminded us that the European and British model of establishing a stem cell bank was done precisely for that purpose. It was part of meeting the objective of limiting the number of embryos that might need to be utilised in this endeavour.
I have already raised in the committee stage that, whilst my own ethical position does not quite equate to what has been described as the third way—which is that whilst we might find this issue ethically contentious there are humanitarian grounds for accepting it, so let us go down that path—I have tried to grapple with the best way of achieving that ambition, given that it was obvious, at least from the second reading vote, that that was the dominant ambition. In my view, if you do hold the view that human embryos have some level of value, that we should respect that value by ensuring that they are not experimented on willy-nilly, that we do not use excessive numbers in experimentation and that experimentation is only done for humanitarian purposes and not done just for commercial interests, and considering all those factors, then that is what this bill should be addressing. If at this point we are not doing something about introducing a means of regulating or containing those for-profit or commercial interests then I think Senator Brown is right: we are basically saying, ‘We’ll look at it,’ but in reality we are really saying that we probably will not get around to it, that we will not get around to it adequately or that we are not very concerned if the horse bolts in a variety of areas that we do not even fully comprehend at this stage.

I was very pleased to hear Senator Stott Despoja say, ‘Let’s have that discussion about the time frame,’ because I think that is the most critical issue. Senator Nettle’s amendment is not the only way to achieve that. You can look at implementing alternative models to the stem cell bank immediately, you can look at implementing alternative models to the stem cell bank on an interim basis or, as Senator Brown has already foreshadowed, you can look at implementing the stem cell bank and modifying it as we learn from international experience. But none of the arguments so far rationalise doing nothing, because the point is that we were assured by COAG that, if we went down this path, we would have a strict regulatory regime—and no strict regulatory regime that I know of says: ‘Leave the blank sheet now and we’ll sort it out later on.’ I think this is one of the most critical issues in relation to ensuring that strict regulatory regime.

I notice that Senator Murphy has just circulated an amendment in relation to patents. Of course patents, as Senator Stott Despoja has gone into quite a great deal of detail on, are one of the alternative ways of seeking to regulate commercial interests—as in the European model, which denies patents in relation to ‘the unmodified human stem cell line’, to use the words Mr Ilyine gave us. He gave a very interesting description of why that was the case. He said:
The unmodified human stem cell line in Europe, it would be argued, comes from nature and therefore should never be patented because a patent granted in this domain would be so broad as to be hugely inhibiting to discovery, because any discovery made on the back of that would have to relate to the original patent holder. So the European position is to say that discoveries made when using such cell lines are indeed patentable when they have novelty and all of the factors that go into making a patent. However, the unique biological material itself should not be patented because it is of human nature.

That argument is, in a sense, twofold. Firstly, there is a public interest argument, which is that discovery would be limited unless we provide some containment of this patenting process. Secondly, there is an intrinsic argument about human nature, which is that these are the types of things that we should not patent. It is a bit like the argument about why we do not accept commercial interests in the trade of blood. The argument is that public interest and humanitarian issues outweigh the argument that this should be an area that attracts commercial interests.

In Australia, I think many people would baulk at the notion that commercial interests would solve our blood bank supply problems. The regulation of the supply of blood has quite a long and detailed sociological history in relation to some of the dangers that might occur were blood regulated in other ways. In a sense this also relates to earlier amendments which asked why it is that we have accepted willy-nilly that commercial interests would apply in respect of stem cells when that has never been the response in Australia in relation to any other human tissue.
I conclude my remarks by recommending we display an enormous amount of caution in what we allow to occur here. I agree with Senator Brown that we are looking at new and evolving interests, which we can barely comprehend at this point. There is an argument for moving away from our current ways of regulating this type of material. Senator Stott Despoja will probably say in a moment that we have allowed that in some other areas, but I would agree with her that we should have been far more cautious in those other areas. I do not think it is beyond us to come up with a way of stopping the horse from bolting. I will support the proposal that Senator Nettle has moved. If there is not adequate Senate support for her proposal, I will be circulating an alternative proposal once the draft has been finalised. I will be looking at expanding on the European experience rather than the UK experience in relation to patents. To ensure that the horse does not bolt—and on an interim basis whilst we wait for the review and the recommendations of the review and for parliament to enact an appropriate regulatory regime in relation to these commercial interests—this bill should make it a condition of licensing that people not seek patents. There are some difficulties with this amendment that I am trying to work through in terms of how we can relate it to the Australian legislation. But we need to explore issues associated with international law as well.

Despite some of those concerns, I think that at this point it is better than nothing and I know of no argument that justifies doing nothing. I know that some will argue that, unless we allow carte blanche, commercial interests will go offshore. With respect, we have had that offshore argument on every single issue that we have dealt with so far. COAG assured us we would have a strict regulatory regime. I think Senator Brown is correct in that implicit in what has been said in the public debate to date is that humanitarian interests would be paramount over commercial interests. If, on a limited basis, we can do that through limiting access to patents, then that is one way.

I should also mention that, in one sense, Senator Murphy’s amendment also seeks to do that but at this stage his proposal would be on a permanent basis. I am suggesting that we allow the benefit of the review that Senator Stott Despoja and Senator McLucas are suggesting but that in the interim we have some arrangement that limits carte blanche commercial interests until the result of that review. When the result of that review sets up an appropriate regime then, if it is appropriate, the restriction on patents will not apply.

Senator McLUCAS (Queensland) (5.04 p.m.)—I rise to speak briefly against the amendments moved by Senator Nettle. I wish to confine my remarks to the amendment that we are dealing with now, which is about delaying the licences, and also to a subsequent amendment on the running sheet that Senator Nettle will move later. I think it is true that almost all senators here think that there is a possibility that the establishment of a national stem cell bank may be a useful mechanism to do two things: to limit the number of embryos that are required for research purposes and to allow access to embryonic stem cell lines for all scientists who have the approvals to do so. The difference is only in how we achieve such a bank that could deliver those desirable outcomes.

I think it is important that we recognise the context in which we are having this discussion. There has been limited community discussion about the establishment of a national stem cell bank. In fact only one witness raised the issue during the Senate Community Affairs Legislation Committee’s inquiry into these bills. That witness was Mr Ilyine and he raised the issue only briefly. It is very hard for us to make decisions about the form and style of a national stem cell bank, having received evidence from one witness at the inquiry and without broad community discussion about the appropriateness, applicability or suitableness of the UK model to Australia.

The other reality that we have to remember is that the UK bank has only been in operation since 9 September this year. It is too early for us to make an assessment of how it has worked in the UK. The UK bank operates in a completely different legislative regime in terms of the operation of their li-
censing requirements and in terms of their intellectual property environment.

I also note that the amendment from Senator Nettle suggests that the bank be a repository for human stem cells, which would include adult stem cells. The committee had no evidence—none at all—from adult stem cell researchers which suggested that would be an appropriate mechanism, so I have no evidence to inform a decision about whether or not a bank would be a useful mechanism as a repository of adult stem cells. I suggest that a more prudent approach would be to allow for a period of time in which to see how the act is operating so that we can make a sensible assessment of the need for and the potential scope of a national stem cell bank. I think it would also be prudent for us to allow time so that we can learn from the UK experience—so that we can learn the lessons from its operation, so that we can find the pitfalls before we have to go through those events.

With respect, I suggest that it is not back to front; it is in fact the right way forward. Let us get it right. Let us make it work. It is not possible now to completely know what operations the bank would have or what guidelines we would have to put in place for it to operate. I commend to senators the way forward, recommended by Senator Stott Despoja, Senator Webber and me in our report following the inquiry and put into effect through our amendment, which we have already successfully moved to the Prohibition of Human Cloning Bill 2002 and which we propose to move later in this committee stage. I suggest that it is a prudent, sensible and thoughtful approach that will deliver the best possible outcome—that is, to limit the number of embryos that will be required and to allow access to a broader range of scientists in a more equitable way. Our amendment is not a do-nothing option. The level of support which is evident in the Senate—and which will be in the community, I believe—will ensure that analysis is undertaken of the UK model's applicability. From that, we will have some valid information which will inform the development of an appropriate model, an Australian model, for an Australian national stem cell bank.

Senator HOGG (Queensland) (5.09 p.m.)—Very briefly, may I say that I support the comments made by Senator Collins. The real concern I have about the proposition that is being put forward by Senator Stott Despoja and Senator McLucas is simply that, from the assent to this bill, licences will be issued. It would seem to me that, for all the value that one might get out of a review and the establishment of a stem cell bank further down the track, one is going to be faced with this problem: how does one make the licences that have already been approved, and the work that comes out of those licences, subject to or part of that stem cell bank? People will argue about retrospectivity, and I cannot see anyone agreeing to anything being retrospective. Whilst Senator Nettle's proposal does not necessarily encompass everything that I would like to see in this area, it would make sense that any licences issued were subject to the establishment of the stem cell bank. That is not going to be achieved by the proposal in the amendment of Senator Stott Despoja and Senator McLucas. So, at this stage, with no other options being before the Senate, it seems to me that the only reasonable option is the amendment being put forward by Senator Nettle, which I support.

Senator NETTLE (New South Wales) (5.11 p.m.)—I would like to take this opportunity to clarify for the Senate what is being proposed not only in this amendment but also in the subsequent amendment that Senator McLucas referred to. So that there is no confusion, I reiterate that our proposal is not simply to take the UK model for a national stem cell bank and inject that into the Australian legislative framework and into this bill in particular; rather, our substantive amendment regarding the establishment of a stem cell bank seeks to give the AHEC an opportunity to investigate the establishment of a national stem cell bank. Rather than saying, 'Here is the model existing in the UK; let's transfer it into the Australian context,' what we are doing is providing a framework through which an investigation can occur about the sort of national stem cell bank we want to see. That allows, as Senator McLucas referred to, for there to be more community discussion and more public in-
Involvement in generating the appropriate model for Australia.

The substantive amendment, which is our subsequent amendment, highlights the framework, the context and the areas in which we need to look at all of the issues that make up a decision about what form the national stem cell bank will take. It is not a simple transferral of the model; rather, it is allowing for a mechanism for the community and public to be involved in shaping an appropriate national stem cell bank for Australia. It also goes further than just stipulating what areas we need to look into and how that review should take place, and I think others have acknowledged that AHEC would be the appropriate forum in which to do that. It achieves a vitally important step that other people have talked about, which is to set in place a time line in which this should occur. The time line that is proposed in our substantive motion on this is for a report to be brought back to both houses of the parliament no later than 1 July 2003. At that time, the stem cell bank in the UK, as an example of something we can look at, will have been running for almost 12 months. Over the next six months, from now until the date we propose it comes back to the parliament, there is an opportunity for a whole range of stakeholders on this issue to have input into the form the stem cell bank should take.

The motion we are debating at the moment is our amendment to link the establishment of the stem cell bank to the provision of licences. We have heard from others about the importance of doing this, and we have heard from Senator Brown the rationale of why we believe this is important. Everyone here is aware of how much concern there is about this area, so we are putting in place an opportunity for public accountability, transparency and public ownership of the research that is occurring, an opportunity which will take place through a national stem cell bank that allows public involvement in deciding the exact format that it should take.

This model we are proposing allows for extensive public and community consultation so that we can develop an appropriate model. The amendment we are discussing is about ensuring that licences are not provided so that we do not run into the sorts of difficulties that Senator Hogg was talking about, whereby people proceed with research and then another mechanism will need to be developed to bring them into line with a national stem cell bank that will have been established subsequent to their research being carried out and their licence being provided for. So we are putting forward a whole package which involves community consultation, developing an Australian model and putting in place a time line to ensure that this takes place. It allows parliamentary accountability in terms of coming back to the parliament where the decision can be made. I cannot do more to commend this model to the chamber as a thorough way to go forward on a stem cell bank that, as indicated in the previous bill, senators in this place support being put into this legislation. We are providing that framework: it is thorough and it is inclusive. It ensures that we can then move forward in a framework which the community and stakeholders are prepared for and are happy with. I commend this amendment to the chamber.

Senator Brown (Tasmania) (5.16 p.m.)—I endorse what Senator Nettle has just had to say. It comes down to two matters. First of all, there is the desirability of having a national authority in place before the licensing system gets under way, and that is what the current amendment is about. The next amendment on this matter from Senator Nettle would establish an inquiry process, to be determined by July next year, as to how a national stem cell bank would be established—and it can draw on the British experience—and would report back to parliament. It would then be up to us, because licences would be awaiting, to get on with the job of bringing that bank into being. But even for those who do not want to have the licences held up, the idea of the bank should be canvassed. It has inherent and enormous merit when we are looking over a landscape with so many imponderables, unanswered questions, pitfalls and unknowables. It needs a structure like this to bring some order into that landscape.

I admire greatly both Senator Stott Despoja and Senator McLucas, but the op-
tion is not a good one, because what they are saying is, ‘Let’s not have an inquiry of that sort at all, except that the people who are appointed by the National Health and Medical Research Council will have to consult the Commonwealth and the states and a broad range of other persons.’ That is far short of the inquiry that Senator Nettle is recommending. But if we take Senator Stott Despoja’s and Senator McLucas’s option, it really comes to this:

... as soon as possible after the second anniversary of the day on which this Act received the Royal Assent—

so that is more than two years down the line—

(4) The persons—

appointed by the National Health and Medical Research Council—

undertaking the review must consider and report on the scope and operation of this Act taking into account the following:

(a) developments in technology in relation to assisted reproductive technology;

(b) developments in medical research and scientific research and the potential therapeutic applications of such research;

(c) community standards—

and then the new proposal—

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

It is not even the establishment of a national stem cell bank; it is the applicability of it. So 2½ years from now, four people that we do not know and do not appoint are going to look at the applicability of whether establishing a stem cell bank should be a matter for the review. It has no foundation of strength and direction.

Senator Hogg—No teeth!

Senator BROWN—Yes, it just does not make it. It is not going to lead to the creation of a stem cell research bank and it is certainly not going to do what the British have already established. I do not know whether that bank is functioning, by the way, but it has been established. I will reiterate what we are after. I will quote from an announcement by the Medical Research Council in the United Kingdom on Monday, 9 September. They stated:

The Medical Research Council ... today ... announced that the National Institute for Biological Standards and Control ... has been appointed to set up the UK Stem Cell Bank ... Yes, it did cost £2.6 million. That is a very small amount when you consider the massive ramifications we are looking at and the sort of money that private enterprise is pouring into this particular area. That press release says that the establishment of the UK Stem Cell Bank at the National Institute for Biological Standards and Control:

... will ensure that there is a single national independent institute responsible for managing and supplying ethically approved, quality controlled stem cell ‘lines’ for research. The cell lines are derived from stem cells which continue to multiply and reproduce themselves and can survive indefinitely. The bank will hold existing and new adult, fetal and embryonic stem cell lines.

Yes, adult stem cells are there, but that is very much within the bailiwick of the inquiry that Senator Nettle is proposing. The press release goes on to say:

A new high level Steering Committee will be put in place to oversee the activities of the bank.

That is standard stuff; it is not difficult. It is certainly no more difficult than asking the National Health and Medical Research Council appointed people to investigate the same matter two years down the line but with their investigation only looking at applicability. I think these are very important amendments from Senator Nettle, and I ask senators to think very carefully about the safeguards that we need to be giving to the community over the matter of stem cell research. I will be supporting this amendment and I will certainly be speaking again to seek the support of senators for Senator Nettle’s substantive amendment, which will come right at the end of this discussion, to have that review, on the establishment of such a bank in Australia, report back to the Senate by 1 July next year. I think it is a very important idea to assuage the concerns that so many people, not just in this Senate but in the Australian populace, have about this new science.

Senator HARRADINE (Tasmania) (5.22 p.m.)—I thought that the minister might have responded to—
Senator Patterson—I gave a long speech last night on it, Senator Harradine.

Senator HARRADINE—I am well aware of what you did last night, Minister, but I thought that you might have responded to what has been said today. There are a number of things that have been said in this committee, and I was looking forward to a response from you about this proposed amendment.

Firstly, I oppose the legislation. However, I will support whatever is necessary to ameliorate this situation. For example, there should be something which establishes that embryonic stem cells will not be sold commercially to the highest bidder. That possibility is promoted in this proposed legislation. However, it is contrary to the intentions expressed in the COAG agreement and by COAG itself. Is the Minister or the NHMRC saying that the state premiers and others will support human embryonic stem cells being sold to the highest bidder? Clearly, the committee inquiry found that there had been no cures or treatments discovered by the use of embryonic stem cells but, if there had been, those cures or treatments would be reserved only for those who could pay the huge amounts of money involved. This is what Senator Nettle’s amendments attempt to address. The concept of a bank is a matter of concern but, if that bank had some control over the uses of stem cells and some consideration of the ethical questions regarding those uses—we are talking mainly about human embryonic stem cells here—then it may be the way to go.

I was going to ask about adult stem cells. I support the use of adult stem cells and I am a great supporter of stem cell therapy, provided that you get the stem cells from an ethical source. There are plenty of ethical sources and useful sources as well. However, embryonic stem cells from excess ART embryos will be absolutely no use at all for therapy. No use at all, and do you know why? One of the reasons is that they are histoincompatible. Absolutely! So, they are not going to be of any use at all. There are no examples of the usefulness of such stem cells. On the other hand, stem cells derived from ethical sources, such as from the patient, are in fact being utilised for a number of therapies which have proven to be successful. That was the advice given to the Senate Community Affairs Legislation Committee. Normally speaking, stem cells from the patient would not be subject to commercialisation other than through the reasonable expertise and expenses that are involved in obtaining the stem cells from the patient.

Under these circumstances, I agree with Senator Collins that it is necessary to do something about this matter. However, I do not agree with Senator Stott Despoja that we should leave it until the hand-picked review in three years time. As Senator Collins said, the horse will have bolted by then. Senator Collins mentioned patents as well. Senator Nettle’s amendment does put a brake on that and, in doing that, it deserves favourable consideration.

I know we cannot debate it now, but I cannot help discussing this matter without referring to a forthcoming amendment by Senator Nettle which provides for the AHEC, the Australian Health Ethics Committee, to commence the investigation, to do the consultation and to provide a report to parliament on 1 July 2003 in respect of this matter. I do not know whether that can stand alone. The mover may be able to tell me whether that amendment could stand alone if there were a provision which required that no licences be granted for the use of human embryos from whom the stem cells will be extracted. That is the sort of thing I would be hoping and looking for. There have been suggestions in this debate, including by Senator Collins, that there should be a report and that, until that report is made, there should be a provision requiring that there is no licensing until that has occurred and parliament has dealt with it. I do not know whether that is possible. If proposed new clause 19A is defeated, is it possible for proposed new clause 47A to be amended so as to essentially require that no applications receive a licence until that time?

Senator Patterson (Victoria—Minister for Health and Ageing) (5.32 p.m.)—If the major concern is regarding patents of human biological materials, it is like last
night. I want to reiterate: those of us who are not supporting the amendments do not disagree with the intent of the amendments but believe it can be done in other ways. We have to get that clear. It was like the issue of conscientious objection—people have very strong views that it can be done one way and others feel that it can be done in other ways.

If it is about patenting of processes related to, or therapies derived from, embryonic stem cells then I believe that if people have a concern about that, there is a similar concern regarding the patenting of adult stem cells or any other human tissue. Throughout this debate people have held up the advances made in relation to therapies available today as a result of research on adult stem cells but one of the things we have to understand is that some of those advances have been made because people have been prepared to invest in the research, and companies have invested money and secured intellectual property protection and developed the products or processes and brought them to market. We have to make sure we separate out the intellectual property of the discovery versus the ownership of the stem cell lines. A number of people in this chamber share similar views about the former. Some people think that nobody should make any profit out of it. In that case, people will not invest.

There is the issue of the patenting of the stem cell line—not just embryonic stem cells but adult stem cells and other human tissue. As I have stated previously, the issue of patents and IP applies to all human biological materials, not just to embryonic stem cells, and I therefore oppose an approach whereby we adopt a knee-jerk and ad hoc response to embryonic stem cell research in the absence of the consideration of broader issues. If we want to ban embryonic stem cell research until this issue is resolved then maybe one should think about what is happening with adult stem cell research. People do not seem to have an objection to that or say that we should have a bank for that. I think it is a position that few of us would support. I do not think it would be received all that well by the Australian public.

As I stated previously, all of these issues would be more appropriately dealt with through a review, the details of which the government is currently considering, to be conducted by the Australian Law Reform Commission. I mentioned this in the debate on the Prohibition of Human Cloning Bill 2002. This will be a broadly based review covering intellectual property issues relating to human genes and genetic technologies, including stem cells. That is a more appropriate way to deal with it. It is a holistic way, and a more appropriate way. That is one of the reasons I will not be supporting this amendment.

Senator MURPHY (Tasmania) (5.36 p.m.)—I agree with the minister’s last statement about a holistic approach. I want to take a holistic approach that puts the horse before the cart, not the cart before the horse, which is exactly what the minister has proposed when she said, ‘Let’s charge off down the research racetrack and do whatever we can and patent whatever we can patent and then we will have a review in two years time and see whether we need to have any laws with regard to patents and intellectual property.’ Minister, I do not agree with that approach. I would like to ask you this question: if you, as the minister, believed that there were things that could be patented but which you thought ought not be patented, under the current acts how would you go about stopping that?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (5.37 p.m.)—I would like to refer to the act that covers intellectual property, which has an express exclusion concerning the patenting of human beings. Section 18(2) of the Patents Act prohibits the patenting of ‘human beings and the biological processes for their generation’. In their submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into the scientific, ethical and regulatory aspects of human cloning, IP Australia stated:

Consistent with the provisions of subsection 18(2) of the Act, IP Australia will not grant patents for the following:

- human beings, foetuses, embryos or fertilised ova; or
wholly biological processes that begin with fertilisation and end with birth of a human being.

The practice of IP Australia is to grant patents on applications in respect of inventions involving human genes, tissues and cell lines, and non-human clones and cloning procedures, providing such inventions meet the statutory patentability requirements such as novelty, inventive merit, industrial application and adequate disclosure of the invention in the patent specification. (A human cell line is different from naturally occurring cells in the human body. It is capable of continuous propagation in an artificial environment by continual division of the cells, unlike naturally occurring cells which die after a limited number of divisions.)

A mere discovery of a gene implicated in a condition such as multiple sclerosis would not be granted a patent, unless that gene had been isolated and purified, and a full description of an actual use of that gene was included.

It is the understanding of IP Australia that its practice in granting patents for inventions involving human genes, cell lines and tissue is consistent with the provisions of subsection 18(2) of the Act. This is premised on a widely accepted view that human genes, cell lines and tissues are not regarded as human beings, as distinct from foetuses and embryos which are regarded as human beings and hence are not patentable. However, while the applicability or otherwise of section 18(2) is reasonably straightforward, there is a grey area and the potential for ambiguity, and I believe that this is one of the reasons why we need this review. If you are going to stop research going ahead you should actually also stop research on adult stem cells, as I have argued. If you do not believe that there is an argument that the patent issue should be addressed before anything goes any further then I think the argument holds for adult stem cells. I do not believe that that is necessary and I will not be supporting the amendment.

Senator JACINTA COLLINS (Victoria)

(5.40 p.m.)—I would just like to respond to a couple of things that Senator Patterson has said in this debate, because I think they deserve some level of challenge. Firstly, I will comment on the point that if you deal with embryonic stem cells in this way the same should apply to adult stem cells. I think the point I made earlier clarifies that distinction very well, as does the evidence that we had from Mr Ilyine from Stem Cell Sciences, which advocates quite strongly that there should be a stem cell bank. This is one of the operators in the industry saying that it thinks that there should be a stem cell bank. The point is that, in the experience of regulation in Europe and Britain, such means were used to eliminate competition and to allow more embryos than might otherwise be required to be used in these humanitarian concerns.

As I said before, that is not my particular ethical position, but I would recommend to Senator Patterson that she take a more careful look at the report that came from the committee. The report fairly clearly did not say that we are not talking about human beings. The report had a more implicit assessment of this position, which was that we are really talking about a third way ethical position—that is to say, most people think that human embryos have some level of moral status. It might be, in the view of some, less than, for want of a better word, a full human being or an adult human being, but part of that status should be that we restrict or limit the usage of human embryos as far as possible. That is the point of regulating commercial interests out of this equation. Again, as I have said before, this is not an ethical or moral position to which I ascribe but it is in the debate that has occurred and it is in the ethical position implicit in that. I would suggest most strongly that Senator Patterson have another look at the report if she thinks that the debate here is not about human beings, because it is very clear in the report that most people viewed stem cells derived from embryos as relating to human beings. To try and make a distinction in that area is quite wrong. It is wrong in the cross-perspective or cross-conscience sense, as was fairly clear in Senator Knowles’s report.

Let us look at the vote that occurred in relation to a stem cell bank. I cannot recall the precise numbers but I think around eight to 12 senators supported Senator Patterson on the perspective that we should do nothing. The point is that a very significant majority of senators think that something should be done to regulate commercial interests with respect to human life, and that is what stem
cells derived from embryos are regarded as. They do not all join me in my position, which is that the respect given to embryos should be equivalent to that given to a full adult—to take the full extent comparison—but the clear perspective of the Senate is that we should do something to restrict the way in which commercial interests operate with stem cells from human embryos. I do not know where Senator Patterson’s advice is coming from when she says that we are not dealing with human beings. It is the clear view of the Senate that we are, and I can only reiterate that the important issue here is that we should not let the horse bolt before we have a strict regulatory regime with respect to the commercial interests in this area.

We only need to analyse what has happened to date. In one of my earlier speeches—I think it was in my speech on the second reading—I reminded the Senate that, from our experience in Victoria, the likes of Dr Trounson have form. He has disregarded the regulatory regime in Victoria in what he has been prepared to do. That does not encourage us to allow for a later day in relation to commercial interests now. It is no encouragement at all. In fact, even though people, sifting through the facts in many areas, might argue that inappropriate allegations have been made in relation to some of the scientists who are active, I do not think that anyone would cast that assertion in my direction. I have been very careful about matters that I raise or claims that I make. I think that it is fairly clear, though, that Dr Trounson has been prepared to be loose with the truth. There are certainly many allegations about people loose about their financial interests, and the commercial interests in this area need tight regulation. I have yet to hear any alternative to the views that have been canvassed by me and Senator Murphy that would prevent the horse from bolting. I cannot accept the perspectives put by Senator Patterson just now. They reflect the vote that we have already had in this chamber, where the government was able to hold, I think, somewhere between eight and 12 votes.

Senator Murphy—It was section 18(2).

Senator Murphy—Can I say two things about that response. There is a significant difference between the reference to adult stem cells and embryonic stem cells. We know what the clear difference is between extracting stem cells from an adult versus extracting them from an embryo: in the latter, you kill the embryo. I suppose that is why I have drawn a focus in the amendment that I have proposed. But, in terms of the question that I put before, from a public health interest point of view with regard to therapies or surgical methods that have arisen that you would not want a patent to be granted over, how would you stop that, Minister? I would suggest to you that section 18 of the Patents Act does not provide you with that capacity. It simply does not do that. So I will ask you the question again in that context and in the context of the research in this technology that might deliver some very substantial therapeutic or surgical treatments: in the public health interest and in the affordability health interest of this country, if the patent claim were made, how would you stop that patent being granted?

Senator Patterson—It is my last contribution on this amendment because I feel that we have discussed this for long enough. We have a licensing committee which will be involved. We will have much clearer disclosure about the sort of research that is being undertaken. I think, Senator Murphy, that there are sufficient safeguards. I have a very strong interest in biological research and in the need to make it transparent and clear within a certain framework, in the sense of people not being able to be gazumped by another research group—and that is always one of the difficulties—but I believe that there are sufficient safeguards. I do not think that I will be able to contribute much more to this debate. I have indicated a number of reasons why I will not be supporting the amendment, and I
think that it would be appropriate if the question on the amendment were to be put. We need to move on because we are going to be here for another three weeks if we continue in this vein. I have no more to add. I will not be supporting the amendment.

Senator MURPHY (Tasmania) (5.49 p.m.)—I know that this is a difficult task. We are dealing with fairly difficult legislation. But, at the end of the day, there are important issues here and they have to be debated. It might help expedite this process if we were able to get some answers. I accept that the minister might believe that there are sufficient processes and protection measures in place, but I would appreciate it if I could be informed of them so that I could consider them in my somewhat probably naive way. Nevertheless, I will do my best. I take account of what the NHMRC says. It recognises that further consideration needs to be given to intellectual property issues in health and medical research involving Indigenous people and communities and where research has the potential to benefit public health in an international context. Look at what the federal government itself has said:

... that, consistent with safeguarding human health and ensuring environmental protection, Australia captures the benefits of biotechnology for the Australian community, industry and the environment.

All I am asking is a question about how we guarantee the public interest factors here, particularly to affordable therapeutic and surgical methods that might arise from this type of research. I do not think that that is an unreasonable question. The reason I ask the question is that right now I do not believe that those things exist, and your answers give me no comfort. You say, 'Tough. This has been a long debate.' I am sorry about that, but realistically it ought to be a process where answers are given. If the answers are there and I have not seen them or cannot find them then I would appreciate that they be given to me. Then I will take account of those answers and will not ask more questions. Your advisers might have that information. It would be useful if they could give it to me or to the Senate so that we can be aware of it.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (5.52 p.m.)—I would like to respond—and I know that people may be getting a little indignant in this debate. In 1989 a family law bill took four days to pass through the Senate. Senator Durack was taking it through on behalf of the opposition and Senator Tate was taking it through on behalf of the government. This is a bit of a history lesson for people who have not been here as long as I have. It took a very long time for that bill to go through and, as a result, in a spirit of cooperation we set up the Senate committee system which then transmogrified into Senate legislation committees. They were joint committees in the beginning, I think, and then they split—somebody is frowning. I cannot remember the exact details, but we ended up with Senate legislation committees.

The purpose of those committees was that people who had a keen interest in a bill could go to the hearings, put questions on notice to the various groups and encourage other groups to come. The Senate used to sit on a Friday, and we changed so that we could have these committees. Then they grew and people travelled around the countryside. But the purpose of them was to have in-depth debates where technical questions could be asked of ministers with time for officers to get detailed answers. I have just checked with the chairman of that committee, and there are some senators here who have asked an inordinate number of questions who did not put questions on notice for that committee and who did not appear at committee hearings. They now come into this chamber and prolong the debate.

I want to put it on the public record that we had five committee hearings and there are some senators who are getting indignant now who failed to take the opportunity, which those committees were set up for, to go through issues in detail and to get considered responses. We did not necessarily have all the officers available, but questions could have been put on notice at the committee hearings and could have been answered. That is the proper way to approach a bill—to participate in the whole process, not the end stage of it. I just remind senators who are
prolonging this debate that there was an opportunity to have these very detailed technical questions answered then. I have made my comments. They may not satisfy Senator Murphy, but I will be voting against his amendment.

Senator STOTT DESPOJA (South Australia) (5.54 p.m.)—In response to questions put forward by Senator Murphy, I think from a process perspective we are going to have a broader debate by virtue of the fact that there is at least one amendment put forward by Senator Murphy in relation to the Patents Act. I understand from Senator Collins that she is contemplating amendments as well in relation to patents, and there may be others in the chamber. I think that debate is going to happen, so let us have that debate later. I think we can facilitate this debate now. I am not suggesting that the issue of patents and common good and patentability is not related to this amendment, but I do think the specifics of legislative changes to the patents law are to be dealt with later on.

When the minister popped up and mentioned 1989, I was going to say that was the answer we were looking for. In 1989 there was a Patents Amendment Bill and my predecessor Senator John Coulter, who before me was the science spokesperson for the Democrats, said that the Democrats did not object to the patents bill in principle but there was one area that was not covered—and that was in relation to biological materials.

Senator Chris Evans—This is a speech bringing us back to the debate, is it?

Senator STOTT DESPOJA—That is a good point, Senator Evans. But in answer to Senator Murphy’s question, my understanding is that in relation to the patents law there are not specific provisions that deal with the issues that you raised and that the issue in relation to genes, gene sequences, a genome or either one that has had genetic material added or deleted, an altered organism—basically human biological materials—can be patented. I think you know that. And while I appreciate what you were doing, I think that if we get that on record we can move on. We are going to have this debate, I can tell, at some scary hour tonight.
minimum of 12 months—under the later amendment—or realistically for two to three years, and we will have a situation where any activity in relation to research will be illegal after six months.

Effectively, you will end research in this country arising from this bill. All ART related research will be effectively ended and none of those activities that are currently allowed and envisaged under this bill will be able to continue. That is the effect of the amendment. The idea of investigating the stem cell bank is interesting and it is one that I am attracted to. I am one of those 60-odd that Senator Collins spoke of who voted for investigating the idea in the previous debate. The effect of the Green amendment is to scuttle the bill and rule out any research. It effectively means that implementation of the bill and the COAG agreement is totally undermined. That is the real impact. I am not sure whether that was the intention but that is the impact. That is why I will be voting against it. That is why the official Labor view is to vote against it. I would urge senators to vote against it because, without putting too fine a point on it, some of the support for this amendment comes from an understanding of the impact of the amendment on the bill.

Senator JACINTA COLLINS (Victoria) (6.01 p.m)—Some of Senator Evans’s comments need some response. The asper- sion that this has been put forward by the Greens to scuttle the bill is—

Senator Chris Evans—I did not say that.

Senator JACINTA COLLINS—That is the effect of it, and some of the support might be related to that. I do not believe it is a reasonable characterisation of the situation. The argument that has been put forward is that this was something that was just flagged in the report by some participating senators. I would like to take the Senate back to what actually occurred. Stem Cell Sciences’ submission to the Senate inquiry and then the appearance by Mr Ilyine were used by the committee—and principally by myself, I should say, Senator Evans—to flesh out this issue of the role of a stem cell bank. It was following through the theme that I had explored in other areas about how, if it is the intention of COAG that we restrict the number of embryos that might be available for these purposes, that could be achieved.

One area where that has been discussed in this debate is the suggestion that we should reinsert into clause 21 the words used by COAG and the words used in the current guidelines that have been in place since 1996. I think that some fruitful discussions have occurred and we may well be able to resolve that aspect. But the other element of how we achieve the intention of COAG, which was that we have a strict regulatory regime that will restrict the number of embryos that are utilised in this endeavour, was, in the discussion with Mr Ilyine, related to using a stem cell bank or restrictions on intellectual property to remove the commercial interests as a means of using more embryos than might be required for the humanitarian interests that many parties have canvassed in this area.

I am sorry, Senator Evans, I do not mean to imply that I took this as a personal insult, but I think that it is important that I use this opportunity to clarify very clearly what my intentions are with this amendment, given that that broad characterisation was made. My intention here is to implement the objective of the COAG agreement, which is that we have a strict regulatory regime. The point of that is that in Europe, where it happens, they have restrictions on patents. In the UK, where it happens, they have a stem cell bank. In Australia, what are we going to say—that we will think about it? That is not a strict regulatory regime. It is nowhere near a strict regulatory regime. I do not agree that it can take two to three years to establish an appropriate means of regulating the commercial interests involved in this endeavour. Anyone who argues that it could take two or three years—

Senator Chris Evans—They do not report back until July next year and we do not sit until August. When is it all going to happen?

Senator JACINTA COLLINS—Senator Evans, it is within our scope to deal with those issues. If we believe that the review time frame is inappropriate in relation to establishing a strict regulatory regime, and
starting a system as a strict regulatory regime, that is within our hands. COAG did not specify the full detail of exactly what time frame should be utilised to establish this. These are all things within our scope. I know that the NHMRC has a particular perspective here but it is not the only relevant perspective. With respect, as we have already dealt with in relation to the advice that we have received on other issues from the Australian Health Ethics Committee, the relevant ethics committee does at times have views contrary to those of the NHMRC. If the advice that has been given is that to establish an appropriate way of regulating commercial interests could take two to three years, I have very strong concerns with the quality of that advice.

Question negatived.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (6.06 p.m.)—Has the minister refused leave?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (6.07 p.m.)—There are a large number of amendments and senators are proposing new amendments. To do that, I think we should follow the procedure; senators cannot just wander in here hoping that we can deal with a new amendment. I told Senator Boswell that if he had an amendment he should take it to the Deputy Clerk and have it put on the running sheet. If it comes up now, that is fine. But I do not think there should be any special reason why a new amendment should come in in any other way than in the normal order of what is occurring in the chamber. I think that it would be unfair if that were to occur. If other people came to me, I would say to them, ‘No, I think we should just deal with it in the normal order in which additional amendments are dealt with.’ If that comes up now, that is fine. If it were on the running sheet to come up now, then leave would not be required. But we do require leave for it to come up now because it is not on the running sheet. The discussion I had with Senator Boswell was that it was not a recommittal; the last discussion I had was that it was a new amendment. If it is a recommittal of the same amendment, then it has to be done by leave. But I was advised that it was a new amendment.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (6.08 p.m.)—What the minister has said is right. Senator Patterson did ask me to put it on the running sheet. I asked the clerks to put it on the running sheet.

Senator Patterson—You said you had a new amendment.

Senator BOSWELL—Yes, I have a new amendment. But I asked you, Senator Patterson: would you give me leave to recommit the amendment?

Senator Patterson—You said you had a new amendment.

Senator BOSWELL—I am sorry; I was very clear about this. I have a new amend-
ment but I do not want to put the new amendment up if I can seek leave to recommit the old amendment.

The TEMPORARY CHAIRMAN—Leave is not granted in any case, Senator Boswell.

Senator BOSWELL—Then I ask that the new amendment be circulated in my name.

Senator CHRIS EVANS (Western Australia) (6.09 p.m.)—I do not know what arrangements Senator Boswell has with the minister and that is a matter for them. But this is a chamber that is concerned with more than just Senator Boswell and the minister. Quite frankly, if Senator Boswell is seeking recommittal of an amendment that was lost yesterday, given the progress we are making on this bill, I am disinclined to support that. Firstly, I would expect other groups around the chamber to be consulted before we recommit. Secondly, I would have thought at the very least that we ought to deal with the amendments we have not reached yet before people have a second go. In any event, I think some wider consultation in the chamber is required before these things suddenly get dropped on us.

It has appeared on the running sheet. I am told it is a recommittal—Senator Boswell seems a little unclear on that. But if it is a recommittal then I think he should have spoken more broadly to people around the chamber. Given the very slow progress that we are making—we have dealt with one amendment so far today in 1¾ hours—he is going to have to have a good story to convince me why we ought to go back and debate ones we knocked off yesterday. If we start doing that, I will be a very old man before we finish this debate.

I suggest to Senator Boswell that he speak to a few parties during the dinner break and make it clear what he is doing. When he does next get to his feet to try and advance this issue, at least we will all understand exactly what he is doing rather than spending 20 minutes in confusion working out exactly what we are dealing with.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (6.11 p.m.)—By way of clarification, Senator Evans said he did not know what sort of deal was done. I said to Senator Boswell—as I would say to any other senator who comes to me and says they have another amendment—‘If you have another amendment or a new amendment, you should go to the Deputy Clerk and have it put on the running sheet.’ That is exactly what I said to Senator Boswell. No arrangements were made. I feel exactly the same way as Senator Evans does; we have been here a very long while. His and my patience are being tested sorely. I think it is appropriate that we have a long debate on this bill. I think we should have an arrangement. I did actually say to Senator Boswell, ‘You need to talk to other people.’ So Senator Evans needs to know that I said to Senator Boswell exactly what I would have said to anybody else who came to me: there is a process, go and follow the process.

The TEMPORARY CHAIRMAN—Senator Boswell, amendment (1) on sheet 2702 has been lost because leave was not granted. The second amendment that you have had circulated now can be considered at a later date, but it is proposed that the correct procedure would be to move on to Senator Harradine’s amendment (4) on sheet 2696.

Senator BOSWELL (Queensland)—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (6.12 p.m.)—I accept that, but I do think that I should state my position as I put it to the minister. I said to the minister that I wanted to recommit an amendment. She was not inclined to do so. I said, ‘If you do not do it, I will just circulate another amendment.’ I understood that she said by way of response: ‘If you are going to do that, just go ahead and put up your original amendment. If you are going to do that, let us do it the best way.’ Senator Patterson then told me to go and put it on the running sheet. I went and did exactly what she said, which was to put it on the running sheet.

It has come out on the running sheet now. Senator Patterson has refused leave with respect to what I understood she had already clearly given me leave to do. It is true that I did not talk to other people, including the Labor Party spokesman—and I plead guilty
to that. But I was under the impression that if the minister gave me leave that would be acceptable. The minister now says that she did not. I have now circulated another amendment which I suppose will take up more time. But if that is the way the minister wants to do it, that is fair enough: we will go through the procedure. It could have been dealt with in about 30 seconds. To accommodate the minister, in an absolute act of goodwill and good faith on my part, I did give her some information that she wanted. She took that information and now that she has declined to give me the opportunity to present that amendment, I circulate another amendment and it will come up at some later time.

The TEMPORARY CHAIRMAN—It will come up at a later stage, Senator Boswell. We now move to Senator Harradine’s amendment (4) on sheet 2696.

Senator HARRADINE (Tasmania) (6.14 p.m.)—I think this committee stage would be assisted if the spokespersons from the government, the minister and Senator Evans, were a little prepared to listen to the argument. For example, it has been said that there may be other ways to deal with the matter—for example, as with the conscientious objection matter. As I pointed out last night, we are given a conscience vote on this bill, but the bill approves of a program which will violate the consciences of a number of other people—not only researchers but also students and others. That is a real problem. I proposed a conscience vote to protect those persons with conscientious objections, as there are moral and psychological distresses involved, and yet that was voted down—closely, by six votes, but nevertheless it was voted down. That was partly due to what the minister said—presumably speaking on behalf of the government—and what Senator Evans said from his notes. The minister was saying that they agree, but that there are some other ways. My question was: what ways? The guidelines of the NHMRC were trotted out. Those guidelines are totally un-enforceable, apart from when an organisation or institution is receiving government money. It is a disgrace for that to have occurred. Senator Stott Despoja opposed the motion to protect the consciences of persons affected by this legislation. No suggestion has been made as to how those workers or others, including students, will be protected. You have asked me to move the proposal in clause 20. Isn’t it a fact that on sheet 2713 revised there is an amendment to be moved by Senator Nettle?

The TEMPORARY CHAIRMAN—That has been moved and dispensed with. We are now considering your amendment, Senator Harradine.

Senator HARRADINE—I thought that (R1) on sheet 2713 amended 19A. Were (R1) and (R2) taken together?

The TEMPORARY CHAIRMAN—No, Senator Harradine. (R1) was taken singularly and that has been disposed of. We are now considering your amendment to clause 20, which is amendment (4) on sheet 2696.

Senator HARRADINE—As usual, you are correct.

The TEMPORARY CHAIRMAN—Thank you, Senator Harradine. You are very kind. I wish every senator showed me that same cooperation.

Senator HARRADINE—I hope this does not take long. If the minister might explain—

The TEMPORARY CHAIRMAN—Senator Harradine, perhaps you could cooperate just a little bit more and formally move that amendment.

Senator HARRADINE—I move amendment (4) on sheet 2696:

(4) Clause 20, page 15 (line 7), omit “(if any)”. By omitting the words ‘if any’ the clause reads: ‘An application under subsection (1) must be made in accordance with the requirements specified.’ That ensures that the NHMRC must specify the requirements for a licence application. If the Committee of the Whole does not mind, I might hurry things up. I see that Senator Campbell is here—he will be pleased with that. I seek leave to move amendment (5) as well.

Leave granted.

Senator HARRADINE—I move amendment (5) on sheet 2696:

(5) Clause 21, page 16 (after line 2), after paragraph (c), insert:
(d) that the applicant has the expertise and capacity to carry out the functions authorised under the licence.

These amendments deal with licence conditions. In effect, I ask that the NHMRC should specify the conditions that must govern an application for a licence. I ask the minister whether that is already catered for. If it is, I would be happy to withdraw that amendment.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (6.22 p.m.)—With regard to Senator Harradine’s amendment (4) on sheet 2696, clause 20(2)(a) of the bill provides that an application made to the NHMRC Licensing Committee:

(a) must be made in accordance with the requirements (if any) specified in writing by the NHMRC Licensing Committee...

The intent of the clause is to enable the NHMRC Licensing Committee to issue application forms or other information about the way that it expects applications to be presented to the committee and examples of the types of information that the applications are expected to include. The words ‘if any’ were included as a drafting safeguard so that if the NHMRC Licensing Committee did not issue guidance initially then applications could still be made to the NHMRC Licensing Committee.

It is important to note that this would not affect the detail of the information that is provided to the NHMRC Licensing Committee or the matters that must be taken into account by the NHMRC Licensing Committee in making a decision. The NHMRC Licensing Committee must still be satisfied of all the matters detailed in the legislation, and it is still up to the applicant to satisfy the committee of such matters. If at any stage the licensing committee consider that they do not have enough information before them in order to make a proper decision, they can go back to the applicant and request additional information.

This is in no way affected by the drafting of clause 22. For that reason, I do not consider that Senator Harradine’s amendment is necessary and I will not support it. With regard to his amendment (5) on sheet 2696, this amendment adds an additional factor that the NHMRC Licensing Committee must consider and be satisfied of before issuing a licence. The additional factor is:

(d) that the applicant has the expertise and capacity to carry out the functions authorised under the licence.

I will be opposing the amendment since this is already covered by the legislation through the matters that the NHMRC Licensing Committee is required to take into account when considering an application. For this reason, I do not consider the amendment to be necessary. Firstly, or first—whichever is more correct as far as Fowler is concerned, and just as a sideline, if anybody wants a bit of light entertainment, they should read the entry entitled ‘Formal enumerations’ in Fowler—

Senator Hogg—You’re doing very well. Just keep going, Minister.

Senator PATTERSON—Before an application can be made to the NHMRC Licensing Committee, it must first be evaluated and approved by an institutional human research ethics committee that is constituted and operating in accordance with the NHMRC National Statement on Ethical Conduct in Research Involving Humans. The ability, expertise and experience of the applicant to carry out the intended project are the key considerations of the human research ethics committee, as required by the national statement. The national statement says: Research must be conducted or supervised only by persons or teams with experience, qualifications and competence appropriate to the research. Research must only be conducted using facilities appropriate for the research and where there are appropriate skills and resources for dealing with any contingencies that may affect participants.

Secondly, if an application is approved by an appropriately constituted human research ethics committee, the applicant is required to submit the human research ethics committee’s evaluation proposal and the NHMRC Licensing Committee is required to include this evaluation in its own considerations. Thirdly, clause 21(4)(b) states:

... the NHMRC Licensing Committee must have regard to
(b) the likelihood of significant advance in knowledge, or improvement in technologies for treatment, as a result of the use of excess ART embryos proposed in the application, which could not reasonably be achieved by other means ... I think that is very important. The skills and expertise of the applicant are critical in determining whether there is likely to be a significant advance in knowledge or an improvement in technology as a result of the proposed use of the excess ART embryo.

Fourthly, the NHMRC Licensing Committee must be satisfied that the protocols are in place to enable proper consent to be obtained before an excess ART embryo is used, and any restrictions on consent are to be complied with. I have just paused—I always look for and see grammatical errors in my notes. I would not actually end a sentence with the word ‘with’, but that is beside the point. A key part of this provision is ensuring that the applicant and the organisation have the capacity and competence to ensure that the requirements are met. It is for these reasons I will not be supporting Senator Harradine’s amendments (4) or (5). Senator Harradine, I hope that that has given you sufficient information so that you may be of a mind to withdraw the amendments.

Senator HARRADINE (Tasmania) (6.27 p.m.)—The Minister for Health and Ageing referred to a human research ethics committee evaluation. Is that evaluation available for public inspection? In other words, is it available to the public to see what the evaluation of the human research ethics committee is?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (6.28 p.m.)—Senator Harradine, I think I actually answered that question. If an application is approved by an appropriately constituted human research ethics committee, the applicant is required to submit that committee’s evaluation of the proposal and the NHMRC Licensing Committee is required to include this evaluation in its own considerations. I will seek advice on whether that information then gets to the public.

Senator HARRADINE (Tasmania) (6.29 p.m.)—That may be able to be dealt with under another provision. Therefore I seek leave to withdraw the amendments—

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Are you referring to amendments (4) and (5)?

Senator HARRADINE—Yes, amendments (4) and (5). Before leave is granted, perhaps the minister could answer that.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (6.29 p.m.)—The answer is that the licensing committee receives that information, but it is not necessarily available to the public. I will try to give you an example. If you go to a university and the ethics committee looks at a proposal, that is one process and that then goes to the licensing committee. I am advised that the actual ethics committee advice is not, under the legislation, necessarily publicly available.

Senator HARRADINE (Tasmania) (6.30 p.m.)—I thank the minister for her comments. I was going to withdraw amendments (4) and (5) and I think I still might withdraw them. But I think that, in the matter that we are talking about, transparency is needed when it comes to the human research ethics committee.

Sitting suspended from 6.31 p.m. to 7.30 p.m.

Senator HARRADINE—Before the dinner break the minister, Senator Patterson, responded to my question, which was: is the ethical evaluation which was conducted by the human research ethics committee public? I am not sure what the response was; I will leave it to the minister to remind me whether or not that is the situation. If that is the situation, that raises a very serious question indeed as to transparency as part of the COAG agreement. This may not be the place to deal with this matter, because the amendments that I have moved deal with an additional requirement that the applicant have the expertise and capacity to carry out the functions authorised under the licence. The minister’s response to me satisfied that particular matter. The minister’s response satisfied me in regard to amendment (4). That is why I will seek leave to withdraw the amendments.
But I need to raise the question again, so that I am clear on it, of whether or not the decisions of the human research ethics committee are available to the public and whether the evaluation by the human research ethics committee is available to the public. The reason I am saying this is that so much has been made of the fact that licences will not be given unless approval for the program has been given by the human research ethics committee. Bear in mind that members of that human research ethics committee, previously called the institutional ethics committee, are appointees of the applicants. That is, they are appointed by the institution that is going to make the application.

There are certain persons who are required to be appointed to the human research ethics committee, as laid down by the NHMRC. But the fact of the matter is that they are appointed by the institution, and it is just not appropriate for their evaluation, upon which everything hangs, not to be transparent or for it to be kept secret when we are talking about other matters. If the evaluation of the committee is to be kept secret then I think that requires a further amendment; it is not covered by this particular amendment. I ask the minister for an answer—yes or no. This is just a factual question: are those evaluations available to the public? Obviously they will be transmitted to the licensing committee, but are they available to the public?

The TEMPORARY CHAIRMAN (Senator Bolkus)—Senator Harradine, before I call the minister, are you seeking leave to withdraw amendments (4) and (5)?

Senator HARRADINE—I have already moved the amendments and I seek leave to withdraw them.

Leave granted.

Senator HARRADINE—I indicate that I am not pursuing my amendment (6), so we are making progress.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (7.36 p.m.)—I tried to answer Senator Harradine before dinner, but my answer was a bit compressed. Under the bill, as I mentioned before, the Human Research Ethics Committee evaluation will be one of the things considered by the NHMRC. While the evaluation will not be public, the NHMRC committee’s decision will be and it will be on the public database. I know that will not satisfy Senator Harradine’s concerns, but I appreciate that he has withdrawn amendments (4), (5) and (6) and I hope we can now move on.

Senator HARRADINE (Tasmania) (7.36 p.m.)—Under those circumstances, I forewarn that, pursuant to the intention of COAG and the transparency in the agreement, I will be pursing this matter by way of another amendment which I will try to get on the running sheet.

Senator MURPHY (Tasmania) (7.37 p.m.)—I seek leave to table the amendment and explanatory memorandum that I have circulated in the chamber.

Leave granted.

Senator BROWN (Tasmania) (7.37 p.m.)—by leave—I move, on behalf of Senator Nettle, amendment (3) on sheet 2705:

(3) Clause 20, page 15 (line 11), at the end of subclause (2), add:

; and (c) if made by an applicant who receives Federal, State or Territory government funding—must include information on all commercial interests related to the activities for which the licence is sought, or related activities.

This is an amendment to require the disclosure of commercial interests in division 4 of the bill, the licensing system. Clause 20(2) now reads, in part:

(2) An application under subsection (1) that is, for a licence authorising the use of excess embryos—

... who receives Federal, State or Territory government funding—must include information on all commercial interests related to the activities for which the licence is sought, or related activities.

The amendment does just what it says. It requires people who are in receipt of public funding to disclose any commercial interests they have in related ventures. The amendment by Senator Nettle is designed to ensure disclosure of any potential conflict between
the roles that an applicant may have as part of a public institution engaged in research and as a shareholder or office holder in a private company, for example, negotiating for public funding.

During the course of the public debate and the Senate inquiry into the bill the question of potential conflict of interest became an issue because of the different roles that some people have been playing in the private and public sectors. Questions were raised about relationships and their influence on grant application outcomes. We are not suggesting that researchers operating with the support of public funding who have a commercial interest in other companies—that is, in companies outside the public arena—should be prevented from applying for a licence, but this amendment gives import to our belief that any commercial interest should be disclosed.

The amendment is particularly necessary given the trend of public researchers in the stem cell field to become involved as directors of private or joint venture spin-off ventures. Perhaps the most notable contemporary case is that of the National Stem Cell Centre, which received a federal government grant of $43.5 million. As we all know, that is a big sum to come from the public purse.

This amendment is also important because the bill excludes the disclosure of information on the grounds of its being commercial-in-confidence, although Senator Nettle notes that Senator Harradine has an amendment to remove that clause. The agreement of the Council of Australian Governments—state and national governments—from which this bill evolved is very clear about the importance of transparency and public accountability. Here we have an amendment which aims to fulfil the desire that in these matters public accountability should be to the fore.

Senator Harradine (Tasmania) (7.41 p.m.)—This amendment, which has been moved by Senator Brown on behalf of Senator Nettle, is dead in line with what COAG obviously wanted in terms of a requirement for transparency. If we cannot have transparency in institutions which receive federal, state or territory government funding, what institutions can we get that information from? Surely we are entitled to that. We need to know the commercial interests of those persons who make the applications. I cannot see why the minister would not accept this if the name of the game were to implement the intentions of COAG as outlined in the COAG agreement and the appendices thereto.

Senator Murphy (Tasmania) (7.43 p.m.)—I would like to ask the minister a question with regard to what Senator Nettle’s amendment proposes. I asked a question of Senator Minchin, representing the Minister for Industry, Tourism and Resources, about the National Stem Cell Centre. The answer with respect to the National Stem Cell Centre and the issue of conflict of interest states:

The Centre must warrant that at the signing of the Deed, no conflict or risk of conflict of interest is likely to arise in the performance of its obligations.

The Centre must disclose in writing prior to the signing of the deed if any conflict of interest exists.

Thereafter, the Centre must notify the Commonwealth if any conflict of interest arises during the term of the contract.

The Commonwealth is entitled to ask the Centre to resolve any such conflict of interest.

If the Centre does not notify the Commonwealth on any conflict of interest or it fails to resolve the conflict of interest, as required by the Commonwealth, the Commonwealth may terminate the Deed.

That itself poses a lot of questions. If you terminated the deed, what would happen to things like intellectual property et cetera? Who would they belong to? Does anything in the bill actually deal with the issue of conflict of interest?

Senator Patterson (Victoria—Minister for Health and Ageing) (7.45 p.m.)—I will not be supporting Senator Nettle’s amendment. The licensing committee will be responsible for assessing applications and establishing that there has been proper consent and consideration by the Human Research Ethics Committee, and establishing the other criteria—for example, that there is likely to be a significant advance in knowledge et cetera. The licensing committee will not be reviewing the funding arrangements of universities and other researchers.
are other avenues by which senators can gain access to information on government expenditure and where it goes, and I do not think it is appropriate to do that through the licensing committee. Under the licensing scheme, all applicants will be subject to the same requirements for disclosure of information, which will be included in the public database maintained by the NHMRC.

The comment has been made that this does not fit with the COAG agreement. I remind honourable senators that the legislation that has come before the House of Representatives and the Senate was sent to the states for comment. I am sure that if they had felt it was significantly out of line with the COAG agreement we would have been advised and would have changed the legislation to ensure that we had uniform legislation across the country. I think it is a bit rich to come in here and to say over and over that this does not fit with the COAG agreement. It is an argument that has been used fairly frequently in this debate. COAG made a decision, COAG set out the communique and then the states were sent the legislation. I presume that if they had had violent disagreement with the legislation they would have advised us. I am not of a mind to support the amendment, and I am not sure that we can progress it much further than that. I again suggest that we put the amendment to the vote.

Senator BROWN (Tasmania) (7.47 p.m.)—I would agree with that. I think, though, that if we had a little bit of extra time and this amendment went out to the states they too would be in agreement with it. It is an excellent amendment and it actually is totally in spirit with the COAG agreement, underlining the importance of transparency and public accountability. I think COAG would give a big tick to this amendment, and I think we should too.

Question negatived.

Senator HOGG (Queensland) (7.48 p.m.)—My amendment (7) seeks to put in at clause 20 an additional subclause, subclause (3), which basically strengthens, in my view, the requirements on the application under subclause (1)—that is, an application where a person is applying to the NHMRC Licensing Committee for a licence authorising the use of excess embryos. I think the addition of subparagraphs (a) and (b) in subclause (3) strengthen the onus upon the applicant to take into consideration when they are putting their application together that, as my subparagraph (a) implies, there should be a ‘likelihood of significant advance in knowledge, or improvement in technologies for treatment, as a result of the use of excess ART embryos proposed in the application’.

In subparagraph (b), I say that the person must demonstrate ‘that the significant advance in knowledge or improvement in technologies could not reasonably be achieved by other means’. There is nothing extraordinary in those words, because those words are lifted straight out of the actual COAG agreement. I believe that, whilst people may allude to those words appearing elsewhere, this ties those words in directly with the person who is making the application themselves, and it is another condition that they must meet in the application.

In clause 21, which covers the determination of the application by the committee, there are certain criteria that need to be taken into consideration. Significantly, my subclause (b) does not appear there, but it is not necessarily appropriate to amend clause 21. The effect of that clause is to place the onus on the committee in terms of the determination of the application, whereas my amendments purely and simply refer to conditions that must apply to the applicant themselves. For the sake of the record, I quote from appendix 1 to the COAG agreement, which states:

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

- there is a likelihood of significant advance in knowledge or improvement in technologies for treatment as a result of the proposed procedure;
- the significant advance in knowledge or improvement in technologies could not reasonably be achieved by other means...

There are other dot points there, but I chose not to include them because they are not
necessarily appropriate to the applicant as opposed to the application. I am seeking to put a rigorous condition on the applicant, the person making the application, to ensure that, in accordance with the provisions of the COAG agreement, they are not making a frivolous claim. I think that would be sorted out under (b) anyway, but it would be clear to applicants up front that there are stringent conditions to be met in putting forward applications to the NHMRC Licensing Committee for their consideration. I commend to the Senate amendment (7) on sheet 2720 revised, which I now move:

(7) Clause 20, page 15 (after line 11), at the end of the clause, add:

(3) For the purposes of paragraph (2)(a), it is a requirement that a person must demonstrate:

(a) the likelihood of significant advance in knowledge, or improvement in technologies for treatment, as a result of the use of excess ART embryos proposed in the application; and

(b) that the significant advance in knowledge or improvement in technologies could not reasonably be achieved by other means.

Senator HARRADINE (Tasmania) (7.53 p.m.)—This is again indicative of how some of us are trying to actually put into effect the COAG agreement. This is word for word what is in the COAG agreement. The minister says the draft legislation has gone to the states. I do not really want to say in this public arena that there have been mistakes made by the National Health and Medical Research Council in letters to the state ministers. That matter was corrected. These sorts of things happen, despite people attempting to do their job with the best will in the world, and I make no reflection upon the persons involved. It is really not intended that this clause simply repeat all of the matters on which the National Health and Medical Research Council Licensing Committee must be satisfied.

There is a range of matters that applicants are required to demonstrate to the NHMRC Licensing Committee in order to obtain a licence. For example—and we have been over this before—applicants must satisfy the licensing committee that appropriate protocols are in place to establish that the embryo was created before 5 April, in the case of a use of the embryo that may damage or destroy the embryo; and that the project has been assessed and approved by the properly constituted human research ethics committee. In other words, there is a range of matters that applicants must demonstrate to the satisfaction of
the licensing committee in addition to whether the project is likely to lead to significant advances and whether the outcome could not reasonably be achieved by other means. Therefore, I do not consider that it is appropriate to draw out only two requirements and put them in the provision relating to a person applying for a licence. That may suggest that another of these requirements—for example, the one demonstrating that there is proper consent—is a lesser requirement, which it is certainly not. For the reasons I have detailed in my explanation, I do not propose to support Senator Hogg’s amendment to clause 20.

Senator HOGG (Queensland) (7.58 p.m.)—I am not going to take up a great deal of time on this, but I believe that it certainly does not make any other requirement a lesser requirement. The reason for the inclusion of those two specific parts applying to the applicant is that they really lead to the quintessential reason why one would be making an application. If one is not going to see the likelihood of a significant advance in knowledge and an improvement in technologies for treatments, or if the significant advance in knowledge or improvement in technologies could be reasonably achieved by other means, the application is really a wasteful one indeed. So, whilst I hear and understand what the minister says, I do not believe the inclusion of those additional qualifications is limiting in any way.

As I said—and I pointed this out to the committee—the qualifications were directly lifted out of appendix 1 of the COAG agreement. The amendment is seeking not to selectively quote from the COAG agreement but to put stringent and tight requirements into the legislation to ensure that applicants clearly understand that, if an application is to be made to the NHMRC Licensing Committee, the person making the application must be able to demonstrate that the matters envisaged in amendment (7) are of importance in making that application. I recommend the amendment to the Senate.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Bolkus)—We now move to Senator Collins’s amendments (3) to (5) on sheet 2693.

Senator JACINTA COLLINS (Victoria) (8.00 p.m.)—I will not be moving the amendments at this time. For the benefit of the Senate, I should indicate that the issue that I have addressed—that the guidelines should be disallowable or, as some discussions have stated, perhaps be expressed as regulation—relates also to some other provisions that are the subject of consideration by the Scrutiny of Bills Committee. I understand that the minister has written to the committee, which should be addressing that issue and reporting on it at some stage tomorrow. I will wait for the result of that advice before we take the Senate into the detail of these issues so that hopefully we will not be duplicating any discussion.

The TEMPORARY CHAIRMAN—Senator Bishop has advised that amendment (4) will not be moved. We now move to Senator Harradine’s amendments (3), (6) and (12) on sheet 2751.

Senator HARRADINE (Tasmania) (8.03 p.m.)—I move amendment (3) on sheet 2751:

(3) Page 11 (after line 5), at the end of Division 2, add:

12B Offence—use of human embryos or human embryonic stem cells in or in testing any pharmaceutical or cosmetic product

A person commits an offence if the person intentionally uses:

(a) a human embryo (including an excess ART embryo); or

(b) human embryonic stem cells;

in, or in the testing, creation or manufacture of, any pharmaceutical or cosmetic product.

Maximum penalty: Imprisonment for 5 years.

The amendment has been circulated, or I hope it has, with further details. If it has not been circulated, I can add—

The TEMPORARY CHAIRMAN—Senator Harradine, my understanding is that you are seeking leave to move amendments (3), (6) and (12) on sheet 2751 together. Would you like to seek leave now?
Senator HARRADINE—I will have another look at what amendment (6) is. I will just move amendment (3). This is a question of pharmaceutical testing on embryos. This amendment will prohibit the use of human embryos or human embryonic stem cells in the testing, creation or manufacture of pharmaceuticals or cosmetics. It is not enough to prohibit the use of human embryos and these activities; it is also important to prohibit the use of embryonic stem cells in this work. A prohibition restricted to human embryos would encourage the destruction of human embryos for their stem cells so that these stem cells could be used for much the same work. I believe the public have been denied information about this matter. Very rarely, if at all, has the question arisen: what will happen to those human embryos? What will happen to those embryonic stem cells? Those who are in favour of this legislation—I am referring not necessarily to people here but to people outside this place—and the scientists concerned have not raised this question. One of the major areas will be the use of embryos, and embryonic stem cells in particular, for the testing of drugs. I believe the public would be appalled if they knew that.

The broader range of destructive human embryo research received less attention than embryonic stem cell research, but this broader use of human embryos includes for examining the effectiveness of new culture media used in assisted reproductive technology, ART, practice; for assisting in understanding embryonic development and fertilisation; for training clinicians in microsurgical ART techniques; for transportation, observation and storage of embryos; for micromanipulation, lasering, cutting and dissecting; for studies in genetic make-up and expression; for quality assurance testing to ensure that pre-implantation diagnostic tests give accurate results; and for drug testing, including toxicology studies on human embryos, as well as for the destructive extraction of embryonic stem cells. Research involving pharmaceuticals and cosmetics is the most likely use of the human embryos and human embryonic stem cells, due to the potential financial returns.

An article in the Australian of 1 April this year reported that Dr Peter Mountford, Chief Executive of Stem Cell Sciences:

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

The Centre for Stem Cells and Tissue Repair, which received $46.5 million from the Commonwealth government early this year, states in its application:

A number of companies throughout the world have identified that ES cells in their differentiated or undifferentiated state can be used to develop screening assays to identify new chemical agents for their therapeutic capability or to screen new or existing agents for toxicity in their profile.

Toxicology testing on animals is a costly but essential step in the development of new healthcare products and cosmetics. There is a global trend to move away from the use of live animals for these testing programs, however, there are not yet effective alternative tests developed and approved for use by the relevant regulatory authorities.

Later, that same organisation that the government is providing $46.5 million to, said:

Additionally a number of the world’s largest pharmaceutical companies have in-house screening using certain types of cells to discover new drug candidates. This will provide the Centre with the opportunity to generate short-term revenue through the licensing of specific cell lines, and longer-term revenues through participation in Australian based drug discovery programs.

For drug development companies, access to pure populations of differentiated adult stem cells and/or embryonic stem cells of different genetic backgrounds in quantity is keenly sought but currently unavailable.

This legislation will make it available.

The Minister for Industry, Tourism and Resources happens to agree that there is a potential in this area. In correspondence with me, he agreed:

Human ES cell lines for drug screening ... could be a major advantage, and is well appreciated by many pharmaceutical and biotechnology companies worldwide.

Minister Macfarlane then went on to say:

... in vitro drug candidate screening—
and the testing of—
new drug candidates for toxicity and deficiency. The industry minister also said:

Biotech company BresaGen is interested in distributing these embryonic stem cells to potential new drug developers.

We all thought it was about cures, didn’t we?—about the use of embryonic stem cells to apply to sick people.

Senator Patterson has suggested in discussion that it is inappropriate to list unacceptable uses of embryos in legislation, because that might suggest that all other uses are acceptable. But there is nothing in my amendment that would give that impression, and my clarifying comments today make it more than clear that that is not the intention of this amendment. The minister has also suggested that we might also wish to consider restrictions on food allergy testing, air toxin testing and industrial chemical testing. I am more than happy to add these to my amendment.

It is appropriate that we as senators set some limits on the uses of human embryos, not hand over that responsibility to a committee of the National Health and Medical Research Council. We are accountable to the people of Australia; the NHMRC is not. I have heard claims that the NHMRC Licensing Committee will be subject to public accountability and will act in accordance with so-called strict criteria. But, clearly, in this area there is limited accountability. Firstly, the criteria are not strict and the NHMRC is, apparently, in advice to the minister, objecting to the Senate having the temerity to consider making it just a little more accountable with these modest safeguards. Secondly, if there are any complaints about a decision made by the committee the minister will say that the decision was made by an independent body, that it was out of her hands and that the licensing committee is appointed, not elected. Both of them will probably point to the COAG communiqué as justification anyway. COAG is not accountable to the people. We cannot see the papers they used to form their decisions, although we have requested those papers. The process is a closed and secretive one. There is no real public accountability. In a climate where we are moving away from the testing of drugs and cosmetics on live animals because of ethical concerns about this practice, it would be disturbing indeed if today we decided to substitute live human embryos as the preferred laboratory animal for drug and cosmetic testing.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (8.16 p.m.)—There are four amendments here—one in the name of Senator Harradine, two in the name of Senator Barnett and one in my name—and they are all very similar in design.

The TEMPORARY CHAIRMAN (Senator Bolkus)—But they are not the same.

Senator BOSWELL—No, they are not the same. I will speak in support of Senator Harradine’s amendment. I listened very closely to what Senator Harradine said and he made the point that we were told that if we supported this legislation we would be able to cure people, that we would turn up with some wondrous cures. Those who had the patience to sit through the five or six sittings of the Senate committee heard the most prominent scientists say that there was a huge hurdle to jump, and that was that the stem cells would not be compatible to transfer and, therefore, there were two ways that you could get cures. One was to have a stem cell bank of something like 10 million Caucasians, 10 million Asians and 10 million of the various races, and that would be the only way that you could make stem cells compatible. We listened with great interest to that. What we did find out from our patient listening throughout the Senate inquiry was that there were people who were very interested in commercialising stem cells. Even in Alan Trounson’s submission for the $46.5 million, he said:

The Centre will be developing pure populations of cells from its internal and external R&D activities and plans to be primarily a supplier to screening companies on a non-exclusive basis for drug screening of selected cell types on a fee for service or a licence basis.

I am sure that the Australian population does not want to underwrite the profits of pharma-
there are a great number of people that would back the stem cell bill because they believe it will give cures. I would say that the majority of scientists, the ones who are prepared to stick their heads up over the parapet, say that it cannot be done. We now have the export of stem cells, the commercialisation of stem cells and drug testing. That is what we are left with.

I am sure that if people were asked they would say, ‘Hang on a moment. This isn’t what we thought this bill was all about. The Premier of New South Wales, Mr Carr, didn’t tell us this. He promised us that people would get up and walk from their wheelchairs and he promised us cures.’ Now what are we left with? We are left with the commercialisation of stem cells where pharmaceutical companies will breed stem cells up to test them on various pharmaceutical products. I am sure that this is not what the people wanted and I am sure that it is very far from what is required by the population. These four amendments, whether they be from Senators Harradine, Barnett or Boswell, are in effect restricting the use of stem cells in drug testing, and I think the Greens may have an amendment in there somewhere too.

All I can say is that it is not what people were promised. I am sure that if we went out there and ran a poll asking, ‘Would you support this legislation if it could guarantee cures or even give us a reasonable chance of cures?’ There would be a lot of people—some would not—who would say yes. But if you ran the same poll and said, ‘Do you want to support stem cells being used for drug testing? Would you back the pharmaceutical companies or stem cell centres, to which the government has given $49 million, to breed up stem cells so drugs can be tested?’ I think that you would get a resounding no. You would also get a resounding no on the export question. So I certainly can wholeheartedly support Senator Harradine’s amendment.

Senator STOTT DESPOJA (South Australia) (8.23 p.m.)—Very quickly and very generally, no-one—certainly not to my face—has promised me that there will be miracles. No-one has promised me that there will be cures. I certainly do not know of any premiers who are silly enough to have absolutely misplaced, ridiculous faith in science to the degree that they would promise anything—certainly not to the degree of people walking after being in a wheelchair. However, I do have hope in science and I am inspired by the vision that some of the scientists have provided us with. I am often scared by some of the images and ideas that scientists and researchers have. Obviously, that is why we discuss regulatory frameworks for scientific research and discovery. Personally, I oppose the idea of embryos being used for testing cosmetics. I am not aware of any proposals to do that. I am not aware of any Australian scientists who have said that that is their intention. I am sure that if there are any examples, they will be provided to the chamber. I would like to think that the licensing committee, in its even-handed or case-by-case approach to licensing, would not allow such frivolous and unethical research.

I am not willing to rule out the issue of pharmaceutical testing—not for frivolous reasons. Perhaps Senator Boswell, or other senators such as Senator Barnett and Senator Harradine who have identical amendments, may be able to provide some responses to my queries and explain to the chamber and give us examples of areas that may be quarantined. What is the impact of writing pharmaceutical testing into this legislation? What are the implications for IVF? Are there any? Is that something that the minister or her advisers are aware of? It may have implications, particularly in relation to people applying for a licence to test a culture medium. Is that a pharmaceutical? Perhaps one of the senators behind the amendment could provide that information.

Not everyone has agreed on the idea of a strong regulatory framework. Obviously, we cannot all agree on exactly how that is framed or constituted. I guess that the key issue is that it boils down to whether we believe that the licensing committee, obviously in conjunction with the guidelines, will include the requirement of the likelihood of a significant advance in knowledge. And, of course, there is the filtering mechanism of the Human Research Ethics Committee. I
guess it comes down to whether we believe that that combination is—

Senator Harradine interjecting—

The TEMPORARY CHAIRMAN—Order, Senator Harradine!

Senator STOTT DESPOJA—I am too tired to even respond to interjections at the moment.

The TEMPORARY CHAIRMAN—Nor should you.

Senator STOTT DESPOJA—I would like to say that it is intellectual tiredness, but it is angst. Obviously, we have to decide whether we leave the combination of those sufficiently robust as to ensure that the kind of frivolous, trivial and unethical research practices and procedures to which some have referred are not allowed. People may dispute some of those ethics committees, and that is reasonable. People are entitled to their opinion, and I think there are amendments that we will deal with later, as well as the one before us, that go to the issue of whether the combination of those groups are sufficiently strong. The amendments throw up a number of questions in relation to the banning of the use of embryos and embryonic stem cell lines and their products in the testing or manufacturing of pharmaceuticals and cosmetics. The implications or questions surrounding these include: should there be different requirements for embryos and embryonic stem cells or their products? Should there be a difference between pharmaceutical and cosmetic testing? Should either embryos or ES cells and their derivatives be used for testing with either pharmaceuticals or cosmetics? I believe that the key feature of the licensing system is that it treats all possible uses of embryos even-handedly and allows the committee to determine if a particular case is reasonable and legitimate.

If there is an argument emanating from anyone in the chamber, including one or all of the three senators behind the amendment, that suggests that the factors in place are not strong enough to rule out that kind of vexatious or inappropriate research, I am happy to hear it. But I am also happy to hear how they define pharmaceutical and what implications there are in relation to IVF and the issue of a culture medium, to which I referred—for example, whether that would be a pharmaceutical.

There are a few broad-ranging implications in these amendments that have not been worked out. I do not want for a minute for it to be interpreted that there are senators in this place who necessarily support cosmetic testing, because I do not get the impression that there are. I did not hear much evidence in the Senate Community Affairs Legislation Committee of examples of where that is taking place or, indeed, where there was an intention. I am not saying that there are not some scientists who might have completely inappropriate and wacky ideas—and Anti-nori springs to mind as one example of a scientist to whom the world looks with grave concern, for understandable reasons—but I am certainly not willing to ban pharmaceutical testing until I hear stronger evidence from those senators who are behind the amendment before us.

Senator BARNETT (Tasmania) (8.30 p.m.)—I support Senator Harradine’s amendment and, indeed, the other amendments standing in my name. I have three in fact relating to drug testing. They have different levels of significance and impact, and I would like to draw the Senate’s attention to those. The first amendment specifically says:
The NHMRC Licensing Committee must not issue the licence if the use of human embryos, human embryonic stem cells or any product derived from human embryos or human embryonic stem cells, proposed in the application involves:
(a) the testing, creation or manufacture of any pharmaceutical or cosmetic product; or
(b) the manufacture of any pharmaceutical or cosmetic product.
The second amendment is worded quite differently. It says:
The NHMRC Licensing Committee may only issue the licence to authorise the extraction from human embryos of human embryonic stem cells, or any product derived from human embryos or human embryonic stem cells, proposed in the application involves:
(a) the testing, creation or manufacture of any pharmaceutical or cosmetic product; or
(b) the manufacture of any pharmaceutical or cosmetic product.
The third amendment is a worse case scenario, which I would hope would have the support of absolutely all members of the Senate in the sense that it is a less strict
amendment. That amendment on sheet 2757 revised says:

The NHMRC Licensing Committee must not issue the licence if the use of an excess ART embryo proposed in the application involves the testing, creation or manufacture of any pharmaceutical or cosmetic product.

So there are three different levels and, for the sake of brevity, I just wanted to speak to all of them rather than standing up to speak on each one.

I do support Senator Harradine’s amendment. We want to uphold the spirit and the wording of the COAG agreement. That agreement makes it quite clear that we should be implementing a strict regulatory regime. I have been through a good number of the speeches in the House of Representatives and in the Senate in support of the Research Involving Embryos Bill 2002, and I cannot find any that actually support drug testing on human embryos or human embryonic stem cells. I was a member of the Senate committee, along with other senators, and we have presented a report. During the hearings many witnesses made submissions and, indeed, of all the submissions, none were actually calling for drug testing to be used on human embryos. I think we need to take note of that. This evidence has been put forward to our committee.

The whole purpose of this legislation is based on the ethical foundation that this parliament should cautiously proceed with the deliberate destruction of the so-called excess IVF embryos for the extraction of stem cells from embryos that would have otherwise succumbed. No-one is speaking passionately for the testing or the manufacture of embryos for pharmaceuticals or cosmetics. The promise of embryonic stem cells to effectively treat debilitating diseases and injuries has been the whole impetus of this debate. That has been the purpose according to the proponents of the bill and, indeed, others. So why would we not want to support a prohibition on the testing of drugs? Surely, we would.

We need to take account of the fact that in three years time this bill will be reviewed under the current legislation. If the parliament believes that the deliberate destruction of embryos should be employed for pharmaceutical testing or for any other purpose, then this should be considered during the review process. There is an opportunity for a review and that is the time when such a new and tragic form of procedure could be considered. So I am just putting the message out that we are trying to create a strict regulatory regime. We are trying to proceed cautiously in a very controversial area. There is nobody in this parliament actually out there supporting drug testing on human embryos, as far as I can tell. The COAG sentiment is for a strict regulatory regime. So the Senate committee report has all that evidence and all the submissions before it.

Let us just look at some of the arguments against the amendments that have been put by Senator Harradine and me. One argument is that the licensing committee can deal with it and that it can be set out in the licensing conditions that it is simply not an appropriate procedure to allow drug testing. I accept that. For goodness sake, you would hope that the licensing committee would take such a position. But I say you are leaving the door open if they believe there is a significant advance in knowledge by using human embryos or human embryonic stem cells for drug testing. Is that what we want? Do we want the door left open to drug testing? It is for this parliament to create the strict regulatory regime as requested by COAG. It is for this parliament to create the rules under which this controversial research would then be undertaken. As I said, nobody is out there actually supporting drug testing that I know of.

Senator Boswell—Trounson is!

Senator BARNETT—There may be one or two who are in a very controversial area, indeed, if they do. Why wouldn’t we want to close this loophole? Why wouldn’t we tie it down and make that happen and cover off this possibility? Then, if you want to, look at it over that three-year period and when the whole regime will be reviewed at the end of that period. I think they are very powerful arguments.

Senator Stott Despoja has asked about the implications for IVF. I cannot see implications for IVF programs, but I stand to be cor-
rected and I seek advice from the minister or anybody else on that. For goodness sake, again, would they want to test drugs on a human embryo in an IVF clinic? Is that appropriate for an IVF clinic? I do not think so. We need to carefully review our thoughts on this. I acknowledge, although I do not accept it, that some people see a difference between testing drugs on human embryonic stem cells and testing drugs on human embryos. I do not support either, but I know that there are senators in this place who have a different opinion from mine on that. You have a number of amendments before you and I draw your attention to them. There are the Harradine amendments, which are tight and strong and which rule out such testing altogether; my three amendments; and the version on sheet 2757, which is the lesser one. I prefer the Harradine amendments. I bring the amendments to your attention so that we can debate them and, hopefully, hear advice from the minister as to her position on them.

To sum up, we are trying to create a strict regulatory regime. We need to proceed cautiously. There is an opportunity for a review. Nobody—certainly nobody in this parliament—wants to test drugs on a human embryo. Certainly there are those who want to test drugs on human embryonic stem cells or on stem cell lines—indeed there are some financial benefits for that—but I do not know of anybody in this place who supports it. So why not close off this loophole in the bill and remove it altogether? Those are powerful arguments and I hope that senators listening elsewhere can consider them. We might have another opportunity to speak on these matters once the minister has responded and once Senator Harradine has had the opportunity to put his view forward again.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (8.40 p.m.)—This is quite a long answer because the issue is obviously of great concern to a large number of people. I have listened with interest to the discussion in the chamber regarding whether or not the bill before us should restrict the types of research that may be carried out on excess ART embryos. I consider that there are four main reasons why we should not include in the bill restrictions relating to the types of work that may or may not be approved by the NHMRC Licensing Committee.

Three main reasons relate to the intent of the COAG decision. Firstly, there is the establishment of an expert licensing committee that must apply very strict legislative criteria. Secondly, there is the role of the people for whom the embryo was created and their ability to provide consent to what uses their embryos may be put, including any restrictions related to such uses. Thirdly, there is a concern that by excluding types of research we are suggesting that other types of research are, by comparison, acceptable. I want to go through each of these in turn.

Firstly, the COAG decision made no distinction between different types of research on excess ART embryos, nor did it place restrictions on the types of research for which a licence may be sought. However, while COAG did not limit the types of research for which a licence may be sought, it did specify that certain safeguards should be included in the legislation to ensure that trivial or inappropriate research involving embryos does not occur. Any application to undertake research involving excess ART embryos must first be considered and approved by the Human Research Ethics Committee according to a range of criteria as set out in the NHMRC guidelines.

Only if the Human Research Ethics Committee approves an application will the application then be considered by the licensing committee. In assessing the application the licensing committee will apply the stringent criteria detailed in the legislation. These criteria include that there be a likelihood of a significant advance in knowledge or improvement in technologies for treatment which could not be achieved by other means. The system described in the legislation ensures that all research projects carried out under this regulatory system will be ethically and scientifically appropriate.

Secondly, the licensing committee has deliberately been established as a body with expertise drawn from a range of relevant fields. Members will have expertise in research ethics, research, ART, law, and consumer issues relating to both disability and
There will also be a member of the Australian Health Ethics Committee on the licensing committee. The licensing committee will, as a group, have extraordinary combined expertise and be accountable to the public and to parliament for their decisions. I am of the opinion that the committee will make appropriate decisions based on the merits of each particular case and the openness of the system with significant public disclosure. It will also ameliorate any risk of trivial or inappropriate research proposals being approved.

Thirdly, COAG also acknowledged that couples donating their excess ART embryos to research should be able to approve the nature of the research for which their embryos would be used and specify restrictions on the types of research. This decision clearly anticipated a range of research projects to which couples may wish to donate their excess ART embryos.

Finally, I think it is inappropriate to start trying to list in legislation the uses of embryos that are not acceptable. The presence of a positive list tends to suggest that other uses are acceptable. For example, if pharmaceutical and cosmetic testing is listed then why not food or allergy testing, air toxin testing or industrial chemical testing? Do we want to test the safety of insecticides, paints et cetera? This is particularly so, recognising that many active ingredients in pharmaceuticals and cosmetics are also present in industrial chemicals. As I said earlier, I think the decision must be left in the hands of a licensing committee who will make decisions in accordance with the strict criteria in the legislation. I think that most people agree that there are certain uses of embryos that we would not like to see occur. Direct toxicology testing may be one such use.

There are many more examples, such as testing ingredients of a range of other products. There are probably many examples that will emerge over the next few years with new scientific discoveries that we will not want to see occurring. However, to our knowledge no such research has been approved in Australia and nobody is doing any of these things now. I will be opposing Senator Harradine’s amendment to restrict the types of research for which a licence may be sought. The legislation as currently drafted is entirely consistent with the COAG decision. It ensures that no pre-emptive decisions are made about the relative merits of various types of research and it ensures that all users of excess ART embryos are treated equally and are assessed by a range of experts in accordance with strict criteria.

Amendment (12) provides for regulation to be made requiring all pharmaceutical and cosmetic products that have not been tested on human embryos or embryonic stem cells to carry a label. This is plainly impossible to implement and I think it is totally impractical. That would apply even more with respect to Senator Harradine’s other amendment requiring labelling of pharmaceuticals and cosmetics that are tested on embryos or embryonic stem cells. I believe that we are scheduled to discuss that amendment relating to labelling later. I am sorry it has taken a while but I needed to explain the position as fully as possible and to indicate why I will be opposing the nomination of those particular items of pharmaceutical and cosmetic products.

I want to make the record very clear, because I think Senator Barnett misunderstood my reference to culture medium. I was not suggesting that there would be willy-nilly drug testing by IVF clinics on embryos. What I was asking for related to the definition of ‘pharmaceutical testing’ and whether or not that would prevent culture medium testing, given that that involves chemicals and given that culture media testing is allowed under the explanatory memorandum. So it was not a suggestion that IVF clinics would be doing that but there may be some practices which are explicitly allowed for that may involve chemicals, for example, that may be prohibited as a consequence of these amendments.

While I also have some difficulty with amendment (12) because it would mean that every pharmaceutical product would have to be so labelled, I am also aware that there is an alternative amendment to the same effect coming down the line from
Senator Boswell. I think the issue is enormously important and I support the sentiment that Senator Harradine has in that amendment. We have talked a lot in this committee about our free vote—our right to have a conscience vote on the clauses and the bill. There has been debate about whether people should not be penalised in the workplace if they choose not to work with embryonic stem cells, although Senator Harradine’s amendments in that regard have failed to get through the committee stage.

Now we get to the question of whether, if there is pharmaceutical testing which involves embryonic stem cells, people who buy those pharmaceutical products ought to know about it. Of course they should as a basic consumer right. In a matter as sensitive as this, I would be horrified if this parliament were to say that consumers out there did not have a right to conscience shop, when we have given ourselves the right to have a conscience vote. Many products are labelled these days, but I cannot think why you would not want to label products that had been tested on embryonic stem cells. In fact, I think we must do it. However, that debate is coming on a little further down the line.

Senator Patterson, on behalf of the government, said that we ought not be restrictive in stating what testing can occur with embryonic stem cells. Why not? I have looked through the index to the bill and I cannot find any reference to pharmaceutical testing. We ought to be debating the matter. Why not have a positive list in the legislation? The alternative is to have no precaution and to simply say that anything applies and, when something goes wrong, bring it back to the parliament and we will try and fix it. That is not the right way of doing things. If you have an intent to allow pharmaceutical testing, then have the gumption to say so. Put forward an argument as to why that should be so, and we will then vote on the matter. I do not accept Senator Patterson’s repeated assertion that these matters should be left to some other appointed people.

Whether we like it or not, ultimately we are charged with the responsibility of making decisions on difficult and critical matters like this on behalf of the Australian people. We are the ultimate ethical committee, if you like. We might not have the so-called expertise or whatever it is that allows people to be appointed to boards and committees. But we are elected by the people whether we like it or not and have to make decisions on these matters. Yet I hear Senator Patterson saying, ‘Let us not debate whether there should be pharmaceutical testing or not’—and she named a number of other matters—‘let us leave all that to somebody else to decide.’ No, thank you, as far as I am concerned. I find it difficult territory but what I want to hear tonight—and what I want to hear from the minister in charge of this bill—is why we should be supporting pharmaceutical testing on embryonic stem cells. Please give me that argument; otherwise, I am left to support Senator Harradine in the absence of an argument. That is not the way the presenter of this bill should present evidence and argument to this chamber on a matter as critical as this. I am not in the business of passing this off to unnamed people somewhere else, hoping they will fix it. That responsibility is fairly and squarely on my shoulders and, I submit, on the shoulders of every other senator. That is why this is such an important matter. I ask the government to please tell us in this chamber here and now—because this is the opportunity—why we should support pharmaceutical testing on embryonic stem cells.

Let me move to another part of this amendment. Has the government no concern about cosmetic testing on embryonic stem cells? Is that a use of these cells which the government promotes? If it does not, it should say so. Finally, the minister said that the woman and the man who are involved in the production of these cells will have the opportunity to make a decision. Are they really going to be told, ‘With your stem cells you have a choice of uses to which they will be put’? Are they really going to know that their embryonic cells are going to be used in the testing of lipstick, skin cream or shaving cream for that matter? I think not. If the minister is going to reassure us about that, let us hear what the genitors of these cells are really going to be told and how the options are going to be put to them. Let us have some assurance about that.
Senator PATTERSON (Victoria—Minister for Health and Ageing) (8.54 p.m.)—At about the same time last night—and it has now been another 24 hours and a significant amount of that time has been spent in this chamber doing this—I objected to an impugnation by a senator on my motives or on the motives of other people in not supporting amendments. Any indication that, because of the argument I put forward, I had a particular view or that I was supporting pharmaceutical testing I find offensive, and I do not think it is appropriate.

I actually have reasonable trust in a system, with a range of people from a range of areas, as outlined in the bill, to be able to make judgments. I would have thought that honourable senators—with the sort of experience that one or two on the other side have, particularly the senator who just gave his contribution, having a medical background—would know that there is a possibility that a pharmacological study might be used to find a better medium in which an embryo could be stored or frozen or a better way in which it could be maintained to be viable. Obviously, that would be tested on animal models right up to the point where it was thought to be appropriate and could provide a better outcome, meaning that more embryos would be taken and women would not have to go through the very difficult procedure of egg extraction. There is a possibility. It may be appropriate to test in that way. I do not know whether the honourable senator opposite is indicating that we should not do any further experiments in preserving those embryos in a better way.

Senator Brown—But where do you draw your line?

Senator PATTERSON—The senator asks where I draw the line. That is exactly what I just pointed out. Once you go through each item and you admit something, you are indicating then that that might be okay. We have very strict criteria.

Senator Brown—There is no line.

Senator PATTERSON—We will disagree most probably forever. But I do find it galling that the people who are supporting some of these amendments impugn those who do not with motives other than honourable motives. I find that totally unacceptable and I will not tolerate it. Whenever it happens, I will get very stroppy and quite strong about it, because I think that it is inappropriate. I have not questioned the motives of anybody else putting amendments forward. I do not like my motives or the motives of people who will support the amendment being impugned. You might think the argument is not good enough. Let us put it to the vote. I believe the system is sufficient for reasonable testing—for example, if it were required to find a better way to store an embryo—and it is appropriate. That is the sort of judgment that I would expect people of integrity and honour to make. You might mistrust people; I actually have a little more faith. I think you would have to outline every detail and explain in what circumstances you could test, for example, a medium in which it was better to freeze an embryo or some procedure by which to freeze an embryo.

Let me just say that I will not be supporting the amendment. I will not tolerate people coming in here and impugning my motives or the motives of anybody else who is voting against the amendments. It has to be fair in here. A couple of times I could have said things that I might have regretted or I had thought in my head about what people have said in here, but I have not said those things, because I think it is fair for people to have their judgment and their view and to be treated with fairness and honour in this place. But I find it offensive when people come in here and say that I am not standing up to this and I must therefore accept pharmaceutical testing. I ask people to bring a little bit more calm back into this. I am feeling a bit agitated now, because last night the same thing happened. I will not tolerate it and I will get up every time. I have been calm in the discussions. I have sometimes disagreed with people, but I have not impugned or questioned their motives.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Before I call Senator Brown, I would like to say that, in my careful listening to Senator Brown, I do not believe he impugned any motives at all.
Senator Patterson—It’s not up to you to make a judgment.

The TEMPORARY CHAIRMAN—I am not making a judgment. You have suggested that he has impugned motives and I do not believe, from my position, that he has.

Senator BROWN (Tasmania) (8.59 p.m.)—That has very much shortened my next contribution to the Senate—

Senator Patterson—that was very unbiased and observant!

The TEMPORARY CHAIRMAN—I am unbiased and observant.

Senator BROWN—You are correct, Mr Temporary Chairman. I am sorry that Senator Patterson feels that way. Senator Patterson, the most important part of my question was a request for information. What is the basis for opening up pharmaceutical testing on embryonic stem cells? I also ask whether the minister could outline why testing on stem cells for cosmetics ought not to be a matter for us to debate and decide on, yea or nay. That is what I really want to know. In the absence of a good argument from the government or the minister as to why we should be endorsing pharmaceutical testing or cosmetic testing on embryonic stem cells, I am left to make up my mind on the matter no better informed than when I first got to my feet—and I will do so. I am sorry if the senator feels she is impugned; I had no intention of doing that.

Senator Patterson—Well, you did.

Senator BROWN—People who introduce bills in here have to expect they will be questioned at length and in full, and I will not desist from that in any measure.

Senator HARRADINE (Tasmania) (9.01 p.m.)—I want to reply and will now deal with the issues that were stated by the minister. Firstly, the example that was given was an exempt use. Secondly, the minister says, ‘We’ll leave it to the system.’ There is no real accountability; we are just told, ‘Leave it to the system; they’re an expert panel.’ We have also heard, ‘The matter has gone through a human research ethics committee.’ Again, let me remind the Senate that a human research ethics committee is appointed by the institution that is making that application.

I ask the chamber and the minister to please have regard to what is being said. Much weight has been put on the application being evaluated and approved by a human research ethics committee, as though that were the end of the story and we do not need to open our mouths. But in this particular case it is the drug company that will be appointing the human research ethics committee, which was once called the institutional ethics committee. I have the provisions here as to who will be appointed. Obviously, the applicants for the licence are not going to appoint a human research ethics committee that is going to cause them trouble.

To cap it all off, the minister says that the decisions and the evaluation of that committee are not going to be made public. There is no transparency in that at all. This was in the statement by the minister that this is all subject to public scrutiny; it is not. I am preparing an amendment, which I hope will be supported, along the lines that at least the decisions of the human research ethics committee should be made public.

The minister talks about the role of donors. I ask the minister: is it not a fact that donors will not be able to know where their human embryonic stem cells will end up? Once the embryonic stem cells are extracted, is it not a fact that the donors will no longer have any control over the use of those embryonic stem cells? Is that a fact or not? Or is it a fact that, because of the structure that has been placed in this legislation, the donors will not know about their embryonic stem cells because the cells are no longer identified with the donors. Is that a fact or not?

I am making something of this because much has been made of it by the minister, on advice. The advisers know what I am talking about. I do hope the minister will see the importance of my forthcoming amendment and will seek some advice from those from whom she receives advice—and I do not mean her advisers in the chamber; I mean elsewhere. I am asking the minister: what are the stringent requirements in respect of this whole question of the testing of pharmaceutical products? The minister appears to be
opposed to the testing of pharmaceutical products. If that is the case, how can we best cater for that view?

Senator Stott Despoja said, ‘Give us some examples of what is meant.’ Is Senator Stott Despoja in favour of the testing of drugs and toxicology testing by using human embryos or human embryonic stem cells? I gave certain examples of what is being proposed, and I quoted the chief executive of Stem Cell Sciences, Dr Peter Mountford. Senator Stott Despoja may not have been here when I was making my introductory comments, so I will repeat that the report in the *Australian* says:

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

Dr Peter Mountford is the chief executive of Stem Cell Sciences and an Australian. The Centre for Stem Cells and Tissue Repair, the Trounson outfit, in its application for the money that it received, stated:

A number of companies throughout the world have identified that ES cells in their differentiated or undifferentiated state can be used to develop screening assays to identify new chemical agents for their therapeutic capability or to screen new or existing agents for toxicity in their profile.

Those are two examples, and there are a number of others. I referred to the letter that I received from the industry minister about these matters. I have given those examples, and I certainly trust that they will be taken on board. I simply put it to the committee that this measure deserves full support, and I request the minister to respond to the questions that I have raised with her.

**Senator BOSWELL** (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (9.10 p.m.)—I would like to ask the minister a question. If a couple have excess embryos, what procedure would they go through to sign the embryos into drug testing or, for that matter, for export? Do they get a choice? Is there a paper on which they can say that they wish to use their excess embryos for a cure, to test drugs, or to be exported overseas to a place that has no rules or standards? What choice do the man and woman, the producers of these excess embryos, have? How do they make that choice? How is that choice given to them? I think that is a reasonable question. Can you tick box A to say that, yes, you can send them overseas? Can you tick box B for drug testing, or tick box C for a cure? How do these people make a decision?

I have an aversion to passing off the duties of this parliament to someone else. We have a democracy in this country. We all run for parliament. Senator Harradine gets up and pushes an agenda, and everyone knows where he is. They know that if they vote for Senator Harradine then they are going to get certain actions in the Senate. They know about Ron Boswell when they vote for him. We go out and we sell our product. We get out there and say, ‘Ron Boswell does this, this and this.’ People judge whether they want to vote for Ron Boswell, Senator Harradine, Senator Murphy, the Labor Party or the Liberal Party. We all stamp our product. We say to people, ‘Vote for me, because I am a conservative and I will represent you in this way.’ Then when we come in here, we say, ‘I don’t want to represent you at all; I’ll flick that over to some committee.’

I have been in this place for 20 years. I have been through native title debates—I have been through many debates. Some just pass through; some are very important. But I cannot think of any debate that will affect Australia and the long-term future of Australia more than this debate. When I go out and ask people to vote for me, they expect me to react. They do not expect me to flick a decision across to someone else who is unelected. They know what I stand for. I run that up the mast and say, ‘Ron Boswell stands for this.’ When I come back here I do not have the choice to make a decision in line with what the people who voted for me want, because it gets flicked away to someone else. I have an aversion to that.

Even if the minister were to say, ‘Let’s make it a regulation, and if you are not happy then the parliament has 15 days to disallow it’—and I think about three disal-
lowances go through a year—I could live with that. Let the so-called experts make the decision and, if the parliament is not happy, someone who represents the values that are opposed to that particular decision can move a disallowance that will be tested by the numbers in the parliament. I feel pretty strongly about this: we are elected to make the decisions; it is not the NMHRC or any other unelected body. I want to put that to you very strongly, Minister. I do not expect you to answer that, but I wanted to put it on the record. I would like you to tell me how people with excess embryos will decide where those embryos will go. Is it by a declaration? By what particular means do they do that? How does it happen?

Senator CHRIS EVANS (Western Australia) (9.15 p.m.)—I indicate on behalf of the Australian Labor Party that will be opposing Senator Harradine’s amendment. Basically, we think that this bill seeks to set up a system which allows for a rigorous and effective means of monitoring what types of research are approved and it sets up a system of safeguards. Senator Boswell said that we cannot pass these decisions onto others. We do in every other piece of legislation we pass in this place. In terms of pharmaceuticals, we set up a system and we let the PBS decide which drugs go on the market and which drugs are subsidised and how they are subsidised et cetera. We do not make each decision in the parliament. We set up a system and we set a process. We make judgments about whether the safeguards are built into that process.

In this legislation we are putting in place a two-stage process. The Human Research Ethics Committee have to give their approval and then an application will go to the licensing committee. So there is a two-stage process to monitor applications for a licence and for research. That is the architecture which is established in the bill, which Labor believe will provide the sorts of safeguards we want. We do not intend to put ourselves in a position of deciding on each application in the parliament or to canvass all the issues that might be raised by various applications for research. Quite frankly, my imagination probably would not be wide enough to canvass all those issues, and I think that would be true of the parliament as a whole. We are setting up a system to allow those applications to be processed on their merits with the appropriate safeguards. If people have concerns about the safeguards, they can move amendments to those. In the debate we have voted for some and opposed others.

Some of the debate today seemed to go to making decisions on issues which someone has got a particular bee in their bonnet about and which they want to make a judgment on. We are saying that we support the architecture which allows for those decisions to be made and we are not going to pull out the two or three issues that are concerning a particular senator at a particular time, because we do not think that will give you the result you are after anyway. We are not in a position to make those decisions. So I will be opposing Senator Harradine’s amendment and amendments similar to that.

Senator HARRIS (Queensland) (9.18 p.m.)—I support Senator Harradine’s amendment. I would like to quote from a research paper produced by the Southern Cross Bioethics Institute. They stated:

In May 2001, Professor Trounson gave a good description of the range of research interests he sees as important. These include infertility research into fertilisation, intra-cytoplasmic sperm transfer and embryo development, as well as research on chromosomal abnormalities, gene expression, artificial eggs and sperm, gene development, cancer (including testing cytotoxic drugs), energy metabolism and therapeutic cloning.

They went on further to state:

All of the studies on which we have reported in this paper come from peer-reviewed journals. In the rapidly advancing and increasingly private biotechnology research sector, it is more than likely that there is another body of research that has not reached these journals and may never do so. Much of this research may not have been published at all, either because it was not undertaken with sufficient scientific rigor or simply did not produce a reportable result. It may also be that the results it yielded, in the view of the companies involved, needed to be kept secret for commercial reasons. Alternatively, even though the work is legal, it may be viewed by the researchers to be outside of publicly acceptable ethical norms, and hence best kept from public view. This may have
been the motive behind the secrecy surrounding cloning experiments conducted in Victoria in which a human nucleus was placed into the enucleated egg of a pig and developed to the 32-cell stage.

Secrecy has accompanied the development of ART from the beginning. Professor Carl Wood made the startling admission in 1983 that he and other IVF scientists had secretly experimented with the conception of a human being in a sheep. These are the reasons I believe that Senator Harradine’s amendment is so important. We need to set out very clearly and explicitly in this legislation what may be carried out but, even more importantly, what may not be carried out. Senator Harradine’s amendment will stop the research that the scientists themselves believe is not publicly acceptable.

Senator HARRADINE (Tasmania) (9.22 p.m.)—I am still awaiting the responses from the minister. I raised what I thought were perfectly legitimate questions, and now Senator Boswell has raised questions which are perfectly legitimate. They are following the minister’s statement as to why she is opposing, presumably on advice—just as she opposed the conscientious objection clause, presumably on advice—

Senator Patterson—I make the decisions; it is not about advice.

Senator HARRADINE—I am trying to protect the minister. The minister has a difficult job, and she is being told, ‘Don’t do this; don’t do that,’ and, ‘Do this; do that.’ She has indicated—

Senator Patterson—I have a mind of my own, as you saw in the cloning bill.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Order! Senator Harradine has the call.

Senator HARRADINE—I had and do have some sympathy for her. She has half-indicated her concerns about the principles, as she said at the beginning of this debate, and I acknowledge that. In the response that she gave, she said that this matter is handled by way of strict, stringent requirements. First up, she mentioned that it has to go through the Human Research Ethics Committee. Bear in mind that it is the applicant who appoints the Human Research Ethics Committee—in this case, it would be the drug company, or the institution governed by the drug company, that will be making the application for an excess ART embryo, or the stem cells derived from that excess ART embryo, to be used for drug testing. The question I am asking is: is that a stringent approach? Is it accountable to the public? Are the public made aware of the precise terms of the evaluation by the institutional ethics committee, now called the Human Research Ethics Committee or HREC? Are they to be made known to the public? If not, why not?

Secondly, the minister referred to the role of the donors, which gave rise to the questions that Senator Boswell properly asked. What role have the donors got? Is it or is it not a fact that the donors do have a right to agree or not to agree to the use of an ART embryo? If they do agree to the use, then they have the right to say to what purpose those human embryos can be put. However, if the stem cells are then taken from the human embryo, do the donors have the right to know where the embryonic stem cells end up? They no longer become identified with the donor couple, and therefore the donor couple do not have control over where the embryonic stem cells end up. Those are three of the issues to which I am asking for a response.

Senator BARNETT (Tasmania) (9.27 p.m.)—I am feeling very disturbed about this debate. I am not sure that I heard it correctly but I thought—Hansard will bear it out—that the minister, in her response to the arguments put by those supporting some sort of prohibition on drug testing on human embryos and human embryonic stem cells, advised this chamber that it may be appropriate to test on a human embryo or human embryonic stem cell into the future. That is how I heard it, and I stand to be corrected; I hope I am corrected. However, I now have to speak on the basis of how I heard the statement from the minister. With that statement, we are saying that the door is open. If that statement is correct, we are saying that the door is open to drug testing on human embryonic—
Senator Patterson—That is not what we are saying. You know very well that that is not what we are saying.

Senator Barnett—Perhaps the minister can correct the statement.

Senator Patterson—No, I just said it. You heard exactly what I said.

The TEMPORARY CHAIRMAN—Order! There will be an opportunity for the minister to respond, and I ask that Senator Barnett be heard in silence.

Senator Barnett—I would appreciate a response. Before I continue, perhaps the minister will respond, because that is how I thought I heard it: that she said that, based on the advice she had been given, at some stage in the future it may be appropriate to do drug testing on a human embryo or human embryonic stem cells.

Senator Patterson—I did not say that at all, and you know that.

Senator Barnett—That is how I heard you, Minister.

Senator Patterson—Sit down and give me a chance to explain it, but I am not going to get up again.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Order!

Senator Patterson (Victoria—Minister for Health and Ageing) (9.29 p.m.)—I did not say ‘open the door’. I was indicating that there are methods of storing embryos. It may be in animal research that it is found that there is a more appropriate medium for storing and freezing an embryo, for example. I presume that it would be tested on animal models. But at some point it would have to be demonstrated that it was more effective than a former method, and I think that there would be people involved in the ART project who would prefer to have a technique for storing embryos that reduces the risk of any changes in those embryos. That is the sort of example I was giving. I would have concern if there were frivolous testing, and I think the safeguards are there. That is why I have indicated that we have safeguards in place to ensure that there is not frivolous—I have forgotten the other word I used—research.

The other thing that I will repeat—and I am not going to get up again; we have gone over this and so much has been said which is relevant to this—is that people making a donation of an embryo will be counselled. If they are not from an English-speaking background, counselling will be given in their own language. They can put restrictions on the way in which that embryo is used—for example, that it is only used for ART and that it cannot be used for any experimentation. They can put very strict controls on the way that excess embryo is used, or they can decide not to use it at all. I keep going back to the point that, if people feel so strongly about it, there will not be an excess of embryos available for embryonic stem cell research. If what you are telling us is that, if the whole community do not want embryonic stem cell research, then there will not be any excess embryos, because people will not give permission. We must go back to the fact that people will have to give permission and will be counselled beforehand. Every attempt will be made to make sure that they understand it. They can put any restriction they like on the use of that embryo or, if it will be used for experimental research, on how it will be used. So I think we have to get that on the record.

This goes back to what I was saying before. I say one thing and it is interpreted another way. But I think it would be totally inappropriate to hinder the fact that we may be able to produce embryos that are less likely to have some sort of problem as a result of the freezing technique, because of the medium in which they are frozen. If it can be demonstrated in animal models that there is a better method for doing it, it would then have to be tested in the human model, with the results demonstrating that it is not detrimental to the embryo. But people can make that decision as to whether they would permit their embryo to be subjected to any form of research. They might say, ‘I only want it for ART and not for stem cell research.’ So if people feel as strongly as people in this chamber indicate that they do, there will not be any embryos; there will be none. All the women who have had IVF will say, ‘I am not going to donate my embryos.’ So if it is as serious and of such a great concern as the
other side is indicating, then that is what will happen. I think that is probably most unrealistic. If people decide to donate their embryo, they will give consent—informed, counselled consent—about the extent of the use of their embryo.

I have indicated before the reasons why I will not be supporting this amendment. I am not going to be subjected to this harassment that I have to answer every single question. When I am sitting here not answering, it is because I believe sometimes that I have answered it this morning, last night or yesterday morning or that it has been answered in the committee. I have been reasonable. When I have thought there was a reasonable point and I had not answered it in a previous part of this debate, I have got up and answered it. But I am not going to get up and keep repeating and repeating and repeating my arguments, nor am I going to be told that I do not really believe what I am saying. I am concerned that there not be frivolous testing, but I believe that we have sufficient safeguards in there. People will say, ‘You are not right.’ That is their privilege and that is their right. But, I am sorry: I believe, as Senator Evans has indicated, that we cannot monitor and approve every experiment that is undertaken. We have put a structure in place—Senator Evans used a very good word: ‘architecture’—to ensure that that building is sound. I have just extended the analogy a little further. I am confident—and maybe you will say that is misguided confidence; so be it. I have said what I had to say about this amendment and I will not be supporting it.

Senator Barnett (Tasmania) (9.35 a.m.)—Thank you, Minister, for that response. As I am standing here, I cannot rely on, nor do I think it is appropriate for the public of Australia to rely on, somebody simply saying they ‘think’ and ‘hope’ and express confidence that a certain outcome will take place. What we can do—now, here, today—is design a regime and say, ‘This is how it will be.’ We can rule out drug testing on human embryos and human embryo stem cells. The minister made a number of other comments. I would like to address some of them. Firstly, with respect to consent and counselling, I think it is very good to have on the record, from the minister’s perspective, that there will be adequate counselling, because that is another issue, as is appropriate consent of the donors of the human embryos. My point about that—and we will certainly be coming to this later in the debate—is that that is set out in the guidelines. It is not set out in any regulation; it is set out in this document entitled Ethical guidelines on assisted reproductive technology. This document is not a disallowable instrument. This is not a regulation and this is not law. This is a guideline, and a guideline is a guideline. That is why it should be embedded in the bill itself.

The minister’s point about the donors is that they have to give consent—point taken. But we were all once a human embryo. Every person in this chamber and in this nation of Australia was once a human embryo, and we have rights too. Human embryos have rights too. That is why this is a controversial debate. That is why we are standing here expressing heartfelt concern from different perspectives. I respect the minister’s perspective and I acknowledge her concern and care, which is expressed in a different way from the way I and perhaps others in the chamber express it. I respect all of that, but I say that those human embryos have rights. I say that the size and function of a human being should not determine the level of respect and honour that should be bestowed on that human being.

We talk about drug testing. The whole purpose of this bill is meant to be designed for therapeutic purposes or for cures, and I have said many times that the end does not justify the means. But even if you do accept in this case that it does, surely drug testing on a human embryo is not appropriate. Surely the destruction of a human embryo for a cure is the only way that you would want it. That is why I have designed one of these amendments to see if I can get a sympathetic response.

One of the four points that the minister made was that if we just exclude those certain types of research, there is a danger, because the exclusion may not be comprehensive. Her concern is that if we list some, we may not list others. Let us focus on the intent...
of the bill—which you will remember was designed for cures, wasn’t it?—which was to help people. That is the purpose according to the proponents of the bill. One of my proposed amendments is that the committee may only issue the licence to authorise the extraction from human embryos of human embryo stem cells and for no other purpose. Why would you not support that? What is wrong with that? Surely, that is consistent with the minister’s view and the concern that it does not rule out other options. It is specifically for the extraction from a human embryo of human embryo stem cells and for no other purpose. Why can we not say that? If that is what this debate is about, why do we not go with it and take it on board? Let us say that it is for no purpose other than for trying to obtain a cure. I request those on the other side of this debate to think carefully about it and I say, ‘Why wouldn’t you support this proposed amendment?’

The minister is confident that the regime will rule out frivolous testing. That is heartening, but it is not heartening enough, because it is not law. It is not in this bill. Yes, there is a regime there, but the regime leaves the door open. That is what concerns me. I say that drug testing on a human embryo or embryo stem cell is an abhorrent act. I see it—and of course this is a personal view—as demeaning. I see it as the worst nightmare that has been foisted on the Australian public. This whole debate about drug testing concerns me greatly. The minister says that it should be ethically and scientifically appropriate. Well, ethically and scientifically appropriate to whom? Here we are in this chamber, designing a regime which COAG says should be a strict regime. They say we should proceed cautiously. We support that, so why do we not back it up by ensuring that we have tight guidelines and not allow this type of testing on a human embryo?

It is concerning and perhaps one does get a bit hot under the collar in these sorts of debates. I feel strongly about it, and that is why I am standing here. The minister talked about the criteria that would be set under this so-called regime in which the minister has confidence. The criteria talk about a significant advance in knowledge. If the committee then decides that drug testing on a human embryo or a human embryo stem cell is appropriate and does in their view provide for a significant advance in knowledge, well, bingo! You’re on! It happens; the door is open and away you go. Down the track it is a possibility. Is that what we actually want? Is that appropriate for this great nation of Australia? There are a lot of individuals that fill up this nation and they all deserve respect. The human embryo, the smallest of human beings, deserves respect. This loophole in the proposed legislation should be ruled out. It should be eliminated. We should treat the human embryo with dignity and respect.

Senator HARRIS (Queensland) (9.43 p.m.)—I would like to further emphasise the importance of Senator Harradine’s proposed amendments. To some extent they are supported by the President of the United States of America. On 9 August President Bush made a public statement:

As a result of private research, more than 60 genetically diverse stem cell lines already exist ... I have concluded that we should allow federal funds to be used for research on these existing stem cell lines, where the life and death decision has already been made ... This allows us to explore the promise and potential of stem cell research without crossing a fundamental moral line, by providing taxpayer funding that would sanction or encourage further destruction of human embryos that have at least the potential for life.

We now have America accepting that it is no longer publicly acceptable to destroy embryos even for the purpose of future research. America has said very clearly that 60 genetically diverse stem cell lines already exist. If America has closed the door totally on the destruction of any further embryos or the production of any embryonic stem cells then I believe Senator Harradine’s amendment really does not go far enough.

I have been very critical at times in this chamber and have said that we have blissfully followed the lead of the Americans. In this case I have to eat humble pie and say, ‘If it is good enough for the Americans then it should be good enough for Australians.’ If the scientific ability of the nation of America recognises that they do not need to destroy any further embryos then how much more fitting is it for Australia to follow that lead of
the President of the United States? I would be very interested to hear a comment from the minister on whether she would take back to the government on notice a request that no federal funding be used in any way in the further development of the extraction of embryonic stem cells or in the destruction of any embryos.

Senator HARRADINE (Tasmania) (9.47 p.m.)—It is obvious that Senator Harris is not going to get that guarantee, because the government has just given $46.5 million to an outfit that is going to use some of that money for purposes which will involve the destruction of human embryos. That is $46.5 million that could have been used elsewhere, plus $5.3 million, plus a lot of other money—amounting to about $112 million. Unfortunately, a significant amount of that will be spent in this particular area, and spent when there is absolutely no evidence at all from peer reviewed journals that there is anything in these particular proposals. Money comes cheap.

Apparently the minister will not answer questions I have asked her. I take it for granted that the minister is saying that the human research ethics committees are secretive. The minister is assuming that they are secretive operations and their evaluation of the applications will not be made public, that it is all secret and there is no way the public can raise questions about the matter. I take it that that is what she is saying about this particular matter when it comes to the testing of drugs on embryos or stem cells.

I have specifically asked the minister whether the donors have control over the use of embryonic stem cells derived from the excess ART embryos for which they are the custodians. The minister has not confirmed that, and I assume that that is the situation. She made three points, the second of which related to the role of the donors. The role of the donors is very limited. They say what their embryos are to be used for, according to the legislation, but it does not go further. They will not be able to know, or keep control of, where those embryonic stem cells end up. Could they indeed end up in attempts in other countries to develop human embryos from embryonic stem cells? I said that last sentence deliberately, because there are people behind you who know that that is a fact, and that will come out later on in this debate.

I will ask those questions with regard to donors at some other stage, but I am going to conclude by saying that this is a defining moment. Here we are agreeing to the use of human embryonic stem cells, to the destruction of the human embryo for the purposes of drug testing. We were all a human embryo at one stage, needing only what we need now to survive—that is, shelter and nourishment. No civilised society can remain civilised if the status of the human being, that human embryo, is to be reduced to that of an experimental tool or a laboratory rat. And that is precisely what we are proposing: drug testing on human embryos or on human embryonic stem cells to the destruction of the human embryo. It might have been any one of us used for that purpose and I, for one, certainly would not want to see that happen.

Question put:
That the amendment (Senator Harradine’s) be agreed to.

The committee divided. [9.59 p.m.]
(The Chairman—Senator J.J. Hogg)

Ays............ 32
Nees............ 39
Majority........ 7

AYES
Abetz, E. Barnett, G.
Bishop, T.M. Boswell, R.L.D.
Brandis, G.H. Brown, B.J.
Buckland, G. Calvert, P.H.
Chapman, H.G.P. Colbeck, R.
Collins, J.M.A. Colbeck, R.
Ellison, C.M. Ferguson, A.B.
Forshaw, M.G. Harradine, B.
Harris, L. Heffernan, W.
Hogg, J.J. Hutchins, S.P.
Johnston, D. Kemp, C.R.
Lightfoot, P.R. Mason, B.J.
McGauran, J.J.J. Minchin, N.H.
Murphy, S.M. Nettle, K.
Santoro, S. Scullion, N.G.
Stephens, U. Watson, J.O.W.
Question negatived.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (10.04 p.m.)—I request that my amendment (1) on sheet 2718, which makes it an offence to fail to label products developed from human embryos, human embryonic stem cells and their derivatives, be circulated in the chamber.

The TEMPORARY CHAIRMAN (Senator McLucas)—That has occurred, Senator Boswell. Are you suggesting that we deal with this now?

Senator BOSWELL—No.

Senator HARRADINE (Tasmania) (10.05 p.m.)—by leave—I move amendments (6) and (12) on sheet 2751 revised:

(6) Clause 21, page 16 (after line 2), after sub-clause (3), insert:

(3A) The NHMRC Licensing Committee must not issue the licence if the use of human embryos, human embryonic stem cells or any product derived from human embryos or human embryonic stem cells, proposed in the application involves:

(a) the testing, creation or manufacture of any pharmaceutical or cosmetic product; or

(b) the manufacture of any pharmaceutical or cosmetic product.

(12) Clause 48, page 35 (after line 13), at the end of the clause, add:

(3) The regulations must include provision for labelling pharmaceutical and cosmetic products including the notification that human embryos or human embryonic stem cells have not been used in the testing, creation or manufacture of any pharmaceutical or cosmetic product.

I will be brief because the argument was made for the matter in principle just a moment ago. One of the reasons for this amendment to clause 21—and I hope it is supported—is that, rather than making it a straight-out offence, it does give authority and guidance to the NHMRC Licensing Committee. It really is an amendment to prohibit the NHMRC Licensing Committee from issuing a licence if the application involves the use of human embryos or human embryonic stem cells in the testing, creation or manufacture of pharmaceuticals or cosmetics. In the discussion that we had previously I gave the example of an institute bankrolled, if you like, by a drug company making an application to the licensing committee for the use of an ART embryo, or ART embryos. That drug company would then make the application and it would go through the institutional ethics committee of the drug company or its institute, and we have heard in the previous discussion that the information of its evaluation would not be publicly available.

Frankly, I believe that this is consistent with the COAG communiqué of 5 April 2002, which stated:

The Council agreed that research involving the destruction of existing excess ART embryos be permitted under a strict regulatory regime to enable Australia to remain at the forefront of research which may lead to medical breakthroughs in the treatment of disease.

The communiqué did not allow a broader range of research. It is not enough to just prohibit the use of human embryos in these activities; it is also important to prohibit the
use of embryonic stem cells in this research. A prohibition restricted to human embryos would encourage the destruction of human embryos for their stem cells so that these stem cells could be used for much the same research.

Debate on the bill has shown that whatever support there is for destructive experiments on human embryos it is restricted to the production of embryonic stem cells to produce possible theoretical therapies for particularly intractable diseases. There is a range of other potential research uses for human embryos. Those involving pharmaceuticals and cosmetics appear to be the most likely due to their potential financial returns. These amendments are slightly different from the matter we just dealt with because this then hands it over to the National Health and Medical Research Council Licensing Committee.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.11 p.m.)—I indicate that the amendments moved by Senator Harradine have the same effect as the amendment that was just defeated, and for the reason I opposed that amendment I will be opposing these amendments.

Question negatived.

The TEMPORARY CHAIRMAN (Senator McLucas)—Senator Barnett, your amendment (R6) on sheet 2694 is the same as amendment (6) that we have just defeated.

Senator BARNETT (Tasmania) (10.12 p.m.)—Yes, that is fine. I accept that. I have two other amendments on this issue. I seek leave to move amendment (R5) on sheet 2694 revised, together with amendment (1) on sheet 2757 revised.

Leave granted.

Senator BARNETT—I move:

(R5) Clause 21, page 16 (after line 2), after sub-clause (3), insert:

(3B) The NHMRC Licensing Committee may only issue the licence to authorise the extraction from human embryos of human embryonic stem cells and for no other purpose.

(1) Clause 21, page 16 (after line 2), after sub-clause (3), insert:

(3C) The NHMRC Licensing Committee must not issue the licence if the use of an excess ART embryo proposed in the application involves the testing, creation or manufacture of any pharmaceutical or cosmetic product.

I stand to support both amendments, but amendment (R5) makes the issue very clear. It states:

The NHMRC Licensing Committee may only issue the licence to authorise the extraction from human embryos of human embryonic stem cells and for no other purpose.

I will be brief, because I have made these arguments before, but I will repeat them again. This whole debate is about cures—to do that, you extract the stem cells from a human embryo. If that is what the proponents and everyone else agrees is the main purpose of the bill, why don’t we say it and advise the committee accordingly? We could authorise the committee to issue licences only for that purpose and for no other purpose. Surely that is an appropriate amendment. Then you can rule out all these other options in terms of drug testing on a human embryo or on a human embryonic stem cell.

I am moving these two amendments together because I can see the numbers—the support is not there—but I am still making the argument that I think they are valid. The second amendment is the weakest amendment that I could possibly envisage in regard to drug testing on human embryos or embryonic stem cells. It says:

The NHMRC Licensing Committee must not issue the licence if the use of an excess ART embryo proposed in the application involves the testing, creation or manufacture of any pharmaceutical or cosmetic product.

That, as I have said, is an amendment which I could live with. I hope that the minister can advise whether she is willing to live with that amendment or whether she does not wish to support it. It would be good for senators to get that on the record. That amendment is different to the other one because it specifies the testing, creation and manufacture of pharmaceutical or cosmetic product and it includes both the pharmaceutical—that is, the drug—and the cosmetic product.
I seek the minister’s response to those two amendments. The same arguments as those that were put by Senator Harradine apply. We want to close the door on drug testing on human embryos and the testing of cosmetics on human embryos or human embryonic stem cells. I do not believe that having confidence in a regime will do the trick. For the sake of brevity, I have been through those arguments before. If we can seek from the minister clarification of whether she supports that amendment, that would be good. If she does, so be it.

Senator Patterson (Victoria—Minister for Health and Ageing) (10.17 p.m.)—Senator Barnett’s amendment (R5) on sheet 2694 revised seeks to confine permission to use excess ART embryos only for the derivation of stem cells. It would prevent all ART related research, training and quality assurance work. These practices have been occurring in Australia for 30-odd years. I was actually at the Queen Vic when they first started the IVF program, doing foetal movement research, so when I say that it is 30-odd years it makes me feel old. Some of you were not born then.

These practices have been occurring in Australia for 30-odd years and have contributed significantly to the high standard of ART clinical practice available to Australian couples today. To ban such activities would severely impact on the ability of ART clinics to maintain and continue such treatment. This amendment would also prevent couples from donating their excess ART embryos to IVF related research. Many couples want to donate their excess ART embryos for this type of research in order to help other infertile couples to become pregnant.

As I noted previously, I will be opposing any amendment which seeks to restrict the types of research for which a licence may be sought. As I have said, the legislation is currently drafted in a way that is entirely consistent with the COAG decision. It ensures that no pre-emptive decisions are made about the relative merits of the various types of research and it ensures that all users of excess ART embryos are treated equally and are assessed by range of experts in accordance with strict criteria.

My arguments opposing Senator Barnett’s amendment (1) on sheet 2757 are the same as in relation to the previous amendments that were defeated and I do not propose detailing them again. I will not be supporting the amendment.

Senator Barnett (Tasmania) (10.19 p.m.)—I make a short response to that. The minister has put her position and I can see where the numbers lie. I would like to see that advice in terms of the ART procedures not being allowed to continue. Clause 10 sets out a number of offences in the use of an excess ART embryo. My understanding is that it is an exempt use and therefore would not be caught by that particular amendment and the ART programs could continue. Anyway, that is the advice that she has received; I will leave on the table whether or not it is correct. It is disappointing that I cannot gain support for my amendment (1) on sheet 2757. I will say no more.

Senator Harradine (Tasmania) (10.21 p.m.)—It is very important for the minister to respond to that. Senator Barnett has a point in respect of his amendment (R5) by reason of the operation of clause 10. It is an exempt use, is it not? I am asking for advice on whether that would come under the prohibition proposed in (R5).

Senator Harris (Queensland) (10.22 p.m.)—I rise in support of Senator Barnett’s amendment (R5). I believe that it might not attack the problem from Senator Harradine’s point of view. It would be a clear restriction if it were passed in this legislation. If we look at the Annotated Constitution of the Commonwealth of Australia—I believe it is on page 346—we see that it is set out very clearly that what is not granted to the parliament of the Commonwealth is denied to it. Therefore, Senator Barnett’s amendment to this piece of legislation would very clearly set out that a licence could not be issued for any other reason than for the extraction of human embryonic stem cells. It is very clear; it adds clarity to the legislation. I believe that in doing so it makes the function of the licensing committee much easier for them to actually implement. For those reasons I believe that the Senate should consider the ar-
arguments that Senator Barnett has put forward and support this amendment.

Senator Barnett (Tasmania) (10.24 p.m.)—I have had a chance to review the bill. I appreciate the comments made by Senator Harris because I think that what he says is entirely correct. Clause 10 of the bill talks about the offence in the use of excess ART embryos. In subclause (2) it says:

A use of an excess ART embryo by a person is an exempt use for the purposes of subsection (1) if:

(a) the use consists only of:

(i) storage ...

(ii) removal ...

(iii) transport ...

Then it goes on to (b), (c), (d) and (e), and (f) is of course the catch-all clause. It says:

... the use is of a kind prescribed by the regulations for the purposes of this paragraph.

So it will not be a problem for the government to prescribe regulations under this. It is an exempt use, and an exempt use is not covered by my amendment, so I cannot see that it is caught. I would like to see some advice on that to be persuaded otherwise. I would like to hear the views of people on the other side about this. What are the Labor Party’s arguments against (R5)? It specifically makes it clear that it is authorised only for the extraction of human embryonic stem cells and for no other purpose. That is what it says; it is pretty straight down the middle. Again, that is the whole purpose of this bill; that is what it is designed to do. It would be helpful to put on the record the views and the advice provided in response to that point. I appreciate the comments of Senator Harris, Senator Harradine and others in support of the amendment.

Question negatived.

The TEMPORARY CHAIRMAN—That is in order. For the record, Senator Boswell’s amendment on sheet 2718 will follow Senator Harradine’s amendment when that is dealt with. The next amendment on the running sheet is Senator Bishop’s amendment (1).

Senator Jacinta Collins (Victoria) (10.28 p.m.)—Since I understand that Senator Bishop is on his way to the chamber now, if we move to the next amendment, which is my amendment (6), we will not waste the Senate’s time. If I am correct, this is my ‘two commas’ amendment. I understand that its attempt to insert the precise framing of the COAG agreement and the earlier guidelines is a matter that is generally agreed, so I will not spend too much of the committee’s time on it. Unless others want to express their sentiments on the same issue, I am happy for the motion to be moved. I now move:

(6) Clause 21, page 16 (lines 8 and 9), omit “advance in knowledge, or improvement in technologies for treatment, as a result”, substitute “advance in knowledge or improvement in technologies for treatment as a result”.

Senator Chris Evans (Western Australia) (10.29 p.m.)—I indicate on behalf of the Labor opposition that we will be supporting Senators Collins’s amendment. I indicated to her very early in the debate that I would go all the way with her on the commas but I was not with her on the full stops. To be consistent with the promise that I gave her, Labor is supporting her ‘comma’ amendment.

Senator Patterson (Victoria—Minister for Health and Ageing) (10.30 p.m.)—I am not going to make a long contribution on this amendment. Deleting the punctuation of this provision, as proposed, will not make a substantive change to the interpretation of the legislation. However, given that some senators feel so strongly about it, I am prepared to support the amendment.

Senator Stott Despoja (South Australia) (10.30 p.m.)—I just wanted to put on record that, while this seems to be a somewhat small amendment that does not seem to influence the legislation in a big way, the Democrats did have a couple of pedantic
concerns in relation to the emphasis on applied and basic research. Senator Collins says that this amendment makes it clearer that the purpose of knowledge sought by research on embryos is to improve medical treatment. However, I do not think this chamber should overlook the fact that there are crucial basic science questions that ES research has the potential to address—not just applications, although applications could subsequently flow from greater basic science knowledge. So there is an argument that the current wording perhaps better reflects scientific realities, because there are basic and applied science issues at hand, not just improving medical treatments and applications. We are conscious of that, but I can read the numbers in the chamber. I congratulate Senator Collins on being so pedantic.

Senator JACINTA COLLINS (Victoria) (10.31 p.m.)—I would like respond to that very quickly. I have never suggested that the distinction here is between basic and applied science, and I can quite easily accept that the type of research that might be utilised with the objective of enhancing medical treatment may well in fact be basic science as well. However, for the licensing committee, I think the connection of these clauses without these commas to medical treatment makes it clear that we are not talking about things such as cosmetic research. In the light of the earlier discussion, I think this, thankfully, is a way in which most of the committee can express a view fairly clearly to the licensing committee. Those involved in this debate never intended to talk about licensing related to the likes of cosmetic research.

Question agreed to.

Senator MARK BISHOP (Western Australia) (10.33 p.m.)—I foreshadow that I will move my amendment (1) on sheet 2750. I understand the government is going to move a further amendment to insert two other words to this, subsequent to my amendment being carried. The committee might recall that this debate started right at the beginning of the committee stage, when there was extensive debate on the first evening on an amendment, which was later withdrawn in my name, to seek to restrict the number of embryos that might be used for the various purposes authorised under the bill and authorised by the NHMRC Licensing Committee. After some hours the point was made in a number of places that it was inappropriate to insert that provision in the objects of the act and, if my amendment was withdrawn at that time, it would be given fuller consideration if inserted into an appropriate place later in the bill.

I will not retread all of that ground. It is exactly the same discussion and the same debate, and the matter is fully on the record. Just very briefly, I would say the bill does not include any requirement for the NHMRC Licensing Committee to seek to minimise or restrict the number of human embryos that will be destroyed. The COAG decision, which this legislation is meant to reflect, stated that in the regulatory regime for the licensing of research involving the destruction of human embryos a licence would only be issued on a case-by-case basis, provided that the procedure involved a restricted number of embryos. That COAG decision had not been included in this bill prior to this amendment.

The amendment, when carried, will require the NHMRC Licensing Committee to go beyond simply having regard to the number of embryos that the research requires in deciding whether to issue a licence for destructive embryo research. Should this amendment be successful, the committee will instead be required to have regard to restricting the number of embryos that will be destroyed for the purposes of this licence. I understand there has been discussion on both sides of the chamber and that the amendment as circulated has been agreed to by both the parties.

Senator CHRIS EVANS (Western Australia) (10.36 p.m.)—I indicate on behalf of the Labor opposition that, in accordance with past practice, senators will obviously have a conscience vote on the issue but that we are formally going to support Senator Bishop’s amendment. As he said while he was speaking to his amendment, this was an issue that originally came up under the objects of the act clause. I expressed the view there that, while my instructions at that time were to oppose it, I had some personal sympathy
with it, because its intention was to give force to a COAG agreement. I think the view around the Senate is that obviously as few embryos as possible ought to be involved in this research. We are looking to have the benefits of the research but obviously do not want to allow any sort of carte blanche. We share an interest in ensuring the numbers are restricted to the necessary and approved research. While that is generally within the framework of the bill anyway, I think it was an important addition. His adding the word ‘restriction’ has given force to the argument he put there. We were not prepared to support it in the objects of the act, but we think it fits much better here. Therefore we will be supporting Senator Bishop’s amendment as a useful addition to the bill.

Senator MARK BISHOP (Western Australia) (10.37 p.m.)—as amended, by leave—I move:

Clause 21, page 16 (line 5), omit “the number of excess ART embryos”, substitute “restricting the number of excess ART embryos to that”.

Question, as amended, agreed to.

Senator JACINT A COLLINS (Victoria) (10.39 p.m.)—I suggest to the committee that I leave my amendment (7) to be dealt with at the same time as we deal with amendments (3) to (5). Amendment (7) relates to an alternative way of dealing with the issue that I raise in my amendments (3) to (5), which we have deferred pending the Scrutiny of Bills Committee’s consideration of Senator Patterson’s response to their alert notice.

Senator BROWN (Tasmania) (10.39 p.m.)—On behalf of Senator Nettle, I move amendment (2) on sheet 2705:

(2) Page 16 (after line 30), after clause 22, insert:

22A Further notification of applications, decisions, and appeals

(1) Subject to subsection (2), any person may request information to be provided by the NHMRC Licensing Committee in relation to:

(a) the receipt of an application for a licence by the Committee;
(b) the decision by the Committee on an application for a licence;
(c) the variation of a licence by the Committee;
(d) the suspension of a licence by the Committee;
(e) the revocation of a licence by the Committee;
(f) the application for review of a decision of the Committee.

(2) The following table sets out the circumstances in which information may be requested, the information that must be provided in those circumstances, and the timeframe for its provision.

<table>
<thead>
<tr>
<th>If the NHMRC Licensing Committee:</th>
<th>the NHMRC Licensing Committee must disclose:</th>
<th>whichever is the later of the following:</th>
</tr>
</thead>
<tbody>
<tr>
<td>receives an application for a licence</td>
<td>all information that is relevant to deciding the application</td>
<td>within 10 days of the Committee receiving the request for information or</td>
</tr>
<tr>
<td>decides an application for a licence</td>
<td>all information that was relevant to deciding the application</td>
<td>within 10 days of:</td>
</tr>
<tr>
<td>Varies a licence</td>
<td>all information that was relevant to deciding to vary the licence</td>
<td></td>
</tr>
<tr>
<td>Suspends a licence</td>
<td>all information that was relevant to deciding to suspend the licence</td>
<td></td>
</tr>
<tr>
<td>revokes a licence</td>
<td>all information that was relevant to deciding to revoke the licence</td>
<td></td>
</tr>
<tr>
<td>receives an application for review of a decision of the Committee</td>
<td>the fact that such an application has been made</td>
<td>becoming aware that the application for review was made</td>
</tr>
</tbody>
</table>

(3) A request for information under this section must be made in accordance
with the requirements prescribed by the regulations.

This is to deal with requests for information about licences that have been issued by the National Health and Medical Research Council. It is quite self-explanatory, and I commend it to the committee.

Question negatived.

**Senator BROWN** (Tasmania) (10.41 p.m.)—On behalf of Senator Nettle, I move amendment (4) on sheet 2705:

(4) Clause 23, page 17 (lines 3 and 4), omit paragraph (b), substitute:

(b) remains in force for the lesser of the following periods:

(i) until two years after the licence comes into effect; or

(ii) until the day it is suspended, revoked or surrendered; or

(iii) until the day specified in the licence.

This amendment is also self-explanatory. Instead of allowing a licence to be given according to the licensing committee for any period of time, the amendment effectively means that the licence remains in force for up to two years, unless it is suspended for some matter, and will then need renewal. It is actually putting a time limit on that licence.

Question negatived.

**Senator HARRADINE** (Tasmania) (10.42 p.m.)—I move amendment (7) on sheet 2696:

(7) Clause 24, page 17 (before line 7), before subsection (1), insert:

(1A) A licence is subject to the condition that before the use of an excess ART embryo may be authorised by the licence, the regulations must provide a mechanism for the proof of date of the creation of each embryo covered by the licence.

(1B) A licence may only be issued in respect of an excess ART embryo which has a proven date of creation.

This is a rather important matter. The amendment is self-explanatory. It seeks to add another subclause to clause 24. Clause 24, on page 17, deals with the matter of the licence being subject to certain conditions. I am proposing another condition, as outlined in my amendment. The background for this is, I think, unexceptionable. I ask the minister to consider this very seriously. The amendment specifies that there must be proof of the date of the creation of the embryo proposed to be used for research. This is a significant amendment that addresses a fundamental flaw or loophole in the bill.

Both clauses 21 and 24 of the bill refer to this particular date as a threshold issue which, in part, determines whether or not an embryo can be used for research. Lack of proof of this date is, I believe, a major oversight. The COAG communique also states, in paragraph 6.5:

... the system should enable appropriate monitoring of compliance with the national standards and provide legislated penalties for non-compliance.

One of the central responsibilities of a government in establishing a new regulatory regime like the one proposed in this bill is to create an effective environment to ensure that the objectives of the legislation are met. One of the key requirements of the COAG communique, detailed in appendix 1 of the communique, is that the embryos to be declared surplus ‘must have been created before 5 April 2002’. I quote their words. As I said, this date is mentioned in clauses 21 and 24 of the bill, but an important factor in establishing this regulatory regime is recognising that the decision on whether or not an embryo was created before this date is dependent on the accuracy of information from the ART centre concerned. As the ART centres are self-interested organisations—I use that term in the technical sense—there is an obvious need to have some proof that the claimed date of creation of embryos is correct.

This is a key risk factor that the intent of the legislation will not be achieved. It is a risk that should have been identified in a risk assessment of this bill. I am wondering what type of risk assessment was done. It is not unusual to have such requirements in legislation. For example, in the child support laws paternity is regarded as a threshold issue which requires proof. My amendment simply strengthens the audit controls of this regulatory regime to ensure that one of the key objectives of this legislation is achieved. The
licensing committee will not be able to monitor compliance with this legislation without documentary proof of the date of creation of each and every human embryo. I hope, in the interests of a 'strict regulatory regime'—to quote the words of the COAG agreement—this amendment will be adopted by the chamber.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.48 p.m.)—The amendment proposed by Senator Harradine includes a new clause that appears to seek to make it a statutory condition of all licences that there must be proof of the date on which the embryo was created before the excess ART embryo can be used in accordance with the licence. I do not understand why it is thought that this amendment is necessary, because the legislation already does what the amendment appears to seek to do.

The legislation already requires that the NHMRC Licensing Committee must not issue a licence unless it is satisfied that there are protocols in place to ensure that any excess ART embryos proposed to be used for work that may damage or destroy the embryo were created before 5 April 2002. In addition, clause 24 makes it clear that it is a statutory condition of the licence that, before an excess ART embryo is used under a licence, the licence holder must write to the NHMRC Licensing Committee and confirm that the embryo to be used was created before 5 April 2002, as determined in accordance with protocols that were considered by the NHMRC Licensing Committee before the licence was issued.

The legislation already does what Senator Harradine is proposing. It already makes sure that if an application involves the use of an embryo which may damage or destroy the embryo there must be proof that the embryo was created before 5 April 2002, and the proof must be established in a manner that is satisfactory to the NHMRC Licensing Committee. Further, under the monitoring powers outlined in part 3 of the bill, the inspector will be able to inspect all relevant records to ensure that the conditions of the licence or licences in the legislation have been complied with. For this reason I will not support Senator Harradine's amendment.

Senator STOTT DESPOJA (South Australia) (10.50 p.m.)—I support the comments made by the minister. I will not be supporting the amendment. I think the bill already requires this and I do not believe that this amendment is necessary.

Senator HARRADINE (Tasmania) (10.51 p.m.)—Where does the bill already require this? I am deliberately asking this question of the minister. If she cannot give an answer, I will ask Senator Stott Despoja. Where in this legislation is this covered? The minister has been saying that the licensing committee can seek proof. What proof? Should they take the word of the ART centre? I am saying that, under those circumstances, that should be an essential provision built into the legislation.

As I said in my explanation, clauses 21 and 24 of the bill refer to the particular date as a threshold issue. Clause 21 states, 'In deciding whether to issue the licence, the NHMRC Licensing Committee must have regard to the following, the following being paragraphs (a), (b), (c), (d) and (e). I am trying to ensure that the date of the formation of the embryo is properly able to be established. This is the way to establish it. I am asking the minister or Senator Stott Despoja: where in this legislation is this cut and dried—in other words, where is it proven?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.53 p.m.)—The amendment requires proof of the date of creation for all uses of embryos. As I said, for uses that damage or destroy the embryo, the committee must be satisfied that the embryo was created before 5 April. The committee has the powers to monitor, and any breach of a condition of the licence attracts a criminal penalty. I believe that that is more than enough. It is built into clauses 21 and 24 and the monitoring provisions to ensure that the embryo was created before 5 April 2002. As I said, I will not be supporting the amendment.

Senator HARRIS (Queensland) (10.53 p.m.)—I have a question for the minister. Minister, clause 24(1)(c), the section that you basically just read out, says:
... the licence holder must have reported in writing to the NHMRC Licensing Committee that the embryo was created before 5 April 2002.

Can you give a categorical assurance to this chamber that, at this point in time, in the records of the NHMRC there are documents that show that the embryos were produced prior to 5 April 2002, and that those documents were provided to the NHMRC prior to 5 April 2002? I am specifically asking: is there a list held by the NHMRC of embryos that exist, and was that list in existence before 5 April? Or can the NHMRC merely say to the minister, ‘Here’s a sheet of paper that says these were created before 5 April’?

Question negatived.

Senator Barnett (Tasmania) (10.56 p.m.)—I move amendment (6A) on sheet 2694 revised:

(6A) Clause 24, page 17 (after line 21), after sub-clause (2), insert:

(2A) A licence is subject to the following specific conditions:

(a) a licence holder must provide a report to the NHMRC every 6 months itemising and describing each research project commenced or undertaken by the licence holder during the preceding 6 month period;

(b) a licence holder must include in each report required by paragraph (a) an analysis of whether or not the research project could have proceeded without the use of human embryos;

(c) a licence holder must report to the NHMRC any variation in the circumstances contained in the licence holder’s application for a licence within 2 weeks of the occurrence of the variation;

(d) a licence holder must report every 6 months detailing the number of human embryos used by the licence holder during the preceding 6 month period.

This amendment sets out a range of reporting mechanisms for the licence holder. Paragraph (a) states that they must provide a report to the NHMRC every six months itemising and describing each research project concerned. This is consistent with the amendment that we moved and passed yesterday in terms of reporting procedures. However, that was reporting from the NHMRC and this is reporting from the licence holder, so there is that distinction; but it is still on a six-monthly basis. It would make it consistent with the amendment that was moved and passed yesterday. Paragraph (b) is again consistent with the amendment successfully moved by Senator Bishop earlier in terms of restricting the number of human embryos for research purposes. I think the amendment is supported by and consistent with the COAG statement, as clauses 6.4 and 6.5 of the COAG agreement of 5 April say:

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

6.5 the system should enable appropriate monitoring of compliance with the national standards and provide legislated penalties for non-compliance.

In my view, the amendment is consistent with the COAG agreement and with the reporting mechanisms that this bill now includes as a result of efforts yesterday. I seek any views from the minister in terms of arguments or positions that may not be consistent with my own. I foreshadow that there may be a view that a reporting mechanism is adequately covered in clause 29 of the bill, which talks about a database that should be maintained by the NHMRC Licensing Committee and about the types of things that should be included in that database. I simply make the point that, if we are going to make it a tight, strict regulatory regime, they need to have oversight of the licence holder, and the licence holder should be able to provide this information and advice through to the NHMRC Licensing Committee so that they can do their job adequately, as per clause 29. We are simply enabling them to do their job as they should, and we are enabling a more open and transparent process in terms of reporting.

It is important for the public and for the community in this country to know about the type of research that is being undertaken. Why shouldn’t we know whether or not the research project could have proceeded with-
out the use of human embryos? This is really the point: we should have the minimum number of embryos necessary in terms of the research and the work that is undertaken by the licence holders. I simply put this forward in supporting a more open and transparent process and a tighter regulatory regime. I will not go into further detail; I could but, in light of the time and the need for brevity, I will seek advice or a response from the minister to the points that I have made in respect of that amendment.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.01 p.m.)—I will not be supporting Senator Barnett’s amendment. It would require the licence holder to report every six months, describing research undertaken including an analysis of whether the work could have been achieved by other means, variations in the licensing conditions and the number of embryos used. Clause 24 gives the licensing committee a wide power to determine conditions of licence and these conditions can include, but are not limited to, the number of embryos, reporting and monitoring. The licensing committee controls specific conditions included in individual licences and asks for monthly reporting, if it so determines.

Since there will be a range of different types of licences granted, it is up to the licensing committee to set the reporting requirements, depending on the nature of the work, so that the reporting periods can be varied from licence holder to licence holder as necessary. There needs to be flexibility in the legislation to allow this. I do not support Senator Barnett’s amendment that a licence holder must report a variation in circumstances to the NHMRC Licensing Committee. The legislation already provides that a licence holder must comply with any condition of the licence. If they vary their circumstances in any way, they may be in breach of their licence, so they should therefore seek a variation anyway in order to safeguard their own licence. The conditions outlined in this amendment are seemingly excessive. More to the point, each licence could have different conditions applied, depending on the nature of the work. Thus, as the minister outlined, the licence conditions need to be flexible, and certainly the licensing committee needs to have flexibility in order to set licence conditions that are relevant to the project. So I do not think this is a necessary amendment; in fact, it is potentially quite an onerous one.

Senator STOTT DESPOJA (South Australia) (11.03 p.m.)—For the same reasons that the minister has outlined, the Democrats will not be supporting the amendment. I think the minister made a particularly important point in relation to the fact that a licence holder must comply with any condition of the licence. If they vary their circumstances in any way, they may be in breach of their licence, so they should therefore seek a variation anyway in order to safeguard their own licence. The conditions outlined in this amendment are seemingly excessive. More to the point, each licence could have different conditions applied, depending on the nature of the work. Thus, as the minister outlined, the licence conditions need to be flexible, and certainly the licensing committee needs to have flexibility in order to set licence conditions that are relevant to the project. So I do not think this is a necessary amendment; in fact, it is potentially quite an onerous one.

Senator MURPHY (Tasmania) (11.04 p.m.)—The bill contains reporting requirements. Minister, would it be envisaged by the NHMRC that they would report at least annually? Could it be longer than that? Would you be able to shed some light on this?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.04 p.m.)—I stand to be corrected, but I think I covered that in the points I made. I said that there would be a range of different types of licences granted and that it is up to the licensing committee to set the reporting requirements, depending on the nature of the work, so that the reporting periods can be varied.
As I said, they may want the report every month. If you stipulate that, that may actually limit what they can do.

Senator MURPHY (Tasmania) (11.05 p.m.)—I understood that. My question was: despite those requirements—and I understand what you are saying in that they may set different times, and that is fair enough—will there be a maximum time of 12 months or greater?

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.05 p.m.)—It depends on what the licensing committee sets and what the reporting requirements of that particular licence are.

Senator HARRIS (Queensland) (11.05 p.m.)—I indicate that One Nation will support Senator Barnett’s amendment (6A) because it sets out quite a reasonable regime for the licence holder to come back to the NHMRC and report progress. I believe that this is appropriate because clause 25 sets out that the licensing committee can vary a licence by giving notice in writing. That is in clause 25(1). Clause 25(2) states:

The NHMRC Licensing Committee may vary a licence under subsection (1) on its own initiative or on application by the licence holder.

So a licence can initially be granted to carry out a specific type of research, and the NHMRC then has the ability to vary that licence. The person who is doing the research may find that they want the licence to go in a different direction, and they can also apply to the NHMRC to vary that licence. To have an understanding of, and for the public to know, the direction of this research, we do need this consistent reporting. I do not believe that it would impose on any eminent scientific establishment in this country—establishments which have their own reporting programs—to have them referred back to the NHMRC on a six monthly basis. In response to Senator Harradine’s amendment (3) on sheet 2751, moved earlier this evening, I gave a quote off the cuff from the Annotated Constitution of the Commonwealth of Australia. I would just like to clarify that the total quotation is from page 346 and is under heading 33 ‘And all Laws’. It states:

No difficulty is suggested by the words, “and all laws made by the Parliament of the Commonwealth under the Constitution.” The words “under the Constitution” are words of limitation and qualification. ... A law in excess of the authority conferred by the Constitution is no law; it is wholly void and inoperative; it confers no right, it imposes no duty, it affords no protection ... To be valid and binding, they must be within the domain of jurisdiction mapped out and delimited in express terms, or by necessary implication, in the Constitution itself. What is not so granted to the Parliament of the Commonwealth is denied to it.

That was the point I was making earlier. If the power is not expressly set out in the Constitution, then the Commonwealth does not have the power to make those laws. Also, if it is in excess of the powers of the Commonwealth, it has no authority, confers no right, imposes no duty and, even more importantly, affords no protection. I wanted to clarify that for the record.

Senator HARRADINE (Tasmania) (11.10 p.m.)—I am surprised that the minister does not accept this. It is a perfectly reasonable approach. It is very good for the licence holders too. In any event, they will probably do this internally. This simply requires that the licence holder reports to the NHMRC on those matters that it should be aware of as a matter of course. I support the amendment moved by Senator Barnett.

Senator MURPHY (Tasmania) (11.11 p.m.)—Clause 24(5) says:

The conditions specified in the licence may include, but are not limited to...

It does not necessarily mean there has to be any reporting. If the NHMRC Licensing Committee deem that there has to be, they may include it or they may not. I would suggest that some consideration be given to those conditions. It should say that the conditions specified in the licence ‘will include, but are not limited to’. At least there would be a requirement to report some things.

Senator HARRADINE (Tasmania) (11.12 p.m.)—Is it a fact that the legislation now enables the NHMRC Licensing Committee to award a licence for the use of human embryos for, say, five years with no reporting? There is no requirement for the licence holder to report. Is that what we are faced with? If that is the case, it really is very disconcerting, given the fact that the
NHMRC Licensing Committee, in any event, is heavily loaded with industry representatives.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.13 p.m.)—As I indicated before, there will be different types of licences granted and the NHMRC Licensing Committee will set the reporting requirements. It is unlikely to be five years, because there is going to be a review in three years. I would be very surprised if the licensing committee did not require a licence holder to report in a reasonable time. When the three-year review comes up, if it is found that the licensing committee is failing in its duty to get licence holders to report adequately, then that will be dealt with. But we may find that the licensing committee will put, as I said, a much more stringent reporting requirement on one over the other, because they want to watch it more closely or they want to have more information. By prescribing it we may limit the licensing committee in doing what they think is best under the circumstances. The public database will also list the conditions of the licence, and there will be public scrutiny straight away if there is not a reporting process. I can see Senator Murphy about to jump up. At the moment I would think that everybody involved in this is heinous and they are going to do terrible things. But the public will be able to observe this. As I said, there will be a review, and prescribing the reporting conditions may limit what the licensing committee can do.

Senator MURPHY (Tasmania) (11.15 p.m.)—I do not have a view one way or the other on Senator Barnett’s amendment for prescribing a time. At the moment it seems to me that the licensing committee may not require reporting or monitoring at all. It says here that the conditions specified in the licence ‘may’ include, and it goes on to refer to reporting, monitoring and information. All I was suggesting was that the ‘may include’ should be changed to ‘will include’. I am not arguing a case for specifying any time, but rather that there ought to be a requirement to report or to monitor. That is all I am suggesting. That might solve a lot of problems.

Senator BARNETT (Tasmania) (11.16 p.m.)—I will respond to some of the comments that have been made. I appreciate the additions from Senator Murphy, Senator Harris and Senator Harradine. This is the whole point: if no time limit is specified, it is open-ended. That is what we have. It is an open-ended system that allows for who-knows-when for the reporting to come in. We recognise that clause 29 sets up a public database, but what about the conditions? Clause 24(5) says that they ‘may include’. That is not adequate. We are trying to build a system that will build public confidence in the regime that we have. That is where I am coming from. I have recommended six months. I think that is fair and reasonable. Senator Harradine made the point that they will probably be doing it anyway. It is not rocket science or a major transformation of their businesses to be reporting in that time frame. Surely the public has a right to know; that is the point that I would like to put forward. We need to proceed. This is controversial legislation and we should proceed cautiously. That is set out in the COAG agreement, so it is consistent with that. The arguments that have been made are quite strong, and I will leave it there.

Question negatived.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.18 p.m.)—We have been moving along at a slightly faster rate, and I appreciate honourable senators’ contributions to that. I hope we can do the same tomorrow.

Progress reported.

COMMITTEES

Legal and Constitutional References Committee

Report

Senator BUCKLAND (South Australia) (11.19 p.m.)—On behalf of Senator Bolkus, I present the report of the Legal and Constitutional References Committee on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and related matters, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.
The DEPUTY PRESIDENT—Order! It being 11.20 p.m., I propose the question:

That the Senate do now adjourn.

International Day of the Disabled Person

Senator FERRIS (South Australia) (11.20 p.m.)—By agreement and on behalf of Senator Ellison, Minister for Justice and Customs, I seek leave to incorporate a speech which marks the International Day of the Disabled Person, today.

Leave granted.

The speech read as follows—

INTERNATIONAL DAY OF THE DISABLED PERSON

TUESDAY, 3 DECEMBER 2002

In 1999, I was invited by the Developmental Disability Council to participate in the Politician Adoption Scheme. I was subsequently adopted by Stephen Franklin and his family and have found the experience to be both enlightening and rewarding.

Stephen is a young man with Prader-Willi Syndrome and, since my adoption, I have learnt a great deal about the difficulties faced by people with disabilities and their families. Today we recognise the contributions of people with disabilities and also their special requirements.

Through the Politician Adoption Scheme, I have also learnt of the incredible drive and dedication of the parents of people with disabilities as they guide and care for their children in what can sometimes be very difficult circumstances. In the case of Stephen, his mother, Carol, has worked tirelessly to promote awareness of disability issues. Carol co-founded CASA (Committed About Securing Accommodation) with Grace Parker, who is also the parent of a young man with disabilities, and together they have made incredible contributions to the lives of those living with a disability.

Over the weekend, I was fortunate to attend CASA’s last meeting for this year and met a number of parents who were kind enough to tell their stories. For some, the most pressing issue was the unmet need in supported accommodation, for others it was respite and post-school options for their children when they finish full-time school. Another family had privately purchased a home for their disabled daughter to give her security and independence and in doing so, have made themselves ineligible for the Aged Pension.

The stories were all different yet the love and determination and commitment to their children and to disability issues was the common thread that bound them so tightly together. It is important that today we recognise the contributions made by people with disabilities and also by their families who provide such vital support.

Drought

Senator FERRIS (South Australia) (11.21 p.m.)—Last week I visited families in the Bourke area of New South Wales at the invitation of the Isolated Children’s Parent Association to experience at first-hand the devastation of the drought in that region. I stayed with families on farms where it has not rained for well over two years, where emus, kangaroos, goats and feral pigs are taking the last of the grasses and some of the grain, and where the people feel a loss of hope.

An essay entitled ‘So near to nothing’ by Rose Nielsen, aged 11, of Bally Castle Station is a true reflection of how these families are struggling. I would like to share just a small part of her essay, which was a finalist in a national essay competition a few weeks ago. She writes:

The blistering dry soil scorched my tender feet. Watching a trail of ants, I thought that the breeze may be more moist. It wouldn’t do anything. I knew. We had seen this before; Old Mother Nature is such a tease ... everything was so close ... almost ruin ... almost rain ... so near to everything being alright ... so near to nothing.

According to the Bureau of Meteorology, it is the greatest area of country which has ever been without rain for the longest period of time. Last Wednesday, the Prime Minister announced additional drought exceptional circumstances measures for rural Australia and these have been welcomed by areas affected by the worst drought in 20 years. This drought is extensive. It covers much of Australia and is placing a great strain on many Australian farmers and their rural communities. The additional measures announced by the Prime Minister will meet a number of urgent needs in the current drought.

Important elements which will provide real benefit to our farming communities include the following. There will be earlier access to farm management deposits, FMDs,
providing an exception to the 12-month waiting period for access to this fund for farmers in EC declared areas. This will help farmers manage the cash flow impact of the drought and will not affect the overall cost of FMDs in the forward estimates. FMDs have been a very important drought management tool. In fact, 43,000 farmers across Australia now have more than $2 billion in these deposits. It is estimated that the measure, which will allow the early withdrawal of some of these funds, will equal $470 million of forgone revenue in this financial year. Personal counselling services in drought affected rural areas will also be crucial to ensure that people do not make decisions without the best professional advice, and when they do they will be able to do so with privacy and dignity.

Pest management is another vital drought management and drought recovery tool. Animal pests such as kangaroos and other feral animals are grazing so heavily on the sparse vegetation that is left out there that I worry that some of it may never recover. Funding for pest management will assist farmers and communities to deal with this problem through humane culling when the drought breaks. I spent some time with Tim Murray and his family in the Bourke region last week and I strongly support this pest management program. Tim told me that he has been handfeeding stock four months sooner than he expected because the kangaroos have eaten so much of the feed that remained on his property. Overnight, each night, there is the heartbreaking sight of kangaroos coming in to what is left of the family’s front lawn and dying in the rose garden or under the swings where the children play, dying because there is simply nothing else left to eat. It really is a pitiful sight.

The Country Women’s Association emergency aid fund has been funded for an additional $1 million to assist people who may be reluctant to apply to agencies such as Centrelink or Farmhand. Those of us who have spent a lot of time with country people know the sense of pride that they have. Despite the fact that many of these families, as I have said, have been without any rain for 2½ years, the consistent theme is that they do not want charity. They do not want handouts; they want understanding. They certainly need some assistance in some vital areas, but they do not want charity. The CWA, as all of us know, do an excellent job of providing real support for families in our regional and rural communities, and I know that they will use these extra funds very wisely. I have already had talks with Marie Lally, the National President of the CWA, who comes from my home state of South Australia. I know that the $1 million that was made available last week will be used to brighten the Christmas of many families affected by the drought.

In addition to suggestions from the CWA and the Isolated Children’s Parents Association that the back bench committee sent to the Prime Minister during the last parliamentary session, there are other relatively small but important changes that would streamline the flow of assistance to some of these families. These include ways to help people with the payment of boarding fees for their children. Many of these children have been students of distance learning, with a classroom in the family home or on the front lawn. To have an opportunity to go away to school, to finish their education and to have the same opportunities for a tertiary education as others do are incredibly important to these families. It is heartbreaking to hear them contemplate bringing their children home to do distance learning because they simply do not have the resources to continue to pay the boarding fees.

The changes to the exceptional circumstances measures include looking for ways to give them a short break. It could be to take the children to a sporting event, to see the cricket or to go to a regional sporting event. It could be to see whether farmers who have retired in the district but who have an understanding of this country are able to step in to manage the farm for a couple of days just to give those people a break before Christmas. We are looking for ways to provide respite teaching for the home teacher—usually the mother—when the children are taught by School of the Air. On one property that I visited a woman from Melbourne had retired and was staying with that family to teach the
children and to help them with some extra study and extra classes just to give the mother a break. This would be a wonderful scheme if it could be broadened and enhanced.

One issue that was raised with me consistently was that, because there will be so little livestock left in the country when the drought does eventually break, there is a concern about restocking properties. There is no doubt that because this drought is so widespread there is very little agistment on mainland Australia for farmers to send breeding stock. When this drought breaks, there will be a real demand for quite innovative financial packages to enable properties to be restocked and returned to profitability.

There is no doubt though that rural families are a resilient group with their own way of overcoming disadvantage. For example, the community that I visited just a few days ago held a function, with candles and the best silver they could find, at the bottom of an 800-acre storage dam which is now completely dry. During these tough times on the land we should never forget the great beauty that our remote areas hold. Sally Bryant, a journalist at the Western Herald in Bourke, said to me as I left the town last week, ‘Remember that once you have been over the North Bourke Bridge you will always return.’ And I will.

**Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002**

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.29 p.m.)—I would like to take this opportunity to thank the Senate Legal and Constitutional References Committee and its staff for their hard and thorough work in preparing the report into the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, which has been tabled tonight. I have only had a chance to quickly look through the recommendations of the committee. They look sensible and balanced. I particularly welcome the fact that they appear to be largely bipartisan. I think everyone agrees that our response to the threat of terrorism has to be strong, effective and consistent with democratic values and freedoms. However, as it stands, the ASIO bill has the balance wrong. The opposition is persuaded that the intelligence gathering powers of ASIO should be enhanced, but not through a police-like detention regime. ASIO can do its job properly and gather vital intelligence without having to detain people for extended periods. We propose a questioning regime, not a detention regime, and we propose such a regime with strong safeguards. The regime must be broadly consistent with other questioning regimes employed by Commonwealth and state law enforcement agencies such as royal commissions, the NCA and state crime commissions. After all, why should ASIO have weaker powers to interview people in relation to terrorism offences than those bodies have in relation to corruption or corporate crime?

I would like to take the opportunity now to briefly outline in more detail Labor’s position on the ASIO bill. The first issue is in relation to the idea of a questioning regime, not a detention regime. Warrants for questioning should be initiated by the Director-General of Security, who should seek the Attorney-General’s consent to apply for the warrant. The Attorney-General must be given a draft and supporting material. Before giving consent, the Attorney-General must be satisfied that the warrant is absolutely necessary and that questioning the person would be more effective than other methods of collecting intelligence. All questioning must take place before a prescribed authority. The opposition believes that a panel of retired senior judges should be established to serve in that role. They could issue warrants, supervise questioning and rule on matters raised by ASIO during questioning. Using a panel of retired judges who have, for example, 10 years service on a superior court has the advantage of removing serious concerns over the constitutionality of using current federal judges as the issuers of warrants, while boosting community confidence in the accountability of the new regime.

It is fundamental to the opposition that this questioning regime should not apply to anyone under the age of 18. Children should not be subjected to ongoing questioning by
an intelligence agency. The government proposes the questioning regime only apply to 14- to 18-year-olds if they are suspected of offences. That is, the government wants children questioned for up to seven days by ASIO. Frankly, that is unacceptable. The PJC unanimously recommended that the provisions of this bill not apply to anyone under 18 years of age. It is more appropriate that, if anyone between the ages of 14 and 18 is suspected of committing a terrorist offence, they should be arrested, interviewed and dealt with by police with the full protection offered to children under the criminal law. As usual, ASIO should be able to access information from those interviews.

The second issue is in relation to questioning. We have listened carefully to the evidence presented to the Senate committee by agencies, lawyers’ associations and community groups. The opposition has come to the view that, with appropriate and strong safeguards, ASIO should ask the questions during interviews. Labor supports five significant safeguards for questioning. Firstly, the questioning would be supervised by an experienced retired judge. Secondly, the warrants would be for a limited period and for questioning only. Thirdly, the person being questioned would have a lawyer. Fourthly, the AFP would be responsible for all the logistical arrangements. Fifthly, the interviews would be videotaped.

With these safeguards in place, it is not only reasonable but appropriate that questioning for intelligence over possible terrorist activity is done by experts who know their brief and whose responsibility it is to investigate such matters. The opposition strongly believes that the legislation must include the maximum time a person can be questioned and provisions ensuring that, once questioning is finished, a person is free to leave. The time for questioning under the warrant should be broadly modelled on the investigation periods set out in the Commonwealth Crimes Act. It is imperative that the time limits should not be such as would turn a questioning regime into a detention regime. We must remember that we are dealing with people not suspected of any criminal offence, and they should not be treated worse than suspects of very serious crimes.

The third issue that I would like to touch on is the written statement of procedures governing questioning. The opposition supports the proposed process for developing the statement of procedures governing questioning, but that statement should be a disallowable instrument. The bill should include a schedule of the matters to be included in that statement. Without going into detail, the schedule should include items such as warrant issuing procedures, details of the prescribed authorities’ responsibilities, details of the conduct of interviews—including time breaks in questioning, interview methods, means of recording and so forth—and, importantly, the entitlements of a person while in custody, such as access to translators, meals, rest periods and privacy.

The fourth issue I would like to touch on is what uses can be made of information. Like under other questioning regimes, such as royal commissions, the NCA, state crime commissions and ASIC, people being questioned should not have the right to silence, but anything they say cannot be used against them. Information obtained can only be used against others. That is, there is use immunity but not derivative use immunity for the information.

The fifth issue is the right to have lawyers. A person being questioned should have the right to legal representation of their own choice and a right to private consultation during questioning. The opposition accepts that certain lawyers may prejudice an investigation and, provided the prescribed authority is satisfied, a person could be denied their lawyer of first choice. In such circumstances the prescribed authority should assist the person to locate another lawyer. Additionally, if there were a real and immediate threat to public safety, questioning could commence before the arrival of a person’s lawyer. The prescribed authority would have to be satisfied of this and of the fact that the other four safeguards that I mentioned earlier would be in place for the short time period before a lawyer arrived.

Finally, I want to touch of the issue of a sunset clause. Consistent with the unanimous
recommendation of the PJC, there should be a sunset clause in this bill. These are significant new powers for ASIO, justified by the current enhanced threat of terrorism. We should not be giving ASIO an open cheque. It is appropriate that these powers be given a time limit and it is appropriate that the government of the day be required to make the case to parliament for their extension. Our most important defences against terrorism are comprehensive and effective Commonwealth and state laws enforced by properly resourced police, security and intelligence services.

ASIO is our most important security and intelligence agency. But Labor is deeply concerned that the secret detention regime proposed by this bill would undermine ASIO’s status in the community and its ability to effectively gather intelligence. Our approach is constructive and principled, and I urge the government to respond positively to our proposals and to the recommendations of the Senate Legal and Constitutional References Committee.

International Congress on Child Migration

Senator MURRAY (Western Australia) (11.39 p.m.)—I thought that tonight was the open adjournment, so my speech is slightly longer than 10 minutes. I have spoken to the two duty whips and both have indicated that at the conclusion of my 10 minutes I would be able to incorporate the rest of my speech. So I will seek leave to do so at that time.

I want to address the Senate on the first International Congress on Child Migration—a historic event which occurred in October of this year. The first International Congress on Child Migration was held in New Orleans and provided a much needed forum to examine and learn from the past experiences of child migration policies. Organised by the Child Migrants Trust, the International Association of Former Child Migrants and their Families and the Nottinghamshire County Council, I was honoured to have been amongst the fine keynote speakers to address this congress.

International academics, practitioners and policy makers in the fields of psychology, psychiatry, law, politics, human rights and history imparted an impressive range of information regarding all aspects of child migration. The effects of separation from family members and the misery resulting from the widespread cruel treatment of these children, including criminal assaults, were a particular focus. The congress heard of the contemporary forms of illegal child trafficking whereby children are used as soldiers, as slave labour and for sexual exploitation, as well as the former child migrant schemes identified as state-sanctioned child trafficking. Unaccompanied child refugees and asylum seekers and inter-country adoptions were also addressed. Copies of the congress papers are available from the Child Migrants Trust.

A particular emphasis of the congress—and one that my address focused on—was how the experience of childhood trauma, exile and abuse impacts on people’s lives and on society. You do not have to be a child migrant to experience the impact of it, and the scale of it makes for a major problem. Last century it is estimated that 250,000 children were institutionalised in Australia. Through examining this population when older, I would not be exaggerating by stating that 10 years of abuse will often lead to 50 or 60 years of problems. This reality became glaringly obvious during the 2001 Senate inquiry into child migration in Australia, when older child migrants appeared before the inquiry as witnesses and were questioned. The ability to create and maintain satisfying relationships, the capacity for effective parenting, the capability to undertake work and one’s sense of identity are all fundamentally damaged. Adult lives are plagued with unemployment and welfare dependency, dysfunctional and failed relationships, homelessness and substance abuse, crime and prostitution, and even suicide. These are not just problems for the individuals or families concerned; they are societal problems that require enormous expenditure from the public purse. It is vital to make this connection. It is one thing to make the moral and emotional connection, but until the light goes on about the economic connection little will be achieved in this pressing policy area.
Take substance abuse alone, which is a common consequence of child abuse. A 1995 report prepared for the Department of Human Services and Health, entitled *Quantification of drug caused morbidity and mortality in Australia*, reported that alcohol is associated with 50 per cent of assaults, 44 per cent of fire injuries, 34 per cent of falls and drownings, 30 per cent of car accidents, 16 per cent of child abuse, 12 per cent of suicides and 10 per cent of machine accidents.

Consider criminal behaviour. The Child Protection Council in New South Wales reported in 1992 that the probability of future delinquency, adult criminality and arrest for a violent crime increased by around 40 per cent for people assaulted and neglected as children. Other Australian studies have found that a high percentage of the prison population is made up of people who as children were victims of sexual and physical assault, abuse and neglect.

Not surprisingly, these Australian research results are replicated in other countries. Research published in 2000 in the Focus Ireland report, entitled *Left out on their own*, reveals quite shocking results. On leaving different forms of care after six months and then after two years, researchers found that 41 per cent had suffered sexual abuse while in care; the same proportion had experienced domestic violence; a similar percentage had physical or learning disabilities or mental health problems such as clinical depression, eating disorders, or suicidal tendencies; and 25 per cent had been placed in care inappropriate to their needs. For example, children suffering from being sexually abused were placed in detention units as if they were the perpetrators and not the victims—clearly a form of secondary abuse. Sixty-eight per cent of those leaving health board care and a third of those coming out of special schools had experienced homelessness; 66 per cent of those who had left special schools had ended up in prison or another place of detention within three years; after two years, over 40 per cent of those who had been to special schools and 30 per cent of those coming out of health board care had addiction problems; and 14 per cent of those who had been in health board care were involved in prostitution.

On reporting this research in the *Irish Times* on 10 October 2000, Fintan O’Toole remarked:

The State ... had been remarkably good at taking vulnerable, neglected and abused children and turning them into drug addicts, prostitutes and criminals.

Weekly, sometimes daily, we read of children in crisis. The *Courier-Mail* ran articles in January of this year about a damning review of Queensland’s child protection system. The *At what cost* report claims that this system operated in constant crisis and that there was mounting evidence that the government was failing to ensure the safety and wellbeing of children, a problem linked to years of under-resourcing.

With New South Wales in the grip of a child abuse crisis, the *Sydney Morning Herald* reported on the parliamentary inquiry into child protection services held last May, in which the Commissioner for Community Services, Robert Fitzgerald, stated that this state’s child protection system was ‘manifestly incapable of delivering’. And who can forget the report prepared by the New South Wales Child Death Review Team, which found that one-third of the 60 children who had died after fatal assaults were already known to the child protection system as being at risk.

In my own home state, the *West Australian* newspaper on 9 November reported on remarks made by the Director of the Institute for Child Health Research at the University of Western Australia, Professor Fiona Stanley. Addressing a national childhood conference in Melbourne, she claimed that since 1970, rates of childhood crime, neglect, sex abuse, mental health disorders, drug abuse, obesity and teen suicide have worsened. For instance, one in five children aged between 12 and 16 have significant mental health problems, male teen suicide rates have quadrupled since the 1960s, the rates of juvenile crime have ballooned and there is a growing welfare dependence of children. Moreover, the Kids First Foundation found last year that 59 per cent of children counselled by its services had experienced more than one kind of abuse.
Clearly, the associated costs to society are critical. Although it seems obvious that spending much more money on lessening the effects of child abuse will lessen the long-term social and economic cost to society, this is just not happening. Accordingly, the first resolution drafted from the first International Congress on Child Migration states:

Congress calls upon the United Nations and all Governments to recognise that the results from trafficking or forced migration can lead to a lifetime of adult problems with severe social and economic costs...

It continues by requesting:

Those Governments ... fund the research necessary to quantify the scale of children and adults affected; and the likely social and economic costs; and then to combine to develop effective and practical policies to address those problems.

Governments, through their various services and agencies, need not only to be aware of the economic and social consequences of family disruption, child abuse and neglect but must act soon to lower the huge costs that future governments will otherwise bear. Let us learn from history and the research available to turn around the high incidence of child sexual and physical assault, child abuse and neglect, and to repair as far as we can those already harmed.

The alternative is a generational continuance of antisocial, dysfunctional and criminal behaviour for which more high-cost health and welfare and more prisons will be required. Just recently, on announcing an increase in the budget for foster care, the Victorian Community Services Minister, Bronwyn Pike, acknowledged that every dollar spent on children in their formative years saved $7 later on.

A good beginning would be for the Howard government to act on the UN Convention on the Rights of the Child and to incorporate its provisions into domestic law. Ratified by Australia in 1990, this convention provides the right concepts for addressing the needs of children and young people. Sadly, however, nothing has been done since its ratification. Although a major obstacle to full implementation of the Convention on the Rights of the Child is the separation of powers between the state and federal arenas, if the states will not play ball, the Commonwealth can and must enact legislation to give effect to the convention, even if it means overruling any state laws.

Currently, we have eight sets of child protection laws each with different definitions of maltreatments and notification methods administered by different agencies and adjudicated by different courts. According to the Family Court's Chief Justice, Alastair Nicholson, this situation means that children are not adequately protected from violence and maltreatment and he has called for the states to hand over sole responsibility to the federal government. A national strategy on child protection matters must be devised. This would require bipartisan political support and extra funding from corporations and non-government welfare agencies.

I seek leave to incorporate the remainder of my speech.

Leave granted.

The speech read as follows—

One similar to Britain's Sure Start Scheme that provides parenting classes, early childhood education and family support services could be considered.

We could also follow the legislative lead of the British Government by extending the state's duty of care to its wards until the age of 21 instead of 18. More services could then be provided, including help through higher education. This would considerably enhance the life chances of state wards.

Now is the time for policy-makers to show some initiative to redress this unjust state of affairs for Australia's children.

Indeed, community concern confirms the need for action. New research conducted by Clemenger Communications—titled 'The Silent Majority Four' reveals that three of the top five issues of primary concern to Australians in late 2002 relate to child sexual assault and abuse.

I conclude by citing from the Australian's insightful editorial on 10 June 2002. It begins by stating that: "Something is terribly amiss when society can write off its vulnerable children", and continues later with these words:

We will not be able to completely prevent violence against children, no matter what protection services do. But that's no excuse for governments to sit on their hands. Where bureaucracies have been found wanting—and that is in most states—
their approach must be scrutinised and more resources must be found to help protect children at risk.

**Suicide: Older Males**

Senator MASON (Queensland) (11.50 p.m.)—I rise tonight to speak about a sad topic but one, nevertheless, of great importance to the people of Queensland and indeed to all Australians: the continuing epidemic of suicide and, in particular, its impact on older men in our community. The suicide rate among younger people has been falling for the past few years. Since 1997 there has been a 35 per cent decrease in suicides in the 15 to 24 age group and the rate is now at its lowest in a decade. That is good and welcome news.

Unfortunately, the same cannot be said for older age groups. Men of all ages are far more likely than women to take their own lives, particularly those living in rural communities. While the gap between male and female suicide rates narrows as people get older, men over the age of 55 are still at least three times as likely to take their own lives as are women of the same age. This tragic state of affairs has recently been brought to my attention by Mr Jack Backer of the Queensland Division of the Association of Independent Retirees. Mr Backer feels very passionately about this issue and is campaigning to educate the community about this epidemic that is costing the lives of so many older Australians.

Suicide is a tragedy in so many different ways. On a personal level it represents the final, terrible step for those who feel that they have lost their struggle with life’s problems. It deeply affects the families and friends of those who have taken their own lives. It imposes a great cost on society, which loses so many of its most sensitive and vulnerable members, both young and old. The high suicide rate is also an indictment on our society for its inability to help those who desperately need that help, to offer hope for those who feel helpless, and to rescue those who feel lost.

Suicide is a complex issue. Many different factors contribute to a person’s decision to end his or her life. Different factors, too, affect different age groups. Younger people are more likely to commit suicide because of an inability to fit in with peers or because of family problems. Many of us have been hurt, as I have been hurt, by the suicide of young friends whose cries for help we did not hear or did not understand. For older Australians, health problems, particularly of a chronic or terminal nature, are more likely to cause them to contemplate ending their lives. The death of a spouse of many years and the loneliness and isolation that follow also often lead to depression and then to suicide.

It is encouraging to note that suicide and suicide prevention are now receiving much more attention both from the government and from within our community. Many useful initiatives are now in place to address suicide as well as, more broadly, the epidemics of mental illness and depression that contribute so much to suicide. Under the National Suicide Prevention Strategy $48 million has already been committed over five years, between 1999 and 2004. The government has recently made a commitment to extend the strategy until 2006. Then there are specific initiatives such as beyondblue, the national depression initiative, which provides education and information regarding disability associated with depression and related illness. Ultimately, beyondblue aims to reduce the impact of common mental disorders, such as depression and anxiety, on the Australian community.

But, as with so many other aspects of life, we have to recognise that there is only so much that the government and its agencies can do. In the end it is up to each and every one of us to help and to try to make a difference. Mr Backer writes in his pamphlet about suicide:

**Prevention is the only cure!**

He goes on to say:

Best of all we can look at our neighbours and may discover the lonely old man, who lost his wife and seems to be withdrawn from social contact. His garden is very likely to be in a mess. Invite him for a cup of tea or coffee. Mow his lawn for him or do some shopping with him and make him feel he is not alone in the world.

That is good advice that we should all heed. It is up to us to notice and not to turn away; it is up to us to notice and to care. Every sui-
cide is one too many. Every one of us can be a lifesaver.

National Library of Australia

Senator TIERNEY (New South Wales) (11.56 p.m.)—I rise tonight to bring to the attention of the Senate the role of a great Australian cultural institution: the National Library of Australia. On 22 October the Senate considered the annual report of the NLA. As I had an opportunity to speak only briefly on that occasion and my time expired before I could conclude, I wish now to continue those remarks. Previously I highlighted how the technological revolution—in particular, digitisation and the Internet—now provides us with the means of creating access to a treasure trove of information. Through satellite, optic fibre and new wireless technology, we can now deliver to individual homes or to local libraries for those who cannot afford the technology. The potential now exists to break down the urban-rural divide and the rich-poor divide in terms of access to information technology.

When I came to this parliament in the early nineties, IT was an area of great interest to me. At that time you could see that Australia was on the developing edge of what the US Vice-President Al Gore called ‘the information superhighway’. A person who influenced me greatly at that time was Eric Wainwright, the Deputy Director-General at the National Library of Australia. He gave me a lot of guidance for a study leave program in 1994. I went to the United States to look at the emerging information age. It was an eye-opening experience, particularly going to companies like Hewlett Packard, AT&T, the Bells, and a whole range of other top information providers, as well as sitting in on a number of think tanks in Washington.

When I came back to Australia, the Internet was very much in its early stages. People who were involved in the Internet at that time were basically academics, people at the top of business and also people in government. The Internet was not operating very much out in the community at all. At that time I made a series of Senate speeches on the coming information age. That was eight years ago. It is just amazing what changes have occurred in society in that time. In 1994 people would ask me what the Internet was and now people give us their home page or their web site. The revolution in eight years is quite dramatic. It is terrific to have been involved with the National Library through that period of very rapidly changing technology. What I love about the National Library is that in this information age there is such a broad range of possibilities in which to connect the fountainheads of knowledge to the community. Doing that more effectively is the real challenge before our nation. It is a challenge for government and it is a challenge for the National Library of Australia.

The way they are developing IT at the NLA is marvellous. We are progressively moving to a point where people, no matter what their level of income or their location, through a computer at home or at a public facility, can easily access information. Access to knowledge is a great protector of our democracy and our way of life. Ignorance and prejudice are its enemies. The more we accept developing access the more we have the opportunity of developing a fair and just society. The National Library has played a critical role as the primary source of information for this development. Now, with new technologies being able to link people to this great range of information, the portents for the future are that much better. One thing that has really enhanced the reputation of the National Library is the way in which it has spread not only print information but also cultural information. Finally, I would like to pay special tribute to the very highly professional staff at the National Library.

Senate adjourned at 12 a.m.

DOCUMENTS

Tabling

The following government documents were tabled:


Tabling

The following documents were tabled by the Clerk:


Taxation Determination TD 1999/66 (Addendum).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Environment: Mission Beach
(Question No. 558)

Senator Harris asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 19 August 2002:

Can copies of the following documents be provided:

(a) Mission Beach Local Marine Advisory Committee (LMAC) minutes for the years 1999, 2000, 2001 and 2002;
(b) the list of invitees to LMAC, and Great Barrier Reef Marine Park Authority (“GBRMPA”) meetings and social functions for the years 1999, 2000, 2001 and 2002;
(c) GBRMPA Board agenda and minutes from July 2001 to date;
(d) recommendations and papers from the LMAC and the GBRMPA relating to the proposed Mission Beach trawl closure;
(e) the formal consultation process undertaken in relation to the proposed Mission Beach trawl closure; and
(f) all correspondence, faxes, e-mails and ministerial briefing papers between the LMAC, the GBRMPA and the Minister and his staff relating to the proposed Mission Beach trawl closure.

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

(a) These Minutes have been released with all personal information deleted. The Privacy Act 1988 provides that a record keeper who has possession or control of a record that contains personal information shall not disclose the information unless the disclosure is required or authorised by or under law. “Personal information” includes information about an individual whose identity is apparent, or can reasonably be ascertained, from the information. As the disclosure of the personal information is not required or authorized by law, deletion of all personal information facilitates the release of the documents without breaching the privacy of named individuals.

(b) Due to the nature of the document sought, the release of this information is likely to result in the breach of the privacy of named individuals. The list of invitees has not been provided.

(c) There have been three meetings of the Marine Park Authority (“MPA”) in this period. The minutes from the last meeting, the 185th meeting of the MPA, have not as yet been adopted by the MPA and are not available for release. The Minutes from the 184th and 183rd meetings of the MPA do not make reference to the Mission Beach trawl closure and fall outside the scope of the request.

(d) Documents falling within the scope of this request also fall within “correspondence, faxes and emails” under item (f) below.

(e) I refer Senator Harris to the Regulation Impact Statement (“RIS”) tabled with the Great Barrier Reef Marine Park Amendment Regulations 2002 (No.1); a copy of this RIS is attached.

(f) In respect of correspondence, faxes and emails falling within the scope of this request, these have been released with all personal information deleted. The deletion of the personal information facilitates the release of these documents without breaching the privacy of named individuals. In respect of the ministerial briefing papers, these are “internal working documents” within the meaning of the Freedom of Information Act 1982 and, as such, have not been released.
REGULATION IMPACT STATEMENT
PROHIBITION OF TRAWLING IN SHALLOW INSHORE WATERS OFF MISSION BEACH
PREPARED BY THE GREAT BARRIER REEF MARINE PARK AUTHORITY

Introduction
The Great Barrier Reef Marine Park (GBRMP) is one of the world’s largest marine protected areas, encompassing a complex array of diverse ecosystems. Because of its large size, diversity and uniqueness, the Great Barrier Reef is an internationally significant ecological resource. As a consequence, it has World Heritage status.

The management of fish stocks in the GBRMP and World Heritage Area (WHA) is the responsibility of Queensland. The Great Barrier Reef Marine Park Authority (GBRMPA), in keeping with its responsibility to protect the natural resources of the GBRMP whilst providing for reasonable use of the Great Barrier Reef Region, contributes to the management of fishing primarily through the use of management zones that restrict certain fishing activities in specific areas.

The East Coast Trawl Fishery is Queensland’s largest commercial fishery in terms of number of operators, level and value of production, and area. The fishery targets prawns, scallops, bugs and squid, with a wide range of other species taken incidentally. Some 170,890 square kilometres of the Great Barrier Reef Marine Park (about 50%) is open to trawling and, historically, about 70% of the effort in the fishery has occurred in the Marine Park.

A recent major research program (1991–1996) on the impacts of trawling in the Great Barrier Reef Marine Park commissioned by GBRMPA and undertaken by the Commonwealth Scientific and Industrial Research Organisation and the Queensland Department of Primary Industries found that trawling has major impacts on the seabed. The study found that for every tonne of prawns taken by a trawler, 6–10 tonnes of bycatch is taken, most of which is discarded. Each pass of a trawl net along the seabed removes 5–25% of seabed life. The impact is cumulative, with 13 passes of a trawl net removing 70–90% of seabed life. The study clearly demonstrated that trawling has a significant adverse impact on marine, particularly seabed, ecosystems and is in line with the findings of similar studies on the impacts of bottom trawling undertaken in other parts of the world.

Following extensive negotiations between the Commonwealth, Queensland and industry, Queensland recently introduced revised management arrangements for the East Coast Trawl Fishery, which made significant improvements to the management of the fishery. These changes included the capping of fishing effort; a reduction in effort of 10.86% via a structural adjustment scheme funded jointly by the Commonwealth and State governments; a further 5% across-the-board effort reduction by industry; the introduction of tradable effort units; effort unit penalties upon trading to compensate for increases in effort due to improvements in technology; the introduction of a satellite-based vessel monitoring system; the closure of areas of the Great Barrier Reef Marine Park where trawling historically had not occurred in order to prevent expansion of the fishery; and the introduction of turtle excluder devices and bycatch reduction devices in trawl nets used in the Marine Park.

What is the problem being addressed?
The issue addressed by the proposed Regulation is the elimination of repeated and extensive fish kills in the Mission Beach area (northern Queensland) as a result of discarded bycatch from trawlers targeting banana prawns in shallow (up to 10m deep), inshore waters.

Such fish kills have occurred at regular intervals since trawling became common in the Mission Beach area in the 1970s. On one occasion in the 1980s, so many fish were washed up on local beaches that a local Shire grader was used to bury the discards. Residents have noticed changes in the abundance and variety of fish off Mission Beach since trawling began.

As a recent example, in May 2001, dead fish were found along a 10km-stretch of local beaches. In addition, a slick of dead fish 600m-1km wide and 3.5-4km long was recorded 2km offshore by the Queensland Parks and Wildlife Service. The density of dead fish in the slick varied, but in some places was as high as 40-50 fish per square metre. The dead fish included dollarfish (Family Leiognathidae), trevally (Carangidae), grunter (Haemulidae), silver jewfish (Sciaenidae), stripies and fingermark bream (Lutjanidae). Such occurrences are unacceptable as part of any fishery that purports to be environmentally sustainable, all the more so if the fishery occurs in the Great Barrier Reef Marine Park and a World Heritage Area, in a prime tourism and recreational region.
Apart from the ecological impacts, such extensive fish kills caused by trawling have an impact on recreational amenity, tourism businesses and the Commonwealth’s reputation as the guardian of a World Heritage Area. The value of tourism to the Queensland economy, in terms of jobs and income, is substantial. Most tourists who visit Queensland come to see one of the natural wonders of the world, the Great Barrier Reef. The occurrence of dead fish on beaches and floating on the water are not the images that domestic and international tourists expect to take home after visiting the Great Barrier Reef World Heritage Area.

**What are the objectives of Government action?**

To prevent the occurrence of extensive fish kills caused by trawlers operating in shallow, inshore waters off Mission Beach, which in turn will:
- protect biodiversity and conserve the natural resources of the Great Barrier Reef Marine Park as required under the Great Barrier Reef Marine Park Act 1975;
- reduce the impact on the recreational amenity of a major tourism area; and
- satisfy the Commonwealth’s stewardship obligations for a World Heritage site.

**Which options for dealing with the problem were considered?**

**Option 1 – The status quo**

Recent changes in management arrangements for the East Coast Trawl Fishery under Queensland fisheries legislation have not addressed the issue of dead fish on beaches in the Mission Beach area caused by trawlers operating in shallow, inshore waters. The mandatory use of bycatch reduction devices in trawlers operating in the Great Barrier Reef Marine Park has not solved the problem. Indeed, the ongoing occurrence of extensive fish kills as a result of trawl discards in the Mission Beach area points to the inadequacy of such devices in significantly reducing fish bycatch in inshore trawl fisheries.

**Option 2 – Industry Self Regulation**

A voluntary code of conduct, introduced by local trawler operators in an attempt to address the problem, has proved ineffective. Any trawler operator with a T1 endorsement in the Queensland East Coast Trawl Fishery can trawl in the area and can choose to adopt or ignore any local codes of conduct.

**Option 3 – Proposed new Regulations**

To prevent the occurrence of fish kills caused by trawlers targeting banana prawns in shallow, inshore waters off Mission Beach, it is proposed that a new Regulation be introduced to prohibit trawling in shallow, inshore waters in the area.

The proposed trawl closure (see map) covers an area of about 400 square kilometres. It incorporates some existing Great Barrier Reef Marine Park zones in which trawling is prohibited already; these zones collectively make up some 130 square kilometres. In addition, some 16 square kilometres in the proposed trawl closure are closed to trawling under Queensland fisheries legislation. Consequently, the area in the proposed closure that will be closed to trawling for the first time is 254 square kilometres or about a seventh of 1% of the 170,890 square kilometres of the Great Barrier Reef Marine Park currently open to trawling.

Although there is broad agreement on the need for a trawl closure, the extent of the closure was the subject of intense debate and involved consideration of closures proposed by the two community-based, local marine advisory committees (LMACs) at Mission Beach and Hinchinbrook, a proposal submitted by the Queensland Seafood Industry Association and the recommendation of the Great Barrier Reef Marine Park Authority (GBRMPA).

The Mission Beach LMAC proposal included all of Rockingham Bay, located immediately to the south of the proposed trawl closure. The Hinchinbrook LMAC supported the Mission Beach LMAC’s proposed trawl closure north of Dunk Island, but proposed an alternative closure boundary running about 4km offshore in Rockingham Bay, immediately north of Hinchinbrook Island. The Hinchinbrook LMAC’s rationale for its proposed closure boundary in Rockingham Bay was that trawling for banana prawns in inshore areas is the primary cause of the fish kills and that the Mission Beach LMAC’s proposal would cause unnecessary hardship to trawler operators targeting tiger prawns in deeper, offshore waters. However, the Hinchinbrook LMAC’s proposal does not include all the shallow areas in Rockingham Bay. Under its proposal, some areas of shallow water would still be open to trawling.

The Queensland Seafood Industry Association proposed a much smaller closure than those proposed by the LMACs.
The closure recommended by the GBRMPA was a compromise between the closures proposed by the two community-based LMACs at Mission Beach and Hinchinbrook. The GBRMPA proposal took into account the bathymetry of the area. Under this option, the area closed to trawling for the first time would have been some 610 square kilometres. It included all shallow inshore waters in Rockingham Bay, but excluded from the closure most of the deeper waters in which tiger prawns occur. Banana prawns typically are caught in shallow, inshore waters to a depth of about 10m, whereas tiger prawns typically are taken at depths of 10-25m. The GBRMPA recommendation was based on achieving the best environmental outcomes by protecting inshore habitat, particularly sea grass beds and dugong habitat, and minimising the potential for fish kills caused by trawlers targeting banana prawns in shallow inshore waters, while at the same time enabling trawlers to continue to target tiger prawns in deeper offshore waters.

Who is likely to be affected?
The primary benefit of the proposed Regulation is greater protection of the natural resources and biodiversity of the Great Barrier Reef Marine Park and World Heritage Area for the Australian and world community.

This has major flow-on benefits to recreational users of the area and the tourism industry, which is focused on providing visitors with an experience of the natural wonders of the Great Barrier Reef Marine Park and World Heritage Area, and contributes substantially to the Queensland and Australian economies.

The value of tourism to the Queensland economy, in terms of jobs and income, is substantial. According to Tourism Queensland, tourism contributes over $6 billion annually to the Queensland economy, $2.4 billion of which is in export earnings, and employs almost 150,000 people.

A study of the economic and financial values of the Great Barrier Reef Marine Park carried out by KPMG Consulting estimated that in recent years (1993/94-1997/98), the gross, annual, financial value of direct commercial tourism use of the Marine Park ranged from $411 million to $507 million. During the same period, the gross, annual, financial value of direct recreational fishing and boating use of the Marine Park was estimated to range from $108 million to $120 million. In comparison, during the same period, the gross, annual, financial value of direct commercial fishing in the Marine Park ranged from $121 million to $149 million. Thus, the combined gross, annual, financial values of direct tourism and recreational fishing and boating use of the Marine Park is more than four times the gross, annual, financial values of direct commercial fishing.

The above estimates of the financial values of the direct uses of the Great Barrier Reef Marine Park do not include consideration of the flow-on impacts or the effects of linkages of these activities with other industries in the Queensland economy. KPMG Consulting extended the direct contribution analysis and considered the indirect or flow-on effects of these activities in terms of output and employment. For the 1994-95 financial year, the total output effects of tourism and recreational boating and fishing ($1,099,300 million) were 5.7 times greater than those for commercial fishing ($193,900 million). Similarly, for the 1994-95 financial year, the total employment effects of tourism and recreational boating and fishing ($14,896 million) were 5.5 times greater than those for commercial fishing ($2,720 million).

The KPMG study clearly demonstrates that tourism and recreational boating and fishing in the Great Barrier Reef Marine Park are worth substantially more to the economy than commercial fishing in the Marine Park both in terms of direct financial value and flow-on effects. Furthermore, tourism and recreational boating and fishing have substantially less impact on the environment than bottom trawling.

The Queensland East Coast Trawl fleet is characterised by a high degree of mobility. Most trawlers involved in the fishery operate in several areas and travel extensive distances while doing so. This characteristic is thought to be a response to the seasonal nature of the various species taken in the fishery. All trawler operators with a T1 endorsement can trawl throughout the Queensland East Coast from the tip of Cape York to the Queensland/New South Wales border. The proposed closure will impact on those trawler operators who target banana prawns in the shallow inshore waters off Mission Beach. However, the proposed closure is very small compared with the area of the Great Barrier Reef Marine Park in which trawlers can operate.

The banana prawn catch in the Queensland East Coast Trawl Fishery is extremely variable (depending on climatic conditions), varying between 300 and 1100 tonnes per year. Typically, banana prawns make up about 6% of the annual catch in the fishery, with 75% of the banana prawns taken south of Ingham,
i.e. in areas south of the proposed closure. Tiger prawns are also taken in the Mission Beach area, usually in deeper offshore waters. The main season for banana prawns is March-May, whereas for tiger prawns it is March-August. Most banana prawns are sold on the domestic market, while most tiger prawns are exported. Current prices paid to fishers by a processor in Mackay, central Queensland, are $14-15 per kg for banana prawns and $19 per kg for tiger prawns.

The proposed Mission Beach trawl closure extends across two 30-minute, logbook-recording grids (I18 and I19 of Queensland East Coast trawler operators’ logbooks). The average recorded catch over the period 1995-2000 for these two grids was 51 tonnes of banana prawns and 108 tonnes of tiger prawns per year. Given existing trawl exclusion zones in these grids, there are about 4000 square kilometres available to trawling. The trawl grounds to be closed under the proposed Mission Beach closure make up about 10% of this area. Trawler operators will be prevented from taking prawns in the shallow water off Mission Beach. Some of the tiger prawn grounds off Mission Beach will be included in the proposed closure, but most of the tiger prawn grounds will remain outside the proposed closure. Since tiger prawns move between the two areas, trawler operators will still be able to access tiger prawns in the offshore grounds.

Under the GBRMPA recommendation, most of Rockingham Bay immediately to the south of the proposed Mission Beach trawl closure would also have been closed to trawling, thereby preventing access by trawler operators to the banana prawn grounds in the shallow, inshore waters of the Bay. Trawler operators would also have been prevented from accessing some of the tiger prawn grounds in the deeper waters of Rockingham Bay.

The average number of trawlers that reported operating in logbook grids I18 and I19 from 1995 to 2000 was 233. Some trawlers targeted banana prawns only, some targeted tiger prawns only, and others reported catching both tiger prawns and banana prawns:

<table>
<thead>
<tr>
<th>Year</th>
<th>trawlers taking banana prawns</th>
<th>trawlers taking tiger prawns</th>
<th>total trawlers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>45</td>
<td>176</td>
<td>203</td>
</tr>
<tr>
<td>1996</td>
<td>52</td>
<td>190</td>
<td>238</td>
</tr>
<tr>
<td>1997</td>
<td>119</td>
<td>221</td>
<td>274</td>
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<tr>
<td>1998</td>
<td>81</td>
<td>212</td>
<td>253</td>
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<td>1999</td>
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<tr>
<td>2000</td>
<td>92</td>
<td>165</td>
<td>206</td>
</tr>
</tbody>
</table>

The results of a recent study (entitled A Guide to the Fishers of Queensland – Town Resource Cluster Analysis and Social Profiles of Queensland’s Commercial Fishing Industry) undertaken by the Cooperative Research Centre for the Sustainable Development of the Great Barrier Reef indicate the relative importance of the area to trawler operators who live in the area and those who come from outside the area. The study was undertaken between August 1999 and April 2000, so its findings can be related to the logbook data for 1999 and 2000.

The analysis was based on questionnaires filled in by 1008 commercial fishers, representing 41.2% of all commercial fishers. Of the respondents, 106 said that they fished in the area that is to be covered by the proposed Mission Beach closure/Rockingham Bay area. Of these, 88 were classified as "roamers" (i.e. they did not live in the area, but fished in the area) and between 62 and 82 per month reported trawling in the area; the remaining 20 said they were "localisers" (i.e. lived in the area and worked in the area) and between 3 and 6 per month reported trawling in the area.

Given that the study was based on 41.2% of commercial fishers, then multiplying by 2.4 would give a rough estimate of the behaviour of all fishers. On this basis, only about 7 - 14 trawler operators, who live and work in the area, actually work the proposed Mission Beach closure/Rockingham Bay closure area each month. On the other hand, 149 - 197 trawler operators, who live outside the area but work part of the time in the area, work in the proposed Mission Beach closure/Rockingham Bay area each month. These figures appear close to the mark because the total number of trawlers that reported in their log books that they operated in grids I18 and I19 in 1999 and 2000 (the period covered by the study) was 222 and 206 respectively. Since this study was undertaken, some 240 vessels have been removed from Queensland East Coast trawl fleet (see below), so the number of trawler operators impacted by the closure will be correspondingly less.

Recent reform of the Queensland East Coast Trawl Fishery has reduced effort in the fishery by some 15% (10% via a structural adjustment scheme, to which the Commonwealth and Queensland governments each contributed $10m). In 1999, there were 750 trawlers operating the East Coast Trawl Fishery.
As a result of the government-funded licence buyback scheme and other mechanisms in the trawl fishery management plan, there are now some 240 trawlers less operating in the Great Barrier Reef Marine Park than there were two years ago.

In essence, today, there are fewer trawlers operating in the East Coast Trawl Fishery and fewer days spent trawling in the Great Barrier Reef Marine Park than there were two years ago. Furthermore, to address the issue of effort creep due to improvements in technology and fishing practices (estimated to be about 3% per year), penalties on effort units are imposed on transfers of licences, transfers of effort units and replacement of fishing vessels. Given that the proposed closure is so small compared to the remaining trawl grounds and that effort in the fishery has been substantially reduced in the past two years, it is unlikely that the proposed closure will cause any significant increase in effort in other areas.

As far as the consumers of local seafood are concerned, any shortfall in the overall catch of banana prawns in the Queensland East Coast Trawl Fishery can be more than made up by the production of banana prawns in aquaculture. Banana prawns are now well established in the Queensland aquaculture industry to the extent that aquaculture production of banana prawns in 2000-01 exceeded the wild catch of banana prawns in the East Coast Trawl Fishery for the same period. Aquaculture production is likely to increase substantially over the next decade. The Great Barrier Reef Marine Park Regulations (Aquaculture) were introduced in February 2000 to ensure that aquaculture developments adjacent to the Great Barrier Reef Marine Park are undertaken in an ecologically sustainable manner.

The inshore area off Mission Beach is a source of broodstock for the leader (black tiger) prawn aquaculture industry in Australia. Leader prawns are not common along the Queensland east coast, but are taken in banana prawn catches in shallow water close to shore. Each mature female leader prawn is capable of producing 250,000-400,000 offspring. Australian prawn hatcheries require 3000-5000 broodstock per year, with 1500 broodstock on average collected each year in the Mission Beach area. In general, trawl operators have not entered the leader prawn broodstock market because most prawns caught by trawling are dead by the time they are sorted from the catch. According to the Australian Prawn Farmers' Association, local prawn hatcheries are finding it difficult to obtain broodstock because most of the estimated 100,000 leader prawns caught each year in the Queensland trawl fishery are usually mixed with banana prawns and sold dead, either fresh or frozen. However, many broodstock leader prawns caught off the Queensland coast are sold overseas where they command a much higher price than locally. Some sources say that as much as 85% of the broodstock leader prawns taken along the Queensland coast is exported. The proposed regulation provides for the issuing of up to five permissions (from the Great Barrier Reef Marine Park Authority) for the collection of live leader prawns in the Mission Beach trawl closure for aquaculture broodstock so that the Australian aquaculture industry is not impacted by the proposed trawl closure.

Consultation
There has been extensive consultation on the proposed trawl closure at a local level.

A trawl closure was recommended by the two, local, community-based groups established by the Great Barrier Reef Marine Park Authority to advise it on local marine issues. These LMACs are representative of their local communities and typically comprise commercial fishing interests, recreational fishing interests, charter boat/fishing guides, recreational boating/yachting interests, conservation interests, Aboriginal interests, tourism interests, local government authorities, progress associations, local user groups involved in the management of natural resources and others who can demonstrate a separate significant stakeholder interest in marine resource matters in the region. Representatives of the Queensland Environmental Protection Agency (including the Queensland Parks and Wildlife Service) and Queensland Department of Primary Industries also attend meetings of these committees.

The proposed trawl closure was discussed at Queensland’s Trawl Management Advisory Committee (established to provide advice to the Queensland Fisheries Service on the management of Queensland’s trawl fisheries) and at the GBRMPA’s Fisheries Reef Advisory Committee (established to provide advice to the Authority on fisheries issues, particularly in relation to auditing fisheries in the Great Barrier Reef Marine Park and World Heritage Area in accordance with the principles of ecologically sustainable development).

The proposed trawl closure was discussed with local trawler operators at a meeting in Innisfail, at which fishing industry representatives from Cairns and Townsville also were present, and at a meeting between the GBRMPA, LMAC representatives, fishing industry representatives and the local State Member of Parliament.
Before the decision on the extent of the proposed trawl closure was finalised, extensive discussions were held between the GBRMPA, the Queensland Seafood Industry Association and the Minister for the Environment and Heritage.

In summary, the local communities in the Mission Beach area support a trawl closure, as do recreational fishers, the tourism industry and conservation groups. Commercial fishers are concerned about any loss of access to local trawl grounds.

**Conclusion and adopted option**

To help safeguard the natural resources of the Great Barrier Reef Marine Park and World Heritage Area and, at the same time, reduce the adverse impacts on the recreational amenity in a prime tourism area, the on-going and extensive fish kills in the Mission Beach area caused by trawlers operating in shallow, inshore waters must be prevented.

It is recommended that trawling be prohibited in the shallow, inshore waters off Mission Beach.

Given the high mobility of the Queensland East Coast trawl fleet, those trawler operators who historically have targeted banana prawns in the shallow inshore waters off Mission Beach and who will be directly impacted by the adopted option will still be able to target banana prawns in most of Rockingham Bay immediately to the south of the proposed closure and continue to operate in other parts of the trawl fishery.

**Implementation and review**

The proposed Regulation will be introduced under the Great Barrier Reef Marine Park Act 1975.

Any fines imposed as a result of the proposed Regulations will be by a court of competent jurisdiction. A person against whom a fine is imposed will be able to appeal if the requirements of the relevant court are satisfied.

As agreed at the 28th Great Barrier Reef Ministerial Council, the Great Barrier Reef Marine Park Authority will audit the performance of the Queensland East Coast Trawl Fishery on an annual basis to determine if it achieves its objective of ecological sustainability within the Great Barrier Reef Marine Park and World Heritage Area. In carrying out the audit, the Authority will apply the National Fisheries Assessment Guidelines developed by Environment Australia. The proposed regulation will be reviewed as part of the Great Barrier Reef Marine Park Authority's audit of the trawl fishery.

The impact of the proposed trawl closure will be monitored closely. If extensions to the closure are needed to avoid on-going problems of fish kills, then extensions to the proposed closure will be considered.

**Superannuation: Commonwealth Benefits**

*(Question No. 758)*

**Senator Sherry** asked the Minister for Finance and Administration, 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. Which Commonwealth agencies is the ANAO report referring to, in key finding 23 and paragraph 3.29, when it states that, ‘as at December 2001, some 30% of employers fail to provide employment details within 10 days of each payday’.

2. Which Commonwealth agencies, if any, is the ANAO report referring to, in key finding 23, when it states that ‘ComSuper has experienced delays from some employers not providing compliant data for over 12 months’.

3. In figure 3.10 the ANAO report lists four agencies (the Australian Customs Service and the Departments of Defence, Foreign Affairs and Trade and Veterans’ Affairs) that have experienced high rates of failure to report new members and/or changes in member contribution rates to ComSuper: (a) which other agencies, if any, have experienced comparable rates of reporting failure; and (b) what steps have been taken at an agency level to address these failures.

4. Which agency is the ANAO report referring to when, in paragraph 3.10, it states ‘that, for 12 weeks in 1999-2000, one agency failed to forward to ComSuper on time the payments for member contributions, productivity contributions, additional cover, and employer liability’ and that ‘ComSuper charged the agency $75 736 [in] penalty interest’.
(5) In paragraphs 4.15 and 4.17 the ANAO report notes that, in June 2001, some 43% of benefit applications were pending, due to either benefit application problems or problems with the member’s record: (a) what proportion of these pending applications was a result of problems with members’ records; (b) how many benefit applications are currently pending; (c) what proportion of total benefit applications does this represent; (d) what proportion of the current set of pending applications is a result of problems with the members’ records; and (e) what was the average time that benefit applications spent pending in 2001-02.

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

(1) ComSuper’s standard for the receipt and processing of superannuation data is 10 business days from the relevant payday. For payday 6 December 2001 (the payday used by ANAO in its report to illustrate the examples of late receipt of data), Commonwealth agency data not received and processed within that standard was as follows:

(a) Received 1 business day outside the standard:
   Family Court of Australia

(b) Received and processed 13-15 business days outside the standard:
   Administrative Appeals Tribunal
   Australian Institute of Criminology
   Australian Prudential Regulation Authority
   Australian Radiation Protection and Nuclear Safety Agency
   CrimTrac
   Food Standards Australia New Zealand
   Land and Water Resources Research and Development Corporation
   National Archives of Australia
   National Gallery of Australia
   National Library of Australia

(c) Received and processed 16-26 business days outside the standard:
   Australian Institute of Health and Welfare

(d) Received and processed 45-50 business days outside the standard:
   Australian Protective Service – Payroll function returned to employer (previously sourced to Attorney-General’s Department). Problems with handover not resolved until February 2002.
   Department of Health and Ageing – Issues with superannuation reporting (following implementation of new pay system) not fully resolved until February 2002.

Although the ANAO report cited that 30% of employers failed to provide the data within the standard for payday 6 December 2001, it affected only 10% of member data. ComSuper records show that these agencies now consistently provide it timely data.

(2) The following Commonwealth agencies did not provide compliant data for over 12 months:
   Agriculture, Fisheries and Forestry – Australia
   Implemented new payroll system in July 1998, data not processed until July 1999
   Australian Federal Police
   Implemented new payroll system in July 1998, data not processed until July 1999
   Department of Foreign Affairs and Trade
   Implemented new payroll system in July 1999, data not processed until August 2000
   Department of the Treasury
   Implemented new payroll system in July 1998, data not processed until August 1999

(3) (a) The Department of Family and Community Services was the only other agency identified with significant reporting issues of a similar nature, relating to new member reporting. Those issues were promptly solved by that agency, with all missing data subsequently supplied to ComSuper.
Comments on the steps taken by the four agencies identified by the ANAO were provided by each agency in their responses to the draft report and are reproduced at paragraph 3.11 of the final report. Further comment is contained in answers to the Senator’s questions (759-762) directed to Ministers responsible for each of the agencies concerned.

The agency referred to by the ANAO was the Department of Employment and Workplace Relations.

(a) Of the cases pending as at 30 June 2001, 19.7% related to instances where there was a problem with the member’s record (80.3% related to incorrectly completed/incomplete benefit applications).

(b) As at 15 October 2002, 87 cases.

(c) As at 15 October 2002, 30.1% of total contributor benefit applications.

(d) During September 2002 (the last available figures) 12.6% of benefit applications were pending because of problems with the member’s record.

(e) 13.3 days.

The Commissioner for Superannuation has advised that he is working with agencies to ensure ongoing improvements in the accuracy and timeliness of agency reporting of member data. I am advised that all recommendations made by the ANAO have either been implemented by ComSuper or are in hand.

Environment Protection and Biodiversity Conservation Legislation: Community Consultation

(Question No. 864)

Senator O’Brien asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 7 November 2002:

With reference to the Minister’s answer to question on notice no.734:

(1) (a) When will the details of the full-time position at the National Farmers’ Federation (NFF) be finalised; and (b) when will this position commence.

(2) Can the Minister confirm the commitment to fund this position was made without consideration of its budgetary impact; if consideration has been given to its budgetary impact, can details be provided.

(3) Will the Minister’s stated expectation that this position will facilitate communication with non-NFF member organisations be realised in the contract arrangements that create the position.

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

(1) (a) 18 November 2002.

(b) 19 November 2002.

(2) Funding for the position is provided for under the Budget allocation for implementation of the Environment Protection and Biodiversity Conservation Act 1999.

(3) Yes.