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

PERSONAL EXPLANATIONS

Senator ABETZ (Tasmania—Special Minister of State) (9.30 a.m.)—Mr President, I seek leave to make a personal explanation.

Leave granted.

Senator ABETZ—Yesterday in question time my attention was drawn to an inclusion in Hansard attributed to me. This has since been repeated in the media. I have checked the Hansard. It is alleged that I said, ‘Is that Prime Minister Muppeteer?’ That term, of course, has no meaning and makes no sense. More importantly, I did not say the word ‘Muppeteer’; I said ‘Mahathir’. I understand that the words sound very similar, and in the—put to it politely—active participation of many senators at that stage of question time it is quite understandable how Hansard would have made such a mistake or simply misheard. I have requested Hansard to ensure that their record reports what I actually said. I thank the Senate.

Senator BROWN (Tasmania) (9.32 a.m.)—Mr President, I seek leave to make a short comment on the statement by the Special Minister of State.

Leave not granted.

Senator BROWN—I will take note of that, I am sure, in the coming week.

NOTICES

Presentation

Senator TCHEN (Victoria) (9.32 a.m.)—I give notice that on the next day of sitting I shall withdraw business of the Senate notice of motion No.1 standing in my name for four sitting days after today for the disallowance of the Public Service Amendment Regulations 2002 (No.1), as contained in Statutory Rules 2002 No. 214 and made under the Public Service Act 1999. I seek leave to incorporate in Hansard the committee’s correspondence concerning these regulations.

Leave granted.

The correspondence read as follows—

Public Service Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.214
19 September 2002
The Hon Tony Abbott MP
Minister for Employment and Workplace Relations
Parliament House
CANBERRA ACT 2600
Dear Minister
I refer to the Public Service Amendment Regulations 2002 (No. 1), Statutory Rules 2002 No. 214. These amendments specify the procedure to be followed in relation to the attachment of salaries of a Secretary, the Head of an Executive Agency, or an APS employee, to satisfy a judgement debt. As part of the procedure, subregulation 8A.4(1) provides that an Agency Head may appoint a paying officer for the purposes of making deductions from a debtor’s salary. This regulation does not provide for the situation where the Agency Head is the debtor. Under subregulation 8A.1(1) a ‘debtor’ can include a Head of an Executive Agency. The Committee therefore seeks advice about the procedures that are to be followed where an Agency Head is in the position of considering whether deductions should be made in relation to his or her own debt.

The Committee would appreciate your advice as soon as possible, but before 18 October 2002 to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG 49, Parliament House, Canberra.

Yours sincerely
Tsebin Tchen
Chairman

---

Senator Tsebin Tchen
Chair
Standing Committee on Regulations and Ordinances
Room SG 49
Parliament House
CANBERRA ACT 2600
17 Oct 2002
Dear Senator Tchen
Thank you for your letter of 19 September 2002 concerning the Public Service Amendment Regulations 2002 (No. 1) Statutory Rules 2002 No. 214.
The following information is provided in response to your question.

Under the Regulations an Agency Head must decide whether or not deductions should be made from a person's salary to satisfy a judgment debt and if so, to appoint a paying officer to facilitate the process. The Regulations do not prescribe separate procedures to be followed where an Agency Head is in the position of considering whether deductions should be made in relation to his or her own debt.

From an operational perspective, it is not likely that an Agency Head would make such a decision. Under section 9.3 (3) of the Public Service Regulations 1999 an Agency Head can delegate to a person any of the Agency Head's powers or functions under the Regulations and it would be unusual for an Agency Head not to make such delegations.

It would be inappropriate for an Agency Head to consider whether a salary deduction should be made in relation to his or her own judgment debt. If the circumstance arose, then for reasons of probity, the Agency Head should delegate to another person any decisions in respect of their own judgment debt. If any Agency Head chose not to delegate in such circumstances where their own judgment debt was at issue, the integrity of the Agency Head might be questioned.

The position of Agency Head carries with it a strong moral duty and legislative obligation to act in accordance with the APS Values and Code of Conduct and to maintain the trust given to them through their position. Such trust and dependence in people who maintain senior positions is commonplace throughout Australian legislation and public policy.

The reliance upon the Agency Head is supported by legislative consequence. Under Sections 12 and 14 of the Public Service Act 1999 an Agency Head is bound by the APS Values and Code of Conduct. If an Agency Head is suspected of a breach of the Values and/or the Code of Conduct the Public Service Commissioner may undertake an inquiry. The inquiry findings would be reported to the relevant Minister and possibly the Prime Minister.

The intention of the Regulations is to maintain administrative simplicity encompassing all APS employees in the model, regardless of status or level.

I trust that this information satisfies your concern.

Yours sincerely

Tony Abbott
Senator Tsebin Tchen
Chair
Standing Committee on Regulations and Ordinances
Room SG 49
Parliament House
CANBERRA ACT 2600
2 December 2002
Dear Senator Tchen
Thank you for your letter of 24 October 2002 regarding the Committee’s concerns about the Public Service Amendment Regulations 2002 (No. 1) Statutory Rules 2002 No 214. These regulations provide for the attachment of salaries to satisfy judgment debts.

As mentioned in my earlier letter, in the unlikely event that this sort of scenario should arise there are already provisions in place to manage it. In particular the APS Code of Conduct and the Criminal Code, both of which are legally binding on Agency Heads, provide a means of dealing with such situations.

Nevertheless, to accommodate the concerns of the Committee and to ensure the withdrawal of the disallowance motion, I am prepared to make the further regulation you request.

I trust that this information satisfies your concern.

Yours sincerely
Tony Abbott

BUSINESS
Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.34 a.m.)—I move:
That the following government business orders of the day be considered from 12.45 p.m. till not later than 2 p.m. today:
  Charter of the United Nations Amendment Bill 2002
  No. 2 International Tax Agreements Amendment Bill (No. 2) 2002
  Trade Practices Amendment Bill (No. 1) 2002
  No. 3 Workplace Relations Legislation Amendment Bill 2002

Question agreed to.

COMMITTEES
Economics Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (9.34 a.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 10 December 2002.

Question agreed to.

NOTICES
Postponement

Items of business were postponed as follows:

General business notice of motion no. 258 standing in the name of Senator O’Brien for today, relating to crises in rural and regional Australia, postponed till 9 December 2002.

General business notice of motion no. 267 standing in the name of Senator Allison for today, relating to the use of photovoltaic energy, postponed till 9 December 2002.

General business notice of motion no. 287 standing in the name of the Chair of the Select Committee on Superannuation (Senator Watson) for today, relating to the reference of a matter to the Select Committee on Superannuation, postponed till 9 December 2002.

General business notice of motion no. 288 standing in the name of Senator Allison for today, relating to the long-distance trucking industry, postponed till 9 December 2002.

PARLIAMENTARY ZONE

Approval of Works

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.35 a.m.)—At the request of the Minister for the Arts and Sport, Senator Kemp, I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the Joint House Department to construct additional security elements, including vehicular access gates and bollards, to prevent access to the Ministerial entry by unauthorised vehicles.

Question agreed to.
ENVIRONMENT: WATER RESOURCES

Senator BROWN (Tasmania) (9.35 a.m.)—I move:

That the Senate calls on the Council of Australian Governments meeting in Canberra on Friday, 6 December 2002, when addressing the critical issue of water, to commit to the following outcomes:

(a) the restoration of the Murray River to good health;
(b) an end to broad scale land clearing; and
(c) a national structural adjustment package, linked to binding environmental outcomes.

Question agreed to.

CRIMES LEGISLATION ENHANCEMENT BILL 2002

First Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.36 a.m.)—At the request of the Minister for Defence, Senator Hill, I move:

That the following bill be introduced: A Bill for an Act to amend the Crimes Act 1914 and other legislation relating to criminal law or law enforcement, and for related purposes.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.37 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.37 a.m.)—I present the explanatory memorandum and move:

That this bill be now read a second time.

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

Leave granted

The speech read as follows—

This is a portfolio bill which contains a number of minor policy and technical amendments to various Commonwealth criminal laws.

The amendments are explained in the explanatory memorandum circulated with the bill. The amendments will not have any significant financial impact.

Two technical amendments are proposed for provisions in the Crimes Act 1914 dealing with the investigation of Commonwealth offences. The first makes it clear that a judge or a magistrate may order the taking of both fingerprints and a photograph of a convicted person. The second clarifies that if a suspect refuses to take part in an identification parade, then any evidence of that refusal, irrespective of whether the suspect had a reasonable excuse for refusing, cannot be used as evidence of the suspect's guilt. The amendments clarify the language of the provisions to reflect their intended purpose without impacting on their operational effect.

An amendment is also proposed for the Crimes Act 1914 to extend the class of indictable offences that may be dealt with summarily. Currently, offences that involve property valued at more than $500 must be dealt with as an indictable offence. The amendment increases this threshold to $5,000. In addition, offences that specify a pecuniary penalty only may in certain circumstances now be dealt with as summary offences. The amendments mean more offences may be dealt with in lower courts, thereby contributing to a more efficient criminal trial process. Amendments are also proposed for the Crimes at Sea Act 2000 to clarify that the laws that apply in the territorial sea adjacent to the Northern Territory are the laws of the Northern Territory rather than all laws that are in force in that Territory.


The Foreign Evidence Act 1994 is amended to remove a provision that requires foreign material to bear an official State seal. This requirement was originally incorporated in section 22 of the Foreign Evidence Act as a means of confirmation that the requested evidence was obtained through appropriate official channels. However, a number of countries have experienced difficulties in meeting this requirement, and it is not considered necessary that foreign evidence be sealed in order for the Attorney-General to be satisfied that the material has been received through official channels. For example, a covering letter from the relevant foreign Central Office for Mutual Assistance in Criminal Matters would suffice. This change
should also add to the efficiency of the criminal justice system.

Section 26 of the Foreign Evidence Act already makes provision for the Attorney-General (or an authorised officer) to certify that specified foreign material was obtained as a result of a request made to a foreign country by or on behalf of the Attorney-General. The issue of such a certificate implicitly requires that the issuing officer is satisfied that the foreign evidence has been received through official channels, the provisions to be repealed are considered to be unnecessary.

The bill provides for several technical amendments to be made to the mutual assistance in criminal matters provisions of the International War Crimes Tribunals Act 1995. Those provisions reflect similar amendments to the Mutual Assistance in Criminal Matters Act 1987 in 1996. The purpose of the amendments is to ensure consistency between the regimes for assistance under the International War Crimes Tribunals Act and the provisions in the amended Mutual Assistance in Criminal Matters Act.

The first of these amendments repeals the definition of “possession” in section 4 of the International War Crimes Tribunals Act. The removal of the definition is to avoid the unintended possible result of the issue of a search warrant in relation to a person could be interpreted as enabling a search of premises for things in those premises under the control of the person where a separate warrant for the search of the premises has not been issued.

The second amendment is to section 29 of the International War Crimes Tribunals Act. The aim of this amendment is to enable the examination and cross-examination via video link, by the person to whom the proceeding relates or their legal representative, of the person giving evidence or producing documents in Australia at the request of the Tribunal.

The third amendment is to subparagraph 66(2)(b)(i) of the International War Crimes Tribunals Act. The aim of the amendment is to change the conditions precedent to the use of force in making an arrest under this provision, from cumulative to alternative conditions in order to avoid unintentionally inhibiting the use of force where it is necessary to protect life or prevent serious injury.

The fourth amendment is to section 80 of the International War Crimes Tribunals Act. It inserts a reference to section 47C of the Crimes Act 1914, which makes it an offence to permit the escape of a person from custody. The aim of the amendment is to clarify that section 47C applies as if references in that section to custody or arrest in respect of any offence against a law of the Commonwealth were references to custody or arrest while in Australia pursuant to the International War Crimes Tribunals Act.

The proposed amendments to the Mutual Assistance in Business Regulation Act 1992 are aimed at removing restrictions on the Attorney-General’s delegation powers under that Act. Under the current provisions, the Attorney-General may only delegate the functions specified in the Act to the Secretary or Deputy Secretary of the Attorney-General’s Department. In addition, the current provisions specify that the Attorney-General must personally deal with a request which the Secretary or Deputy Secretary considers should be refused on national interest grounds. The amendments remove both of those restrictions from the Mutual Assistance in Business Regulation Act. The amendments allow the Attorney-General to delegate his powers to either the Secretary of the Attorney-General’s Department or to an APS employee. They also remove the requirement that the Attorney-General personally deal with a request which the delegate considers should be refused on national interest grounds. The current limitation on the delegation provision is unnecessary. Routine requests will be dealt with by the Attorney-General’s delegates. More sensitive requests will be referred to the Attorney-General for his personal consideration.

I commend the bill to the Senate.

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

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.37 a.m.)—I move:

That, on Thursday, 5 December 2002:

(a) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) not be proceeded with;

(b) the routine of business from not later than 4.30 pm till the adjournment shall be government business only; and

(c) divisions may take place after 6 pm.

Senator LUDWIG (Queensland) (9.38 a.m.)—by leave—I move:
That, on Thursday, 5 December 2002:

(a) the hours of meeting shall be 9.30 a.m. to adjournment, and standing order 54(5) shall apply to the adjournment debate as if it were Tuesday; and

(b) government business shall take precedence over general business from not later than 4.30 p.m. to 6 p.m.

Senator BROWN (Tasmania) (9.39 a.m.)—by leave—What about the urgency motion? Will it get its full hour?

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.39 a.m.)—by leave—My advice is that this motion will not make any difference to the consideration of the urgency motion, because, if this motion were not moved, general business would cut in at 4.30 p.m. anyway. The time that is available for your proposed urgency motion will not be altered by this motion.

Question agreed to.

Original question, as amended, agreed to.

PERTH PRESS CLUB AWARD

Senator MACKAY (Tasmania) (9.40 a.m.)—At the request of Senator Cook, I move:

That the Senate—

(a) congratulates Ms Natalie O’Brien for maintaining the highest standards of Australian journalism in reporting the fact that the ‘Children Overboard’ incident never happened and on receiving the Perth Press Club Award, an honourable mention at this year’s George Munster Award for Independent Journalism and a nomination for, and an honourable mention in, this year’s Walkley Award for journalist of the year; and

(b) notes that:

(i) in reporting her award the Australian stated that, ‘the story broke through the wall of official misinformation surrounding the “children overboard” affair. The resulting furore became a major factor in the 2001 federal election campaign. The story forced the Prime Minister to release the video of the episode and sparked a departmental enquiry’,

(ii) the Select Committee on A Certain Maritime Incident records, at 6.194 of its report, that Ms O’Brien’s article reported comments from Christmas Island residents claiming that HMAS Adelaide crew members had said that children had not been thrown overboard,

(iii) the report notes at 2.53-4 that the strictly centralised control of information through the Minister’s office meant that:

(A) Defence was unable to put out even factual material without transgressing the public affairs plan,

(b) the instruction that no information was to be released to the media by Defence personnel was explicitly reinforced on the day after Minister Reith had been told by Air Marshall Houston that no children were thrown overboard from SIEV 4, and

(c) as Mr Humphreys said, ‘no public correction to information could be made unless the Minister agreed to those misrepresentations being corrected’,

(v) consequently, legitimate inquiries by the media were not answered and, by Ministerial directive, were required to be referred to the Minister who did not answer them, and

(vi) the publication by the Australian of Ms O’Brien’s article played a key role in bringing to light the truth about the alleged children overboard incident.

Question agreed to.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (9.41 a.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 10 December 2002.

Question agreed to.
HEALTH INSURANCE AMENDMENT (PROFESSIONAL SERVICES REVIEW AND OTHER MATTERS) BILL 2002
Consideration of House of Representatives Message
Message received from the House of Representatives returning the Health Insurance Amendment (Professional Services Review and Other Matters) Bill 2002 and acquainting the Senate that the House has made the amendment requested by the Senate.

Third Reading
Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.42 a.m.)—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (AUSTRALIANS WORKING TOGETHER AND OTHER 2001 BUDGET MEASURES) BILL (No. 2) 2002
Consideration of House of Representatives Message
Message received from the House of Representatives returning the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill (No. 2) 2002 and requesting the Senate reconsider the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 as originally transmitted to the Senate by House of Representatives message No. 77, dated 30 May 2002.

Ordered that consideration of the message in Committee of the Whole be made an order of the day for a later hour.
Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.46 a.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.46 a.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

TRADE PRACTICES AMENDMENT BILL (No. 1) 2002

The purpose of this bill is to amend the Trade Practices Act 1974 to better protect consumers and to ensure that the Act remains relevant to business and consumers alike.

The reform contained within this bill will assist the community to better understand the law prohibiting the undesirable practice of pyramid selling and the distinction between pyramid selling and totally legal multi-level marketing schemes.

The plain-English re-write of the law banning pyramid selling is an initiative developed through the forum of the Ministerial Council on Consumer Affairs, and reflects a bipartisan approach to ensuring that consumer protection laws work effectively for the Australian community.

The pyramid selling provision in this bill was drafted by the Parliamentary Counsels’ Committee, which comprises representatives of all jurisdictions, in a manner which will permit its adoption by States or Territories in their fair trading laws.

When this bill is passed, businesses and consumers will no longer be able to claim that they failed to understand the law in this area because it was too complex. And to aid the community and the courts in their interpretation of this law, a simple “Readers’ Guide” with basic examples of how the provisions operate has been included in the bill’s Explanatory Memorandum.

The bill also includes another amendment drafted by the Parliamentary Counsels’ Committee, to ensure that persons are unable to avail themselves of a defence to a prosecution for an offence against the Act’s consumer protection provisions in circumstances which were clearly not envisaged when the Act’s statutory defences were initially framed. However, decisions by the Courts have made it necessary for the Act to be amended to spell out the defences more clearly. Again, this change can be adopted by jurisdictions which mirror the Trade Practices Act in their fair trading laws.

The final amendment comprises the correction of a drafting oversight which occurred when amendments to the Act were passed last year, and restores a sanction which was never intended to be removed. The amendment will ensure that the ACCC can seek an appropriate sanction from the Court if individuals deliberately resist the proper efforts of the ACCC to acquire information, documents or evidence necessary for its investigatory functions.

CHARTER OF THE UNITED NATIONS AMENDMENT BILL 2002

In the post September 11 environment, we are all aware of the reality that terrorist groups are well organised and well financed. This reality was again brought home to us by the terrible events in Bali on 12 October this year. Australia has enacted a host of measures to counter terrorism and the financing of terrorism. One of these measures is Australia’s financial sector is also strongly committed to ensuring that terrorists cannot use its institutions for terrorist financing.

Officials from the Department of Foreign Affairs, the Australian Federal Police and other agencies have consulted extensively with representatives from the private sector in developing a comprehensive and workable asset freezing regime. A joint public/private working group has been developing the regulatory and operational framework which will accompany that part of the Sup-
pression of the Financing of Terrorism Act which is to become the new Part 4 of the Charter of the United Nations Act. This new regime will replace the existing regime contained in the Charter of the United Nations (Anti-Terrorism Measures) Regulations.

Part 4 creates offences of dealing with freezable assets and of giving an asset to a proscribed person or entity. A proscribed person or entity is one the Minister for Foreign Affairs is satisfied is a terrorist entity. The freezing of terrorist assets is a crucial part of international efforts to suppress terrorism.

Under Part 4, the owner of a freezable asset can apply to the Minister for Foreign Affairs for permission to deal with the asset. The owner of an asset seeking to make the asset available to a proscribed person or entity can also apply in writing to the Minister for Foreign Affairs for permission to do so. The Minister can give such authorisations by written notice. Under the existing regime, holders of assets have the same ability to apply for authorisations and the Minister can grant such authorisations on his own motion. The amendment contained in this bill will ensure that this discretion to grant authorisations is replicated under the new asset freezing regime. Private financial institutions have highlighted the need for holders of assets, as well as owners, to have the capacity to apply to the Minister for permission to deal with freezable assets or give assets to proscribed persons in specific circumstances.

Under the updated regime, holders of assets such as banks and trustees can ask the Australian Federal Police (“the AFP”) for help in determining whether there is a likely match between a proscribed person and an owner or controller of an asset. Such a mechanism was recommended by the Senate Legal and Constitutional Committee in its Report of its Inquiry into the Security Legislation Amendment (Terrorism) Bill 2002 (Recommendation 7(a)). For this mechanism to be effective, section 22 must be amended to give the holders of assets the same ability as the owners of assets to apply to the Minister for Foreign Affairs for permission to deal with an asset that may be a freezable asset, or make an asset available to a person or entity who may be proscribed, while they seek the assistance of the AFP.

Part 4 of the Act will commence either on the making of regulations under Section 22A, or on 6 January 2003, whichever is earlier. Passage of the bill through Parliament is urgent, in order to prevent Part 4 from commencing unamended.

This amendment bill is part of Australia’s ongoing commitment to combating terrorism and, in particular, terrorist financing.

I commend the bill to the Senate.

Debate (on motion by Senator Ludwig) adjourned.

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

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

COMMITTEES
Environment, Communications, Information Technology and the Arts References Committee

Report

Senator ALLISON (Victoria) (9.47 a.m.)—I present the report of the Environment, Communications, Information Technology and the Arts References Committee entitled The value of water: inquiry into Australia’s urban water management, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator ALLISON—I move:

That the Senate take note of the report.

The report I am tabling today is the result of a comprehensive inquiry by the committee into—

Senator Harradine—Mr Acting Deputy President, I raise a point of order. This is eating into the time of the debate on the Research Involving Embryos Bill 2002. The Democrats voted for the gag, and here they are taking up our time. That was not our understanding with the Manager of Government Business in the Senate.

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—Senator Harradine, I understand Senator Allison has the right to move that motion at this time.

Senator Harradine—She is speaking on the motion, and I ask her to incorporate it.

Senator Ian Campbell—Mr Acting Deputy President, it is certainly Senator Allison’s right to do this. I believe that it would be in the spirit of the cooperation in which the Research Involving Embryos Bill 2002 was put under a time management motion yesterday to make this housekeeping period, as I call it, as truncated as possible. We have moved
through that housekeeping in incredibly rapid time. If it is possible for Senator Alli-
son to assist the Senate in maximising the
time available for debate on the bill, as Man-
ger of Government Business in the Senate I
certainly would be deeply appreciative. I
think the point made is a good one.

Senator ALLISON—I am happy to in-
corporate my speech, and I seek leave to do
so.

Leave granted.

The speech read as follows—
The report I am tabling today is the result of a
comprehensive inquiry by the Committee into
Australia’s urban water management. It is clear
that Australian cities are using water in ways, and
quantities, that cannot be sustained.

There is a growing public awareness of the prob-
lem, and a great deal of progress in taking up
measures, at least in some areas.

Now we need to force the pace of change.

Australians use about 350 litres per person per
day. Despite significant reductions in per capita
consumption in the past decade, overall demand
is still rising. As we waste high quality drinking
water we are also missing the opportunities to put
effluent to good use.

Some cities are taking water from aquifers faster
than they can be recharged. Logging, agriculture
and urban developments are putting great pres-
sure on some catchment areas.

On current trends many cities and towns in Aus-
tralia will need to find new sources of water un-
less they can use their water more efficiently.

Difficult and possibly expensive decisions will
have to be made to ensure reliable and high qual-
ity urban water supplies.

Australia’s stormwater systems are largely out-
dated. They were designed primarily to prevent
flooding and transport rainwater as fast as possi-
ble away from the city, untreated, into streams,
rivers and the sea. The stormwater carries with it
pollutants include litter, sewer overflows, heavy
metal residues from vehicle, animal faeces, gar-
den fertilisers, silt and vegetation. It also includes
pharmaceutical products, chemicals and antibiot-
ics.

Natural ecosystems can absorb some pollutants,
but metropolitan centres produce waste streams
that contain excessive concentrations. The results
are algal blooms, fish kills, closed beaches and
shrinking fisheries, which have direct adverse
effects on the health, prosperity and amenity of
urban areas. River systems and enclosed waters
such as Moreton Bay and the Great Barrier Reef
are particularly vulnerable to effluent and storm-
water pollution.

Other aspects of the way we manage water exac-
erbate these problems.

The institutional and policy complexities of three
levels of government, and the multiple agencies
responsible for planning, health, environment
protection, natural resource management and
price regulation all complicate reform.

The relatively low price of water in Australia,
averaging around $1 per kilolitre, also does little
to encourage awareness of the value of water.

Low prices have been possible because they only
factor in infrastructure costs and not the cost of
taking water from the environment or protecting
catchments—what economists call externalities.

Many consumers would argue that because water
is a basic human need, it should be free. However,
it is ironic that Australians are prepared to pay a
thousand times more per litre for bottled water
than they do for tap water of much the same
quality.

Management Principles: ecological sustain-
ability and the water cycle

Achieving ecologically sustainable water man-
agement in Australian cities must be based on the
natural water cycle, which in Australia is charac-
terised by diversity and variability. Accordingly,
water management must be local, tailored to the
conditions in different parts of the continent.

Management solutions must also be based on the
three parameters of environmental, social and
economic sustainability.

The Committee is convinced that Australia al-
ready has most of the knowledge, technical ex-
pertise and systems needed to solve the problems
in urban water management.

There are five broad solutions.

The first is demand management. There is great
scope to reduce water use. Water efficient appli-
cances such as dual flush toilets, low flow shower
heads, and washing machines can dramatically
reduce water use in homes. This can be coupled
to water efficient gardens, using native plants,
minimal lawns and efficient watering systems.

However, the fundamental factor in a successful
demand management program is changing be-
aviour away from habits such as hosing down
 driveways and gutters, watering lawns during the
heat of the day and having long showers.

The second solution is adopting much greater
reuse of water. Australia reuses only a small frac-
tion of its wastewater, and there are major op-
portunities to improve on this performance. Water
can be reused on gardens and playing fields, for irrigation, in industrial processes, and in the sewage treatment systems themselves, which are heavy users of water.

Aquifer Storage and Recovery and sewer mining are also introducing much greater flexibility into wastewater systems.

Recycling still faces major obstacles though. Often recycled water is distant from the reuse opportunity, and the costs of storage and transport can be prohibitive. Matching the availability of recycled water with the needs of the users can also be problematic. Most of all, negative public perceptions remain a significant barrier to expanded applications for recycled water.

The third solution is better water treatment. Australia has working examples of leading edge facilities that can turn wastewater into potable water. Technologies include membrane filtration, bio-remediation, and dissolved air flotation processes.

These tertiary treatment technologies are gradually being adopted around Australia, and are also leading a change towards smaller scale treatment plants, which in the future are likely to see treatment systems operating for individual suburbs or housing developments.

Fourth, techniques are now available which reintegrate stormwater into urban water cycles, making use of this water as a resource. Developments such as the Lynbrook Estate in Victoria demonstrate water sensitive urban design principles and also show that they are no more expensive to construct and maintain than conventional methods.

Unfortunately use of water sensitive urban design principles is the exception rather than the rule, even in new developments.

**Goals for Australian urban water management**

A central concern for the Committee is how to make all of these solutions actually happen. What is lacking is a sense of urgency.

In Australian cities, efficient water use is still perceived as an emergency measure to be adopted during drought conditions. In a country of such limited water resources, this behaviour must be the norm, not the exception.

Using a combination of techniques is the key to changing this, and the Committee considers that the Commonwealth can do much to drive the pace of change.

Accordingly, the Committee has made a number of general recommendations:

(a) The Commonwealth play a more prominent role in driving the changes needed to manage urban water more sustainably.

(b) A national approach be taken to overcome the jurisdictional barriers to better practice.

(c) A high priority be given to scientific research into water management coordinated at the national level.

(d) Efforts be made to enhance awareness of the environmental issues associated with water use and management.

(e) Water prices should better reflect the significant impacts of current extraction and discharge. Any extra revenue generated should be used to improve performance in this area.

(f) Australians generally be encouraged and assisted to use less water, recycle more effluent and significantly reduce the impact that urban development and its stormwater collection and transport has on natural systems.

In addition, the Committee makes several specific recommendations:

The first is the development of a National Water Policy (NWP) through a National Water Partnership Framework.

The Framework must integrate all levels of government, research institutions, catchment management authorities and the general public. Its
priority would be to simplify institutional arrangements, review the effectiveness of COAG water reforms and enhance cooperation between governments, industry and communities.

The Framework would also contain measures to achieve better monitoring, reporting and information systems. These would gauge the effectiveness of urban water management strategies and, in particular, the impacts on receiving waters.

The National Water Policy should set targets. These would include State and local targets with timeframes for key parameters such as: effluent reuse; per capita water consumption reductions; the uptake of rainwater tanks; and reducing effluent to ocean outfalls.

The Policy should set standards. These would include: model planning codes that incorporate water sensitive urban design principles; national water efficiency standards and rating schemes for appliances and building systems; and best practice water management standards.

The Commonwealth, with the States, Territories and the private sector, should also consider a broader range of funding mechanisms for a comprehensive national research effort. This is needed to gain better understanding of, among other things, groundwater and catchment management; and small scale treatment technologies.

This must be linked to a review of pricing and financing systems, and the impact of dividends, grants programs, and water pricing mechanisms.

The Commonwealth should also lead by example. A starting point for this is to adopt a strategy for upgrading all Commonwealth buildings to high standards of water efficiency. Similarly, within Parliament House, funds should be committed to upgrade all toilet cisterns to dual flush and to fit water efficient shower roses.

The Report details further aspects of these recommendations. I commend it to the Senate.

Leave granted.

**Senator TIERNEY** (New South Wales) (9.49 a.m.)—I seek leave to incorporate my speech as well.

Leave granted.

**The speech read as follows**—

We are considering the inquiry into Australian Urban Water Management. This inquiry has taken 18 months, and the Committee has examined Urban Water across the nation. In terms of a water cycle we have looked at the flow of water into cities, the way that water is treated and then the disposal of wastewater and sewerage.

During this inquiry we have been very mindful that we live on the driest continent on earth. What is amazing given that very stark fact is the very prolific way we have used water in this country. Australia has been thoughtout the 20 century very wasteful in its use of our precious water resource. We're currently undertaking major reform Australia wide into the use of water in the countryside. What this inquiry addresses is the need to undertake a similar process in the City.

We certainly need to use our fresh water more carefully but we also need to be a lot smarter in the disposal of water and associated waste. A lot of this material has just been sent out to sea, but it is quite possible that much of it could be recycled.

The smart use of water was a major focus of the inquiry. But there is a difference within the committee on the way in which all of this should be managed. The chair of the committee has brought down a report which has a focus on a much more central role for the Australian government. It is very tempting in all areas of government activity to say, well the states often muck these things up—and perhaps our government should take it over.

But we do have a federal system and what is working quite successfully in many areas of government now—a co-operative federal approach. Indeed water reforms in the countryside under COAG are working very well in a cooperative way.

There was agreement by COAG in 1994 on the National Water Reform Framework. This framework put in place systems to manage rural water far more effectively; state and federal governments are working out proper pricing structures, and a proper balancing of use of water between agriculture and the environment. I believe that same sort of COAG process could be used to get agreement across the states on the proper management of water flow into the city and waste flows beyond the city.
Therefore the proper role of the Commonwealth as stated by the Commonwealth Environment Australia is one of leadership and coordination of these polices not direct administration and control. This should be undertaken by the states who have responsibility for land and water.

With these general remarks on the broad thrust of the report I would now like to turn to the specific recommendation in the report and comment on where Government members agree or disagree.

Recommendation A states that the Commonwealth should play a more prominent role in driving the changes needed to manage urban water more sustainably. The Government Senators believe that the Commonwealth is already taking a leading role in addressing recommendation A in managing urban water more sustainably through the COAG Water Reform process, which is achieving many of the goals that are sought, as well as through its development of a Coastal Policy—where it is very actively seeking the cooperation of the States.

Recommendation B advocates a national approach to be taken to overcome the jurisdictional barriers to better practice. Government Senators believe that a national approach to overcome jurisdictional barriers to better practice is being taken through the COAG National Competition Policy.

Recommendation C suggests a high priority be given to scientific research into water management coordinated at the national level. Government Senators acknowledge that more research into urban water management would be valuable, but there is no reason that this should not be administered by the States, who are better placed to direct research to local priorities and ecosystems.

Nevertheless, as the Report demonstrates, the Commonwealth has already taken a proactive role in directing national research, through the highly successful Cooperative Research Centre program, and the Natural Heritage Trust, with guaranteed expenditure in the States of some $350 million on water quality issues. As the Committee saw during the inquiry, urban regions around Australia have successfully applied for funding under this program and have used the funds to create many of the country's leading examples of water efficient design.

Recommendation D advocates greater efforts to be made to enhance awareness of the environmental issues associated with water use and management. Government Senators believe that the Commonwealth has for some time been leading the process of enhancing awareness of the environmental issues associated with water management.

Recommendation E suggests that water prices should better reflect the significant impacts of current extraction and discharge and any extra revenue generated should be used to improve performance in this area. Government Senators believe that reform in the area of water pricing is being led by the Commonwealth, and there is action on a number of fronts. COAG has already achieved major institutional reforms that are driving more efficient use of both water and funds, and which will increasingly ensure that the cost of water reflects its true value. The Commonwealth will continue to lead the process of establishing water rights, which will underpin the development of water markets, through which the value of water will be established. The suggestion that the revenue generated by higher prices be used to improve performance of water management systems (and particularly their environmental performance), is a matter for the States in their role as managers of the water markets.

Recommendation F urges that Australians be encouraged and assisted to use less water, recycle more effluent and significantly reduce the impact that urban development and its stormwater collection and transport has on natural systems. Government Senators commend this recommendation. The principle of environmental, economic and social sustainability is already accepted and well established, and is the foundation for the COAG reforms. The achievement of sustainability is also the clear policy that underpins the Natural Heritage Trust, and the National Action Plan for Salinity and Water Quality.

Recommendation 1 covers a proposal for the development of a National Water Policy (NWP) through a National Water Partnership Framework. The Government Senators do not agree with the recommendation 1 to create a National Water Policy. It is believed it will develop further levels of policy in an already 'policy rich' environment and would do nothing to enhance urban water management.

Recommendation 2 advocates a National Water Partnership Framework between all levels of government, research institutions, catchment management authorities and the general public. Government Senators agree with the need for many of the tasks identified in the Chair's recommendation 2. Government Senators do not agree with the recommendation to create a National Water Partnership Framework. There is already a proliferation of institutions managing water, and institutions already exist at the national level to carry out the tasks listed, principally COAG and the
Ministerial Councils, while the Regional Organisations of Councils are fulfilling similar roles at the regional level.

Recommendation 3 suggests the setting of targets. Government Senators support many of the ideas in the Chair’s recommendation 3, but note that many of these issues are already being addressed by existing initiatives under the National Action Plan on Water Quality and Salinity, the National Water Quality Management Strategy, and to a lesser extent, National Environment Protection Measures. At the same time, Government Senators stress that detailed standard setting is most appropriately done at the state and local level, given the huge variability of conditions across Australia.

Recommendation 4 advocates that the NWP should set standards. Government Senators support many of the ideas in the Chair’s recommendation 4. The concept of nationally uniform minimum standards for water efficiency in all new buildings, and buildings undergoing major refurbishment, is also attractive. Our understanding is that a number of States are already headed in this direction.

Recommendation 5 urges better monitoring, reporting and data collection and Recommendation 6 suggests that the Commonwealth examine legislative and regulatory opportunities for reporting on water consumption.

The Government Senators agree with the importance of many aspects of the Chair’s recommendation 5, but again, stress that they are, or could appropriately be, done by existing institutions, such as the National Land and Water Resources Audit in cooperation with relevant Cooperative Research Centres, and, in the case of the Chair’s recommendation 6, COAG.

Recommendation 7 advocates funding and financing better water management and Recommendation 8 considers pricing and financing for better water use and management.

The Government Senators have combined their response to Recommendation 7 & 8. The Commonwealth is already heavily engaged in funding research into reuse and recycling. Examples include:

- Development and support for the Co-operative Research Centres program; the feasibility work for the City to Soil/Darling Downs Vision 2000 project in Queensland, which has had strong financial support from the Commonwealth; the strong support for the Virginia Pipeline project in South Australia; the Memorandum of Understanding with Queensland on establishing water quality standards for the Great Barrier Reef; and the National Action Plan on Water Quality and Salinity, which will include major investment in research and on-the-ground actions over the next five years.

The issue of urban water pricing is one of the key elements of the COAG competition policy reforms and the move towards metering and two-tiered tariffs. Consequently, making the price of water more closely reflect its cost is already well advanced.

The issue of a levy, however, on top of full cost recovery is not supported. In relation to many of the points raised here, considerable Commonwealth money is already being applied through the NHT, particularly in catchment protection and rehabilitation, and the repair of natural waterways and wetlands.

Recommendation 9 advocates that the Commonwealth lead by example and develop a strategy for progressively upgrading all Commonwealth buildings for high standards of water efficiency. Government Senators support this recommendation.

Recommendation 10 suggests that the Joint House Department be funded to change all toilet cisterns in Parliament House to dual flush and to fit water efficient shower roses. Government Senators support this recommendation.

Debate adjourned.

RESEARCH INVOLVING EMBRYOS BILL 2002

In Committee

Consideration resumed from 4 December.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—The committee is considering the Research Involving Embryos Bill 2002, as amended, and amendments (8A), (8B) and (8C) on sheet 2751 revised 2, moved by Senator Harradine.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (9.51 a.m.)—Amendment (8A) put forward by Senator Harradine requires reasons for decisions to issue a licence to be published on the public database. All applicants for licences will need to meet the criteria set out in clause 21 of the Research Involving Embryos Bill 2002—that is, that protocols are in place to obtain proper consent and that there will be a significant advance in knowledge. Meeting the criteria will obviously make up a large part of the reasons for the decision. Public accountability is achieved through access to
information on a database which I believe is certainly up around the best, if not the best, in the world.

Amendment (8B) requires the membership of the human research ethics committee which approved the activity to be published. Ultimately, as I have said on a number of occasions in this debate, the licensing decisions are made by the licensing committee and it is that committee which will be accountable to the public through the database, to the parliament through the reporting requirements of the licence holders and through the appeals process. The human research ethics committee’s decision is not the final decision but just one of the matters considered by the licensing committee. Therefore, I do not believe it is relevant that the names of the members be published; they are not the decision makers. What is relevant is the membership of the licensing committee, and this will certainly be publicly available information.

Senator Harradine’s amendment (8C) seeks to have information available on the Internet site within 30 days of the ethics committee’s assessment. As I said earlier, I do not think it is necessary to specifically refer to the Internet since the database must be made publicly available and the obvious way to do this is via the Internet. Quite apart from this, Senator Harradine’s amendment is unworkable because it requires information to be published within 30 days of the ethics committee’s assessment. In many cases, within 30 days of the ethics committee’s assessment the licensing committee will not have made its decision as to whether or not to grant a licence. Again, we need to remember that the human research ethics committee is not the decision maker. It provides its evaluations to the licensing committee and it is the licensing committee which is the decision maker. I will be opposing Senator Harradine’s amendments.

Senator HARRADINE (Tasmania) (9.54 a.m.)—First of all, I will deal with this quite clearly. What is being said here is not correct. I will have a look at what the Minister for Health and Ageing said in this chamber on Tuesday, 3 December. I raised this question about the human research ethics committee. I did so following the emphasis that the minister has constantly given to the structure and the fact that it is based on the institutional ethics committee’s decision. The minister says here to us today that they do not make the decision. If they do not make the decision, then why does the minister say:

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 the decision. It is if not so approved then the licensing committee cannot deal with it. So it is effectively the decision making body. The minister shakes her head, but she has said it here.

Senator Patterson—I haven’t.

Senator HARRADINE—Minister Patterson says she has not. Let me read it:

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 ...

Senator Patterson—The licensing committee might say no. Don’t you understand?

Senator HARRADINE—It might say no; it might say yes. The point is that what you have been saying here through all of this debate is that the essential feature is: ‘Don’t worry. It’s going to be dealt with by the institutional ethics committee.’ Bear in mind that it is the applicant who is appointing the institutional ethics committee. That is bizarre. All I am asking, with these amendments, is for transparency in respect of the decisions or evaluations that are undertaken by this key committee. I am not going to waste my time, because the minister is obviously not acting in accordance with the COAG decision. The COAG decision is perfectly clear that to be accountable there must be transparency and the whole system must be accountable to the public. That is the word: accountable. How can they be accountable if the information is not supplied?

Let me finalise by saying something that has been said—that is, that it is a secretive society. All of this matter is going to be undertaken in secret, except after the NHMRC Licensing Committee decisions are made. I will read from the Hansard of 24 September.
One witness to the Senate Community Affairs Legislation Committee, who ought to know about it, said:

We do have a culture here with the Human Research Ethics Committee and the NHMRC, and now this licensing authority ... There is not openness in reporting or stringent reporting requirements, so you have got no reporting of, for instance, the Human Research Ethics Committee’s decisions or anything like that. The public does not have access to those. So we have got a fairly secretive culture, a non-consultative culture. In fact, the institutions will defend that in terms of their own commercial interests and so on and also their interests in not having public scrutiny.

This is a very vital matter and I will be extremely disappointed if the ALP has decided, in some back room or another, to oppose this need for complete transparency by the institutional ethics committee, which is appointed by the applicant for the licence! It is a shame. It is obvious that the minister is just following the NHMRC. The minister herself was clearly not aware that the reporting and evaluation provided by the ethics committee would not be public. She was not aware of that on 3 December. She said to the committee when I pressed the issue:

The answer is that the licensing committee receives that information—

that is, the information from the human research ethics committee—

but it is not necessarily available to the public.

There is no point in proceeding. I seek leave to withdraw amendments (8A), (8B) and (8C) on sheet 2751 revised 2. I will be dealing with this matter in another forum.

Leave granted.

Senator BROWN (Tasmania) (10.02 a.m.)—I would like it noted that I support the amendments even though they have been withdrawn.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—We now move to Senator Barnett’s amendment (R3) on sheet 2757 revised. This amendment was postponed from 4 December.

Senator HARRADINE (Tasmania) (10.03 a.m.)—We are moving on to a later clause, are we not?

Senator HARRADINE—I am saying that we need to express our views on the clauses that come before the next amendment. I am strongly opposing clause 30 of the bill.

The TEMPORARY CHAIRMAN—You can speak to that now, Senator Harradine.

Senator HARRADINE—I am attempting to do so. This is commercial-in-confidence information and may be disclosed only in certain circumstances. This caps it all off! What happens? You do not get the information and then what information you do get will of course be subject to a statement saying that commercial-in-confidence information may be disclosed only in certain circumstances. That is it. Yesterday the Senate by a narrow majority opposed an amendment that was put forward to prevent patenting of these life forms. That was defeated, and now this is the cap. Here it is again: commercial information prevails. I have never heard the Labor Party supporting such a provision in this place—the confidentiality of commercial information. I have had run-ins with employers when they have sought to hide behind commercial-in-confidence information in certain areas which affect employees. I know the government is not going to take any notice, and the ALP are probably supporting the government to prevent information coming to the public because of confidential commercial information considerations. Almost all applications will have this confidential commercial information—it cannot be given out to the public. I see no point in proceeding with this. This is the cap. I oppose clause 30 in the following terms:

(10) Clause 30, page 20 (line 21) to page 22 (line 6), TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The question is that clause 30 stand as printed.

Question agreed to.

Senator BARNETT (Tasmania) (10.07 a.m.)—I would like to let the chamber know that amendment (R3) on sheet 2757 revised, in relation to clause 11, will be held over for
a short time. You may remember that last night, when we were discussing this, the minister sought leave to postpone this amendment overnight so we could have some discussions on it. We have and, through the goodwill of the minister, me and others, we have worked through the amendment. That amendment has now been re-drafted, and I advise the chamber that it is being circulated at this time. Apparently it is not in the chamber just yet, but it will be here very shortly.

Senator HARRADINE (Tasmania) (10.07 a.m.)—I move amendment (9) on sheet 2751 revised 2:

(9) Clause 29, page 20 (lines 19 and 20), omit subclause (4).

To put this into context, clause 29 is titled ‘The NHMRC Licensing Committee to make certain information publicly available’. Subclause (4) of clause 29 says:

Information mentioned in subsection (1) must not be such as to disclose confidential commercial information.

The arguments are clearly the same as those I gave previously: it means this is going to be a secretive operation and dealt with mainly in-house. This is a disgrace, as everything then is subject to so-called confidential commercial information.

Senator BROWN (Tasmania) (10.09 a.m.)—I ask through you, Mr Temporary Chairman, if the minister might help the committee at this stage by giving examples of the sorts of commercial-in-confidence information that would be withheld under this subclause and the following clause.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.10 a.m.)—Clause 30 of the bill and relevant parts of clause 29 enable the licensing committee to protect legitimate confidential commercial information. Such provisions are a standard part of licensing schemes such as this and involve disclosure of certain information to the public. However, these clauses do not allow potential licence applicants to hide behind commercial-in-confidence provisions—that is, it would not be possible for an applicant to provide a simple explanation of their intended project and state that the detail is of commercial value and cannot be disclosed to the NHMRC Licensing Committee. Applicants must make all relevant information available to the licensing committee, including confidential commercial information.

Clauses 29 and 30 simply protect the limited class of legitimately confidential commercial information from being disclosed to third parties—to parties other than the licensing committee. This way there will be no disincentive for the applicant to provide more, rather than less, information to the licensing committee, because they will know that any legitimately confidential commercial information will be protected from public disclosure. The legislation requires that the public will have access to very detailed information about licences, including information that is unlikely to be able to be protected from disclosure on the grounds of commercial confidentiality—for example, the number of embryos proposed to be used, the duration of the licence, the description of the project, the conditions applied to the licence.

Like any legislation which provides provisions protecting confidential commercial information, the impact of these provisions and the extent to which they are relied upon cannot be known until the system has been in operation for a period of time. The review of this legislation, which is to be conducted within three years, will enable reconsideration of these issues should this be deemed necessary. For this reason, I will be opposing the amendment put forward by Senator Harradine.

Senator BROWN (Tasmania) (10.11 a.m.)—The boot is on the wrong foot. There should be no commercial-in-confidence exclusion here; a review in three years should take into account the potential for that if the need arises. I asked the minister to give the committee an example of warranted commercial information that should be kept confidential from the public under the exclusion clauses that the government has here. Could we have an example, please?

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—The question is that the amendment be agreed to.
Senator BROWN (Tasmania) (10.12 a.m.)—It is simply not good enough for the minister to sit there mute and silent on a legitimate question like that. I have watched this debate unfold. I came here with the wish to support this legislation, but I had a concern that the embryo testing system was going to be at the service of commercial interests first, rather than the humanitarian interests which we are all told the system is essential to service. We have here an exclusion on the commercial interests—no doubt, for the benefit of the companies that are going to be involved in the experimentation. There is not an exclusion clause here to protect other aspects of the whole chain of events that are involved in such experimentation.

I have asked the minister for a simple explanation as to why this subclause should be kept. Senator Harradine has moved that it be removed. This committee has every right to say, ‘Let’s have the argument from the minister defending the subclause being there.’ We are a house of review. We are here to protect the public interest and, above all, to ensure that there is transparency in what government and government appointed committees do. Where you move to make some of the outcomes of the government committees secret, you need a darn good explanation as to why that secrecy should be supported by the Senate. I have asked the minister to give us an example. We know the commercial-in-confidence record of governments around the country. I am frankly disgusted that the commercial-in-confidence explanation is used all the time to prevent public access to matters which affect the public every day.

It is simple enough, for example, under freedom of information around this country, to have a minister prevent the public from getting a whole range of information which is legitimately theirs by the simple mechanism of saying those three great words, ‘commercial-in-confidence’. We are into a very important matter here. I have asked the minister for some explicit examples to warrant this part of the legislation—the end of clause 29 and the whole of clause 30, which Senator Harradine has drawn our attention to—giving legitimacy to throwing a veil of secrecy over the workings of the committee and the licensing system, through the mechanism of commercial-in-confidence. I do not have faith in that.

I am asking the minister to please give me an outline of where the line would be drawn on this commercial-in-confidence mechanism. We have a total right to know that. We have every right to know that. I do not want leave it to some committee under pressure from some drug company further down the line to say, ‘We cannot put that out because it is commercial-in-confidence and the drug company will threaten us under this law if we release that information to the public.’ Our job here is to protect the public interest and therefore the committee. What the minister is doing here is promoting the commercial interest through law to be able to cut across the right of the public to know. It is very important that the minister respond to this question, give us examples and draw a line on commercial-in-confidence. She uses the word ‘legitimate’. What does ‘legitimate’ mean? It is not defined here. There is a very big responsibility on the minister to define what she meant by ‘legitimate’, so that we can clearly know what we are voting for in terms of Senator Harradine’s asseveration that there should not be such commercial-in-confidence, as against the minister’s asseveration that there should be. It is very clearly up to the minister to tell us what she means by ‘commercial-in-confidence’ and, indeed, ‘legitimate commercial-in-confidence’ so that we can make that determination.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.17 a.m.)—I object in some ways to the honourable senator’s claim that I have just sat here mute. I believed I had answered the question. We sit here and pontificate about this being a house of review. I have actually indicated that we had five days of hearings on the Research Involving Embryos Bill 2002 where there was the opportunity for detailed questions like this to be asked and to be put on notice. It is appropriate to have questions asked again here, but I believe that I have answered the question. Clause 29 indicates that the NHMRC Licensing Committee must put on the database the name of the person and a
short statement about the nature of the uses of excess ART embryos that are authorised by the licence.

I would hope that the Licensing Committee gets as much information as possible. I believe that using the clause that Senator Harradine has put forward would make people reluctant and would encourage them to put in the application as little information as they possibly could to get the application through rather than give an open account of what they are undertaking to enable the Licensing Committee to make a very fair and reasonable choice about whether the licence should be issued or not. The problem is that, if you put all the information on the database, if you have to signal to the world the formula, for example, for a medium that you are using, who on earth will participate? I think it would mean that people would not participate in research when their intellectual property has to be exposed in absolute detail.

I would like to see the Licensing Committee have the opportunity to get as much detail as possible without there being any sort of hindrance on the applicant in terms of putting forward exactly what they are going to do. Some people would see a risk in that—that the information may leak and that they may have to expose that information to other people who may be involved in the research world—and there could still be reluctance. But at least the opportunity is there for them to indicate in absolute detail what they are doing, thus enabling the Licensing Committee to make a judgment on the basis of all information, rather than people trying to circumvent it so that their intellectual property is protected in some way by them not exposing it to the Licensing Committee. That is why I do not want to support Senator Harradine’s amendment.

I find it really difficult. People come in here and, because they do not agree, they dump on me and my motives, which is what has just happened. I believe there is sufficient protection. Other people do not, but I have not bucketed other people because they have a different view. I find that approach offensive. I believe there is sufficient protection. I believe that in fact there is more protection by enabling the Licensing Committee to have as much information as possible rather than, as I said, having the applicant circumventing it and giving as little information as possible—just enough to get their licence without giving full details to the Licensing Committee.

Senator BROWN (Tasmania) (10.21 a.m.)—Firstly, let us go to criticism that ‘the Greens did not go to the committee’, which the Democrats and the government want to use so freely. The committee hearings were held during the sitting days of the Senate. The minister clearly knows that Senator Nettle and I are here for the Greens. Is she saying that we should have left our obligation to be in the Senate to go to the committee? You cannot have it both ways.

Senator Stott Despoja interjecting—

Senator BROWN—Senator Stott Despoja has now entered the fray, because we are in a political debate rather than a substantial debate. It is interesting, isn’t it? I can assure the minister, if it will help her, that the Greens senators are acquainted with the whole of the proceedings of that committee. Nevertheless, if the government—and the Democrats, for that matter—want to take on a debate as to the legitimacy of senators entering into debate in this chamber if they were not at committee hearings, I am quite happy to do it. You would close the Senate debate system down—that is what you would simply do. I suggest to senators that they think of some other way of promoting their political debate.

Let me get back to the substantive matter. The minister’s job is to acquaint the committee with the information it seeks so that the best determination can be made. She has not yet given any example on commercial-in-confidence. She has used a reference to a medium being used, but that does not satisfy me. We are wanting to know about the actual experimentation with the embryonic material. I would like her to give an example that we can look at to see why commercial-in-confidence should be employed.

We have a philosophical difference here. Let me talk about that. The minister says that the commercial entity, if it gives this information, may have to share it with other ex-
perimenters. I thought that the impulse behind this legislation was to make available to the commons, to the people, as quickly as possible the advantages of genetic experimentation. The fastest and most efficient way to do that is to make the information coming out of that experimentation available to all experimenters so they can use that information for the common purpose. But here we have the minister arguing, ‘No, the commercial interest is pre-eminent here—you do not share your information.’ The old days of science being in the interests of the public good are gone. It is now owned science, which has as its core impulse the commercial interest.

A lot of people might ask what Senator Harradine and I are doing in arguing the same point on so many of these issues. There is an ethicality behind this. I do not know if we share it, but I respect Senator Harradine’s lifelong ethicality. He has talked about issues of ethics—and he has clearly definable ethic, which is good to have in an age where the commercial impulse and materialism as core beliefs have taken over society and the way it runs. That is writ large here this morning. It is the materialist profit ethic which is cutting across the delivery of science that is for the common good. The exclusive owning of information to make money is behind this commercial-in-confidence clause.

This matter deserves to be debated, because it is an extremely important one. It is one of the big divides in the coming political debate of this century, I believe. Are we going to be run by the commercial impulse or are we going to have an ethic which says, ‘Humanity and the good of this planet in the long term come first and the commercial impulse must be subsidiary to them’? That is what we are debating here. It is a huge question. I am not going to expound it further, because there are other important matters to be dealt with here. But the minister’s response to the legitimate questions that Senator Harradine and I have put is well short of the mark. It simply demonstrates our concern—or my concern; I will speak for myself—that the commercial interest is going to be pre-eminent in the outcome of the passage of this legislation. That worries me greatly.

Senator STOTT DESPOJA (South Australia) (10.26 a.m.)—I want to put on record that my involvement in this debate has been from a scientific perspective—that is the debate that I have had. I resent and ask Senator Brown to withdraw his comments about me entering the political fray. In this chamber I have discussed the amendments and I have engaged in the debate on the different ethical and obviously widespread beliefs that we have. I have not discussed his non-attendance at the committee in this forum, because I recognise that it is difficult for some senators to be involved. That is why we lodge questions on notice if we are unable to be involved in the committee or in the writing of reports. I ask Senator Brown to withdraw the political reflection and the comment that he made in the Senate, so that we can get on with the debate. I think it was an unfair reflection, especially on someone who has been here most of the time in both the committee stage here and the Community Affairs Legislation Committee process.

Senator BROWN (Tasmania) (10.27 a.m.)—I take Senator Stott Despoja’s explanation—I misheard her. I guess Hansard may not have picked up on that. I thought she was actually criticising the Greens for not going to the committee hearings. This is a new direction for the Democrats and it is different from what I have heard during the week. Let me say to Senator Stott Despoja that I am quite happy to withdraw that, because we need to get on with the substance of this debate.

Senator STOTT DESPOJA (South Australia) (10.28 a.m.)—The senator has made another reflection. This is not a new direction. My participation in this committee process is on record in relation to debating the amendments from an ethical, social and scientific perspective. Can the senator withdraw that reflection as well, so we can get on with this debate?

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—I think your point is made appropriately in debate. But I do not think there are grounds for me to rule
that Senator Brown’s comments are out of order. They are debating points. I think that we should move on.

Senator HARRADINE (Tasmania) (10.29 a.m.)—I raise with the minister that no example has been given. The minister said that these matters will be attended to and be able to be remedied after three years—that is, after the review. Is it then a fact that the licensing committee will not issue a licence for a greater period of time than three years? If this question of commercial-in-confidence is such an important one—and it is—and if the minister says that this whole issue can be dealt with at the end of the three years, clearly the licensing committee should not issue licences beyond three years. Otherwise, as Senator Brown said—and I do not know whether he said it would be putting the cart before the horse—if a licence is given for a greater period than three years, the review cannot be operative in respect of that particular licence.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.31 a.m.)—In answer to Senator Harradine’s question on the review, one of the problems we have is that, for example, in two years and nine months somebody may have got a licence for a year, or the licence might be for when they have used an embryo and they have not used the embryo by the time the review comes. If you set it to say that licences should all end by the time of the review, I think that would create a massive problem. If there is not the review and if there is some concern about the way these licences are issued, clause 25 states:

(1) The NHMRC Licensing Committee may, by notice in writing given to the licence holder, vary a licence if the Committee believes on reasonable grounds that it is necessary or desirable to do so.

So if, under review, the parliament required the licensing committee to vary the length of the licence, I presume that would be necessary grounds on which to do it. I think there is control within that clause, Senator Harradine, to meet the concern that you have.

Senator HARRADINE (Tasmania) (10.32 a.m.)—I raise the fundamental point that the horse has by then bolted. If you are allowing confidential commercial information to be withheld at the request of the applicant, then that sets a pattern. At the end of that three years, that pattern has been set and there is no way in the world that the review could reverse that pattern, because of the commercial interests involved. Once you get commercial interests substantially involved as the primary purpose of the application—and let us face it, this is the motivator of not all but a number of those persons who seek to do such experiments—then that is of concern. I myself do not wish the decision relating to the use of human embryos, to their destruction, to be subject to commercialism; but that is what it is.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—Senator Barnett, do you wish to return to your clause 11 amendment?

Senator BARNETT (Tasmania) (10.34 a.m.)—Yes, I do. I seek leave to withdraw amendment (R3) on sheet 2757, which was debated last night.

Leave granted.

Senator BARNETT (Tasmania) (10.34 a.m.)—by leave—I move amendments on sheet 2767:

(1) Clause 11, page 10 (lines 12 to 14), omit paragraph (b), substitute:

(b) the use is not for a purpose relating to the assisted reproductive technology treatment of a woman carried out by an accredited ART centre, and the person knows or is reckless as to that fact.

(2) Clause 11, page 10 (lines 16 to 25), omit subclause (2).

These amendments are to clause 11. We had some discussion and debate about this last night. As I indicated earlier, through the goodwill expressed by the minister’s office we have discussed this amendment, and I believe it an appropriate and sensible one. It removes entirely subclause (2) to clause 11, which was the offending clause. It set up a ‘code or document as is prescribed ... from time to time.’ It set up a code which was issued by a voluntary non-government organisation. Subclause (2) has been deleted alto-
gether. That removes any lack of parliamentary scrutiny and makes sure that we do have a tighter regulatory regime and parliamentary scrutiny. That is the removal of subclause (2). Subclause (1) is slightly reworded to say:

… the use is not for a purpose relating to the assisted reproductive technology treatment of a woman carried out by an accredited ART centre, and the person knows or is reckless as to that fact.

That replaces subclause (1)(b). As I said, I talked to the minister and she is happy with that amendment. I am happy, and I think it avoids all the problems that we were discussing last night. I commend the amendments.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.36 a.m.)—During this debate there have been questions about my motives, my intentions and my commitment to the Senate process from time to time. I can take all that because I am defending a position. I did not have time to read the Scrutiny of Bills Committee report yesterday, because I have been a little preoccupied, as have been some other senators who have spent the whole of this week sitting in this chamber. But I do have very high regard for two Senate committees: the Scrutiny of Bills Committee and the Standing Committee on Regulations and Ordinances. The regs and ords committee has not lost a debate in this house since 1932, I think. The Scrutiny of Bills Committee has no power but it has the influence to question. When I saw the Scrutiny of Bills Committee report, I believed it was appropriate for me to try and negotiate a position. I think that shows that I am not intransigent and that I will actually move when I think it is appropriate. I will be supporting these amendments because I believe they do what is required and also meet the concerns expressed by the Scrutiny of Bills Committee report. I will be supporting these two amendments.

Senator STOTT DESPOJA (South Australia) (10.38 a.m.)—I commend Senator Barnett—and, similarly, the Minister for Health and Ageing and the government—for taking on board some of the concerns that people had with the original amendments. Some of us were concerned in advance of the Scrutiny of Bills Committee report being handed down, but when it was released yesterday afternoon it outlined that there were some issues—certainly issues with which my party room had some problems. I commend them for that and indicate that the Democrats will also support the amendments before the chamber.

Senator HARRADINE (Tasmania) (10.38 a.m.)—Can I just ask a question of the mover. What, then, does this mean if there is an improvement in the code of practice for those using assisted reproductive technology? The whole point that I am concerned about is parliamentary scrutiny. How do we have effective scrutiny over the code of practice for centres using assisted reproductive technology?

Senator BARNETT (Tasmania) (10.39 a.m.)—I am happy to attempt to respond to Senator Harradine’s questions, unless the Minister for Health and Ageing wants to. The answer is that the code is still in place; the non-government organisation is still in place. Instead of creating bad law—and for the code to be changed from time to time and for people to be subject to the code—what these amendments do is take that out of the bill altogether. So any changes to the code have to be recognised by those who are subject to the code—what these amendments do is take that out of the bill altogether. So any changes to the code have to be recognised by those who are subject to the code. This does not make any reference to the code whatsoever in the bill. It is an improvement to the legislative effect of the bill in terms of parliamentary scrutiny because, prior to these amendments being moved and under the existing bill that the minister has put forward, it would have left it way open. I wanted to close that loophole. I think these amendments will close it, but I think Senator Harradine has raised a good point about improvements being made to the code—how they will be addressed and how they will be exacted and implemented. I am only assuming, Senator Harradine, that that will be a voluntary act. The participants who are subject to the code—the ART centres—will no doubt be complying with the code. That is for them to decide; it is basically self-regulation. We are setting up a regulatory regime, and these are the offence provisions. That is my response; the minister might care to make a response.
I am happy to also comment on some of the responses I have heard regarding these amendments. They have been around for several days, so I do not accept the fact that they are as a result of the Scrutiny of Bills Committee report. I have been discussing this at some length with the minister’s office, so this was an idea in advance of the Scrutiny of Bills Committee report being handed down. That report has now backed up those amendments, for which I am very thankful.

With respect to Senator Stott Despoja’s comments about the concerns with the amendments, there were no concerns expressed last night to the amendments that I put—not in this chamber. The minister simply requested that the amendments be postponed and looked at this morning. I thought they were good amendments, and I still think they are good amendments, but we have different amendments which achieve the same purpose.

I commend Senator Stott Despoja for her participation in the committee and in this chamber and for the manner in which that has been done. I am thankful for that. I also commend Senator Brown for the contributions he has been making during the debate; I think they have been very positive and helpful. I hope that helps to answer some of Senator Harradine’s questions. If the minister would like to respond, that would be good, too.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.43 a.m.)—I want to respond by saying that we should go back to appendix 1 of the COAG communique under the heading ‘A nationally consistent approach to ART’. The Commonwealth is not regulating the ART clinical practice. Who oversees that is very clear under the COAG communique, which reads:

11. Accreditation by the Reproductive Technology Accreditation Committee (RTAC) of the Fertility Society of Australia should provide the basis for a nationally-consistent approach to ART. The Commonwealth is not regulating the ART clinical practice. Who oversees that is very clear under the COAG communique, which reads:

11. Accreditation by the Reproductive Technology Accreditation Committee (RTAC) of the Fertility Society of Australia should provide the basis for a nationally-consistent approach to ART clinical practice in Australia, noting that compliance with the NHMRC/AHEC Ethical Guidelines on ART is a key requirement of RTAC accreditation.

12. Individual jurisdictions may choose to mandate RTAC accreditation in legislation or supplement requirements for RTAC accreditation with an additional layer of oversight (for example, through a system of licensing or accreditation of ART service providers).

These clauses were included to close the loophole for the use of embryos that were excess to ART, which we needed to make sure were caught up. Because the states are legislating for excess ART embryos for the purpose of ART, we wanted to cover—and it is here in clause 11—'a human embryo that is not an excess ART embryo'. So it was covering a potential loophole. But the states have the responsibility for overseeing RTAC accreditation. I hope that is clear.

Question agreed to.

Senator HARRADINE (Tasmania) (10.45 a.m.)—I move amendment (11) on sheet 2751:

(11) Page 22 (after line 6), at the end of Division 5, add:

30A Public interest disclosure

A person may make a public interest disclosure about conduct arising from Division 3 or 4 of this Act if:

(a) the person has information about the conduct; and

(b) the conduct relates to one or more of the following:

(i) conflict of interest;

(ii) malpractice or maladministration;

(iii) corruption;

(iv) substantial and specific danger to public health or safety.

(2) The conduct referred to in subsection (1) may relate to members of the NHMRC, the NHMRC Licensing Committee, staff or contractors of the NHMRC or any of its committees, or a licence holder.

(3) A person is declared not to be liable civilly, criminally or under an administrative process for making a public interest disclosure provided that the disclosure is made to an appropriate entity.

(4) An appropriate entity for the purposes of subsection (3) is any one or more of the following:

(a) the Commonwealth Ombudsman;

(b) the Australian Public Service Commissioner;
(c) the Commissioner of the Australian Federal Police;

(d) the Auditor-General for the Commonwealth of Australia;

(e) the Chief Executive Officer of the Australian Customs Service;

any one or more of whom may investigate the conduct disclosed in accordance with their usual powers and procedures.

This is an amendment to the whistleblower provision. All that we have heard to date proves beyond question that there is a need for this particular amendment. Clause 30 of the bill prohibits whistleblowing by threatening whistleblowers with two years imprisonment. Look at the bill: that is what it does. It allows for two years imprisonment for somebody who blows the whistle on a practice which is not transparent. If people with commercial interests want access to excess ART embryos, then they must be prepared for full public scrutiny of all of their activities which are relevant to the use of such embryos. There should be no hiding behind the term ‘confidential commercial information’.

Studies regularly show how whistleblowers suffer as a consequence of their actions, even though their actions may be vindicated and their allegations proved. We have a responsibility to take steps to prevent victimisation of people who do the right thing by exposing fraud, corruption or unethical behaviour. Parliament has a responsibility to encourage and support ethical conduct of citizens. Inserting public interest disclosure rules into the Research Involving Embryos Bill 2002 provides an opportunity to uphold that responsibility. Citizens need to have confidence that the regulatory structures that are in place to handle sensitive ethical matters are strong and effective. Inserting whistleblower provisions in those structures will help to enhance public confidence that ethical guidelines will not be breached and taxpayers’ resources will not be wasted.

The Public Service Act protects public servants who blow the whistle. This protection should be extended to those who make disclosures in the public interest, whether or not they are public servants. This is not a willy-nilly approach. The whistleblower’s information—the exposure of fraud, corruption or unethical behaviour—has to be reported to an appropriate entity, either the Commonwealth Ombudsman, the Public Service Commissioner, the Commissioner of Australian Federal Police, the Auditor-General for the Commonwealth of Australia or the Chief Executive Officer of the Australian Customs Service. It is important that the information is conveyed to responsible authorities and organisations. I hope that the Minister for Health and Ageing will see her way clear to accept this amendment, bearing in mind that under the present bill somebody who is going to blow the whistle faces a two-year jail term.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (10.49 a.m.)—Whistleblowing provisions, as they are commonly referred to, pose a number of complex issues. These include employer-employee relationships, potential liability and damages, privacy and the right to a fair hearing, natural justice and appeal. Senator Harradine’s amendment does not deal with any of these. Some states have attempted to codify the law regarding whistleblowing. Queensland recently developed comprehensive legislation in relation to whistleblowing. The legislation exceeds 64 pages, which reflects the complexity of the issues. In the context of Commonwealth legislation, there is also an issue of the constitutional power and ensuring that the provisions can be tied back to the subject matter of the regulation and the heads of power detailed in the Constitution.

The Queensland legislation sets up a system of public interest disclosures. It contains a lot of detail about when an entity is an appropriate entity to receive a disclosure and how and by whom such disclosures are to be handled. In contrast, it is not clear from Senator Harradine’s amendment what an appropriate entity would do with the information once it is received. For example, under the amendment a disclosure about a licence holder may be made to the Ombudsman or the Public Service Commissioner. However, a licence holder is likely to be a non-government entity and neither the Om-
budsman nor the Public Service Commissioner have jurisdiction to investigate non-government bodies. It is obvious that the amendment raises a number of issues which require clarification. It is simply not a matter that can be dealt with in four paragraphs as suggested by the amendment.

There are two important avenues through which complaints can be made and protection can be afforded to those who make complaints. Firstly, anyone can make a complaint to the Commonwealth Ombudsman, who has a range of powers to investigate complaints about Commonwealth bodies, including the NHMRC Licensing Committee and staff or contractors of the NHMRC. Secondly, the NHMRC Licensing Committee will be able to consider complaints about licence holders. In some cases, the criminal law will compel people to report certain offences or risk being liable for aiding and abetting the commission of the offence. This would not, of course, apply to people who simply become aware of an offence and report it. Rather, it would apply to people who are intimately involved in the commission of an offence or who may be said to have aided or abetted the offence. For these reasons, I will not be supporting Senator Harradine’s amendment.

Question negatived.

Senator MARK BISHOP (Western Australia) (10.52 a.m.)—I move amendment (6) on sheet 2689:

(6) Clause 31, page 23 (line 20), at the end of the definition of eligible person, add:

; or (f) a responsible person, as defined under section 8 of this Act; or

(g) any other person who is acting in the public interest.

Pursuant to clauses 31 and 32 of the Research Involving Embryos Bill 2002, rights are granted to seek review of decisions of the NHMRC Licensing Committee. Clause 31 lists those eligible persons who have standing to seek review. Clause 32 presently allows licence applicants and licence holders to seek review of the decisions listed in clause 32. This amendment seeks to make it clear that, as well as applicants for licences and licence holders, any other interested party should have standing to appeal decisions of the NHMRC Licensing Committee, including present or former owners of embryos, interest groups and members of the public at large acting in the public interest.

There are two basic arguments as to why you would have such an admittedly extensive review or list of persons who might be given appeal rights. Firstly, it is one of inclusion and equity and, secondly, it is an issue of transparency and accountability. In the discussion on this debate a range of allegations have been made as to the bona fides, the activities or the appropriateness of a range of commercial organisations, the role of the NHMRC itself, the role of the AHEC and the role of government agencies. There has been considerable questioning as to the bona fides of many of those organisations, let alone organisations involved in universities in the private sector who seek to make commercial gain from the research activities and opportunities that derive from that.

One of the best ways to put that whole debate in context—in balance—is to have full disclosure and full accountability, full transparency of activities, the reasons for licences being granted and the reasons for licences being rejected. Those who have a commercial interest, an ethical interest, a matter which is of interest to the public at large—or any other interest that has some substance perhaps worthy of articulation—should be allowed, when they feel aggrieved, to participate and to exercise rights in the appeal procedure through to the AAT. That process of discussion, of disclosure of information, of exercising rights, of putting arguments will, in the final analysis, be the catalyst that resolves competing interests and competing differences that have emerged in this debate.

Some would suggest, in response, that the amendment is framed too widely and that the process of appeal of review, as a consequence, would be too long or too time consuming. My response to that in anticipation is simply that a wide list of applicants who can seek reviews of the licensing committee decision will see, over time, full information being put on the public record—not allegations or aspersions or a range of conspiracy theories. Full information results in full dis-
closure, and full disclosure results in full and open debate, and eventual and final resolution of conflicting arguments. That is a proposition which I have long held to. It is better to have the debate open and out there; people can put their point of view, issues can be discussed and resolved, and the community and those who have interests can move on.

Secondly, the argument will be put that if the list of applicants seeking review rights is too wide or too long it will be too time consuming and hence costly to the public purse as a range of people manufacture arguments to put a case who really have no interest in or role to play outside that of licence holders, aggrieved applicants, embryo owners or a range of ethnic groups. My simple response to that is that the rules of the AAT, as indeed for nearly all administrative law agencies, contain provisions that applications that are vexatious, litigious or frivolous can be dismissed ab initio—they can be dismissed at any time of proceedings. If any individual or group sought to engage in recurring conduct contrary to the spirit implicit in appeal rights being given or granted to aggrieved parties to the AAT, eventually that tribunal would exercise the rule or the powers that it has been given to dismiss—and properly so—such applications. I commend the amendment before the chamber.

Senator Nettle (New South Wales) (10.58 a.m.)—I rise to inform the chamber that I will be withdrawing amendment (6) on sheet 2705 standing in my name, because it is identical to the amendment that Senator Bishop has just moved. As Senator Bishop has said, this amendment seeks to permit someone with a direct interest in the excess embryo, as defined in clause 8 of the bill, and also any person acting in the public interest, to appeal a decision of the NHMRC Licensing Committee. This amendment has been designed to provide a check on the decisions of the licensing committee, which is particularly important given that the decision making process through the NHMRC, about which we have had discussions, is not as open and accountable to the public as we would like to see.

There are numerous precedents for allowing people acting in the public interest to appeal decisions of public bodies, and there has been a trend in recent years to widen this opportunity for third parties. There are examples in a range of legislation, including in the Environment Protection and Biodiversity Conservation Act, which permit a member of the public to seek an injunction if they believe that an act or an omission constitutes an offence under that act. This is about allowing that third party to be involved in calling for a review of decisions made by the licensing committee of the NHMRC and to do so if they are acting in the public interest. This is an opportunity for people who have concerns about commercialisation aspects or influence on decisions of the licensing committee to be able to seek review and to ask for information to be provided by the committee about the basis on which the decisions were made. We withdraw our amendment and will be supporting the amendment put forward by Senator Bishop.

Senator Stott Despoja (South Australia) (11.00 a.m.)—I will not be supporting Senator Bishop’s amendment to the Research Involving Embryos Bill 2002. It is quite appropriate that applicants for a licence or licence holders have the right to ask the Administrative Appeals Tribunal to review an NHMRC Licensing Committee decision in respect of issuing or declining to issue a licence, specifying licence conditions, varying or refusing to vary licence conditions, or suspending or revoking a licence. I believe that this is explicitly allowed for in clause 32. But I am not sure why it is necessary—and I certainly do not see that it is necessary—to expand the list of eligible persons who can apply for an AAT review to include the woman and the man who provided the egg and the sperm, the woman for whom an embryo was created or, indeed, their respective spouses. These people must give their consent before their excess ART embryos can be licensed by the NHMRC committee for research, training or quality assurance. It is not at all clear, and I do not think it has been made clear, why they would need to access the AAT to review a decision. If the donors of the excess ART embryo become aware that the purposes specified in their
consent have not been honoured, that is a breach of the licence—as it should be. Remedies of course exist under the legislation—including, let us not forget, criminal actions—for the licensing committee changing or failing to honour, and thus breaching, the licensing conditions.

We think that expanding the range of eligible persons to any interested group, even if they think they are acting in the public interest, opens up some interesting opportunities—even arguably, at worst, systematic abuse—by allowing vexatious applications to review all decisions made by the licensing committee. I think that this amendment can be misused—in some ways, perhaps, to undermine the very intent of the legislation. The people who should be involved in accessing the tribunal are already catered for under the legislation. I think that any reason why those people would want to ensure a review of a decision is allowed for under the legislation. Even the fact that there is potentially a breach would be dealt with, and is dealt with, under this legislation. I put on record again my grave concern about third parties getting involved. I think that senators can see the potential for abuse under that amendment. We will not be supporting it.

Senator BROWN (Tasmania) (11.04 a.m.)—I support this amendment to the Research Involving Embryos Bill 2002, because I support the public interest. We must not be frightened of the public interest. Inherent in what Senator Stott Despoja said is a concern that the public interest can be equated with vexatious litigants. Of course it cannot. Vexatious litigants are dealt with under time-honoured standing rules, but I do not think it is valid to exclude the public interest because that may open an avenue to a vexatious litigant who has a bee in their bonnet about the matters we are discussing here. I will always stand for public interest clauses, because I think it is too difficult these days for the public to have access to processes like this that worry them greatly. If there are already provisions for the woman and/or man who have given permission for experimentation on the embryos they have given rise to to have recourse if they find that what they were promised has not happened, there is no harm in repeating it under this section. Here, again, we have a wariness coming from those who oppose this point of view that the public is going to get too involved in this matter. My wariness is that the commercial interests are going to be too controlling. For goodness sake, ought not the public interest test be legitimately upheld under these circumstances? I think it should.

Senator PATTERTON (Victoria—Minister for Health and Ageing) (11.06 a.m.)—This amendment seeks to expand the definition of ‘eligible person’ in relation to persons who have the right to appeal to the AAT. The Research Involving Embryos Bill 2002 currently allows review of decisions by a defined class of persons: the applicants for a licence and the licence holders. Appeal to the AAT is permitted on a range of decisions, including a decision not to issue a licence, a decision to specify licence conditions and a decision to suspend or revoke a licence. I will be opposing any amendment which gives standing to an interested party to appeal decisions of the NHMRC Licensing Committee to the AAT. I consider that such an amendment would enable any interest group to frustrate the policy intent of this legislation by seeking review of all decisions made by the NHMRC Licensing Committee. The effect of this would be to provide no regulatory certainty to applicants and to ensure considerable time delays before any activity could proceed.

It is important to remember that the AAT does not have the power to make decisions outside the scope of the legislation or change government policy enacted in the legislation. If the objective of the amendment is to provide greater opportunity for the views of interested parties to be heard on general issues rather than on the merits of any specific application, these concerns are better considered in other forums. They are not matters which can be properly addressed at the merits review stage, and the AAT is not the appropriate body through which organisations should attempt to change government policy enacted in the legislation. For these reasons, I will not be supporting the amendment.

Senator NETTLE (New South Wales) (11.07 a.m.)—I have a question for the min-
ister in regard to the matter that Senator Stott Despoja raised about the donors who have given consent to the excess embryos being used. If there is then a breach of the licence conditions with that consent not being followed to the letter in terms of the conditions under which it was given, can the minister inform the committee how the donors of the excess embryos would be aware that the licence conditions and their consent had been breached in that process.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.08 a.m.)—I am advised that if there is a breach the licencing committee would pursue a prosecution. But, as I said earlier, some of these questions are very detailed and they are hypothetical. I am not trying to avoid them, but we did have a process where these sorts of questions could have been put on notice in detail and the answers could have been given. There are senators here, interested in both sides, who spent hours and hours in committee on this and there was an opportunity for those detailed questions. I believe I have given an answer and a reason as to why I will not be supporting this amendment.

Senator NETTLE (New South Wales) (11.08 a.m.)—I am wondering if there is a process by which those people who have given the excess embryos can be informed along the way, before the prosecution takes place, that there has been a breach of the consent conditions that they gave for the use of their excess embryos.

Senator CHRIS EVANS (Western Australia) (11.09 a.m.)—While the minister is getting an answer, I will do a little ‘ad-break’. I think it is a reasonable question from Senator Nettle and I will allow the minister to answer. I just want to indicate formally on behalf of the Labor Party that we will be opposing the amendment. Pre-empting me, Senator Bishop summed up the argument pretty well as to why we will be opposing it. We believe it is too broad and that the breadth of appeal allowed by his amendment could in fact end up making the thing unworkable, by virtue of those groups who are basically opposed to any research being allowed to go ahead being able to challenge every decision. While we support openness and appeal rights, you have to balance that against making the system totally unworkable. We are concerned, particularly given the level of emotion and feeling about some of these issues, that the broadness of these appeal rights would in fact frustrate the purpose of the legislation. So we will not be supporting that particular amendment.

Senator BROWN (Tasmania) (11.10 a.m.)—On Senator Nettle’s line of questioning, I wonder if the minister could inform the committee whether the woman and/or man who give permission for the excess embryos to be used will be kept informed of the progress of the use to which it is put. Secondly, and quite importantly, if they seek information about it, can the minister give an assurance that commercial-in-confidence considerations will not prevent those donors from being able to track the experimentation which is a consequence of their donation.

The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that the amendment moved by Senator Bishop be agreed to. Senator Nettle?

Senator NETTLE (New South Wales) (11.11 a.m.)—I want to give the minister an opportunity to be able to respond to the questions.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.11 a.m.)—The amendment proposed by Senator Nettle does not in any way address the concern or the issue that she has raised. Appeal to the AAT is in relation to decisions made by the licensing committee, not in relation to breaches. The AAT has no power over breaches. As I said, this is appropriately pursued through prosecutions, and the licensing committee will certainly be reporting.

Senator BROWN (Tasmania) (11.11 a.m.)—I wonder if the minister could respond to my questions about whether the donors will be kept informed of the progress of experimentation and, secondly, whether there are any circumstances in which the commercial-in-confidence clause could be used to exclude donors from seeking information about what is happening to the embryonic material they have donated.
The TEMPORARY CHAIRMAN (Senator McLucas)—The question is that the amendment moved by Senator Bishop be agreed to. Senator Brown?

Senator BROWN (Tasmania) (11.12 a.m.)—I will give the minister an opportunity to respond to that, because otherwise the answer to my question goes begging.

Question negatived.

Senator BARNETT (Tasmania) (11.13 a.m.)—I move amendment (7) on sheet 2694:

Clause 42, page 29 (lines 4 to 7), omit the clause, substitute:

42 Operation of State laws

Nothing in this Act is to be taken to affect the operation of any law of a State that prohibits absolutely the use of excess ART embryos, or that imposes additional conditions, whether consistent or inconsistent with this Act, on the use of such embryos.

Amendment (7) concerns the override of state laws in clause 42. I have prepared some notes on this because I think this is a very crucial amendment. This is about the right of each state parliament in the federation of states in Australia to make its own decisions. It should be remembered that each of the states and territories, to implement a watertight legislative regime in any event, will be required to pass its own law, which will be specific to both the Prohibition of Human Cloning Bill 2002 and the Research Involving Embryos Bill 2002. They will be required to pass that law anyway, and yet here we have a provision in this law that effectively overrides state legislation.

The impact of section 42 is to unilaterally override existing state bans on destructive embryo research in Victoria, South Australia and Western Australia. This is wrong for three reasons. Firstly, the bill is meant to represent a national approach on embryo research that respects our federation. The Senate is a states house. We should only pass this bill if it is agreed to by the parliaments and not just the premiers—those who are involved in COAG—of all states. The parliamentarians in each state represent their state. We are representing our states and, indeed, our nation in this Senate.

Secondly, federal parliamentarians have enjoyed a conscience vote on this issue. If this is a matter of conscience, state parliamentarians should equally be entitled to a conscience vote rather than have their views rendered irrelevant by being overridden by a Commonwealth law. The consciences of federal parliamentarians are not more equal than those of our state counterparts—we are not more equal than them. They are entitled to and are in fact responsible for their own decisions. They are accountable for their own actions. That is an important principle that we need to hold on to.

Thirdly, the constitutional validity of the bill is doubtful without state endorsement. There is no specific head of power that gives the Commonwealth comprehensive powers to legislate on research. COAG has no constitutional status. As the National Health and Medical Research Council told the Senate:

The advice we have received from the Australian Government Solicitor has been that using a range of constitutional powers, as we do in clause 4, provides considerable coverage in relation to the legislation, but not complete coverage. Hence, there is a need for corresponding state and territory laws to confer powers on the NHMRC licensing committee to enable full constitutional coverage of all activities and persons in Australia. The Commonwealth powers are extensive but not comprehensive. There is no constitutional status to COAG, as I have said, or to the regulation of unincorporated entities by the Commonwealth. We are primarily relying on the Corporations Law in this parliament. The external affairs power has been referred to, but there is no specific treaty, and it is clearly extensive but not comprehensive. That means that, unless these state laws are enacted, we have a mishmash; we have a legal loophole. Even if we pass this law today, you have a legal loophole; you have a constitutional loophole. It is on the record that the states and territories are required to pass their own laws anyway. So why, in clause 42 of this bill, would we want to be overriding those state laws? It is a very persuasive argument, I believe. Without complementary state legislation this
legislation will be subject to challenge. Researchers will not be able to rely on the regulatory regime the bill will establish due to the risk of challenge. That is a major area of concern. We are talking about individuals here, and they will not be able to rely on that legislation.

If the premiers are as concerned about biotechnology investment and medical breakthroughs as they have expressed then the incentive for those premiers and states to legislate is very strong indeed—of course it is. This amendment ensures that state parliaments remain accountable to and consistent with the Constitution and our federation of states. I draw the chamber’s attention to page 2, clause 1.1 of the NHMRC’s Ethical guidelines on assisted reproductive technology, 1996. These are draft guidelines which are under review. This is what we have at the moment. These should have already been updated and set out in law and the review should have been completed. Nevertheless, clause 1.1 says:

In those States where there is specific legislation regulating assisted reproductive technology (ART), compliance with provisions of the statutes must be observed. Where both the State law and the guidelines apply, the State law prevails.

So we already have the guidelines, which say that the state laws must be preserved. We are actually arguing against ourselves. If this amendment is not supported, we are arguing against ourselves. These guidelines make it very clear that, with regard to specific regulations regulating ART, ‘compliance with provisions of the statutes must be observed’ in those states. That is a persuasive argument. The federal government and federal legislation rely on these guidelines. The guidelines say they must observe state law. And here we go in clause 42 wanting to override these state laws. I feel this is an inappropriate way to go.

In particular, I feel for the states of Victoria, South Australia and Western Australia, who already have strict regulatory regimes in place. Those states effectively ban destructive research of human embryos. Why shouldn’t they be allowed to have those laws in place? We are setting up a federal regime, and we can do that. Why can’t they have a stricter regime than we are recommending? Why isn’t that appropriate? I would like to hear the reasons why, because I do not think there are any. I hope that this amendment is supported, because the amendment allows those states to do what is appropriate, fair and right for them. As I say, they are accountable for their actions; they are responsible for their decisions in those states. We are parliamentarians for the federal parliament; they are parliamentarians for the state parliaments. I think this is a very important issue. I encourage all senators to search deep down in their consciences and to think carefully about this amendment and this particular provision, because, if this bill goes through without this amendment, I think you are undercutting big time the rights, roles and responsibilities of each state and territory in this nation.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (11.22 a.m.)—I rise to strongly support Senator Barnett’s amendment. I have deliberately stayed out of this debate given the very capable articulation of the amendments and in deference to my cabinet colleague, but I am very concerned about what I regard as one of the worst and most offensive clauses of the Research Involving Embryos Bill 2002. I am particularly concerned because I had believed, in the lead-up to the COAG meeting in April, that there was no way that any federal legislation would purport to override the existing properly legislated bans on destructive research on embryos in three states of our six states—South Australia, Western Australia and Victoria. We have heard from Senator Barnett about those bans, which were put in place properly by those parliaments as recently as 1995 in Victoria and confirmed in 1995 in South Australia and in Western Australia in 1991. They are the current law.

Frankly, I was horrified when the COAG communiqué came out making it clear that what was going to be proposed in this federal legislation was a purported override of those bans in those states. It is one thing for this parliament to pass a law which sets an outer limit of what the states can do and sets a national framework of what is possible in this
area of embryonic research, but to use that power to render unlawful the prohibition passed by those sovereign state parliaments on such research is an abuse of the Constitution, an abuse of this parliament and utterly wrong.

Whether or not you are a supporter of embryonic stem cell research, the proposition should be that it is up to those states to decide by a conscience vote of their parliaments and their duly elected representatives whether or not to maintain their prohibition. That is a matter for them and, as an opponent of embryonic stem cell research, I will respect those three parliaments if, ultimately, they remove their bans by a conscience vote of their parliaments. That is the proper process. But it is entirely improper and a contradiction of everything that this Senate is about and the very reason this Senate exists for this parliament and this chamber, of all chambers, to pass a law which purports to override that very ban. It is utterly wrong, and this chamber and every senator in it ought to think seriously about why we are here, about our role as representatives of our states and about the fact that this chamber only exists because we are the ultimate expression in a federal sense of the federation and of the sovereign rights of these parliaments.

To override the properly enacted prohibition on this life-destroying research by this act of parliament is very wrong. Indeed, it is clear from the advice to the government and the committees that there is a constitutional doubt about the capacity of the federal parliament to do so. The Australian Government Solicitor and the Attorney-General have both signalled, as Senator Barnett said, that there is not confidence in the capacity of the federal Constitution to be used to do this. There is no head of power on medical and scientific research. There is a manufactured use of the corporations power and a few other powers to cobble together this attempt to override a properly legislated prohibition in those three states. I suspect that this could well be challenged in any event. It is clear that it is not comprehensive and that this clause cannot work effectively anyway without state legislation. The matter should be left to those state parliaments to decide whether or not they want to lift the prohibitions that they put in place. It should not be done by this Senate.

Senator STOTT DESPOJA (South Australia) (11.26 a.m.)—Some of the comments that you, Madam Temporary Chairman McLucas, and I have made in relation to this debate are contained in a supplementary report of the Senate Community Affairs Legislation Committee. I will not go into the detail of those comments in relation to the states rights argument—I will be trying to steer clear of that as such; suffice to say that we are aware of this issue. Not only were we alerted to it by questioning in the Senate committee process but submissions to the Senate inquiry drew attention to the notion that allowing the Commonwealth to override state law was purportedly inconsistent with COAG or potentially undemocratic. The Western Australian division of the National Civic Council and the Festival of Light submissions were very strong in that regard. I have looked into this issue, and I do not support that assertion. Apart from anything else, I think it does not recognise the fact that the states and territories are parties to the COAG agreement.

Senator Barnett—The premiers are.

Senator Minchin—The premiers are.

Senator STOTT DESPOJA—I will not be supporting Senator Barnett’s amendment. I think there are good reasons for the legislation allowing for the Commonwealth, to the extent of its constitutional powers, to override existing legislation in Victoria, South Australia and Western Australia. On that note, Senator Barnett, you commented on the strict regulatory regime. That is perhaps a debate for another time, but I think you and others may recognise that there are issues in relation to whether or not some of those pieces of legislation are perhaps outdated. I am not suggesting that they could not be updated, but the fact that only three states have a regulatory regime speaks volumes; hence, my strong support for a nationally consistent framework. Clearly, that is the intent of this legislation: to come up with a nationally consistent piece of legislation. I strongly support that objective—so do my colleagues. Obviously, this amendment would threaten that
objective. The COAG communique is quite explicit in stating:
Research involving human embryos should be regulated through nationally consistent legislation.

The three states that have already got legislation in place—Victoria, South Australia and WA—did agree. I will accept those previous interjections—they keep saying, ‘the premiers’—before anybody makes them again: at last count, I thought the premiers were representing the states, and that is the view that some people hold. If we are going to start heading down that path of distinction it will open up a whole can of worms in relation to debates as to what is negotiated at COAG. Regardless of that, three states—or their representatives, the premiers—agreed at COAG to amend their legislation to complement the Commonwealth’s legislation. I do note the Attorney-General’s advice of 24 September in the other place that these states have in fact commenced doing that. That was certainly an area of questioning for some of us on the committee as well.

I believe one of the real strengths of the COAG communique is that it unequivocally intends a nationally consistent legislative and regulatory regime. Any allowance for significant differences among jurisdictions, which will happen if this amendment is successful, is unacceptable to me and the Democrats. Given time constraints I will not go further, but all these debates have been emotional and controversial and I recognise that this one is too. Most of us in the last hour or so have been able to be heard without interjection. I am happy to make sure I stick to that rule myself—in the next hour and a quarter, anyway—and I ask other colleagues to do the same. We may have different debates, views, legal interpretations and what have you on this matter, but this should be a debate that occurs without interjections. It is a particularly interesting debate and I am sure there will be an interesting outcome. While I respect Senator Barnett’s strong views on this, neither I nor my colleagues will be supporting his amendment.

Senator KNOWLES (Western Australia) (11.31 a.m.)—I oppose this amendment. No one can accuse me of not being a states’ righter, but I find it somewhat incredible that the people who in the main are supporting this amendment are the very people who voted in favour of the Andrews bill to over-turn the decision of a territory government. The Territory has self-government. Whether it is a state or not, it has a constitutional right for its parliament to decide the issues for its territory. But the people in this parliament who are now, basically, supporting this amendment decided that those people did not have that right.

It is interesting because, as Senator Stott Despoja will affirm, I had someone from the National Civic Council in Western Australia ring me up and give me a right proper old blast on the basis that I voted against the Andrews bill—partly because it overrode the decisions of the Northern Territory parliament—and I was accused of being totally and utterly inconsistent with my position in support of this bill. The National Civic Council said to me, ‘There are hundreds of members of parliament around Australia who oppose the agreement that COAG came to.’ I asked the representative of the NCC: ‘Who are they? Give me names, dates, times and places when they have actually expressed that opposition. Tell me who in the Victorian, Tasmanian and Western Australian parliaments have said that they totally and utterly disagree with the premiers’ position on this.’ That conversation took place about two months ago, and here we are 5 December and I still do not have that list. That is instructive, too. The conversation was turned immediately when I asked for that list.

There should not be that type of inconsistency. As a very strong states’ righter, I am quite happy with my position. I will uphold the decision of COAG in the same way as I upheld the decision of the Northern Territory parliament to vote according to what the parliamentarians believed their constituents wanted in the Northern Territory. I find it quite inconsistent for those people who took that position quite some time ago on euthanasia and the Northern Territory decisions to now be saying that we must uphold the position of unnamed, unknown people who are outraged at the decision of COAG.
Senator JACINTA COLLINS (Victoria) (11.34 a.m.)—I do not know the conversation that Senator Knowles is referring to—I was certainly not part of it—but I could give her a list of plenty of people from Victoria if she wants it. Let me take this discussion back a step. I agree with her on the states rights issue. I do not support this amendment in relation to states rights issues; I support this amendment for quite different but very strong reasons. Those reasons are simply to do with democratic process. This is the fundamental flaw here: a straightforward lack of democratic process.

I have noticed that in the past, for instance, Senator Stott Despoja has referred to the fact that she has followed these issues for a considerable period of time. I have, too, in the Victorian context. I was involved directly in the debates that led to the Victorian legislation. That legislation went through a democratic process and was put in place to establish a strict regulatory regime—in fact, you cannot get much stricter than an outright ban, except of course if you leave a loophole which then, as Senator Patterson has referred to in the past, allows the importation of stem cell lines from Singapore. With a bit of foresight perhaps that loophole might have been avoided, but that loophole now is being used as a reason to undermine the overall regime. My answer to that was straightforward: close the loophole. But the political climate has obviously moved on in this debate in Victoria since the mid-1980s in, unfortunately, a less democratic way.

I am struggling—one of my colleagues might be able to help me here—to find a party policy position on this, other than our federal parliamentary caucus position with a conscience vote attached. So I do not know what informs a premier to turn up to COAG and argue a nationally uniform system which will override his own state legislation and which is considerably inconsistent with that legislation. Perhaps, and this is still unclear to me, there was a Victorian Labor caucus position on this. If that was the case I am unaware of it, but there is no party platform position on this. People say that to support this amendment would undermine the nationally consistent legislation. That is twaddle. All we are saying here is, ‘Take it back to the states and if they can democratically process it through their own states then they can have it.’ What is the problem there?

This establishes an extraordinarily dangerous precedent. COAG is going to be a very interesting body in the future if this is how it can function. If the Premier of my own state—an extraordinarily popularly elected Premier—is able to rock up to COAG and express a position, without even necessarily having a position from his own state parliamentary caucus, and reach agreement for nationally consistent standards and if the Prime Minister will process legislation like this, which completely overrides inconsistent legislation which has been democratically processed through that parliament in the past, think of what else we might be able to do this with, think of what other areas we might be able to address in this way. This is an extraordinarily dangerous precedent.

I want to enlighten the committee on another aspect which I would have dealt with during the debate on the NHMRC guidelines, except for the guillotine and some of the time limitations; but I was pretty confident a later opportunity would come up to deal with this issue. The NHMRC believes it is independent of parliament. This is an organisation that needs to go through ‘Parliamentary Process 101’. The NHMRC was structured to be independent of government, never to be independent of parliament; yet its response to amendments in relation to parliamentary scrutiny of its guidelines was, ‘It would compromise our independence.’ That is the point. I am absolutely astounded, although I have had conversations with some of my other colleagues, even Labor colleagues, who have more experience dealing with the NHMRC and I am told that it is not uncommon to come across this perspective of its role with respect to the parliament. I am absolutely intrigued. I have had experiences in the past where the Privileges Committee sent federal departments, such the previous Department of Employment, Workplace Relations and Small Business, to 101 classes on parliamentary practice. Perhaps it is time we did that with the NHMRC. Independent of parliament? For goodness sake!
The next issue we were supposedly compromising was the NHMRC’s broad consultation process. Tell that to the Australian Health Ethics Committee. They were the ones repeatedly saying, ‘We’ve raised these issues,’ but somehow they never got through. It took a Senate Community Affairs Legislation Committee inquiry to ask the right questions—perhaps someone to breach commercial confidence—for the information to get out. Is that the role the NHMRC should be playing? Is this the body that is going to be the keeper of our strict regulatory regime, which already has diffused and conflicting roles in how it is structured? I am sorry, but I do not see it.

Having taken a point off to the side, I will go back to the issue at hand—that is, that this should be taken back to the states. It is a simple question of democratic process. I am reasonably confident that when the Victorian parliament deals with this issue certainly my views and many of my state colleagues’ views will not prevail, but it is an issue of process. I worked through these issues in the eighties. We established a regime in Victoria in the eighties in a democratic way, but this is not a democratic response to that. It creates other problems that have not yet been thought through. In Victoria we are going from a regime that has an outright ban. We have been assured of a strict regulatory regime to come in in its place and we are yet to see what guidelines might apply or be put in place.

In New South Wales, for instance, the guidelines, which have been in place since 1996—not 30 years as some have suggested; only since 1996—have allowed destructive embryonic work. But when during the committee inquiry I asked the NHMRC and the Australian Health Ethics Committee if they could tell us how the guidelines had been operating to date they could not. They said they were under review. I asked, ‘Where is your review up to?’ They said, ‘We’ve concluded the first stage.’ I asked, ‘What is the result of your first stage.’ They said, ‘We didn’t want to pre-empt parliament by making public the draft that we are working on at the moment.’ Okay—don’t inform parliament either; this is getting better! In relation to those guidelines, when I further asked, ‘Can you give us any insight into how these guidelines have been applied by ethics committees?’ the answer was no. The NHMRC has said to us that there are already good, strict guidelines; they have also said to us, ‘There’s no feedback mechanism and we can’t tell you how they’ve been applied for six years.’ How on earth can you run an argument that we do not need to strengthen this area?

I commend Senator Patterson, because one of the areas where we have agreed to tighter regulation is this particular area. In commending Senator Patterson, I should note that, courtesy of some research, I understand this was an issue she ran quite some years ago when guidelines in relation to research on humans were being put in place. She ran the argument then that the guidelines should be disallowable. I wish I had been in parliament at the time, because I would have supported her. Unfortunately, she failed. Senator Patterson can take heart that this time, in her position as the Minister for Health and Ageing, she has been able to negotiate an outcome. Perhaps she has negotiated with the Prime Minister—I am not sure; I do not know the intricacies of what level of negotiation needed to occur—but she has at least negotiated an outcome where the NHMRC must be accountable to parliament about the way it is going to implement this type of regime.

Where are we going with these guidelines? This goes back to my point about Victoria. We are going from an outright ban in Victoria to some waffly idea about guidelines that we do not know how ethics committees have been applying in New South Wales to date. We cannot tell you. We cannot tell you what the ethics committees think a ‘significant advance in knowledge’ might be, although we do have one example I had forgotten. We have the example of Monash. After the interim statement—as I think it was called—was issued there was the requirement that when you were dealing with imported stem cell lines you needed to go through certain hoops. We know from Monash that their view that it should involve a significant advance in knowledge is simply
that it should have been through a competitive funding assessment process. If your peers have assessed it as worthy of funding, that means it is a significant advance in knowledge! No wonder we want these things to come back to the parliament. No wonder we want more than just the health ethics committees involved with some of these institutions to be determining these things.

I also know, from Victoria and from some of my colleagues I have spoken to, that Senator Patterson has some level of experience with health ethics committees. From her experience, I understand she has good reason to doubt the ability of ethics committees to be able to impact on their institutions. The point from this process is that we have solid evidence that even the Australian Health Ethics Committee cannot impact on the process used by the NHMRC. It just cannot get through. Unless they have some senator asking very confronting questions that force them into a position that they cannot back out of—and again I commend Dr Breen for the courage of what he did eventually come forward with—the response you get is, ‘No, there is not an issue there, Senator.’ It is just not good enough.

I should not have spent so much time concentrating on the NHMRC. I want to go back to the principal issue, and that is one of straightforward, pure, simple democracy. This is not a complicated issue. This is not complicated at all. There is no Labor Party position other than my federal caucus position, of which I am free, through a conscience vote—and this is an issue I will deal with later as well. Unless you refer to the federal caucus position, there is not a party platform position to inform the premiers. It could, for all we know, be their personal view—and that is not democracy.

Senator SANTORO (Queensland) (11.47 a.m.)—I wish to make a few remarks but, in view of the time limits that we are facing in this debate, in deference to other speakers who may want to continue with contributions to this debate, I will keep them brief. This is really the first opportunity for me to take a significant role in the work of the Senate chamber and, because of this, I seek the indulgence of the committee to make some general remarks about the Research Involving Embryos Bill 2002 before going on to briefly discuss section 42. By any measurement, by any criteria, this is a historic debate that I have been anxious to participate in. I have received probably more representations in relation to the matter that is under debate in this bill than at any other time in my 26 years of political activity and involvement. I must admit that it is an argument that is immensely difficult. I have sat around dinner tables and at group meetings discussing it. I have seen families divide over it. I have seen friends divide over it. I have seen people argue vehemently against each other who were never in that state of mind until this issue came before the community in the way that it has.

It is a conscience vote, and I have thought very long and very hard about this. One of the reasons I delayed coming into the debate was that I wanted to see and hear carefully the arguments that were being put forward by my new parliamentary colleagues. I must admit that I was particularly impressed by two speeches that were made very early in the piece by Senator Minchin and Senator Hogg. Those two contributions, in a very poignant and very convincing way, addressed the key question that I think everybody that has participated in this debate has sought to address, and that is: when does life begin?

I wish to declare my own personal view about this, and that is that I believe that it begins at the moment of conception, and that any other interpretation puts at risk the whole Christian ethos as well as the principles of moral science. When we start going down the road of arguing as to when life is viable, we start heading down a very dangerous road. If a society is prepared to make laws defining when early life is viable, what is there then to stop it making laws defining when, for example, later life becomes non-viable? This particular issue was addressed by my colleague Senator Knowles when she referred to Territory rights versus Commonwealth rights.

I listened carefully to what Senator Knowles had to say but I was not convinced, because really the Commonwealth does have
overriding rights over territories that it does not have over states. The rights of states are entrenched in our constitutional arrangements, indeed in our Constitution. These are the sorts of rights that we are trying to protect—or that Senator Barnett and those that support his amendment are seeking to protect. I cannot but recall—in fact, I was prompted to recall it by one of my colleagues here today—that the Northern Territory voted very recently against becoming a state. It did not want to take on the rights that would accrue to it as a political entity, as a constitutional entity, had it voted to become a state. That is the fallacy within Senate Knowles’s argument.

If we do not support this amendment and if the clause goes through as it is, it is highly likely that this part of the bill will be open to quite significant and possibly successful constitutional challenge. If I were a heavily involved member of the Catholic Church taking a strong interest in this part of the debate, I could see myself strongly motivated to take it to the High Court with a view to overturning what potentially we are about to do here today.

Senator Collins, I believe, put the whole view in relation to conscience votes and party positions in a very enlightened way. I cannot enlighten you in terms of answering your question, because I totally agree with you and I have not heard any other argument to the contrary here today. So I support Senator Barnett’s position. There is a lot more that I would like to say, but, in view of the time limits and the indulgence that I have had in canvassing some second reading aspects of the bill, I will allow other senators to continue making their contributions.

Senator Nettle (New South Wales) (11.52 a.m.)—I put on record that the Australian Greens will not be supporting the amendment put forward by Senator Barnett. I do not particularly wish to speak on that issue now, other than to say that this legislation has come out of a COAG agreement and that we believe that, given that it has come out of a COAG agreement and that the states have agreed to also put in place mirror legislation relating to this piece of federal legislation being debated—that is, given the agreement that has been reached with all of the premiers as to the nature of this legislation, and given the relevant states making changes to their state legislation—it is appropriate to go forward in this manner. We will not be supporting the amendment.

Senator Chris Evans (Western Australia) (11.53 a.m.)—I indicate formally on behalf of the ALP that we will not be supporting the amendment either, for the reasons outlined in part by the minister. I know that these are the dying stages of the bill, but effectively we have heard an argument which seeks to maintain a situation where we do not have nationally consistent legislation but where the states are able to have different legislation. That is really what this argument is about. The states have agreed to try and get a nationally consistent approach to overcome the difficulties posed by different state regulations encouraging people to move between states.

Really, what Senator Barnett put was a plea to maintain different state regimes. It is a plea put by someone who opposed the second reading of this bill and who hopes to maintain that position in other states. I understand his position. That is fine; that is his view. But I always get concerned when senators come in here and start arguing the ‘states house’ argument. It is like what they say about the last refuge of a scoundrel: it is used when it suits; we suddenly become a states house. When my good colleague Senator Collins almost got to that point—Senator Jacinta Collins—I didn’t say that!

Senator Chris Evans—No, you did not quite get there. Her concern was for democratic process, which is the second last stage, I think! The fact is that the premiers went into that meeting knowing exactly what they were doing. One of them just got re-elected with a whopping increased majority. In the end, the states will get to consider their complementary legislation. No doubt there will be arguments inside those parliaments and they will come up with what they will. I do not want to go on, because I know that there are other amendments in this section that people do not have the chance to speak to. We ought to deal with the Real-
We have a chance here to shape the legislation as we see fit, and the states will get their opportunity to deal with their commitment to complementary legislation. We will be opposing Senator Barnett’s amendment.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (11.56 a.m.)—We are not going to support the amendment. I think that Senator Evans has given the reasons, and the Council of Australian Governments communique makes it quite clear that a nationally consistent approach to regulation on research involving embryos is required. The amendment would be inconsistent with the agreement reached by the council.

Senator BARNETT (Tasmania) (11.56 a.m.)—In closing, I wish to make a few brief comments. This is about proper process; we are not following it. I foreshadow my view that, in the very near future, there will be a High Court challenge to this legislation. It is full of holes and it is not constitutionally tight or comprehensive. I foreshadow that that will happen because of this ramshackle legislation. I also indicate and highlight that the euthanasia bill was Northern Territory legislation; it was not legislation of a state. That difference has been made clear in the past and it is made clear again today. So that argument does not hold up. We should be following a democratic process.

COAG is not recognised in the Constitution and so I do not agree with the views put by Senator Knowles that, because they have agreed, therefore we must agree. We are authors of our own destiny. I will not say any more on this. I was hoping to leave a few minutes for others who are wishing to move amendments in this time frame, but this will be very difficult. I would foreshadow that, if there is no time to put the other amendments into the debate, I would like to incorporate the arguments in favour of those amendments. I urge all senators to support the amendment.

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

The committee divided. [12.02 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes……… 29
Nees………… 43
Majority…… 14

AYES
Alston, R.K.R. Barnett, G.
Bishop, T.M. Bosswell, R.L.D.
Brandis, G.H. Buckland, G.
Calvert, P.H. Chapman, H.G.P.
Collins, J.M.A. Conroy, S.M.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Forshaw, M.G.
Harradine, B. Harris, L.
Heffernan, W. Hogg, J.J.
Hutchins, S.P. Lightfoot, P.R.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.J. * Minchin, N.H.
Murphy, S.M. Santoro, S.
Sherry, N.J. Stephens, U.
Watson, J.O.W.

NOES
Allison, L.F. Bartlett, A.J.J.
Bolkus, N. Brown, B.J.
Campbell, G. Carr, K.J.
Cherry, J.C. Colbeck, R.
Cook, P.F.S. Crossin, P.M.
Denman, K.J. Evans, C.V.
Faulkner, J.P. Ferris, J.M.*
Greig, B. Hill, R.M.
Johnston, D. Kirk, L.
Knowles, S.C. Lees, M.H.
Ludwig, J.W. Lundy, K.A.
Macdonald, I. Mackay, S.M.
Marshall, G. McLucas, J.E.
Moore, C. Murray, A.J.M.
Nettle, K. O’Brien, K.W.K.
Patterson, K.C. Payne, M.A.
Ray, R.F. Reid, M.E.
Ridgeway, A.D. Scullion, N.G.
Stott Despoja, N. Tchen, T.
Tierney, J.W. Treeth, J.M.
Vanstone, A.E. Webber, R.
Wong, P.

* denotes teller

Question negatived.

The CHAIRMAN—Order! It being past 12.05 p.m., the allocated time for the consideration of amendments to parts 3, 4 and 5—that is, clauses 33 to 48—has expired. The questions will now be put on the remaining amendments.

Senator BARNETT (Tasmania) (12.06 p.m.)—As foreshadowed, Mr Chairman, I
seek leave to incorporate into the Hansard the arguments in support of the following amendments: a consequential amendment and a sunset clause amendment on sheet 2694.

Leave granted.

The speech read as follows—

Amendment 1 (Clause 2—Commencement)

As this clause stands Section 42 commences, along with most of the Bill, on the 28th day after the Act receives the Royal Assent. One of the intended effects of Section 42, as stated in the Explanatory Memorandum, is “that is a State has existing legislation that, for example, bans the use of excess ART embryos, such a law would not be capable of operating concurrently with the Act and as such it is intended that the Act override the State law to the extent that it is inconsistent” (EM 42)

Existing legislation in Victoria, South Australia and Western Australia bans the use of excess ART embryos. These laws will be overturned when Section 42 comes into effect.

However, the offence provisions in this Bill contained in Section 10 to 12 do not, as provided in Clause 2, commence until six months after the Royal assent is given to the Act.

The combined effect of these provisions would be to overturn the existing prohibitions in three States five months before the offence provisions under Commonwealth law come into effect. This seems to be an unintended consequence with no possible justification.

The effect of the amendment is, by coordinating the commencement provisions of Section 42 with the commencement provisions of Sections 10 to 12, to preserve the existing offences in State Law until the full Commonwealth scheme takes effect.

Amendment 8 (Part 5—Sunset Clause)

The sunset clause essentially takes away the powers of Federal Parliament and gives it to the Council of Australian Governments (COAG). Despite its capacity to achieve nationally consistent approaches by confederal consensus, COAG is without any constitutional status. Further, this clause diminishes not only Federal Parliament, but also responsible government in the State and Territory governments.

It is particularly worrisome that the clause empowers it with gazettal powers over a conscience matter. Parliament should be in control over the future protocols that allow access to excess IVF embryos created after 5 April 2002. The Prime Minister, the Premiers and the Chief Ministers of the day do not have a conscience superior to the legislatures that elect them.

Considering the technical and ethical complexities of the issues contained in this Bill, it is highly inappropriate to leave these decisions to COAG. After all it is very difficult to define ‘excess’ after the legislation has passed without allowing people to deliberately create an excess for research purposes alone. Interestingly during the committee hearings one witness estimated the number of non-viable human embryos emanating from ART Centres at 40,000 per year.

The CHAIRMAN—I will now proceed to put the circulated amendments. The question is that amendment (1) on sheet 2694 revised, standing in the name of Senator Barnett, be agreed to.

The amendment read as follows—

(1) Clause 2, page 2 (table item 4), omit the table item, substitute:

4. Sections 13 to 41
The 28th day after the day on which this Act receives the Royal Assent

5. Section 42
At the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent

6. Sections 43 to 48
The 28th day after the day on which this Act receives the Royal Assent

Question negatived.

The CHAIRMAN—The question is that division 1 of part 5 stand as printed.

Question agreed to.

The CHAIRMAN—The question is that amendment (1) on sheet 2704, which has been circulated in the names of Senator Stott Despoja and Senator McLucas, be agreed to.

The amendment read as follows—

(1) Clause 47, page 33 (after line 24), at the end of subclause 4, add:

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

Question agreed to.

The CHAIRMAN—The question is that Senator Nettle’s amendment (8) on sheet 2705 be agreed to.

The amendment read as follows—
(8) Clause 47, page 33 (line 31), after paragraph (b), insert:
and (c) the general public;
Question negatived.

The CHAIRMAN—The question is that Senator Murphy’s amendment (1) on sheet 2729 be agreed to.

The amendment read as follows—
(1) Clause 47, page 33 (line 14), after “Governments”, insert “and both Houses of the Parliament”.

Question agreed to.

The CHAIRMAN—The question is that Senator Bishop’s amendment (8) on sheet 2689 revised 2 be agreed to.

The amendment read as follows—
(8) Division 2, page 33 (line 2) to page 34 (line 7), omit the Division, substitute:

Division 2—Review of Act

47 Review of operation of Act

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

(2) The Parliamentary Joint Committee must consist of 12 members of whom:
(a) 6 must be senators appointed by the Senate; and
(b) 6 must be members of the House of Representatives appointed by that House.

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

(4) A person is not eligible for appointment as a member if he or she is:
(a) a Minister; or
(b) the President of the Senate; or
(c) the Speaker of the House of Representatives; or
(d) the Deputy President and Chairman of Committees of the Senate; or
(e) the Deputy Speaker and Chairman of Committees of the House of Representatives.

(5) A member ceases to hold office:
(a) when the House of Representatives expires or is dissolved; or
(b) if he or she becomes the holder of an office referred to in a paragraph of subsection (4); or
(c) if he or she ceases to be a member of the House by which he or she was appointed; or
(d) if he or she resigns his or her office as provided by subsection (6) or (7), as the case requires.

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

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

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

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

(10) The Parliamentary Joint Committee in undertaking the review must consider and report on the scope and operation of this Act and such matters as may be referred to it by either House of Parliament.

(11) The report must contain recommendations about amendments (if any) that should be made to this Act.

Question negatived.

The CHAIRMAN—The question is that Senator Nettle’s amendment (R2) on sheet 2713 revised be agreed to.

The amendment read as follows—
(R2) Page 34 (after line 7), after Division 2, insert:

Division 2A—National Public Human Stem Cell Bank

47A National Public Human Stem Cell Bank

(1) The AHEC of the NHMRC must commence investigating the establishment of a National Public Human Stem
Cell Bank, on the day after the day on which this Act receives the Royal Assent.

(2) The investigation must be undertaken in consultation with the general public and with relevant experts in the following areas:

(a) research ethics;
(b) a relevant area of research;
(c) assisted reproductive technology;
(d) a relevant area of law;
(e) consumer health issues relating to disability and disease;
(f) consumer issues relating to assisted reproductive technology;
(g) regulation of assisted reproductive technology;
(h) embryology.

(3) The AHEC must include in its report of the investigation draft protocols for the establishment, management, operation and control of the National Public Human Stem Cell Bank with recommendations for a legislative framework.

(4) A report of the investigation must be presented by the NHMRC to both Houses of Parliament not later than 1 July 2003.

(5) In this section:

National Public Human Stem Cell Bank means an independent institution that:

(a) will provide a repository for human stem cell lines; and
(b) will make human stem cell lines available to accredited bodies for approved research; and
(c) may have additional related functions.

Question put.
The committee divided. [12.14 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes............ 26
Noes............. 42
Majority......... 16

AYES

Alston, R.K.R. Barnett, G.
Bishop, T.M. Boswell, R.L.D.
Brown, B.J. Buckland, G.
Chapman, H.G.P. Collins, J.M.A.
Eggleston, A. Ellison, C.M.
Forshaw, M.G. Harradine, B.
Harris, L. Heffernan, W.
Hogg, J.J. Hutchins, S.P.
Lightfoot, P.R. MacDonald, J.A.L.
McGauran, J.J.J. * Minchin, N.H.
Murphy, S.M. Nettle, K.
Santoro, S. Sherry, N.J.
Stephens, U. Watson, J.O.W.

NOES

Allison, L.F. Bartlett, A.J.J.
Bolkus, N. Campbell, G.
Carr, K.J. Cherry, J.C.
Colbeck, R. Cook, P.F.S.
Crossin, P.M. Denman, K.J.
Evans, C.V. Faulkner, J.P.
Ferris, J.M. * Greig, B.
Hill, R.M. Johnston, D.
Kirk, L. Knowles, S.C.
Lees, M.H. Ludwig, I.W.
Lundy, K.A. Macdonald, I.
Mackay, S.M. Marshall, G.
Mason, B.J. McClucas, J.E.
Moore, C. Murray, A.J.M.
O’Brien, K.W.K. Patterson, K.C.
Payne, M.A. Ray, R.F.
Reid, M.E. Ridgeway, A.D.
Scallion, N.G. Stott Despoja, N.
Tchen, T. Tierney, J.W.
Troeth, J.M. Vanstone, A.E.
Webber, R. Wong, P.

* denotes teller

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator PATTISON (Victoria—Minister for Health and Ageing) (12.18 p.m.)—I move:

That this bill be now read a third time.

Senator HARRIS (Queensland) (12.18 p.m.)—I seek leave to incorporate in Hansard my speech to the motion that the bill be read a third time. The speech has been circulated in the chamber.

Leave granted.

The document read as follows—

INTRODUCTION

The separation of sexuality from reproduction is today a taken-for-granted aspect of modern life.
Assisted reproductive technologies and related developments such as egg “harvesting,” freezing, and donation and embryo freezing, transplant, and donation are a reality. The economic, social and political implications of these new technologies have yet to be fully understood.

The Bill attempts to address concerns about the utilisation of human embryos created by assisted reproductive technology or ART. One Nation supports the current use of embryos for the IVF programme, but has clear and distinct concerns that this legislation may enable excess ART embryos to be misused, and may indeed encourage the production or importation of excess ART embryos for commercial, profit making motives.

As a result of Senator’s defeating amendments to exclude the excess ART embryos from being exported, this legislation would not stop testing on humans at their embryonic stage. Human embryos could be used to test cosmetic formulations or as a means of determining the allergenics of a proposed product. I note that several amendments which would have prohibited this have been voted down.

This Bill, as it has developed, constitutes a fundamental lack of respect for human life. Allowing research, particularly profit driven research, on human embryos is abhorrent. I remind the Chamber that the federal government has already allocated $46 million to scientists for human embryo research, back in May this year. Why would the government hand over funds for research on human embryos before Parliament has even seen a Bill on this subject? Why should taxpayers fund destructive human experiments on the littlest humans before the issue is even debated in federal parliament? It seems the government thought there was no moral obligation to explore and exhaust every ethical alternative. This sort of capital-intensive research is of great concern. As is the importation and use of embryos from other countries such as Singapore.

Are we to have a value system uncritical of the commodification of life?

On the issue of commodification, this legislation exempts human embryos created after 5 April 2002 from destructive research. This means that there will be a finite number of embryos available here in Australia. This is the whole problem with allowing human embryonic stem cell research in the first place. In economic terms, Australian embryos will become a scarce commodity. As we know, there are more than 70,000 embryos in storage. They should never have been allowed to be stockpiled, like commodities to start with. A human embryo is not an economic good. All human embryos should be exempt from research and there should be a ban on importing them.

ARGUMENTS AGAINST EMBRYONIC STEM CELL RESEARCH

There are numerous arguments against embryonic stem cell research.

Adult Stem Cells—more promise

Firstly, adult stem cells show more promise. Researchers have been able to successfully produce liver, kidney, lung tissue, retina, nerve, mouse heart muscle and brain cells from adult stem cells. Animal models using embryonic stem cells are not yet able to adequately demonstrate “proof of concept”, and human safety issues have not been adequately addressed. In proper medical research, “proof of concept” must first be established in animal models before moving to human subjects. Such proof using embryonic stem cells has not been established in any of the conditions such as Alzheimer’s, MS, diabetes and Parkinson’s which are so often part of public discussion. Research methods which use stem cells from adults to develop treatments for many diseases have recently been successful. The use of a patient’s own stem cells is preferable to using embryonic stem cells because it avoids the problem of the body rejecting cells other than its own.

Human Embryonic Stem Cell Research Is Scientifically Questionable

Research on human embryonic stem cells is objectionable due to the fact that such research necessitates the prior destruction of human embryos. Some evidence suggests that stem cells cultured in the laboratory may have a tendency to reaggregate and form an aggregate of cells capable of beginning to develop as an embryo. In 1993, Canadian scientists reportedly produced a live-born mouse from a cluster of mouse stem cells. While it is true that these stem cells had to be wrapped in placenta-like cells in order to implant in a female mouse, it seems that at least some doubt has been cast on the claim that a cluster of stem cells is not embryonic in nature.

Why not experiment?

The utilitarian principle does not ask whether an action is morally good, only whether it will work. The question often posed by advocates of embryonic stem cell research is that excess ART embryos are going to be destroyed anyway so why not carry out research on them? The claim that research is justified because “these embryos are going to die anyway” is spurious. Even if an individual’s death is imminent, we still do not have a license to use him or her for lethal experiments.
We cannot seek a good end through immoral means.

**Health care privatisation**

The advocates of embryonic stem cell research promise cures for diabetes, Parkinsons disease and Alzheimers. Even if these treatments were developed, those suffering and dying of untreatable conditions may not have access to them, particularly as our health services are gradually being privatised by the back door. If this trend continues—and there is strong pressure from within the World Trade Organisation, to open up all public services, including healthcare, to privatisation and foreign competition—those who will have access to these potential treatments will primarily be those who can afford them, not those who might benefit most from them.

**Media 'opinion'**

In this debate, risk, unlike promise, is often ignored or downplayed. Science journalism in Australias and many other Western countries generally promotes the great promise of technological breakthroughs. Many articles have conveyed the message that embryonic stem cell research is instrumental in constructing a better world. Coverage of this technology typically uses a language of promise. In some articles, risk is warned about, but mostly in a futuristic or abstract sense with rare reference to the historical context of past technologies gone wrong. The emphasis is often on the possible miracle, the magic, and mystique. Exaggerated claims abound. It is as if the technological Kingdom of God is truly at hand. One example is the discredited claims by Dr Trounson, whose paper "The Case for Embryonic Stem Cells" was widely distributed to Senators and MPs. He made a discredited claim about embryonic stem cells used on that infamous paralysed rat—which was in fact treated with differentiated germ cells from the early sex gland of a two month old aborted human foetus. The hoax rat was not an isolated aberration, but part of a widespread misrepresentation of stem cell science.

Also frequently left out of debates about the benefits and ethics of embryonic stem cell research is that the government is under pressure from the scientific establishment and pharmaceutical firms that want to change the law on embryo research because of hopes for future economic growth onto biotech.

**PROBLEMS WITH THE BILL**

**NHMRC Licencing Committee**

Any use of excess ART embryos that is not exempted under Sub Clause 10 (2) must be licenced by the NHMRC Committee. A licence can be issued for a variety of purposes. The Legislation makes provision for some exemptions—that means some things don’t have to be licenced for example—storage, transport, observation, allowing the embryo to die or as it is euphemistically described—succumb, and diagnostic investigations another euphemism for experimentation.

Again, an amendment to ban the export of embryos or any product derived from an embryo was defeated so under the Bill there is no need for a licence to transport excess ART embryos. They could even be transported overseas, to a country where there are no regulations or controls regarding the use of embryonic stem cells or for that matter, human cloning. Is this yet another awful dimension of the export led economy?

Of great concern to One Nation is that the Bill does not explicitly prohibit certain uses of embryos. In fact, the word 'prohibit' only occurs in the Bill in relation to the prohibition of human cloning. Research is only subject to the terms of the licence. For example, there is nothing in this legislation to prohibit a licence being granted so that excess ART embryos could be experimentally grown—for example—in an artificial womb. Experiments with artificial wombs have already been conducted using excess IVF embryos at Cornell University’s Centre for Reproductive Medicine and Infertility.

Regarding the licencing process, let me note that this is the same type of regime that we have with the Gene Technology Regulator. If you want to undertake an experiment or research, then you have to have a licence. You have to wonder if this licencing system will be as seemingly ineffectual as licencing by the Office of the Gene Technology Regulator. The OGTR licences gene technology applications and only manages to review five per cent of applications per quarter.

Within this debate, a vigorous process to constantly monitor and review licences has been defeated. I note also that under this legislation any application for a licence must be accompanied by an application fee if proscribed in the regulations—so there is the potential to make money from licencing fees, there is already provision for the commodification of life.

**Women representatives on committee.**

Under clause 16, the NHMRC licencing committee will be composed of 9 members—all experts. There is no provision for the inclusion of a lay person on this committee. There is no provision for a person to represent the spiritual or religious needs of the community. And of great concern to One Nation is that there is no specific provision for a balance of men and women to be on this
licencing committee, despite consent—of both parents—being required when it comes to determining the fate of an excess ART embryo. Technically, a situation could arise where the licencing committee is composed entirely of men or entirely of women. There should have been a provision for a gender balance.

**Overseas Stem Cell experience**

The history of this sort of legislation in other countries is worrying in terms of precedents that have been set. In Canada and the USA legislation relating to embryonic stem cell research is still being debated. In the UK, the Human Fertilisation and Embryology Act 1990 (HFE Act) was passed to regulate the practice of IVF and the creation use, storage and disposal of embryos formed by this means. In 2002, the Human Fertilisation and Embryology (Research Purposes) Act were debated and passed by the House of Commons and then by the House of Lords. The regulations came into effect on 31 January 2001.

The regulations were introduced to take account of important scientific developments, especially cloning. The regulations added three new purposes for which research on human embryos could be lawfully undertaken. The additional purposes to the existing five in the 1990 act were:

- Increasing the knowledge about the development of embryos;
- Increasing knowledge about serious disease, or
- Enabling any such knowledge to be applied in developing treatments for serious disease.

So we see that by allowing initial research in this area, a gradual extension, or expansion of research is possible.

**Review of Legislation**

Clause 47 of the Research Involving Embryos Bill 2002 contains the provisions providing for review of the operation of the Act. It provides that the National Health and Medical Research Council ‘must cause an independent review of the operation of this Act to be undertaken as soon as possible after the second anniversary of the day on which this Act received the Royal Assent’ (subclause 47(1)). It also provides that the review must be undertaken ‘by the persons who undertake the Prohibition of Human Cloning Act review’ (paragraph 47(2)(a)).

**Reporting to Parliament**

It was of great concern to see that with regard to the review of this Bill, there was no specific provision for a written report to either houses of Parliament. An amendment to the Bill now provides for the NHMRC Licencing Committee report to be tabled in Parliament. It is quite alarming that the Bill came into parliament without any provision for parliamentary oversight of the review process.

**Sale of fertilised embryos**

The Bill does not expressly prohibit the sale of fertilised embryos by a licence holder. Although there is human tissue legislation in all States and Territories of Australia prohibiting commercial transactions involving human tissue, the Bill fails to address this matter at a federal level.

**Conclusion**

One Nation has examined the legal, ethical, and scientific issues associated with human embryonic stem cell research and concludes that to support research that necessitates the destruction of human embryos is, and should remain, prohibited by law.

If anything is to be gained from the cruel atrocities committed against human beings in the last century and a half, it is the lesson that the utilitarian devaluation of one group of human beings for the alleged benefit of others is a price we simply cannot afford to pay. Research should be limited to adult stem cells, which pose no ethical issues because they are obtained from tissue such as bone marrow or umbilical cord blood. Important progress has been made using the nasal nerve stem cells of patients with spinal injuries. This process is still being evaluated at Princess Alexandra Hospital in Brisbane and although there have been improvements in body functions, a partial or complete return to mobility is still some way off.

In conclusion, because the Bill still allows for the destruction of embryos for uses other than IVF purposes, One Nation will oppose the Bill.

1. Metherell, Mark., & Smith, Deborah., *Stem cell scientists given $46 million ahead of ban vote*, Sydney Morning Herald, May 31, 2002

Senator BROWN (Tasmania) (12.18 p.m.)—I came into this debate in support of this legislation because I thought the amendments which would put commercial interests secondary to the wider humanitarian and public interest would prevail. However,
that has not happened. At the outset it was a very difficult decision to make. Do we allow embryonic stem cells which are otherwise destined to be destroyed to be used for humanitarian experimentation? That in itself was a difficult enough question but, given that circumstance, I felt—as my colleague Senator Nettle did—that we could support it, provided that limitations were put on it. However, I had great qualms, because it is quite evident that adult stem cells are providing the lead in this research and have the potential to cover all the research that embryonic stem cells might provide.

In the process of the debate which has been allowed—and I object greatly to the gag being placed by the Democrats and the government on the proper and full debate of this matter of conscience—we have seen the overriding commercial interest. The public interest has been closed out. Public input and surveillance, even of whistleblowers, have been knocked out. The export of embryos and embryonic material overseas, where they cannot be controlled, has been allowed. A provision to ensure the labelling of products which are developed through embryonic testing—for example, pharmaceutical or cosmetic products—has been knocked out. How dare we as senators debating this as a matter of conscience not allow the public, in conscience, to know whether drugs, cosmetics or any other material that comes about from embryonic testing is in the product they are seeking to buy? And so it goes on. Secrecy and confidentiality—because a matter is commercial—prevail here. Even the generators of the embryonic material, the woman and the man involved, will potentially be prevented from knowing what is happening with that material because the drug companies’ interests prevail. It is still a very difficult decision to make.

Because of the voting which has taken away the public right and given pre-eminence to the corporate right, I will not be supporting this piece of legislation. I respect totally the point of view of those who will support it—and I believe they will be the majority—but, in the process, we have failed to put the amendments in place that would have made this legislation the sort of legislation that the public expects, with the public being taken into account and with the interests of those people who donate the embryonic material taken into account. All that has been subjugated to the commercial interest which, with potentially billions of dollars’ profit driving it, is now going to be in this country the driving force overriding the ethicality of the embryonic stem cell industry, as it will become.

Senator BARNETT (Tasmania) (12.23 p.m.)—I stand to make a few comments in this third reading debate on the Research Involving Embryos Bill 2002, firstly to say that this is a watershed event, in my view. It is a conscience vote and I have expressed my thanks to the Prime Minister and others for that opportunity. I respect the views of other senators in this chamber and in this parliament to have their own point of view. It is a deeply personal position and in many cases we have had to dig deep to consider our own views, so I respect the right of senators to express their views accordingly.

I want to highlight a few big picture points and then itemise some of the key amendments, in my view, that have been passed. Firstly, I predict and foreshadow that there will be a High Court challenge to the legislation. It is extensive but it is not comprehensive. The legislation relies on the Corporations Law, the trades and commerce power and, to some extent, the external affairs power—but there is no specific treaty that it relies upon—and it will require state and territory legislation to make it watertight, and any time before that it is subject to challenge. I make that point and put it on the record to make it quite clear, because that is one of the reasons I was very disappointed we could not get up the amendment to clause 42 in terms of overriding state laws. That is one of the sad outcomes of the debate.

I say ‘big picture’, again—that one’s size, one’s functionality as a person should not determine the level of respect, honour and dignity bestowed on that person. Each one of us in this chamber was once a human embryo, and that is why I cannot support this legislation; the ends do not justify the means. I have indicated my own personal position: my father had motor neurone disease and I
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have type 1 diabetes, so I had to think about these issues very hard. Nevertheless, the ends do not justify the means and I cannot support the legislation.

Going to the amendments, my understanding, based on research, is that we have had two successful amendments to the Prohibition of Human Cloning Bill 2002 and some 14 successful amendments to the Research Involving Embryos Bill 2002. I want to highlight some of the important amendments that have gone through to tighten the bill and some of those that should have gone through but have not. Firstly, diagnostic testing: there was a loophole which was highlighted on day one when this legislation was introduced and made available. Jacinta Collins was responsible for this amendment, and I made it clear on day one that there was a huge loophole. Why does it take so many months for it to be fixed?

The reporting arrangements have been tightened up. The automatic revocation of licences was an important amendment. I think the disallowable instrument issue has been fixed. It improves the bill markedly, making sure that the guidelines which impose five-year penalties have been fixed. I am thankful for that amendment to clauses 8, 11 and 21. The financial conflict of interest on the NHMRC Licensing Committee has been fixed, and there has been an improvement in terms of restricting the number of licences. Then we move on to investigating the stem cell bank. One great sadness, as Senator Brown indicated earlier, is the drug testing on human embryos. As I said, we were all human embryos once and to not rule that out in this legislation is a great disappointment. It is a tragic outcome for the Australian people. I will not be supporting the legislation.

Senator HOGG (Queensland) (12.27 p.m.)—I believe that the most important aspect of the debate on the Research Involving Embryos Bill 2002 has been the access to a conscience vote for all senators. The debate in this chamber ensured, up to a point, that the legislation was properly reviewed. I was concerned at times in the debate when the Minister for Health and Ageing gave the impression that, as state governments had seen drafts of the legislation and had ticked off on it, therefore we the Senate should automatically tick off on the legislation.

Senator Patterson—I never said that.

Senator HOGG—I said ‘gave the impression’, Minister, if you listened to my comment. I reject absolutely that the Senate should be viewed as a rubber stamp. Clearly the Senate is a properly elected and constituted body. It should never be taken for granted or treated in a manner that could constitute contempt. By and large, the point of reference has been the COAG agreement. However, the Senate has the responsibility to ensure that the legislation passed is good law and will stand up to basic transparency and accountability tests. The COAG agreement is not the only reference point and should not dictate, but rather form, the basis of the legislation.

In this sense the bill as first presented has been improved—not necessarily to the degree and satisfaction that everyone would like, but at least it has been improved. However, the basis of the bill still remains completely objectionable to me. One cannot avoid that the destruction of embryos for research is a destruction of life. As I said in my speech in the second reading debate, I started life as an embryo and, through the continuum of life, I am here today to participate in this debate. Interference or destruction at the earliest stage of my existence would have denied me the right to be here now. The value of life does not change, only the quality. It is disappointing to see the embryos, which were created for the purpose of life in the IVF program, becoming the by-product of the process to become the raw material for another process. I believe that, in spite of the improvement to the bill, it should fail to pass the Senate.

Senator STOTT DESPOJA (South Australia) (12.30 p.m.)—Madam Acting Deputy President, I thought it was time someone spoke in favour of the Research Involving Embryos Bill 2002 to indicate that this legislation is welcome. It is long overdue. It is about time that Australia caught up with other jurisdictions in the world—that is, that we have nationally consistent legislation not only governing biotechnology but also re-
lating specifically to research on human embryos, and companion legislation prohibiting the cloning of humans. If I may reflect on a vote of the Senate, the Prohibition of Human Cloning Bill 2002 was passed unanimously in this place and was also long overdue. Democrat calls for such legislation since 1997 had previously been unheeded.

I recognise that not all legislation is perfect and that few bills result in such strongly held, emotional and controversial beliefs as this one, and I put on record my thanks to those people who participated in the lead-up to this debate and in the committee stage of the bill. It is time for us to have laws governing this whole country in the biotech area. I think it would be erroneous for people to leave here today believing that, if this legislation goes down, somehow some of those problems to which others have referred in their speeches in the third reading debate—that is, commercialisation of research, lack of proper scrutiny and issues in relation to patents or intellectual property—will go away. They should not fail to recognise that many of these issues are already problems, that most states and territories in this nation do not have a regulatory regime and that commercialisation of research on embryonic stem cells is actually going on.

This is the first time we have sought to regulate this area in a manner that is appropriate. We have done so in a way that will be reviewed in a number of years—and I have no doubt that the debate will be ongoing. I am glad to see that, regardless of people’s views in this debate and regardless of whether the amendments have gone the way we wanted them to, issues such as the intellectual property environment in Australia, patents, commercialisation of research, funding disclosure provisions and public funding are on the table—on the political agenda—and that we are debating these issues for one of the first times at a federal level. I am glad that we have had these debates, including the most recent one on constitutionality and whether or not those constitutional powers are being well used or legally used—which, indeed, some senators would debate.

For us, the best outcome of this legislation has been the Prime Minister’s announcement that he will give effect to the second reading amendment moved by me on behalf of the Australian Democrats for an AHEC-ALRC inquiry into the intellectual property framework in this nation. As much as I, and I am sure many others—and I look to Senator Harradine and Senator Murphy, who have been involved in this debate, and certainly to Senator Collins—wish that it had happened earlier, I recognise that it must not be an ad hoc process and that it must be comprehensive. The ALRC and AHEC are appropriate bodies to be charged with such a responsibility, and I hope that senators who have expressed strong views on these issues in the last couple of days, particularly in relation to the patenting of things such as genes, gene sequences and other biological materials, will play an active role in that debate. I also put on notice that we should have a debate next time on patenting of life forms or, more specifically, patenting of genes. To those people who spoke so passionately about the issue: we will be watching how you vote.

The Democrats always think it is exciting when the ability to conscience vote is exercised in this place. It makes for interesting dynamics in the Senate. One highlight is when your amendment passes unanimously; another is when you are the only person who votes against something that everybody else liked, such as the NHMRC amendment for six-monthly reporting that Senator Bishop proposed. I hope that this—senators charged with reading the legislation and making their own decisions—is something we see more of. On this occasion, while this is a conscience vote for the Australian Democrats and we have exercised that right with very occasional differing votes in the committee stage of the bill, I am proud to report that all of my colleagues and I will be voting in favour of this legislation.

We have heard a lot about the problems with science during this debate. We have debated whether embryonic stem cells are pluripotent—as we know they are—or totipotent, which of course is not established. We have heard different views of science and scientists. I take great hope from this science
and I hope that people will reflect positively today on a piece of legislation that is long overdue. I commend the Prime Minister for introducing it. I am not suggesting that legislation is always perfect—hence the need for review and the debates about a sunset clause. I wish the scientists well, but that is not to say that the Democrats will fail to continue calling for strict regulation of science in this country and arguing against the patenting of all life forms, including genes and gene sequences.

Senator JACINTA COLLINS (Victoria) (12.35 p.m.)—I take this moment to very briefly add to the comments made by Senator Brown reflecting that, through this committee stage of the Research Involving Embryos Bill 2002, we have not achieved the strict regulatory regime intended by COAG. The principal reason for that is highlighted by Senator Brown: we have left this system open to commercial interests. I know my perspective is coloured by my ethical position. I am quite happy to be up front about that. But I think anyone reflecting on my contribution to this debate and the nature of my amendments would also understand that I have concentrated on keeping COAG to their commitment on a strict regulatory regime. I come from a state which will go from a total ban to some nebulous guidelines, and we do not even know how they are currently being applied. Thankfully, those guidelines will now be regulations that come back before the parliament, but I believe it is still unclear whether licensing will occur before we get to scrutinise those guidelines. That would be completely inappropriate.

I want to very briefly highlight one issue. I do not believe we have ever had a good feel for what the community sentiment is on this issue. But let me give the Senate one very brief insight that will cause some to pause. There has been a lot of criticism about the role of the Fertility Society of Australia and how well regulated ART has been over the decades. Some believe that has improved in more recent times; some still hold very serious concerns. But this year, at the Fertility Society of Australia scientific meeting at the Radisson Resort on the Gold Coast, during one session that was addressed by Professor Trounson and others, Associate Professor Peter Illingworth asked the 200 delegates for their position on the issue of experimentation on embryonic stem cells. The result was quite illuminating. These are the practitioners in the regulated field. Of those 200, 30 were in support, 20 were opposed and the rest were undecided. There is no clear call in the community to inform the premiers for the positions they have taken here. There is no clear view to inform the Prime Minister for the position he has taken here. Personally, I think the ethical distinction he has found is abhorrent—and I think the result is abhorrent.

The ACTING DEPUTY PRESIDENT (Senator McLucas)—I advise the Senate that the minister is seeking the call, and there are a couple of others. We have six minutes.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (12.38 p.m.)—My comments on the Research Involving Embryos Bill 2002 will be very brief.

Senator Barnett—Madam Acting Deputy President, I raise a point of order: I will be seeking leave for those who would like to make a comment to have at least five minutes, once we get to 12.45 p.m.

Honourable senators interjecting—

The ACTING DEPUTY PRESIDENT (Senator McLucas) —There is no point of order, Senator Barnett. 

Senator BOSWELL—When I started out in this debate—and this may seem strange to some people—I could not get the difference between the terms ‘expire’ and ‘use’. I think that is where most people started. I began to get my mind around it, and then it started to become clear to me. In fact, I think I even rang Senator Harradine to ask the difference, and he explained it to me. But after that, it started to grip and I began to understand where it was coming from. But that was not so much my problem—although, for ethical reasons, I would not vote for the bill. My problem became the money trail—the commercialisation of life. That is where I became very strongly opposed to this bill.
I think this legislation has failed on many fronts. On the drug testing front, what sort of drug testing is it where you can actually test drugs on human embryos or stem cells? That is not what the people want. If you went around and asked the people, you would get an overwhelming rejection of that. Yes, some people might go for the cure, but they would not go for the drug testing. They would be overwhelmingly against it. On the labelling front, how could anyone reject labelling? It is just not possible to reject. On the export front, we proved—that the minister said it would be unlikely—that it was possible to clone from a stem cell. We proved that the Singapore government has allowed cloning. We proved that BresaGen and ES Cell International are setting up a laboratory in Singapore. Yet we firmly came down and said, ‘You certainly cannot clone a person in Australia, but once Australian embryos go overseas, that is okay—you can do anything you like.’ I cannot understand that. I think this is bad legislation. In fact, as I have said in the debate a few times, I have been here 20 years and I have never been so disappointed as I am today.

Senator Nettle (New South Wales) (12.41 p.m.)—The Research Involving Embryos Bill 2002 has raised a lot of emotions for people in here. The Australian Greens have appreciated the opportunity to go through the legislation and propose almost a dozen amendments, which have sought to bring public accountability into this legislation and ensure some safeguards against the privatisation and commercialisation of this industry, particularly by putting some safeguards in to ensure that commercialisation and privatisation do not run rampant. It has been extremely disappointing that we have not had the support of the Senate to get up those accountability measures—in particular, an amendment we voted on recently to say that when this legislation is reviewed the people undertaking the review must consult. Currently, the legislation says they must consult the Commonwealth, the states and a range of people with expertise or experience in the relevant disciplines. The Australian Greens proposed an amendment to say that the public should be consulted in a review of this legislation. That amendment was voted down by this parliament, and there was no opportunity for debate on whether the public should be involved in this review, because the guillotine was applied.

Equally, we were not able to debate a provision to lift the cut-off for embryos in existence at 5 April. We were not able to say that that decision should be made in parliament rather than made by COAG, because the guillotine was applied. I am extremely disappointed by the process that we have followed and the lack of will within the Senate to put forward those sorts of public accountability measures. However, I will be voting for this legislation because I believe that it is appropriate that we have regulation in place rather than, as currently exists in some states, not having regulation in this industry.

Senator Harradine (Tasmania) (12.43 p.m.)—I would like to introduce the Senate to Luke Borden. Luke was an excess IVF embryo, left over after IVF treatment. Luke and his twin brother were adopted and are doing well. What the Senate has done today is hand thousands of embryos like Luke over to the researchers and say: ‘They’re all yours. Experiment on them as you will—cut them up, dissect them, test them on drugs or cosmetics; they’re all yours.’ Today we have stripped the embryo of its humanity for utilitarian purposes. We have defined the human embryo as research fodder in the interests of the biotechnology industry. The Research Involving Embryos Bill 2002 sets a precedent for the vivisection of living human embryos. It will entrench the commercialism and commodification of human life.

The President—Order! Senator Harradine, it being 12.45 p.m.—

Senator Harradine—I seek leave to incorporate the remainder of my speech.

Leave granted.

The speech read as follows—

In the words of a witness to the recent Senate committee inquiry, the bill will permit “the statutory creation of a biological underclass: those unwanted of life but worthy of sacrifice on the commercial slab of experimentation”.

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Human rights commentator Katrina Hallen told the Community Affairs Committee:

The use of one group of the human family to serve as experimental subjects, or spare parts resources, for another group is exploitative and abusive. The use of human embryos to serve as experimental subjects for the interests of science, creates a group of human individuals that can be used and destroyed for another group of human individuals. This violates the ethical principles of doing no harm, benefiting the subject experimented on, autonomy, justice and the sanctity of human life.

Despite hours of debate on this bill, much confusion still remains. Many people still think this bill is about stem cells.

During second reading debate Senator Lees made the incredible statement that:

In dealing with the question here, we need to be clear about what this research actually does and does not do. It does not propose experimentation on human embryos per se.

But that is exactly what the bill does. It permits using embryos in drug and toxicology testing, in training IVF clinicians in lasering, cutting and dissecting and for “quality assurance” in genetic testing. Any use of human embryos which the licensing committee thinks worthwhile will be approved under this bill.

There is no regulation of industrial and other uses of human embryonic stem cells. There is no restriction on their export or trade. There is no provision even to track the uses of stem cells or to keep donors informed of their end-use. Indeed, such trade will create its own momentum. As one committee witness said: “Where vast sums of money are at stake, it would be impossible to regulate such research so effectively as to prevent more and more destructive research, requiring more and more embryos, be they bar-coded, fresh, frozen.”

In evidence to the Committee inquiry on the bill, an ethicist stated:

We are seeing a whole opening up of this area to unregulated, unrestricted and unsurveyed research on both the stem cells and the embryos. You ask questions like these: who stops the stem cells finishing up in cosmetics and who stops them being sent for biowarfare to one of the less democratic regimes in the world? Remember, they can be sold off. Alan Trounson was talking earlier about buying and selling the stem cells. If he has got products here in Australia within the companies that he is associated with, what stops those companies selling them to anybody?

I put up a number of what were very reasonable amendments to this Bill, which in other circumstances and on other subjects most people in this chamber would normally support. These amendments went to the important issues of consumers’ right to know, conscientious objection, disclosure, and whistleblower protection. I feel these were voted down for political reasons and not because of a decision arrived at after consideration of the substantive issues.

Shouldn’t consumers have a right to know whether pharmaceuticals and cosmetics are tested, created or manufactured using human embryos? Why is it ok to tell people they might be eating GM foods, but not tell them they might be consuming products derived from human embryos?

Conscientious objection is another one. Senators have been given a conscience vote on this issue—consumers should at least have been given the right to full information on whether or not they use products which have been tested, created or manufactured using human embryos so that they can exercise their own conscience.

But the minister said this was all too hard for this “strict regulatory regime”—it was burdensome. Well what about the burden on people who would have no way of knowing whether they are using drugs that involved the destruction of human embryos? What about the people who find out that the drugs they have been taking were derived using human embryos—a practice ethically repugnant to them? Don’t you care about them?

And why couldn’t we protect the rights of workers and students to conscientiously object to participation in destructive embryos research?

Don’t we believe in the fundamental right not to be personally complicit in what one sees as morally and ethically objectionable practices?

The Democrats kept saying—“this bill is not the place for these amendments”. Well, if not now, when? How long can we wait? Senator Stott Despoja herself has been waiting since 1996 for her patents amendment bill. Her genetic privacy and non-discrimination bill has gone nowhere since 1998. She of all people should! know how long these things take. We need consumer protection now. We need protection for conscientious objection now. We need whistleblower protection now.

I want to express my great appreciating to those many Senators who have understood the serious public policy implications of this Bill and have given support to my amendments. I want to espe-
cially thank all those who may not share my views on some other issues but who are open minded enough and not bound by political expediency to consider the amendments on their merits.

I also proposed an amendment to prohibit the use of human embryos or human embryonic stem cells in the testing, creation or manufacture of pharmaceuticals or cosmetics. Research involving pharmaceuticals and cosmetics is among the most likely uses of human embryos due to the potential financial returns.

Dr Peter Mountford is the Chief Executive of Stem Cell Sciences. An article in The Australian of 1 April reported:

“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.”

But this amendment was rejected. In a climate where we are moving away from testing drugs and cosmetics on live animals because of ethical concerns about this practice, it is disturbing that we are about to substitute live human embryos as the preferred laboratory animal for drug and cosmetic testing.

Human research ethics committees

In explaining the licensing system during the committee stages of the Bill the Minister stated that “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”. When asked whether, in this supposedly open and transparent system, the decision of the human research ethics committees would be made available to the public, the Minister said “it is not necessarily available to the public” and later she admitted that “the evaluation will not be made public”.

Given the ethics committee is appointed by the institution making the application I cannot imagine an institution appointing someone to their committee who is likely to give them any difficulty in getting applications approved—it would not be sensible for them to do so. I tried to have those decisions made public, but the numbers were apparently not there to support the amendment. Without having the decisions of ethics committees made publicly accountable, we will never know whether the process is rigorous.

When this bill passes—as it seems it will—Parliament will have abrogated the foundational principle of the uniform protection of human life. It will have facilitated the deliberate destruction of human life for radically utilitarian, commercial purposes.

The PRESIDENT—I am obliged by the order of the Senate to put the question on the third reading of the Research Involving Embryos Bill 2002 at 12.45 p.m., and I intend to do that. The question now is that the Research Involving Embryos Bill 2002 be read a third time.

The Senate divided.  [12.50 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes............. 45
Noes............. 26
Majority......... 19

AYES

Allison, L.F.  Bartlett, A.J.J.
Bolkus, N.  Campbell, G.
Carr, K.J.  Cherry, J.C.
Colbeck, R.  Conroy, S.M.
Cook, P.F.S.  Crossin, P.M.
Denman, K.J.  Evans, C.V.
Faulkner, J.P.  Ferris, J.M. *
Greig, B.  Hill, R.M.
Johnston, D.  Kirk, L.
Knowles, S.C.  Lees, M.H.
Ludwig, J.W.  Lundy, K.A.
Macdonald, I.  Mackay, S.M.
Marshall, G.  Mason, B.J.
McLucas, J.E.  Moore, C.
Murray, A.J.M.  Nettle, K.
O’Brien, K.W.K.  Patterson, K.C.
Payne, M.A.  Ray, R.F.
Reid, M.E.  Ridgeway, A.D.
Scullion, N.G.  Stott Despoja, N.
Tchen, T.  Tierney, J.W.
Troeth, J.M.  Vanstone, A.E.
Watson, J.O.W.  Webber, R.
Wong, P.  

NOES

Alston, R.K.R.  Barnett, G.
Bishop, T.M.  Boswell, R.L.D.
Brown, B.J.  Buckland, G. *
Calvert, P.H.  Chapman, H.G.P.
Collins, J.M.A.  Coonan, H.L.
Eggleston, A.  Ellison, C.M.
Forshaw, M.G.  Harradine, B.
Harris, L.  Heffernan, W.
Hogg, J.J.  Hutchins, S.P.
Lightfoot, P.R.  Macdonald, J.A.L.
McGauran, J.J.  Minchin, N.H.
I rise today to speak on the Charter of the United Nations Amendment Bill 2002. The Australian Democrats will be supporting the legislation. We believe that the United Nations represents the most appropriate forum in which Australians should work together with other nations to address the threat of terrorism. Australia, of course, has an important role to play in this global campaign. As a result of United Nations resolution 1373, Australia has a responsibility to suppress the financing of terrorist acts and to freeze the assets of terrorists and terrorist organisations.

The Democrats recognise that suppressing the financing of terrorist acts is a fundamental and necessary measure that is one of many required to ensure that we prevent future attacks. Despite this recognition, however, we are opposed to the original provisions that this bill seeks to amend, because we believe the definition of 'terrorist act' in that legislation was too broad. One of our most serious concerns regarding the government’s various antiterrorism measures has been that they are poorly targeted. The definition of terrorism employed in the package of antiterrorism legislation passed earlier this year was, we think, excessively broad, incorporating a range of activities that fell well short of accepted definitions of terrorism. Because of this broad definition, there is a possibility that persons who are not terrorists are at risk of being charged with criminal offences. In the same way, the Suppression of the Financing of Terrorism Act created a situation in which a person or organisation not associated with terrorism could potentially have their assets frozen. In fact, there has already been at least one situation that we know of where this has actually occurred.

Despite our ongoing opposition to the provisions introduced into the Charter of the United Nations Act by the Suppression of the Financing of Terrorism Act, the Democrats support the amendments now proposed. They are minor amendments and we think that they improve the legislation. Under the act in its present form, it is an offence to deal with assets owned or controlled by a person or organisation proscribed by the minister or by regulation. A person or organisation may be proscribed only in order to give effect to a decision made by the Security Council under chapter 7 of the UN charter, which Australia is required to carry out pursuant to article 25 of the charter and which relates to terrorism and dealing with assets.

Section 22 of the Charter of the United Nations Act enables the owner of a freezeable asset to the apply to the minister to use or deal with the asset in a specified way. The minister may then permit the asset to be dealt with in a specified way. The bill before us will permit the holder of a freezeable asset to apply to the minister to deal with the asset in the same way that the owner may apply under the existing provisions. Of course, the holder of an asset will usually be a financial institution. The offence provisions under the act already extend to holders of assets and it is foreseeable that there may be legitimate reasons for financial institutions to deal with freezeable assets, particularly while they are confirming the identity of the proscribed person or organisation. It therefore makes sense for financial institutions to be able to apply to the minister for permission to deal with that asset in a specified way.

I understand that regulations are being developed under section 22 of the act to enable financial institutions to seek the assistance of the AFP in confirming that a specific asset is a freezeable asset or that a specific person or organisation is a proscribed person or organisation. These regulations flow from a recommendation made by the Senate Legal and Constitutional Legislation Committee in its inquiry into the package of antiterrorism legislation. The amending provisions will also enable the minister to on their own initiative authorise financial institutions to deal
with this in a specified way. The Democrats welcome these amendments.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.58 p.m.)—The Charter of the United Nations Amendment Bill 2002 further ensures that the government has control over efforts to freeze terrorist assets. It does this by ensuring that the Minister for Foreign Affairs is able to issue notices on his own motion providing for financial institutions to use a freezable asset in a specified way. Obviously, the freezing of terrorist assets is a crucial part of international efforts to suppress terrorism. The bill has been drafted in response to issues raised in consultation with private financial institutions. I thank the Senate for its support and commend the bill.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

Bill read a second time.

INTERNATIONAL TAX AGREEMENTS AMENDMENT BILL (No. 2) 2002

Second Reading

Debate resumed from 14 November, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.00 p.m.)—This bill adopts into Australian law recent amendments to our double tax treaties with Canada and Malaysia which update the treaties to reflect modern treaty and trading practices. These changes are welcomed as further strengthening our ties with these two important trading and investment partners. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

Bill read a second time.

TRADE PRACTICES AMENDMENT BILL (No. 1) 2002

Second Reading

Debate resumed.

The ACTING DEPUTY PRESIDENT—The question is that this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

Bill read a third time.

WORKPLACE RELATIONS LEGISLATION AMENDMENT BILL 2002

Second Reading

Debate resumed from 5 December, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator O'BRIEN (Tasmania) (1.02 p.m.)—I understand that Senator Sherry intended to make some remarks on this proposed legislation. He is unable to attend the chamber at present, but he may seek to incorporate his comments later. If that is acceptable to the government, I can merely say that I understand we are supporting this legislation.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.02 p.m.)—I would like to thank everyone for taking a constructive approach in supporting this bill as non-controversial. It addresses mostly minor and technical matters, but improvements will be made to the relevant legislation and to the operation of various schemes administered by the workplace relations portfolio.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

Bill read a third time.
Sitting suspended from 1.03 p.m. to 2.00 p.m.

MINISTERIAL ARRANGEMENTS

Senator HILL (South Australia—Leader of the Government in the Senate) (2.00 p.m.)—by leave—I inform the Senate that Senator Rod Kemp, Minister for the Arts and Sport, will be absent from question time today and next week. Senator Kemp is attending the opening of the National Museum of Australia’s exhibition in Guangzhou and the International Intergovernmental Consultative Group on Anti-Doping in Sport forum in Moscow. During Senator Kemp’s absence Senator Alston will take questions relating to the arts and sport.

QUESTIONS WITHOUT NOTICE

East Timor

Senator HOGG (2.01 p.m.)—My question is to Senator Hill, Minister for Defence and Minister representing the Prime Minister. Given the deterioration in the security situation in East Timor in recent days, what information can the minister provide on the security of Australian citizens and military personnel in East Timor? Given that the 1,200 military personnel in East Timor are currently serving in a peacekeeping role, what is the current position in relation to their involvement in civilian functions such as policing and the maintenance of law and order? Has the government received any requests from the East Timorese government for the role of ADF personnel to be upgraded from that which was provided under the UN mandate: to assist in the restoration of law and order?

Senator HILL—There has been a large civil disturbance in Dili involving about 600 people. Regrettably, several people are believed to have been killed and there was considerable damage to property. That was the situation yesterday; I am told that the situation today is calm but tense. Two AFP officers sustained minor injuries, one requiring medical treatment, when the UN police compound was stormed. No other Australians were injured. Our embassy advised Australians registered with the embassy to remain indoors. Australians in the affected areas were evacuated. We are continuing to monitor the situation closely, and the welfare of Australians is our top priority.

The government obviously condemns the violence in the strongest possible terms. There is no excuse to resort to this action for any local grievance. The Prime Minister, Mr Howard, called Prime Minister Alkatiri this morning to convey the government’s sympathy about the loss of life and damage caused by the unrest. Prime Minister Alkatiri’s own residence was burned to the ground. The Prime Minister conveyed to him that it was the task of his government to resolve the situation but that Australia, as East Timor’s friend, was obviously willing to help if it was requested. Prime Minister Howard told him we were willing to do what we could to help them develop the capacity to better handle law and order problems. He said that we will be looking at additional assistance to help develop the capacity of the East Timor police service and judiciary. I understand that Prime Minister Alkatiri appreciated the call and the expressions of concern and support from Australia.

The UN forces that assisted yesterday were principally the Portuguese force, because Dili is in their area of operations. I think they received some support also from the Fijian force, but I am not sure of the details of that. Obviously, Australian military forces—I will put it this way—are able to look after themselves, and I am sure that they can handle that side of the matter. In relation to Australian civilians, I have covered that in the earlier part of the answer.

Senator HOGG—Mr President, I ask a supplementary question. Noting your answer, Minister, has there been a request for the role of ADF personnel to be upgraded in terms of the UN mandate that currently exists? Minister, what action has been taken by the government to ensure the safety of the 1,500 Australian civilians estimated to be in East Timor? Has the Department of Foreign Affairs and Trade upgraded its travel warnings for East Timor? Are there any plans for an evacuation of Australians from East Timor?

Senator HILL—I do not know of any requests for upgrading. I am not sure exactly what is meant by that. The restriction is that in matters of internal security the Australian
force can provide passive support. If it is to be more than passive support then it would need my approval. That has not been sought. In relation to the latest travel advisory, I should be able to provide that at the end of question time. There is no intention that I am aware of to move anybody out of East Timor.

**Superannuation**

Senator WATSON (2.06 p.m.)—My question is directed to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Will the minister update the Senate on what control Australian workers have over their superannuation? What steps is the government taking to address the issue? Is the minister aware of any alternative policies?

Senator COONAN—I thank Senator Watson for the question and acknowledge his continuing interest in this very important issue. Australia’s superannuation system is growing at a phenomenal rate. The maturing of the system and the increases in the superannuation guarantee rate mean that for most Australians superannuation savings are their second largest asset after the family home; yet today most Australian workers are in the preposterous situation of having absolutely no say in where their superannuation savings are invested. Regardless of the fees they are charged, the returns their funds achieve or the services their funds deliver, these employees cannot change their super fund. Even though it is the workers’ money and the workers paying the fees, the decision of which fund to invest in is made for them by their employer or through their award by their union.

The person paying the piper here does not call the tune, and this government believes that it is time that changed. The government has been trying for six years to implement choice and portability in superannuation to let employees choose their fund now and to allow them to roll money from different funds into one more efficient chosen fund. With a more flexible and dynamic labour market, portability and choice are absolutely vital to the efficient and effective growth of retirement incomes. We believe that people should be able to take an active interest in their superannuation, to choose a fund that suits them, to direct their money to ethical investments if they wish and to consolidate their superannuation into one account to save money on fees and charges.

Repeatedly, the ALP have opposed and blocked these reforms and are giving every indication of getting ready to do it once again. There are clearly some vested interests that would like to protect the current system from competition, and the ALP are completely in their pockets on this issue. The ACTU do not want employees to have a choice; they want to be free to direct workers’ money into union funds, and they have sent the message loud and clear to their minions here in the Senate. Recent Financial Planning Association research shows that 71 per cent of employees believe they should have the right to choose their own super fund. This is another example of Labor and their union masters acting against the interests of workers.

The government’s superannuation choice legislation was backed by the electorate at the last election and has strong support in the community. Asked whether they were happy to let their employer choose where their money was invested, as occurs under the present system, the answer from employees was a resounding no. How does Labor’s spokesperson on this, Senator Sherry, justify his steadfast refusal to allow some competition into the system to bring down fees and improve services? ‘Simple,’ he argues, ‘the public aren’t capable of making a choice, so it needs to be made for them.’

Senator Abetz—How patronising!

Senator COONAN—Yes, how patronising, Senator Abetz. According to Investor Weekly, Senator Sherry told an industry lunch last week:

The problem with choice of funds is that it is based on the presumption that we can educate members, but I am sceptical that we can educate nine million people.

According to the Labor Party, Australian workers are not up to choosing their own super fund and never will be. Senator Sherry should seriously think about whether he should be following union orders on this one. It is not employers’ money, it is not the super funds’ money and it is not the government’s
money; it is employees’ money, and they should have a say on where it is invested. This is just a commonsense freedom, and it is about time it was granted to all Australians.

**National Security**

Senator Faulkner (2.10 p.m.)—My question is directed to Senator Hill, the Minister representing the Prime Minister. I refer to the Prime Minister’s comments last Sunday, when he said:

... if you believed that somebody was going to launch an attack against your country ... and you had a capacity to stop it ... then of course you would have to use it.

Did the Prime Minister mean what he said? If so, can the minister explain the implications for regional security if countries feel free to use force to remove threats to their security which are located in other jurisdictions? Minister, if the Prime Minister did not mean to say what he said, will you explain to the Senate what he actually meant to say?

Senator Hill—The questions committee on the other side has been on strike or something, because that question was asked of me yesterday, but perhaps Senator Faulkner had other things on his mind yesterday. The Prime Minister has said subsequent to the Sunday program that he stands by what he said. He has asked those who are interested in what he said to read the whole of the question that was asked of him and the whole of his answer, rather than quote the bits that might serve someone’s, such as Senator Faulkner’s, political interests. For example—as I said yesterday, but I will say it again—the question asked was:

Does that mean that you ... if you knew that, say, JI people—

and that is being interpreted as a terrorist organisation—

in another neighbouring country were planning an attack on Australia that you would be prepared to act?

The Prime Minister said if there was ‘no alternative other than to use that capacity then of course you would have to use it’. He went on to say:

Now, that situation hasn’t arisen because nobody is specifically threatening to attack Australia ...

I also said yesterday that Australia has good relations with its neighbours, and on the issue of terrorism we have been working constructively all year with them to address terrorists as they exist within the region and as they are a threat to regional states and to Australia and Australians. So what the Prime Minister said in those terms stands.

Senator Faulkner—Mr President, I ask a supplementary question. Does the minister agree with commentators such as Paul Kelly, Anthony Bergin and Hugh White that the Prime Minister’s talk of pre-emption is interpreted by our regional neighbours as aggressiveness and could be counterproductive to securing their cooperation in the war on terrorism? Minister, have any countries in the region other than Malaysia and the Philippines indicated they may go slow or break off cooperation with Australia over the Prime Minister’s comments?

Senator Hill—It shows how bad Labor is going if the best it can do is to follow Senator Brown’s line of questioning one day later. As I said, Mr Howard has asked those interested in his comments to read the question in full and to read his answer in full—and he stands by his answer. As I have said, we have good relations with our neighbours. We are working constructively with them to address the issue of terrorism, and we expect to continue to do so because it is in their interests and it is in our interests.

**Family and Community Services: Volunteer Small Equipment Grants**

Senator Mason (2.14 p.m.)—My question is to the Minister for Family and Community Services, Senator Vanstone. Will the minister inform the Senate of assistance being offered to Australia’s hardworking volunteers?

Senator Vanstone—I thank Senator Mason for the question. Today is United Nations International Volunteer Day. In Australia, nearly one in every three people is a volunteer and they are all doing a great job all around Australia. We announce today $3 million worth of grants to volunteer associations for small equipment. These people are some of the best people I get to deal with in my portfolio. They do all of us a favour.
Take, for example, the bush fire volunteers, who are going to be used all of this summer, for which we should already be grateful. But they are not greedy people; they want to give. Take, for example, the Tamworth and District War Widows Guild Club, who wrote in and said, ‘Thank you very much, but because of the age of members we do not wish to purchase a computer.’ They said that they would be quite happy with $195 for an electronic daisy wheel typewriter. Take the Zeehan Country Women’s Association in Tasmania, who have a weekly craft session, an annual arts and crafts exhibition and a few fundraising activities, and do catering for some funerals. They told us that a few tablecloths on their tables would make it a pleasure to work, and that listening to music would put them in a wonderful mood, so we bought them a couple of tablecloths and a Sony CD player/radio.

Opposition senators interjecting—

Senator VANSTONE—I notice people opposite laughing. This is not a funny matter. These volunteers do a great job. There are the Lutheran Archives in North Adelaide, in my own state, where we paid for six months of taxi fares. Before you get hysterical and say this was a waste of money, this paid for three very old guys, in their 90s—Mr Hebart, Pastor Schirmer and Dr Meier, who speak Old German—to go into the archives and help translate some old Lutheran material. Then there is the Clarendon Ladies Bowling Club in my state. They got a small amount of money. You see, volunteers are not greedy people. They could have had up to $5,000, but they told us what they needed, and that was a large capacity stainless steel urn, an electric knife, a ventilator system for the kitchen and new curtains. One of the ladies wrote to us and said she had been in the club for 25 years and she did not remember the curtains ever having been replaced. So we are very pleased.

Let us turn to the Lake Wollumbooloo Protection Association. These people do a tremendous job in the Shoalhaven City Council area, but a lot of planting and digging equipment is made for bigger people, and a lot of their volunteers are women who are smaller than me, and so they needed more ergonomically designed spades and things; so we spent a small amount of money—just $285—buying them what they needed. We can turn to the Ensay Volunteer Drivers in Victoria. These people volunteer their time to drive people from Ensay to Sale or Bairnsdale for hospital appointments. They did not want very much at all. They only wanted a lightweight aluminium wheelchair. It cost us less than $1,000 and they were very pleased that the remaining money of the $5,000 could go to someone else.

Queensland was not left out. The Blackwater Community Centre gets a bit hot, and so they got an airconditioner, which was really good. The Poochera Central Area Sporting Complex got a ride-on mower. It gets hot in Poochera. You do not want to walk around with a hand mower there. The Swanpool Country Women’s Association were very happy with a small equipment grant of $27 for a fan. One crowd sent us a cheque for 65c in return, because they did not want the money wasted. I only wish they were more volunteers in this country, that everybody did some volunteering and that everybody had the attitude of taking what they needed, being grateful for getting what they needed, and passing the remaining money on to others in need. (Time expired)

National Security

Senator CHRIS EVANS (2.19 p.m.)—Sorry, Mr President, that I was a bit slow to my feet. I was waiting for a supplementary question, but Senator Mason seemed a bit sluggish out of his chair. I cannot understand why. My question is directed to Senator Hill, as Minister for Defence. Can the minister confirm what military capability we would use in a first strike against threats in the region? Aren’t our F111s the ADF’s primary long-range strike capability? Isn’t it a fact that for most of this year only six of the fleet of 35 F111s have at any one time been operational? When six F111s flew to the US for a recent exercise, didn’t that leave us just one operational F111 in the country? Won’t it be at least another three years before the F111s will be able to use the new long-range precision missile? What ADF capability would be used to carry out your policy of first strike?
Senator HILL—There is no issue of first strike within the region. The only ones I know who are talking it up are those on the other side of this chamber. As I have said, we have good relations with our neighbours. From a defence perspective and particularly in addressing the issue of terrorism, which I think is what Senator Evans is talking about, as I said, we are cooperating with each of our neighbours in a number of practical ways in order to address what we see as a joint threat—a threat to their interests and a threat to our interests.

In relation to the F111s, I think that Senator Evans is referring to an answer to a question that I gave him on notice. I have to say that their recent performance in exercises with the United States was first class. They are a very capable aircraft. They give us a capability that we would not have with other of our platforms. It is true that, as aged aircraft, they cost a lot to maintain; but we believe it is nevertheless necessary to maintain them as an important deterrent.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I refer the minister to his speech on 18 June where he endorsed in principle the first-strike doctrine, and made it very clear that the government supported that. Prime Minister Howard has only been continuing his public words on it. Minister, given that we only had one F111 operational at one point this year, why is it that every time you are asked about a first-strike capability you are unable to justify its use or say how it might be carried out, and unable to explain the circumstances and what forces we might commit? Will the minister tell the Senate how we could actually carry out this policy? Doesn’t it in fact highlight the view of experts that your first-strike policy cannot actually be implemented against the terrorist targets, which do not present themselves as targets for military action in most cases in any event?

Senator HILL—Anticipatory self-defence has always been permitted—

Senator Chris Evans—Not the way you interpret it!

Senator HILL—Senator Evans says, ‘Not the way you interpret it.’ What that does mean—

Senator Bolkus—Why do you want to change the charter?

Senator HILL—You can read article 51 of the charter, if you wish, and you can look at the ways in which it has been interpreted during the last 50 years. Anticipatory self-defence is permitted. On the issue of in what circumstances it might be utilised, obviously that is a hypothetical question and it is difficult to answer, other than to talk of a specific instance. In relation to the interjection from Senator Bolkus, ‘Why do you want change it’? there is no doubt that there is a lack of clarity in the interpretation of the rules as they relate to self-defence. I have been suggesting that the international lawyers might play a part in helping to overcome that lack of clarity.

Agriculture: Water Property Rights

Senator CHERRY (2.23 p.m.)—My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry and it concerns water reform. Does the minister agree with the assessment by the Queensland Department of Natural Resources that water property rights as proposed by the National Farmers Federation are one-sided, legally unsound, economically irresponsible and amount to merely intangible expectations? Is the minister aware that a water reform paper by PIRAC Economics, released by the National Competition Council last month, argues that water users are the main beneficiaries from reductions in overallocations of water because:

... reduction in risks and improvement in reliability will increase the value of licences.

Can the minister assure the Senate that the government will not be arguing at COAG tomorrow for a model of water property rights that involves triple-dipping for farmers—that is, compensations for reductions in water allocations; benefits flowing to licensees from reduced overallocations; plus the government picking up the tab for environmental repair required because of poor agricultural practices?
Senator IAN MACDONALD—I appreciate the question from Senator Cherry. I also appreciate his interest in what is obviously a very important matter in Australia generally, one that is exacerbated or brought into greater focus with the current very dry weather we are having. Senator Cherry will understand that water property rights are matters for the state government. Until we can change the Constitution or get rid of the states—something which grows more and more appealing to me personally with the passing of every day—

Senator Abetz—Just change the governments!

Senator IAN MACDONALD—Change the governments? Sometimes our people are not much better, I have to say, Senator Abetz! But it is obviously a state matter. We can urge, and we do; and, as you quite rightly highlight, it is a matter that will be discussed at COAG tomorrow. The Prime Minister has made the federal government’s position very clear. Reform of water management arrangements by the states does not in our view provide sufficient certainty in water property rights to allow for efficient planning, efficient use and the investment that is required for the more careful use and application of water. As I said, we will be discussing this tomorrow at COAG and we are going to work with the states to ensure the protection of legitimate property rights for farmers.

We do not believe that farmers should have to bear the full cost of changes required in the public interest. Senator Cherry would also know that, under the National Competition Policy payments scheme, we did provide money to the states so that they could compensate those in the community affected by changes resulting from competition policy, particularly in relation to water. We are very disappointed that the states have not used the quite substantial amounts of money they have received from the Commonwealth under the competition policy payments to help out with the water reform that is so vital and so necessary.

Both Mr Truss and the Prime Minister have indicated that one of our considerations for future payment of competition moneys might be that we might have to take them back from the states and deliver them from the Commonwealth directly to those affected, because the states do not seem to have been holding up their end of the bargain. Of course, that is a matter that is open to discussion and is something that the Commonwealth will consider in the period ahead. But we do believe that there is a need to properly address the question of water property rights, and I repeat that it is principally a matter for the state governments to do.

Senator CHERRY—Mr President, I ask a supplementary question. I thank you for that slightly contradictory answer, in which you say that it is left to the states but they are not doing enough. The National Competition Council has said that the states are actually progressing quite well on these issues, as a matter of interest. The Wentworth Group has proposed a definition of water rights that recognises water licences as property that is tradeable, that water allocations should be a percentage of total river allocation, and that adjustments of allocations should be based on the amount of water available and the health of the catchment. Does the government support that view of water property rights or does it support water itself as property, where any reduction in water allocated should directly and immediately attract compensation?

Senator IAN MACDONALD—As I have just explained, the actual formulation of what property rights should involve and how that should be applied and adapted is a matter for the state government. Until such time as the Commonwealth has constitutional power to deal with this, there is not a lot of use in the Commonwealth having a very prescriptive view. We want to work with the states to help them as much as possible with research and resources, to get to an arrangement that is appropriate—

Senator Brown interjecting—

Senator IAN MACDONALD—I hear Senator Brown’s interjections about the environment. That is very important and a very significant part of the whole discussion on water property rights. I know you have that interest as well, Senator Cherry. But it is a
matter that the Commonwealth will be working on to help the states, but, as I say, the end result is that it is a matter for the states. We will try to make sure that there is a nationally appropriate regime when there is one. *(Time expired)*

**Australian Broadcasting Corporation:**

**Managing Director**

Senator HUTCHINS (New South Wales) (2.30 p.m.)—My question is directed to the Minister for Communications, Information Technology and the Arts, Senator Alston. Will the minister take this opportunity to rule out any possibility of Peter Reith being appointed to the board of the ABC?

Senator ALSTON—That raises some very interesting possibilities. I am being asked to rule certain people out for the ABC board. I suppose I could rule out appointing a South Australian premier. I could probably rule out the appointment of a former ALP pollster. I could also probably guarantee that there will not be—

Senator Sherry—Mr Howard ruled out Daryl Williams going to the High Court, at the weekend.

Senator ALSTON—That is a good non sequitur.

*Opposition senators interjecting—*

Senator ALSTON—I am busy ruling people out right now. I am saying that we will not have any former ALP South Australian premiers on the ABC board. I can give you that commitment. We will rule that out. We certainly will not be having a managing director who secretly belonged to the ALP throughout his tenure and who never came clean until after the event. I can also rule out having a majority of unionists on the board—card-carrying ALP supporters, no doubt. So I think there is quite a few one can rule out if one is serious about these things. I would not rule out someone like Gary Johns—a sensible, middle-of-the-road sort of operator. I would have thought you would have been in favour of someone like that. It is probably premature to get into this business. But I hope that has been helpful, because we do have to draw the line somewhere, as you know. There are some good people around. In fact, I always thought John Bannon did quite a good job—after the event: I do not think we could have actually come to appointing him in the first instance. There are enough very bad examples from the Labor years for us to have learned a very serious lesson, and we certainly will not be going down that track.

Senator HUTCHINS—Mr President, I ask a supplementary question. As the minister has not ruled out Mr Reith, how can the Howard government possibly justify appointing to the board of our national broadcaster someone who has been found by the Senate Select Committee on a Certain Maritime Incident to have “deceived the Australian people during the 2001 Federal Election campaign concerning the state of the evidence for the claim that children had been thrown overboard from SIEV4”?

Senator ALSTON—I think we had better refer Senator Hutchins’s fitness to remain in the Senate to one of the legislative committees on which we have the numbers, and we will give you a good hearing. All right? The idea of somehow taking the view of a committee on which the government does not have the numbers as a benchmark for deciding to appoint people to the ABC board is pretty breathtaking stuff, I have got to say. I hope that your policy formulation work will take you a bit further than that. We do not actually think it is a very good idea to take findings of select committees of the Senate on which Labor has the majority and use them as a benchmark for determining appointments, because you would end up with 100 per cent unionists on the ABC. We just will not wear it.

**Agriculture: Moreton Sugar Mill**

Senator HARRIS (2.34 p.m.)—My question without notice is to the Minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Ian Macdonald. Are you aware of the special circumstances being faced by the Sunshine Coast sugar growing community in and around Nambour? Is the minister aware that the Moreton Sugar Mill is the singular processing mill for that area? Is the minister aware that the production through the mill this year is approximately 500,000 tonnes and the break-even tonnage at US7c per pound is
850,000 tonnes? Is the minister aware that the owners of the Moreton Sugar Mill have agreed to crush next year’s crop and have indicated that the mill will then close?

Senator IAN MACDONALD—Senator Harris raises a question that is very important to those people in the Nambour region of Queensland, and I thank him for his interest in that area. Coincidentally, Senator Harris, as you probably know, yesterday a group of councils were down from the Sunshine Coast area that encompasses Nambour. Their federal representative and my Liberal colleague Mr Alex Somlyay had them in speaking to Mr Truss about the mill and its future. It is obviously of concern, but I think it is well accepted in the community of Nambour that the mill is simply unable to operate profitably and that therefore there has to be some look at its future.

Senator Harris, you are right: the mill owners have agreed to extend their closure from the end of this season, as was originally anticipated and announced, and have now indicated that they will not close until the end of the 2003 sugar crushing season. I understand that the reason behind that is that, in conjunction with local growers and John Holland Ltd, they are looking at a proposal for an ethanol plant at Yandina, just outside Nambour. If that does come to fruition, obviously the cane farmers will supply the ethanol plant, and life will go on in a slightly different direction.

I guess that depends on what the government determines in relation to ethanol. Senator Harris, you would probably be aware that the government is working on that. It is an issue that does take a lot of Mr Truss’s time and energies, as we work through a number of very complex issues on ethanol. The government hopes to be able to make an announcement on ethanol before the end of this year or sometime early next year. That will then give places like Nambour, the growers there and John Holland, the time to assess whether it is appropriate to invest in that particular area.

Senator Harris, there is something happening; the growers understand. The very important issue is that the sugar package which the government has announced will be of considerable benefit to that mill. We have a real problem, though, because the Labor Party have announced that they do not support the sugar industry and, in fact, they are intending to reject the proposed levy. Of course that means that without the levy there will be no rescue package, no future package for the sugar industry. That is something that is concerning us; Senator Harris, I am sure it is concerning you as well. I know it is concerning the Labor government in Queensland, who have called upon Simon Crean to allow this levy through. Any number of state Labor members up and down the coast have pleaded with Mr Crean to allow this package through so that the cane farmers, who do need some help at the present time, can get that help from the Queensland and Commonwealth governments. It is very distressing to read in the papers that the Labor Party are going to oppose that and, in doing so, they are going to completely reject the interests of the sugarcane farmers and make sure that in their time of need there will not be any facilities, there will not be any assistance available to those farmers. Labor—for some reason which no-one can quite understand, least of all their Queensland colleagues—are so opposed to the sugar industry and they just cannot help the sugar industry. (Time expired)

Senator HARRIS—Mr President, I ask a supplementary question. Minister, will you within this current financial year take a proposal to the government that will address the social and economic impacts of that proposed closure of the mill? Will you give an undertaking to address the specific concerns, in addition to the proposed package, of the cane growers, harvest workers, the workers at the mill? What will be the flow-on effects to the area around Nambour? Minister, it is important that we do not wait until those people are in a desperate situation before the package is implemented. Based on the unique impact of the impending closure of the mill, an effective, efficient and caring government would initiate a special discrete package for the Nambour people.

Senator IAN MACDONALD—We obviously are a very caring government: that is why we have announced the sugar package.
It is beyond belief that the Labor Party will be rejecting the sugar package and making sure that there are no funds available. Senator Harris, your question really presupposes that the mill in one form or another will shut down. As I mentioned in response to your original question, there may be a bright future for the sugar farmers in the area in a slightly different focus. So until decisions are made in that regard by the local growers, it is a bit premature. Certainly the sugar package that we are proposing does help those who have to leave the industry. All we have to ensure, Senator Harris, is that that proposal does get through this parliament so that we can make sure that there are funds available to help those sugar farmers, perhaps like those in the Moreton area who are in dire straits. Without the support of that levy, it is going to be a very tough time, a very tough Christmas, for the sugar farmers. (Time expired)

National Security

Senator MACKAY (2.42 p.m.)—My question is to Senator Ellison, the Minister for Justice and Customs. Does the minister recall offering the advice to the Australian public on the ABC program AM on 20 November that, if people are concerned about someone’s apparently suspicious behaviour, they should ask: ‘Excuse me, are you doing something untoward there’? Does the minister stand by that advice, or is he able to offer further and perhaps better advice to those who, while being alert to possible terrorist threats, might become alarmed at suspicious behaviour and be unsure what to do?

Opposition senators—Ha, ha!

The PRESIDENT—Order! I do believe this is a serious question.

Senator ELLISON—Thank you, Mr President, although I do not think it is being seriously put. I think the issue does raise something which is of concern to the Australian public and which related to the alert that was given at the time. The question that was put to me was: if someone were behaving suspiciously in a supermarket, what would you do? I indicated that you could make inquiries, as people would normally do. If a person sees someone behaving in a suspicious manner, of course it is up to the person to make a judgment as to whether or not they should do anything.

I can say, and I also mentioned it at the time, that I had an experience when I was travelling in London during the time of the bombings. There certainly was an awareness prevalent at that time in the community—and it was one which, I likened, could be looked at—of where packages were left unattended. If someone were in a restaurant or a bar or an airport and a person left a bag unattended, someone would tap the person on the shoulder and say, ‘You left your bag there.’ That did happen; I remember it happening. It happened to me in London when I was travelling there as a young person. I think that is a reasonable level of awareness, and I indicated that in the interview. But certainly it is up to the individual as to the assessment of the level of suspicion. If somebody is climbing in the window of a house and a person who is passing by sees that, I think the average person would make some inquiry or alert the authorities—and I said that, too, about alerting the authorities. The Prime Minister is looking at an information campaign, which I think is an appropriate way to assist the public in dealing with the new level of threat that we are facing.

Indonesia: Terrorist Attacks

Senator JOHNSTON (2.45 p.m.)—My question is to the Minister for Justice and Customs. Will the minister update the Senate on the progress of the investigation into the Bali bombings and on the important contribution that Australia is making to ensure that the perpetrators are brought to justice?

Senator ELLISON—This question is a very important one. The headlines about the investigation in Bali might be fading somewhat, but I can assure the Senate that the investigation is continuing. It is a comprehensive investigation. Just yesterday, a number of people were taken into custody by the Indonesian police. We still have Australian Federal Police in Bali. Some 68 Australian law enforcement officers continue to work there. Of those, 36 are members of the Australian Federal Police, five are Australian Protective Service personnel and the remainder are from the various state and territory...
police forces, which have been of great assistance. Three crime scenes are being investigated in addition to the bomb site itself. We have been able to assist the Indonesian authorities in the analysis of a great deal of forensic evidence. It is important that we acknowledge the great cooperation we have had from Indonesia, especially the Indonesian police, in this matter. It is on occasions like this that we should continue to place that acknowledgment on the record.

Over the last six weeks we have made progress in the identification of disaster victims. The government is of course sympathetic to the families and loved ones of victims who have been waiting through a harrowing time. Seventy-eight Australian victims have been identified. Five Australians died back in Australia and one Australian died in Singapore. The progress in disaster victim identification has been much better than first anticipated. Under the circumstances, the personnel involved have done a fantastic job and I want to place on the record the government's appreciation for the great work they have done.

When the Bali atrocity occurred some six weeks ago, I do not think anyone envisaged that the investigation would be this far down the track by now. The Commissioner of the Australian Federal Police, Mr Keelty, said at the time that we are in it for the long haul. This is a complicated investigation, occurring on foreign soil. Mr Keelty prepared the Australian public for an investigation that could go on for some time. I think the progress we have made has been remarkable. We are continuing to work with the Indonesians in other ways. AUSTRAC is working on an investigation into the financing of terrorism and, as Senator Hill mentioned earlier, we are working with our neighbours in the region. I will be going to Bali, Indonesia on 17 and 18 December this year. With the Indonesian foreign affairs minister, Mr Wirajuda, I will open a conference on the financing of terrorism. I understand that over 30 countries from the Asia-Pacific region will be represented. This is a very important conference in relation to money laundering and the financing of terrorism, and it is significant that Australia is cohosting it with Indonesia—yet again signifying the great cooperation that we have with Indonesia in the fight against terrorism.

### National Security

**Senator BOLKUS** (2.49 p.m.)—My question is to the Minister for Justice and Customs. Can the minister provide details of the so-called public information or national security campaign that the government is reportedly planning to educate the Australian public about appropriate precautions against terrorist attack? Is it true that the contract for the advertisements has already been awarded and that an agency has been appointed by Mr Max Moore-Wilton? If so, how was the tender process conducted? Which agency has got the contract? When will the campaign be run? How will it be conducted and how much will be spent on it?

**Senator ELLISON**—Mr President, this question should be directed to the Minister representing the Prime Minister, because that is a matter being dealt with by the Department of the Prime Minister and Cabinet. I understand that it is being dealt with by the Prime Minister. It is not in my area of responsibility nor in the Attorney-General's. I will take that question on notice.

**Senator BOLKUS**—Mr President, I ask a supplementary question. Since the minister's direct interest and responsibility is in the area of antiterrorism, I ask the minister whether it is true that neither the US government nor the UK government has found it necessary to run public information campaigns to educate their public about terrorism? If so, given the increased level of terrorist threat in those two countries—and increased activity in the United States—what is this government's justification for conducting a campaign in Australia?

**Senator ELLISON**—That is a question for the governments of the United Kingdom and the United States. There are countries overseas which have had experience with terrorism, and the United Kingdom is one of those countries. Australia has not previously had experience of terrorist activities, so we are dealing with a very different public compared with the public in the United Kingdom. I believe that it is incumbent upon the
government to take a role in this matter, and I think the Australian public would expect that.

**Environment: Land Clearing**

Senator NETTLE (2.51 p.m.)—My question is to the Minister representing the Minister for the Environment and Heritage, Senator Hill. Given that land clearing is a major cause of salinity and poor water quality and that Australia continues to clear 600,000 hectares each year nationwide, can the minister assure the Senate that this issue will be a top priority at tomorrow’s COAG meeting? When can we expect an announcement detailing this government’s commitment to end broadscale land clearing in Australia and by what specific target date?

Senator HILL—Land management is, of course, regulated in Australia principally by the states. Most of the clearing referred to in the question is in Queensland, which is regrettably governed by a Labor government that was not willing to cooperate with us in seeking a significant reduction in the rate of land clearing. Through the Natural Heritage Trust and through some greenhouse funding we would have been prepared to financially support a significant reduction in the rate of land clearing in Queensland, but unfortunately Mr Beattie and his government were not prepared to come to the party. The Greens in their new enthusiasm, I would respectfully suggest, might put a bit of pressure on state governments for a change and then they could be doing something useful. The Commonwealth government is committed to better environmental outcomes. We do know the detrimental consequences from overclearing of land. We know the consequences in relation to salinity and we know other detrimental consequences as well, but to effect a satisfactory outcome in this area we will need the cooperation of the states and, unfortunately, under Labor that has not been forthcoming.

Senator NETTLE—Mr President, I ask a supplementary question. I thank the minister for his answer. Can the minister detail the conditions under which the Commonwealth government would agree to provide funding to the Queensland government to end broadscale land clearing in that state? Can the minister advise what discussions have been undertaken to achieve this end between the Commonwealth and the Queensland governments on this issue and where those discussions are at at present? Can the minister also confirm whether it is true that no applications for land clearing have been refused under the EPBC Act?

Senator HILL—Matters in relation to the environment portfolio I will refer to Mr Kemp to see whether I can get responses to the detailed issues you raised in that supplementary question.

**Family and Community Services: Disability Support**

Senator MARSHALL (2.54 p.m.)—My question is to Senator Vanstone, the Minister for Family and Community Services. Is the minister aware that Highlands Personnel in Ballarat, which is a specialist employment service for persons with disabilities, have received just 11 new places under the first round of funding from the Australians Working Together initiative and that they currently have a waiting list of 100 people? Is the minister aware that, with the current funding levels, someone applying for assistance today would not receive help before January 2004? How are people with disabilities in Ballarat expected to access specialist employment assistance with funding levels and waiting lists like this?

Senator VANSTONE—I thank the senator for the question. Obviously, I do not have the details with me of each disability employment service. I do not suggest that if you were genuinely interested you might have come to me and asked me to look at this matter and get you some detail on it. I do not know why you have chosen to raise it when you would not expect to get a detailed answer. Nonetheless, I will not take that in bad faith; I will get you a detailed answer on that service. There are a number of services that would have a waiting list; it is a difficult situation. But all of these people work extremely hard to get the right people in the right placements. I will have a look at it. If they have a funding problem it does not mean it cannot be fixed. I am not suggesting this is the case in Ballarat, because I simply do not know how many services there are.
Let us not forget that in the community sector the people who are the most committed are probably the ones who are working in the disability area; people who run these services are not dropping out of the Deutsche Bank for a year to do a bit of community service. They are very community minded. They are not out there to make a buck and get ahead themselves; they are genuinely motivated to do the best in this area. But even amongst those groups there is, of course, competition for funding and competition to get people to go to one employment service versus another one. I will get you an answer and get back to you as soon as I can.

Senator MARSHALL—Mr President, I ask a supplementary question. Can the minister confirm that the government intends to reintroduce legislation that will force 103,000 Australians with disabilities onto Newstart payments—that is, they will receive $54 less a fortnight than those on disability support pensions? How can the minister justify shunting thousands of people with disabilities onto a lower payment when the government cannot even provide sufficient employment and rehabilitation support to those already on pensions?

Senator VANSTONE—I can confirm that the Australians working together bill is coming back—I think it might already be here. You are asking about the other bill in relation to disabilities. It is my view that the government will bring the bill back. That bill—if you have looked at it—will not take any money from any existing disability recipients. But what it will do is give you the opportunity to tell Australians whether you would pay a bloke in a wheelchair who has to be tube fed and who cannot possibly work the same amount of money as a guy who can work 24 hours a week at award rates. Your answer to that is yes; our answer to that is no. Yes, we might make you tell the public that that is your view—that you would pay someone in a wheelchair who cannot possibly work the same amount as a bloke who can work 25 hours a week.

Economy: Growth

Senator BRANDIS (2.58 p.m.)—My question is directed to Senator Minchin, the Minister representing the Treasurer. Will the minister advise the Senate of the contribution business investment is making to Australia’s current strong economic growth? How have the Howard government’s policies contributed to the strength of business investment and is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Brandis for that very good question about the state of the Australian economy which, as the national accounts released yesterday show, is in remarkably good shape, despite the drought. Despite the state of the international economy, we are still growing at an annual rate of 3.7 per cent, so we are still the leading economy in the developed world. The most significant thing out of the figures released yesterday was the state of business investment, which is growing very strongly. It is going to underpin growth through this year and underpin our expectation of four per cent in 2003-04. Over the past year new plant and equipment was up 12 per cent, new building investment was up 17 per cent and, most significantly, engineering construction was up a massive 39 per cent.

There is a very impressive list of major projects attached to the national accounts figures. Some 34 major projects around Australia are listed there. There is $6 billion invested in projects currently under construction. We have got the North West Shelf expansion, the Alice to Darwin railway and things like that. There is an additional $16 billion worth of investment scheduled to start this year, and $6 billion worth of investment on top of that that could well commence this year.

Interestingly, a lot of these 34 projects are only happening because of federal government support. They would have either gone to other countries or not happened at all if we had not got behind them through our strategic investment incentive program—an excellent program run by this government—or with direct funding. I remind the Senate that we have put $190 million into the Adelaide-Darwin railway—and that is a $1.3 billion investment. We are putting $350-odd million into the Western Sydney orbital and $445 million into the Scoresby freeway—both billion-dollar programs. We have backed the
Comalco aluminium refinery and the Australian Magnesium Corporation project—both massive projects—to the tune of hundreds of millions of dollars.

A lot of these things are happening because the economy is so strong, because we have backed these projects and encouraged them to come to Australia through our support and, even more importantly, because we have a realistic, practical national interest policy on greenhouse gases. We have made it clear that we will not sign up to the Kyoto protocol in its current state because it would damage the economy and render unlikely any chance of getting these projects to come to Australia—unlike the Labor Party, which is manically committed to signing the Kyoto protocol and thus threatening the very future of investment in this country.

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

W ATER USE: PARLIAMENT HOUSE

The PRESIDENT—Because of the current drought affecting many parts of Australia, including to some extent the ACT, the Speaker of the House of Representatives and I have asked the Joint House Department to implement a policy to restrict and reduce water consumption within the parliamentary precinct. For the information of honourable senators, I table a paper prepared by the Joint House Department which sets out various measures that will be taken to reduce water use at Parliament House.

QUESTIONS WITHOUT NOTICE:

TAKE NOTE OF ANSWERS

National Security

Senator MACKAY (Tasmania) (3.02 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Justice and Customs (Senator Ellison) to questions without notice asked by Senators Mackay and Bolkus today relating to national security.

The opposition were somewhat bemused by the advice of the Minister for Justice and Customs to the people of Australia in relation to the current terrorist threat. I suppose one could call it avuncular advice; but the main point made in the minister’s answers is that it seems that the minister’s own portfolio area and the Attorney-General’s Department as a whole have not been directly involved in the formulation of what has been foreshadowed as the Prime Minister’s public information campaign on antiterrorism measures. The critical thing about this is that the process that would normally be followed is that the client agency themselves—Attorney-General’s, for example, in relation to the guns campaign—would submit a proposal for a public information campaign to the Government Communications Unit and then they would put it together. What is clearly happening in this case—and this is what is of concern to the opposition—is that the client agencies are having no responsibility whatsoever.

The opposition’s concern is that this information campaign will not turn out to be a genuine information campaign. That is our concern, and I think that the minister, despite his avuncular advice to the people of Australia generally, has in fact let the cat out of the bag. The minister should know something more about an information campaign than complete bewilderment—but he is saying: ‘I do not know anything about it. This should be directed to Senator Hill in relation to the Prime Minister.’ Why is this campaign, completely against normal process, being run out of PM&C?

The opposition regard this matter very seriously. I do not think anybody would contest that. We have offered a bipartisan approach to this. I am advised that the Leader of the Opposition wrote to the Prime Minister on 24 November asking to be consulted on this public information campaign and that he has not received a reply so far. We are advised—and I would like some response from the government on this—that this campaign is fairly far advanced. Senator Bolkus’s questions were quite specific. He asked: ‘What is the nature of the campaign? When will it be conducted? How much is the campaign going to cost?’ and so on. As I indicated previously, the minister was unable to respond at all; in fact he looked quite bewildered. This is the minister, and this is the portfolio, directly responsible for antiterrorism, so I think
that could at best be described as passing strange.

Despite the campaign being fairly far advanced, the opposition would like to know how much is being spent on it. At this point in our history we do not want just a PR stunt by the Prime Minister. We want people to have genuine information. We would prefer, and I think every Australian would prefer, that the money going into what is shaping up to be a PR stunt for the Prime Minister and the government be put into something concrete such as machines to X-ray luggage on domestic flights—I think most Australians were quite amazed to find out that does not actually happen. This is clearly a far more pressing matter than getting pamphlets out or using mass media or, particularly—with no disrespect to Senator Ellison—promulgating avuncular advice such as to ask, ‘Excuse me, are you doing anything untoward?’ I think people deserve a bit more than that.

This is obviously a very serious issue. We want to know how much money is involved and we want to know the nature of the campaign. Mr Simon Crean wrote to the government on 24 November asking for consultation. We have heard nothing. Clearly this campaign is very far advanced, and we want to know whether this is going to be a PR stunt for the Prime Minister coordinated entirely within the Department of the Prime Minister and Cabinet—whether this money could be better spent on X-raying luggage at domestic airports, for example.

**Senator LIGHTFOOT** (Western Australia) (3.07 p.m.)—I listened to what Senator Mackay had to say in her contribution to taking note of answers this afternoon. It is a pity that, although she mentioned that a bipartisan approach was being offered by the Australian Labor Party to the government, they were hollow words—they were not words of sincerity. You only have to look at the actual approach by the Australian Labor Party so far. Ruling out the atrocity in Bali, where so many Australian and other lives were lost, where is the bipartisan support of Her Majesty’s official opposition for the first-strike position—about which controversy has been promoted in this chamber by the opposition—that the Prime Minister has elucidated? Are the opposition saying that they are going to wait for a second strike? Are they saying that they are going to wait until there is another Bali type incident in Australia and not seek out these terrorists—some of the worst known people in the world, who place no value on the lives of people of any age? These people place no value on any life, not even their own. How can you say that we should not support a first strike? Of course we have to support a first strike. You fail the basic tenet of government if you do not protect the Australian people. This is where the government of this country is strong. Compare that to the opposition. Not only do they oppose and not support any policy in most other areas; they do not supply any basic policy on the defence of this nation and the protection of Australian citizens, whether they are in Australia or overseas.

The opposition mentioned something about X-ray machines. Of course they are necessary—the examination of luggage is necessary in this country. But the main thrust of protecting Australia is being able to ascertain where the terrorists are and to strike first before they strike Australia. The only other possible alternative is for you to have a second strike—to sit back here in a bunker with your arms folded and wait for the first strike, find out where it came from and then take action. That is not the right way to protect your citizens; that is being irresponsible. This government, thank the Lord, cannot afford to take that luxury with Australian lives. That is at least part of the reason that the Prime Minister’s rating is up around 60 per cent and the support rating of the Leader of the Opposition, who is the alternative Prime Minister, is barely 20 per cent. The Prime Minister is a long way in front.

I will give the Labor Party some advice. I do not want this to be gratuitous. This is not going to be uncle-like advice—or avuncular advice, as Senator Mackay said; that was perhaps the most interesting thing she said in her whole contribution of five minutes. Your first responsibility, if you are to form a government, is to look after Australian citizens, whether they are in this country, which is the priority, or in another country. You cannot
say that you are going to put in some X-ray machines and somehow magically this is going to assuage a first-strike capability by these horrendous, indiscriminate killers of Australians. We now know that Osama bin Laden is accepted as being alive and well. He was not killed. Where are we going to go if we discover that he, or a cell of his, is in Australia or overseas? That is not to say that there would be a pre-emptive strike overseas without the cooperation of that particular government, but there must be a first strike. No matter how you qualify things, there has got to be a first strike. That is the responsibility of any government that has its citizens’ interests at heart. That is the responsibility of a government that is riding high in the polls. You must change your attitude to defence. You must get some basic policies to protect Australian citizens, whether they are in this country or overseas. Until then, I would not see you getting an approval rating over 20 per cent—you are lucky to be in double figures, let alone in a winning per centum.

(Time expired)

Senator FORSHAW (New South Wales) (3.12 p.m.)—I rise to contribute to the taking note of answers—or, more correctly, the refusal to answer by Senator Ellison. The question that was asked of Senator Ellison concerned the proposed advertising campaign. Senator Mackay, in leading off this debate, directed her remarks to that issue. But we have just heard the unguided missile of the Liberal Party talk about a first strike. If you are ever looking for a first strike, he is it! The trouble is that the missile goes around and usually hits him. But this is a serious issue. It is an insult to the intelligence of the Senate and the intelligence of the Australian community to have the sorts of remarks just made by Senator Lightfoot.

I want to deal with some of those points. Firstly, Senator Lightfoot sets out to denigrate the Labor Party with respect to the issue of defence. Senator Lightfoot, I point to the record of the Australian Labor Party over the last 50 years in this country. When it comes to the defence of this country, the Labor Party stands a long way in front of your colleagues and their predecessors—whether you go back to John Curtin or indeed you only go back to 1991, when there was a war to get the Iraqis out of Kuwait and a Labor government, led by Bob Hawke, committed Australian forces to the campaign. That campaign was authorised by the United Nations. What we are getting from this Prime Minister, by contrast, are some stupid and irrational remarks.

Let us deal with this issue of the first strike. Nobody denies that the concept of a first strike exists in terms of defending one’s own country or one’s own people. But the smart leaders in the world will tell you that the one thing you do not do in situations like that is actually go out and talk about it. You do not announce your military strategy publicly. When the Israelis were forced to use the first-strike option in 1967 because of the threat from their neighbours they did not ring up the President of Egypt or Syria and say, ‘We’re going to take first-strike action.’ This issue has been blown up—excuse the pun—into a regional controversy that should never have arisen, and it arose because of the Prime Minister’s approach to this issue.

Let us get back to the question that was asked of Senator Ellison which he avoided answering by saying that it was really a matter for the Prime Minister and his department. Well, of course, that is the issue. This proposed advertising campaign is to be run out of the Department of the Prime Minister and Cabinet by Mr Max Moore-Wilton. This is the same guy who oversaw the debacle of the ‘children overboard’ saga—who put the political spin on that issue. This is the same person who was responsible, either directly or indirectly, for the lies that were told to the Australian people simply to suit the political opportunism of the Prime Minister and the coalition government at the last election. That is likely to be the case again on this occasion if this campaign is run in that manner. This is a serious issue, but it is a joke that the minister responsible for this particular area, Senator Ellison, is not even in the loop with respect to this campaign.

We all agree that governments have to advertise. But advertising should be appropriate to the circumstances. It should be properly targeted. It should be open to public and parliamentary scrutiny in terms of the fi-
nancing and arrangements under which the campaign is put together. Beyond all that, it must also be politically neutral. It should not be used for partisan political purposes. That is the real danger in this proposal. It is fine to warn Australians about the dangers of terrorism—we know that. But this government and this Prime Minister should sit down and have a good hard look at the actions being taken in other countries around the world that have to deal with this issue and learn from their examples. (Time expired)

Senator SCULLION (Northern Territory) (3.17 p.m.)—I must say I was somewhat miffed and concerned when I heard the question from the other side that started with something about a joke. It is a bit funny, something we are doing! The government are attempting to do something that is somewhat humorous!

Senator Jacinta Collins—They were laughing on the government side of the chamber too.

Senator SCULLION—Well, I was not laughing, and I did not see too many people laughing on this side. It certainly was not humorous. In the environment where we still have not identified some of the bodies in Bali, let alone brought them home and buried them, to be making light and humorous critique at this moment is inappropriate. I would suggest that when the members opposite leave this place they should start talking to the first people they meet and ask them if they think it is humorous. I can assure you the answer will not be in the affirmative. I think it is absolutely absurd. They have to understand that in the last election they came second. In regard to all of these matters the government has the very clear right and preserve to continue to pursue these issues in the way that it has. I have certainly seen nothing to indicate that this government is going to use its position, in putting this legislation and these very strong policies in place, to somehow score some small political point by advertising something that is out of line. That is just preposterous.

This call for a bipartisan approach is really a thinly veiled wedge. This government is trying very hard in very trying circumstances to ensure that all Australians have ownership of this issue—that all Australians can contribute in the way that people in other countries in the world who have been faced with similar threats in the past have. In his answer the minister, in a very articulate way, referred to his personal experience in the United Kingdom when traveling there as a young man. He spoke about how the processes of advertising and ensuring that everybody understood some of the risks they could actually alert people to were in place and working. He shared with this place his experience there that if you left your bag unattended someone would tap you on the shoulder. It has been well documented that that level of concern in the United Kingdom led to ensuring that there was a lower
risk level, because everybody was aware of the most simple things.

Coming through Canberra Airport the other day there was a bit of a kerfuffle in the corner. I asked the driver what it was about and he said someone had left a bag there. Whilst this campaign has not yet started, people in the security business have very properly started going down the line of ensuring that this is a safer place in which to live. This advertising campaign will ensure—not with a casual ‘What are you doing there, mate?’ sort of flippancy—that those issues that are anomalous to our everyday life, those issues that are somehow not exactly the way things should be, are reported. It will give people a sense of confidence that they are not going to look like a bonehead because they say, ‘Excuse me, mate, what is that over there?’ They will be doing it in an environment that recognises the very important role Australians can play. It will give them ownership in the security of their country and the security of their children. (Time expired)

Senator LUDWIG (Queensland) (3.22 p.m.)—I wish to take note of the answer to a question asked today by Senator Bolkus to Senator Ellison, the Minister for Justice and Customs. This debate has broadened into an area where it should not go. To put it bluntly, what we are talking about here is summed up in the title of an article in the *Sun Herald*—that is, a ‘TV campaign on how to spot a terrorist’. The subheading of that article reads ‘Howard plans urgent safety information ads’. We heard from Senator Ellison that he does recall posters in the UK, but we are not talking about that specifically; if we were, he perhaps would have told us today. He did not say today that we would have posters in railway stations or posters in trains or posters on buses, or posters on omnibuses, for that matter. We did not hear Senator Ellison talk about that. In fact, we did not hear from Senator Ellison much of an answer to the question that was asked.

I remind the Senate that the information we were seeking was information about the so-called public information or national security campaign with which the government is reportedly planning to educate the Australian public. It is appropriate that the question was asked. It is appropriate for Senator Ellison to provide the information in question time—that is the place where he can say: ‘This is what we intend to do. This is the information we intend to provide, and this is how we are going to provide it.’ But we did not hear that. We did not hear much of that at all. We heard some anecdotal information earlier in response to a question, but we did not hear how much the campaign would cost and who would run the campaign.

It is even more curious if you look at the issue of who would run the campaign and how it would be run. You would imagine that if it was going to be the A-G’s Department then at least Senator Ellison would have some more intimate or detailed knowledge about it. You would expect A-G’s, with Senator Ellison involved, to be the client department. You would expect the Attorney-General and Senator Ellison to have a public information campaign at their fingertips. Given that this is about national security in relation to domestic security issues, you would expect that that would be the client department that would look at this issue.

Instead, Senator Ellison did not shed sufficient light on this to demonstrate, in my view, that he knew about it. That leaves us with a concern, because the normal mechanism is that you would expect that the Government Communications Unit would receive information from the client department and a request about how this information was then going to be put out and that it would be tendered and then put out. I would imagine that A-G’s, in that instance, would be the client department. But that seems not to be the case. When you ask the question and Senator Ellison does not confirm it, it leaves unanswered the question of who the client department is. That becomes the question. Who is the client department? Senator Ellison has not said who the client department is. There was clearly an opportunity for him to answer that.

So we are left with supposition. Is the Prime Minister’s office the client department that has asked for the information from the communications unit? Is the Department of the Prime Minister and Cabinet going to run
this? Is it through Max Moore-Wilton? That is the real question. If that is the case, is there a process of politicisation of this issue? You would not expect that to be the client department at all. They have not indicated how much it is going to cost, so are we then looking at not only Prime Minister and Cabinet being the client department and making a request but also seeing Mr John Howard featured in these advertisements? Are we going to see Australian taxpayers' money spent on publicising Mr John Howard rather than bringing the real issue about national security or domestic security to the forefront to ensure that the public is at least informed? Are we going to see the politicisation of this? (Time expired)

Question agreed to.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

East Timor

Senator HILL (South Australia—Minister for Defence) (3.27 p.m.)—by leave—In question time I said that I would try and get information on the current travel advisory in relation to East Timor. I now have some information. I am told that the existing travel advisory is the one that was issued on 30 October. That is current for today and I will table it. It, therefore, obviously does not take into account events of the last couple of days but, as is always the case, the travel advisory is under constant review.

REVIEW OF JUDICIAL REMUNERATION

Return to Order

Senator HILL (South Australia—Leader of the Government in the Senate) (3.28 p.m.)—by leave—I make this statement on behalf of Senator the Hon. Chris Ellison, the Minister for Justice and Customs and Minister representing the Attorney-General. This order arises from a motion moved by Senator Joe Ludwig, as agreed by the Senate on 3 December 2002, relating to the release of the government’s submission to the recent Remuneration Tribunal major review of judicial and related offices’ remuneration.

I wish to inform the Senate that the government’s submission to this major review is being tabled. This is the first major review of judicial salaries conducted by the Remuneration Tribunal since 1993-94. I understand that on the occasion of that review the tribunal in fact published the then government’s main submission. As the review has now concluded, release of the government’s submission will not interfere with the tribunal’s deliberative processes.

The government notes, however, that this submission was made to a major review, the first in almost a decade. During the course of the review, the government released its submission on a confidential basis to other submitting parties who sought access to the submission. The government considers that a major review of this kind is significantly different from the many other reviews and deliberative processes conducted by the tribunal. While the government is tabling its submission in this particular case, this should not be taken as an indication that future submissions will be tabled.

MATTERS OF URGENCY

National Security

The DEPUTY PRESIDENT—I inform the Senate that the President has received the following letter, dated 4 December, from Senator Brown:

Dear Mr President

Pursuant to Standing Order 75, I give notice that today I propose to move:

That, in the opinion of the Senate, the following is a matter of urgency:

The need for the Prime Minister to act to limit the continuing damage to our nation arising from his comments on pre-emptive strikes, and to restore confidence in Australia as a constructive and non-belligerent neighbour in our region.

Yours sincerely
Bob Brown
Senator for Tasmania

Is the proposal supported?

(Quorum formed)

More than the number of senators required by the standing orders having risen in their places—

The DEPUTY PRESIDENT—I understand that informal arrangements have been
made to allocate specific times to each of the speakers in today’s debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

Senator BROWN (Tasmania) (3.33 p.m.)—I move:
That, in the opinion of the Senate, the following is a matter of urgency:
The need for the Prime Minister to act to limit the continuing damage to our nation arising from his comments on pre-emptive strikes, and to restore confidence in Australia as a constructive and non-belligerent neighbour in our region.

I thank the Democrats for their support and note that only the Democrats supported this motion being debated as an urgency motion. It is a very important motion. I am not going to fall prey to the new political correctness that is overtaking debate in this country which says that you cannot question the Prime Minister’s hegemony as the defender of the public realm and the linkage there is with the United States or the danger that that might put us into as far as the war on terrorism, which the Prime Minister speaks so much about, is concerned.

We are headed to war with Iraq in the coming months at the behest of the United States, which has its view very firmly on the oilfields of Iraq. To pave the way we have the Bush doctrine of pre-emptive strikes, which breaches the enormous importance of the United Nations charter. To pave the way for that, we have Mr Howard’s doctrine of Australia being America’s deputy sheriff. On Sunday, in the pursuit of that doctrine, the Prime Minister made the remarkable, destructive and irresponsible statement on Channel 9 in a response to Laurie Oakes that indeed Australia would be involved in a pre-emptive strike. He had a caveat on it but it was sotto voce and it was not the main thrust of—

Senator Coonan—It was not.
Senator Ferguson—It was not. Did you hear it?
Senator BROWN—In effect it was. I heard it, and I am one of those who got straight out of my chair because I knew the implications straight off—that it would be destructive, that it would raise umbrage in the neighbourhood and that it would cause enormous damage to Australia’s reputation. So on Monday I said so, and I called on the Prime Minister to withdraw. Of course, that did not happen, but that would have been the wisest course of action. The obvious response in the neighbourhood—in the Philippines, Malaysia, Thailand, Indonesia and, indeed, China and other countries—has been resentment of the Australian Prime Minister and, therefore, because he speaks on behalf of us, of the Australian people’s attitude that we would invade the territory of neighbours if we felt a pre-emptive strike was in order.

What an extraordinary and destructive gaffe by the Prime Minister of this country. You do not as Prime Minister trespass into answering hypotheticals like that which was put to him on this occasion, no matter what the hedge is. This Prime Minister has done great disservice to our great nation in this neighbourhood by his statement. Those opposite should read the Jakarta Post, the Indonesian press and the press in Malaysia and elsewhere in the region to see what the reaction has been. It should not have happened. It should not have occurred. This statement by the Prime Minister was not essential in the interests of this nation. It did not have to be made. It was a statement that was bound to get a negative reaction for our country and to cause long-lasting damage to this country. That is what has been achieved: a damaging statement from the Prime Minister. The Prime Minister is not big enough to recognise that this nation was going to be damaged in the long term by his foolishness. I said that it was a gaffe, but I believe it was premeditated. The Prime Minister is not big enough to say, ‘In the interests of the nation which I serve’—he is a servant of this nation—’I will withdraw it.’ He left it to his Minister for Foreign Affairs to call in the delegates from other nations in the region to try to explain the Prime Minister’s destructive statement, while the Prime Minister went into the bunker yesterday. He headed for earth because he knew that he was wrong and that anything further he had to say would add to the damage.
This Prime Minister has done this country a great disservice. He may have wanted to do it for domestic political gain—just as George W. Bush wanted him to do it, to soften the road to Iraq—but, as far as our nation and its future is concerned, he has done a great disservice. He should now retract. He should withdraw. He should put this country’s interests first and show that he is statesman, not just a politician, when it comes to leading this country. We can expect that of him. He has had the experience. He says that he puts this country first, he says that Australia is at the top of his interests; he should act as such.

(Time expired)

Senator FERGUSON (South Australia) (3.38 p.m.)—No-one will ever accuse Senator Brown of political correctness, and no-one will ever accuse him of standing up for Australia; no-one will ever accuse him of that because he does not.

Senator Brown—Mr Deputy President, I rise on a point of order. I disagree with him, but I will leave that to your judgment.

The DEPUTY PRESIDENT—There is no point of order.

Senator FERGUSON—Senator Brown’s scaremongering and his lack of either knowledge or understanding of the facts is abysmal. He always comes into this place purporting to represent the people when he, in fact, represents certainly no more than one in 10, if ever that. The issue of pre-emptive action that Senator Brown refers to is in relation to comments that the Prime Minister made in the context of commentary on the issue in response to a lecture delivered by Senator Hill at the University of Adelaide and as a result of a journalist’s question. The speech focused on the general question of the evolution of international law to reflect new challenges in global security—but Senator Brown is not interested in that; he is only interested in a little bit of cheap publicity, which is all he has ever been interested in.

Both the speech and the Prime Minister’s comments discussed the issue in hypothetical terms, and that is all it ever was. But the Senator Browns of this world make sure the media get the wrong end of the stick in order to make it an issue. It is wrong to interpret the remarks as suggesting any shift in the government’s approach to the problem with Iraq. We are certainly working very closely with all our neighbours under bilateral counter-terrorism memorandums of understanding, and we are working to develop these in cooperation with all those other countries.

The key point is that the Prime Minister’s comments have been deliberately taken out of context by the Greens, by Senator Brown, by the Democrats, by the ALP and by sections of the media. If you read the comments in context and in their totality, you will find that they are soundly based and would be supported by all Australians. Let me remind Senator Brown of what the Prime Minister actually said in response to a question by Laurie Oakes. Laurie Oakes said:

Now, you have been arguing for a new approach to pre-emptive defence, you want the UN to change its charter, I think. Does that mean that you ... if you knew that, say, if people in another neighbouring country were planning an attack on Australia that you would be prepared to act?

The Prime Minister responded:

Oh yes, I think any Australian Prime Minister would.

And that is true. He continued:

I mean, it stands to reason that if you believed that somebody was going to launch an attack against your country, either of a conventional kind or of a terrorist kind, and you had a capacity to stop it and there was no alternative other than to use that capacity then of course you would have to use it.

Now, that situation hasn’t arisen because nobody is specifically threatening to attack Australia ...

Further on, Laurie Oakes said:

It’s fair to say, isn’t it, that the SAS is not only perfectly tailored to make that kind of pre-emptive strike in another country but that’s really what we’ve got it for.

The Prime Minister’s response—which Senator Brown carefully made sure that he did not put in his speech—was:

Laurie, there’s no situation that I’m aware of at the moment that raises that issue, and I don’t really want to go down that path any further other than to state the obvious that any Prime Minister who had a capacity to prevent an attack against his country would be failing the most basic test of
office if he didn’t utilise that capacity if there’s no other alternative.

Senator Brown very carefully made sure that he did not use the words that were actually used by the Prime Minister: ‘if there’s no other alternative’. What we get from the Prime Minister is strong leadership. He is a man who is prepared to accept his responsibility for protecting the Australian people, which is more than Senator Brown has ever been interested in. What do we get from the opposition? Mr Crean believes that the Australian Prime Minister should apologise for stating that he would do everything possible to protect Australian citizens. He wants the Prime Minister to apologise for protecting Australian citizens—and this is a man who wants to be Prime Minister! It is unbelievable.

Unfortunately, the Greens—Senator Brown, in particular—the Democrats and the Labor Party, and some of their fellow travellers from the more loopy left of our country, have stirred up ‘much ado about nothing’. How do we know they have stirred up much ado about nothing? If Senator Brown thinks that this is such a new development on the issue of counter-terrorism, I would really like him to listen to this. The Prime Minister recently said:

Well the principle that a country which believes it is likely to be attacked is entitled to take pre-emptive action is a self-evidently defensible and valid principle and I don’t think you need a government decision to say that you agree with that. I mean let me make it very clear if I were presented with evidence that Australia was about to be attacked and I was told by our military people that by launching a pre-emptive hit we could prevent that attack occurring I would authorise that pre-emptive hit and expect the Opposition to support me in the process.

Do you know, Senator Brown, when the Prime Minister said that? He said it on 20 June this year, and you never said a word about it then. Senator Brown never said a word about it then, Senator Bartlett never said a word about it then, and Mr Crean never said a word about it then. This was almost six months ago. It was exactly the same statement, and there was not a word from Senator Brown, Senator Bartlett or Mr Crean. It is only now that, for cheap political purposes, the Prime Minister’s comments have been misrepresented to other nations in our region, that Mr Crean, Senator Brown and Senator Bartlett seek this opportunity to score cheap political points. That is hypocrisy in its highest form. All Australians—and I mean all Australians except for Mr Crean, Senator Bartlett and Senator Brown—would agree that defending Australian lives is the most important duty of an Australian Prime Minister.

I can say with some confidence that everybody on this side of the chamber and the vast majority of the Australian population rely on this Prime Minister, whom they trust implicitly—they do not trust Senator Brown, Mr Crean or Senator Bartlett, but they trust this Prime Minister—to agree to defend Australian lives. I can tell you that everybody on this side of the chamber, and practically every Australian who cares about protection in the future, would fully support the Prime Minister, and that is reflected every time the Australian people are asked. This is a beat-up of a repeat of a statement made six months ago, when Senator Brown said nothing—not a word. Now we have a situation where, for cheap political point scoring, he sees fit to raise the issue, to make sure it is beaten up in the media in order to try and destabilise our relationship with neighbouring countries—and that will not happen. That will not happen because we are working very well under our memorandums of understanding to make sure that we secure our counter-terrorism measures. (Time expired)

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.48 p.m.)—Before I commence my contribution, I seek leave to reduce my contribution in length from 25 minutes to 20 minutes and to ask for those five minutes to be shared between the Australian Greens senators.

Senator Ferguson—This should get you a few more preferences.

Senator FAULKNER—No, it is an informal arrangement that broke down, I believe, Senator Ferguson, and you will understand that sometimes—
The DEPUTY PRESIDENT—Whilst leave is not necessary, Senator Faulkner, I understand your motive and your request is granted under the circumstances. Senator Faulkner’s time will be set at 20 minutes and Senator Nettle’s time—

Senator FAULKNER—No, I would like the time to go between the Australian Greens senators, Senator Brown and Senator Nettle. They can work it out and reply between them.

The DEPUTY PRESIDENT—All right. It will be between the Greens.

Senator FAULKNER—I appreciate that.

Senator Ferguson—He made a poor attempt the first time. He needs another go.

Senator FAULKNER—Really, you’ve got a problem there, haven’t you?

The DEPUTY PRESIDENT—Senator Faulkner, you have the call.

Senator FAULKNER—The Prime Minister, Mr Howard, and the Minister for Defence, Senator Hill, have spent much of the last six months trying to construct an argument that would justify a pre-emptive first strike against Iraq. In pursuing that line, they have faithfully reflected the views of the hawks in the Bush administration. It is very much a second-hand policy from a second-rate government, but we had the Prime Minister taking the argument one step further last week. We need to be very clear about what the Prime Minister, Mr Howard, said—because there have been a number of attempts now by the government to backtrack, nuance and qualify the remarks that Mr Howard made. On the Channel 9 Sunday program on 1 December, Mr Howard was asked this specific question:

Does that mean that you ... if you knew that, say, JI people in another neighbouring country were planning an attack on Australia, that you would be prepared to act?

Mr Howard replied:

Oh yes, I think any Australian Prime Minister would. I mean, it stands to reason that if you believed that somebody was going to launch an attack against your country ... and you had a capacity to stop it ... then of course you would have to use it.

Senator Ferguson—that is correct.

Senator FAULKNER—Thank you, Senator Ferguson, for acknowledging that it is correct. The government says that this is a fairly unremarkable statement from the Prime Minister, but what Mr Howard failed to say—and this is the reason why there has been such a strong reaction from leaders around our region—was that any such action would need to be undertaken with the close cooperation and the full support of our regional partners. And now the Prime Minister puts his hand on his heart—unusual for him!—and tells us he was not talking about pre-emptive strikes in our region and he was not seeking to build a case in relation to Iraq. Despite the government’s protestations that Mr Howard is just misunderstood, this new Howard doctrine on regional military pre-emption is already having an impact on our national security interests. That is the fact of the matter. The Philippines National Security Adviser, Roilo Golez, said:

This statement—Let me interpolate here—

Senator Ferguson—Is this a half quote or a full quote?

Senator Johnston interjecting—

The DEPUTY PRESIDENT—Order! Senator Johnston, I see you are on the speaking list. Senator Ferguson, you have had your go. Give Senator Faulkner a go, thank you!

Senator FAULKNER—I enjoy being interrupted by those on the other side of the chamber, because they are trying to cover up—they are ashamed of what Mr Howard has done and said. Let me quote Mr Golez, the Philippines National Security Adviser, on the statement by Mr Howard:

This to me is quite arrogant and because of this I have recommended that we review and go slow on the proposed anti-terror pact with Australia because they might use this for their pre-emptive agenda.

What about the spokesman of the Thai government, Rathakit Manathat? What did the Thai spokesman say—

Senator Ferguson—What did he say?

Senator FAULKNER—I am glad you ask. Let me quote him. He says:
Nobody does anything like this. Each country has its own sovereignty, that must be protected.

Indonesia’s Foreign Minister Wirayuda said:
If you ask what is Indonesia’s position on this discourse of Prime Minister Howard, I say that such a discourse is unacceptable.

What did Malaysia’s foreign minister, Syed Hamid Albar say? He said:
This statement is a serious threat to regional peace and stability.

Prime Minister Mahathir is reported today—and I assume accurately; someone else can establish that—as having threatened to break off cooperation on counter-terrorism efforts with Australia unless it stops behaving like an agent of the US in Asia. Let us remember that these are all countries in our region. They are all countries on whose cooperation we must depend if we are to rid our own country and our region of the scourge of terrorism.

Just in case some might think that it is just a majority of the South-East Asian leaders and some Australian political parties that have found Mr Howard’s comments either unacceptable or offensive, let us look at what some of the credible national security commentators in this country have said. I think it is fair to describe Paul Kelly of the Australian as ‘credible’—Opposition senators interjecting—

Senator FAULKNER—If you do not think he is credible then that is a matter for you, but I think he is credible. Writing in the Australian yesterday, he said—

Senator Ferguson—Whitlam accolades!

Senator FAULKNER—That is to his credit. He said:
John Howard’s key weakness of faulty judgment in dealing with Southeast Asia is on display again.

He is dead right. He said:
Howard has fallen into an old error—an inability to appreciate that any statement he makes about foreign or military policy cannot be limited to a domestic audience but reverberates across South-East Asia.

What about Anthony Bergin?

Senator Ferguson—Who?

Senator FAULKNER—Anthony Bergin and Hugh White. You are such ignoramuses on that side of the chamber! Of course you do not know who these highly respected commentators are. We would not expect people like you to know. As long as Mr Howard says something, like a whole mob of automatons you just fall into line and agree. It would not matter what he said. You do have a range of respected commentators, and so what did they argue yesterday? What did Bergin and White argue yesterday? Let me quote them:

... talking about pre-emption gives the appearance of aggressiveness and a willingness to push the boundaries of international law to suit Australia’s interests (and those of the US). This is counter-productive in terms of securing political support from our neighbours in the war on terrorism.

All of these people are just termed ‘carping critics’ by the government. I suppose they think that Jonathan Stevenson, a senior fellow in counter-terrorism at the International Institute for Strategic Studies in London who has written in the Australian newspaper today, is just another carping critic. What did Jonathan Stevenson say? I would like to quote him as well. He said:

Prime Minister Howard’s public rhetoric alone has already discomfited Malaysia, the Philippines, and Thailand, which have proved relatively solid counter-terrorism partners, as well as Indonesia.

He went on:
Ultimately, alienating such countries could degrade the counter-terrorism coalition’s intelligence-gathering and transnational law-enforcement capabilities and make them all the more hospitable to al Qaeda.

So there is a real arrogance creeping in to the way Australia’s Prime Minister, Mr Howard, is handling this debate about Australia’s relations with South-East Asia. It is absolutely irresponsible of our Prime Minister to publicly speculate about the possibility of a future military strike against the territory of our South-East Asian neighbours. That is irresponsible. Mr Howard should be big enough to own up and say that he got it wrong. He should immediately contact the leaders of each of these countries, either to say that his comments were misinterpreted or to reaffirm his commitment to building stronger regional
cooperation, or perhaps both. So it is a blunder, a very serious blunder. When you make a blunder, imagine sending in Alex Downer to try to fix it! Fair dinkum, can you imagine sending in Alex Downer to fix up a major blunder like this? Oh yes, good old Alex is going to come in.

Senator Ferris—Would you rather send Gareth Evans?

Senator Faulkner—No. It would have been interesting to see: Alex Downer was probably wearing his fish-net stockings and high heels. But in he goes to clean up the mess. What does the Prime Minister do? He calls in the South-East Asian ambassadors to have a cup of tea with Alex Downer. There is only one proper solution for Mr Howard to clean up this incredible mess, and that is for him to get on the telephone and clean up the mess himself. That is the sort of responsibility the Prime Minister of Australia should take. I have to admit to the Senate this afternoon that we in the Labor Party are not overly optimistic that the Prime Minister will get in and clean up the mess. You have to remember the absolute obstinacy he displayed when he was asked about these comments in parliament earlier this week, and he has continued that obstinacy today.

Serious commentators on national security—and I have mentioned some of them—have argued that on these matters the government, under the leadership of Mr Howard, is at best erratic and at worst aggressive and counterproductive. After nearly seven years in office, the Howard government has yet to articulate a clear national security strategy. We have a foreign and defence policy marked by inconsistency—which, I might say, has been so effectively exposed by my colleague Senator Chris Evans, the shadow minister for defence, and my colleague in the House of Representatives Mr Rudd, the shadow foreign minister. The government’s approach to foreign affairs and defence, as I have said, has been evident in a number of ways. It is stuck in the old mindset. Security threats to Australia have shifted rapidly in the decade since the end of the Cold War. Transnational threats such as people-smuggling, organised crime, piracy and international terrorism are now the primary threats to Australia’s security, but the Howard government remains stuck in the Cold War mind-set; it is unable to define an appropriate strategic response.

There have been repeated mistakes, as we know, in defence procurement—very effectively exposed by Senator Chris Evans. This is often the result of changing contractual arrangements to suit political objectives—it is very hard to keep up with what role Mr Reith might have had in all of this—for example, the combat systems on the Collins class submarines, the torpedoes that are too heavy, the Seasprite helicopters on airframes that are 40 years old. The government is just not up to the job in that area. There is no consistency of message. The 1997 foreign and defence white papers listed four key relationships: Indonesia, China, Japan and the United States; but, following the breakdown in relations with Jakarta over East Timor, Mr Howard says, ‘We don’t need special relationships.’ That is Mr Howard’s new doctrine. Now we have got new white papers being written which will revise all the previous policy settings and show a further lack of consistency.
Of course, you have Mr Costello, a good friend of Senator Ferris, boasting about how Australia was immune from the 1997 regional economic crisis. And who could forget Mr Howard—not a good friend of Senator Ferris—in his deputy sheriff role in East Timor, which was widely reported across the region? You have this lack of independence in foreign and defence policy; a failure on the part of this government to articulate a sufficiently independent set of policies, independent of the Bush administration, which we have said is a fundamental mistake; a failure to recognise the long-term security implications of poor regional relations; and, of course, a lack of coordination among our security intelligence agencies.

What we say here is that Mr Howard’s recent ill-advised and ill-considered comments about pre-emptive strikes are simply the latest manifestation of this ineptitude from the Howard government in the handling of our country’s foreign relations, particularly those with our immediate neighbours, whose understanding and cooperation we have never depended on more. The opposition will be supporting the urgency motion.

Senator NETTLE (New South Wales) (4.08 p.m.)—In rising to speak to this urgency motion, I note the comments that have already been made about the Prime Minister’s inflammatory comments on Sunday. Rather than just doing as he has done so far and supporting George Bush’s and the United States’ pre-emptive doctrine, John Howard did not think that was good enough. He wanted to go further and put in place his own pre-emptive doctrine for Australia to follow when it comes to international relations. We have heard from other speakers about the nature in which this was so irresponsible. It was irresponsible in an international context because the international community is currently trying to come together and resolve conflict in Iraq, at this stage through non-violent means, and to do so through the United Nations and through the weapons inspection program. The government have articulated that they are supporting that position—being involved in trying to resolve that conflict through the United Nations, through diplomatic means rather than through a military strike on Iraq—while at the same time pledging their wholehearted support to any unilateral military action that the United States may choose to launch on Iraq.

We have seen the impact that these comments have had on our neighbours—and we have heard others quote people around this region—and the damage it is having on the ability of the Australian government to indeed work with those governments to ensure that we reduce the likelihood of terrorist events occurring in our region. We have heard about the memorandums of understanding that the Thai government are currently talking of breaking off. We have heard about other cooperative measures—ways we could work together with our neighbours to reduce the likelihood of terrorism occurring. We have heard about the governments in our region who are pulling out of those arrangements because of these inflammatory and irresponsible comments made by the Prime Minister.

Let us look at what we should be doing. We should be addressing the root causes of terrorism—the poverty and the inequality in our region that lead to terrorist events occurring. We need to be doing that by looking at our aid programs, looking at whether we are, in fact, supporting community development programs, conflict resolution in our region and programs that support and celebrate a diversity of communities—multiracial and multifaith communities living together in a tolerant and a cohesive society. This is the constructive role that the Australian government could be and should be playing in our region to ensure that we reduce terrorism.

(Time expired)

Senator SANDY MACDONALD (New South Wales) (4.11 p.m.)—I have seen Senator Faulkner come into this place and make some very powerful attacks, but today was not one of his best days. In fact, he even cracked a smile today, and I think that gives the Senate a very clear indication of the fact that Senator Faulkner’s heart is certainly not in this debate. All I can say is that, from his own point of view, he is probably lucky that the debate today is not being broadcast, be-
cause he really should have given somebody else a few minutes of his 20 minutes. I think it is probably one of the weakest attacks made on our defence and foreign policy at a time when Australia has never had a more credible image in the world.

The motion that Senator Brown has moved is in line with his usual method of seeking publicity, which he does, I have to say, very effectively. He does so because the facts and the truth are of no relevance to Senator Brown. Any damage or collateral embarrassment to Australia is of no concern to Senator Brown. In fact, he is quite prepared to be an apologist for Australia, and he has a record of that. I think other countries look askance at comments made by Senator Brown or they take the opportunity to use his comments as a way of promoting their own political agendas. His views, while given wide publicity, have no resonance—and I think you made this point, Mr Acting Deputy President Ferguson, when you were speaking—with the vast majority of the Australian people. You said one in 10; I think it will be more like one in 100 or one in 1,000. If people actually knew Senator Brown and saw the sorts of policies that he promoted privately, they would not be bearing out the policies that he speaks about when he speaks about foreign affairs or defence matters.

To put what the Prime Minister said in a colloquial context which we all understand, I think I can put it this way: if some terrorist is going to hit you on the head with a stick, then it is incumbent on any Australian government, whatever its political persuasion—and I am sure my colleagues opposite would agree, or disagree on other issues—to defend its citizens. That is the requirement of any Australian government. There is nothing more or nothing less than that. If you have some clear indication that there will be an attack upon your citizens and you have the capacity and there are no other alternatives, then clearly it is incumbent on any Prime Minister, given the great responsibilities of that high office, to act accordingly.

A military response would never be the first call. It is simply not the Australian way. It has never been our record in our long and proud history of military involvements. We will work with our neighbours and our friends in forums, in the United Nations and wherever. We will pursue every opportunity of cooperation but, at the exhaustion of all those methods, it should be known that terrorists who might terrorise Australian citizens at home and abroad must be aware that they cannot hide; they cannot run. But they can hide, I am sure, with Senator Brown. I make no apologies for that. I am proud to be part of a government that takes a stand on behalf of its citizens in that regard, because there is no higher obligation on any government than to protect its citizens. There is no obsequiousness from our side of politics, but lots of it from Senator Brown. The attitudes given publicity by Senator Brown or by Australia and its citizens should indicate that there is no safety at all. There is nowhere to hide with terrorism and there is no benefit to Australia in providing an opportunity to give succour and support to potential terrorism.

Regional cooperation clearly remains the priority of the government, especially following the Bali bombings. The response and help of the Indonesian government is very much appreciated. The cooperation between the Indonesian police and the AFP, and the long-term mutual personal benefits that have been developed through this investigation and through the ongoing training cooperation, particularly in the forensic area, will be of immense benefit in the future. The AFP has been exceptionally diligent in developing this cooperation. The commitment to regional security cooperation supported by Malaysia and Singapore—and the recent detention by Malaysia of the 74 Jemaah Islamiah operatives that were alleged to have been planning an attack on the US, UK and Australian embassies—is clear evidence of this cooperation, and is ongoing.

I turn now to the points raised in Senator Brown’s motion concerning the Prime Minister’s comments. The Prime Minister’s comments on possible pre-emptive action were in the context of a commentary on the issue in response to the John Bray memorial oration delivered by Senator Hill in Adelaide a couple of weeks ago. They are also in the context of the rethink of the long-standing rule of international law—the right of self-
defence, which the United Nations recognises in section 51 of the UN charter. Senator Hill’s speech focused on the general question of the evolution of international law to reflect new challenges to global security. Both that speech and the Prime Minister’s recent comments discussed the general issue in hypothetical terms only. It is wrong to draw a conclusion from these remarks that the government has any specific plans for changing its direction of working cooperatively with the regional countries on the common problem of terrorism that we all face. (Time expired)

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.18 p.m.)—The Democrats support this urgency motion. We support the need for the Prime Minister to act to reverse the damage that he has caused. The Prime Minister has caused more damage to the image of Australia in our region than anyone since Pauline Hanson. He is damaging the security of Australian citizens and he is damaging multiculturalism. His refusal to acknowledge that damage and take this issue seriously is equally disgraceful. This issue has been raised during the week—by the Democrats in question time on Monday, by the Greens in question time on Wednesday, and by the Labor Party in question time today. Each time, the response has been not only to ignore the damage that has obviously been done but to treat the issue with complete flippancy and without any seriousness. We even had a government minister, Senator Abetz, calling the Prime Minister of Malaysia, ‘Prime Minister Muppeteer’. It is really helpful for building strong relations with Malaysia when government ministers use such language in the Senate and have it recorded in the Hansard!

The Democrats believe it is very destructive that the government appears to have abandoned the previous tripartisan policy of positive engagement with South-East Asia and the Pacific. A recent publication of the Australian Strategic Policy Institute, Beyond Bali—a very worthwhile document which I would encourage all people to read—said:

Our ability to respond effectively to the new challenge of terrorism will depend on our ability to work with governments in the region.

Senator Ferguson—Mr Acting Deputy President, I rise on a point of order. It goes to the comment made by Senator Bartlett who obviously was not in the chamber this morning. The reference he made to the Malaysian Prime Minister, Dr Mahathir, in fact proved to be false. It was a misrecording by Hansard that has been admitted. So I think it is wrong for Senator Bartlett to perpetuate something that has already been corrected in the Senate, although Senator Bartlett might not have heard that correction.

Senator Brown—We have not heard that that correction has been made yet. There is some dispute about that, so the matter has not been resolved.

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—Senator Abetz has withdrawn his comments and sought to correct the record.

Senator BARTLETT—I am not surprised that an attempt to alter the Hansard has been made, but I do have ears of my own, which were working at the time that I was asking that question. It was in response to a question that I was asking.

Senator Ferris—Why don’t you withdraw it, Andrew?

Senator BARTLETT—I am not the one withdrawing it. The Australian Strategic Policy Institute’s document stated:

Our ability to respond effectively to the new challenge of terrorism will depend on our ability to work with governments in the region.

I note the recent comments by the Director of the Australian Defence Studies Centre, Anthony Bergin, and the associate professor of politics at the Australian Defence Force Academy, Hugh Smith:

... talking about pre-emption gives the appearance of aggressiveness and a willingness to push the boundaries of international law to suit Australia’s interests ... This is counter-productive in terms of securing political support from our neighbours in the war on terrorism. ... The most effective means of dealing with terrorism ... remains prevention through cooperation between governments.

The Australian Defence Association has questioned the practicalities of Prime Minister Howard’s first-strike policy, and that is the message that the Democrats would like to
get out. Even the editorial of the *Australian*, not exactly the newsletter of the peace movement, has said that the Prime Minister should not have made those comments.

Just look at the Philippines, a nation that has worked closely with the US to address terrorism, including joint training exercises and counter-terrorism manoeuvres in the country. A note reports that the Philippines’ response to Mr Howard’s comments was to announce that it would rethink the bilateral counter-terrorism pact it was negotiating with Australia. How can one say that the Prime Minister’s comments were not damaging when that has been the response of a key government in our region? We acknowledge that Minister Downer called an emergency meeting to try to defuse the situation, and the Democrats hope that that has had some success. But the fact remains that the Prime Minister needs to act. He is the one who has made the comments, and he is the one, along with all his ministers, who has refused to acknowledge the enormous damage that those comments have done to our region. As I said at the start, it was widely acknowledged that comments by Pauline Hanson, an independent MP, were damaging; Mr Howard’s comments are equally damaging and should be addressed. *(Time expired)*

Senator JOHNSTON (Western Australia) (4.23 p.m.)—The problem with this motion is that it complains of inflammatory conduct and yet, of course, what we have seen here today is the best example of where the problem really lies. Senator Faulkner, quite surprisingly, treading water over a period of 20 minutes in this debate, in giving his quote left out some important words which the Prime Minister said. He left out the words ‘and there was no alternative other than to use that capacity’. Senator Brown, of course, has not cited the direct quote of the words used, and the words used in their completeness by the Prime Minister were:

> Oh yes, I think any Australian prime minister would. I mean, it stands to reason that if you believed that somebody was going to launch an attack against your country, either of a conventional kind or of a terrorist kind, and you had a capacity to stop it and there was no alternative other than to use that capacity, then of course you would have to use it.

My challenge to Senator Brown is that, if he takes the microphone in this chamber again on this subject, he should tell the Australian people that he disagrees with that statement and those words—that he would allow an attack to unfold and that he would allow the citizenry of our country to be exposed—and then respond. Let him say that to his constituency; there is the challenge. If he does not take the challenge, he is guilty of the inflammatory conduct that he accuses our Prime Minister of. You take the challenge, Senator Brown. You tell Australia what you really mean in this debate, because you refuse to cite the words. You want to inflame and prey upon what you see as the representation of the Prime Minister talking about a pre-emptive strike. On 20 June you were silent when similar words were used in a similar context—in that there would be no alternative. You said nothing. You come here today seeking to pander to your constituency, seeking to say that there is something wrong in the words that you refuse to cite for Hansard and your constituency and playing out this charade, this deceit, this misrepresentation.

For your information, the world has changed dramatically in the last 18 months, with the events of 9/11 in America, the Twin Towers being destroyed; the USS *Cole*; events in Algeria; events on the subcontinent; events in Aceh; events in the Philippines; and, of course, the tragic events in Bali. These events give a disturbing window into the psyche of terrorism. You have people prepared to sacrifice their own lives in order to achieve the murder and destruction of people they consider to be some form of threat to them or to make some political statement. This is like nothing we have had to deal with before.

The government has been highly successful in working with our neighbour states in Malaysia, Singapore, Indonesia particularly and, of course, in the Philippines, and we continue to live up to the expectations of every Australian citizen in forging strong ties to defeat this terrible blight of terrorism. Where have you been, Senator Brown? Do not forget that I want definitely to hear you disavow and say that you would not agree
with the exact words of the Prime Minister in the circumstances that he portrayed. The fact is that this new breed of threat is extraordinarily difficult to defeat and difficult to detect, and it puts an enormous stress upon our intelligence capability.

Senator Brown, you are either ignorant of what he said in the context in which he said those words or you are intentionally misleading your constituents, this parliament and the Australian people. I would like you to come clean and tell us what the real fact is and why you pretend that these words are other than what they actually are. If you think you have any political credibility you need to be supportive in circumstances such as this. You need to say to our near neighbours that there is a serious problem confronting all of us. We must work together and not seek to get some cheap political mileage out of the distortion that you want to perpetrate in this. Your integrity is at stake here—your credibility, your sincerity and your honesty—and I want to hear you say that you would disavow it. (Time expired)

Senator BROWN (Tasmania) (4.29 p.m.)—We have just heard the new political correctness, disgusting political correctness, in full flight—that is, if you do not support the bellicosity of the Prime Minister then in some way you are a fellow traveller with terrorists. Andrew Bolt is the doyen of the new political correctness and here we have heard it from the Liberals opposite. I am not going to be cowed by that, nor should anybody else. (Time expired)

Question agreed to.

BUSINESS
Rearrangement

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (4.31 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 5 (Taxation Laws Amendment (Structured Settlements) Bill 2002).

Question agreed to.

TAXATION LAWS AMENDMENT (STRUCTURED SETTLEMENTS) BILL 2002

Second Reading
Debate resumed from 25 September, on motion by Senator Patterson:

That this bill be now read a second time.

(Quorum formed)

Senator SHERRY (Tasmania) (4.34 p.m.)—The Taxation Laws Amendment (Structured Settlements) Bill 2002 is a positive reform and the Labor Party strongly supports it. The explanatory memorandum states:

A structured settlement is basically a settlement in which part or all of a damages award is paid in the form of an annuity or annuities and may include a deferred lump sum.

The current bill proposes tax changes to encourage the use of structured settlements as agreed at a meeting of Commonwealth, state and territory ministers and the President of the Local Government Association on 27 March 2002. Encouraging structured settlements will help to ensure that injured patients have adequate regular payments for the rest of their lives. It will also make a contribution towards tackling the problem of rising insurance premiums for public liability insurance.

It is because of these clear benefits of structured settlements that Labor has been calling for this reform for a long time. In fact, as far back as June 2000 my colleague Mr Kelvin Thomson in the other place announced Labor’s policy that the tax treatment of structured settlements for injury compensation claims should be changed to make it more comparable to the tax treatment of lump sum payments. In July last year Labor committed itself, when in government, to promoting structured settlements by changing the tax treatment of periodic payments. This was to ensure that injured patients have adequate regular payments to cover their health care costs for the rest of their lives. Labor made this commitment because it recognised the need to break the cycle which is driving up the costs of medical indemnity insurance and similar public liability insurance.
Labor has a long commitment to encouraging the greater use of structured settlements, which, as I said earlier, goes back to at least June 2000. By contrast, the Liberal government has been slow to recognise the benefits of structured settlements. In 1999 the Structured Settlements Group began lobbying the government on the benefits of structured settlements. The group were hopeful that the budget in 2000 would recommend changes to the tax laws to encourage the use of structured settlements. However, the budget that year contained no such changes. Around that time, a spokesperson for the then Assistant Treasurer is reported to have said:

This is a complicated issue. It is a difficult one and needs to be looked at very carefully.

In August 2000, in reply to a question on notice from Labor about changing the tax treatment of periodic payments for injury compensation claims, the Treasurer said that the government was thinking about it.

Finally, in September 2001, the then Assistant Treasurer announced the government would introduce legislative amendments designed to encourage the use of structured settlements for personal injury compensation. The press release issued by the then Assistant Treasurer was quite comprehensive. It acknowledged that a major advantage of a structured settlement over a lump sum compensation payment is that many people are unable to properly manage the investment of their lump sum. The press release proceeded to say:

... where they are not able to meet the on-going medical and other costs associated with their injury.

The press release contained a number of detailed eligibility conditions for tax exemption for structured settlement annuities. Alas, no legislation was introduced before the election, and the government remained silent on the issue of structured settlement until March this year. The Liberal government then announced as part of the communiqué to the national summit on public liability insurance that it would introduce legislation to make tax changes to encourage the use of structured settlements for personal injury compensation.

I applaud the government for finally taking up Labor’s suggestions but must note my disappointment that it took so long—and a crisis in the insurance industry—before we finally saw the legislation we are considering today. Let me be unequivocal about Labor’s position on this bill. We support it and we will not hold up its passage. However, we still have some remaining concerns regarding details, which I will touch on later, and I foreshadow that we will be moving an amendment to address these concerns.

My opening remarks indicated there is substantial common ground between us and the Liberal government on this issue. I will not then dwell on this common ground in detail, apart from emphasising again that it constitutes the great majority of the bill. The new bill proposes to amend the income tax law to provide a tax exemption for certain annuities and deferred lump sums awarded as part of personal injury compensation under a structured settlement. Labor agrees that this taxation reform is desirable, as, in practice, annuities have been tax-disadvantaged relative to equivalent lump sums because they have been deemed to be more closely identifiable as compensation for lost earnings.

I note that the revenue forgone to the Commonwealth due to the tax that would otherwise have been payable on these annuities is estimated to be $12.1 million over the four-year forward estimate period. The annual cost will then rise to approximately $20 million after 20 years, stabilising at that level. We agree with the Liberal government that this is a reasonable price to pay for the policy benefits brought about by this reform. We also note that, in practice, this cost may be offset to some extent by indirect savings from reduced payments in welfare payments in the longer term. We also agree with the general principles underlying the eligibility criteria for income tax exemption. It is desirable that they restrict the tax-exempt status to genuine cases of personal compensation payments, ensure that the revenue is protected by preventing any other movement of income into this tax-advantaged vehicle and ensure that the annuities are purchased from
a source that is subject to proper financial supervision.

The extent of this common ground is considerable. However, as foreshadowed in the House debate on this issue, Labor remains concerned to ensure appropriate flexibility of structured settlement arrangements. The issue at stake is whether the eligibility conditions as they stand in the bill unnecessarily constrain the financial interests of the injured person. The bill currently requires that the annuities are purchased by the defendant or their insurer directly. This would exclude the injured person or their financial manager from purchasing an annuity with the same tax concessions. Court-appointed financial managers such as trustee corporations are compulsory for minors and the intellectually disabled. In addition, victims with intellectual capacity also choose to utilise financial managers where this is appropriate. The Trustees Corporation of Australia argued that the current arrangements in the bill give the defendant insurer veto over the injured person’s access to tax concessions. The Labor opposition considers that this is a legitimate concern. We moved an amendment in the other place to attempt to address this concern and will also be doing so in this chamber, although in a slightly modified form.

As a result of a further round of consultations undertaken since the debate in the other place, Labor has decided to modify the amendment to restrict the buying of the annuities to before the time of the settlement. As previously, the amendment will maintain safeguards to ensure that these arrangements are not misused for tax planning purposes and to preserve the requirement that annuities be purchased from a life insurance company or state insurer. Let me emphasise again that this is a matter of detail in the implementation of the bill. It is an important detail, but it is only a detail. Although we believe the bill would be substantially improved by it, even if it does not pass we will not change our strong support for the underlying principles of this bill.

Given our continued willingness to offer bipartisan support for the bill, I would have thought the government might have been willing to reciprocate and take a constructive approach to resolving such details. As I stated previously, the Labor Party has been a strong and consistent supporter of structured settlement reform. However, we believe that the fundamental principle should be to encourage uptake of structured settlements on their own merits. For this reason we consider that the fundamental feature of the reform in this bill is the provision of a tax concession to strengthen the economic advantage of structured settlements. Once this economic advantage has been bestowed, we believe the bargaining process should be made as fair as possible.

The proposed amendment will make the choice of structured settlements fairer by providing the injured person with some legitimate bargaining power in the negotiations. We consider that this would strike a more responsible balance between the competing legitimate interests in this matter. After all, there is a legitimate public interest in safeguarding the interests of the defendants and insurers to help ensure that continued downward pressure is placed on insurance premiums. But this must be balanced responsibly against the safeguarding of the interests of the injured person to ensure that they receive adequate compensation for the rest of their lives. At present, if the offer put forward by the defendant’s insurer is unreasonably low, the lawyer of the injured person or plaintiff is left only with the options of pursuing a lump sum settlement or proceeding to court for a lump sum award. Labor’s amendment would strengthen the bargaining power of the injured person or plaintiff lawyer by allowing them to present a counteroffer of a tax concessional structured settlement.

Senator Coonan is fond of coming into this place and lecturing us about so-called choice. We had another example of a grossly misleading lecture about so-called choice in question time today. But when it comes down to making sure that this choice is informed, fair and strongly protected, she seems to go very silent. She will have an opportunity to speak on this matter and on this important area of principle in concluding this debate.
In the time remaining to me I wish to urge the Liberal government to do more to resolve the difficulties faced by many small business operators and community groups in obtaining public liability insurance. The same difficulties are now also evident in relation to professional indemnity insurance. Small business and community groups make a significant contribution to the economy and to the fabric of Australian society, and I acknowledge their contribution.

Labor supports the thrust of the reforms to the law that have now been made by a number of the state governments. As stated in March this year, Labor recognises that appropriate rights for the victims of negligence are essential in our society. The community has had an expectation that those who suffer an injury as a result of someone else’s culpability will be compensated for that injury. But there must be a balance to the system. We must have a system of tort law which appropriately reflects the community’s expectations regarding realistic standards of responsibility, culpability and informed voluntary assumption of risk.

However, we must also ensure that the benefits of these reforms are reflected in insurance premiums, for that is what we want to achieve. Labor wants small businesses and community groups to be able to obtain insurance at affordable prices. The insurance industry has warned that reform of public liability may not lead to cheaper premiums. This could mean that without proper supervision the benefits of the law reforms will end up in the pockets of the insurance companies, and the public liability insurance crisis will continue unabated.

The Howard Liberal government have consistently refused to act on this issue even though it is their constitutional responsibility. Further, the Australian Competition and Consumer Commission has said on the public record that it does not have the power to ensure that the savings from the law reforms are passed on by the insurance companies to the consumers. To ensure that this is the case we require Commonwealth legislation. Labor has introduced a private member’s bill which grants the ACCC the necessary powers to protect consumers and ensure savings are passed on. It allows the ACCC to take action against insurance companies which exploit the savings from the law reforms and do not charge premiums for public liability insurance which reflect the effects of the law reform. Such legislation is necessary to realise the benefits of the law reforms undertaken by the states, and I hope that the Liberal government will consider Labor’s private member’s bill.

Justice Ipp, in his report on negligence law, has also indicated that there are other areas of law and other matters that the Commonwealth is responsible for. I hope that the minister is considering, as a matter of priority, the recommendations of Justice Ipp and other people on the panel. I hope that the minister will be acting as quickly as possible to take forward and implement any appropriate recommendations. Other organisations have also indicated a need to immediately improve the availability and accuracy of data on claims, premiums and other relevant data. The statistics collected in the past by APRA have been subject to many criticisms. I understand from my questioning of APRA that they are in the process of improving their data collection. This data collection should have the full support of the government. I was recently questioning APRA about the collection of superannuation fees, charges and commissions. They appear to be under some new leadership in their data research area and they are making a much more determined effort to collect accurate and independent data across a wide range of areas. The government should also immediately be looking at what other data is necessary and how it should be collected. This may include data from court records.

The supervision of the insurance industry by APRA and the pace of reforms by the Liberal government have also been questioned—and rightly so. We used to hear time and time again from this government about how APRA was the world’s greatest regulator. APRA failed in its supervision of HIH. I think we will hear a lot more about the failures of APRA as the regulator when the royal commission hands down its report. The government failed in reforming the regulation of insurance companies. The pace of
reform adopted by the Liberal government was too slow, and a quicker pace may have prevented much of the damage we have now seen. The oversight of APRA by the government must be improved, and the performance of APRA itself must be improved. Before I conclude I reiterate Labor’s strong support for the reforms in the Taxation Laws Amendment (Structured Settlements) Bill 2002. This is overdue. It should not have required an insurance crisis to bring it on. Nevertheless, the reform is very welcome.

Senator MURRAY (Western Australia) (4.50 p.m.)—Before I begin, I ask that Senator Ridgeway’s speech in the second reading debate be incorporated. The alternative is that he will make the speech and take up more time.

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—I think senators would like to have a look at it.

Senator MURRAY—You have 20 minutes. There is no issue with that but if leave is denied Senator Ridgeway will come down and take up the time. I too wish to speak on the Taxation Laws Amendment (Structured Settlements) Bill 2002. In starting I would like to try and summarise the issues. Two important considerations must be borne in mind in matters of compensation for a seriously injured person: will they get sufficient regular disposable income to cover their living and health needs, and will any dependents be able to receive continuing support, particularly in the event of an early death?

Compensation in Australia is presently paid either as a lump sum or as a periodic measured amount, otherwise known as a structured settlement. Structured settlements were adopted by the United States and Canada in the 1970s and the United Kingdom in 1987. Structured settlements are seen as an attractive public policy instrument as an alternative to lump sum damages. The danger with a lump sum payment is that the unwise, the foolish, the unsophisticated or even the unlucky can waste it and leave the injured person in dire circumstances and on welfare.

The take-up of structured settlements in Australia has been low because of tax disadvantages. This bill removes some of the tax impediments. However, the recipient of a damages award may prefer to make their own investment decisions if they receive a lump sum. In this way, the bill does create further tax inequality, since income from an annuity will now be tax exempt while income from the investment of a lump sum will still be taxed. It is plainly the policy intention of the government to push persons who are in this situation towards structured settlements rather than lump sums, and overall it is a policy intention with which we agree.

The bill covers an area of taxation reform that is long overdue. The reform will mean that structured settlements may become more commonly used in Australia as a mechanism for seriously injured people to plan for their future. I have been long concerned about the fact that there might be many cases where lump sum payments have been made and these moneys have been exhausted quickly, leaving victims with no future financial security. It is my understanding that this legislation is designed to ensure that people who are disabled, for example, have income flows that allow for meeting their medical and other costs, as well as providing a steady income stream. This offers the government the ability to potentially save moneys by ensuring, as much as possible, that they do not have to pay income support for these individuals through the welfare system.

With respect to the speeches given on this bill, a large number of the speakers, especially government members in the lower house, saw structured settlements as being part of the solution to the liability insurance industry troubles. Although my colleague Senator Ridgeway will address this in more detail in the second reading debate, let me make it clear that the Australian Democrats do not agree with this notion. The public liability and professional indemnity insurance issues require substantial and coordinated effort from all levels of government, but tax concessions on structured settlements are not at all a significant part of this solution.

Until the existing legislation, there was no real incentive for the widespread use of structured settlements in cases of personal injury claims. A major impediment to struc-
tured settlements was that of their taxation treatment, and, gladly, with this legislation this impediment will be removed. I anticipate there will be some, or perhaps much, discussion about allowing tax concessions for annuities arising not only at the time of settlement but also after a lump sum is sought initially and then invested under an annuity arrangement. I understand that ALP amendments proposed this in the other place, but, while I saw some merit in the notion of allowing for this, one of the important factors in encouraging people to take up the new arrangements was for there to be some incentive for compliance.

In another way, if a tax-free annuity could be purchased with the proceeds of a lump sum then plaintiff lawyers would not be obliged to raise the issue of a structured settlement before settlement or at all. They could consider the matter to be one of financial planning on which a plaintiff could obtain financial advice at a later date. Plaintiff lawyers could therefore continue to seek lump sum damages only. I do not believe we would be able to support amendments that would have effected change to the timing arrangements at this stage.

If structured settlements were an issue of financial planning, this could be dealt with after the matter was closed and the plaintiff lawyers would not be obliged to arrange for a plaintiff to have the benefit of financial advice before the case settles. The incentive would simply be lost. If the Labor Party amendments put forward in the other place were to have been put forward here and were to have been successful, I question whether or not anyone would have taken up a structured settlement on the basis of that, as their amendment had stood. This is not seen in any other part of the world that offers structured settlements. I am glad to see that the Labor senators have prevailed and that they will be moving a different amendment to that of their House colleagues.

The Corporations Law, strictly speaking, provides that lawyers must not give financial advice. Lawyers are therefore appropriately loath to get involved with financial matters, even to the extent of recommending a financial adviser. Compensation is calculated and negotiated on the basis that it is all needed and will be invested wisely. That is an assumption. It is important to ensure good investment of compensation funds from day one if a plaintiff is to have any hope of ensuring that they are adequate. As I understand it, under the existing bill, lawyers from both sides will be overseeing the purchase of the annuity to ensure that it is in strict accordance with the terms of the settlement agreement. If financial advice is left up to the plaintiff after settlement, they might leave it too late. They might have spent a fair proportion of their compensation money before they receive advice, if they receive that advice at all. If the plaintiff could purchase the annuity directly, additional care would be needed to ensure that the right type of annuity—non-commutable, non-assignable and so on—is purchased with the settlement funds and not any other funds, and is purchased within a specified time after settlement and in a manner approved by the Taxation Office.

Taking this into consideration, I will be moving an amendment in the committee stage that makes it compulsory for there to be independent financial advice at the discussions on structuring a settlement. While I recognise that there are provisions within the financial services and regulations acts that could possibly cater for this, I believe that it has value and that having provided for it within the legislation adds to the bill. One of the issues that must be considered is that of ensuring that the plaintiff is satisfied and looked after through this process. We would not want to go through this process and have arrangements that do not effectively meet the needs of those who will fall within the arrangements.

The Democrats are very supportive of the whole notion of providing an incentive to structured settlements, and we wish to see this legislation pass through the Senate. That is all I have to say in my opening remarks. I seek leave to incorporate Senator Ridgeway’s remarks.

Leave granted.

The speech read as follows—

The Australian Democrats welcome the passage of the Taxation Laws Amendment (Structured Settlements) Bill 2002 with few changes to assist
in ensuring people are best looked after through the process. We appreciate that lobbying for this Bill began in the mid 1990’s and with the establishment of the Structured Settlements Group.

While we support this Bill, as my colleague Senator Murray has touched upon, the Australian Democrats believe that the following issues should be addressed, some by amendment now and others by a review of Structured Settlements or future legislation.

First, this Bill encourages structured settlements over lump sum payments. The recipient of a damages award may prefer to make their own investment decisions if they receive a lump sum. In this way, the Bill creates a tax inequality since income from an annuity will be tax exempt while income from the investment of a lump sum will still be taxed. One solution is to treat all compensation and damages payments equally under the tax system. I understand this Bill is concerned with out-of-court settlements only and, as such, moves to tax exempt all compensations and damages payouts might be better resolved in separate legislation after a review of these initial arrangements.

Second, an amendment should be considered to continue annuity payments to the beneficiary of the victim in the event of the victim’s early death. The current Bill allows for payment to continue up to a maximum of 10 years. Rather than the annuity issuer benefiting from the early death of the victim, payments to a named beneficiary should be maintained until the time when payments to the victim were estimated to cease.

Finally, an amendment should also be considered in relation to the decision by the victim to agree to take up the option of a structured settlement. It should be considered compulsory for the victim to seek independent financial advice to ensure the victim has all available information at their disposal before making a decision.

Generally, however, by removing the disincentive to receive a structured settlement for monies received for personal injury claims this creates a small bonus for accident victims in a situation where there may be many obstacles to a path of financial security, good health and rehabilitation. The knowledge that periodic payments will be tax exempt is a win for those who wish to make agreement about a structured settlement.

However, while on the topic of ‘wins’—I think it is unlikely that the ‘win-win’ situation the Assistant Treasurer alluded to in her media release on structured settlements will eventuate. The ‘win’ that this Bill was promoted to achieve was a reduction in insurance premiums and this goal is optimistic to say the least. I would also challenge as misleading, Mr Don Randall’s assertion in his second reading speech, that this Bill is an effective tool to tackling the problem of public liability.

While I commend the Government on its willingness to create tax incentives for personal injury victims, this aim should be considered as an entirely separate issue to the problem of rising insurance premiums.

Once again, we find the federal government providing so called solutions to rising insurance costs through focusing on measures that excuse the insurance industry from any reform.

As we have already seen, despite this lack of data on claims numbers all Governments have been prepared to endorse tort law reform as the solution to the public liability crisis on the assumption that it is the cause of the problem. The absence of hard data means that not only is it impossible to be sure that tort law is the cause of the current crisis but it will also be difficult to assess the effectiveness of the reform process.

The absence of empirical evidence is a point that was acknowledged by The Ipp Report on Negligence, who justified its recommendations as based on a ‘collective sense of fairness’.

It is high time that government focus shifted from the legal system and tort reform, plaintiff lawyers and damages awards to more far reaching solutions to this issue.

What a ‘collective sense of fairness’ would require at this point is for reforms to offer advantages to members of the community who aren’t connected to the insurance industry. While individual rights are being eroded through tort law reform, the community has been guaranteed nothing in return.

If the Government cannot guarantee the reduction of insurance premiums then at the very least, the community deserves a greater sense of surety and commitment from the government that their safety is a main concern and that the insurance industry is acting in good faith and with their social obligations to the community in mind.

While this Bill goes some way to ensuring that long term care for the injured is available, the government should, as a priority, turn its attention to solutions that reduce the number of accidents that occur in the course of peoples professions and in public places. As well as this, tighter and more effective prudential controls over the insurance industry by APRA is another matter that needs to be addressed if the government is serious about providing long term solutions. Another matter that I believe has yet to be highlighted is...
the need to encourage the control and management of risk, which not only makes good sense from an insurance point of view, but also from a community welfare point of view.

Now, I come back to my earlier point about what the community should expect from the insurance industry in light of the concessions that have been granted to it by the government and the limits that have been placed on individual rights.

Of all of the so-called solutions to the public liability crisis, this Bill is the only measure that at least provides the community and accident victims some kind of guarantee. That is not to say that this Bill will provide any comfort to those experiencing massive insurance hikes but it is a measure nonetheless that differs from the others in that there are at least some advantages to the individual.

Notwithstanding that the Government’s measures to cure the crisis in public liability are misdirected, as I have stated, the measures are primarily devoid of any insurance industry involvement. The government now owes it to the community to provide concrete guarantees that their giving up of their individual rights will not be in vain.

I urge the Government to commit to including the insurance industry in their solutions to the current insurance crisis:

• Extend APRA’s monitoring powers to include other types of insurers such as professional indemnity groups;
• The Government must increase its commitment to ensuring APRA use their monitoring and enforcing powers with respect to the insurance industry;
• Provide the community with greater confidence in insurance industry practices through ensuring transparent and independent auditing and accounting functions. In line with CLERP 9 recommendations, this should include restrictions on the length of time a single auditor could provide services to an insurer without rotation;
• The industry is currently undertaking harmonisation of the various industry complaints mechanisms and the government must ensure that this is in place within the next 12 months; and finally,
• A stringent insurance industry code of practice should be applied to the industry to ensure that its application is equal in strength to the Code applying to the banking industry where adoption of the Code contractually binds the bank and the consumer.

To conclude, I would like to stress that it is my hope that the Government can build on the achievements of this Bill by considering the points I have raised earlier about its shortcomings and by being more realistic about the goals that this legislation was intended to achieve.

This Bill is not part of a solution to the rising cost of insurance and by seeing it as such, further detracts from the Government’s focus on solutions that will benefit the community in the long term. One-sided solutions to an insurance problem that do not involve the insurance industry are becoming increasingly inappropriate.

Accident victims, regardless of whether they choose structured settlements or not are now severely limited in the level of damages that they could receive; yet at the same time, executives of failing insurance companies receive salaries and bonuses of amounts that the vast majority of accident victims can only dream of.

Insurance industry involvement is well overdue and the Government must now shift its focus to restore some balance in a series of solutions that have severely diminished the rights of accident victims and the community as a whole.

1 According to the Bill and Schedule 1 Part 3 Application provisions 54-75, the Minister is to arrange a review of the operation of the proposed amendments after 4 years and 6 months.
2 Media Release from Assistant Treasurer Helen Coonan dated 28 March 2002 “Structured Settlements a Win-Win”.
3 Randall, Don, MP (Canning, LP, Government), Second Reading Speech, Hansard 18 September 2002 (11.21) am.
4 The 30 May Ministerial Communiqué on public liability stated that: “Ministers agreed that the lack of comprehensive data on claims costs was a significant constraint in the appropriate pricing of premiums by the insurance industry for not-for-profit, adventure tourism and sporting groups. The paucity of data is also inhibiting the development of insurance products suitable for these sectors. The Commonwealth has agreed to use the Financial Sector (Collection of Data) Act 2001 and require all authorised insurers operating in Australia to submit claims data to the Australian Prudential Regulation Authority (APRA) for analysis and publication. Consultations to develop a consistent methodology will begin shortly.”
The States and Territories also agreed to contribute similar claims data from State insurers and local government insurance mutuals to assist in the understanding of public liability insurance. Ministers also agreed on the need for a nationally consistent methodology for courts statistics and asked the Standing Committee of Attorneys-General to consider this as a high priority.


6 In June 2002 the ABIO, IEC and FICS announced the establishment of a common toll free number through which consumers would be directed to the appropriate complaint resolution service. The three bodies have established a harmonisation project with the ultimate object being the full integration of the services into one body. I understand from speaking to FICS that full integration is at least 12 months away.

7 Ray Williams, former HIH CEO, received a $5 million payout from the Board when he resigned 5 months before its collapse.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.58 p.m.)—I thank my colleagues for their contributions in the debate on the Taxation Laws Amendment (Structured Settlements) Bill 2002 and for their substantive support of this very important piece of legislation. When the decision to exempt from income tax those annuities paid under structured settlements was first announced, the government was motivated by the desire to assist injured people to make better financial arrangements for their future. The subject was considered in the context of the review of the law of negligence, chaired by Mr Justice Ipp. The Ipp report—and I will quote this because I think it is important that we have it on the record—said:

Structured settlements have significant advantages over lump sum compensation, at least in serious cases. Structured settlements are in the interests of plaintiffs, because the plaintiff is relieved of the need to manage their compensation. Various studies have shown that, where the lump sum award covers a long period, the amount awarded often runs out before the end of that period, even if it is well and wisely invested. A structured settlement provides the plaintiff with a more secure source of income in the longer term. This is good for society generally, as well as for injured persons. It is therefore in the public interest that, in cases where large sums of damages are awarded for personal injury and death, the parties have the opportunity and incentive to conclude a structured settlement.

Since the former Assistant Treasurer’s announcement, issues have emerged in relation to the availability and affordability of public liability insurance. At ministerial meetings convened to discuss these problems, Commonwealth, state and territory ministers and the President of the Local Government Association of Australia have agreed to remove impediments to the use of structured settlements. This bill will allow the Commonwealth to give effect to its commitment.

With the moving of government amendments, which I understand have been circulated, the bill goes further in that it also makes provision for court ordered structured payments. There are cases where a plaintiff wants or needs to take the matter all the way through court to defend his or her rights, to have their day in court. The benefits which a plaintiff and society in general derive from a structured arrangement should not be lost simply because the matter has gone to a hearing. The Ipp review also went on to recommend that states and territories should require mediation before the award of a large amount of damages, with the aim of encouraging structured settlements. I note that this legislation has been introduced in New South Wales at least.

I know Labor and the Democrats will suggest some amendments to the bill. However, I would point out that the bill has been carefully considered and drafted with a considerable degree of assistance from plaintiff representatives and the Structured Settlements Group. On behalf of the government, I would like to thank all of them for their interest and for giving us the benefit of their experience, which has been invaluable. I note too that the legislation contains a provision requiring a review of the working of the
structured settlement law in five years time. The issues raised can then be more usefully considered in that context when we have some practical experience to work with. I commend the bill and once again thank my colleagues for their support for the substantive measures in this bill.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.03 p.m.)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 3 December 2002.

Senator MURRAY (Western Australia) (5.03 p.m.)—I have a single question for the minister. The minister made the remark that this bill had been very carefully structured and designed by very experienced and capable people in this field. I just wonder, Minister, why we have got 62 amendments after the bill has been ‘designed’.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.04 p.m.)—I said that it had been carefully considered and drafted, Senator Murray, with a considerable degree of assistance from plaintiff representatives and the Structured Settlements Group. Obviously, Senator Murray, this matter has perhaps undergone some evolution, if I could put it that way, and superimposed upon its consideration has been the emergence of real difficulty with the affordability and availability of insurance. This matter has been considered in context with some consideration by the committee chaired by Mr Justice Ipp and that has in fact meant that, to reflect the issues that have arisen in the meantime, some amendments are needed. But I can assure the Senate and Senator Murray that the matter has been very carefully considered and, now I would anticipate, drafted. I seek leave to move government amendments (1) to (18), (20) to (23), (25) to (36), (38) to (42), (44), (46) to (55) and (57) to (62), which are printed on sheet DU353.

Leave granted.

Senator COONAN—I move:

(1) Title, page 1 (line 9) after “settlements”, insert “and structured orders”.
(2) Clause 1, page 1 (line 14), after “Settlements”, insert “and Structured Orders”.
(3) Schedule 1, heading, page 3 (line 2), at the end of the heading, add “and structured orders”.
(4) Schedule 1, item 1, page 3 (line 8), at the end of the heading to Division 54, add “and structured orders”.
(5) Schedule 1, item 1, page 3 (line 19), after “settlements”, insert “and structured orders”.
(6) Schedule 1, item 1, page 3 (line 20), after “settlement is”, insert “and what a structured order is”.
(7) Schedule 1, item 1, page 4 (lines 2 to 16), omit section 54-5, substitute:

54-5 Definitions

In this Division:

date of the settlement or order:

(a) for a structured settlement, means:

(i) the date on which the agreement that is the structured settlement was entered into; or

(ii) if that agreement depends, for its effectiveness, on being approved (however described) by an order of a court, or on being embodied in a consent order made by a court, the date on which that order was made; and

(b) for a structured order, means the date on which the order was made.

personal injury annuity means an annuity:

(a) that is purchased under the terms of a structured settlement as mentioned in paragraph 54-10(1)(e); or

(b) that is purchased under the terms of a structured order as mentioned in paragraph 54-10(1A)(e).

personal injury lump sum means a lump sum:

(a) that is purchased under the terms of a structured settlement as mentioned in paragraph 54-10(1)(e); or

(b) that is purchased under the terms of a structured order as mentioned in paragraph 54-10(1A)(e).
(8) Schedule 1, item 1, page 4 (line 17), at the end of the heading to section 54-10, add “and structured order”.

(9) Schedule 1, item 1, page 5 (after line 17), after subsection (1), insert:

(1A) A **structured order** is an order of a court that satisfies the following conditions:

(a) the order is made in respect of a claim that:

(i) is for compensation or damages for, or in respect of, personal injury suffered by a person (the **injured person**); and

(ii) is made by the injured person or by his or her legal personal representative;

(b) the order is not an order approving or endorsing an agreement as mentioned in paragraph (1)(d);

(c) the claim is based on the commission of a wrong, or on a right created by statute;

(d) the claim is made against a person (the **defendant**) and satisfies the following conditions:

(i) the claim is not made against the defendant in his or her capacity as an “employer, or “associate of an employer, of the injured person;

(ii) the claim is not made under a “workers’ compensation law, and is not made as an alternative to a claim under such a law;

(e) under the terms of the order, some or all of the compensation or damages is to be used by the defendant (or by a person with whom the defendant has insurance against the liability to which the claim relates) to purchase from one or more “life insurance companies or State insurers:

(i) an “annuity or annuities to be paid to the injured person, or to a trustee for the benefit of the injured person; or

(ii) such an annuity or annuities, together with one or more lump sums that are also to be paid to the injured person, or to a trustee for the benefit of the injured person.

(10) Schedule 1, item 1, page 5 (line 18), omit “paragraph (1)(e)”, substitute “paragraphs (1)(e) and (1A)(e)”.

(11) Schedule 1, item 1, page 5 (line 28), after “agreement”, insert “, or in the order”.

(12) Schedule 1, item 1, page 5 (lines 31 and 32), omit “structured settlement annuities”, substitute “personal injury annuities”.

(13) Schedule 1, item 1, page 6 (line 8), omit “Structured settlement annuity”, substitute “Personal injury annuity”.

(14) Schedule 1, item 1, page 6 (line 9), omit “structured settlement annuity”, substitute “personal injury annuity”.

(15) Schedule 1, item 1, page 6 (line 17), after “settlement”, insert “or order”.

(16) Schedule 1, item 1, page 6 (line 24), after “settlement”, insert “or structured order”.

(17) Schedule 1, item 1, page 8 (line 5) after “settlement”, insert “or order”.

(18) Schedule 1, item 1, page 8 (line 9), after “settlement”, insert “or order”.

(19) Schedule 1, item 1, page 9 (line 5), after “settlement”, insert “structured order”.

(20) Schedule 1, item 1, page 9 (line 12), after “settlement”, insert “or order”.

(21) Schedule 1, item 1, page 9 (line 22), after “settlement”, insert “or order”.

(22) Schedule 1, item 1, page 9 (line 33), after “settlement”, insert “or order”.

(23) Schedule 1, item 1, page 10 (line 13), after “settlement”, insert “or order”.

(24) Schedule 1, item 1, page 10 (lines 20 and 21), omit “structured settlement lump sums”, substitute “personal injury lump sums”.

(25) Schedule 1, item 1, page 11 (line 2), omit “Structured settlement lump sum”, substitute “Personal injury lump sum”.

(26) Schedule 1, item 1, page 11 (line 3), omit “structured settlement lump sum”, substitute “personal injury lump sum”.

(27) Schedule 1, item 1, page 11 (line 5), omit “structured settlement annuity”, substitute “personal injury annuity”.

(28) Schedule 1, item 1, page 11 (line 6), after “settlement”, insert “or structured order”.

(29) Schedule 1, item 1, page 11 (line 13), omit “structured settlement lump sum”, substitute “personal injury lump sum”.

(30) Schedule 1, item 1, page 11 (line 14), after “settlement”, insert “or order”.
(33) Schedule 1, item 1, page 11 (line 21), omit “structured settlement lump sum”, substitute “personal injury lump sum”.

(34) Schedule 1, item 1, page 11 (line 23), after “settlement”, insert “or structured order”.

(35) Schedule 1, item 1, page 12 (line 2), omit “structured settlement lump sum”, substitute “personal injury lump sum”.

(36) Schedule 1, item 1, page 13 (line 4), omit “structured settlement annuity”, substitute “personal injury annuity”.

(37) Schedule 1, item 1, page 13 (lines 17 and 18), omit “structured settlement annuity or a structured settlement lump sum”, substitute “personal injury annuity or a personal injury lump sum”.

(38) Schedule 1, item 1, page 14 (line 10), after “settlements”, insert “and orders”.

(39) Schedule 1, item 1, page 14 (line 10), after “settlements”, insert “an order”.

(40) Schedule 1, item 1, page 14 (lines 20 and 21), omit “structured settlement provisions”, substitute “structured settlements and orders provisions”.

(41) Schedule 1, item 1A, page 15 (line 1), omit “structured settlement annuity”, substitute “personal injury annuity”.

(42) Schedule 1, item 1A, page 15 (line 3), omit “structured settlement lump sum”, substitute “personal injury lump sum”.

(43) Schedule 1, item 2, page 15 (line 9), at the end of the heading to Division 2A, add “and structured orders”.

(44) Schedule 1, item 2, page 15 (before line 15), before the definition of structured settlement, insert:

structured order has the same meaning as it has in Division 54 of the Income Tax Assessment Act 1997.

(45) Schedule 1, item 2, page 16 (line 12), after “settlements”, insert “and structured orders”.

(46) Schedule 1, item 4, page 17 (line 10), after “settlements”, insert “and structured orders”.

(47) Schedule 1, item 5, page 17 (line 17), after “settlements”, insert “and structured orders”.

(48) Schedule 1, item 6, page 17 (lines 19 to 21), omit the item, substitute:

6 Section 11-15 (after the table item headed “social security or like payments”) Insert:

Structured settlements and structured orders

Annuities and lump Subdivisions 54-B, 54-C and 54-D

(51) Schedule 1, item 10, page 18 (lines 8 and 9), omit the definition of date of the settlement, substitute:

date of the settlement or order, for a structured settlement or a structured order, has the meaning given by section 54-5.

(52) Schedule 1, item 11, page 18 (line 13), after “settlement”, insert “or a structured order”.

(53) Schedule 1, item 12, page 18 (lines 16 and 17), omit the definition of injured person, substitute:

injured person:

(a) in relation to a structured settlement, has the meaning given by subparagraph 54-10(1)(a)(i); and

(b) in relation to a structured order, has the meaning given by subparagraph 54-10(1A)(a)(i).

(54) Schedule 1, item 12A, page 18 (line 20), omit “structured settlement lump sum”, substitute “personal injury lump sum”.

(55) Schedule 1, page 18 (after line 20), after item 12A, insert:

12B Subsection 995-1(1) Insert:

personal injury annuity has the meaning given by section 54-5.

12C Subsection 995-1(1) Insert:

personal injury lump sum has the meaning given by section 54-5.

12D Subsection 995-1(1) Insert:

structured order has the meaning given by section 54-10.

(57) Schedule 1, item 16, page 20 (line 9), at the end of the heading to Division 54, add “and structured orders”.

(58) Schedule 1, item 16, page 20 (line 17) after “settlement”, insert “or order”.

(59) Schedule 1, item 16A, page 21 (line 8), after “settlement”, insert “or order”.

(60) Schedule 1, item 17, page 22 (line 6), after “settlement”, insert “or under a structured order.”.

(61) Schedule 1, item 17, page 22 (line 7), omit “date of the settlement (within the meaning of that Division)”, substitute “date of the settlement or order.”
(62) Schedule 1, item 17, page 22 (after line 8), at the end of the item, add:

(2) In subitem (1), *structured settlement, structured order and date of the settlement or order* have the same meanings as they have in Division 54 of the *Income Tax Assessment Act 1997*.

Senator SHERRY (Tasmania) (5.06 p.m.)—I indicate that the Labor Party will be supporting these amendments. As Senator Murray has pointed out, there are 62 amendments. I have to say that when I looked at the amendments I saw that most of them say exactly the same thing. I understand that, because of the design of the bill, there are a very significant number of amendments that have almost identical wording in most cases. So, whilst I would normally be concerned if they were all differently worded and dealt with different issues, I think in this case we are basically dealing with the one broad amendment, despite the fact that it is structured in the form of 62 amendments.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Hutchins)—The question is that schedule 1, items 14 and 15, stand as printed.

Question negatived.

Senator SHERRY (Tasmania) (5.07 p.m.)—I move opposition amendment (1) on sheet 2669:

(1) Schedule 1, item 1, page 5 (lines 8 to 17), omit paragraph (e), substitute:

(e) under the terms of the settlement, some or all of the compensation or damages is to be used by the defendant, a person with whom the defendant has insurance against the liability to which the claim relates, the injured person or the injured person’s legal personal representative to purchase from one or more *life insurance companies or State insurers:

(i) an *annuity or annuities to be paid to the injured person, or to a trustee for the benefit of the injured person; or

(ii) such an annuity or annuities, together with one or more lump sums that are also to be paid to the injured person, or to a trustee for the benefit of the injured person.

As I referred to earlier, the bill requires that annuities are purchased by the defendant or their insurer directly. Labor’s amendment will enable the injured person or their legal personal representative to also buy a tax concessional annuity as part of a settlement. This will ensure that the uptake of structured settlements is encouraged on its own merits rather than because of any structural unfairness in the bargaining process.

As I noted previously, we have taken on board representations through consultations that it would be simpler to remove the timing concerns from the debate by restricting the purchase of such annuities to before the time of the settlement. The issue then simply becomes one of access. Why shouldn’t the injured person or the legal personal representative have the right to put a counteroffer on the table at the time of the negotiations? Importantly, Labor’s amendment will maintain safeguards to ensure that these arrangements are not misused for tax planning purposes and preserve the requirement that annuities be purchased from a life insurance company or state insurers. The integrity concerns will be met through the simple requirement that no more than the original settlement can be converted into an annuity at the time of settlement. This will prevent other sources of funds being moved into these tax advantage vehicles. Also, preserving the requirement that annuities are purchased from a life insurance company or state insurers will continue to ensure proper prudential supervision of the source of the annuities.

Labor considers the bill to be substantially improved by the amendment that I am proposing today. It enhances the policy intent of the bill by further encouraging the use of structured settlements by injured parties. It does this in a responsible manner, it protects the revenue and it strikes a more responsible balance between the competing legitimate interests. As noted previously, the essential economic case is unchanged under Labor’s proposed amendment. There remains a direct economic advantage to both parties for an insurer life office to provide annuities rather
than lump sums since the provider is able to bear the actuarial risk more efficiently than an individual. In addition, the tax concession provides a further economic advantage for annuities.

Since these fundamental economic incentives remain unchanged, the only change is with respect to who captures this economic advantage in the bargaining process. Under the current arrangements, the veto power held by the defendant insurer will mean that they can seek to capture all of this economic advantage through bargaining by providing a ‘take it or leave it’ offer. Labor’s amendment will mean that the injured person’s plaintiff lawyer can put a floor under unreasonably low offers from the defendant insurer. This will help to ensure that the economic advantage from moving to structured settlements is shared appropriately between the defendant insurer and the injured person. The concern has also been raised that Labor’s amendment will reduce the financial advice given to injured persons before the time of settlement. It is not clear how this can possibly be an outcome of providing more financial bargaining power to the injured person.

Senator MURRAY (Western Australia) (5.11 p.m.)—The Democrats see this amendment as offering greater choice, and as I understand it the government likes greater choice. We think it is a useful addition. It is nothing earth-shaking but it is thoughtful, so we will be supporting it.

Question agreed to.

Senator MURRAY (Western Australia) (5.11 p.m.)—by leave—I move amendments (1), (R3) and (4) on sheet 2670 revised together:

(1) Schedule 1, item 1, page 4 (after line 10), after the definition of date of settlement, insert:

life expectancy has the same meaning as life expectation factor has in section 27H of the Income Tax Assessment Act 1936.

(R3) Schedule 1, item 1, page 7 (line 9), omit subsection (1)(b), substitute:

(b) for the life of the injured person; or
(c) in the event of the death of the injured person for the period of the life expectancy of the injured person; whichever period is chosen by the injured person and specified in the annuity instrument.

(4) Schedule 1, item 1, page 8 (lines 3 to 15), omit subsections (1) and (2), substitute:

(1) This section applies where a person:

(a) has purchased an annuity instrument for a period of at least 10 years; or
(b) has purchased an annuity instrument for a period of life expectancy.

(2) The annuity instrument may specify a period (the guarantee period) of:

(a) up to 10 years; or
(b) life expectancy; or

after the date of settlement, during which, if the injured person dies, the payments (the remaining payments) for the remainder of the guarantee period that would have been paid to the injured person are to be paid instead to:

(c) the injured person’s estate; or
(d) a reversionary beneficiary.

Note: For tax exemptions in this situation, see sections 54-65 and 54-70.

I was interested in the minister’s remarks about the quality of the drafting. I am certain she did not mean it in that manner, but I thought it impugned slightly by inference the quality of what was an offer from the opposition and the Democrats. I know she did not mean that, but in her response to my question she did make the quite proper remark that, as the bill goes through both houses, there is an evolutionary process and it is quite proper for the government to introduce further amendments to its own bill if they are justified. Therefore, in the spirit of evolution I shall move my three amendments and I hope that the government takes them on that basis.

These amendments try to deal with the issue of life expectancy. The first amendment is the addition of the definition of ‘life expectancy’ to have the same meaning that ‘life expectation factor’ has in section 27H of the Income Tax Assessment Act 1936. This is to provide for the ability for life expectancy in the subsequent amendments to have mean-
References are to the Income Tax Assessment Act, which contains the actuarial tables to which this applies. The third and fourth amendments provide an option for annuity payments to carry on for a guaranteed period of 10 years or for the remaining period of a victim’s estimated life expectancy if the victim happens to pass away before this time. The bill as it stands only provides for a maximum of 10 years continuation of payment after death from the time that the annuity was entered into. These amendments are designed to allow the option for a named beneficiary to receive the annuity for the remainder of the period that was used in the victim’s calculated life expectancy. We see this as a fairness issue and an issue trying to take account of real experiences in this somewhat sad and tragic field.

There are a few points to mention. Firstly, the lump sum may have been substituted for lifetime periodic payments and calculated as such; therefore, the amount paid would always have been calculated with this in mind. Secondly, were it otherwise than for the beneficiaries to receive the remainder of the payments, the annuity issuer would be faced with a greater windfall with every annuity that ceases prematurely. Thirdly, it is quite probable that the victim’s beneficiaries are family members and dependants who might be partly or wholly reliant on the income that flows from the victim’s annuity. So we do see this as a fairness issue and as providing a little more option for those who are put into this unfortunate state by serious injury.

Senator SHERRY (Tasmania) (5.15 p.m.)—I indicate that the Labor Party, after a lot of thought and consultation, will not support this amendment. We have concluded that we do not wish to see an extension of the guarantee period for the annuity payment. As I noted in my second reading contribution, it is important to strike a responsible balance between the competing interests in this matter—the interests of the injured persons, ensuring that they receive adequate compensation for the rest of their lives must be safeguarded; however, there is also a legitimate public interest in containing costs for the defendant’s insurers in order to help ensure that continuing downward pressure is placed on insurance premiums. Our understanding is that the 10-year condition in the bill is a compromise between those interests, reached in the consultations on the bill. In the absence of compelling evidence following the consultations we have undertaken, we are not inclined to revisit the compromise figure that has been reached after a lot of discussion.

Question negatived.

Senator MURRAY (Western Australia) (5.16 p.m.)—My evolution did not work, I see. I move Democrat amendment (R2) on sheet 2670 revised:

(R2) Schedule 1, item 1, page 5 (after line 30), at the end of section 54-10, add:

(4) Before entering into a structured settlement, the injured person must obtain independent financial advice about the best choices and the process and consequences of entering into a structured settlement.

This amendment refers to the issue of independent financial advice. The amendment would require compulsory independent financial advice to be provided to the victim prior to their entering into a structured settlement. Although there are other acts that might impact upon these arrangements, it would be useful—and we think a necessary addition—to have this requirement within the current legislation. It would provide added security and confidence to the victim in a financial sense if this requirement were included.

The payment of annuities is not dependent upon invested income once an agreement has been reached; rather, it sets out what payments, over what time and at what rate they will increase by, in providing assistance for the victim. It is not necessary to have or to rely upon any particular financial group to set out investment or to work towards any greater investment returns, which can mean that the return to the victim is less than it would otherwise be. It is necessary to ensure that the victim is provided with moneys to cover expenses that would occur and a reasonable, regular disposable income.

If you put into this equation independent financial advice, you do provide for a leveling of the bargaining field between the vic-
tim and the insurer, and would provide for a fair assessment of the offer or offers that are being put forward. It is also guards against any undue or improper direction by some insurers. For anyone who does not believe that insurers can behave improperly, we know that there is a royal commission into one right now. This advice could reach not only the bounds of servicing the financial needs of the victim now and in the future but also advice on the quality of the return rate from a suggested annuity provider. I think that goes some way to satisfying concerns others have raised.

This is speculation and, while I am prepared to put forward amendments that offer consumer protection, I think it is necessary to recognise that the government has set a precedent elsewhere, and quite properly, to reinforce the issues of independent financial advice, simply because of the abuses that have been well recorded. At other times with regard to other debates, both the opposition and the Democrats have congratulated the government on pursuing that issue to some degree. So, if you like, this just continues that approach. We do think it is workable. This sort of approach is within family law, it is within the dairy industry adjustment program and it is within other sorts of acts.

Senator SHERRY (Tasmania) (5.20 p.m.)—The Labor Party supports this amendment. That might surprise some of my fans in the financial planning industry, of whom I have been somewhat critical in recent times—certainly not critical about the need for financial advice for various financial products but about the way in which it is paid for. In these circumstances where a person is going to lock in an income stream for a very long period of time—it could be for 20, 30, 40 or 50 years even; over the remainder of their life—they really have to make sure that they have taken independent expert advice about the structure of that income stream, because it is very difficult, if not impossible, to revisit that decision once it has been made.

We endorse the concept that you would go and seek independent advice. We do think it is necessary. Regrettably, the degree of financial literacy in the broader community is not high and, while we can make best efforts to improve education in this area, there is a need in these circumstances—and I think it is a compelling argument—for people to seek some independent financial advice from an appropriate adviser. I would indicate, however, that if we see a misuse of this provision in the sense of the issue I referred to earlier about the development of trail commission products, which the Labor Party strongly criticised, we would revisit the issue. But I think that, on balance, seeking independent financial advice is critical, given what are in many cases very substantial amounts of money locked in for very long periods of time. So we have decided to support this. We think it is necessary. It certainly should be test run, if you like, for a period of time. If abuse emerges then I put on notice to the financial advice and planning industry that we will deal with that if it happens.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.22 p.m.)—I can certainly appreciate the good intent behind the amendment that has been moved by Senator Murray for the Democrats and that will be supported by Labor, but I just want to put a couple of comments on the record in response. The amendment would require injured persons to obtain independent financial advice before entering into a structured settlement. There are serious difficulties in defining an independent financial adviser in a strict sense and so the provision would be difficult to enforce. Moreover, in practice, a person who is seeking a structured settlement or a structured judgment will typically have a number of advisers or representatives with a suite of legal, medical, financial planning and other skills. Dare I say it, I may be the only senator who has actually run one of these settlements and I can assure Senators Sherry and Murray that people in this unfortunate situation have a great deal of advice and their needs are very carefully assessed, as you would expect and as is needed in cases where a person has been catastrophically injured. As such, the government does not see a specific need to mandate that an injured person receive advice from a person in one field of expertise that relates to their future care and not others. It is somewhat illogical to be picking out
financial advice as opposed to a separate medical assessment, for instance.

More broadly, the government’s policy of encouraging structured settlements or court orders through providing a tax concession is certainly likely to encourage financial planning relative to the current arrangements. This is because plaintiffs and their representatives will of course be looking to ensure that the outcome, in terms of annuities and deferred annuities, meets the ongoing needs of the plaintiff. Whilst I hear what has been said in support of the amendment, I did think it appropriate to put on record that the government does not support the amendments and the reasons why it does not support them.

Senator MURRAY (Western Australia) (5.25 p.m.)—Again, for the record, to some extent the minister’s remarks are contradicted by the government’s own support for independent financial advice. There are a number of examples but I will give just one to make the point. The Family Law Legislation Amendment (Superannuation) Act 2001 No. 61, which was passed quite recently, requires that when a non-member spouse is served with a notice the persons concerned must be provided with independent financial advice supplied by a prescribed financial adviser and a certificate signed by the adviser stating that that advice was provided. That is in subsection 90MZA(2). That makes the exact point we make and yet the government recognises it in one act and says in another act that the same principle cannot apply. We just disagree with that.

Senator SHERRY (Tasmania) (5.26 p.m.)—I am still of the mind, on behalf of the Labor Party, to support the Democrat amendment after listening to the contributions. Senator Murray raised a very good point in that last contribution he made. It is not a dissimilar situation to that of financial lump sums that are being split in a divorce circumstance, where the parties are going to make decisions about the split of the superannuation and enter into financial arrangements that will impact over a very long period of time. The origin of the financial instruments is obviously very different, but the decision to enter into an agreement in respect of what could be a very substantial lump sum of money and converting it into some sort of annuity is not a dissimilar situation. I think Senator Murray is quite right to point out that financial advice is required there. Given the complexity of superannuation, I would argue that a very significant number of people in our community would just not have the required level of financial literacy to make an informed choice in those circumstances and advice would be necessary.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.28 p.m.)—I do not want to delay the Senate for very long on this matter, but I simply wish to say that family law and superannuation does involve an act that covers very different circumstances and uses a different definition. It is a very complex piece of legislation that cross-references other legislation so it is easier to tell if you have complied or not. My earlier point was that a definition sitting there by itself is almost impossible to enforce. In situations where people are catastrophically injured, where they already have such a great deal of advice at the time that they would be considering these circumstances, the circumstances are very relevant and often do not apply in family law, particularly at a time of separation where often both parties can find themselves alone and friendless. In catastrophic injury cases, there is a very different range of assistance available to a plaintiff that the government thinks obviates the need for something so restrictive. To expect a person who has been affected by catastrophe to jump through another hoop, so to speak, is a very difficult thing. Although I wholeheartedly accept the good intent behind the proposed amendment, I do caution that it will be very difficult and will not assist in the long run.

Question agreed to.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.29 p.m.)—by leave—I move the remaining government amendments (19), (24), (37), (43) and (45) on sheet DU353:

(19) Schedule 1, item 1, page 8 (lines 26 to 28), omit subsection (5), substitute:

(5) The amount of the lump sum under subparagraph (3)(b)(ii) or subsection
(4) is the *policy termination value of the *life insurance policy that is the *annuity instrument, as calculated by an *actuary as at the date of the injured person’s death. In making this calculation, the following are to be disregarded:

(a) any payments of the annuity due to be made after the end of the guarantee period;

(b) any *structured settlement lump sums that are also provided for by that policy.

(24) Schedule 1, item 1, page 10 (line 1), omit the formula, substitute:

Most recently published * All Groups Consumer Price Index number for a * quarter

*All Groups Consumer Price Index number for the same * quarter in the base year where:

base year means:

(a) if there have been one or more previous years for which the indexation factor was greater than 1—the year ending immediately before the most recent year for which the indexation factor was greater than 1; or

(b) otherwise—the year ending immediately before the *date of the settlement or order.

(37) Schedule 1, item 1, page 13 (line 11), omit “making up the lump sum worked out”, substitute “taken into account in working out the amount of the lump sum”.

(43) Schedule 1, page 15 (after line 4), after item 1A, insert:

1B Subsection 995-1(1)

Insert:

policy termination value, in relation to a *life insurance policy at a particular time, means the amount that is, within the meaning of the *Solvency Standard, the termination value of that policy at that time.

(45) Schedule 1, item 2, page 15 (lines 12 to 14), omit the definition of date of the settlement.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.31 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

TELECOMMUNICATIONS COMPETITION BILL 2002

Second Reading

Debate resumed from 14 November, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator LUNDY (Australian Capital Territory) (5.31 p.m.)—I rise to speak on the Telecommunications Competition Bill 2002. This bill seeks to enhance the level of competition and improve the investment climate in the telecommunications sector. The bill forms part of the government’s response to the Productivity Commission report into telecommunications competition regulation. Labor is broadly supportive of the bill as it provides for some general improvements to the telecommunications competition regime. The bill improves access arrangements for core telecommunications services, facilitates a greater degree of certainty for investors in new telecommunications infrastructure, provides for a slightly more transparent regulatory market—particularly in relation to Telstra’s wholesale and retail operations—and codifies a level of accountability and transparency in the tackling of anticompetitive conduct in the telecommunications industry.

The government instituted a Senate inquiry into the bill in September after its introduction into the House. The majority government report on that committee, written by Senator Eggleston, recommended that no amendments to the bill were needed, despite many submissions of witnesses suggesting a raft of amendments to this rather complex piece of legislation. Labor disagrees with this assessment, and we will be moving some amendments to improve the bill.

The government first announced its planned response to the Productivity Commission report into telecommunications competition regulation on 24 April this year,
some seven months after receiving that report. Who can forget the controversy that Senator Alston created with his vague statement at that time that the bill would require accounting separation of Telstra’s wholesale and retail operations? This sent the sharemarket and Telstra into a spin, and Senator Alston was soon on the defensive. Senator Alston was forced to issue a press release saying that he had no plans to structurally separate Telstra. The tabling of the bill on 26 September revealed a very much watered-down version of accounting separation, where the minister will be able to direct the ACCC regarding the required level of accounting separation. Telstra had clearly spooked Senator Alston.

Under the proposed amendments, the minister will be able to direct the ACCC by disallowable instrument in relation to its existing record-keeping rules regarding accounting separation. Telstra would also be required to publish current and historical costs on core services and information on nonprice terms and conditions in relation to those core services. The ACCC would also prepare and publish an imputation analysis which would demonstrate whether there is any price squeeze behaviour by Telstra in relation to the provision of its wholesale services to downstream operators. These powers would give the ACCC improved costing information to identify possible discriminatory or anticompetitive behaviour.

Labor remains concerned that parts of the accounting separation component of the bill are governed by ministerial direction rather than being administered by the ACCC. Under the bill, the minister plays a key role in determining which accounting information Telstra is required to prepare and publish. This ministerial direction would purportedly allow the government to mandate the implementation of accounting separation in a more deliberative and prohibitive manner. What it really means is that Telstra has nobbled the minister not to give too much power to the independent regulator, the ACCC. Labor believes that a transparent accounting separation framework for Telstra, administered by the ACCC, is a minimum requirement for a more competitive telecommunications sector.

Labor supports open and transparent networks in telecommunications. The accounting separation provisions of this bill fall short in that regard. These provisions represent only an incremental improvement to the existing accounting separation provisions. However, Labor will let these provisions pass unamended. We have our own policy development process in this regard and, as these reforms represent some minor improvements, we shall not stand in their way. The government has set the hurdle that the accounting separation provisions will comply with the Productivity Commission recommendation that—and I quote from Senator Alston’s April press statement:

... vertically integrated access providers should not be able to set terms and conditions that discriminate in favour of their own downstream operations, except to the extent that the cost of providing access to other operators is higher.

That is the hurdle the government has set. Let us see if this legislation provides for such non-discriminatory access. We suspect not, but we will give the government the benefit of the doubt to see if their seemingly watered-down accounting separation framework actually does encourage competition in the telecommunications sector. Labor will certainly continue on its path of developing robust policy in this area.

The Productivity Commission also identified the timeliness of access to the telecommunications infrastructure as a key problem in the existing telecommunications access regime. Many access seekers have faced delayed access through regulatory gaming tactics. The amendments to part X1C are designed to speed up wholesale access to telecommunications services and infrastructure. The removal of merits review for ACCC arbitrations is to be commended. This was Labor policy prior to the last election and Labor is pleased the government agrees with us on this point, albeit belatedly.

The publication of pricing principles by the ACCC to guide determination of access prices for declared services is also worthy of support. There has been concern expressed in submissions to the Senate inquiry into the
The bill that, as the merits review process remains for access undertakings, gaming tactics will move from arbitrations to undertakings. Witnesses and submissions to the inquiry expressed concern that the new provisions concerning the interplay between the arbitration process and the access undertaking process will allow for new forms of regulatory gaming based around shifting access determinations from arbitrations to undertakings. The department has dismissed these concerns and has pointed out that undertakings are not as prone to gaming as arbitrations by their very nature. Labor will carefully monitor the operation of the new regime, and I will seek to address the issue if new gaming tactics do emerge under the amended act.

In the Senate inquiry, Labor senators identified a serious problem with the current bill in that the revocation of merits review for ACCC arbitrations applies retrospectively. Under the bill, parties currently involved in access arbitrations with the ACCC will not be allowed to appeal. Such parties commenced their action on the assumption that they would be able to appeal. Labor announced in our Senate report that we would seek to amend the transitional provisions so that the right of parties to merits review will continue in cases where the ACCC was notified of an access dispute prior to the introduction of the bill on 26 September. We now understand that the government is amending the bill to this effect and, having first suggested such an amendment, we will of course support it.

Labor also has concerns with the ministerial power of direction under the new special anticipatory access provisions. Under the current act a potential investor in telecommunications infrastructure is unable to seek access exemptions or undertakings for non-declared services—that is, services that are not yet provided. This can be a disincentive for potential investors who face regulatory uncertainty as to future access arrangements for such future services. The Productivity Commission identified the lack of any provision for future access arrangements as a weakness in the existing legislation. These services might include important state-of-the-art communications infrastructure such as third-generation mobile phone networks, digital pay-TV or broadband infrastructure. The amended access regime allows for special undertakings and exemptions for non-declared future services. In effect, the legislation extends the ACCC’s powers by enabling it to deal with access issues before an investment is made on similar terms as it currently deals with access arrangements after the infrastructure has been put in place.

However, there is one important difference between the new special anticipatory access arrangements and the existing ordinary access arrangements. The new special anticipatory category requires the ACCC to take into account the views of the minister by disallowable instrument in determining whether or not to grant anticipatory access undertakings or exemptions. Several witnesses to the Senate inquiry into the bill expressed serious concern about this anomaly. Labor accepts the validity of these concerns.

To ensure legislative parity between special—or anticipatory—and ordinary undertakings and exemption provisions, Labor will be moving amendments to remove the ministerial power of direction under the new special anticipatory access provisions. It is important, particularly given the current controversy over the Foxtel-Optus content sharing deal, that the government ensures that access arrangements legislated for anticipatory services are the same as for existing ordinary services. The ACCC must be left to do its job. It should continue to use the long-term interests of end-users test to guide its access decisions. The ACCC should not be subject to undue political interference.

Labor’s amendments here will ease concerns that the regulator could be influenced by the short-term political considerations of the minister rather than using the existing LTIE—the long-term interests of end-users—test, as is currently the case for ordinary access decisions. Labor urges the minor parties and independents in the Senate to support this important amendment.

The Productivity Commission report recommended amending part XI B, the telecommunications specific anticompetitive conduct provisions, to improve certainty and
procedural fairness in the use of these provi-
sions. The ACCC will be required to consult
with the potential recipient of a part A com-
petition notice prior to issuing such notice.
The ACCC would also be required to publish
guidelines on the exercise of its powers un-
der part X1B. We note that the ACCC views
that this formalises existing arrangements
and we support this part of the bill fully.

However, the proposed blanket removal of
the requirement for carriers to submit indus-
try development plans is of concern to Labor.
Labor acknowledges that these provisions
are somewhat burdensome on the growing
number of carriers. However, in the absence
of a more suitable proposal Labor rejects
removing industry development plans en-
tirely. It is consistent with Labor’s approach
to industry policy that carriers demonstrate a
commitment to local industry. Labor believes
that it is appropriate that carriers, particularly
Telstra, be encouraged to fulfil their re-
quirements in Australia wherever and when-
ever possible. Carriers will remain account-
able in this regard if annual industry devel-
opment reports are retained. This will ensure
that the industry development programs of
the major carriers can continue to be moni-
tored. Labor and, we understand, the Demo-
crats will be moving an amendment to this
bill to retain industry development plans. We
understand that if this amendment is success-
ful the government will then move an amend-
ment that modifies industry development plans to ease the regulatory reporting
burden on smaller carriers. Labor supports
this amendment as the larger carriers, par-
ticularly Telstra, will still be required to pre-
sent industry development plans to the min-
ister, summaries of which will be made
available to the public.

Finally, Labor does not support the auto-
matic sunsetting of access declarations after
five years. This period is too short for in-
vestment decision making purposes, par-
ticularly considering many commercial con-
tracts run for over five years. This will also
increase the workload on the ACCC, who
will have to go through unnecessary and
burdensome statutory and regulatory re-
views. The ACCC has the power to unde-
clare services in any case, as happened dur-
ing the course of the current regime when the
ACCC undeclared the AMPS service. Labor
will be moving amendments doubling the
period for the automatic sunsetting of access
declarations from five to 10 years. Labor’s
amendments will provide investors and ac-
cess seekers alike greater regulatory cer-
tainty. The ACCC will also benefit from be-
ing relieved of constant regulatory reviews.
Ten years is a more appropriate time frame
for the automatic sunsetting provisions.

In conclusion, the Telecommunications
Competition Bill 2002 goes some way to
speeding up the telecommunications access
regime, particularly by removing the merits
review of ACCC arbitrations, a reform that
Labor advocated prior to the last election.
The mild enhancement of the accounting
separation provisions represents an incre-
mental reform, albeit an imperfect one, with
regard to the strong ministerial involvement
in the accounting separation framework.

The increased regulatory transparency of
the anticompetitive conduct regime is gener-
ally positive. Labor has supported the con-
cept of anticipatory access arrangements for
future telecommunications services so as to
ensure greater investment certainty for com-
panies undertaking substantial investments in
this area. It is important that this principle is
maintained despite the current controversy
surrounding the Foxtel-Optus content shar-
ing agreement. Labor’s amendments to re-
move ministerial involvement of anticipatory
access arrangements will strengthen these
provisions. Labor’s move to retain industry
development plans and extend the automatic
sunsetting of declaration to 10 years will also
improve the operation of this bill.

The Telecommunications Competition Bill
represents incremental reform to the tele-
communications competition regime. Labor
remains committed to genuine competition in
telecommunications delivering real outcomes
for consumers. This bill represents a further
small step in that direction and it deserves
the support of the Senate, just as we hope the
Senate will support our positive and con-
structive amendments.

Senator CHERRY (Queensland) (5.47
p.m.)—The Australian Democrats in very
general terms support the Telecommunica-
tions Competition Bill 2002, but a number of issues will need to be addressed when we get into the committee stage. We have circulated two sets of amendments in that regard. The Democrats, the opposition and indeed the government will be moving quite a few amendments which will strengthen the legislation. For the record and to ensure ease of debate, we will be supporting the government’s various technical and minor amendments to schedules 1 and 2 and also their proposed amendments in respect of industry plans.

We will be moving amendments to oppose the provisions in the bill to delete the requirement that carriers provide industry plans. I note that the opposition is to move an identical amendment to ours. We will be moving amendments to introduce merit selection for the ACCC and we will propose a code of practice to achieve that. We will also be moving a change to declarations to ensure that the ACCC conducts a public inquiry in the last 12 months of the five-year life of a declaration. That will assist in deciding whether a declaration will be renewed. We will not be supporting the opposition’s amendment to increase the sunset on declarations to 10 years, but we will be supporting the opposition’s amendment to remove the minister’s power of direction to the ACCC when considering anticipatory undertakings.

The bill implements some fairly key Productivity Commission recommendations plus a range of relatively minor measures. The key elements are: requiring the ACCC to produce model terms and conditions for core activities; the extension of provisions concerning exemptions and undertakings under part XIC of the Trade Practices Act to services that are not yet declared or supplied; allowing for accounting separation of Telstra’s wholesale and retail operations; removing merits review by the Australian Competition Tribunal of ACCC arbitrations; and permitting the ACCC to defer consideration of an access dispute to consider an access undertaking relevant to the access dispute. The primary intention of all these reforms is to provide for more timely access to basic telecommunications services, provide for greater regulatory certainty for investors in new telecommunications infrastructure and facilitate greater transparency in telecommunications regulation.

The bill removes merits review on arbitrations but retains them for access undertakings. The intention is to lessen access delays through gaming and shift the emphasis to undertakings as the prime mechanism to resolve access disputes. The Democrats accept that one advantage of this approach is that undertakings apply generally to all access seekers, not just the parties in an arbitration dispute. One issue raised by the Seven Network and the Fairfax group was that the provisions removing merits review on arbitrations had an impact on two arbitrations relating to pay television. There are no outstanding telecommunications arbitrations. The opposition foreshadowed an amendment to grandfather these two arbitrations, and I note that the government will be moving a minor amendment to that effect, which we will be supporting.

As the accounting separation framework will be dependent on the scope of the ministerial direction to the ACCC to exercise its record-keeping rules, rather than the legislation per se, it is difficult to comment in detail on the consequences of this approach to Telstra’s market dominance. The Democrats
wish to make the point that if separation is to be a valid instrument then non-price elements must be included. The explanatory memorandum explicitly states the intention is to ensure:

Telstra publishes information comparing its performance in supplying 'core' services to itself ... in relation to key non-price terms and conditions. (These will include faults/maintenance, ordering, provisioning, availability/performance, billing and notifications).

We will look closely at the minister’s directions when they are tabled in due course.

During the course of consideration of this bill by the Senate Environment, Communications, Information Technology and the Arts Committee, on 13 November the ACCC announced that it would not oppose the arrangement that allows Optus and Foxtel to share pay TV programming as they accepted the undertakings proposed by Foxtel, Optus, Telstra and Austar to address the ACCC’s concern about the potential anticompetitive effects of the planned pay-TV arrangements between Foxtel and Optus. The ACCC added:

Foxtel and Telstra have committed to digitise the pay TV network, although this commitment is conditional on the passing of the Federal Telecommunications Competition Bill and further decision making processes provided for in this proposed legislation. The proposed legislation allows potential investors to seek an exemption from the access regime which would otherwise apply if the services were regulated in the future.

It should also be noted that in correspondence to the committee, the ACCC stated: These would be new and separate statutory processes to the previous consideration of the section 87B undertakings.

The Democrats believe that pay TV should be subject to a rigorous legislative access regime that ensures that independent content providers and service providers have full access on reasonable terms to the platform. While we have concerns that the Trade Practices Act does not provide a sufficiently robust system, as evidenced by the C7 arbitrations, we note that the issue of further access can be tested if Foxtel applies for a further anticipatory undertaking as a result of this bill. We would expect the ACCC to apply its criteria rigorously to this in the future.

There are cultural as well as economic issues involved with access to the pay TV platform. Diversity of views and content provision are clearly in Australia’s interests. The potential for the digital platform to deliver a boost to diversity in an already concentrated media market is substantial. It may be appropriate that the ABA, as the custodian of cultural aspects of media, should have a greater role in decisions relating to access to pay television and the contents shown on pay television. But these are all issues for a debate at a later time and on a more appropriate bill.

It should be noted that the Foxtel-Optus deal will result in a further need to consider structural and competition issues in communications. As Professor Fels stated in his press release:

The ACCC continues to be concerned about the level of vertical integration in the pay TV industry, particularly given the position of Telstra as a major shareholder in Foxtel. This leaves the ACCC with concerns about the appropriate regulatory regime in both pay TV and telephony markets. These will be considered in a report to Senator Alston, who has requested advice on how emerging market structures are likely to affect competition across pay TV and telecommunications. This report will also include some of the concerns raised during the consultation process, which the ACCC did not consider relevant to the transaction being considered.

The Democrats would have preferred to have had this report at hand with the government’s response in the consideration of this bill, as the linkages between those issues and the telecommunications competition regime generally are quite clear. However, given that this bill is a culmination of a two-year process, we would prefer the bill to proceed rather than delay it further. We will be seeking a commitment from government that it will consult all Senate parties on its response to the ACCC policy report and bring appropriate legislative responses to the parliament promptly. Leaving these issues up in the air in many respects is unsatisfactory and leaves significant competition issues in the media industry in a continuing state of flux. As Senator Lundy has pointed out, this reform bill is one step in a long ongoing reform process of the competition regime affecting tele-
communications. Obviously, the next step will flow from that ACCC report.

I foreshadow that the Democrats will also be moving amendments in the committee stage dealing with the merits appointment system to the ACCC. Last week, the Senate supported a motion moved by Senator Murray expressing concern about the government’s proposed appointment of Mr Graeme Samuel as the Deputy Chairman of the ACCC. In that motion, the Senate noted that there needs to be more consultation and that a merits based appointment process needs to be developed.

The amendments we will be moving—similar to the amendments we have moved 17 times in this place before—will be seeking to ensure that a code of practice is developed for an appointment process of ACCC commissioners. The appointment of ACCC commissioners is fundamentally important to the whole issue of how the competition regime is developed in the telecommunications sector and how it is developed across all sectors of the economy. The fact that there is no code of practice, other than consultations with the states on how those appointments will occur, is a very sad reflection on the government’s commitment to probity and merit in terms of public appointments. The Nolan committee in the United Kingdom provides a very sound model, which we have adopted. We hope that the Senate will support those amendments when we move them in the committee stage. We will be supporting the second reading and we will be moving amendments accordingly.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.57 p.m.)—I seek leave to have my concluding remarks on the second reading incorporated in Hansard.

The speech read as follows—

In summing up this debate I would like to thank all Senators for their contributions.

The Telecommunications Competition Bill 2002 introduces a range of measures to enhance the level of competition and improve the investment climate in the telecommunications sector.

The measures will ensure that consumers continue to enjoy lower prices and improved services from a competitive telecommunications industry.

The objectives of the Bill are to:

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

The Bill implements the Government’s response to the Productivity Commission’s inquiry report on Telecommunications Competition Regulation and builds upon amendments introduced by the Government last year to streamline the Australian Competition and Consumer Commission’s (ACCC) arbitration process for telecommunications access disputes.

The provisions in the Bill have been developed following extensive consultation with industry and other key stakeholders.

I would like to thank the members of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee for their report on the Bill. I note that both the minority report by Labor senators and the Australian Democrats’ supplementary report are broadly supportive of the Bill.

After carefully considering the Senate Legislation Committee’s report, the Government is proposing to move a number of amendments that will:

- improve the effectiveness of the proposed Accounting Separation framework;
- refine the proposed Pre-selection provisions; and
- ensure that parties to access disputes that were notified to the ACCC before the introduction of the Bill into Parliament will be able to seek merits review.

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

The Government recognises that the changing and dynamic nature of the telecommunications industry will require ongoing monitoring to ensure the regime continues to meet the needs of an open and competitive telecommunications market.

Issues such as bundling, which can provide benefits to residential and business end users of tele-
communications also have the potential to be anti-competitive.

The greater transparency provided to the regulator from accounting separation will aid it in investigating any claims of anti-competitive conduct, including any alleged instances of anti-competitive bundling.

In addition, I have requested the ACCC to report to me in January 2003 on the wider competition implications of emerging industry structures in the Pay TV sector, including implications for the telecommunications sector. This report is likely to cast further light on this issue.

The Government is also actively investigating arrangements in a number of overseas jurisdictions, including Hong Kong and the UK, as they relate to the regulation of bundled telecommunications products.

The Government will continue to keep these matters under review with a view to determining whether appropriate action is necessary to address these matters.

In summary there is a range of specific measures in the Bill each of which will improve the operation of the telecommunications competition regime.

The package of measures combine to make the telecommunications competition regime more timely, effective and accountable.

The Government considers that it is important for the Bill to be passed as soon as possible in order to provide regulatory certainty and to allow carriers to get on with delivering benefits to consumers.

Question agreed to.

Bill read a second time.

Ordered that consideration of this bill in Committee of the Whole be made an order of the day for the next day of sitting.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Watson)—The President has received letters from party leaders seeking variations to the membership of committees.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.58 p.m.)—by leave—I move:

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

Environment, Communications, Information Technology and the Arts References Committee—
Appointment—Substitute member: Senator Moore to replace Senator Wong for the committee’s inquiries into the role of libraries as providers of public information in the online environment and the Australian telecommunications network on Friday, 6 December 2002

Treaties—Joint Standing Committee—
Discharged—Senator Stott Despoja.

Question agreed to.

NOTICES

Presentation

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.58 p.m.)—by leave—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 Taxation Laws Amendment (Venture Capital) Bill 2002 and the Venture Capital Bill 2002, allowing the bills to be considered during this period of sittings.

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

Leave granted.

The document read as follows—

Purpose of the Bills

The Bills will provide an exemption for gains on the disposal of investments in eligible venture capital businesses made through a venture capital limited partnership by tax exempt non-residents, non-resident venture capital fund of funds and taxable non-residents holding less than 10% of the limited partnership.

Reasons for Urgency

This measure was announced to apply from 1 July 2002 but introduction of the legislation was deferred to enable further consultation with industry. Although the measure will apply from 1 July 2002, tax exempt investments under this measure cannot be made until legislation to create venture capital limited partnerships has been enacted.

(Circulated by authority of the Treasurer)

PERSONAL EXPLANATIONS

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.00
by leave—Earlier in the matter of urgency debate, amongst other things that I said which were entirely appropriate I suggested that Senator Abetz was misleading the Senate with his comments this morning when he corrected the *Hansard* use of the comment ‘Prime Minister Muppeteer’. I accept his assurances that he did not make that comment. As I was the person asking the question at the time, I certainly heard something that sounded similar to that, but I have no reason to suggest, other than that it was in the *Hansard*, that it was Senator Abetz who made the comment. Therefore, I am quite happy to withdraw the statement that I made and any reflection it may have had on Senator Abetz.

**DOCUMENTS**

The ACTING DEPUTY PRESIDENT (Senator Watson)—There are 207 government documents listed for consideration on today’s *Notice Paper* and there is a limit of one hour for their consideration. To expedite the consideration of these documents, I propose, with the concurrence of honourable senators, to call on the documents page by page. They are listed on pages 9 to 22 of today’s *Notice Paper*. Documents to which no senators rise will be taken to be discharged from the *Notice Paper*. Documents not called on today will remain on the *Notice Paper*.

Great Barrier Reef Marine Park Authority

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.03 p.m.)—I move:

That the Senate take note of the document.

The report of the Great Barrier Reef Marine Park Authority is an important document for people to read. In a way it is a shame that we get so little time to consider annual reports and documents and to debate them formally, although I know that obviously Senate committees have that opportunity. As we have 207 different documents listed here, many of which are annual reports and many of which are reported because it is mandated by the parliament, it is a bit of a shame that so little recognition is given in this chamber for the various wide-ranging and important issues that all of these documents deal with. The Great Barrier Reef Marine Park Authority report is one in particular that I single out. I do so because of the extreme importance of the work of that authority and the extreme importance of the marine park. The marine park authority is legislatively responsible for overseeing and protecting the natural values and the world heritage values of that magnificent marine park. The marine park authority is obviously not going to put in its annual report that it is extremely stretched for resources, but in the view of the Democrats it is underfunded, given the enormous job that it has and the enormous economic value, let alone environmental value, of the asset that it seeks to protect and manage.

In many ways, in conjunction with many other agencies in the north of Queensland, my home state, it is a world leader in terms of the management of and research into reef ecosystems and reef related issues. I think it is often underrecognised that the world-leading, cutting edge research that is done by people in institutions in northern Queensland such as the James Cook University and many others is looked to by others around the world. I take this opportunity to urge the federal government and indeed the Queensland state government, which talks a lot about being the smart state and the knowledge economy, to look at that asset, which I think is significantly undervalued. I think that in northern Queensland we really do have an opportunity to be a centre of excellence in reef management issues and some of the important scientific research that is being done.

The Great Barrier Reef Marine Park Authority is currently conducting what I think is probably the most important task in its 25-year or more history: a complete review of the biodiversity of the marine park and mapping the different bioregions or ecosystems that are in the marine park. There is obviously a lot of focus on the coral in the reefs, which is appropriate, but there are lots of other aspects of the marine park and its ecosystems that do not get as much attention. It is a lot easier to try and save magnificent coral with colourful fish all around it than it is to try and save a mud flat. Saving a mud flat does not have quite the same resonance but it is often equally important in terms of
the ecological values and the way it links into the matrix of the entire marine park.

The Democrats continue to remind the public and the government that there are a number of threats to the marine park that are not being properly addressed. There is the immediate threat of climate change leading to increased coral bleaching, which, due to this government’s refusal to act properly on greenhouse gases and to ratify the Kyoto protocol, is a real and continuing danger. That danger is exacerbated by many of the other threats to the reef that are weakening its defences against shocks like coral bleaching.

Water quality is one threat that has been in the news lately, with more scientific research being produced, as well as the Productivity Commission’s report, that demonstrates that water quality in the marine park is a major problem. Illegal fishing is undoubtedly a major problem and I think we only know the tip of the iceberg about that because, again, the authority does not have the resources to properly police this type of activity. It is immensely lucrative, the fines are not adequate in our view and the resources for policing that are not adequate. Those are just a few of the areas where there are threats.

I think the marine park authority does a good job in a very difficult situation. There are a lot of competing interests and the authority has to straddle the divide between state and federal governments, which would make life difficult for anybody. The authority needs extra resources. I think there needs to be more commitment and recognition given to the value of the reef, the real threats that it is under and the economic value of the scientific research surrounding that. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Migration Review Tribunal

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.09 p.m.)—I move:

That the Senate take note of the document.

The Migration Review Tribunal is an important body that takes actions that have an enormous impact on people’s lives. Perhaps it is not as dramatic as the Refugee Review Tribunal, which makes life and death decisions, but the Migration Review Tribunal makes decisions that have massive impact on people’s futures. There has been a significant problem with this tribunal being overloaded with cases and for that reason having long waiting periods before cases get determined. That backlog is very slowly being addressed but it is still far from ideal. Again, there is a real case for even some temporary extra resources to be provided to clear that backlog.

It is also important to note that it is a tribunal that has to operate in an area of regularly changing legislation. Sometimes the high-profile legislation about refugee and migration issues gets debated here, but there are many other regulations that pass almost unnoticed by this place that are very significant to practitioners in the migration industry and the people they affect. This makes it all the more crucial in terms of resources provided to the tribunal, even if it is just to keep up to date with the latest legislative changes.

Some of the high-profile changes that have been made through legislation do impact on appeal issues. There was a lot of focus on the package of legislation that went through just before the last election that dramatically reduced the rights of refugees and asylum seekers. I think it was not noticed that it also reduced the rights of people using the migration system itself. The privative clause removed the right of appeal of all migration decisions, which makes it all the more crucial that the Migration Review Tribunal be properly funded and that it is not under the stress of an excessive workload, because that tribunal is now the last port of call for most people. That makes it all the more unacceptable when it is not able to cope with the workload that it has.

The legislative changes that went through affected the entire Migration Act and all migration decisions, not just the refugee decisions. Indeed, there was another piece of legislation which was passed at the end of June without much controversy, which was very frustrating at the time. That legislation was the Migration Legislation Amendment (Procedural Fairness) Bill 2002 and, of course, it removed procedural fairness. Again, whilst its focus was supposedly on
refugee decisions and people appealing refugee decisions, it also affected all migration decisions in that there is no scope for people to appeal a decision of the Migration Review Tribunal on the grounds that it did not follow natural justice. I think a lot of people find that fairly astonishing but that is the way the law is now. Natural justice was removed from the Migration Act as a requirement and replaced with a set of criteria which fall far short in the Democrats’ view. If the privative clause works in the way it is intended to—which is something that we will find out in the next year or so—then that means that, even if those limited and inadequate criteria are not followed, there is still no scope for appeal.

All of those legislative changes that have taken away the rights of people in the migration area make the proper operation of this tribunal all the more critical. The Democrats believe that it is an area that should be given more focus. Migration decisions affect enormous numbers of people, despite the government rhetoric. There is no doubt that our system in practice operates in a way that discriminates against people on various grounds. It certainly discriminates on the grounds of sexual orientation and disability. In terms of applications for visitor visas and other types of visas, it certainly discriminates on the grounds of what country you come from, your age or your marital status in some circumstances.

Again, it is all the more critical that we have a tribunal that can ensure that, insofar as there is any fairness left in our Migration Act, that fairness be applied. In the Democrats’ view, the fact that the tribunal is grossly overloaded makes it all the more difficult for people to get the justice that is denied them through any other avenue because of the restrictive Migration Act as it operates, having been passed through this place with the continuing support of the two larger parties.

Question agreed to.

Sydney Harbour Federation Trust

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.15 p.m.)—I move:

That the Senate take note of the document.

The Sydney Harbour Federation Trust has provided its report to the parliament. Again, I think it is a shame that, because of the load of documents, we do not give some of these documents the consideration that they deserve. The federation trust is an evolving activity, but certainly, in terms of my involvement in the Senate, I am particularly proud of the role the Democrats were able to play in enabling the establishment of that trust and ensuring that it was established in a far more effective way than was originally proposed by the Howard government. It is a real shame in my view that—I presume due to state Labor Party antagonism towards the Howard government—the ALP did not support the establishment of that trust and refused to accept the model that was put forward, which of course would have meant no protection at all for what are very important and very valuable former Defence lands around Sydney Harbour that have immense environmental, historical and heritage value.

A lot of this land was previously hidden from the public, and the public was unaware of it. Part of the valuable role that this trust is playing in an evolving way is opening up those areas to the public and opening up our history for the people again. I think that is crucial and it is a real shame that the ALP, and indeed the Australian Greens as well, opposed this measure. You only have to look at this report to see the immense value that this trust is now adding and to scratch your head and wonder what would have happened if the opposition of parties such as the Greens and Labor had been successful. It would have left that land completely vulnerable to inappropriate development and completely vulnerable to being sold off. It is obviously immensely valuable. Given the record of state governments in this area—including the current state Labor government, whose use of Sydney Harbour foreshore lands has been fairly lamentable—it would have been highly irresponsible to give it back to state government without the protections that, through the actions of the Democrats, were put in place in the legislation in establishing this trust.
It is good to see the work that the trust is doing now. There is still work to be done and there are still issues in terms of ensuring adequate, ongoing funding. But, with the protections that were put in place by Democrat amendments, the trust does have to operate in a way which ensures proper protection of the assets and ensures restoration, which is another crucial issue. That was why it was so important to get this trust established, because the other ongoing problem has been the decay of some of these assets. Certainly historic sites like Cockatoo Island, which had not actually been used for a long period of time, had been sitting there decaying. Now that place is being slowly restored. It is being opened up to the public and there are tours to experience the historic nature of the place. In addition, this can then provide some income for ongoing restoration and management of that area.

The report is welcome because it shows the progress of the trust. It shows that some of the concerns people had about how it might operate were unfounded. Indeed, that means that tributes should be paid to the staff, the people on its board and its director, Mr Bailey, who have certainly worked very hard to turn that vision for the trust into reality. This will produce, over a period of 10 years, a magnificent extra asset for all Australians, particularly people in Sydney.

Sydney Harbour itself, despite what you might say about the rest of Sydney that is not so complimentary, is a magnificent natural asset and a magnificent historical site for Australia. I would really encourage people, if they get a chance, to investigate the activities of the Sydney Harbour Federation Trust. There are ongoing plans afoot at the moment—and public comment is being sought—on the further direction of their activities and the best ways to utilise these lands for the good of the public whilst protecting their environmental and heritage values and, indeed, some incredibly important Indigenous historical values as well. The trust is now starting to generate a tremendous number of activities that provide a magnificent opportunity for people to get a different look at the history as well as the beauty of Sydney Harbour. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Consideration

The following orders of the day relating to government documents were considered:


International Air Services Commission—Report for 2001-02. Motion of Senator Marshall to take note of the document agreed to.

Australian Transaction Reports and Analysis Centre (AUSTRAC)—Report for 2001-02. Motion of Senator Marshall to take note of document agreed to.


Land and Water Resources Research and Development Corporation (Land and Water Australia) and Land and Water Australia Selection Committee—Reports for 2001-02. Motion of Senator O’Brien to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

called on. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.


Sugar Research and Development Corporation and Sugar Research and Development Corporation Selection Committee—Reports for 2001-02. Motion of Senator Marshall to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

Grape and Wine Research and Development Corporation and Grape and Wine Research and Development Corporation Selection Committee—Reports for 2001-02. Motion of Senator Marshall to take note of document agreed to.

Australian Fisheries Management Authority—Report for 2001-02. Motion of Senator Marshall to take note of document agreed to.

Defence Housing Authority—Report for 2001-02. Motion of Senator Marshall to take note of document agreed to.


Australian Electoral Commission—Report for 2001-02. Motion of Senator Marshall to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.


Australian Radiation Protection and Nuclear Safety Agency—Report for 2001-02. Motion of Senator Marshall to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

Department of the Prime Minister and Cabinet—Report for 2001-02. Motion of Senator Marshall to take note of document agreed to.


Australian Industrial Relations Commission and Australian Industrial Registry—Reports for 2001-02. Motion of Senator Marshall to take note of document agreed to.

Australian Strategic Policy Institute Limited—Report for the period 22 August 2001 to 30 June 2002. Motion of Senator Marshall to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

Australian Greenhouse Office—Report for 2001-02. Motion of Senator Marshall to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.


Film Australia Limited—Report for 2001-02. Motion of Senator Marshall to take note of document agreed to.

Australian Film, Television and Radio School—Report for 2001-02. Motion of Senator Marshall to take note of document agreed to.


Australian Film Commission—Report for 2001-02. Motion of Senator Marshall to take note of document agreed to.


called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.


Commonwealth Ombudsman—Report for 2001-02, including a report of the Defence Force Ombudsman and a report pursuant to the Complaints (Australian Federal Police)


Human Rights and Equal Opportunity Commission—Report—No. 21—Inquiry into a complaint by six asylum seekers concerning their transfer from immigration detention centres to state prisons and their detention in those prisons. Motion of Senator Nettle to take note of the document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business


General business orders of the day nos 41-44, 46, 47, 49-63, 65-67, 71-76, 78-93, 95-99, 101-104, 106-109, 112-116, 120-125, 127-137, 140-143, 145-147, 149-156, 158-162, 164-169, 172, 173, 175-194, 198, 199 and 202-207 relating to government documents were called on but no motion was moved.

COmmittees

Legal and Constitutional References Committee Report
 Debate resumed from 4 December, on motion by Senator Harris:
That the Senate take note of the report.

Senator LUDWIG (Queensland) (6.23 p.m.)—I rise to take note of the Legal and Constitutional References Committee report on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and related matters. I start by saying that the members of the committee that considered that report were: Senator
Nick Bolkus, the chair; Senator Marise Payne, the deputy chair; Senator Brian Greig; Senator Linda Kirk; Senator Nigel Scullion; and Senator Ursula Stephens. The report is excellent. It provided a fantastic overview of the role of ASIO in gathering security and intelligence. It also, at the end of the day, provided an insight into how ASIO provides security to this country. In addition, the report also provided fantastic recommendations that this government should take on board. The Legal and Constitutional References Committee was charged with examining both the bill itself and other matters. They were outlined on page IX of the report under the heading ‘Terms of reference’ and include:

i. the development of an alternative regime in which questioning to obtain intelligence relating to terrorism is conducted not by ASIO but by the Australian Federal Police ...

And it goes on. But the original bill that was proposed by this government, even after the amendments recommended by the parliamentary joint committee on ASIO, still allowed for the detention of non-suspects for a period of up to 48 hours and, under certain circumstances, detention without recourse to a lawyer. It reminded me of a book I read some time ago. I think it is worth starting with a quote from one of Kafka’s characters, characters who were at the time punished or threatened with punishment before they had even offended the authorities. One of the characters in the book explains:

You may object that it is not a trial at all; you are quite right, for it is only a trial if I recognise it as such.

The book starts with the famous words:
Someone must have traduced Joseph K. for without having done anything wrong he was arrested one fine morning.

That is the essence of the ASIO bill when you look at it. You can be arrested, taken before a prescribed authority under a warrant and detained without a lawyer and without any explanation as to why you are there. The ASIO matters were sent to the committee on 21 October for report by 3 December. The reference contained, as I earlier indicated, six matters. I need not go to them here. Suffice it to say they provided an excellent starting point to address the issues that were germane to the bill.

The report contained a comprehensive list of something in the order of 27 amendments to the ASIO bill. The recommendations arose, ostensibly, from the submissions that were made and the work of the committee itself. On that point it is worth thanking not only the committee members, who took significant time and effort to provide the report, but also the committee secretariat and the staff, who worked tirelessly to ensure that the Senate was well served.

The starting point for the committee was made significantly easier, as I said earlier, by the work of the Parliamentary Joint Committee on ASIO, ASIS and DSD. It provided an advisory report on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002. The government did make substantial amendments to the bill arising from that report. It acceded to some, if not all, of the 15 recommendations that were made by the parliamentary joint committee. The bill was improved markedly by the adoption of those recommendations. It was disappointing to find that it did not adopt all of the recommendations that were made. Nevertheless, there were still considerable matters that the committee did find that needed to be addressed.

There is no doubt in my mind that a regime to improve the ability of our security intelligence outfits to get on with the job is needed. The shocking events of 11 September and the Bali bombing leave an indelible mark on my consciousness. But that does not mean that my generation will regard things very differently. We still have to look at matters that come before us. This leads me to the conclusion that there is a need for greater powers for the intelligence outfits not only to combat the substantive threat of terrorism but to improve our feeling of security. When I turned my mind to the submissions that were made to the committee about the bill, the overarching framework I used to address the bill was: do any of these recommendations detract from the ability of the intelligence organisations to pursue their goals of combating terrorism and improving security; and will the bill, if its recommendations are
adopted, stop the intelligence organisations from doing their jobs? The answer I came to was simply no. They will enhance and, in my view, strike the right balance between security and intelligence-gathering, and civil liberties and people’s rights.

The bill, in its present form, leaves us having sacrificed our Australian ethos of a fair go all round. I came to the conclusion that it provided the wrong balance in its present form. In pursuing its apparent aim of combating terrorism, it trammelled many rights and liberties that people would be extraordinarily surprised to find they no longer had. The bill in its current form does not strike the appropriate balance, as I have said. It is sometimes too easy to take, as the government has done in this instance, the easy way out by simply removing many rights—another way of saying its ‘obstacles’. This might, in the end, make the bill look good but has no real practical advantage. It allows extraordinary latitude and opens the door for abuses perhaps to creep in.

In doing so, this bill, in my view, does not achieve its aim. The cost is great—the cost is, of course, the loss of rights, the loss of freedom and the feeling of insecurity. When you look at the report, it is clear that the committee considered that, in the end, the bill should contain a model that is flexible and promotes the objects of the bill whilst establishing a balance between people’s individual liberties and the need of society to protect itself, and it should contain the recommendations that were made.

It remains clear, at least in my mind, that not all the powers that the intelligence-gathering agencies have are the ones that they will oft use. In fact, my recollection is that Mr Richardson from ASIO was of the view that the power of detention for 48 hours, perhaps without a lawyer, would be one that was rarely used. However, the concept that ASIO can initiate, participate in and process questioning and detention is a perception, the perception that they do have the power and they may use it. That is the one that the committee had to address and deal with. The committee looked at how those issues would be dealt with, and I think the report provided a better model than that which was promoted within the bill. The committee provided a way forward for this government to take the powers that are within ASIO and to provide the right balance between civil liberties and intelligence-gathering to ensure that ASIO can do its job effectively in combating terrorism and gathering intelligence whilst ensuring that people have security and maintain the feeling that they were not giving up rights that they would not ordinarily give up.

Senator Nettle (New South Wales) (6.33 p.m.)—I also rise to speak to the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 report, which was considered by the Legal and Constitutional References Committee. In speaking to this report, I would like to thank Senator Ludwig, who spoke before me, for his comments on how these recommendations go some way towards ameliorating the worst aspects of the bill as it was originally introduced. It is worth noting that this is the third committee to which this legislation has been sent and that we have had the opportunity for public input into the inquiry by way of submissions. For each of those inquiries into the bill there was a substantial number of submissions from the public. On each of those occasions, the majority of the submissions raised problems with the bill, and many of them called for there to be outright opposition to this bill. That is the position of the Australian Greens, and that remains the position of the Australian Greens.

Even if the recommendations put forward by this latest committee are adopted by the government, this piece of legislation would still allow ASIO to detain people who were not suspected of being involved in a terrorist activity. It is a fundamental tenet of our legal system—indeed, it is stated in the Magna Carta—that no-one should be detained unless they have come before a court and have been found by that court to be either suspected or convicted of being involved in a criminal act. This piece of legislation seeks to undermine that very tenet on which our legal system is based.

It seeks to extend, to a point that we have never seen before in this country, the power
of our security services. It seeks to give ASIO the power to detain people and to put in place a regime of coercive questioning under which, if people do not respond to questions, they can be imprisoned for five years. So they no longer have another basic tenet of our legal system, which is the right to silence. These are the things that this piece of legislation would do even if the recommendations put forward by the committee were adopted by the government. We heard Senator Ludwig go through the other parts of this legislation that were originally there that the committee seeks to amend.

I would like to go to some of the recommendations from the committee. Before I do so, I would like to point out that this idea of being able to detain non-suspects is not something that we have seen in the United States or in the United Kingdom in the legislation that they have brought into play post September 11 to try to address issues of terrorism. People who appeared before the committee—a number of whom were prominent QCs—came forward with an explanation, often a strident explanation, of the ways in which our current criminal justice system allows us to deal with those crimes that are considered to be terrorist crimes. They went through in detail the ways in which our current criminal justice system allows the style of coercive questioning that ASIO and the government have been arguing for in this piece of legislation. They went through the arguments to say that, when a terrorist act is committed, it is a criminal act that is committed. The thing that makes it a terrorist act is that it is motivated by political or religious beliefs, but the actual crime that is committed is a criminal offence and an offence that can be prosecuted under our existing criminal justice system. We have had that argument from several legal practitioners and legal organisations, and now we have had three public hearings of explanations of ways in which our current criminal justice system can deal with the issues of terrorism; we do not need this piece of legislation. So that is where we are starting from in this debate: it is not needed.

I would like to spend a little bit of time going to one particular recommendation of the committee report. It is recommendation 13. One of the things that we have heard the committee and the Labor Party in particular say about this report is that it seeks to put in place an opportunity for people to have legal representation. That, as I think Senator Ludwig may have pointed out, was not originally in the bill. I have some concern about the way in which recommendation 13 is worded. It says:

The Committee recommends that access to a legal adviser should not be barred under the terms of a warrant—

which is something I think Senator Ludwig addressed—

but that if ... there is a real and immediate threat to public safety, the Prescribed Authority should be empowered to order that questioning commence without waiting for the attendance of a legal adviser.

I point that out as a caveat on being able to have a legal adviser present for this questioning by ASIO. It then goes on to provide another caveat, which is to say:

The Prescribed Authority should also have the power to order that questioning should proceed where he or she is satisfied that consecutive nominations of legal advisers constitute an attempt to frustrate the questioning process.

This is another caveat that has been added into this recommendation. So we have in this recommendation two opportunities to allow questioning to begin without a legal adviser being present. We are yet to see at this stage the amendments that I understand the Labor Party is putting forward to see that the recommendations of this committee are implemented. If indeed this is the path that the Labor Party is prepared to take and is choosing to take—that is, the assumption that this bad bill, this bill that undermines fundamental tenets of our legal system, can be amended and therefore made appropriate, which is not a position that the Australian Greens subscribe to—then these recommendations would need to be modified in amendments. It would need to be a modification that would reflect the deliberations of the committee, which I took to be an assumption that questioning could begin without a legal adviser being present but that a
As I said in my speech in the second reading debate, the proposed bill is one of the most controversial pieces of legislation to be considered by this parliament in recent times. Since the September 11 attacks in New York and Washington and, more recently, the tragic October 12 Bali bombing, it has become necessary to revisit our laws relating to intelligence and terrorism. It cannot be questioned that Australia needs a national legislative response to combat terrorist activity. However, as I said in my speech in the second reading debate, new antiterrorist measures must strike an appropriate balance between, on the one hand, national defence and security and, on the other hand, civil liberties and human rights.

As parliamentarians, we must always perform balancing acts with regard to difficult legislation such as this bill. In my view, the recommendations of the committee in its report, if accepted by the parliament, will ensure that the balance is right in this case. Generally speaking, the submissions the committee received recognised the heightened risk of terrorism that now threatens our country, but urged parliament not to unnecessarily sacrifice civil liberties in the process of countering the new terrorist threats to our nation. The submissions recognised that ASIO needs increased powers of intelligence gathering in this new climate, but argued that the manner in which this bill seeks to achieve that aim is flawed.

The committee recognises the need to confer on ASIO additional powers to conduct compulsory questioning of non-suspects for the purpose of intelligence gathering in relation to actual or potential terrorist attacks. However, to achieve this goal it is not necessary to establish an unprecedented detention regime for non-suspects. The majority of the committee concluded that the intelligence gathering powers of ASIO should be enhanced through a compulsory questioning regime that has strong safeguards. The committee accepted that the Director-General of Security be required to seek the Attorney-General’s consent to apply for a warrant for questioning. In so doing, the Director-General of Security must satisfy the Attorney-General about a number of matters,

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including that the warrant will substantially assist in the collection of intelligence in relation to a terrorism offence.

Under the proposed legislation, chapter 3 court judges and magistrates are empowered as issuing authorities to issue these warrants. The committee heard a number of submissions from eminent constitutional lawyers that raised serious concerns as to the constitutionality of using chapter 3 court judges in this way. Recommendation 2 of the committee’s report addresses this matter. It recommends that the issuing authority be chosen from a panel of retired federal or state court judges with 10 years service on a superior court, to be appointed by the Attorney-General for a three-year period. The use of retired judges, as opposed to serving members of the federal judiciary, will remove any constitutional obstacles and ensure public confidence in the warrant process.

The committee also heard concerns about the person who would perform the role of the prescribed authority, before whom the questioning will take place under the bill. The committee heard various submissions arguing that the appointment of AAT members, as is proposed, would not allow for sufficient independence from the executive branch of government and this would potentially damage public confidence in the process. In response to this, recommendation 1 of the committee is that the role of the prescribed authority, like that of the issuing authority, be performed by retired judges to ensure that the questioning is overseen by an impartial authority.

The committee also received numerous submissions that objected strongly to the compulsory detention and isolation of people who have committed no crime or terrorist act. It is difficult to discern a clear purpose for the proposed detention regime. It seems to be a muddle of two objectives: firstly, the detention of people who may have knowledge of a planned terrorist offence; and secondly, detention as a means of coercing answers to questions in relation to such offences. Recommendation 4 of the committee’s report recommends that the time limits for questioning under the Crimes Act, which provides for a maximum of 12 hours, should be the model for such limits under a compulsory questioning regime by ASIO, and that these should be included expressly in the legislation.

Recommendations 6 and 7 of the report, if adopted, would allow for a person to be questioned under a second warrant for another maximum 12-hour period, but only if new information about an imminent terrorist attack were received. At the expiration of the second warrant, the person cannot be questioned again for the next seven days. In recommendation 8, a majority of the committee recommended that when the questioning of a person has concluded, that person should be free to leave. ASIO should have a compulsory questioning regime with strong safeguards, but not an infinite detention regime, as is proposed under this bill.

The bill as it currently stands creates a system for legal representation based upon the approval of legal representatives as approved lawyers. Under the bill, these lawyers will have a limited role in the questioning process and, in some cases, those being questioned may be prevented from having a lawyer present for up to 48 hours. The majority of the committee, in recommendation 11 of the report, concluded that the system of approved lawyers should not proceed. The committee concluded, in recommendations 9, 10, and 19, that individuals should have the right to the lawyer of their choice. They should have the right to private consultation during questioning, it should be ensured that legal professional privilege not be affected and, importantly, that those individuals have access to legal aid funding as appropriate.

In recognition that certain lawyers may pose a security risk, the majority of the committee recommended in recommendations 11 and 12 of the report that, where the prescribed authority is satisfied on application by ASIO that the lawyer represents a threat to public safety, a person could be denied their lawyer of choice. However, they would be permitted to choose another lawyer. The bill, as drafted, applies to children between the ages of 14 and 18 years, where they are suspected of a terrorist offence. A majority of the committee considered that to make children subject to this legislation only
where they are suspects is both inconsistent with the objectives of legislation and inappropriate.

Recommendation 27 of the committee’s report is that the questioning regime under the bill not apply to anyone under the age of 18 years. It is more appropriate that, if a person between the ages of 14 and 18 is suspected of involvement in a terrorist offence, they be arrested and interviewed and dealt with by the police, with the full protections offered to children under the criminal law. The committee emphasised the need for a statement of procedures to be developed to regulate such matters as the place and conditions for questioning, the security arrangements, the conduct of interviews, the responsibilities of agencies and, importantly, the entitlements of a person being interviewed, including access to translators, meals, rest periods and privacy. The committee considered that the importance of these issues requires the statement of procedures to be included in regulations to the act and that no warrant be issued until such regulations come into force.

Under the current bill a person can be detained on a belief that they have information relating to a terrorist offence. It is an offence under the proposed legislation to not give such information. In the circumstances where a person does not have the information that ASIO seeks, the individual has the evidentiary burden to show that they do not have that information. The majority of the committee recommends in recommendation 15 that this reverse burden of proof be removed. Finally, in recommendation 26, the committee recommends that the bill include a sunset clause of three years.

Following the careful deliberations of the committee, the report has made a number of recommendations for changes to the bill that will improve it dramatically if they are accepted by the parliament. The substitution of a questioning regime instead of a detention regime, its non-application to children, the provision for legal representation and the use of retired judges to issue the warrants and oversee the questioning by ASIO are improvements that will ensure public confidence in this necessary antiterrorism measure. (Time expired)

Senator STEPHENS (New South Wales) (6.53 p.m.)—I too rise to speak on the Legal and Constitutional References Committee report on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002. I add my comments to the concerns of other speakers about the bill and its intent and I recommend strongly the adoption of the recommendations of the committee, which would actually improve this legislation quite significantly.

I begin by saying that of course Australia’s response to the threat of terrorism must be strong and effective protection for all Australians and all that we stand for. But so much of what we stand for is the rights and freedoms that give us the opportunities to make the most of our lives. In responding to terrorism we must ensure that these are not eroded by the very legislation that seeks to protect them. ASIO must be able to function as effectively as possible in responding to terrorism, and Labor believes that ASIO should have enhanced powers to gather information but that it does not need to detain people indefinitely and it needs few safeguards in order to achieve this.

The bill is controversial and unprecedented in many regards. It provides powers for compulsory questioning and detention of non-suspects for the purposes of gathering information relating to terrorism offences. Because these powers are so unprecedented both within Australia and within other Western countries, we need to be particularly careful as to how we safeguard against possible abuses of them. As it stands, the legislation has been poorly conceived and there are few such safeguards, leaving it open to serious abuse.

The committee was exhaustive in considering the complex and contentious aspects of this bill, and I would certainly like to place on record my thanks to my colleagues on the committee and to the secretariat staff for their impressive work on this inquiry. It became apparent in the course of the inquiry that there must be certainty as to the purpose of the bill if it is to have such sweeping powers. That purpose must be information gath-
ering, not law enforcement. As it stands, there is some confusion as to what the legislation allows. Its aim should be fundamentally preventive, not retributive. What we do not want to see is the proposals in this bill being used to detain people for, effectively, unlimited periods of time.

The committee found that the bill should be amended to change what is, as it stands, a detention regime. It should instead be a questioning regime. The Law Council argued that the detention of non-suspects should be conterminous with the questioning and should not continue once questioning has finished. The International Commission of Jurists expressed concern that a detention regime such as that under the bill as it stands could create a shadow criminal justice system, without the safeguards of the existing formal legal system. In light of this, the majority of the committee recommends that the bill must also include a provision ensuring that, once questioning has finished, a person is free to go.

The committee notes that the bill does not limit the time for which a person may be questioned when appearing before a PA. As such, the bill can subject non-suspects to longer periods of questioning than those to which suspects are subjected under the Crimes Act—that is, someone who has committed no offence is subject to a harsher regime than someone who is suspected of a crime. The Crimes Act provides for the questioning of a suspect for four hours, with the potential for an eight-hour extension, and other colleagues in the chamber have elaborated on that point this evening. The committee recommends that the basis for maximum time allowable for questioning under this bill and that the provisions relating to this be provided for in the legislation.

I would like to confine my remarks now to the whole issue of questioning and the questioning regime. One important safeguard of the rights of those questioned under the bill is that of legal representation. Significant concerns were raised in submissions as to the limited role of legal representation under the legislation as it stands. The bill allows access to an approved lawyer, but all contact between that lawyer and the person being questioned must take place in the presence of an ASIO officer. As Professor George Williams pointed out, this undermines the value of having a lawyer. Access to a lawyer under these conditions effectively becomes another intelligence gathering exercise by ASIO instead of being an opportunity to receive frank advice as to the situation a person finds herself or himself in.

Under the bill a person being questioned has access only to an approved lawyer. A situation in which a person is detained in secret with only access to a lawyer who has been vetted by the detaining power is obviously open to abuse. Submissions acknowledged, however, that there may be circumstances where a particular lawyer may, because of a possible conflict of interest or a personal connection to a terrorist group, jeopardise an inquiry. Accordingly, the majority of the committee recommends that proposed section 34AA, concerning approved lawyers, should not proceed. Instead, the prescribed authority should be given the power to refuse to permit a particular legal adviser to be present on the application of ASIO if the prescribed authority believes on reasonable grounds that the particular person represents a security risk and that to allow representation by that person may prejudice public safety. The committee also recommends that the communications between a person and his or her lawyer be confidential. In this way, the committee recognises the importance of impartial legal advice as a necessary safeguard of the rights of someone who is detained.

The bill includes some safeguards relating to the videotaping of procedures and the provision of interpreting services. Concerns were raised by many submissions that additional safeguards are also required. Important amongst these is the right of a person being questioned to know the function of all the parties who are present during questioning. The committee also suggests that the bill should specify that information about the rights of someone being questioned be given to them both orally and in writing, with translation into the person’s first language if necessary. Access to an interpreter is essential in a situation with complex legal impli-
cations, particularly in light of the concerns amongst those making submissions that this legislation might target those persons whose first language is not English. Under the bill the PA can order that an interpreter be provided. However, in addition to this, the committee finds that a person being questioned should also be able to request an interpreter.

Many of these safeguards, as my colleague Senator Kirk has mentioned, are to be included in a statement of procedures. The committee encountered a difficulty in that many of the issues raised in submissions, including the problems compulsory questioning would raise for someone fasting during Ramadan or Lent, could not be addressed by the committee because the statement of procedures had not yet been drafted. Under the provisions of the bill, these procedures need only be approved by the minister, but there needs to be an opportunity for scrutiny of such provisions. Considering the level of community concern about what will be included in these procedures, the committee recommends that the statement of procedures be included in regulations so as to allow for parliamentary scrutiny and, if necessary, disallowance. One concern that particularly bothered me was the issue of the detention and questioning of children. There are provisions under the Convention on the Rights of the Child relating to the detention of children. The convention states:

... detention ... shall be used only as a measure of last resort and for the shortest appropriate period of time.

There were many submissions and much evidence given that raised concerns that children are particularly vulnerable to the reverse onus of proof. There is also the possibility of children being used to gather information about their family members and this would be a completely unacceptable application of this legislation. There is no limit in the bill on the number of times a child can be questioned. If the purpose of continuing to detain a child is to overcome their reluctance to provide information, children are clearly at a much greater risk of coercion. This not only would be contrary to community standards but of course would result in tainted evidence.

The original bill has been amended following a previous committee report to lift the age limit to 14 years and to provide only for the questioning and detention of children who are suspects. This raises the question in my mind of why it would ever be necessary or advisable to detain a child under this bill. If a child is a suspect, they should be arrested and be subject to the full range of protections offered to children under the criminal law. What we need now in this discussion on how to deal with the threat of terrorism is clarity, rigour and care. This legislation as it stands does not reflect this and I have been heartened that during the process of this inquiry, in submissions, hearings and debates, these qualities have been manifest. The bill should be amended to protect the rights of the Australians who may be subject to it.

Question agreed to.

Corporations and Financial Services Committee Report

Debate resumed from 14 November, on motion by Senator Chapman:

That the Senate take note of the report.

Senator WONG (South Australia) (7.04 p.m.)—I rise to make some brief comments regarding the report of the Joint Committee on Corporations and Financial Services on the inquiry into regulations and ASIC policy statements made under the Financial Services Reform Act. As the Senate would be aware, the Financial Services Reform Act was passed last year, although most of the reforms commenced in March of this year. It is an act which, simply put, has two objectives. The first is a competitively neutral regulatory system providing for uniform regulation across a range of financial services. The second objective is consumer protection. It is a new regime and, as was stated by the Labor Party when this bill was before the parliament, its operation needs close monitoring to ensure that the objectives are being met and to consider the impact of the licensing regime, which is affecting and will further affect providers of financial advice. The act itself was always intended to set out
the basic principles of this regime and it was always intended that the regulations made under the FSR Act would provide the details of the practical application of the legislation. It is these regulations which are the subject of this report.

I want to make some brief comments regarding the report of the Labor members of the committee, of which I was one. Whilst we are in substantial agreement with the majority of the committee’s report, there are a few areas of differentiation that I would like to clarify and discuss briefly. The first area relates to the issue of disclosure of fees and charges. Labor members believe that there should be a comparable disclosure regime across both superannuation products and managed funds. We see the ability to have comparable disclosure between those two types of products as an integral aspect of the consumer protection objectives of the act. It is also a position that is consistent with the report of Professor Ramsay, who, in September of this year, indicated that he was of the view that the disclosure regime should apply consistently across both these areas—that is, superannuation products and managed funds.

The other issue in relation to disclosure of fees and charges is that the Labor members believe that the information which is provided to consumers regarding fees and charges is comprehensible. The evidence presented to this committee—and subsequently the subject of some media interest—in the context of the discussion of these regulations in the Senate, showed that one aspect of the regulations put forward by the government did not meet the basic test of being comprehensible. The ongoing management charge which was included in these regulations did not provide a comprehensible mechanism whereby consumers could compare products. The evidence before the committee raised concerns about its meaningfulness and subsequent consumer testing by consumer organisations demonstrated that an overwhelming number of consumers who were asked to consider the ongoing management charge found it difficult to understand and virtually incomprehensible, and considered that it provided no reasonable basis for comparing the fees and charges of any one product as against another. For this reason, the Senate will recall, the regulations which included the OMC were disallowed by the Senate. In this minority report, we make the point that in any regulations which set out a disclosure mechanism so that consumers can reasonably compare fees and charges there must be:

... proper consultation and consumer testing before they are finalised.

Another aspect which the Labor members of the committee wished to discuss was the impact on small business operators who operate in the financial services sector during the transition to the financial services regulatory regime. We simply make two points. The first is:

ASIC must have due regard to the disproportionate impact on small business, subject to not compromising consumer protection.

Secondly, there is a capital gains tax issue which may or may not apply if small business chooses to restructure its operations so as to facilitate compliance with this regime. The Labor members have recommended that Treasury begin discussions regarding the impact of capital gains tax when such restructuring occurs. We are concerned that legislation has not been introduced by the Treasurer on this issue and that the absence of such legislation dealing with the potential tax liability may be discouraging people from moving to the new regime. Obviously that is not a good outcome.

The final area that I want to discuss is in relation to basic deposit products. The Labor members disagree with the majority recommendation that basic deposit products be excised from the FSR regime by removing them from the definition of financial product. This would have the effect of taking these products outside of this regulatory regime. We do not consider that that is appropriate. Consumers are entitled to reasonable advice, even in relation to basic deposit products. We do not think that it is appropriate for these to be excised from the regime. We agree that there are some issues associated with the training requirements of persons operating basic deposit products, and we have some sympathy for the second and alternative rec-
ommendation put by the committee that ASIC should consider amending the training requirements it has released in relation to persons providing advice regarding basic deposit products.

There was some evidence presented to the committee that the training regime which ASIC has set out, which is in policy statement 146, is too onerous in relation to some basic services, including basic deposit products. We have indicated that we do not have a difficulty with ASIC considering whether it would be appropriate to amend PS146 in consultation with the industry to ensure that the training requirements are not excessively onerous. We consider that that is a more appropriate way of going about dealing with this issue than excising the products from the regime. If it is going to be a consumer protection regime, then it should be consistent. In relation to that, though, we do say two things. The majority recommends that some consideration be given to in-house training—that is, existing training—as being sufficient. The Labor members want to reiterate that there is a benefit to consumers and industry in having consistency to staff training standards across the financial services industry. We consider it could potentially compromise the consumer protection benefits of this legislation if you were to see very disparate levels of training amongst staff who are providing financial advice.

Finally, there was some suggestion before the committee that counter staff of some financial institutions may receive or be offered benefits in relation to the sale of financial products to customers—that is, it was suggested that, if you go into a bank, the staff member may have some benefits accrue to them if they suggest to you that you should look at some of the other particular financial products that the bank provides. The Labor members wish to reiterate that, consistent with the disclosure regime that is explicit in this legislation, any such benefits or incentives should be disclosed to consumers. Consumers have a right to know if the person who is recommending a product has any financial interest in their take-up of that product.

Question agreed to.

Consideration

The following orders of the day relating to committee reports and government responses were considered:

Legal and Constitutional References Committee—Report—Outsourcing of the Australian Customs Service’s information technology—Government response. Motion of Senator Lundy to take note of document agreed to.


Economics References Committee—Report—A review of public liability and professional indemnity insurance. Motion of the chair of the committee (Senator Collins) to take note of report agreed to.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Order! It being 7.14 p.m., I propose the question:

That the Senate do now adjourn.

Queensland Railway Workers: Wartime Service

Senator HOGG (Queensland) (7.14 p.m.)—I rise this evening to speak on an issue of the contribution of the Queensland government railway workers during World War II. I do so because a constituent of mine, Mr Mark Underwood, has approached me and my office. Mr Underwood has undoubtedly approached quite a number of politicians in Queensland regarding what he and many of his fellow workers see as a great oversight—that is, a lack of formal recognition of the outstanding efforts of Queensland railway workers during the Second World War. My constituent of course is particularly upset by the fact that Queensland railway workers have been rejected as being eligible
for the award of the Civilian Service Medal 1939-1945. To people such as Mr Underwood it means a great deal indeed.

It is worth noting therefore in this brief adjournment debate this evening the record of the Queensland railway and its workers' contribution to the war effort. I will refer to the reports of the Commissioner for Railways as an example of the service of these people. In order to meet the significant extra call on the railways, holiday leave for all railway workers was cancelled from 1941. Crews were required to work extended shifts—anything up to or exceeding 70 hours per week—with minimal time off between shifts, and the railways were declared a 'protected industry', meaning employees were not allowed to volunteer for the war.

When I actually proceed to some of the reports in 1942, 1943, 1944 and 1945, one will get a feel for the contribution that was made by Mr Underwood and his colleagues in Queensland Rail. I will just turn to the 1942 report. The Commissioner for Railways in his report for the year 1942 under the heading of 'War' said:

Reference has been made to the demands on the transportation branch by the exceptional volume and unusual features of the passenger and freight traffic carried for the defence services, but the effects of the war have also been felt in every other branch of the service, and all sections of employees have been called upon to adapt themselves to the needs of the moment, some by improvising methods, others by strenuous exertion, and all by assiduous attention to the work at hand.

Further on, in the annual report, he made this comment about staff:

Exceptional demands were made on the staff to meet the abnormal volume of traffic and the exigencies of war. All sections of the service responded admirably, and I place on record my appreciation on behalf of the Government of their co-operation and assistance.

That was 1942. If we turn to 1943, we find another comment by the Commissioner for Railways about the efforts of his staff. He said:

Emphasis should be placed upon the excellent service given throughout the year by all sections of the railway staff. The Department could not have coped with the enormous increase in business without the devotion to duty and the loyal co-operation of all employees, and it is fitting that I should place on record my appreciation on behalf of the Government of their sustained contribution to the war effort.

The same appears again in a similar vein in the 1944 annual report of the Commission for Railways, where he said:

I desire to place on record the keen appreciation of the Government and myself of the splendid service rendered to the department, and to the State generally, by railway employees of all grades. Traffic was again exceedingly heavy, and the department could not have handled the business it did without that co-operation and loyalty to duty with which the staff performed the tasks allotted to them. Their response to the demands made upon them has been commendable.

So it is interesting then to look at the 1945 report of the commissioner where he said about his staff:

The war in the Pacific having reached a successful termination, I wish to pay a tribute to the part played by the large body of railway men and women of all grades during the war years. Their task was no easy one and none was more ready to recognise its magnitude than those in charge of the Defence Services, whose requirements were so considerable, consistent, and exacting. The employees were called upon to handle phenomenal traffic, passengers and tonnages which even the most optimistic would have considered, in 1938-39, to be beyond the capacity of the system and the staff.

The report went on:

The response to the call for maximum effort, however, was spontaneous on the part of all concerned. The challenge was taken up. Industrial peace was maintained. All worked wholeheartedly to keep the wheels moving, despite the long hours involved and the personal inconvenience which many must have experienced from time to time.

The result is now history and to each and every employee who participated in this great effort I tender my deepest appreciation, on behalf of the Government and myself, of the valued assistance rendered to the State in its time of extreme need.

Mr Underwood has been on a crusade—and I think that is a fair and reasonable term to describe it—to seek recognition for the work of the Queensland Rail workers during World War II. I think it would be fair to say that in some ways Mr Underwood expresses a degree of frustration in having approached
a wide range of politicians, as I understand it; having gone to the media; having lobbied both at the state and the federal level of governments, to find that the service has gone, in his eyes, quite unrecognised. He believes that recognition has been given to other areas of service within the community during the war years and he believes that appropriate recognition should be given to Queensland railway workers for the work they contributed to the war effort during that period of time. In particular, of course, Mr Underwood and a number of his colleagues are seeking access to the Civilian Service Medal 1939-1945. They believe that their efforts were not properly recognised. I cannot form a proper opinion and judgment on that.

Senator Ian Macdonald—Fairly helpful!

Senator HOGG—I heard the interjection from the minister; that is quite correct. In Mr Underwood’s later days, he is seeking a recognition, which I do not believe is unwarranted or an overly great demand. When one reads just some of the records of the day, one reads the mileage that was covered. Remember that we dealt in miles in those days. For example, one report states that in 1939 the mileage covered by Queensland locomotives was 16,810,602 miles, yet in 1942-43 they travelled 24,309,794 miles. The records also go into the tonnage and the efficiencies that were gained throughout that very difficult war period.

It would seem to me to be a reasonable request. Mr Underwood and his colleagues must be congratulated on the persistence that they have shown. One would hope that the government would look sympathetically upon the call by Mr Underwood and his colleagues for what they consider to be minimal recognition after a long period of time for the work that they put into the war effort given that, in many instances, many of these people would have enlisted but, because they were in a protected industry, were not able to enlist. I commend the concept to the government to look at very closely.

Information Technology: Security

Senator GREIG (Western Australia) (7.24 p.m.)—I want to talk about security implications in the information age, particularly in light of recent comments from the Australian Bankers Association and Senator Chris Ellison, the Minister for Justice and Customs. The recent suggestion that the government may allow banks to access data from Medicare and passport records and from state government drivers licensing details in an effort to crack down on fraud represents a security minefield. Yet this is the very proposal being suggested by the Australian Bankers Association and the Proof of Identity Steering Committee, a joint government and private sector enterprise. When questioned on radio earlier last month the justice minister, Senator Chris Ellison, confirmed that the proposal was being considered and did not rule out the possibility of it being introduced. The minister also told a Senate estimates committee that the proposal was being considered as a backup mechanism for the current 100-point identification test used when citizens open bank accounts.

One problem with this is that the banks offer not only banking services but also health, accident and life insurance cover, plus a range of other products, many of which could be materially advantaged by access to data currently stored on government computers. Such advantages would provide a strong incentive to the banking industry to pressure for such access, and an even stronger incentive for the system to be misused once implemented. If the information to be shared is limited to the individual’s Medicare number and passport number only and it excludes billing records from Medicare, the most amazing amount of security would be required to ensure that it did only that. However, the implementation of even the most limited amount of bank access to government records is the thin end of the wedge. Modern data mining techniques make all information valuable, particularly identifying information, and separating data categories is difficult and very expensive.

In a perfect world, all employees could be trusted with such information. However, Surf Control, one of the world’s top security organisations, has estimated that some 80 per cent of all security breaches are made from within an organisation at an average cost of $US2.7 million. The current royal commis-
sion into police corruption in my home state of Western Australia serves to remind us just how much access private individuals and companies have gained from government data using various methods of social and financial inducements. We know this has happened, we know it is happening and we know it will happen again. There is no protection against the disgruntled, compromised or incompetent employee except the restriction of access and control of the data once available.

Many questions surround the idea of access to government records by private enterprise. How will the data be stored? Will the accessible data be held on the same physical servers or networks as confidential information? Will there be any links between the servers holding the permissible information and those holding confidential information? Will staff be able to access both levels of information concurrently and use the same point of access? Will the system supplying identifying verification be kept isolated from all specific account information?

The Australian National Audit Office in its report of September 2002 concluded:

... security levels across the audited agencies varied significantly from very good to very poor ...

For the majority of agency web sites, the current level of Internet security is very poor. This was dramatically highlighted by the admission this month that a government network, National Mapping, formerly AUSLIG, a civilian cartographic and remote sensing division of Geoscience Australia, part of the federal Department of Industry, Tourism and Resources has been sending out a virus as part of its newsletter. In its report on the incident, the news service, Computerworld, said:

Geoscience Australia shares satellite imaging information with the Department of Defence’s spy satellite unit, the Australian Imagery Organisation (AIO).

This type of cross-pollination is not just an Australian problem, given the increasing complexity of programs and operating systems combined with the increase in hackers’ tools and skills. The official audit of government technology in the US, published in October 2002, found that security vulnerabilities are on the rise with the third quarter of 2002 revealing a 65 per cent increase in vulnerabilities reported in computer systems and programs compared to the third quarter of 2001. This is in spite of the increased recognition of security issues since September 11.

In 2001, there was a total of 52,658 reported security breaches. By comparison, in the first quarter of 2002 there have already been 26,829 events reported. Many of these breaches exploited reported vulnerabilities of which there are many. The US Computer Emergency Response Team, or CERT, reports that in 2001 an average of just under seven new vulnerabilities were reported each day—that is, 2,437 in total. In the first quarter of 2002, there were 1,065 reported. According to CERT, there are currently over 8,000 vulnerabilities.

Although the banks will not publicly discuss their own security information, it is reported that about 80 per cent of companies in Australia have internal security compromised at least once a year. The exact numbers are hard to find because those affected hide behind the concept of commercial confidentiality. A recent study by the Internet Security Alliance found that around the world, almost one-third of the companies surveyed say they may still not be adequately equipped to deal with an attack on their computer networks by cyber terrorists. This complacency was also reflected in the Australian federal government budget of 2002-03, which allocated only 32c per head of population in protecting the national information infrastructure, or NII, compared with the United States budget allocation of approximately $28 per head of population in that country. The NII comprises information systems responsible for telecommunications, transport, distribution, energy, utilities, banking and finance.

The data held by the federal departments of immigration and health and the state department of transport are far too sensitive to be accessed by commercial entities. We must not forget that the ATO sold business registration details, which business was required to supply following the implementation of the GST. If the most secure government en-
tity in the country was prepared to on-sell sensitive information as a matter of policy, what hope do we have for total security within lesser government organisations?

Superannuation

Senator WATSON (Tasmania) (7.33 p.m.)—Senators would be aware that in the wake of the 1997 Wallis report, Australia’s financial systems underwent a major re-structure and rationalisation. APRA was created to look after the prudential side of things while ASIC concentrated on disclosure and consumer protection measures. Responsibility for small self-managed super funds was transferred to the Australian Taxation Office. In August 2001, the Senate Select Committee on Superannuation presented its first report on the regulatory framework. The report was one of three that we presented in the last parliament on prudential supervision and consumer protection for superannuation, banking and financial services. The committee found that the current arrangements were complex and confusing. It found that more needed to be done to improve the awareness of the roles of the regulators, especially the need to clarify the respective roles of APRA and ASIC. The committee also recommended streamlining the entry point for consumers and others by having a one-stop shop with respect to regulatory and consumer affairs.

We also found that, while ASIC was operating efficiently and effectively at the time, there was scope for APRA to improve its performance as the major prudential regulator, especially in the regulation of small to medium superannuation funds. Thankfully, there has been some improvement by APRA, which is now emerging. But what has been surprising is that, given the high-powered composition of the APRA board, this competency and skill has not shown itself in the day-to-day operational performance of APRA either at the fund level or in the level of advice given to government about closing deficiencies. For example, it took a government commissioned report from an APRA board member to produce recommendations that should have flowed earlier and automatically, I believe, from the board to the government. With the collapse of Commercial Nominees, our concerns were unfortunately justified. Commercial Nominees was an APRA approved trustee for three public offer superannuation fund entities and about 500 small superannuation funds with fewer than five members. CNAL engaged itself in inappropriate investments, cosy deals, non-arms-length transactions, failed to adequately disclose its investments to members and engaged in inappropriate management procedures.

With other corporate collapses such as HIH, the role of the regulator has come increasingly under closer scrutiny. My committee was pleased that the government has acted to provide financial assistance to those small APRA funds which lost money through the collapse of Commercial Nominees. We are now concerned to achieve a degree of justice for small self-managed funds regulated by the ATO. Apparently, they are not covered by the protection of the theft and fraud provisions of the SIS Act, but we are hoping that the government will give consideration to claims for an act of grace payment under the FMA Act, the Financial Management and Accountability Act. The most disappointing aspect of all our inquiries into this matter has been the stubborn attitude of the bureaucrats who believe that the problem lies with the investor in that it was their investment choice and, therefore, their investment risk. I find this hard to comprehend coming from people who have a responsibility for regulation. There is not much point in having laws if they are not appropriately overseen.

A report on the opportunities and constraints for Australia becoming a centre for the provision of global financial services contained some significant recommendations aimed at promoting Australia’s competitive advantages. These recommendations included maximising the opportunities for Australia to become a centre for the provision of global financial services, improving the efficiency with which Australian financial services can be delivered and so improving Australia’s potential to become a global financial services centre. This report achieved a high degree of acceptance in the business community, and I am pleased to say...
that the government has supported most of our recommendations. We now look forward to some government initiatives.

The Senate Select Committee on Superannuation is currently examining whether the current arrangements for superannuation will be adequate under the present taxation regime to address the retirement income and aged health care needs of Australians. This has been a very wide-ranging inquiry covering all aspects of superannuation as well as social security and health issues. Initially the committee received what appeared to be irreconcilable evidence from Treasury on the one hand and ASFA on the other about what a member could expect to receive as retirement income. ASFA provided the committee with an income figure of $19,000, while Treasury considered that the income should be more like $28,000 in the same circumstances.

The committee needed to reconcile these differences, so it commissioned a report from the Institute of Actuaries. The report showed that expressing retirement incomes in dollar amounts is not as useful in the adequacy debate as the net of tax replacement rate. The replacement rate is the percentage of the final year net salary to the first year of retirement net age pension and income stream payments, expressed as a ratio. This ratio, especially for actuaries, is easily capable of comparison with a retirement target for any person. We are told that this ratio is more relevant to the debate because to some extent the replacement rate avoids the timing effects of inflation and wages growth on dollar amounts, which can muddy the water.

Under choice, funds will need to keep more cash on hand to pay out transferring members, particularly if choice is associated with the other factor, which is going to be subject to some regulatory changes to enable people to consolidate their accounts—this is called ‘portability’. Asset consultants should be advising trustees in the choice environment that they might need to revise their asset allocation ranges with a higher rating for cash. As we all know, cash will underperform other assets in most circumstances, so this will act as a break on fund returns at a time when returns are under very close pressure.

A further dilemma for investment managers in a volatile stock market is the timing of investment decisions in a falling market leading to higher cash holdings. If cash is held for too long, the trustees could well be in breach of the fund’s trust deed. Currently we have approximately $540 million in superannuation assets. This figure will grow to $1.7 billion by 2020. It seems to me that much of that growth will be invested more traditionally through chasing up prices for the top 50 or 100 or so stocks on the Australian secondary market or flowing overseas, where up to 25 per cent of Australian superannuation assets for some funds are currently invested.

This does little for the rural economy, for innovation and for job growth. It would be better if there were a steady flow of superannuation assets that could be invested by trustees in long-term adding projects, such as infrastructure and venture capital—projects that actually boost growth and consequently improve the lot of all Australians. I do not want these remarks to be interpreted that we should be directing how superannuation funds should be invested—far from it—but I draw to the attention of senators and listeners the dilemma that we have in Australia that much of our export income is earned in rural areas but finds itself deposited in city or overseas accounts.

I recently spoke with one of Australia’s top directors who in an earlier life had experience in the funds management industry. He believed that there should be an inquiry into the efficiency of the funds management industry. That led me to a report by Paul Myners on institutional investment in the United Kingdom. The report has raised a number of issues related to the adequacy of fund governance, the competencies of trustees and the adequacy of the disclosure regime for fund managers. However, it should be noted that the UK is well behind Australia in its regulatory framework. It is one of the goals of my committee to keep Australia at the forefront of world’s best practice. I was disturbed to read a report issued, I think, by the chartered accountants Deloitte which showed
that about 28 per cent of funds did not have a
corporate plan.

On a related issue, I recently expressed
my concern at the outrageously generous
performance bonuses, share options and
other benefits paid to some senior company
executives. Given the size and importance of
superannuation investments in corporate
Australia, I believe that trustees now have a
special responsibility to their members to
ensure that potential retirement benefits are
not eroded through such practices, particu-
larly when these rewards are not matched by
superior performance by the CEO. Today we
are seeing a lot of that non-performance.
Perhaps the time has come for chairs of su-
perannuation trustees to start directing their
investment managers about issues such as
the automatic re-election of underperforming
members of boards. (Time expired)

Sport: Active Australia

Senator LUNDY (Australian Capital Ter-
ritory) (7.43 p.m.)—Far from backing Aus-
tralia’s sporting ability, the coalition gov-
ernment has for some years been backing
away from community based sport and par-
ticipation programs. Now the Howard gov-
ernment has effectively killed off Active
Australia, the highly successful division
within the Australian Sports Commission
tasked with helping Australians, especially
school aged children, to become more physi-
cally active and healthy. This disturbing fact
was gleaned at Senate estimates hearings in
November.

Active Australia was initiated at the end
of the last Labor government, following the
reorganisation of the Australian Sports
Commission. This restructure divided the
Sports Commission into three primary divi-
sions: (1) the AIS, focusing on elite sport; (2)
the Sports Development and Policy Division,
which included Active Australia; and (3) the
Sport and Business Services Division. A
participation division was initiated to de-
velop, coordinate and fund programs de-
signed specifically to encourage a greater
level of participation in sporting and recrea-
tional activities. To achieve this goal the par-
ticipation strategy was developed and subse-
quently promoted under the banner of Active
Australia.

Active Australia was charged with work-
ing with national sporting organisations or
NSOs, state government departments,
schools and community groups to promote
healthy lifestyles through physical activity.
Within a year of its conception, the Sports
Commission was proudly boasting that Ac-
tive Australia had developed a national par-
ticipation strategy and, for the very first time,
reached agreement with the three tiers of
government, as well as government and non-
government sporting organisations, on a na-
tional approach to physical activity in Aus-
tralia.

Importantly, Active Australia worked very
hard with ATSIC to combine Indigenous
sports programs under one umbrella, and that
year at Atlanta our first Indigenous athlete
won an Olympic gold medal. At the time, the
incoming Howard government was proud to
talk up the success of Active Australia. The
Sports Commission too was glowing in its
commitment to Active Australia. The com-
misson’s 1996-97 annual report boasted
about how Active Australia has taken a
leading role. The report stated:
The Active Australia program represents a shared
commitment by government and non-government
groups in the sport, community recreation, out-
door recreation, fitness and health sectors to pro-
mote physical activity ...

Several years ago the Sports Commission
produced a document called Beyond 2000.
This report stated that Active Australia has
been internationally acclaimed by UNESCO
and the International Olympic Commission,
that over 27 countries have adopted key ele-
ments of Active’s strategies, and that the
World Health Organisation identified Active
Australia as an exemplar national model for
sport and physical activity development.
Significantly, in Beyond 2000, the board of
the Sports Commission recommended that
the Sports Commission ‘should assume na-
tional management and coordination of Ac-
tive Australia and ensure that it is adequately
resourced’. The basis for this recommenda-
tion was:

Australia is facing a situation of crisis in commu-
nity participation in sport and physical activity
and, as a result, in personal fitness and health.
Beyond 2000 goes on to state that the aim of substantially resourcing and managing Active Australia is:

... increasing the adult participation rate in community sport by 10% by 2004. This is likely to save some $400-$500 million per annum off the national health bill.

That is the history of Active Australia. It was initiated to boost physical activity participation in Australia. It was recognised worldwide as a landmark strategy. It was identified by the World Health Organisation as an exemplar model. Also, the Sports Commission claimed only a few years ago that Active was a key component in addressing the ‘crisis in community participation’. What is more, the commission told the government that an effective Active Australia would reduce the health budget by hundreds of millions of dollars.

So you can imagine my disappointment when I was told at Senate estimates on 20 November that the commission is walking away from Active Australia. First up, the name ‘Active Australia’ has gone. It has now been consolidated into Ausport. The reason, according to the Minister for the Arts and Sport, Mr Rod Kemp—

Senator Eggleston—It’s Senator Kemp.

Senator LUNDY—Senator Rod Kemp. I should say—is that there is some ‘confusion’ about what Active Australia does. I would say to Senator Kemp that the World Health Organisation, the IOC, UNESCO and about 30 other countries do not seem to be confused about Active Australia; they reckon it was a world-class participation policy. After six years, we all know what Active did: it promoted healthy and active lifestyles for all Australians.

Senator Kemp told estimates that the government wanted to re-badge Active Australia to better reflect what the AIS and Sports Commission do. Senator Kemp is saying that this is no longer a role that the coalition wants the Sports Commission to play. The government’s view—and one that appears to be wholeheartedly backed by the Sports Commission board—is that Active Australia and the promotion of healthy physical activities is something for the state and territory governments to look after.

Do not be tricked into thinking that the targeted sports program is a suitable replacement for Active Australia. This policy objective of increasing membership of organised sporting clubs by one million is no substitute for dedicated participation programs like Active Australia. Simply increasing the number of Australians who are financial members of an organised sporting club does not address the nation’s long-term health problems and the dramatic rise in sedentary behaviour among young people. It merely creates a simplistic, quantitative mechanism to justify redirecting money from Active Australia and giving more to the national sporting organisations. For instance, the coalition’s policy of increasing club membership does not take into account what is called ‘churn’ in other industries—that is, someone leaves one club and joins another. I am sure it will clock up as a statistic as far as the targeted sports policy is concerned, but really it is just one person transferring membership from one club to another.

I believe it is up to the Australian Sports Commission—certainly it is up to its board—to play a leadership role in promoting and increasing participation in all forms of sport and physical activity. I wanted to use this opportunity to express my grave concern and disappointment that the Howard government and the board of the Australian Sports Commission are walking away from what was a fine program, established under Labor, called Active Australia.

Research Involving Embryos Legislation

Senator JACINTA COLLINS (Victoria) (7.50 p.m.)—I want to use the adjournment debate tonight to further some of the comments I would have liked to have made in the debate on the Research Involving Embryos Bill 2002. Consequent to the guillotine, which has already been canvassed in this place, there were significant limitations on the debate, particularly on the third reading. I had intended to raise quite a number of issues that would have taken away from the debate in the committee stage, had I addressed them there. But, with less than five minutes to spare during the third reading, I have deferred raising them until this evening.
I alluded to one of those issues in my speech on the second reading debate—much of which was incorporated rather than delivered. I draw the Senate’s attention to the fact that one really contentious issue that challenged the Community Affairs Legislation Committee in dealing with this legislation was the potential for exploitation not only of women but also of couples desperate to have children. It is with some level of angst that I reflect on the fact that the response of full voting senators on this issue, in my view—and I accept that this is my personal view—seemed to reflect an attitude of denial. With that attitude of denial, we will not be able to seriously grapple with these issues.

That attitude of denial has been reflected upon in some of the feminist dialogue with respect to the issue of abortion, for instance. The view there is that feminist theory has never quite grappled with whether or not it is a human life we are dealing with when we are dealing with the issue of abortion. The argument is—and I do not fully accept all the feminist argument here—that, because some people can never quite bring themselves to acknowledge their ethical position or their view on when value should be ascribed to human life, a culture of denial has developed around that issue. Unfortunately, I fear that culture of denial has extended itself into the debate about stem cell research. The culture of denial has gone so far as to say that we are not talking about any relationship to the rights of a woman; there we are talking solely about the issue of what right or value society should ascribe to a human embryo. I would suggest that anyone who has ever argued that abortion establishes a precedent about how we should ascribe value to human embryos needs to look carefully at some of the feminist literature on the abortion debate particularly, because it clearly shows that there is still quite a meshed and uncertain perspective in that debate on the status of the human embryo. If you take one step away from that and look at the status of the human embryo as distinct from the rights of a woman, in my view it is much clearer. It being much clearer, it has cast the debate in a much broader, utilitarian perspective. I think that is inescapable for those who have supported the Research Involving Human Embryos Bill. They have decided that they accept an ethical position which is that, for utilitarian purposes, the value for humanity of this research overrides the value of an individual human life.

Whilst there was some talk in the report on this bill from the Community Affairs Legislation Committee about a third, ethical way, perhaps I can lend that position something that was not put into the report. Unfortunately, the third way perspective in the chair’s report did not have any philosophical tradition to underpin it. There was no association or no reference in it. But perhaps, from my own philosophical studies and my own experience studying logic, I can lend it one. The philosophical tradition that I think best belongs to the third way of ethics relevant to the Research Involving Embryos Bill is what has been characterised as ‘fuzzy logic’. In terms of a philosophical tradition, I think it has adopted fuzzy logic. Another way to characterise it—and I think I have used these words before—is ‘fudgy ethics’. The challenge I issue to philosophers when they review the literature in relation to this debate is: have some serious ethical consideration of what is being dealt with here. That has been one of the things that has been considerably lacking in this debate: any serious philosophical discussion of what is involved in a decision to start using human lives for utilitarian purposes. That is the line that I think we have crossed here, and that is the line that I think we need to give some very serious further thought to.
When the committee considered the issues of the potential exploitation of women, unfortunately a vote occurred in the committee. I do not think I will be breaching the confidence of the committee when I say it was the only contentious issue where the decision was ultimately to not express the full argument on this matter and to leave it in a footnote, which is on page 25 of the report. At footnote No. 78, we see the reference:

See, for example, Submissions 211, 882, 981 and 1036.

Unlike in most other footnotes, there is no citing of where those arguments have come from and there is no clear description of what those arguments are. I encourage anyone following this debate to go back to those submissions and have a good look at what they are talking about, because I think the future will show some of these issues. I wanted to spend some time tonight fleshing out some of these issues. I wanted to spend some time tonight fleshing out some of those issues, because the argument that was raised in the committee was that it was a beat-up, that there were not serious issues here and that anyone who raised the issue of the potential exploitation of women or couples involved in IVF was really exercising a beat-up and trying to distract from the main issue at hand.

I would like to pay some respect in this chamber, on this particular night, to the comments of Carmen Lawrence in the House of Representatives debate on this bill, because, in her contribution, Carmen, who is very close to the health issues associated with IVF, was able to acknowledge that there had been some significant issues of exploitation in relation to how IVF has been practised in this country over time. She had a personal view that most of those issues have been resolved; I am not so sure. I think the experience internationally leaves me not so sure. Let me give a few examples of the experience internationally. Today I received an email from a woman who is associated with some of the consumer interests in IVF and who has been corresponding with me since ACCESS—which is the consumer group representing IVF and which is 75 per cent industry funded—appeared before the Community Affairs Legislation Committee. This woman forwarded to me information on a UK problem. The note in the email is, ‘Hey, we can’t even get a watchdog for ART in this country,’ and she was referring to Australia.

Some of my colleagues have the view that the Fertility Society of Australia is a reasonable watchdog. I question that. I certainly do not have access to the facts to challenge it but I do seriously question it. This particular article from the UK cites an example where Professor Ian Craft stands accused of dubious trade. That trade is offering free IVF treatment to women—or, I presume, couples—who are desperate to have a baby, as long as they agree to donate some eggs to his clinic. I suspect that under UK law that is not allowed. *(Extension of time granted)*

This article raises the concern as to whether the British Fertility Society is sufficient a watchdog to deal with this problem. That leads me to ask whether the Australian watchdog is sufficient to deal with some of the ethical problems here. We know already, from the experience of Sydney IVF, that the Fertility Society of Australia is not sufficient a watchdog to deal with some of the ethical problems here. We know already, from the experience of Sydney IVF, that the Fertility Society of Australia is not sufficient a watchdog to deal with ethical problems such as the use of IVF solely for sex selection purposes. We know from the industry that this practice raises some serious ethical issues and that most practitioners—in fact, I think all practitioners except Sydney IVF—are unprepared to further this practice. But we know that Sydney IVF is able to continue it. Sydney IVF is able, without Medicare assistance, to offer to couples who are desperate to have a child of a particular sex IVF procedures solely for the purpose of sex selection.

I was challenged by many for the view I took about the carte blanche extension of IVF services. What Jansen is doing at Sydney IVF is, I believe, a good example of why the straightforward extension of IVF needs to be challenged. I was accused at the time of having the views of a fundamentalist, orthodox Catholic and it was said that that was the only reason I held these concerns. This is not the case at all. If anything, I hold these views more because of sociological concerns about exploitation and what these developments might mean for society in the future.

One of the main concerns I have with the Research Involving Embryos Bill 2002—or
act, if it eventually so becomes—is that un-
like most other regimes it does not now deal 
with the commercialisation issues. It has left 
that open, subject to a review at some time 
into the never-never. In that context, I want 
to bring to the attention of the Senate some 
of the recent developments in some other 
areas. One of the countries cited to us as al-
lowing embryonic stem cell research was 
Japan. For the benefit of the Senate, let us 
look to Japan. Japan is now deciding that it 
has left too much power in unresourced in-
istitutional ethics committees. One particular 
example that has been brought to my atten-
tion by Australasian Bioethics Information 
No. 57 of Friday, 29 November is the Japa-
nese concern over ethics committees and 
how they are functioning. I think the Senate 
can take heed of some of their comments. 

We already know from our own debate that 
even the Australian Health Ethics Committee 
was not listened to by the NHMRC, and it 
took some considerable digging by me in the 
committee process to bring out and make 
public concerns that finally the government 
was prepared to act on.

I am quite concerned about what ulti-
mately would have happened had someone 
like me not been able, through our parlia-
mentary processes, to do that digging. I 
know, from Senator Patterson’s own experi-
ence with health ethics committees, about 
their limitations in impacting on the institu-
tions that they are related to. The Japanese 
example shows that the Japanese government 
has had to step in where an ethics committee, 
despite government guidelines that had 
specified that embryos should be handled in 
a way that does not violate the dignity of the 
individual, declared that no special treatment 
was needed. The government has recently 
responded to that. So anyone who has used 
Japan as an example of where embryonic 
stem cell research has developed with no 
issues or problems needs to think again very 
carefully.

Another area of debate has been the 
United Kingdom, so let us consider the UK. 
We have heard in the media recently that in 
the UK ‘fake embryos’—God only knows 
what they were—were implanted in women 
desperate to have children. They were im-
planted by a practitioner who was having 
financial troubles and who was paid per im-
plantation. Having, presumably, a limited 
stock of embryos, he implanted fake em-
byros into women desperate to have children.

The other recent examples in the media— 
two UK examples and one Australian exam-
ple—have been of women selling eggs or 
contemplating selling eggs. Two UK women, 
for purely eugenic purposes, have been at-
tracted on an all-expenses-paid trip to the 
United States to sell their eggs. They get a 
better value for their eggs if they are better 
educated, and they get a better value for their 
egg if they are pretty. We are talking about 
people in the United States who are using 
IVF to eugenically control the children that 
they have. And who is their stock? Their 
stock are young women students from the 
UK and potentially, given media examples of 
one Australian woman, Australian women.

The Research Involving Embryos Bill 
2002 would not have addressed this; I am 
quite happy to concede that. But these are 
issues of exploitation or potential exploita-
tion of women that the community affairs 
committee was happy to relegate to a foot-
note, without even citing the arguments 
rised. It was happy to deny any space for 
the perspectives that say that the potential 
exploitation of women and couples desperate 
to have children is something that we must 
take into account, that we should not let 
commercial interests dominate the debate. 
The Senate, in the committee stage, denied 
that when it denied my amendment seeking 
to at least contain patents on unmodified 
stem cells.

At this stage I would like to say something 
in relation to Senator Stott Despoja’s con-
cerns. She acknowledged that I had chal-
lenged her in relation to her past position on 
genes and gene sequences, but she issued a 
challenge back to me, which was: ‘Take this 
issue on board. Do what you can in your own 
caucus.’ I am sorry, Senator Stott Despoja, 
but after the vote on that day, and after ob-
serving the behaviour of your new leader, it 
is hard for me to take as sincere those com-
ments, because the result of that vote demon-
strated that your own party did not take your 
view on these issues seriously. I am serious
about these issues. I do not believe that humanity should be commercialised. Whether it pertains to a sociological perspective about blood—which I studied in my early days at university—human tissue or other human products or aspects of humanity, I think it applies across the board. For the Democrats to allow, in a sense, Senator Stott Despoja to sell her conscience and a few of her colleagues to do likewise but, at the same time, for them to deliver the result to the government so that this bill could proceed unhindered was quite insincere.

Mr Deputy President, I am pretty sure you will not be surprised to see me making these points, because you know that I am not a novice in this place and I observe a deal when it is being done, but they are points that need to be noted. I think that the Australian Greens on this particular issue have maintained a position of principle and have followed those principles through. I am glad that on this occasion, as a Labor senator with a conscience vote, I have been able to do the same. I have not taken my time tonight to reflect on the Australian Labor Party and the way in which the conscience vote was applied; I will do that in another forum. But let me say this: a conscience vote that has been distorted by having a party position at the same time is something that we can never allow again. Many of my colleagues have said that they were not comfortable with a supposed conscience vote occurring at the same time as a party position, which was developed with limited dialogue and was poorly informed. I will be dealing with this issue internally within the Labor Party. (Time expired)

Senate adjourned at 8.11 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

Defence Act—Determination under section—


Health Insurance Act—


Superannuation Industry (Supervision) Act—Request from Minister to APRA, dated 8 October 2002.

Sydney Airport Curfew Act—Dispensation granted under section 20—Dispensation No. 12/02.

QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Environment: Indigenous Culture**

(Question No. 814)

Senator Nettle asked the Minister representing the Attorney-General, upon notice, on 17 October 2002:

1. Does the Attorney-General accept that under the International Convention for the Elimination of all Forms of Genocide, destruction of culture is a form of genocide.

2. Is the Attorney-General aware that the ongoing destruction of Indigenous culture at Sandon Point, New South Wales, is seen as an act of cultural genocide by senior Indigenous community figures.

3. What measures will the Attorney-General be taking to ensure that Indigenous culture at Sandon Point is protected in accordance with the Convention.

4. Will the Attorney-General contact local Indigenous authorities at Sandon Point to investigate their claims of cultural genocide under the terms of the Convention.

5. Will the Attorney-General take action to apply the provisions of the convention to those responsible for the destruction of Indigenous culture at Sandon Point.

6. Will the Attorney-General be guided by the principles of Article 13 of the Draft Declaration on the Rights of Indigenous People, which accords them the right of ‘… access in private to their religious and cultural sites’.

7. Is the Attorney-General aware that the rights of access and privacy accorded to Indigenous people under this declaration are being transgressed by a housing development at Sandon Point.

8. What action will the Attorney-General be taking to investigate the claims that rights accorded to Indigenous people under Article 13 have been denied at Sandon Point.

9. What actions will the Attorney-General be taking to see that the Burra convention is appropriately applied to Aboriginal sites at Sandon Point.

10. Will this include contacting local Indigenous authorities at the Sandon Point Aboriginal Tent Embassy.

11. Is the Attorney-General satisfied that articles 10, 23, 25, 26, and 27 of the Burra Convention have been observed in relation to Aboriginal sites at Sandon Point.

12. If the Attorney-General is not satisfied that these articles have been observed, what measures do they propose to take to see that they are.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator’s question:

1. The issue of cultural genocide was debated by the drafters of the Convention on the Prevention and Punishment of the Crime of Genocide but the decision was taken to exclude the concept from the Convention.

2. to (5) Refer to the answer to Question 1.

6. The Draft Declaration on the Rights of Indigenous Peoples is only a draft document and has no status at international law. Consequently, the rights described in the Draft Declaration are neither agreed to nor enforceable.

7. to (8) Refer to the answer to Question 6.

9. The Burra Charter is a set of principles or guidelines for the conservation of places of cultural significance. It is aimed at heritage professionals and local decision-makers. It is not a legally binding document or “convention”. Where State processes have failed to provide effective protection, Indigenous persons may resort to applying under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 for protection of areas that are significant in Aboriginal tradition.

10. If an application were made under section 10 of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, the Minister for the Environment and Heritage would be required to nominate a person to prepare a report for him on certain matters that are outlined in subsection 10(4) of
the Act. The reporter would be required to advertise for public representations which would enable interested stakeholders to make their views known.

(11) to (12) Refer to the answer to Question 9.

**Agriculture: Australia-Indonesia Horticulture and Agribusiness Support Systems Task Force**

(Question No. 918)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 13 November 2002:

(1) What is the purpose of the Australia-Indonesia Horticulture and Agribusiness Support Systems Task Force.

(2) When and where has the task force met.

(3) Who has represented Australia at these meetings.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) The Horticulture and the Agribusiness Support Systems Task Forces are two of the four task forces of the Australia-Indonesia Working Group on Agriculture and Food Cooperation. The Working Group was established in 1992 under the Australia Indonesia Ministerial Forum. The purpose of the Horticulture Task Force is to facilitate cooperation and information exchange between the governments and private sectors of Australia and Indonesia designed to benefit trade and investment in horticulture, strengthen horticultural development, and assist in the development of markets for horticultural products. The purpose of the Agribusiness Support Systems Task Force is to promote cooperation in agribusiness trade and investment between Australia and Indonesia, with the exchange of information on the implications of current and emerging food safety and quality requirements in the global agri-food market being a key focus.

(2) Meetings of the Working Group’s task forces are held at each meeting of the Working Group. The Working Group last met from 5 - 7 March 2002 in Perth.

(3) The Working Group and its task forces are co-chaired by Department of Agriculture, Fisheries and Forestry Australia officials and Indonesian Ministry of Agriculture officials with participation by private sector interests from both Australia and Indonesia.